

AD-HOC PUBLIC REPORT

On the 2008 February 19 Presidential Elections and the Post-Electoral Developments

As per Article 17(2) of the Republic of Armenia Law on the Human Rights Defender

YEREVAN 2008

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INTRODUCTION

The 2008 February 19 presidential elections and the post-electoral developments considerably influenced all spheres of public life in Armenia, including the whole spectrum of individual right and the situation in terms of protection and respect for human and civic personal, political, social, and economic rights.

The Human Rights Defender of the Republic of Armenia (hereinafter, “the Defender”) is constitutionally obliged to make an impartial assessment of the crisis situation and to seek ways to overcome it. Furthermore, Article 17(2) of the Republic of Armenia Law on the Human Rights Defender authorizes the Defender to issue ad-hoc public reports on matters drawing heightened interest from the public, as well as on grave violations of human rights and the failure to eliminate mass violations of rights.

The substance and structure of this Ad-hoc Public Report (hereinafter, “the Report”) are designed to support a comprehensive analysis of the presidential elections and the post-electoral developments.

The First Part of the Report explores how the pre-electoral social-psychological atmosphere changed because of the lack of access to impartial information about the campaign. The Second Part of the Report provides an analysis of the atmosphere on the voting day and its legislative causes. The Third Part elaborates on the post-electoral developments. The Fourth Part is an overview of the Defender’s activities aimed at eliminating violations of human and civic rights in the post-electoral context.

In the Report, the analysis of developments related to the presidential elections in Armenia takes into consideration that the pre- and post-electoral situation in the country had emerged on account of numerous problems that objectively remain unsolved in the country, making a significant part of society dissatisfied. Many of those issues were identified in the Defender’s 2006 Annual Report, the conclusions of which, unfortunately, did not receive adequate attention from the authorities.

The structural logic of the Report is based on the irrefutable fact that, during the presidential elections, the already-existing dissatisfaction of a large part of society, having found a channel of expression, obtained new qualities: the obvious socio-economic polarization, the lack of public trust in public bodies, especially the law-enforcement agencies, as well as the over-centralization of the power, the ineffectiveness of checks and balances between the three branches of government, the inadequacy of safeguards for human and civic rights, and the emergence of a privileged “inner circle” of the elite impelled a significant share of society to seek drastic change as a ways of solving those problems.

In effect, a significant part of society started showing demand for radical action. Consequently, a number of political forces came up with supply that matched the demand. Hence, polarization of society began, and the atmosphere of intolerance intensified.

Indeed, the present situation did not emerge spontaneously, but rather, was the product of certain actions of various candidates, political forces, and mass media outlets. Therefore, the Report examines all the processes that took place in the context of the aforementioned entities' actions.

While it is true that these processes were influenced by the conduct of all the candidates and the political forces supporting them, the atmosphere of intolerance was created primarily due to the activities of both the authorities and certain elements of the opposition. Therefore, the Report mainly focuses on their activities. The analysis covers the period from the start of the campaign till the 9th of April.

PART ONE

In an election process, information is disseminated by means of informing the citizenry and campaigning. The state is responsible for creating arrangements to ensure the provision of sufficient information.

The provision of sufficient information is a prerequisite for administering tolerance-based elections. In the absence of comprehensive information, the election process becomes radicalized.

To illustrate the aforementioned assertion, it is necessary to review the pre-election campaign factors that, to varying degrees, influenced the public processes.

However, before reviewing those factors, it must be noted that the *de-facto* campaign started much earlier than the official launch of the campaign under the Electoral Code of the Republic of Armenia. Abusing the legislative gaps, mass media and political parties were essentially campaigning for or against presidential hopefuls from as early as November 2007. The situation was further complicated due to the inadequacy of electoral legislation and legal responsibility for electoral offences (for details on these issues, see the Defender's 2007 Annual Report), such as the lack of administrative sanctions for citizens, political parties, and party alliances campaigning outside of the legally-prescribed campaign period.

An overview of the strategies of the sides engaged in the political struggle markedly demonstrates that the opposition candidate Levon Ter-Petrossian had adopted a strategy based on "abusing the mistakes of political opponents." In spite of the existence of such mistakes, Levon Ter-Petrossian's political revival was largely facilitated by the governmental public figures' and pro-governmental mass media's propaganda against him, as well as objective factors.

The mass media and telecommunication means are intended for informing the public of elections, the nomination of candidates, their programs, the campaign process, the voting, and the election results, and must operate in accordance with the Republic of Armenia Constitution, laws, and international obligations.

Providing a level playing field in the election process, including access to and the neutrality of mass media and telecommunication means is a necessary prerequisite for respecting the freedom of expression and conducting fair elections.

In view of the foregoing, as well as the actual coverage of the campaign for the 2008 presidential election, there is a clear need for more thorough regulation of the activities of the mass media and telecommunication means during this phase of the election process.

Balanced and impartial coverage is especially important in relation to television coverage, since television more effectively reaches a much larger audience than the print or Internet-based media.

In the period before the official pre-electoral campaign, television coverage was already highly critical of one of the candidates. The 2002 CIS Convention on the Standards for Democratic Elections, Electoral Rights and Freedoms¹ enshrines certain provisions regarding the role of the mass media in the election process, including the coverage of elections. The Convention provides that the Contracting Parties shall ensure the freedom to seek, collect, and disseminate information on elections and contestants, as well as impartial coverage of information about elections in the mass media and telecommunication means. Recommendation 15 /1999/ of the Committee of Ministers of the Council of Europe² is also relevant here, as it is directly concerned with measures to be taken by states to ensure fair, balanced, and impartial coverage of election campaigns.

Although the heavy political bias of television stations somewhat diminished after the start of the official campaign, it did not substantively change the situation.

The Second Interim Report of the OSCE/ODIHR Election Observation Mission, too, addressed issues of media activities during the campaign for the 2008 presidential election. The Report states: “Official public service announcements on the elections were aired on television. The CEC Chair held a press conference in which he reassured voters of their freedom of choice and the secrecy of the vote; the Ombudsman made a statement against ‘vote buying’, and the Prosecutor General made a statement highlighting legal penalties for election violations.” It then goes on: “Media monitoring indicates that the amount of political and election-related information has increased significantly from 21 January (start of official campaign period) onwards. On most of the media, the candidates’ total coverage time was more equitable than in the previous reporting period. However, the coverage of Levon Ter-Petrossian in various broadcast media contained many critical remarks, while the other eight candidates were presented in a generally positive or neutral manner.

Thus, it can be concluded that a crucial element of the authorities’ campaign was aimed at isolating Levon Ter-Petrossian and his supporters from society. There were attempts to persuade the public that Ter-Petrossian’s electorate comprised ex-officials eager to resume robbery, as well as the ignorant, deceived, or irrational members of society, and the lower stratum of society, i.e. an obvious minority. President Robert Kocharyan said: “Perhaps, they

¹ www.laws.am

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[https://wcd.coe.int/ViewDoc.jsp?Ref=Rec\(99\)15&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999C&BackColorIntranet=FFBB55&BackColorLogged=FFAC75](https://wcd.coe.int/ViewDoc.jsp?Ref=Rec(99)15&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999C&BackColorIntranet=FFBB55&BackColorLogged=FFAC75)

now see the economy rebounding and think there are new opportunities for robbery. Perhaps, their appetite has been whetted.”³ Instead of isolating the respective candidate and his supporters, these activities exacerbated the division of society and the incitement of an atmosphere of intolerance between two distinct poles.

These trends intensified due to the similarly radical and biased conduct of the opposition campaigners. Mirroring the authorities’ policy of dividing society into the “majority, which is on our side” and “the opponents, which are the obvious minority,” the opposition in turn divided society into “Us” versus “Not us”, emphasizing the advantages of “Us” and the “foreignness” of “Not us” (they presented the opposition candidate’s entry as a “people’s movement,” and the opposition candidate, as “the people’s candidate” or “the people’s representative,” while characterizing the authorities as a “banditocracy”, “Mongol-Tatar rule,” and the like⁴). The atmosphere that was thus formed in society affected the voting, the vote count, and the recount, ultimately serving as one of the main causes of the tragic events of the 1st and 2nd of March.

This Report does not aimed at analyzing the sides’ gains, losses, mistakes, or achievements in the election campaign, as those matters are for the candidates themselves to study.

The Report addresses these issues only from a standpoint of human rights, especially the right to freedom of expression and the right to obtain information. The purpose of the Report is to illustrate and underline that, in a modern society, restricting one side’s (the opposition’s) freedom of expression and artificially creating unlimited opportunities for the other (the authorities) in this sphere, as well as the disproportionate and unjustifiable use of other instruments of power, in turn leading to restrictions of human rights, may actually do a disservice to and backfire on those abusing such instruments.

This conduct of the authorities has had the following consequences:

1. The candidate who, according to all the opinion polls, had only 3-4 percent of the votes in the run-up to the elections, managed to mobilize around him a large electorate that, in the opinion of any political figure and political scientist, must now be reckoned with;
2. During the campaign and after the election, the number of people participating in Levon Ter-Petrossian’s demonstrations increased abruptly;
3. A sizeable electorate comprising representatives of all groups of society, including, the youth, in particular, mobilized around the opposition candidate; and

³ *Hayastani Hanrapetutyun* daily of October 27, 2007.

⁴ *Haikakan Jamanak* daily of December 4, 2007 and February 6, 2008.

4. During the campaign, an atmosphere of intolerance was formed, which later grew into mutual hate and became the main cause of the events of the 1st and 2nd of March. However, it would be naïve to put all the “blame” for the intensifying intolerance on the authorities. The opposition also “contributed” to it.

These consequences and the factors leading to them are elaborated in greater detail below.

1. All the television stations, including the Public Television, as well as the pro-governmental press (*Golos Armenii*, *Hayastani Hanrapetutyun*, *Hayots Ashkharh*) not only were attributing various negative features to Ter-Petrosian’s character, but were also dominated by biased and one-sided information, which eventually concentrated the attention of the public on his character and created and reinforced, in his supporters’ subconsciousness, Ter-Petrosian’s “sufferer” image. The reason lies in the so-called “image reversal” phenomenon, when external information or emotions may turn into other images at the subconscious level, which may be the reverse of what was presented, if the presentation came from a source that is not credible or reputable. It is a fact that the pro-governmental media do not enjoy an adequate reputation in the public.

While the “negative PR” might have been aimed at conditionally planting various negative associations in people’s consciousness regarding Ter-Petrosian’s image, the result was that its reverse emerged in the subconsciousness of many neutral voters and voters liking Ter-Petrosian, as he began to be perceived as the one with many positive characteristics. Considering that the quantity of such materials in the mass media increased for several months, it was natural that the number of Ter-Petrosian’s sympathizers and followers grew at the same pace: those were people that did not and still do not trust the authorities.

The emotionally-flavored and prolonged anti-propaganda ultimately helped to advertise a segment of the opposition, only to prove the saying that “any adverse publicity is above all promotion.” In the consciousness of neutral citizens, he became associated with images of the “persecuted and unprotected” one. Onesidedness often has an adverse effect.

It is necessary to elaborate on the factor of the Second President of Armenia, who clearly helped to improve the rating of the opposition candidate during the period before the election. A number of acute comments made by the Second President were often spiced with irony, provoking the adversary’s supporters to prove their resolve. For instance, just before the launch of the official campaign, Robert Kocharyan, commenting on Ter-Petrosian’s possible nomination, said the following: “[In such a case,] Ter-Petrosian will become an ordinary oppositionist.”⁵ In general, the labels used by officials were perceived by many

⁵ *Hayastani Hanrapetutyun* daily of September 26, 2007.

voters as being very harsh; given the lack of confidence in the authorities, this improved the First President's rating in a segment of the public. The lack of public confidence in the authorities is objectively confirmed by the opinions of numerous political and social scientists.

The expansion and activation of Ter-Petrosian's electorate was facilitated by three factors, all of which were products of the authorities' conduct. First, pressure against his supporters, exerted using instruments of power. Second, the "possibility" given to him by the authorities to become personally engaged in the "liberation" of persons disseminating information about Ter-Petrosian's demonstration that were apprehended to the police for unclear reasons, including political figures and newspaper editors. These acts, clearly, were perceived as "heroic" interventions by neutral or pro-Ter-Petrosian voters, creating the so-called "diadem effect" around him, which was another social-psychological phenomenon that unconsciously incited voters later to make comments in favor of Ter-Petrosian. Furthermore, the police officers that were restricting the rights of others (the incident of apprehending participants of an activity in an attempt by the police to suspend a non-mass event) did a disservice to the authorities' candidate. Third, the authorities gave Ter-Petrosian and his supporter the "opportunity" to accuse law-enforcement authorities of bias in the investigation of incidents during the meetings in Artashat and Talin.

Voicing problems faced in the country, including the authorities' arbitrary conduct of the authorities and certain aspects of the activities of the authorities, especially officials and leaders, in a specific rhetoric and linguistic style, Ter-Petrosian managed to rouse the "dormant" society.

"Mutinous" citizens and those dissatisfied with the authorities, eager to get rid of the incumbent power at any cost, gradually believed that "voting for Levon" was the most effective way to express their no confidence in the incumbent authorities. Perceiving Ter-Petrosian as a "resolute, incorruptible, principled, and clever leader," they expected that Ter-Petrosian would be able to put an end to the "corrupt and oligarchic power."

These positions became increasingly more extreme, leading to the formation of two main poles in society: those that wanted to see change on the political arena against the incumbent regime versus those that were opposed to abrupt change.

The red thread in the opposition campaign was the idea that Ter-Petrosian's nomination was a "movement of the people." Its primary purpose was to psychologically prepare people for a "movement."

The existing power system was fertile ground for these developments. A sizeable segment of the population, not having had such mobilization since 1988, which would have developed a sense of "togetherness," felt isolated and marginalized from what was happening

in the country, causing many voters to seek new ways of coming together to restore their rights and freedoms. To make the psychological background very similar to 1988, the campaign was presented to the public as “a national liberation struggle, just like that in 1988.”⁶ Some of the main reasons for this situation were the oligarchic system that had emerged and the human resource policies of the authorities, which inclined more people to the opposition candidate.

2. Levon Ter-Petrossian ran his campaign mainly through demonstrations and rallies, although *he had been invited to convey his messages through the broadcast media*. As the number of demonstration participants grew, so did his electorate.

Here, too, the authorities made a “contribution.” The gradual increase in the number of demonstration participants was primarily due to desire of a large number of voters to fill the gap of information about the views of the opposition, imposed on them by the authorities, and to obtain more than one-sided information. This was the reason why many voters started to participate in the opposition demonstrations in order personally to see and hear what went on: the so-called “forbidden fruit” appeal.

The number of demonstration participants increased also because of techniques employed by the opposition, primarily Levon Ter-Petrossian, to mobilize and steer the masses.

The opposition campaign made extensive use of manipulative techniques: “the psychology of masses” implies that ideas conveyed to large crowds do not need rational argumentation or proof; what matters, rather, is the psychological preparation of a certain emotional state that cultivates manipulative ideas, which, once in the crowd, will contagiously and rapidly spread as the ultimate truth. As the masses respond to stimuli, their behavior will change in accordance with the stimulus (for instance, the masses may applaud the police officers, when the speaker says that “the police officers will not raise a hand against their own people,” or may be aggressive, when they are told that the police are being violent and beating their allies).

The masses have imaginative thinking: when the target of negative emotions is presented as an abstract object (such as “the incumbent authorities”), it is very difficult to guide their emotions “towards” or “against.” However, when the target is personified (for instance, by naming specific officials), the negative image, having acquired certain facial features, guides intolerance in the desired direction.

The categorical and spontaneous presentation of ideas, the use of hearsay and word of mouth to influence the masses, a focus throughout the campaign on the existing dissatisfaction in the public and the negative emotions caused by numerous unsolved problems, and the

⁶ *Haikakan Jamanak* daily of January 22, 2008.

frequent and emotional repetition of this information over a lengthy period of time turned into steady negative feelings in the electorate.

Once the masses, due to the number of people involved, have a sense of strength, it can be reinforced and augmented by means of a grotesque exaggeration (“the people of Armenia are regaining their will and victory, and the victory will be imposed on the banditocracy”⁷), which benefited further from statements that new forces would join the ones already supporting Ter-Petrosian.

The masses also care about the images of those steering them: the masses are ready to perceive them as heroes, without any rational analysis or synthesis of facts. One of the first steps in this direction was to shape the image of a political leader. In some of his earlier speeches made after nomination, Ter-Petrosian declared that he was acting as “a fighter against power based on corruption, nepotism, and cronyism.”⁸ Ter-Petrosian was presented as the “fighter” for “unification,” ready to struggle “to the end” against “the hated authorities,” “a wise politician” who had only shaped victories and presented Armenia as “an equal and dignified partner” to the rest of the world.⁹ All of this gave him a special charisma.

The use of these techniques enabled not only to gradually increase the number of demonstration participants, but also to make them more active and manageable.

However, the obvious successes of the opposition candidate were due to only subjective factors. First and foremost, they were driven by the objective reality: the thoughts, emotions, and wishes expressed in the demonstrations were shared by their participants and, as already mentioned, had a factual basis.

3. The authorities’ campaigners failed to notice that the opposition was critical of the social conditions of a large number of people, the desperate state of human and civic rights and freedoms, and numerous drawbacks in the sphere of public administration, rather than challenges to economic development (the construction of tunnels, roads, or elite buildings). To this end, the representatives of the power had chosen the wrong tactics: they would speak of material values, while the opposition had transferred the main ideological struggle to the domain of political and spiritual values, including civic freedoms, human dignity, fairness, justice, and equality.

In this respect, it is worth noting how Robert Kocharyan was sincerely convinced that, during Ter-Petrosian’s term in office, nothing had been created in the country: President Kocharyan asked journalists to name at least one project constructed during Ter-Petrosian’s term: “Try to remember: during the rule of the Pan-Armenian Movement, was anything

⁷ *Haikakan Jamanak* daily of January 23, 2008.

⁸ *Haikakan Jamanak* daily of December 22, 2007.

⁹ *Haikakan Jamanak* daily of January 25, 2008.

permanent built in Yerevan, the Earthquake Zone, or anywhere? Can anyone claim today that, during his term in office, something of permanent value was built with his involvement and still stands?¹⁰

There is a reason why representatives of various strata of Armenian society assembled on Freedom Square: while they were very diverse in terms of social status, level of education, and personalities, they shared a concern over the absence or lack of values that certain psychologists or lawyers later characterized as “purely neurolinguistic” expressions: Fatherland, Family, Justice, Democracy, Equality, Human Rights, and Freedoms. The opposition, having focused its campaign on these very social values, which are essential for any society, managed to mobilize representatives of diverse social groups. This also explains a phenomenon that many could not understand: the active participation of scores of youth in events organized by Levon Ter-Petrossian. The youth has a deeper perception of those eternal values.

4. Before and during the official campaign, the opposition candidate and his team mainly focused on cultivating a negative image of the incumbent authorities (using the emotional state of “intolerance” among a sizeable share of the electorate) as a way of preparing the public.

In parallel, the image of the authorities was personified with a view to giving the movement a clearer target, relying on and reinforcing emotional stereotypes that already existed in society (expressions like “Karabakhis versus Armenians of Armenia,” “the Karabakh clan,” or “the Karabakh junta”). In the opposition propaganda, the Armenian public was clearly divided into two poles: Ter-Petrossian’s electorate (“Us”, “the people,” “the owners of the country”) versus “Not us” (perceived as “traitors” or “the strayed”¹¹). In the beginning of the campaign, having cultivated suspicion regarding the lawfulness of elections (unconditional statements such as “there is no alternative to our victory,” “our victory is unstoppable,” or “we have won already”¹²), people were invited to the Freedom Square on the day following voting day to celebrate their victory. They said that, if there is no victory, then “the elections have been rigged.” A future course of action was defined (“None of us shall go home unless we stand up for our victory and our will”¹³).

The emphasis was laid on the idea that there was a divide between people and the incumbent authorities (“the Kocharyan-Serge administration is a hated, alien, and foreign power for the people”¹⁴). Cultivating the image of the authorities (“immoral and dumb-

¹⁰ <http://news.president.am/arm/separate.php?sub=news&id=1676&month=10&year=2007>

¹¹ *Haikakan Jamanak* daily, N14 {1963} of January 25; N30 {1979} of February 16.

¹² *Haikakan Jamanak* daily of January 26 and 31, 2008.

¹³ *Haikakan Jamanak* daily, N31 {1980} of February 17.

¹⁴ *Haikakan Jamanak* daily of January 23, 2008.

minded thieves, robbers, and oppressors”) versus that of the people (“freedom-loving, wise, resolute, honest, and determined to stand up against the dictatorship),¹⁵ a sense of intolerance in the masses was accompanied with a sense of revenge; the psychological tension was maintained through promises to “punish the culprits” (“... his whole gang, which, together with him, will either end up behind bars, or somehow flee from our country”). At the emotional level, these sentiments were reinforced with accusations on matters that interested the public and had not been addressed sufficiently (for instance, in relation to price increases¹⁶).

To understand fully the propaganda against the authorities, one needs to consider that the opposition, having initially stressed the lack of confidence in the law-enforcement agencies, the judiciary, and other public administration bodies, later began to cultivate a mood of intolerance. In all the propaganda materials (opposition mass media, videos, flyers, and the like), the law-enforcement agencies were presented as an instrument of the “hostile” authorities, a tool of their oppression. In almost all the public meetings, there was special mention of the police violence and provocation against the opposition candidate and the people supporting him (allegations of unlawful searches, battering, and violence¹⁷).

On the last day of the campaign, the opposition invited the electorate to join the celebration of their victory on February 20 or “to stand up for their votes till the very end.”¹⁸

This was how the opposition cultivated intolerance of the authorities and their supporters.

A number of statements and one-sided reporting by the Second President and the “Haylur” news program of the H1 public television channel were directly helping the opposition. The obvious “anti-propaganda” was an additional factor that the opposition could use, citing biased and unfair reporting by the “official” mass media in order to intensify the propaganda against the authorities. In many instances, the pro-governmental newspapers and broadcasters reported that Ter-Petrossian “was provoking division of the nation, and it is in his interests that blood be shed in the streets of Yerevan; the only salvation from this dangerous situation is to put an immediate end to his ambitions.”¹⁹ By attributing such aggressive intentions to their opponent, the authorities continued to escalate intolerance between two opposing camps, which further polarized society. This was one of the reasons why the electorate of other pro-governmental candidates, too, developed a sense of mistrust, fear, and intolerance against the opposition.

¹⁵ *Haikakan Jamanak* daily of January 22, 2008, and January 25, 2008.

¹⁶ *Haikakan Jamanak* daily of January 23, 2008; January 25, 2008; and January 31, 2008.

¹⁷ *Haikakan Jamanak* daily of January 31, 2008.

¹⁸ *Haikakan Jamanak* daily of February 17, 2008.

¹⁹ *Golos Armenii* of January 19 and February 16, 2008.

Before the elections, the campaigns of other opposition candidates, too, contributed to escalating tension in society. Focusing on criticism of the incumbent authorities based on social and economic problems and the inadequate protection of human rights, many of the other presidential candidates contributed to opposition against the authorities and polarization of society. Consequently, many of their voters appeared on the Freedom Square after the 19th of February, considering Levon Ter-Petrossian the only person through whom they could solve their problems.

Indeed, we are all guilty of the situation that was created. However, only the opposition representatives were held responsible: yet another injustice.

PART TWO

This Part addresses:

- a) Applications and complaints addressed to the Defender on the voting day, including measures taken by the Defender in response to complaints;
- b) Imperfections of legislation related with the recount;
- c) Contradictory assessments of elections by international observation missions; and
- d) Issues related with the formation of electoral commissions.

2.1. The polarization and division of society that began before and deepened during the campaign culminated on the voting day: the voting took place in an atmosphere of extreme tension and incidents not appropriate to democratic elections. Both the authorities and the opposition did not spare efforts in insulting and finding fault with each other. The authorities used all possible means to discredit and criticize the opposition, while the latter in turn criticized the authorities and called them a “banditocracy.”

Clearly, in this heated campaign atmosphere, the voting could not go calmly and without mutual accusations. In this respect, there have been numerous media publications on violations by both the authorities and the opposition. The opposition mainly complained about the acts (or inaction) of the electoral commission members and police officers, while the authorities mainly complained about the conduct of Levon Ter-Petrossian’s proxies.

On the voting day, numerous complaints were received by the Staff of the Human Rights Defender, the substance of which was not much different from the media publications.

Below is an overview of some of the more significant applications and complaints received:²⁰

1. A journalist of Radio Liberty telephoned the Defender’s Office and informed that, in the campaign headquarters of Serge Sargsyan near the Zeytoun dormitories, “Form number 9” statements were being issued to citizens, after which they were being bussed to polling stations. The Defender’s staff were unable to receive an explanation about this issue from the Central Electoral Commission (hereinafter, “the CEC”). The Rapid Response Team of the Defender’s Staff visited the place and took note of the quantity and license plate numbers of minivans and other vehicles present there. Members of the Team were not allowed to enter into Serge Sargsyan’s campaign headquarters; the people there denied the

²⁰ This is an overview of applications and complaints addressed to the Defender. Inquiries in relation to those applications and complaints have been made with public authorities.

allegations that statements were being issued. The information received on this call was forwarded to the Office of the Prosecutor General of the Republic of Armenia.

2. Levon Ter-Petrossian's proxy Hakob H. informed that, in District number 4 of Davitashen (City of Yerevan), people were being bussed to polling stations. The Defender's Rapid Response Team visited the site and took note of the fact, including the number of minivans, which were parked closer to the polling stations than the distance permitted by law.

3. The Defender's Staff received a report that, in the Town of Abovyan, proxy Larisa Tadevosyan had been battered. According to verified information, she had reported to the Police, where she had been issued a referral letter to be examined by a forensic doctor.

4. Proxy Ivetta G. reported that, in the polling station formed in school number 5 in the Town of Artashat, ballot stuffing had taken place: about 250 people had entered into the polling station and stuffed ballots into the ballot box. The report was transferred to the Chairman of Territorial Electoral Commission number 17, who refuted the information. The report was also transferred to the CEC.

5. Member of the Armenian National Assembly Karo Karapetyan, accompanied by Vardan Stepanyan and Styopa Stepanyan, had entered into the polling station in the Shahumyan Village of the Ararat Marz, taken the ballots and passports of other citizens, and voted instead of them. The report was transferred to Mr. Nyulbenkyan, the officer in charge of the relevant police station.

6. In the Malatia-Sebasia community (City of Yerevan), proxy Pargev Mnatzakanyan was battered, as he tried to prevent voting irregularities. The Rapid Response Team of the Defender's Staff went to the site, and then, to the Police Station, where they were told that materials had been prepared on the incident and transferred to the Prosecution Office.

7. In polling station 13/16 of the Erebouni District (City of Yerevan), they battered Member of the Armenian National Assembly Armen Martirosyan, who was registered as an observer representing the non-governmental organization called "Fund against Arbitrary Action," as well as another observer (Seda Melikyan), and a journalist. Members of the Defender's Rapid Response Team met with them: during the meeting, it was established that the aforementioned individuals, having received information about voting irregularities in this polling station, had visited it. They had then been approached by a police officer, requesting them to leave the polling station. There had been some pulling around, after which the Police Station Chief had arrived at the scene. A journalist of *Haikakan Jamanak* had tried to photograph the incident, but had been hit around the abdomen, after which they had taken away his audio recorder and camera. The aforementioned incidents reported the incident to the Prosecution Office and to the Defender.

8. Rouben Torosyan, a representative of the Campaign Headquarters of Levon Ter-Petrosian, reported that at 3:21 p.m. on February 19, presidential candidate Artashes Geghamyan had carried out anti-propaganda through the “Lur” program of the Public Radio.

9. Edward Vahanyan, the Chairman of Precinct Electoral Commission 30/22 (City of Vanadzor) reported that the Commission, based on a unanimous vote, had decided to remove Sofia Kalantaryan, Levon Ter-Petrosian’s proxy, from the polling station because of obstructing the Commission since the previous day and regularly provoking incidents in the Commission.

Even if it is proven that Levon Ter-Petrosian’s proxy had obstructed the work of the Commission, Article 27.1(4) of the Electoral Code of the Republic of Armenia provides that electoral commissions may not remove proxies from the voting room or to isolate them in any other way from being present at the commission’s activities, except in the case of their arrest or detention.

10. Citizen Shushan Sardaryan sent an e-mail message to the Human Rights Defender of the Republic of Armenia, informing that, in polling station 5/20 of the Arabkir community (City of Yerevan), two proxies of candidate Levon Ter-Petrosian had been present concurrently, which is in violation of the law. An observer present in the polling station informed that he had approached one of Levon Ter-Petrosian’s proxies, said that the law did not permit the concurrent presence of two proxies of the same candidate in a polling station, and suggested that one of them leave. Both of Levon Ter-Petrosian’s proxies had said that they would not leave. The observer took note of the violation of the law, after which he invited police officers, and the latter removed one of Levon Ter-Petrosian’s proxies from the polling station.

11. In polling station 8/21 of the Malatia-Sebasia community (City of Yerevan), four-five members of Levon Ter-Petrosian’s campaign headquarters brutally battered Hrach Petrosyan, the Chairman of the Precinct Electoral Commission. The latter reported the incident to the Malatia-Sebasia station of the Police.

12. In polling station 31/69 (Lori Marz), Levon Ter-Petrosian’s proxy Sargis Tamazyan had threatened and intimidated the commission members. Tamazyan said that, if anyone tried to interfere with him doing what he wanted to do, the end would be terrible for all of them.

13. Serge Sargsyan’s campaign headquarters in the City of Gyumri reported that Petros Makeyan, the Chairman of the “Democratic Fatherland” Party, together with his supporters, had rushed into polling station 34/06 in Gyumri, cursed at, and intimidated the commission members with threats.

14. Aram Karapetyan, the Chairman of the “New Times” Party, had rushed into polling station 13/02 located in school number 16 in Yerevan, shouted, threatened, and cursed at the commission members. He threatened Serge Sargsyan’s proxy that he would personally settle with the latter. According to Serge Sargsyan’s proxy, Aram Karapetyan had declared, prior to leaving the polling station, that he would make sure that all those supporting Serge Sargsyan ran away from the country.

15. In polling station 36/34 in the Town of Maralik, during the most active turnout period, at around 3:00 p.m, Levon Ter-Petrossian’s Maralik headquarters chief Harutyun Urutyun, together with his supporters, attacked candidate Serge Sargsyan’s proxy Souren Avetissyan, inflicting grave injuries upon the latter. S. Avetissyan was transferred to a hospital in Gyumri with missile wounds.

16. Groups of representatives of Levon Ter-Petrossian’s campaign headquarters had also rushed into polling stations 36/34, 36/35, and 36/36 in the Town of Maralik and tried to obstruct the work of the commissions.

On the whole, several dozen anonymous reports were received about incidents of battering of or pressure against persons engaged in the election process, including in Kanaker-Zeytoun, Malatia-Sebastia, Abovyan, and Artashat communities.

The number of complaints received on the voting day for presidential elections was close to the number of complaints received by the Defender on the voting day for the 2007 parliamentary elections; however, the number of complaints regarding violence against persons involved in the election process on the voting day for the presidential elections was much larger than that on the voting day for parliamentary elections.

In accordance with the procedure stipulated by the Republic of Armenia Law on the Human Rights Defender, the Defender undertook necessary measures to obtain clarifications from appropriate bodies regarding issues raised in the complaints. A number of applications and complaints were forwarded to the law-enforcement agencies for further processing in accordance with the procedure stipulated by law.

It is essential that the competent authorities conduct an impartial investigation of all violations alleged in the applications and complaints, and inform the public of the results of the investigation in order to stop and overcome the division of society and to safeguard social solidarity and civic obedience. To achieve this goal, the Defender stresses the need for an independent commission to seek ways of overcoming the domestic political situation created in Armenia due to the events that took place after the 2008 February 19 presidential election.

2.2. The atmosphere was tense during not only the voting, but also the vote count and recount.

The OSCE/ODIHR Election Observation Mission, too, addressed the issues in the vote count process: according to its Post-Election Interim Report, “the conduct of the vote count was assessed as ‘bad’ or ‘very bad’ in [some 16 per cent of polling stations visited].”²¹

As for the recount of voting results, the OSCE/ODIHR Election Observation Mission noted that, according to the CEC, recount requests were filed in 25 territorial electoral commissions regarding 159 polling electoral commission results, of which 134 were granted, while the other requests were rejected by territorial electoral commissions on the ground that the deadline to request a recount had expired.

Under Article 40²(12) of the Electoral Code of the Republic of Armenia, “the recount activities in territorial electoral commissions shall stop at 14:00, five days after the voting day.” In some cases, essentially, not all recount requests can be granted, due to this time restriction.

Article 40²(8) of the Electoral Code of the Republic of Armenia provides: “Territorial electoral commissions shall recount the voting results in the order in which recount requests have been logged.” Certain problems arise in connection with the practical enforcement of this provision. Perhaps, the issue would not be so contentious, if the Electoral Code, instead of providing that territorial electoral commissions shall recount the voting results in the order in which recount requests have been logged, stipulated that the territorial electoral commissions shall grant the recount requests of all the candidates, either on some pro-rated basis, or prioritizing the recount requests of the candidates that received more votes. Other options can be considered, as well.

This issue was also mentioned in the Second Interim Report of the OSCE/ODIHR Election Observation Mission. The observers noted that, on some occasions, i.e. TEC 1, 4 and 13, the TEC did not conduct recounts requested by some other candidates because it was occupied with those requested by just one presidential candidate, Aram Harutiunyan.

Besides, the OSCE/ODIHR Election Observation Mission concluded that the majority of recounts observed showed discrepancies and mistakes in the original count, some of which were significant and raised questions over the political impartiality of precinct electoral commissions and territorial electoral commissions.²²

2.3. The tension created in society in the context of the presidential election was exacerbated by the inconsistent findings of different international observation missions. For instance, the OSCE/ODIHR Long-Term Election Observation Mission reported in its Statement of Preliminary Findings and Conclusions published on February 20, 2008: “[*The 19*

²¹ http://www.osce.org/documents/odihhr/2008/03/30090_en.pdf

²² http://www.osce.org/documents/odihhr/2008/03/30090_en.pdf

February presidential election in Armenia] was administered mostly in line with [the country's international] commitments..., [while] further improvements ... are required to address remaining challenges." Conveying the overall impression of about 400 international observers, Anne-Marie Lizin, the OSCE Parliamentary Assembly Vice President and Special Co-ordinator of the OSCE short-term observers, said that there was progress compared to the previous elections. "Compared to the previous presidential elections, significant progress was noted with regard to the preparation and conduct of the electoral process," said Marie Anne Isler Beguin, the Head of the European Parliament delegation.²³

At the same time, in an interview with Radio Liberty on February 29, 2008, Geert Ahrens, the head of the long-term observer mission deployed in Armenia by the OSCE's Office for Democratic Institutions and Human Rights said: "The mission's preliminary assessment of the election conduct given on February 20 was not as positive as has been widely construed in and outside the country. "When we say 'mostly,' this is not a compliment," he said. ... I would say 'largely' is 80 percent to 90 percent, while 'mostly' can be 51 percent or 75 percent but not more."²⁴

It is perplexing, to say the least, that such reputable organizations can make statements entirely contradicting one another or, what is more, to present such statements in their reports.

These inconsistent statements may be due to the opposition's rather harsh criticism of the OSCE/ODIHR Election Observation Mission: in a demonstration on February 23, Levon Ter-Petrossian declared that he had reason, based on a certain attitude, to conclude that the West was not interested in Armenia's democracy or democratic or intellectual power, as the West did not, in his opinion, want to speak with the Armenian authorities as equals, but rather, wanted Armenia to have weak and submissive authorities.²⁵

While refraining from any political comments, it should be noted that reputable organizations like OSCE/ODIHR are simply obliged to be consistent in their statements and not to abide by the influence of any political force whatsoever. The aforementioned quotes remain unclear: in one case, it was stated that "compared to the previous presidential elections, significant progress was noted..." while in another, made only nine days after the first one, it was mentioned that "when we say 'mostly,' this is not a compliment. ... I would say 'largely' is 80 percent to 90 percent, while 'mostly' can be 51 percent or 75 percent but not more."²⁶ Thus, what progress are senior European officials referring to? Or, if there was indeed progress, then why was the term "largely" used in relation to the parliamentary

²³ *Azg* daily of February 21, 2008.

²⁴ www.alplus.am February 29, 2008.

²⁵ www.lragir.am February 23, 2008.

²⁶ *Azg* daily of February 21, 2008.

election, and the term “mostly” in relation to the presidential election? For us, it is unclear how electoral progress can be characterized in percentages.

2.4. The overall impression of the voting day was affected by not only the division of society and the atmosphere of intolerance, but also deficiencies of the electoral legislation, including, in particular, the electoral commission formation procedure stipulated by the Electoral Code of the Republic of Armenia.

The existence of independent and impartial electoral commissions is an essential prerequisite of the proper administration of the election process. Although the Electoral Code provisions on the formation of electoral commissions have been positively assessed by international structures, the observation of both the 2007 parliamentary and the 2008 presidential elections showed that those provisions need to be further discussed and revised.

The Code of Good Practice in Electoral Matters, adopted by the Venice Commission of the Council of Europe, emphasizes that “only transparency, impartiality and independence from politically motivated manipulation will ensure proper administration of the election process, from the pre-election period to the end of the processing of results.” To this end, the Explanatory Report to the Code specifies that, “in states where the administrative authorities have a long-standing tradition of independence from the political authorities,” elections can “be organized by administrative authorities, and supervised by the Ministry of the Interior.” “However, in states with little experience of organizing pluralist elections,” electoral commissions should be formed mainly by the parties already represented in the parliament.

This approach is reflected in the Electoral Code of the Republic of Armenia. However, experience has shown that the “political” formation of electoral commissions cannot ensure proper administration of the election process.

The only way to overcome this situation, perhaps, is to combine the two aforementioned models of electoral commission formation. Thus, the administrative authorities will be able to conduct the electoral administration, while observer commissions formed by the parties represented in the parliament will supervise the activities of the relevant authorities. Of course, this problem needs to be studied more profoundly and comprehensively. Moreover, legislative solutions must be developed.

PART THREE

3.1 The post-electoral developments began with the opposition demonstration that followed the voting day of the February 19 presidential election.

Forces acting at the opposing ends of the political spectrum made completely different comments on the February 19 election and its results.

Representatives of the power insisted that the shortcomings in the election process could not overshadow the election, because shortcomings take place in any election anywhere.²⁷ The opposition leaders, in turn, harshly criticized all the phases of the election process, especially the processing of vote results and the recount.²⁸

Given the lack of confidence in the authorities, their representatives, and various institutions of the power, such mutually exclusive assessments of the same process, from “the most disgraceful” to “the most successful ever” in the history of the state, inclined sizeable segments of the population towards the opposition.

Many citizens tended unconditionally to believe any argument made against the authorities in the demonstrations or spread through the opposition mass media. The pro-governmental political figures’ and mass media’s efforts to convince people that the results published by the Central Electoral Commission reflected the reality were often perceived by citizens with certain reservations, as, due to the deprivation of objective information, trust in the authorities eroded by the day.

Under such circumstances, information circulating in the form of hearsay became more influential; people became more sensitive to negative signals, which contributed to overall tension in society during the first post-electoral week.

In an attempt to fill the gap of information about the opposition activities, people continued participating in demonstrations, which the authorities called “unlicensed and unlawful,” while the demonstrations remained at the center of everyone’s attention.

Television stations covered the opposition demonstrations in a distinctly negative light. Some analysts believe that the failure to cover the criticism expressed against the authorities in the demonstrations led to a significant increase in the number of demonstration participants. In spite of criticism and allegations made in the demonstrations, television stations continued to present only programs and interviews in which pro-governmental forces criticized the opposition.

²⁷ See, for instance, the Statement of the Parliamentary Factions of the Republican Party of Armenia and the “Prosperous Armenia” Party at www.lragir.am; February 24, 2008.

²⁸ See, for instance, *Haikakan Jamanak* daily of February 21, 2008.

Oppositionists, in turn, capitalized on this situation. A comparison of pre-electoral and post-electoral campaigns shows that the former was primarily focused on the post-electoral developments. The propaganda spread on Freedom Square during February 20-29 concentrated on messages about the authorities exerting violence against the people, falsifying the elections, trying to take victory away from “the people’s candidate,” and not deserving to be tolerated.

The analysis of speeches made on Freedom Square shows that some of them were based on a highly emotional reproduction of the 1988 national liberation struggle. This component stirred up the emotions of the younger electorate that, by virtue of age, had not participated in the Karabakh Movement (messages like “we are in an information blockade, but, in 1988, we ran many blockades, and we shall do the same now”; “people are struggling against oppressors”; “however, we were resolute in 1988”,²⁹ and so on). These messages channeled the emotionality of masses in a new direction, which was related with the Karabakh movement and associated with the national liberation struggle (“we are all together”; “all the people are gathered here”).³⁰

During this period, the messages concerning the incumbent authorities were mainly a continuation of the pre-electoral propaganda. In this context, the propaganda was aimed at deepening the divide between society and the authorities by means of cultivating a negative image of the authorities (“people are the real owners of the country, not the authorities”; “the Armenian people have overcome the atmosphere of intimidation”).³¹ To intensify the emotional state of further, various means were used to inspire the masses that they had the right “to punish” (“if those deadlines run out, and our demands are not fulfilled, we shall together do what we have to do”; “no one can stop us”; “the people must find the will to punish those culprits”).³²

Perhaps, the representatives of the power and the pro-governmental mass media underestimated the number of pro-opposition voters and their determination to continue the political struggle with all means. Apparently, they hoped that Ter-Petrosian’s supporters “would soon be bored and tired, and would go home,” automatically easing the situation. The opposition figures were characterized as mercenary, anti-Armenian, and aggressive, with an emphasis on the need to respond to their conduct using law-enforcement agencies.

The polarization that existed in society deepened further on account of one-sided comments of various specialists (psychologists, sociologists, political scientists, and others),

²⁹ *Haikakan Jamanak* daily, N34 {1983} of February 22, 2008.

³⁰ *Haikakan Jamanak* daily, N33 {1982} of February 21; N34 {1983} of February 22, 2008.

³¹ *Haikakan Jamanak* daily, N33 {1982} of February 21; N34 {1983} of February 22, 2008.

³² *Haikakan Jamanak* daily, N33 {1982} of February 21; N34 {1983} of February 22, 2008.

which attributed unappealing qualities to the demonstration participants (“zombied,” “irrational,” “semi-literate,” “losers,” “hysterical women not satisfied in their families,” and the like).³³ These attitudes incited both the passive and active protesters to prove that they did not have such qualities and deserved attention.

With the prevalence of opposite impulses, tension in society continued escalating. Many political scientists characterized the post-electoral period in Armenia as “a struggle of nerves between the authorities and the opposition.” It seemed like both poles were waiting for the other to run out of patience. The mass media continued to provide polarizing information charged with sharp expressions and threats. In the same period, the sense of psychological alarm was intensified using information about the arrest by the authorities of opposition figures and their supporters.

On the background of this atmosphere of distrust, the public was not persuaded by messages of various non-governmental organizations, artists, and scientists to stop the protest and to be tolerant. In the context of extreme tension in society, the Second President’s statements that he was willing to give a job to Levon Ter-Petrosian in his staff or to resolve the conflict in four possible ways gave rise to a further emotional response by various parts of the public.³⁴

Curiously enough, all of this continued during and beyond the state of emergency. Under such circumstances, one could have expected the mass actions of protest about unfair conduct of the authorities in various regions of Armenia since the state of emergency expired, as large segments of society still cannot see any impartiality or fairness on the part of the authorities.

The leaders of the radical opposition, in turn, continue to apply intolerance-breeding techniques tested during and after the election campaign. Those are the techniques the use of which intensified the negative perceptions of the incumbent authorities, law-enforcement agencies, and the institutions of state power, generally, among a segment of society; over time, they generated emotional tension.

It needs to be emphasized that such positions are based on objective factors, including:

1. The over-centralization of the power and the alienation of a considerable part of society from them;
2. The inadequacy of civic freedoms;
3. Socio-economic polarization;
4. Limitations of the right to obtain information;

³³ *Hayastani Hanrapetutyun* daily of February 22, 2008.

³⁴ <http://news.president.am/arm/?sub=statements&id=202&from=0&year=2008>
Hayastani Hanrapetutyun daily of February 27, 2008.

5. Insufficient protection of the freedom of expression; and
6. The superficiality of respect for human rights as a supreme value.

The main conclusion from the foregoing is that, during the observed period, the authorities, having formed a closed system of “the privileged inner circle” versus “the rest of society,” left no chance of political struggle for either the opposition or any dissenter. The democratic principles of the organization of power were superficial. The opposition adopted the same radical means by going out to the streets (forcedly) and polarizing society into “Us” versus “Not us.” The public suffered as a consequence of the radicalism of both a part of the authorities and a part of the opposition, as the March 1 and 2 events were caused, among other things, by the use of radical means. Hence, society has the right to demand that the country’s political elite (both the authorities and the opposition) safeguard the rights and freedoms of the people. Now, the primary mission of the political elite is to build an atmosphere of tolerance in society.

3.2.1 The Freedom Square Operation (6:40 a.m. on March 1, 2008)

The March 1 events started with the forcible termination of the peaceful sit-in on Freedom Square.³⁵ At 6:40 a.m., police officers wearing protective clothing and carrying shields and truncheons attacked the demonstrators that were on Freedom Square.

The Petition for Consent to Bring Charges against Four Members of the National Assembly of the Republic of Armenia, filed with the National Assembly on March 4 by the Prosecutor General of Armenia, provides: *“On February 29, the Police and the National Security Service of the Republic of Armenia received credible intelligence information according to which Levon Ter-Petrossian’s supporters were planning, by means of carrying out provocative acts, to incite mass disorder in the capital city on March 1, and that, in pursuit of this aim, a large quantity of cudgels, metal sticks, explosive materials, firearms, and grenades would be distributed to the participants of the sit-in taking place on Freedom Square. To render the situation harmless, the Police undertook early in the morning of March 1 an operation intended to seize those socially-dangerous materials; however, in response to an appeal to provide an opportunity to carry out an appropriate inspection, the participants of the sit-in fiercely attacked the law-enforcement officers that were performing their official duties. From the crowd, they started throwing on the police officers stones, wood pieces, metal sticks, and Molotov cocktails prepared in advance, which was accompanied with swear words against the law-enforcement officers and calls to forcibly overthrow the power. Based on the created situation, an operational on-the-spot decision was made to implement*

³⁵ Statement of the Human Rights Defender of the Republic of Armenia on the Situation Created in the Country, paragraph 2, March 3, 2008; <http://ombuds.am/main/en/9/18/1281/>

*appropriate measures within the framework prescribed by law, only after which the police officers managed to overcome the armed resistance.*³⁶

A legal assessment of the event that took place in the morning of March 1 requires addressing the following issues:

- A. The lawfulness of the 10-day-long sit-in on Freedom Square.
- B. The hypothesis that arms had been built up on Freedom Square by the morning of March 1, which served as a basis for applying the criminal-procedure legislation.
- C. The Police authority and the proportionality of Police actions.

A. The Lawfulness of the Demonstration (February 20 – March 1, Freedom Square)

Under Article 29 of the Republic of Armenia Constitution, “*everyone shall have the right to freedom of peaceful and unarmed assembly.*” The exercise of this right was regulated by the Republic of Armenia November 19, 2005 Law on Conducting Meetings, Assemblies, Rallies, and Demonstrations (the version of the Law that was in effect up to March 19, 2008). Article 10-12 of the Law prescribed the content of a notification on conducting a public event, as well as its submission and review procedure.³⁷ On the first day of the sit-in, Nikol Pashinyan, a member of the Election Campaign Headquarters of presidential candidate Levon Ter-Petrosian declared that the sit-in was taking place at his and Ararat Zurabyan’s initiative, and that thousands of Armenian citizens were spontaneously joining them. The Campaign Headquarters of presidential candidate Levon Ter-Petrosian, invoking Article 10(1) of the Law on Conducting Meetings, Assemblies, Rallies, and Demonstrations, insists that notification was not required, because a non-mass event had been organized, which had later spontaneously grown into a mass public event.³⁸ It is worth mentioning here that the intent to make it an organized demonstration and to grow it into a mass event is illustrated by the fact that the mass media outlets and websites serving Levon Ter-Petrosian had regularly

³⁶ Office of the Prosecutor General of the Republic of Armenia, Agency Documents, Petition for Consent to Bring Charges against Four Members of the National Assembly of the Republic of Armenia, March 4, 2008; <http://www.genproc.am/main/am/23/3469/>

³⁷ Article 10(4) of the Law provided: “*Organizers submit a written notification about organization of a mass public event to the head of the community where mass public event is organized or to Mayor of Yerevan [in case the public event is held in Yerevan]. The notification shall be considered lawful and subject to review, if it is submitted not later than three working days and not earlier than twenty days prior to the conducting of the event.*” Article 12(6) of the Law provided: “*In the result of consideration of the notification, in the absence of the circumstances referred in the Article 13, the notification about mass public event shall be acknowledged, and the event shall be held at the place and time mentioned in the event notification.*”

³⁸ Article 10(1) of the Law provides: “*Except for cases when a non-mass public event has spontaneously grown into a mass public event, mass public events may be organized only after giving written notification to the authorized body.*”

encouraged Armenian citizens to participate in those demonstrations. Moreover, a specific place (Freedom Square) and a specific hour (15:00) were decided for organizing daily demonstrations. However, the Yerevan City Administration was never informed of either the approximate ending time of the demonstration or the route and approximate timetable of rallies, and did not receive data on the organizers' passports or other personal identification documents. In formal terms, the demonstration that lasted from February 21 to March 1 did not correspond to the requirements of law, because the Yerevan Mayor had neither been notified of nor acknowledged the conducting of a demonstration. In the meantime, thousands of citizens spontaneously went to Freedom Square at varying times of the day to protest the way in which the election had been administered and the official results of the election, a matter that touches the interests of all Armenian citizens and their collective right to form the power by the expression of their free will. The OSCE/ODIHR report explicitly states: *“From 21 February to early morning on 1 March, protesters maintained a peaceful, though not formally sanctioned, assembly in Freedom Square. They also held numerous peaceful processions. On 21 February 2008, speakers announced that their intention was to reach annulment and repetition of the election. The authorities overall accommodated the protest actions.”*³⁹

The official results of the election did not merit unequivocal popular trust: the Campaign Headquarters of opposition candidate Levon Ter-Petrossian and the “Heritage” Party, which now remains the only opposition party in the National Assembly, issued official statements explicitly questioning the election outcome; they claimed that the election had been marred by pervasive vote buying, violence, and abduction, and pointed out a number of violations during the recount. In the meantime, Vahan Hovhannesian, the candidate of the ARF *Dashnaksutiun*, which was a part of the Government, stepped down as Deputy Speaker of the National Assembly citing election irregularities.⁴⁰ Tigran Karapetyan was the first presidential candidate to apply to the Constitutional Court of the Republic of Armenia with a request to invalidate the election results. On February 29, presidential candidate Levon Ter-Petrossian did the same. The Constitutional Court had to issue its decision by the 8th of March, which would effectively be the legal end of this electoral process in Armenia.

³⁹ OSCE/ODIHR; Election Observation Mission, Presidential Election, 2008, Republic of Armenia; Post-Election Interim Report, 20 February – 3 March 2008, p. 3; http://www.osce.org/documents/odhr/2008/03/30090_en.pdf

⁴⁰ OSCE/ODIHR; Election Observation Mission, Presidential Election, 2008, Republic of Armenia; Post-Election Interim Report, 20 February – 3 March 2008, p. 3; http://www.osce.org/documents/odhr/2008/03/30090_en.pdf; February 28, 2008 Statement of the US Mission to the OSCE: www.osce.usmission.gov

The movement led by Levon Ter-Petrossian organized a campaign of protest against the vote fraud and violence, demanding a fair recount. A sizeable share of Armenia's population gathered at Freedom Square from February 20, 2008, intending to continue until the final determination of the electoral complaint, in order to peacefully protest against the way in which the election had been administered and the official results of the election. These demonstrations had been viewed in the context of the electoral process also by the Second President of the Republic of Armenia, Robert Kocharyan, who had said in a press conference: *"The unlicensed demonstrations were not terminated by the Police for nine consecutive days only due to one reason: I was prohibiting such termination. The reason was the post-electoral recount and appeals process. I thought that the dispersal of demonstrations would be perceived as the authorities' attempt to undermine the recount or appeals process."*⁴¹

B. Legitimacy of the March 1 Operation from the Perspective of Criminal Procedure

The Republic of Armenia Law on Conducting Meetings, Assemblies, Rallies, and Demonstrations distinguishes two separate processes: making a decision to terminate a public event (Article 14(1)) and the procedure of compulsorily terminating a public event (Article 14(1)). The aforementioned Law gives the Police the right to take a decision on terminating a public event, if, for instance, the mass public event is conducted without notification. However, Article 14(3)(2) of the same Law provides: *"The Police may compulsorily terminate a public event, if the event poses a real threat to the lives of people, health, state and public security, the public order, or may inflict considerable property damage to the state, the community, or to natural and legal persons."* Hence, the March 1 interference was justified with the argument that, on February 29, the Police and the National Security Service of the Republic of Armenia had received intelligence information according to which arms were building up in Freedom Square. To render the situation harmless, the Police undertook in the morning of March 1 an operation intended to seize those socially-dangerous materials.

The Campaign Headquarters of Levon Ter-Petrossian and the opposition "Heritage" Party represented in the National Assembly both insist that the objective of the events in the morning of March 1 was, under the guise of a locality inspection operation, to violently terminate the peaceful demonstrations that had been continuing for 10 days, to remove the

⁴¹ Press conference of the Republic of Armenia President Robert Kocharyan, March 20, 2008; <http://news.president.am/arm/?sub=press&id=104&year=2008>

citizens participating in the sit-in from there, and to prohibit future demonstrations on Freedom Square.

A comprehensive and independent investigation will show which of these hypotheses is correct. However, certain issues may be raised at this point already:

- There are certain inconsistencies in the statements made by the Office of the Prosecutor General of the Republic of Armenia. For instance, the Petition of the Prosecutor General for Consent to Bring Charges against and Detain Pending Trial Four Members of the National Assembly of the Republic of Armenia, filed on March 4, 2008, states: “*The objective of the Police was to carry out an operation aimed at seizing arms, which grew into a clash*”⁴²; while the March 1 Press Release of the Office of the Prosecutor General of the Republic of Armenia stated that “*the objective of the Police was the compulsory termination of the gathering at around 6:00 a.m. on March 1.*”⁴³ What is the truth?
- There is a discrepancy between the aforementioned Press Release and the Petition of the Prosecutor General to the National Assembly: the Press Release states that “*during the clash between the police and demonstrators, the latter used cudgels, metal sticks, and other adapted instruments*”; while the list of objects used is longer in the Petition and includes “Molotov cocktails” (“bottles with inflammable substances”), which can be considered ammunition (under Article 1(1)(h) of the Republic of Armenia Law on Arms: “*thrown adapted objects that contain technical inflammable fillings*”).⁴⁴ Naturally, the existence of Molotov cocktails would provide additional evidence that the demonstrators had prepared the arms in advance, and that, because of it, the demonstration could not be treated as unarmed assembly. Furthermore, in their press conference on March 4, the First Deputy Chief of the Police of the Republic of Armenia Ararat Mahtesyan and Press Secretary of the Chief of the Police of the Republic of Armenia Sayat Shirinyan mentioned only cudgels and iron sticks.⁴⁵

⁴² Office of the Prosecutor General of the Republic of Armenia, Agency Documents, Petition for Consent to Bring Charges against Four Members of the National Assembly of the Republic of Armenia, March 4, 2008; <http://www.genproc.am/main/am/23/3469/>

⁴³ Press Release of the Office of the Prosecutor General of the Republic of Armenia, “*Criminal Case Instigated in the Special Investigative Service of the Republic of Armenia*”, March 1, 2008; <http://www.genproc.am/main/am/16/3421/>

⁴⁴ “From the crowd, they started throwing on the police officers stones, wood pieces, metal sticks, and Molotov cocktails prepared in advance, which was accompanied with swear words against the law-enforcement officers and calls to forcibly overthrow the power.” Office of the Prosecutor General of the Republic of Armenia, Agency Documents, Petition for Consent to Bring Charges against Four Members of the National Assembly of the Republic of Armenia, March 4, 2008; <http://www.genproc.am/main/am/23/3469/>

⁴⁵ “*However, when the police officers entered there, the demonstrators immediately confronted them with cudgels and iron sticks.*” Police of the Republic of Armenia, Meeting with Journalists, April 4, 2008; <http://www.police.am/page.php?section=news&id=5214&lenguige=am&txt=>

- It can be inferred from the text of the Petition lodged by the Prosecutor General to the National Assembly on March 4 that there was credible information about the distribution of firearms and grenades, and that the Police were attempting to seize those socially-dangerous materials and to inspect the locality.⁴⁶ The existence of such information is a sufficient ground to assume that, as soon as information about illegal arms and grenades was obtained, a criminal-procedural matter arose, because the distribution of illegal arms and grenades is a criminal offence. The Criminal Procedure Code of the Republic of Armenia requires the body of criminal prosecution (in this case, the Police) to instigate a criminal case, if the information received about a committed or contemplated crime is credible (“Grounds for Instigating a Criminal Case”), and the information was obtained in the performance by the competent authority (in this case, the Police) of its functions (“Reasons for Instigating a Criminal Case”). A number of questions arise, including, in particular, the following: why had the Police of the Republic of Armenia not instigated a criminal case based on the fact of having received such information?⁴⁷
- If the materials received by the Police and the National Security Service of the Republic of Armenia were not credible (which would in fact contradict the official statement made in the Petition of the Prosecutor General of the Republic of Armenia), then only the following investigative acts would be permitted: inspecting the incident scene, ordering a forensic examination, taking samples, and searching a person. In the official statement, it was mentioned that the Police undertook an operation in order to seize the socially-dangerous materials. To carry out seizure, a criminal case had to have been instigated already. Besides, Article 218 of the Criminal Procedure Code of the Republic of Armenia provides: “*As a rule, a locality inspection is conducted in the day-time, with the participation of inspection witnesses*”⁴⁸. Under Article 6(48) of the Criminal Procedure Code of the Republic of Armenia, “night-time” means the period between 10:00 pm and 7 a.m. It remains to be determined whether inspection witnesses took part in the process, and whether there was any justification for performing the investigative act in the night-time. The Freedom Square operation took

⁴⁶ Office of the Prosecutor General of the Republic of Armenia, Agency Documents, Petition for Consent to Bring Charges against Four Members of the National Assembly of the Republic of Armenia, March 4, 2008; <http://www.genproc.am/main/am/23/3469/>

⁴⁷ Article 175 of the Criminal Procedure Code of the Republic of Armenia provides: “*In the presence of the reasons and grounds for instigating a criminal case, which are envisaged in the present Code, the prosecutor, the investigator, and the investigation body **must** institute a criminal case within the limits of their authority.*”

⁴⁸ Article 81(1) of the Criminal Procedure Code of the Republic of Armenia provides: “*Witness to an investigative act is any adult citizen of the Republic of Armenia, disinterested personally in the criminal case, invited by the body of criminal prosecution for the participation in the implementation of the investigatory act for the verification of the fact of its implementation, the substance, the course and the results.*”

place at 6:40 a.m., which is extremely surprising given the simple reason that, if the Police were indeed performing an investigative act, then, in practice, they would have waited slightly longer in order to avoid having to provide additional justification, and instead of performing the investigative act at 6:40 a.m., would have performed it after 7 a.m.

- It is necessary to determine whether the demonstration participants were publicly informed about a planned locality inspection, and if yes, then by whom. It remains to be determined whether anyone introduced himself as the official responsible for the operation, and whether such person used the loudspeaker available in the Square to declare the demand to perform a locality inspection.
- In an inspection, the official conducting criminal proceedings, either on his own or with the assistance of an expert, records traces and takes documents and other objects that may have evidentiary value in the case. It is strange, to say the least, that the police officers were picking up the discovered arms with their bare hands, which was broadcast on the Public Television on March 1. The negligence of those police officers may have led to the destruction of fingerprints on those arms, which is clearly not in the interests of the criminal case that was later instigated. It is worth recalling here that the presumption of innocence is a cornerstone of criminal proceedings: the prosecution carries the burden of proof and may not rely on assumptions.
- On March 4, the First Deputy Chief of the Police of the Republic of Armenia Ararat Mahtesyan and Press Secretary of the Chief of the Police of the Republic of Armenia Sayat Shirinyan, during their press conference, declared that the essence of the acts carried out on Freedom Square in the morning of March 1 was the following: “*The Police were to go and perform a locality inspection on the spot and search the tents.*”⁴⁹ How can one explain the performance of a search, which is an investigative act, not having instigated a criminal case? Was the search performed in accordance with the required procedure?
- According to official information, the participants of the sit-in fiercely attacked the law-enforcement officers that were attempting to perform a locality inspection in pursuit of their official duties. Based on the created situation, an operational on-the-spot decision was made to implement appropriate measures within the framework prescribed by law. A logical question comes up: how did it happen that, at 6:30 a.m., in a matter of just minutes, the Police managed to mobilize numerous units, wearing

⁴⁹ Police of the Republic of Armenia, Meeting with Journalists, April 4, 2008; <http://www.police.am/page.php?section=news&id=5214&lenguige=am&txt=>

protective clothing and carrying shields and truncheons, which attacked the demonstrators, if the only objective then was to perform a locality inspection?

- Given the highly politicized nature of the situation, one would assume the law-enforcement officers to videotape the operation, especially its launch, especially if one considers that camera crews were accompanying them and later made videos of the discovered arms. Therefore, the launch of the operation, as videotaped by them, should be analyzed rigorously. To this end, there are concerns over the confiscation of the videotapes of “A1+” and “Yerkir Media” and the smashing of the “ALM” camcorder (all three were videotaping the situation in the morning of March 1). Moreover, freelance photographer of *Aravot* daily Gagik Shamshyan was beaten and the photos taken by him were taken away.⁵⁰ What was the Police hiding? If everything was done in accordance with law, the Police should have been the most interested in everything being videotaped and covered.
- The operative-intelligence measures stipulated by Article 14 of the Law on Operative-Intelligence Activities (inspection of buildings, structures, localities, premises, and vehicles; collecting samples for comparative examination; and the like) may be performed by both the Police and the National Security Service also prior to instigating a criminal case. Article 38(2) of the same Law prohibits the body carrying out operative-intelligence activities from performing acts that are not stipulated by the decision to perform an operative-intelligence measure. Moreover, Article 33 of the said Law provides: “*The performance of operative-intelligence measures stipulated by this Law shall be directly supervised by the official that took the decision to perform such measures, who shall be personally responsible for the lawfulness of operative-intelligence activities.*” It is necessary to determine who engaged the units performing operative-intelligence activities, what operative-intelligence acts were stipulated by the decision to perform an operative-intelligence measure, who carried out the whole preparation of the operation, and who managed and supervised it. To this end, Article 35 of the Law on Operative-Intelligence Activities provides: “*At the prosecutor’s demand, the heads of bodies performing operative-intelligence activities shall be obliged to present to him documents and other necessary information supporting the performance of such activities.*”
- Why did Grigory Sarkisyan, the Head of State Protection Service, participate in the Freedom Square operation? Moreover, it remains to be determined whether he

⁵⁰ Statement of the Human Rights Defender of the Republic of Armenia on the Situation Created in the Country, paragraph 2, March 3, 2008; <http://ombuds.am/main/en/9/18/1281/>

managed the March 1 Freedom Square operation, and, in the frameworks of the locality inspection, what the reason was for accompanying the First President of the Republic of Armenia to his home “forcedly” and then keeping him there under “house arrest,” as alleged by the ex-President.

- There have been numerous mass media reports, none refuted to date, that the Police Troops of the Republic of Armenia took part in the operation. Under Article 3 of the Republic of Armenia Law on Police Troops, “*the activities of Police Troops shall be carried out based on the principle of personal leadership*”; while Article 13 of the same Law provides that “*overall leadership of the Police Troops shall be exercised by the Chief of the Police of the Republic of Armenia, and immediate leadership shall be exercised by the Commander of the Police Troops.*” It is necessary to determine whether there was a decision to engage the Police Troops, and who the official exercising immediate leadership was. Article 20 of the Law on Police Troops provides that “*it shall be prohibited to engage the Police Troops for the prevention of peaceful and unarmed meetings, assemblies, rallies, and demonstrations.*”
- In the morning of March 1, and later on the same day, in the vicinity of the French Embassy, no shots were fired during the first half of the day. No firearms were used by the demonstrators. According to the March 1 Press Release of the Office of the Prosecutor General of the Republic of Armenia, grenades were discovered in Freedom Square in the morning, which raises a question: *why were they not used?* If the fleeing demonstrators indeed left pistols behind, as presented by the Public Television, then how did it happen that, during their dispersal, which included battering and resistance, not a single shot was fired? Moreover, on the same day, in the vicinity of the French Embassy, the demonstrators were assembling stones and similar objects in order to “arm” themselves.
- On February 29, the Second President of the Republic of Armenia stated, in a meeting at Yerevan State University, that among available solutions was the “*cleaning up of the Square*” by police officers. He said: “*Option one: to wait patiently until the theatrical performance cleans itself up. Option two: to apply police acts to clean up that square in order to enable people to live more calmly, which, I believe, will now be of great assistance first of all to the deluded individuals that have assembled and are being kept there by means of various techniques.*”⁵¹ In the Republic of Armenia, the Police and the National Security Service are under the *de-facto* control of the President

⁵¹ President of the Republic of Armenia; Speeches; Meeting of the Republic of Armenia President Robert Kocharyan with Students of Yerevan State University, February 19, 2008; <http://news.president.am/arm/?sub=statements&id=202&from=0&year=2008>

of the Republic. Moreover, the pro-governmental media were asserting for several days that it was necessary to clean up the Freedom Square. It is worth citing a section of the aforementioned OSCE/ODIHR report: “On 23 February, President Kocharyan held meetings with the leadership of the armed forces, the police and the National Security Service, in which he spoke of an “illegitimate attempt to take over power” and announced “determined and sharp” actions directed at preserving stability and constitutional order in the country. In the following days, persons were detained on suspicion of ‘illegally possessing weapons’, ‘actions or physical abuse towards an authority’, and ‘intentional delinquency’.”⁵² Based on President Kocharyan’s report of a crime, did the Police of the Republic of Armenia instigate a criminal case regarding either the crime of attempting to seize the state power or the crime of making public calls to forcibly overthrow the constitutional order in the Republic of Armenia?

C. The Police Authority and the Proportionality of Police Actions

Any investigative or operative-intelligence act of the Police, as well as any force used by the Police to compulsorily terminate a demonstration, must be necessary and proportionate to an imminent threat.⁵³

- According to mass media reports, the Freedom Square operation began when Levon Ter-Petrossian finished his appeal to the demonstrators in the Square to make no resistance, to remain calm, and to see what the Police want. Without any warning, the police officers started pouring water on the demonstrators, hitting them with electric shock, and then, hitting with truncheons. Numerous demonstrators have been tortured. The UN Convention against Torture provides: “*No exceptional circumstances whatsoever, whether a state of war or a threat or war, internal political instability or any other public emergency, may be invoked as a justification of torture.*”
- Reportedly, police officers battered passers-by, including children.
- Article 18 of the Law on Police Troops and Article 36 of the Law on Police require police officers and servicemen of the internal troops to ensure the provision of first aid to persons that have sustained physical injuries. According to numerous eyewitnesses,

⁵² OSCE/ODIHR; Election Observation Mission, Presidential Election, 2008, Republic of Armenia; Post-Election Interim Report, 20 February – 3 March 2008, p. 4; http://www.osce.org/documents/odihr/2008/03/30090_en.pdf

⁵³ Article 29(3) of the Republic of Armenia Law on Police provides: “*When choosing the physical force, special means, and firearms to be used, the police officer shall take into consideration the created situation, the nature of the offence, and the offender’s person.*”

scores of injured citizens were being arrested and taken to the police, short of any first aid, including children with bleeding wounds. Parliament Members from the “Heritage” Party claimed to have personally witnessed similar incidents in front of the “Kentron” Police Station in Yerevan at around 9:00 a.m. on March 1.⁵⁴

In connection with the aforementioned incidents, the following needs to be mentioned:

a. Article 31(4) of the Law on Police “*prohibits the use of special means in relation to manifestly disabled persons and children, or in order to suppress an unarmed unlicensed gathering, unless the latter disturbs the operation of transport, communications, and organizations.*”

b. Article 29 of the Law on Police provides: “*The use by a police officer of physical force, special means, or firearms in cases not stipulated by law, or the excessive use thereof shall give rise to liability in the procedure defined by law.*” All of the aforementioned potential abuses by police officers and servicemen of the Police Troops must be thoroughly investigated, among other means, by analyzing the existing videotapes of the operation and eyewitness (victim) statements. It is worth noting that, to date, not a single criminal case has been instigated against any police officer, even for excessive use of physical force and special means.

- Around Freedom Square, there were two circles of police officers: one on the actual Freedom Square, and the other, along the four adjacent streets.⁵⁵ These circles were intended to keep everyone out, so that the demonstration ended. In this respect, it is important to recall the jurisprudence of the European Court of Human Rights, according to which the right to peaceful assembly is a cornerstone of democratic society, and offences by some participants of a demonstration should not serve as a basis for depriving others of this right.
- Not all the citizens assembled on Freedom Square were purported criminals. Among them were many demonstrators; therefore, the Police operation directly resulted in the compulsory termination of the demonstration. Article 7 of the Law on Conducting Meetings, Assemblies, Rallies, and Demonstrations provides: “*Every citizen shall have the right to stop his/her participation in public events and, in the event of termination of the public event, shall immediately leave the venue of the public event.*” According to eyewitness accounts, demonstrators were chased much beyond Freedom Square.

⁵⁴ Statement of the “Heritage” Party, March 1, 2008; <http://www.heritage.am/pr/010308-1arm.htm>

⁵⁵ Police of the Republic of Armenia, Meeting with Journalists, April 4, 2008: “*Naturally, the Police also encircled the area, in order for the demonstrators not to hamper the police work.*” <http://www.police.am/page.php?section=news&id=5214&lenguige=am&txt=>

Some eyewitnesses claim that, at the beginning, the loop was closed, and demonstrators could not escape the blockade. These allegations must be investigated, with a particular focus on analyzing the existing videotapes and eyewitness accounts.

- Article 14(3) of the Law on Conducting Meetings, Assemblies, Rallies, and Demonstrations provides: “*Prior to compulsory termination of the public event, the police representative shall no less than twice inform the participants through a loudspeaker about the request to terminate the public event within a reasonable time-frame. Should the public event be not terminated within such time-frame, the police shall have the right to terminate the event compulsorily by means established by the law.*” While it is true that, every day preceding March 1, police officers announced through loudspeakers that the demonstration was unlawful and requested the citizens to terminate it, no such demand was presented in the morning of March 1. No time-frame was given to the demonstrators for terminating the demonstration. Based on the existing video footage, it needs to be determined whether the Office of the Prosecutor General of the Republic of Armenia has established compliance with or the reasons for non-compliance with the aforementioned rule.
- Regarding the events that took place in the morning of March 1, it is still unknown what information had been received about the buildup of arms on Freedom Square. In this respect, the European Court of Human Rights, in the judgment on the case of *McCann and Others v. the United Kingdom* (1995), reviewed the lawfulness of the use of force by law-enforcement authorities, urged the authorities to refrain from acting on the basis of incomplete hypotheses.⁵⁶ Moreover, all the activities carried out by Levon Ter-Petrossian starting from the 20th of February had taken place in complete peace, as confirmed by senior officials of international organizations.⁵⁷ To this end, Article 35 of the Law on Operative-Intelligence Activities authorizes the prosecutor to demand the heads of bodies performing operative-intelligence activities to present to the prosecutor the information that supported the performance of such activities. Did the Office of the Prosecutor General of the Republic of Armenia receive such information? Did it assess the appropriateness and lawfulness of the locality inspection activities performed on the basis of such information?

⁵⁶ *McCann and Others v. the United Kingdom*, 1995 (A n 324).

⁵⁷ OSCE, Press release, Helsinki, 1 March 2008; www.osce.org/item/2996.html?print=1

US Mission to the OSCE, Statement on the Elections in Armenia. February 28, 2008. www.osce.usmission.gov
“*We applaud both the government and the opposition in Armenia for avoiding successfully any incidents of violence in the context of large political rallies on behalf of each the two top candidates. This peaceful exercise of the freedom of assembly, coupled with effective, non violent, crowd management, is a notable achievement and a sign of democratic progress.*”

3.2.2. The French Embassy (starting from 11:30 a.m. on March 1)

At around 11 a.m. on March 1, people started gathering on the square adjacent to the French Embassy. People had gathered to express their protest and indignation about the events that took place earlier that morning.

There is a clear correlation between the events of the morning of March 1 and what happened during the second half of the day. The events that took place during the second half of March 1 cannot be investigated without a focus on their causal link with the violence done to the demonstration participants earlier in the morning; hence, these two events should be investigated in a common framework.

At 11:15 a.m. on March 1, the Police and Police Troops detachments that were near the Opera started moving towards the French Embassy. Servicemen of the Police Troops and other special detachments were standing in several directions and lines. The faces of some “police officers” were covered with masks. Employees of the Republic of Armenia Police Department against Organized Crime were taking part in the attempt to disperse the demonstrators.

Numerous provocateurs, planted among the demonstrators, were doing their best to incite clashes with the Police. All of these allegations, including eyewitness accounts, must be thoroughly investigated.

Unlike the Freedom Square operation earlier that morning, which was subject to the criminal procedure legislation (given the “buildup of arms” hypothesis), the use of force near the French Embassy is subject exclusively to the Republic of Armenia Law on Conducting Meetings, Assemblies, Rallies, and Demonstrations, especially its provisions regarding the termination of demonstrations and the use of special means. The Police have the right to compulsorily terminate a gathering, if the gathering poses a real threat to the lives of people, health, state and public security, the public order, or may inflict considerable property damage to the state, the community, or to natural and legal persons. Therefore, the physical force applied by the Police at around noon on March 1 should be considered unlawful, because there was no official presentation and explanation that the citizens’ gathering in the vicinity of the French Embassy posed a real threat to any of the aforementioned. Moreover, up to 2:00 pm, the demonstration was peaceful, and Article 14(4) of the said Law was not applicable (Article 14(4) provides: “*The procedure for terminating a public event ... shall not apply in the event of an outbreak of mass disturbance in the place of conducting the public event,*

which call for appropriate emergency measures in line with the situation.” For spontaneous gatherings, the Law did not even require any notification.

The engagement of the Police Troops of the Republic of Armenia in the attempt to disperse the citizens in the vicinity of the French Embassy at noon of March 1 should be considered unlawful, as well, because Article 20 of the Law on Police Troops directly provides that *“it shall be prohibited to engage the Police Troops in the prevention of peaceful and unarmed meetings, assemblies, rallies, and demonstrations.”* In this respect, Colonel Gegham Petrossyan, Chief of Staff of the Police Troops of the Republic of Armenia, mentioned the following in a televised speech, without providing any details: *“During the day, we were performing our service in different streets of the capital city.”*⁵⁸ It needs to be determined who issued the unlawful order to engage the Police Troops, and whether an internal investigation was instigated.

The situation was different in the second half of the day, when the demonstrators became, in a sense, uncontrollable, which was accompanied with disorders. The events near the French Embassy in the second half of March 1 took place in two places: (i) in the vicinity of the Myasnikyan statue, where demonstrators had assembled and were waiting for their leader, and (ii) in the area between Mashtots Avenue and Paronyan and Leo streets, where discrete clashes took place between police officers and groups of persons. Moreover, during the night of March 1, the looting of shops on Mashtots Avenue and the burning of vehicles took place under questionable and controversial circumstances. It is worth noting that the participants of the demonstration in the vicinity of the French Embassy did not attack any of the nearby shops (including, for instance, the “Euromotors” showroom of BMW automobiles). The investigation needs to reveal whether the peaceful demonstrators gathered in the vicinity of the French Embassy are actually related with those perpetrating disorder in the nearby streets. This question is of particular legal importance from the standpoint of charging the *de-facto* leaders of the demonstration with the organization of disorders in the nearby streets.

The investigation should also address the infliction of firearm wounds upon the police officers, given the fact that the Police have still not published any evidence of the demonstrators firing in the direction of the police officers.

During the clashes in the area between Mashtots Avenue and Paronyan and Leo streets, eight people died, according to official information, of which seven were civilians.⁵⁹ Four of the civilians died of firearm wounds, while the other three died because of special means (tear gas).

⁵⁸ Televised speech of Colonel Gegham Petrossyan, Chief of Staff of the Police Troops of the Republic of Armenia, March 3, 2008; <http://police.am/page.php?section=news&id=5208&lenguige=am&txt=>

⁵⁹ As of April 15, 2008, the death toll reached 10, of which eight were civilians.

To determine whether firearm use in the demonstrations was legitimate, the following tests should be applied:

- Firearm use is lawful in any of the situations specified in Article 32 of the Law on Police, including, in particular, “*while repulsing an attack made upon a police officer when his/her life or health are endangered, as well as while preventing an attempt to seize his/her weapon.*” It remains to be determined whether each case of firearm use was preceded by a demonstrator’s attack on the police officers, which posed a real threat to the police officers’ life or health, or whether the police officers were the first to attack and to use firearms.
- If it turns out that the Police could realistically achieve their objective by using special means, but instead, preferred to use firearms, then the principle of proportionality has been breached. It is worth noting that, as a result of using special means, three civilians died. In this respect, the Republic of Armenia President Robert Kocharyan declared: “*The events illustrated that what we have is rather outdated and not always safe. Had the special means truly been safer, three of the seven civilian lives could have been spared.*”⁶⁰ Here, a question arises: how did it happen that hazardous special means were used, causing three additional deaths, especially if we consider, as the President said, that *we inherited those means from the Soviet period*. The authorities responsible for the investigation should ask the following question: who ordered to use those special means? Moreover, Article 29(2) of the Law on Police provides: “*The Police employees shall pass special training, as well as regularly take tests, to determine their ability to act under situations giving rise to the need to use physical force, special means, and firearms.*” Which official is responsible for administering those tests? When were they last administered?
- According to the jurisprudence of the European Court of Human Rights, the use of force which results in the deprivation of life may be legitimate, if it was “absolutely necessary” and “reasonably justifiable.”⁶¹ Here, when assessing proportionality, it must be taken into account that the brains of the dead demonstrators had been smashed. Reportedly, the police officers were shooting in the direction of the demonstrators for over an hour. Finally, there is video footage in Armenia, which shows how masked individuals fire at people. The Office of the Prosecutor General of

⁶⁰ Press conference of the Republic of Armenia President Robert Kocharyan, March 20, 2008; <http://news.president.am/arm/?sub=press&id=104&year=2008>

⁶¹ *McCann and Others v. the United Kingdom*, 1995 (A n 324).

the Republic of Armenia has expressed readiness to engage UN experts in verifying the authenticity of such videos.⁶²

- It must be determined, in the event of using firearms when there is a considerable accumulation of people, whether it has the potential of inflicting damage upon other individuals. Article 32(3) of the Law on Police explicitly prohibits firearm use when there is a considerable accumulation of people, if such use has the potential of inflicting damage upon others. It should be noted that, in the provision that prohibits firearm use, the legislature has used the term “considerable accumulation of people,” which includes all forms of assembly. If it turns out that, in the instant case, firearms were used in a situation in which there was a real threat of inflicting damage upon other individuals, then such interference will be considered unlawful.

Article 29(5)(3) of the Law on Police provides that, in all those cases when physical injury or death of a person was inflicted by the use of physical force, special means, or firearms, the relevant police officer must inform the supervisory police body thereof within the shortest possible time-frame. The police body must inform the victim’s close relatives and the prosecutors of the event within the shortest possible time-frame. For each case of death, a special investigation must be carried out. To this end, the Prosecutor General of the Republic of Armenia Aghvan Hovsepian mentioned, in his meeting with the Council of Europe Commissioner for Human Rights Thomas Hammarberg, that the pre-trial investigation authority has been instructed in writing to carry out a comprehensive investigation into not only the disorder, with a view to finding its organizers and perpetrators, but also the lawfulness of police conduct, even though written complaints about police conduct had not been received.⁶³ We hereby urge the Office of the Prosecutor General of the Republic of Armenia to be proactive; in particular, not to wait for victims or their successors to file complaints.

All the questions raised in this Chapter require exhaustive answers. An impartial, comprehensive, and complete investigation into the events of March 1 is necessary as a prerequisite for overcoming the crisis. After such a severe shock, reconciliation in society cannot be achieved, unless the public perceives that real justice has been administered.

⁶² Office of the Prosecutor General of the Republic of Armenia, Press Release, *The Prosecutor General of the Republic of Armenia Aghvan Hovsepian receives the EU Special Representative Peter Semneby*; March 21, 2008; <http://www.genproc.am/main/am/16/3817/>

⁶³ Office of the Prosecutor General of the Republic of Armenia, Press Release, *The Prosecutor General of the Republic of Armenia Aghvan Hovsepian receives the Council of Europe Commissioner for Human Rights*, March 13, 2008; <http://www.genproc.am/main/am/16/3729/>

3.2.3. The State of Emergency

In a press conference related to his enactment of a Decree to impose a state of emergency on March 1, President Robert Kocharyan mentioned that the measure was aimed at maintaining the constitutional order in Armenia and ensuring the security of the population of Armenia. The Decree was signed when they reported to the President that eight officers were wounded.⁶⁴ Under such circumstances, it was necessary to introduce a state of emergency.

Under Article 55(14) of the Republic of Armenia Constitution, the President of the Republic has the power to declare a state of emergency. The state of emergency legal regime is defined by law. The Republic of Armenia still does not have a law on the legal regime of a state of emergency, which would define all the rights that may be restricted, the scope of restrictions, the mechanisms for supervising them, and other related matters. In this situation, the introduction of a state of emergency gave rise to the following practical issues:

1. Under Article 44 of the Republic of Armenia Constitution, “*certain fundamental human and civil rights ... may be temporarily restricted in accordance with the procedure prescribed by law in case of martial law or a state of emergency.*” Although Article 117(6) of the Republic of Armenia Constitution permits the President, in the event of an imminent danger to the constitutional order prior to the definition of the legal regime of a state of emergency by law, to carry out measures appropriate in the given circumstances, the absence of a law defining the legal regime of a state of emergency created further controversy over the restriction of rights.
2. The practical enforcement of the Decree was accompanied with a number of violations:
 - Though the state of emergency was declared only in the City of Yerevan, some restrictions specified in the Decree were effectively applied in other towns of Armenia, as well (such as the restriction of the freedom of assembly);
 - Paragraph 4(3) of the aforementioned Presidential Decree prescribed the right of law-enforcement bodies, upon necessity, to restrict the movement of and to inspect vehicles. Applications and complaints received by the Human Rights Defender of Armenia indicate that, as a consequence of the wide interpretation of the aforementioned provision, citizens’ right to enter into Yerevan, in particular, was

⁶⁴ Press conference of the Republic of Armenia President Robert Kocharyan: *President Robert Kocharyan had a meeting with journalists on the situation created in Yerevan*, March 1, 2008; <http://news.president.am/arm/?sub=press&id=100&from=0&year=2008>

disproportionately restricted.⁶⁵ Though the issue was raised in the March 3 Statement of the Human Rights Defender, there has so far been no response from the law-enforcement agencies, neither refutation, nor punishment of the offenders.

- Under Paragraph 4(4) of the Decree, mass media reports on state and domestic political matters were permitted only within the limits of official information from state bodies. As mentioned in the information disseminated by the Defender, the news websites of “A1+” and “Lragir” were shut down; and
 - Though the restrictions imposed under the Decree did not contemplate censorship (censorship is also prohibited under Article 4 of the Republic of Armenia Law on Mass Information), there was *de-facto* censorship during the period in question. As a consequence, the printing of some nationwide newspapers was prohibited on account of their contents. A number of newspapers, citing the regime imposed under the Decree, refused to operate, because they were unable to present critical opinions or the opposition viewpoint, whereas certain other newspapers and television stations faced no restrictions in publishing information that dishonored and insulted the opposition, and was frequently aggressive. The aforementioned provision of the Presidential Decree did not contribute to pacifying the public. The most shocking example of such unacceptable coverage was the First Channel of the Public Television of Armenia (HI), which not only ignored the relevant provision of the Decree, but also breached Article 28 of the Law on Television and the Radio, which “*prohibits the predominance of political views in the programs broadcast by public television companies.*” The National Commission for Television and the Radio (“NCTR”), which by law is an independent regulatory body called to supervise the activities of television companies and radio companies, failed to perform its core function of preventing violations of the Decree by not only H1, but also the majority of private broadcasters. Since the unlawful acts in the sphere of information during the state of emergency were related directly with elections, punishing their perpetrators is just as important as punishing those violating the electoral procedures.
3. Given the manipulation of the mass media, statements of international organizations and their officials⁶⁶, too, were presented in distorted form, which misled the public and turned into an additional factor hampering the international reputation of Armenia.

⁶⁵ Statement of the Human Rights Defender of the Republic of Armenia on the Situation Created in the Country, paragraph 5, March 3, 2008; <http://ombuds.am/main/en/9/18/1281/>

⁶⁶ OSCE/ODIHR; Election Observation Mission, Presidential Election, 2008, Republic of Armenia; Post-Election Interim Report, 20 February – 3 March 2008; http://www.osce.org/documents/odihr/2008/03/30090_en.pdf

4. The legislative amendments regarding the freedom of assembly, which were enacted during the state of emergency, were aimed at effectively “prolonging” the regime imposed under the Decree. This was the reason why the amendments to the Law on Conducting Meetings, Assemblies, Rallies, and Demonstrations took effect on the day following their official promulgation, which coincided with the end of the state of emergency. The imposition of those restrictions immediately after the end of the state of emergency directly contradicts Article 46(2)(3) of the Republic of Armenia Law on Legal Acts, which provides that any law restricting rights and freedoms may take effect only after a minimum of 10 days following its official promulgation.

Clearly, the decision to impose a state of emergency in the evening of March 1 and related further measures did not contribute to overcoming the polarization of society. In an attempt to obtain alternative information, scores of citizens had to exert additional efforts on a daily basis searching the radio and navigating the Internet, where they would find new facts causing further dissatisfaction. Information obtained from these sources, as exaggerated or inadequate as it might have been, had a strong influence on the public, because it was not balanced with any objective information.

The measures implemented during the state of emergency did not help to relieve the tension in society.

PART FOUR

This Part is an overview of inquiries made by the Human Rights Defender in connection with applications and complaints received by his Staff on violations of rights in the course of post-electoral developments, as well as the findings of the Defender's visits, made on his own initiative, to penitentiary institutions and the regions in connection with post-electoral developments.

4.1 After the March 1 events, the Staff of the Human Rights Defender of the Republic of Armenia received over 60 oral and written applications, complaints, and reports. The Defender also received collective statements on behalf of over 1,000 citizens.

In terms of the substance of applications and complaints received, and the measures available to the Defender under the legislation for responding to them, all the complaints can be classified into the following groups:

- A) Complaints regarding groundless or politicized charges against individuals;
- B) Complaints regarding unlawful police custody and violations of the arrest procedure and time requirements;
- C) Complaints regarding the failure to provide a defense lawyer to individuals apprehended in accordance with the Criminal Procedure Code; and
- D) Complaints regarding illegitimate restrictions of the liberty and personal immunity rights of individuals taking part in activities organized on the Northern Avenue.

A. The majority of persons detained after the March 1 events have disagreed with the charges filed against them, calling them groundless and purely political. However, the Defender has limited possibilities under the legislation to respond to such allegations. The Defender does not have the right to interfere with the activities of courts, which have the power to assess whether the facts underlying charges are justifiable. The Defender only has the power to examine violations of criminal-procedural rights, to prevent such violations, and to restore such rights.

B. The next category of complaints was related to unlawful police custody and violations of the arrest procedure and time requirements stipulated under the Criminal Procedure Code.

Example 1. A citizen lodged a written application to the Human Rights Defender, in which he stated that, at 10:00 a.m. on March 1, police officers had apprehended his brother from the territory of the Northern Avenue to the Kentron (Center) Police Station of the

Yerevan City Police Department. Later on the same day, he had been transferred to the Malatia-Sebastia District Police Station of Yerevan, where he had been unlawfully detained until March 5, i.e. longer than permitted under the legislation.

Example 2. A detained person informed the Defender that he had been arrested on March 3, but the formal arrest decision had been made only on March 5. On March 3, he had been taken to the Kentron (Center) Police Station of the Yerevan City Police Department, after which he had been transferred to the Yerevan City Police Custody Institution for Holding Arrested Persons, where he had been kept for four days.

C. The next category of complaints was related to the failure to provide a defense lawyer to individuals apprehended in accordance with the Criminal Procedure Code.

It should be noted that the right to have a defense lawyer is enshrined in Article 20 of the Republic of Armenia Constitution and Article 6(3(c)) of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Article 20(2) of the Republic of Armenia Constitution provides: “Everyone shall have the right to have a defense lawyer of his choosing from the moment of his arrest, imposition of a preventive measure, or indictment.”

The terms “arrest,” “imposition of a preventive measure,” and “indictment” used in Article 20 of the Constitution must be construed from the standpoint of constitutional, rather than criminal-procedural law. Given the aim of the constitutional right to have a defense lawyer, it is necessary to consider the factual, rather than formal-procedural status of the person subjected to criminal prosecution. Therefore, anyone who is apprehended has the lawful right to demand a lawyer, and such demands must be fulfilled immediately, even prior to filing an arrest protocol. This conclusion is also supported by the jurisprudence of the European Court of Human Rights.⁶⁷

D. The last category of complaints addressed to the Defender was related to the apprehension of citizens “strolling” on Northern Avenue to various police stations.

To assess the lawfulness of the conduct of law-enforcement officers, it is necessary for them to provide clear answers to the following questions:

a. What offence has been committed by the apprehended citizens? Can the so-called “political strolling” of citizens be considered an administrative offence?

b. If citizens have committed an offence, then what measures contemplated by law were taken, and what procedural documents were compiled in respect of both the apprehension and the offence?

⁶⁷ Murray, 1996-1, para. 66, 08.02.1996, Foti, Series A, no. 56, para. 52, 10.12.1982.

c. If citizens have committed an offence, then what criteria did the police officers employ when apprehending some, but not all of them? Did the police conduct not violate the constitutional principle of equality before the law?

d. If citizens were apprehended to police stations in order to check their identity, then was their identity checked on the spot on the basis of personal identification documents?

4.2 Considering that everyone is entitled to the Human Rights Defender's assistance on the grounds and in the procedure stipulated by law for the protection of his rights and freedoms,⁶⁸ working groups established at the Defender's instruction visited the "Noubarashen," "Vardashen," "Yerevan-Kentron," "Vanadzor," "Artik," and "Convicts' Hospital" penitentiary institutions of the Republic of Armenia Ministry of Justice, where the members of the working groups had meetings and private interviews with persons detained in the aftermath of the March 1 events. During the visits, the working groups met with a total of about 110 detainees. A number of problems, as presented below, were found during the visits.

Regarding post-electoral developments and issues concerning the protection of human rights, the Human Rights Defender of the Republic of Armenia believes that the Presidential Decree rightfully did not contemplate any restrictions of procedural rights, and persons may be arrested or detained only in accordance with the general procedure stipulated by law.

4.2.1 Complaints regarding Cruel and Inhuman Treatment

20 of the detainees stated that they had been ill-treated during their apprehension by the police and custody in police stations.

Example 1. A detainee reported that he had been arrested on March 1 on Freedom Square. During the arrest, force had been used against him, although he had not resisted in any manner. Later, he had been transferred to the Yerevan City Police Department, after which he had been transferred to the Kanaker-Zeytoun District Police Station of Yerevan, where someone with the rank of a colonel had hit him on the head and battered him.

Example 2. A detainee reported that he had been arrested on March 7 in Artashat. He reported being battered in the Artashat Police Station. On March 12, 2008, he had been transferred to the "Noubarashen" penitentiary institution. He did not complain of the administration of the penitentiary institution.

4.2.2 Issues related to the Right to Have a Lawyer

Inquiries showed that 60 of the 110 detained individuals had exercised their procedural right to have a lawyer, while 50 had refused to have a lawyer on various grounds: 31 of those 50 considered that they could defend themselves, while the remaining 19 cited social conditions as the reason for the inability to hire a lawyer. The Staff of the Human Rights

⁶⁸ Article 18 of the Constitution of the Republic of Armenia.

Defender explained to them the nature of the well-established institution of the Public Defender. Several of the detainees said that, although they had lawyers, they considered the lawyers' engagement a formality, because they either were not allowed to meet with their lawyers or were allowed to have a lawyer in breach of the specified procedure.

Example 1. A detainee charged with Article 316 of the Criminal Code of the Republic of Armenia reported that the Public Defender's Office had provided him with a lawyer, but the investigative authority was obstructing to the lawyer meeting with his client. The detainee also mentioned that, as of March 25, no investigative act related to him had been performed yet.

Example 2. A detainee reported that he was completely isolated and not allowed to use either the press or the telephone. He also complained that, although he had requested to see his lawyer, his request had been processed only after several days, i.e. the presence of the lawyer had not been properly ensured.

4.2.3 Persons Gone on a Hunger Strike

In the period following March 1, Staff of the Human Rights Defender met with 25 persons gone on a hunger strike as a way of expressing their protest against groundless charges, claiming that they were political prisoners, or complaining about the detention conditions in the penitentiary institutions.

Example 1. On March 17, 2008, during a visit to the "Noubarashen" penitentiary institution, the working group of the Human Rights Defender met with Vardges Gaspar, who had gone on a hunger strike. The detainee reported that, at 8:00 a.m. on March 1, he had been arrested in the vicinity of the Opera and transferred to the Kentron (Center) Police Station of Yerevan, from where he had later been transferred to the Arabkir District Police Station of Yerevan, after which he had been transferred to the Custody Institution for Holding Arrested Persons, and, at midnight on March 6, to the "Noubarashen" penitentiary institution. He was charged with Article 316 of the Criminal Code of the Republic of Armenia. He claimed that he had not done anything unlawful and had not resisted. While in police custody, he reported not having been allowed to contact his relatives and to inform them of his whereabouts. He did not plea guilty to the charges against him. He reported having met with international observers, as well. On March 3, while in the Custody Institution for Holding Arrested Persons, he went on a hunger strike. He said his hunger strike was due to numerous and widespread violations of human rights and the situation in the penitentiary institution. He said that, during his detention in the "Noubarashen" penitentiary institution, his following rights had been violated: he had been kept in the same cell with a person with many former convictions, who also had gone on a hunger strike and, according to Mr. Gaspar, had

tuberculosis. Mr. Gaspar had requested his cellmate to be examined by doctors.⁶⁹ He also reported that, in cells number 9, 29, 04, and 79, the printed reminders of inmates' rights and freedoms were not posted on the walls, although such reminders, in his opinion, were essential for inmates that wished to abide by the law.

The Staff of the Human Rights Defender found the hunger-striker's cell to be in a detrimental state. Mr. Gaspar complained about the lack of sanitation and said that, several days prior to the visit, sewage water had poured out and covered the floor of the room, and that they had permitted him to clean the floor only after one hour. He also complained about the lack of any social-psychological activities.

Example 2. On March 25, 2008, at the Defender's instruction, the working group made another visit to the "Noubarashen" penitentiary institution and met with Souren Sourenyants, who had gone on a hunger strike on March 24. Mr. Sourenyants reported that, at around 8:30 p.m. on February 25, 2008, three individuals, dressed in civilian clothes, without introducing themselves, had taken him to the Kentron (Center) Police Station of Yerevan. Later, he had been taken to a police inquiry officer, and then, to an investigator for performing investigative acts. Mr. Sourenyants claimed that, for a reason that he could not understand, he had been placed under detention for a 20-day period. He also reported having been initially charged with Article 225¹ of the Criminal Code of the Republic of Armenia, but, considering that the sentence under Article 225¹ was not imprisonment, and he could not be detained pending trial on charges under this Article, they had later charged him with several other articles (225(2) and 300), as a consequence of which his detention had been prolonged for two months. He reported having gone on a hunger strike and told he would stop it only when his demands were met. He demanded the following: 1) ordering his release on bail; and 2) initiating a legal-political dialogue. The penitentiary institution was performing medical supervision of Mr. Sourenyants.

4.2.4 Groundless Criminal Prosecution

There have also been cases of detainees reporting that they did not know the reason for their detention and claiming that they had not either participated in mass disorders or made any public speeches.

Example 1. A citizen (registered at the Ashotzk region of the Shirak Marz, currently residing in the City of Yerevan) reported that he had been apprehended early in the morning of March 3, when he was simply walking in the street. He had been taken to the Kentron (Center) Police Station of the Yerevan City Police Department, from where he had been

⁶⁹ Staff of the Human Rights Defender met with doctors of the penitentiary institution on March 17, 2008. The latter informed that sputum analysis had been performed and lung X-ray had been taken. As of February 28, 2008, the sputum did not contain tuberculosis pathogens, and the March 4, 2008 lung X-ray did not discover any pathological signs.

transferred to the Vagharshapat City Police Station. He claimed that he had been transferred to the “Noubarashen” penitentiary institution only on March 10. He also claimed not having participated in demonstrations and not knowing the reason for his arrest. Furthermore, he alleged having been cruelly battered by police officers.

Example 2. It was impossible to communicate with a deaf-and-dumb person detained in the “Noubarashen” penitentiary institution with the help of his cellmate. The Defender’s working group tried to ask him to write his problem on a sheet of paper. In this way, he informed the working group members that, at 12:30 p.m. on March 3, he had been standing next to the Circus, where persons seeking menial jobs usually stand, when police officers approached them. Everyone other than him had run away, so the police arrested him and took him to the Kentron (Center) Police Station of the Yerevan City Police Department, from where he had been transferred to the “Noubarashen” penitentiary institution on March 6. He reported not having done anything illegal, not having broken anything, and not understanding why he had been arrested. He also reported that, during the investigation, he had not been provided with a gesture-translator or anyone through whom he could communicate.

Example 3. A citizen reported that, on March 6, National Security Service officers of the Town of Martouni had detained and charged him with mass disorder on March 1 (Article 225 of the Criminal Code). He also reported that he had been apprehended to the Police Station of the Town of Martouni in the morning of March 1, where he had stayed till the evening, and could not have possibly been engaged in the mass disorder in Yerevan. Letters issued by the Village Mayor and Police confirmed that he had been in Martouni the whole time.

4.2.5 Detainees’ Complaints about Political Prosecution

During visits to penitentiary institutions, 70 of the detainees claimed to have been jailed for their political views and considered themselves political prisoners.

Example 1. A citizen reported that nothing had been found during the search of his apartment performed on March 3, 2008, except for his computer, which had been taken to the National Security Service. On March 14, 2008, he had been apprehended to the National Security Service; up to such time, he did not have any procedural status. Then, he was charged with Articles 225 and 300(1) of the Criminal Code of the Republic of Armenia. He had made a speech from the platform on Freedom Square on February 27, 2008. He considered himself a political prisoner who was prosecuted for his political views. He had a lawyer. He had not been battered, but reported psychological pressure. He did not complain of the administration of the penitentiary institution in which he was being kept.

Example 2. A citizen reported that he was fully isolated and not allowed to read the press. He had been charged with Article 149(2)(3) of the Criminal Code of the Republic of Armenia. He had a lawyer, but considered the charges against him groundless and fabricated, aimed at isolating him. He considered that he was being prosecuted for political reasons.

4.3 Visits to Regions

4.3.1 On March 19, 2008, a working group established at the Human Rights Defender's instruction visited the Republic of Armenia Lori Region Police Department, the Vanadzor Police Unit of the Lori Region Police Department, the "Vanadzor" penitentiary institution of the Republic of Armenia Ministry of Justice, and met with a representative of the "Helsinki Citizens' Assembly" non-governmental organization.

During the meeting with the Chief of the Vanadzor Police Unit, he reported that, in connection with mass disorders in the City of Yerevan on March 1 and 2, citizens of the Town of Vanadzor had been arrested, as well, and the courts had ordered their detention. One of them was in the "Vardashen" penitentiary institution, while the others were in the "Vanadzor" penitentiary institution of the Republic of Armenia Ministry of Justice.

The Chief of the Lori Region Police Department presented the situation in the region and provided a list of persons apprehended during March 1 and 2 mass disorders in the City of Yerevan as of March 14.

In the "Vanadzor" penitentiary institution of the Republic of Armenia Ministry of Justice, the working group met with the detainees whose names were in the list provided by the Police.

Example 1. A detainee reported that, on February 29, at the suggestion of the chief of the campaign headquarters for presidential candidate Levon Ter-Petrossian, himself and three others from Vanadzor had gone to Yerevan to participate in the demonstration. Early in the morning of March 1, when he was sleeping in a tent on Freedom Square, other people on the Square woke him up, telling him to leave the tent, as police officers had entered into the Square. He did not leave the tent, but, after some minutes, the police officers started hitting him in the tent, after which he left the tent and then also left Freedom Square. Later, he went and joined the demonstrators gathered near the French Embassy in Yerevan. When he was apprehended to the police station, he was informed that he had kicked the license plate of a police car, which he did not remember, because he had a mental disorder, and the events that had happened early in the morning of March 1 had exacerbated his mental state further. He reported having had his army duty waived in connection with the mental disorder.

He spent the night of March 1 at a hotel next to the Malatia Market and returned to Vanadzor on March 2. *He was apprehended to the Vanadzor Police on March 3, where he*

was kept in the Police Custody Institution for Holding Arrested Persons up to March 13, after which he was transferred to the “Vanadzor” penitentiary institution of the Republic of Armenia Ministry of Justice: all of this was confirmed with the detainee’s movement record. The Chief of the Vanadzor Police Unit explained that the basis for keeping the detainee in the Police Custody Institution for Holding Arrested Persons for 10 days was letter 1/37-08 dated March 6, 2008 from the Lori Region Prosecutor (received in the Vanadzor Police Unit on March 6, 2008, receipt number 1648), in which the Prosecutor had requested to keep the accused Stepan Sargsyan in the Lori Region Police Department Vanadzor City Police Custody Institution for Holding Arrested Persons up to March 13, 2008 for the purpose of performing necessary investigative activities.

The detainee also reported that he had not been subjected to any violence in either the Vanadzor Police Unit or the “Vanadzor” penitentiary institution of the Republic of Armenia Ministry of Justice.

Example 2. A detainee reported that, on February 28, he had traveled to Yerevan and participated in the demonstrations on Freedom Square. He had been sleeping over at a friend’s place. He reported having participated in the February 29 demonstration up to 4 p.m.

In the morning of March 1, he went to Freedom Square and found no demonstrators, after which he went to the area next to the French Embassy in Yerevan.

On March 6, 2008, he was apprehended by police officers, after which he was taken to the Prosecution Office and interrogated, after which he was released. On March 8, 2008, he was again taken to the Police and informed that someone was testifying against him.

He reported that he had been in the “Vanadzor” penitentiary institution since March 11. He had met with his lawyer only once in the Police Station. He reported no violence against him in either the Vanadzor Police Unit or the “Vanadzor” penitentiary institution.

Example 3. A detainee (formerly not convicted, currently unemployed, member of the Board of the Pan-Armenian Movement, had spent the last 10 years in Moscow) reported that he had been charged with Article 225(2) of the Criminal Code of the Republic of Armenia.

He had participated in demonstrations starting from February 22. He had been sleeping on Freedom Square, in his own car. Early in the morning of March 1, he alone was sleeping in his car parked near the office of the “Hanrapetutyun” (“Republic”) Party. He woke up to find no demonstrators on Freedom Square, which was encircled by police officers. For some time, he stayed in his car. Then, at around noon or 1 p.m., he left the car at the same place and walked to the area near the French Embassy in Yerevan, where he stayed until 4 p.m., after which he returned to Armavir.

As his relative told him that the Vanadzor Police was looking for him, he went to the Vanadzor Police Station on March 10, where he was kept for three days before being transferred to the “Vanadzor” penitentiary institution.

He did not testify, signing a paper about this decision. He also refused a lawyer.

4.3.2 Visit to the Shirak Region

On March 18, 2008, Staff of the Human Rights Defender visited the Gyumri Police Unit of the Shirak Region Police Department. They met with the Unit Chief, who informed that three persons had been apprehended to the Gyumri Police Unit on suspicion of having participated in the March 1 disorders in the City of Yerevan; two of them had been interrogated and released, and the other had been arrested and transferred to Yerevan.

Visits were made to the “Artik” and “Kosh” penitentiary institutions of the Ministry of Justice of the Republic of Armenia. The heads of those penitentiary institutions reported that no detainees were kept in their respective institutions in connection with the March 1 events.

During private interviews in various penitentiary institutions, the vast majority of the detainees expressed their disagreement with the charges brought forward against them. They claimed that the charges were groundless and purely political. The Defender’s Staff explained that the Defender had no right to interfere with the activities of courts, which had the power to assess whether the facts underlying charges were justifiable. During meetings, it was also explained that, at that stage, the Defender only had the power to examine violations of criminal-procedural rights, to prevent such violations, and to restore such rights.

Letters have been sent to the relevant officials in connection with written applications and complaints received by the Defender. Issues discovered during the visits will be presented in greater detail in the Defender’s Annual Report for 2008.

To summarize the written applications and complaints received after the elections and the visits to penitentiary institutions, it should be noted that, in many cases, there were violations of criminal-procedural deadlines and the right to have a lawyer; there have been mass arrests, which the arrested consider groundless and politically-motivated.

The Human Rights Defender believes that the Special Investigative Service of the Republic of Armenia, which is not subordinate to any agency, must carry out the pre-trial investigation in a comprehensive and justified manner in order to remove any doubt that there are political prisoners and political prosecution in Armenia. To this end, it is essential that only those who committed offences be punished in connection with the post-electoral developments.

SUMMARY

Human and civic rights and freedoms can be safeguarded only in a well-established democracy. It is the only way to avoid division of society and the state, and to shape accountability and public trust in the institutions of state power.

In the majority of transition countries, including the Republic of Armenia, domestic stability is usually achieved through the dominance of one institution of power, such as the President, rather than a system of checks and balances between the three branches of power.

In the system of state power, the political majority can exercise good governance based on democratic principles only if the rights of the political minority are guaranteed, and the majority reckons with the programs and views of the minority. In this sense, democracy is the art of governing through debate, negotiations between different political forces, combining alternative opinions and views, and choosing the best of them. Any power that fails to reckon with the minority opinion precludes the possibility of changing its position as a result of discussions with the minority, thereby also undermining individual freedoms. To this end, the role of parties in the political system of society can hardly be overestimated.

The partisan system is not a passive mechanism between society and the state; rather, it is an active factor that affects both. The interaction between society and the state is reflected in the partisan system and is modeled in the form of relations between opposition and ruling parties. Public discontent with the state is minimized through changes in the ruling party's policies, regrouping of party alliances, new elections, and change of the ruling power. The institutional dynamism of the partisan system, reflected through parties exchanging roles of the government and the opposition, is a necessary prerequisite of social and political stability of society and the state. However, the aforementioned ideal situation was unfortunately completely deformed in the Republic of Armenia, where, up to the recent presidential elections, the main purpose of the ruling elite was to form artificial mechanisms, rather than to create a multi-partisan system that would act as an intermediary between society and the state.

In a democracy, the party or party alliance that has the largest electorate gets the majority in the parliament. The situation in non-democratic countries is different: the forces that have majority in the parliament can reproduce even when they do not enjoy the support of the majority of the electorate.

(See Diagrams 1 and 2.)

Diagram 1. Classical Model

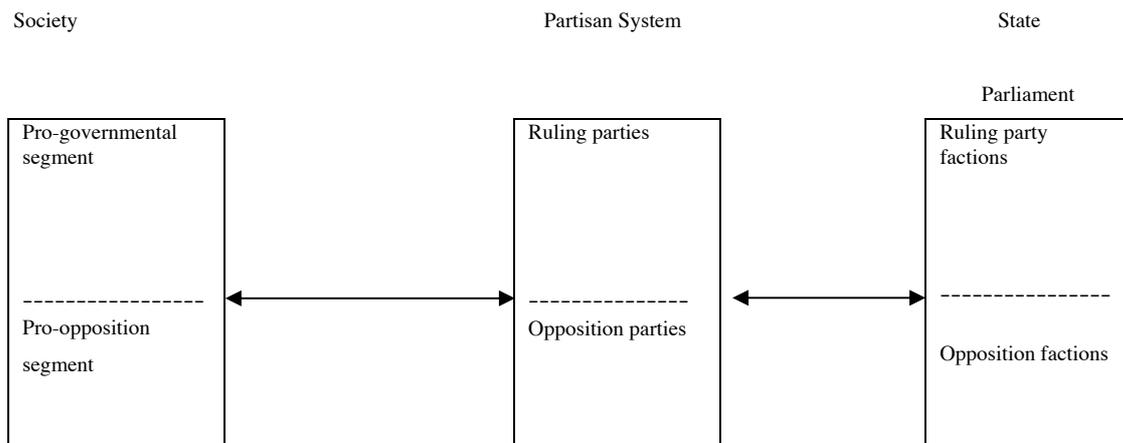
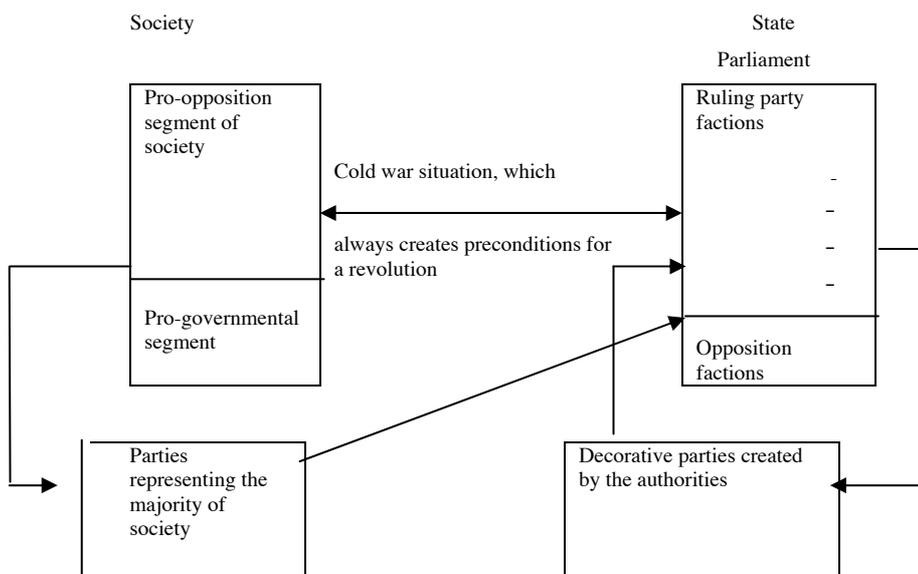


Diagram 2. Deformed Model



Clearly, the majority-minority situation in society is reflected in the party system and, through elections, in the parliament. The representative nature of the parliament is the essence of parliamentarism.

The change of ruling political forces through elections, the exchange of roles between ruling and opposition forces is a key indicator of democratic development and an effective safeguard of socio-political stability. If the opposition forces are deprived of possibilities to replace the incumbent authorities through free and fair elections, and the authorities are democratic insofar as it secures their “normal” reproduction, then extremism in the political struggle cannot be avoided.

Constitutionalism is a limitation of the power, which precludes situations in the political struggle, when the winner assumes all political, economic, and social control, while the defeated side loses any possibility of survival. This is the type of situation that pushes sides into a “life-or-death” struggle, laying the ground for the emergence of authoritarian and totalitarian political regimes.

Today, Armenian society faces a choice: to develop by reinforcing democratic values and institutions, or to reinforce authoritarian trends in power, thereby widening the gap between the authorities and the majority of society.

The right to defend one’s rights and freedoms was for the first time stated in the Concluding Document of the Vienna Meeting of Representatives of the Participating States of the Conference on Security and Co-operation in Europe. Of course, the majority of rights is not absolute and may be restricted. However, such restrictions must be fair, justifiable, and not undermine the essence of such rights and freedoms.

Many who speak of universal values, such as freedoms, human dignity, and equality in practice encroach on all of these values. Therefore, the state should create all the necessary, political, social, and legal safeguards needed to guarantee human rights and freedoms in practice.

Like a number of other transition countries, in Armenia, as well, an oligarchic system of governance had formed, which to a considerable extent controlled the media, parties, and state institutions. As a consequence, the economic elite was driving out the political elite and taking its place. Business and politics were intertwining in the same corporate group, and the same individuals were acting as both businessmen and politicians or statesmen. The business elite were becoming able to exert a decisive influence on public policy, especially the economic policy, by imposing its inner-circle or personal interests on the state power. Entities outside oligarchic groups were effectively deprived of any possibility to pursue economic activities, which disproportionately widened the income gap between different segments of society and precluded the formation of a middle class that could become the social basis of state stability.

Such circumstances undermined a key principle of democracy, according to which there are no rights without responsibilities, and no responsibilities without rights. Rights concentrate in the hands of a small group of persons, while responsibilities are binding for the majority of society. This is the reason for mass encroachments on the rights of the majority of society, essentially rendering impossible the effective exercise of such rights. This was the reason why, before and after the election, a sizeable segment of society, representing diverse

social and economic groups, actively responded to the opposition's call to restore human dignity, equality of all, justice, and other democratic values.

The newly-elected President and the new system of government inherited a heavy burden from their predecessors. It would have been preferable to avoid it, but it could not be done, and now, everyone must now come together to overcome this situation.

The following issues have to be resolved in order to address this situation:

1. To ensure that the authorities function in a framework of public accountability, and to secure a strong opposition: this is the only case in which the authorities will no longer be able to subordinate society to their will. As a result, the opposition will not have to go to the streets, because they will be able to voice their concerns through legal and political means.

2. To reform the electoral legislation: in particular, it is necessary to revise the Electoral Code provisions on the formation of electoral commissions, the recount procedures, etc.

3. To safeguard the freedom of expression and to put in place conditions for pluralism and impartiality in the electronic media. Without pluralism, society cannot be free, and the authorities will not exercise self-restraint. To this end, it will be essential to reform the legislation on television and the radio. It is also necessary to ensure equal participation of the representatives of the power and the opposition in the formation of television and radio regulatory and supervisory bodies.

4. To rule out laws groundlessly restricting human rights and freedoms (such as the recent amendments to the Republic of Armenia Law on Conducting Meetings, Assemblies, Rallies, and Demonstrations).

5. To safeguard the constitutional principle of equality of rights and to eliminate existing economic monopolies, which will help to overcome the oligarchic system of governance. This is the only way to enable people to realize their creative potential. As a result, society will no longer demand political extremism, and political forces will no longer generate such supply. Extremist ideas are born out of an extremely polarized society. If society is not polarized, no extremist idea can activate the broad masses.

6. To fight against causes, rather than consequences. To this end, it is vital to create an independent commission to inquire into the March 1 events.

7. At this point, it would be most dangerous and useless to imitate reforms.