



# DITORD 10 (28)

OBSERVER

HUMAN  
RIGHTS  
IN ARMENIA

YEREVAN  
2005

# HUMAN RIGHTS IN THE MENTAL HEALTH FIELD

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Human rights and mental health issues are closely interrelated. First, according to both international and domestic legislation, persons with mental health problems enjoy the same rights as all citizens. Second, human rights violations sometimes give rise to mental health problems. Third, persons with mental illnesses are often held in “closed” psychiatric institutions, which are risk zones in terms of human rights. Finally, human rights violations can pose a serious obstacle to mental health rehabilitation. It should also be stressed that in Soviet times psychiatry was widely used as a tool for punishing dissidents and was in fact an element of the human rights violations system. It is therefore only natural that international legislation on human rights should keep this sphere in the focus of its attention.

Of course, first of all the UN *Universal Declaration of Human Rights* (UDHR) should be mentioned. Although not legally binding, the UDHR has become a source of over 60 international legal instruments, including *International Covenant on Economic, Social and Cultural Rights* and *International Covenant on Civil and Political Rights*. The two Covenants were ratified by Armenia<sup>1</sup>. Besides, the international legislation both at the UN and European levels addressed the issues of human rights and mental health. In particular, the UN highlighted in its three Resolutions those principles that the human rights protection in the mental health sphere should be grounded in. Those are:

- the UN *Standard Rules on the Equalization of Opportunities for Persons with Disabilities* (Resolution 48/96),
- the UN *Declaration on the Rights of Mentally*

<sup>1</sup> Armenia ratified *International Covenant on Economic, Social and Cultural Rights* on 13 September 1993 and *International Covenant on Civil and Political Rights* on 23 June 1993.

*Retarded Persons* (Resolution 2856),  
- the UN *Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care* (Resolution 46/119).

This last one, which contains 25 basic principles of the human rights protection in this field, is of paramount importance. Those principles are related to civil rights and processes (e.g. forcible hospitalization and institutionalization) and to care provision standards. Even though the UN standards are not legally binding, the World Health Organization stresses, that those principles bring “... together a set of basic rights which the international community regards as inviolable either in the community or when mentally ill persons receive treatment from the health care system.”<sup>2</sup>

The European structures, too, adopted a number of resolutions that regulate the mental health sphere from the human rights perspective. The most important among those are:

- Council of Europe Committee of Minister’s Recommendation (83)2 *concerning the legal protection of persons suffering from mental disorder placed as involuntary patients*, and
- PACE Recommendation 1235 (1994) 1 on psychiatry and human rights.

Since psychiatric institutions restrict inmates’ freedom of movement and since not infrequently persons are held there against their will, those institutions are ranked among the so-called “closed” institutions such as jail cells, penitentiaries and suchlike institutions. Therefore, psychiatric institutions fall within the province of the mandate of the *European Committee on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment*. It is not incidental that a special chapter of the Committee’s standards are devoted to mental institutions.

<sup>2</sup> *Mental Health: New Understanding, New Hope*. (The World health report 2001). Geneva: WHO, 2001, p. 84.

*Convention for the Protection of Human Rights and Fundamental Freedoms* (also known as *European Convention on Human Rights*) occupied a significant place in the European system of human rights protection. At least three articles of the Convention deal directly with the mental health sphere:

- Article 3 (Prohibition of inhuman or degrading treatment)
- Article 5 (Right to liberty and security of person), and
- Article 8 (Right to respect for private and family life).

Besides, the *European Convention on Human Rights* recognizes the rights of persons to contest in the *European Court of Human Rights* their Governments' actions that violated human rights. By acceding in 2001 to *Convention for the Protection of Human Rights and Fundamental Freedoms* Armenia assumed the obligation to comply with the legislative provisions formed by the Convention and by the judgments of the European Court.

About twenty judgments of the *European Court of Human Rights* deal with the issues of the human rights protection in the mental health sphere. In particular, the Court finds that Article 3<sup>3</sup> of the *Convention for the Protection of Human Rights and Fundamental Freedoms* is one of the fundamental values of a democratic society. There is no exception to the provision in that Article even in a situation of a public emergence that threatens the State's existence. In order to comply with the requirements of Article 3 psychiatric treatment should be "least restrictive." That is dependent on such circumstances of a case as duration of the treatment, physical or mental impact and, in some case, on the patient's sex, age and health status ("Selmouni v. France.") This Article applies directly to the complaints of the conditions of the upkeep, confinement and restrictions. The activities of the above-mentioned *European Committee on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment* are also closely related to the application of that norm.

Article 5 of the *European Convention on Human Rights* lays down the right to liberty. However, the circumstances under which that right can be restricted are

<sup>3</sup> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

spelled out in the first part of the Article. Those include lawful detention of "persons of unsound mind." In the "*Winterverp vs. the Netherlands*" case the court stated that Article 5 does not allow the confinement of persons only on the grounds that their views or conduct deviate from one or another norm, which is prevailing in a given society. Proceeding from the provision in Article 5.2<sup>4</sup> the Court stated that "each person that is subjected to confinement cannot exercise his rights effectively, if he is not informed properly and promptly of the reasons for the confinement." (*Van der Leyern v. the Netherlands*).

The Court asserted that according to Article 5.4<sup>5</sup> of the Convention, a due process should be independent of the executive branch of government and of the parties involved (*Varbanov v. Bulgaria*). The trial should also provide basic guarantees for court procedures for detention. Due to those guarantees the party concerned has an opportunity to go to court and to present his case personally or through a representative. In "*Mediern v. Germany*" case the Court found that provision of legal assistance is necessary in the event of a person's continuous detention. Article 5.4 of the Convention requires that review of lawfulness of the detention should be undertaken speedily. In "*Y. v. Norway*" case the Court decided that the review, which lasted for about 2 months, was not speedy.

Article 8 of the *European Convention on Human Rights* deals with the spheres that affect people's personal lives. If the rights spelled out in Article 8 are violated, the State has to prove that the interference is justified by the reasons specified in the second paragraph of the Article, "There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others." The cases reviewed by the Court involve restrictions on correspondence, access to children and treatment in the community.

<sup>4</sup> "Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him."

<sup>5</sup> "Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful".

In terms of human rights one of the most important issues is passage of domestic laws. The lack of legislative regulation can be injurious to a person's health, civil rights as well as to the country's international prestige. The World Health Organization addressed the issue of fundamental principles of mental health legislation through a number of its decisions. The law regulates the *patient-doctor-society* relations. The most sensitive, painful and important issue of the legislative regulation of those relations is the protection of rights of persons with mental disorders.

It should be noted that prior to 1988 the Soviet Union and some Eastern European countries did not have laws regulating the mental health sphere. Since 1990s on, the post-Soviet countries passed their domestic legislation that regulates the sphere. The Russian Federation Law *On Psychiatric Assistance* went into effect on 1 January 1993. In the years that followed, all post-Soviet countries, with the exception of Tajikistan, adopted laws regulating the sphere. The principles underlying their approaches are common and are to a varying degree grounded in the UN Resolution 46/119; however, they have some specifics and differences. From the human rights perspective the most important is the solution of the compulsory hospitalization problem. The UN principles highlight independent decision as a guarantee for the protection of basic rights of persons with mental disorders. It means that consent needs to be obtained of a person concerned prior to starting any psychiatric intervention. Besides, this consent has to be free (i.e. without pressure) and informed (i.e. based on correct and understandable information sufficient for making a decision).

Without that consent, any intervention should be made only through the procedure established by national legislation. The legislation should specify those cases, when intervention can be made without a person's consent, e.g. in case when the said persons poses danger to other people. The procedures for placing persons suffering from mental disorder as involuntary patients into psychiatric institutions are numerous. There exist the following models of compulsory hospitalization: judicial (e.g. in France, Russian Federation, USA), quasi-judicial (in England and Wales), administrative (Japan) and medical (Scandinavian countries, Kazakhstan). For the most part the laws lay down a procedure for reviewing medical decisions as well as

the right to lodge an appeal against the decisions. While the procedures and timeframes differ, the conditions are almost the same everywhere. The bottom line is there is a serious danger to the patient or to other persons. As to the Council of Europe Parliamentary Assembly Recommendation 1235 (1994)<sup>1</sup>, the criterion for compulsory admission (placement in a psychiatric institution) is a serious danger to the patient or to other persons. This Recommendation played a prominent role in the development of mental health-related legislation in various countries. In the legislations of almost all countries serious danger to the patient or to other persons is a principal factor for compulsory admission. The notion of danger to other persons is used in legal measures aimed to protect the society against possible dangerous actions by persons with mental illnesses or disorders. It is used both in the forensic as well as outside the forensic, i.e. civil, compulsory admissions context.

The notion of danger to other people is interpreted in different ways in different countries. For example, in the former Soviet Union, when political and religious dissidents were diagnosed as mentally ill, they were immediately recognized as posing danger to other persons. Thus, a question arises of how to ensure a balance between the rights of mentally ill persons and the interests of a society. Even more important is a question of who should be authorized to make a decision of compulsory admission, whether it should court or psychiatrists. Different countries opt for different approaches. In most Northern European countries power to make those decisions rests with doctors, while in Southern Europe, with judges. In France, for instance, courts make the final decision based on the results of the examination by two doctors. In Eastern European countries, too, those decisions are made by judges. It is important that a decision-making on that matter involve both a psychiatrist and, at a certain stage, the third party, i.e. court. In other words, first a psychiatrist and then a commission of psychiatrists make a compulsory admission decision. After that, upon the expiration of a certain period of time specified by law, it is the court that has to make a decision on placing a person in a psychiatric institution as an involuntary patient. It is noteworthy that in different countries the timeframe for court's intervention is different. A question arises of whether a judge can make a correct decision since he is not a psychiatrist.

In Armenia an intervention by court is a new phenomenon since the culture of legislation was developed during the Soviet times, when a judge's role was minimal and the circle of decision-makers was very narrow. Today, too, many persons could question the idea that judge can make a correct decision concerning the necessity of placing a person into a psychiatric institution as an involuntary patient because the judge does not and cannot have medical knowledge and relevant experience. However, judge does not make a diagnosis and does not determine the degree of gravity of a mental illness. He merely makes a decision on a danger to other persons. This system has been in operation for many years in numerous countries and for about ten years in Russia. The third party involvement in the decision-making process is one of the most important guarantees for human rights protection.

It should be stressed that law should never allow placing mentally ill persons into mental institutions because of his political, religious, cultural or other views. It is also important that psychiatrist be protected and be responsible. Law should protect also a psychiatrist, when he discharges the duties placed on him by the society. It is important that this protection should be clear and rule out any violation of rights. At present, a psychiatrist, although he works in very difficult conditions, makes important decisions and is often the only defender of the patient's interests, is poorly remunerated and is in need of protection. In contrast to other specialists, psychiatrist bears responsibility vis-à-vis both the patient and the society.

It is also important that human rights protection in the mental health sphere should also include the conditions for the person to live, to get treatment and care and to be secured shelter and food. It is inadmissible to throw a person into the street, while saying that his rights are defended.

By the way, laws in some countries contain exclusive provisions. Thus, in Poland the law provides the involvement of self-help groups (composed of mentally ill persons and of their family members), alongside other civic groups, in mental health care provision. The law in Georgia is unique in that it exempts mentally ill persons from paying an income tax. Such examples demonstrate that a country can uphold the

acknowledged international principles of psychiatric assistance and at the same time include special provisions taking into consideration social and cultural features.

The Armenian Law *On Psychiatric Assistance* went into effect on 1 August 2004. Its adoption had been delayed for a number of reasons. Back in 1998, with the support of the Open Society Institute Assistance Foundation the working group of the *Mental Assistance Foundation* (Mr. Arman Vardanian, Mr. Nikolay Arustamian and Mr. Gagik Manukian) prepared the first draft of the Law *On Psychiatric Assistance*. In 1999 the Armenian Ministry of Health submitted a positive conclusion about that draft and the Minister of Health Mr. Nikoghossian declared that the Law would be passed by June 2000. In 2000 the Armenian Ministry of Health established a Commission on mental health legislation (Mr. Samvel Sukiassian, Mr. Arman Vardanian, Mr. Alexey Hairapetian, Mr. Marukeh Yeghian, Mr. Samvel Cheshmaritian and Coordinator Ms Karineh Simonian). Taking the draft Law prepared by the *Mental Assistance Foundation* as a basis, the Commission revised it and submitted to the general public. In September 2000, after a new Minister was appointed, Mr. A. Mkrtchian, Armenian Minister of Health, declared at the Board meeting of the Armenian Ministry of Health that the mental health-related legislation should be adopted only after the RoA Law *On Health Care* has been passed. The passage of the Law *On Health Care* was, however, delayed.

On the initiative of the *Mental Assistance Foundation*, in 2002 a coalition of 25 non-governmental organizations *For Mental Health* was established for the purpose of the passage of the law on mental health. The pressure brought to bear by the Coalition forced the Ministry of Health to change the attitude and in 2003 the RoA Law *On Mental Health* was adopted in first reading. However, in 2004 the draft Law underwent unjustified changes and was passed under the title of the RoA Law *On Psychiatric Assistance*. It is noteworthy that the RoA Law *On Health Care* has not been passed yet.

The final version of the Armenian Law is not in line with the state-of-the-art views in the field of mental health. The Law retained the archaic Soviet-time

model of the “dispensary department control”, whereas it is high time to make a transition to a contemporary system, the model of which has been proposed by NGOs. The Law also contains numerous inaccuracies and flaws. Nevertheless, the Law incorporates important provisions concerning human rights protection. The most important among those is, of course, the provision that requires a court hearing to resolve the issue of placing a person as an involuntary patient at a psychiatric institution.

It should be pointed out that the issue of a court intervention was included back in 1998 in the RoA Civil Code. However, after the Code took effect, that norm has not in fact been operational. According to the available data, until 1 August 2004 (when the Law *On Psychiatric Assistance* took effect) not a single instance of a court hearing of a forcible hospitalization case was registered. However, a string of human rights violations, which is widespread in today’s Armenia, starts with forcible hospitalization. It is underlain primarily by economic reasons. Usually, persons with mental disorders are denied civil rights through guardianship with the intention of getting hold of those persons’ apartments. In most cases that is done by close relatives. The process of “registering” guardianship starts with forcible hospitalization. Therefore, the guarantees of a fair trial are particularly important in case of forcible hospitalization.

The adoption of legislation is the first and probably the easiest step in the reform of the system. It merely sets general rules. To pass the law does not yet mean that the problems of the systems have been solved and that human rights protection has been secured. Even the most perfect law cannot deliver the desirable results until the State policy of the reform of the mental health sphere has been formulated.

One of the specific features of the Armenian situation is that within the past few decades the mental health system has not been changed. The reforms of the mental health sphere are occurring throughout the world. A central component in those reforms is a transition from a discriminatory and segregationist system, which tolerates no alternatives, to an effective system of community-based services, i.e. psychiatric treatment and care are transferred from psychiatric institu-

tions to communities. The model that exists in Armenia today and that is based on big psychiatric clinics has become out-of-date both economically and morally and entails grave risks for human rights. Also important is the issue of a professional ethics code, which should contribute to minimization of human rights violations risks in the sphere and to the adoption of fundamentally new approaches that respect human rights. Unfortunately, such a code is non-existent in this country.

In 2003 the RoA Ministry of Health prepared and put into circulation a draft of the “RoA national policy for promoting health of the population in years 2004-2015.” A separate chapter of the document deals with mental health issues. However, this draft, too, disregards the contemporary trends in the development of the mental health sphere and the approaches of the World Health Organization. In particular, it does not outline ways for integration of mental health services into the overall health care system and for a transfer of the provision of mental health services from psychiatric institutions to communities. Furthermore, it is in fact planned to establish new clinics. Besides, the document does not spell out the mechanisms of cooperation between the RoA Ministry of Health and providers of community services. Thus, unless the draft of the “RoA national policy for promoting health of the population in years 2004-2015” is not harmonized with the contemporary requirements of the development of the mental health sphere, in 2015 Armenia will have the same psychiatric treatment system as it had in 1950s and 1960s. A number of non-governmental organizations voiced their concerns to that effect.

Of course, the problems related to mental ill persons’ rights are not a top priority for Armenia; they do not, though, lose their relevance. Even though psychiatry in Armenia managed on the whole to avoid “diagnoses for political ends”; however, many approaches and traditions from the old times have survived. And the unfavorable situation, which is prevalent in the sphere, can be rectified only through comprehensive solutions.

## THE ROAD-BLOCKS IN THE WAY TO COURT

DITORD

by Sarah Petrossian

***“In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.”***

Convention for the Protection of Human Rights and  
Fundamental Freedoms  
(European Convention on Human Rights), Article 6

***“In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.”***

International Covenant on Civil  
and Political Rights, Article 14

By amending the Civil Procedure Code in March 2001, the Armenian Parliament limited the term for lodging an appeal with the RoA Cassation Court Chamber for civil and commercial cases. As per paragraph 1.1 of Article 225 of the RoA Civil Procedure Code, a cassation appeal against a court ruling or judgment can be lodged within three months after court ruling or judgment has taken effect. After a 15-day period for lodging an appeal expires, a cassation appeal can be lodged only by a specially licensed attorney. In case a 3-month period has been missed, a cassation appeal can be lodged only if there have emerged new circumstances.

The time limitation placed on submission of appeals has brought about serious consequences for the citizens' protection by court. It should be noted that the Civil Procedure Code is not perfect in terms of notification of citizens about the court sessions. As per

Article 78.3 of the Civil Procedure Code, a subpoena to an appellee is sent to the address provided by a plaintiff, while as per Part 2 of Article 118 of the Civil Procedure Code, the appellee's failure to appear in court is not an impediment for the trial to proceed. In reality, as a result of the interpretation by courts, Article 80 of the Civil Procedure Code is applied only partially as the subpoena sent to the latest known address is regarded as delivered, even though an addressee may no longer reside there. In the absence of an appellee thus “properly” notified the court hands down a judgment and, as a rule, the appellee misses the 3-month cassation term and that deprives him of almost any opportunity of filing an appeal against the judgment. Particularly in recent years the opinion became prevalent that judges, reaching an agreement with one of the parties, resort to this method and by not making the other party a participant in a trial, solve the problem to the prejudice of that party.

In its annual report in 2002, the RoA Presidential Commission of Human Rights confirmed that the limitation of the term for lodging a cassation appeal to 3 months is a limitation on the opportunities for the human right protection. The Commission recommended that “the right to lodge a cassation appeal against a relevant court judgment should be given to a party concerned also after the set period of time has expired, in case of a good reason.” At the same time the Commission thought it advisable that the situation be rectified through a legislative amendment. In 2004, the *Investigative reporters* NGO came up with such an initiative, which, however, was not put on the agenda of the Parliament because of the opposition by the Ministry of Justice.

In the words of Ishkhan Nazarian, Chief of Staff of

the RoA Justice Council (JC), a part of the complaints submitted to the JC by the citizens are related to the obstacles that arise while a cassation appeal is lodged against the rulings or judgments that have been delivered by the first instance courts or by the courts of appeal and that have come into force. Mr. Nazarian says, “The citizens’ complaints concern the cases, when the court of appeal has not properly notified them about the time and venue of the trial; naturally enough, they are not aware of the judgment and miss an opportunity of lodging a cassation appeal within 15 days.”

The Chief of Staff of the RoA Justice Council told us that Justice Council also receives complaints and petitions from persons that have not been made parties to a trial, where a judgment has been made regarding their rights and obligations. “In particular, they point out in their petitions that they were absolutely unaware of the suit and of the judgment. They found out only during the enforcement of the writs.” (See Boxes 1 and 2).

The RoA Civil Procedure Code provides for one exception only in such cases, *viz.* the law allows going to a higher court, through a procedure set in Article 77, with a request of getting a waiver for the fixed time requirement for lodging an appeal. There is also a 22 December 2000 decision # 36 on that issue by the Chairpersons of Court. Paragraph 2 of the Decision states, “To explain to courts that while reviewing the petitions for getting a waiver for the fixed time requirement for lodging an appeal, the causes for missing the deadlines should be examined in minute detail. In all those cases, when the deadline has been missed for reasons out of the petitioner’s control (disease, force majeure, being not informed - through no fault of his - about the court ruling delivered, etc.), the reasons for having missed the deadline have to be recognized as valid.” Paragraph 3 of the same decision states, “As a rule, the missing of the deadline for lodging an appeal has to be recognized as for good reason and that requirement has to be waived in case the deadline has been missed because the judgment handed down by court has been delivered later than required by law.”

#### BOX 1

The first instance court of the Gegharkunik region handed down two contrary judgments concerning the same dispute between the same persons. By one judgment, Judge V. Melikian in Vardenis ruled that Khanum Sargsian's property should be released from Sos Melkonian's unlawful possession, while by the other judgment, Martuni town Judge A. Petrossian ruled to invalidate Khanum Sargsian's ownership right and to recognize Sos Melkonian's ownership right of the house located in the village of Akunk.

Sos Melkonian lodged an appeal with the court of appeal against the first judgment.

The first instance court handed down the second judgment on February 15 on the basis of the suit brought by Sos Melkonian, whereas on February 18 he submitted a petition to the court of appeal requesting to postpone the review of his appeal since he has brought a suit to the first instance court. The court of appeal rejected S. Melkonian's petition; however, the session did not take place because one of the judges failed to come. The 25 January session was postponed in the same fashion. On March 10, the party that had lodged an appeal came to the trial with a judgment, whereupon there was no need for the court of appeal to review his appeal. Khanum Sargsian was notified about that on March 10 during the session scheduled to take place in the RoA court of appeals for civil cases. The judgment stated, "Although duly notified about the time and venue of the session, the appellee Khanum Sargsian neither came to the session nor requested to examine the case in her absence."

However, in reality that decision is not always complied with, since very often a petition like that submitted to the Court of Cassation is answered not by the Court through its judgment or ruling but by an office employee at the Court of Cassation who rejects in writing the petition to give a waiver for the fixed time requirement. Attorney Zaruhie Danielian believes that such *modus operandi* is erroneous for a number of reasons:

a) The note by the head of the office cannot provide grounds for not accepting the petition since a court ruling is required concerning any petition, including petitions requesting a waiver for the fixed time requirement.

b) The head of the office is not in the position to evaluate the reasons brought in the petition since those have to be evaluated by court. This procedure is used in order to avoid the well-reasoned ruling.

Whenever a court hands down a ruling, it is required to substantiate that ruling.

Attorney Hayk Alumian believes that there is a serious legislative gap here: while there are a legislative procedure for the first instance court or the court of appeal to return the suit or petition and a mechanism for appealing against it, the law contains nothing about the operation of the Court of Cassation. The law does not have any provision as to what the Court of Cassation should do in the event a cassation appeal has been submitted with a violation of law. Should it or should it not make a decision? And who should make the decision? This legal impasse gives rise to unlawful situations as petitions are returned with a note by the head of the office. The law does not specify who should make the decision, whether the Chairperson of the Cassation Court Chamber or someone else. While expressing his view on imperfections of the legislation, the attorney pointed out that under the circumstances the returning of an appeal with a note by the head of the office is not the best mechanism since a citizen petitions for the protection by the court and should get the court decision that states that his appeal is not going to be reviewed. However, as a rule, judges tend to be inconsistent in such situations (See Box 2).

### *The mediated justice*

The majority of lawyers are of the opinion that the idea of a special license is harmful since it grants the right to appeal to the Court of Cassation only to certain persons.

Rafik Petrossian, Chairperson of the Standing parliamentary commission on State and legal issues, believes that the provision that only the attorneys that have a special license can go to the Cassation Court should be abolished. R. Petrossian says, "An attorney is an attorney. There is no need to distinguish some since all of them got the same education. If an attorney is capable of submitting a well-reasoned cassation appeal, that appeal should be accepted." Attorney Hayk Alumian seconds that view, "It is wrong to grant a person the right to go to court only through a mediator."

The former Chairperson of the Union of the RoA

### **BOX 2**

In June 2000, the Yerevan city resident A. Petrossian gave its antique dishware set to A. Galoyan for silvering and gilding. A. Galoyan spoiled the set. After a dispute the parties signed a commitment letter, according to which A. Galoyan had to compensate the damage by paying \$ 350. After contesting the content of the commitment letter in the courts of three instances A. Galoyan fulfilled his obligation and paid \$ 350 to A. Petrossian. However, one year later he went to the court demanding that the second part of the commitment letter be fulfilled and that A. Petrossian return him the spoiled set.

Edik Avetissian, Judge of the first instance court of Kentron and Nork-Marash communities in Yerevan, on 16 April 2003 reviewed A. Galoyan's lawsuit claim and handed down a judgment obligating A. Petrossian to return the set or to pay \$ 395 to the plaintiff, even though the plaintiff demanded 90,000 AMD (about \$ 180). A. Petrossian says, "We were notified about the judgment only one year later, when officers from the Department for Enforcement of Writs came to collect the money." The judge stated in the judgment that A. Petrossian had been properly notified about the time and venue of the court session. Even if the duly notified respondent failed to report to court, the law obligates the judge to properly dispatch the judgment, after it has been handed down, to the parties to the trial. A. Petrossian said that a number of subpoenas for various days are attached to the case file but he never received a single one of those.

A. Petrossian tried to bring an appeal against the judgment to the Cassation Court for civil cases because he believed that the court had denied him his right to a fair trial. However, the Cassation Court rejected his request of getting a waiver for the fixed time requirement for lodging an appeal and did not accept the petition. Even though the petition was addressed to the Chairperson of the RoA Court of Cassation, the reply came from Sh. Manukian, the head of the Court of Cassation office. "A cassation appeal against a judgment that has taken effect can be lodged only by an attorney who is specially licensed and is registered with the Court of Cassation and only if there have emerged new circumstances for reconsidering the case."

Attorneys Misha Pilipossian brings forth another forcible argument for the abolishment of the institution of attorneys that have a special license. "They are all concentrated in Yerevan and people in other regions are denied the opportunity to lodge an appeal, even though there is an acute need to do so.

Besides, not all attorneys charge reasonable fees. Citizens wish to be given an opportunity to get represented by the attorneys that they want. The existing legal norms limit human rights.”

Ara Ghazarian, expert with the *Comparative Law Center* NGO, believes that both the licensing procedure of attorneys with a special license and the limitation of the time period for lodging an appeal are violations of the international Conventions. In similar cases the European Court always suggests amending the legislation rather than getting an amount from the country’s budget.

Quite a few citizens are displeased with the assistance provided by the attorneys that have a special license for a number of other reasons. Some attorneys take back their petitions and appeals in order to blackmail the clients, if the latter do not pay then the amount they want. Not infrequent are cases, when an attorney with a special license refuses to submit to the Court of Cassation the petition that he has written himself or resorts to all sorts of fraud thus denying justice to a citizen (See Box 3).

### ***Justice is inaccessible to the socially vulnerable groups***

According to the Armenian Government’s official data, almost half of the country’s population is poor. This segment of the population does not have a real opportunity to enjoy the right to protection by court, as declared by the Armenian Constitution. The amounts of duties set by the RoA Law *On State duties* are inaccessible to persons living below the poverty line; besides, tidy sums are also needed to pay an attorney that has a special license. Citizens do not have an opportunity of enjoying their constitutional right to legal counsel since the Constitution and laws do not provide for getting legal counsel for free in civil cases. In Armenian legal counsel can be obtained for free only in criminal cases.

On 25 October 2000, the Council of Ministers of the Council of Europe issued a recommendation concerning freedom of practicing the profession of an attorney. The principles suggested to the member States, in particular, the provision concerning the accessibility of attorneys to all persons states that attor-

### **BOX 3**

Armen Galstian, director of the *Painting shop* JSC, approached Armen Simonian, an attorney that has a special license and is registered with the Court of Cassation, so as to lodge an appeal with the RoA Cassation Court Chamber for civil and commercial cases against the judgment handed down by the Court of Appeals for commercial cases. The JSC director contends that after studying the materials for a month and, in fact, writing an appeal, the attorney refused to submit it to the Chamber. Then he approached with the same request the attorney Vardan Safarian who has a special license.

On 14 October 1999, V. Safarian lodged a cassation appeal to the court. A copy of the appeal he himself took to the Court of Appeals for commercial cases. Months passed but he never received a notification. About 6 months later, in early March 2002, V. Safarian returned the documents and the fee saying that there is a problem of paying a State duty and that after that problem is solved, he is ready to lodge the appeal again.

It was only when he received the 13 March 2000 letter from the chief of staff of the Court that A. Galstian realized that his appeal was returned 12 days after it had been lodged with the Court. However, as Mr. Galstian says, V. Safarian carefully concealed that letter from him.

Then he complains against the attorney’s actions. The Union of the RoA Attorneys declined the Galstian’s demand to start a disciplinary investigation of the attorney. The RoA Prosecutor General’s Office, too, refused to start a criminal case. Again lodging an appeal against another refusal received from the Prosecutor General’s Office, A. Galstian says, "Herewith I enclose a document evidencing that the third attorney A. Shahumian refused to take the case and I can give information about the fourth attorney that has a special license..."

neys that provide legal counsel to persons in hard economic situation should be encouraged. In the attorney Hayk Alumian’s words, the interpretation of the European Convention’s article on a fair trial brought the European Court to a conclusion that legal counsel should be provided for free not only in criminal cases but also in such civil cases, which are complex for an ordinary citizen because of a nature of the case or of the special trial procedure.

The attorney contends that the right to a legal coun-

sel is not adequately ensured to insolvent citizens. The State does not support a citizen in seeking protection by court first of all because the procedure for providing legal counsel for free in civil cases is non-existent in this country, whereas in criminal cases that right is denied to licensed attorneys. The Law *On State duties* does not give the right to courts to waive the State duty payment in case of insolvent citizens. It means that court is inaccessible to that social group. The attorney says, "The State denies that opportunity to insolvent persons and shows him the only way of going through

#### BOX 4

In March 1998 the Yerevan city resident Henrik Mkhitarian bought BMW-318 car from Germany for 1,400 German marks. The Armenian customs officials thought that the car value as stated in the documents was dubious and they re-valued at the market value of about \$ 2,700 and demanded \$ 1,400 custom duty for it. Being unable to pay the duty, which turned out to be much higher than he expected, H. Mkhitarian offered a car instead. But before he would try to sell the car on the market so as to be able to pay the custom duty the car was confiscated by the Department of the Interior of the Aragatsotn region and taken to their parking lot, where the car stayed for a year. In the course of that time the fines are added to the custom duty amount. One year later the RoA State Revenues Ministry goes to court demanding that the amount be paid and the first instance court of the Ajapniak and Davitashen communities satisfy that claim handing down a judgment of a forced levy of the State duty of \$ 1,400 and of about \$ 27 from Henrik Mkhitarian for the benefit of the State budget. H. Mkhitarian did not participate at the trial. H. Mkhitarian says, "The court session was scheduled for 11 a.m. I waited till 1 p.m. Then one of the employees told me that the judge will not come. Next day I went to the court only to find out the judgment has already been handed down. However, I did not have the required amount to appeal against that judgment." The Department for Enforcement of Writs sold the car for a symbolic price of 254,000 AMD (\$ 453). To make things even worse, H. Mkhitarian has yet to pay off the custom duty and the fines. The TV set owned by H. Mkhitarian's family was sold and piano and furniture were put up for auction but no one buys them. Finally, the forced levy was placed on 50% of H. Mkhitarian's pension.

a mediator, *viz.* an attorney that has a special license. A citizen will go to the European Court and will win the case since in one way or another he has been denied an opportunity to get protection from court." (See Box 4).

This year, however, there has been some progress. The new Law *On Attorneyship* has provided the poor with an opportunity of getting legal counsel for free in two cases:

1. In cases of crippling or causing some other damage to a person's health or
2. in cases concerning compensation of damage caused by death of a breadwinner.

Attorneys point out that the main reason for citizens' complaints is the State duty of 20,000 AMD (about \$ 40) set for lodging an appeal with the Court of Cassation. "As the minimum wage in this country is 13,000 AMD (\$ 27)<sup>1</sup>, the amount of 20,000AMD set for lodging a cassation appeal is extremely large. Ruben Sahakian, an attorney who has a special license, shares the view that the amount of 20,000AMD set for lodging an appeal with the Court of Cassation is extremely huge and that not all insolvent persons are aware that that amount can be waived. Arman Mkrtumian, Chairperson of the RoA Cassation Court Chamber for civil and commercial cases, also subscribes to that view. At the same time he assured that the State duty is waived for all insolvent citizens. He said that "a person should not be denied justice, if at that moment he or she does not have the required amount."

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<sup>1</sup> The minimum wage was increased only since January 2004; prior to that it was merely 5,000 AMD (\$ 10).

## THE MOLOKANS: RIGHTS WITHIN AND OUTSIDE THE COMMUNITY

by *Shavarsh Khachatryan*

This paper focuses on three areas of those rights, the enjoyment of which is important, albeit problematic for the survival of the ethnic-confessional community of Molokans. The first area is the enjoyment of gender equality inside the community and equal opportunities for both sexes outside their community. The second issue deals with the problems that arise from the “linguistic isolation” of the Molokans from the country’s ethnic majority, the Armenians. The third area covers the issues related to the necessity of protecting their own ethnic and religious identity and at the same time of participating in the country’s civic, political and economic life. The enjoyment of those three rights is also important because Armenia confronts perforce three processes. The first is consolidation of civil society that in fact presupposes the enjoyment of equal rights by all, whether groups or individuals, regardless of their ethnic, religious and other features. Even more, the enjoyment of right both by groups and individuals presupposes their participation in the life of civil society. On the other hand, the enjoyment of those rights is important because the State, whether it likes it or not, should opt for the advancement of democracy, even though the latter still might be at a nascent stage in the country. Finally, the third process is related to the obligations assumed vis-à-vis the Council of Europe. Those obligations are also related to the necessity of actual enjoyment of ethnic minorities’ rights in Armenia. Thus, we come across here with

issues that are problematic for the Molokans<sup>1</sup> and with the context of the three processes that are necessary for the development of the entire country in general and for the Molokans in particular.

Let us get a closer look at those processes in relation with the interests of the Molokans’ community and of Armenia. The first process is civil society. According to the broadest definition, civil society is in general non-governmental entities (such as, for example, non-governmental organizations), including business enterprises. The definition of ‘civil society’, which is the best-matching in this context, characterizes it as “being the protector of collective interests, differing political parties ... and encompassing basic civil liberties” and as “girded with a cohesive element of trust that allows groups to function to the betterment of society.” Collective interests presuppose also group interests, including those of ethnic minorities.

The second process is characterized as democratization of society<sup>2</sup> and of State. This is construed in various ways. The political system of democracy is characterized by the form of government that, on

<sup>1</sup> According to the statistical data published in 2001 by the Armenian National Statistical Service ([www.armstat.am](http://www.armstat.am)), there were 14,660 ethnic Russians in the country. The Molokans’ communities are concentrated primarily in the villages of Fioletovo and Lermontovo as well as in ethnically mixed localities such as in the capital city, Dilijan, Vanadzor and Krasnoselsk.

<sup>2</sup> West-East Civil Society Partnership: Partnering for Growth or Preparing for Conflict? By Paul Beran for the EMEU Conference, Beirut, Lebanon; May 2002 <[http://www.csd.neu.edu/Beran\\_vol1\\_Fall2002.htm](http://www.csd.neu.edu/Beran_vol1_Fall2002.htm)> November 2004.

the one hand, enables the political majority to exercise State power directly or through its representatives. Besides, the present-day democratic State is characterized by respect for civil and political right. And that entails, *inter alia*, ethnic minorities' participation in political life and respect for their rights.

Finally, the third process is the fulfilment of the obligations assumed by the country on joining the Council of Europe. The process includes, in particular, the compliance with the provisions made binding on the signatory States by the *Framework Convention for the Protection of National Minorities* and by the *European Charter for Regional or Minority Languages*<sup>3</sup>. The practical significance of those documents is that they require that States, on the one hand, ensure the promotion of the minorities' identity (by creating conditions for the development of their languages and culture) and effective participation of minorities in public life in the spirit of the 1999 Lund Recommendations. On the other hand, according to the spirit and letter of all those documents and to the Recommendations adopted in Oslo by the OSCE member States, that they are able to integrate into the wider society as full and equal members. From this perspective, the participation of the country's ethnic minorities is impossible "without a sound knowledge of the official language(s) of the State<sup>4</sup>."

It is the issue of the knowledge of the official language that probably is the most problematic one for the Molokan community in Armenia<sup>5</sup>. As demonstrated by a study of educational issues of national minorities in Armenia conducted by the Armenian Center for National Studies *Hazarashen* in August-September 2004<sup>6</sup>, the overwhelming majority (96%) of the Molokan community members knows and uses only Russian as a medi-

<sup>3</sup> Armenia ratified both documents in 2001 and 1998 respectively.

<sup>4</sup> Explanatory Note to the *Oslo Recommendations Regarding the Linguistic Rights of National Minorities*, February 1998.

<sup>5</sup> This community appeared as a result of emigration of the Russian religious groups to the Transcaucasus in the 19th century. The group initially originated even earlier in tsarist Russia by splitting away from the mainstream Russian Orthodox Church. Also see: *Национальные меньшинства Армени*. Ереван, Кавказский центр иранских исследований, 2002, 13.

<sup>6</sup> School-age children were also surveyed within the framework of the study. The total of 445 Russian children was surveyed.

um of communication<sup>7</sup>. Their knowledge of Armenian is either very poor or inadequate for using it for practical purposes as the country's official language. The situation is such in particular in the village of Fioletovo, where there is only an elementary and junior high school. Knowledge of the official language is crucial not only for daily interaction but more so for getting a job and for entering a college to continue professional education. The community members are well-aware of it and they point out that their children have no prospects for entering State-owned educational institutions in Armenia<sup>8</sup>. The education-related situation becomes particularly complicated because many students drop out of school at their parents' will, while they are still in grades from 3 through 8. The percentage of those who dropped out prior to graduating from junior high school is particularly high among girls. They make up 68% of the surveyed children. The above-mentioned study concludes that "as regards Yezids and Molokans, this trend is particularly marked in case of girls<sup>9</sup>." The main reason for children to drop out of school, as contended by 47% of the respondents, is the necessity to help parents in keeping a household<sup>10</sup>. The problems related to education and knowledge of the country's official language are rooted in the requirements of moral education and in the community's traditions.

Even 7-8-year-old boys are aware that their sisters are not going to attend school for a long time and in hold the view that in general "why would a girl need education?" At the same time teachers kept telling, with a heavy heart, about promising and well-studying schoolgirls whom "their parents have taken out of school."

*The situation of school education of national minorities in Armenia*, p. 84

Female student: "I want very much to become a doctor. But I wonder how we, the Molokans, can become a specialist. Here people do not get education at all. I do not know; I have no idea. If one of our Russians goes (to a college) and says I want this, but they do not know Armenian. No one goes anywhere. I do not understand what they become. In case of the Molokans, the medium of instruction at schools is the mother tongue. It does not inhibit advancement in terms of language but, may be, it is a problem in psychological terms. If Russian is the only language you know, it will not take you far in Armenia."

*The situation of school education of national minorities in Armenia*, pp. 115-116.

<sup>7</sup> *The situation of school education of national minorities in Armenia*. Yerevan, Armenian Center for National Studies *Hazarashen*, 2005, 34 (in Armenian).

<sup>8</sup> *Ibid.*, p. 79.

<sup>9</sup> *Ibid.*, 83.

<sup>10</sup> *Ibid.*, 68.

The explanation of this phenomenon should be sought first and foremost in the moral and religious criteria of the traditional education. Practically speaking, the Molokans' morality is grounded in positive moral criteria, with the underlying principles of respect for work and of personal integrity. That traditional way of life and the endeavor to preserve it have also had an impact on other areas of life of the ethnic-confessional group of the Molokans. One of the specific features of that community is self-isolation in terms of their private life and social contacts and that also can be accounted for by the traditional education occurring inside each family. The community's self-isolation has different forms and is reflected in different ways in its confessional sub-groups.

The Molokan community incorporates various confessional sub-groups such as "pryguni" ("jumpers"), "maximists" ("maximalists") and "postoyanny" ("steadfast"). The "maximists" views, for instance, on traditional and religious upbringing are strikingly radical. They are the ones who shun interaction and reject such social benefits as pensions or any assistance from the State. Often they also refuse to deal with non-governmental organizations.

Members of the Molokan community, in contrast to other ethnic groups, marry exclusively within their community and the rationale is again the issue of upbringing. In general, in their families there is less inequality between the sexes than, say, in the Yezid families. Nevertheless, gender inequality is no exception for that ethnic-confessional group. Another phenomenon, which is typical of the Molokans, is their belief that it is difficult to be a part of the community, if you do not abide by its customs and moral and religious principles. In other words, the community membership is practically grounded in moral and religious principles, without which there can be no membership. All those factors, taken together, demonstrate at least a number of negative trends.

The strengthening of the tendency towards self-isolation results in the obvious disintegration of the community. On the one hand, the Molokan community members leave the country because they do not

know Armenian and because of a number of radical approaches in the field of upbringing. On the other hand, the same reasons prompt a certain part of the Molokans to give up on the traditional lifestyle and thus their ties with the community become loose. Since Armenia gained independence those tendencies to a certain extent became more pronounced as a result of the necessity to retain the traditional lifestyle. The Russian community, which primarily consists of the Molokans, within the period from 1989 till the most recent census decreased by three-fourths (i.e. at present it is 14,660-person strong)<sup>11</sup>. Thus, those tendencies could be accounted for by the factors dictated by the necessity of the protection and promotion of the group's identity under the conditions that followed the period of their existence in the Soviet Union.

The protection of identity and participation in public life is an issue that is related not only to the situation within the community but also to the country's overall stance on the issues of protection of the identity of ethnic groups and of their integration into the society. Thus, the preservation of the mother tongue of the ethnic group is to a large extent dependent at present on the textbooks that funded and delivered by Russia. Given the difficult conditions of the transition period that may be a way out; however, the issue of the community's integration requires a more sensitive attitude on the part of the Armenian State towards not only the issue of the textbooks of Russian but also of Armenian as well as of designing a less demanding course of Armenian. Probably, such specially adapted textbooks should be designed in such a way as to be applicable in professional education. While the problem of textbooks can be solved by the Ministry of Education by designing a special syllabus for ethnic communities, their integration into the society's life should include not only education and language but also the issue of preservation and development of their cultures and religions. Those issues are in and of themselves are quite complex.

The conflict between the two goals, when one of them is focused on the preservation and develop-

<sup>11</sup> *Национальный состав населения СССР в 1989 г.* Москва, "Финансы и Статистика" 1991, 134-135.

ment of community's (not necessarily liberal) foundations, which are necessary for the protection of its identity but which impede its integration into a larger society, is not a new phenomenon. Similar problems are well-known and have to a certain extent been already reflected in international legal instruments and in Western scholarly publications. As regards the international legal instruments, Article 1 of the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities "States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities ... and shall encourage conditions for the promotion of that identity." On the other hand, Article 8 of the Declaration provides, as M. Freeman points out in his "Collective rights and distributive justice" article, "that the exercise of the rights set out in the Declaration 'shall not prejudice the enjoyment by all persons of universally recognized human rights<sup>12</sup>.'" The same issue is also addressed by the Lund Recommendations in the "General Principles" section: to assist and enable the minorities to protect their identity and specific features. In practical terms, those relationships are not easily ensured.

In his article, M. Freeman, too, pointed out the problematic nature of these issues stressing that there the relation between Article 1 and Article 8 of the UN Declaration is not clear<sup>13</sup>. The same comment has been made by Jeff Spinner in his "*The boundaries of citizenship*" book, "For a democracy to survive, at least some citizens need to vote and to participate politically." Also, "Institutions that are part of civil society must be open to all if we are to have equal citizenship<sup>14</sup>." We do not have yet either democracy or common civil rights; what we have is a common State. Besides, we speak not only about what is missing but also about what is needed by all the citizens of the State. J. Spinner argues that the following solution of that problem is found in a common State, The founding of the race and ethnic-

ity-based institutions empowers the group's members to fight for integration into the society. Those institutions provide an opportunity to struggle without giving up one's cultural customs<sup>15</sup>. It should be noted that the institutions mentioned here are not those that discriminate on the basis of race or ethnicity or that isolate some people from others. The matter here concerns other things. The Lund Recommendations go even further and point out in several paragraphs the necessity of introduction of such institutions that grant special rights to ethnic minorities in the fields of religion, culture and language through territorial and non-territorial arrangements that grant them broad rights in those fields (see Chapter 2 "Participation in decision-making" and Chapter 3 "Self-Governance"). All those rights aim to protect and promote the above-mentioned fields. The same is done in the new Draft Law on ethnic minorities. The protection and promotion rights are secured by the provision of such rights as collective rights that aim to protect the communities' rights and that are collective in their essence, even if their holders are individuals.

Article 8 of the Draft Law provides a dual solution to that problem by granting the participation right in local government in all localities, where citizens that differ in their ethnic origin from the majority reside. Besides, the representatives of ethnic communities elected to local governments are endowed with the right of representing the rights of their community in the field of the promotion of their identity (language, culture, religion, education, etc.). This right also applied to ethnically mixed communities in those localities, where a given ethnic group constitutes at least 15 percent of the entire population. Even if a representative of an ethnic community is not elected during the elections, the Draft Law proposes that he or she should be appointed to such a position in a local government that gives the right to represent socio-cultural interests of the ethnic community in question. Those interests entail the development of the language, culture and religion of a given community. Another approach is to grant the right to establish

<sup>12</sup> Freeman, M. "Collective Rights and Distributive Justice." [www.psa.ac.uk/cps/1995/free.pdf](http://www.psa.ac.uk/cps/1995/free.pdf) retrieved in June 2003.

<sup>13</sup> Ibid.

<sup>14</sup> Spinner, J. *The Boundaries of Citizenship: Race, Ethnicity and Nationality in the Liberal State* (John Hopkins University Press, Baltimore & London 1994, pp. 43-44.

<sup>15</sup> Ibid.

autonomous bodies of local government whose powers will cover socio-cultural issues and fields. As legal entities, such bodies shall be authorized to represent the rights of a given community and shall be formed through a direct vote. The local government bodies shall apply to all those groups, to which the criteria of collective rights apply, i.e. if they constitute a group that fits quantitatively and qualitatively into the definition of one provided by the Draft Law.

Thus, if this Law proposes such a solution to the protection and promotion issues of such ethnic and ethnic-confessional groups as Molokans and Yezids, the issues of enjoyment of equal civil rights and human rights will yet have to be addressed. The latter is more problematic, even though there are several levels at which to address that issue. On the one hand, it is necessary to make stricter the requirement of *knowledge* of the official language and *for the children* to get general education, while on the other hand, to indicate the interest of the society and of the State in all children's getting compulsory education up until a certain age. It is also important that this education requirement should equally apply to both sexes alike. Let me note in passing that it is the exclusive right of the State to set the minimum age limit of the compulsory education for children in any community<sup>16</sup>. Such a criterion is mandatory and is not dependent on the traditions, religious beliefs or ethnic origin of a family or a community. In other words, family is free to bring up a child in conformity with its reli-

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<sup>16</sup> As per Article 1 of the Convention on the Rights of the Child, a child means "every human being below the age of eighteen years." Article 28 of the same Convention states that States Parties to the Convention shall: "(a) Make primary education compulsory and available free to all; (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need."

As stated by the **Guidelines for review of legislation pertaining to religion or belief**, "there is no agreed international standard that specifies at what age children should become free to make their own determinations in matters of religion and belief." Guidelines for review of legislation pertaining to religion or belief. OSCE/ODIHR 2004, p. 12.

gious and moral principles. Likewise, family has the right to provide the appropriate religious instruction to its child<sup>17</sup>. However, according to the law that sets the minimum age limit for compulsory education, family must not restrict child's education. Besides, it is not enough and it is not right to solve the problem by establishing colleges and universities with Russian being the medium of instruction. In a country, which, in the final analysis, seeks to represent and promote the rights of the ethnic majority, the minority groups, while protecting and promoting their identities, should take into consideration the culture and language of that majority and have some idea about them. Also, the same applies to the majority in terms of knowledge of the cultures and languages of the minorities. In case of contacts and cooperation between the (ethnic majority and minority) groups the language of the majority of a given nation State is used. Without that it is impossible to imagine a civil society of the present-day nation State. On the other hand, human rights non-governmental organizations should, in cooperation with the State, start their activities in upgrading the knowledge of ethnic communities with a focus on both universal human rights and on civil liberties. No less indispensable are joint initiatives of minority and other NGOs that aim, for instance, at elaborating the projects to create textbooks for elementary education.

However, irrespective of who will put forth those initiatives, the underlying principle, in my view, should be that all problems, whether in the field of education or, in general, of human rights, should be solved and all projects should be designed jointly with a community in question and with due consideration for its members' sensibilities.

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<sup>17</sup> Paragraphs 1 and 2 of Article 5 of the UN *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*.

## MILITARY SERVICEMEN AS UNPAID LABOR

DITORD

*by Zhanna Alexanian*

Alongside the actions of hazing and harassment, another major problem that yet to be seriously addressed in the Armenian army is the use of the servicemen as unpaid labor force by officers. The labor of military servicemen is used on the construction of mansions, in unlawful cutting-down of trees in forests, in farming work as well as in the production shops owned by high-ranking commanding officers.

Military servicemen from a N military unit in Armenia sent an unsigned letter to the Armenian Helsinki Committee requesting that the letter be passed on to the superior commanding officers in the “Ministry (of Defense) and to other power structures.” The soldiers wrote, “By doing that, you will do the most special favor in the world to your brothers in the army,” requesting us to burn the letter after reading it or else “we will be murdered.” The letter states the number and the address of the military unit and the names of four commanding officers who, according to the servicemen, commit unlawful acts.

“For a long time already we do not get money, safety razors, toilet paper, soap and detergent but we are required to be always well-shaved. We are beaten all day long, not with hands but with a piece of a rubber hose or a metal pipe. Then we are sent to the forest to cut the trees all day long. They sell those trees. They take the greater part of our food to their homes and all that is controlled by 4-5 persons. They steal gasoline from State-owned cars and pour diesel oil instead and then blame the soldiers. If you try to say a word, they will beat you up so that even a stray dog will be scared by the way you look. They send a soldier home for a brief visit and tell the unit commander that it is for free

but in fact they charge money for that... The head staff officer (who is the one who beats soldiers most) is well aware of everything. He gets out money but does not give it to us.”

One of the former officers from the Defense Ministry tried to take an action on this letter, which had been written about 3 years ago. However, when the letter reached a certain echelon of power, it was hushed up. The military servicemen stationed in high-mountainous areas continue to unlawfully cut down forest trees for the commanding officers’ private gain. The cases of injuries or death of the personnel caused by the cutting of trees or another work are not infrequent but they are put down in the official documents as “accidents” or “suicides.”

Two cases with a fatal outcome described below occurred in the same military unit thus evidencing that the situation there remains the same and that the high-ranking officials from the Defense Ministry are not concerned about the unlawfulness that takes place in the unit.

On 27 November 2004, the dead body (with a gunshot wound in the head) of Yenok Markarian, a 20-year-old resident of Shahumian village in the region of Ararat, was handed over to his parents. The cause of death was reported to the parents 7 days after the funeral through one of the village residents. Says Anush, Yenok’s mother, “They did not want us to raise clamor or get agitated.”

The written report provided by the military unit stated that Yenok Markarian died of a gunshot wound in his head. However, later on Tigran Karapetian, investigator from military prosecutor’s office in Sevan garrison, told parents that their son had committed suicide. The parents disagree with the suicide version.

The mother says, “It is obvious that they are covering up the case but we cannot prove anything since we are not well-connected. In this case money talks but we do not have money.” One month before the incident Yenok came home for a brief stay and they did not have an impression that he had problems in the military unit.

The socioeconomic situation of the Markarians’ family is difficult. The conditions for their big family in Shahumian village were very squalid. The family moved to the town of Aratashat to live temporarily in their relative’s house. The mother says, “Our family was never well-off and I could not give much to my son. He worked equally with us since he was twelve. He had a clear conscience. Seeing our problems, he would say, ‘take it easy; I’ll soon be back and I’ll help you.’”

On April 9, 2004, five months after Yenok was drafted into the army, his father Norik Markarian went to visit the military unit located near the border and about 400 kilometers from Yerevan. He stayed there for 3 days. Mr. Markarian said, “Everything seemed to be OK. The servicemen treated each other well. They were working all day long. I saw every day that soldiers “armed” with axes and saws would go into the mountains to cut down trees. They were cutting down the trees for the officers who would then sell the timber. The officers made money exploiting the soldiers.”

Yenok came on a furlough from September 20-28, 2004. He gets home from the distant military unit traveling on a truck loaded with wood for sale.

His mother recalls, “He came one day late. He said, ‘Mom, till we unloaded and stowed the wood, we got late.’ When he was leaving, we gave money to take with him. It is only natural; of course, we could not leave him empty-handed. At first he did not say anything, as he knew that we did not have money. But at the last moment he said, ‘Dear Mum, it is obligatory.’ We borrowed \$ 50 and gave it to him. I knew that if he did not take that money, they would give him hard time. He said, ‘Dad, it is not only me. There are 14 of us, and we all will be taking money.’ And I told him that it did not matter; what mattered was that he would come home safe and sound.”

The parents have only isolated pieces of information about what happened to their son. They take what

Tigran Karapetian, the investigator from military prosecutor’s office in Sevan garrison in charge of the case, tells them as a fictitious account. The Markarians cannot afford going from Artashat to Sevan (about 110 kilometers) and watching the investigation closely. They met the investigator only once and he told them that Yenok committed a theft in the military unit as a result of which there is a \$ 1,000-worth shortage in the warehouse. According to investigator Tigran Karapetian, a criminal case was opened concerning the theft. 3 servicemen were detained. The preliminary investigation is still in progress but the investigator Karapetian contends that the version of suicide is confirmed. According to the investigator, Yenok was summoned to the unit from the front-line for clarification; however, on his way to the unit, in a small house about 800 meters from the unit, Yenok fired one shot into his head from *Kalashnikov* submachine gun and died. Says the father, “They took my dead son out of that house and left outside for an entire night unattended on the pretext that an investigator should come and see; however, the case file does not even contain a picture of the site of the event. The picture was taken only when he was already placed on the stretcher.”

Karapetian, who is in charge of the case, confirmed the version that Yenok Markarian had committed suicide using another person’s weapon since he had been a machine gunner and his weapon would not have been particularly suitable for suicide. He contends that the evidence obtained during the investigation of the case, viz. the testimony given by other servicemen, confirm that version of the story.

The investigator told the parents, “If you wish to find out anything about the case, you need to find it out from Yenok.” The mother who distrusts the investigation contends, “I told him (the investigator), ‘I do not believe; you have written so much but there is no sense in it. Since the boy did not have any connections to support him, how would have he ventured to steal? Or, why should he commit suicide for mere theft; he would have stood the trial. It turns out that a serviceman is a non-entity; they can do to him what they like. Having killed my son is not enough for them; they want to implicate him in theft.’”

The incomplete and uncoordinated information that had reached the parents made them to conclude that

their son had witnessed something and had been killed by those who were afraid that more things might resurface and who now got the opportunity to put the blame on him. Says Hrachia Margarian, Yenok's uncle and the Karabakh war veteran, "He would have never killed himself, especially by the sub-machine gun. The investigator explained to me that Yenok used AKS sub-machine gun to kill himself but when I saw, I realized based on my personal experience that he was hit by AKM bullet, which is thicker. I always took pride in our Armenian army but now I do not trust it. Officers are engaged in business, nothing else."

The investigator Tigran Karapetian told them, "Do not complain in the court and do not talk too much. I will convince the perpetrators' parents and they will compensate the damage incurred by the military unit so that their children's penalty will be light." Says Hrachia, "They killed the boy and now I can image what large financial interests are involved."

The Markarians have not yet received the compensation for the funeral-related costs, which is provided for by the Defense Ministry. The parents were told by the Social Department of the Defense Ministry that they would get that amount only after the court has handed down a sentence. Says the Head of the Social Department of the Defense Ministry Balian, "In case of suicides, the issue is discussed by the commission. In the Markarian's case various opinions were voiced during the commission's session. We usually make the payment after the military prosecutor's office has submitted the conclusions, and at that point we did not have it." According to Sedrak Sedrakian, Head of the Legal Issues Department of the Defense Ministry, the law does not provide that money in case of suicide. Sedrakian says, "However, often we obviate the law and we try to help those families since what matters for the parents is that their sons died in the army. We are always accused, 'I have given my son the country and you return me his dead body.'"

The preliminary investigation is still in progress; however, Yenok Markarian's parents have no hope that the military prosecutor's office will break the case.

Garik Khachikian's parents received his dead body on 17 July 2002, slightly more than a month after he had been drafted into the army. The news was incredible since one day earlier they had received a letter from

him and a poem that he had written dedicating it to the young woman he loved.

3 servicemen that came from the military unit to attend his funeral were saying that Garik died while discharging his duties. Sona Asatrian, his mother, says, "We got very angry at that. There is no war now. It would have been much better, if I had lost my son during the war. I would be prouder."

Gnel Manukian, investigator from military prosecutor's office in Sevan garrison, told the parents that Garik "had accidentally fallen down the cliff" and died. As evidence, the investigator showed the picture of Garik's body lying next to a thick log in the alleged site. According to the official version, the soldiers were engaged in combat engineering activities constructing dug-outs on a mountain 1,868 meters high and were throwing 2.5-3-meter-long and 20-25-centimeter-thick logs from there into a canyon. Khachikian slipped in an extremely dangerous spot on the cliff and fell down from the height of about 45 meters." However, the log in the picture is incomparably bigger than the one described in the court's judgment. Pointing out at a carefully bound file of the criminal case Sona says, "I asked the investigator whether that log was for a dug-out or for business, whereupon the picture and the entire page disappeared from the criminal case file. Now they have given me this file instead of the son."

Sona's suspicions that her son had not fallen from the cliff but was killed do not look unfounded, when one reads the conclusions of the forensic medical examination. Vigen Adamian, expert with the forensic research and examination center of the Ministry of Justice, concluded that "all the injuries were inflicted with blunt objects, while he was still alive and shortly before the death, and have an immediate causal connection with his death. Such injuries are usually categorized as serious bodily injuries that pose danger to life."

The mother says, "I have harbored a suspicion since then. How come there was no defect in my son's body. Had he fallen from a 45-meter height, his entire body (and not only head and foot) would have had fractures." Certain official documents in the criminal case also substantiate that Garik Khachikian dies "during the collection, piling and transporting of wood." "Had the tree trunks been designed for fortifying the

positions, they would not have been thrown into the canyon but would have been brought up, since the military unit's positions are located there," say the parents who left for the military unit after Garik's death so as to clarify the details of the accident. The investigation that they had conducted on their own led the parents to conclude that the reason behind the lie is that in reality the servicemen had been forced to transport the wood not for the needs of the military unit but for selling it outside the unit for the private gain of the officers.

The criminal case contains statements that the servicemen volunteered to do that work but the parents deny that. While in the military unit, they found out that newly drafted servicemen are forced into such work. The mother says, "In reality those poor kids were working day and night like serfs and slaves in the mountains and in the canyons implementing the "business" project for officers endowed with special privileges and rights. I had raised the kid for 18 years and then sent him to defend the home country but not to become a slave of the military unit's commander Seyran Saroyan." Garik's father tells that while his son was still a schoolboy people from the same military unit would come with the *Ural* trucks loaded with the wood to their yard to sell it.

According to reliable information obtained by the parents, after the accident a medical team came from Yerevan to the military unit on a helicopter so as to take Garik to the specialized clinic and "to save the live of my son." However, the commanding officers of the military unit did not allow doing that. The mother says, "It is clear, had they saved the life of my son, he would have been a living witness for solving the criminal case. That is why they did not save my son's life." Judging by the picture, where her son is lying next to a thick tree trunk, the mother concludes that he was not given help. Garik was taken to "Omar" field hospital, where he died without regaining consciousness. The diagnosis made by the hospital is missing from the file of the criminal case and it was not provided, even when demanded by the expert. Garik's military uniform is also missing from among the material evidence. Sona says, "We have seen Garik's military uniform. It is clear why the investigator has hidden it. There were no traces and holes in the uniform that

would have otherwise been there, had he indeed fallen."

4 months after the accident the battalion's commander Aramayis Saroyan and military police officer Manuk Harutiunian (who are relatives of the military unit commander Seyran Saroyan) came to the Khachikians and urged them to not complain promising to pay the bill for the tombstone, etc. The Khachikians have been complaining since but nothing happens. In order to take part in the trial they twice went to the first instance court of Gegharkunik region (about 200 kilometers from Artashat). However, the trial was postponed because the accused failed to show up (as he had not been detained). Garik's mother told us, "In the courtroom Aramayis Saroyan was controlling the servicemen so that they would not say a word. All the servicemen's testimonies given during the preliminary investigation were written in the investigator's handwriting, whereas the protocol of the trial has not been given to us till today."

The trial ended without the parents' presence and the court's judgment was sent to the parents with a month's delay thus depriving them of the right to lodge an appeal against it within 15 days.

The court found Captain Hayk Mayilian, the company's commander, guilty of criminal negligence and sentenced him to 2 years in a colony for persons who committed a crime out of carelessness (there are no such colonies in Armenia and such convicts are kept under the control of the Interior Ministry departments). Sona says that according to the information that she has obtained, "he did not serve the sentence and was always in the military unit."

## THE NUMBER OF PEOPLE TURNED HOMELESS IS ON THE RISE

DITORD

*by Ruzan Bagratunian*

Within the past few years a large number of families lost their homes as a result of transactions conducted by various State entities and local governments. Officers from the Department for Enforcement of Writs threw them out into streets. *Ditord/Observer* has already several times raised the issue of the unhappy lot of hundreds of Yerevanites who became homeless because of the construction of the Northern Avenue. This time we were approached by the most recent victims, *viz.* the residents of 16 Sissakian Street and 10 Futchik 10 buildings. In November 2004, 5 families that lived in those buildings were evicted from their apartments.

The 25 October 2000 Armenian Government's Decree # 682 required the allocation of a certain amount of money from the Armenian State budget for 2000 *to buy out* the buildings located at 16 Sissakian street, at 19 and 10 Futchik street and at 6 Shinararneri street subject to demolition and designated as ramshackle as far back as 1987 and *to resettle* the families living in those buildings. This Decree of the Armenian Government applied only to legal residents living in the buildings designated as ramshackle, i.e. to tenants, owners and refugees.

However, besides those legal residents, there were also other families residing in those buildings. Those families were given housing there by the orders of (former) Yerevan City Council and

Mashtots District Council as well as of (the present-day) Ajapniak district community Town Hall. Most of those residents had lived for over 10 years in those buildings and paid all the required service fees for maintenance of the buildings. These so-called "illegal" residents applied numerous times to the appropriate entities requesting the legalization of their status: their requests, however, were always turned down.

In early 2002, the Ajapniak district community Town Hall filed a suit with the first instance court of Ajapniak and Davitashen communities seeking the eviction of those families. The court ruled that those families shall be evicted but also shall be provided with adequate housing. On 9 November 2001 the issue was discussed by the Armenian President, Mayor of Yerevan and Heads of district communities. The City Hall was ordered to allocate 98 million AMD from the proceeds from selling the property held in the city's ownership to those residents (48 families), while the city Mayor R. Nazarian and Chief of staff of the Armenian Government, Minister Manuk Topuzian were assigned to ensure that the order is carried out within 10 days. However, Head of the district community Artsrun Khachatryan concealed that decision from the residents.

According to the 18 July 2002 decision # 120 of the Ajapniak community Town Hall, the housing that was to be given to the documented tenants, i.e. to lawful residents, was replaced with monetary sup-

port, while each refugee family was, according to the Government's Decrees # 682 and 1070, to be given 70% of the amount of the support designated for a lawful resident's family. 10 families that occupied the premises for 3-7 years, albeit unlawfully, were granted the use rights by the ruling of the first instance court of Ajapniak and Davitashen communities. And they received the support like the lawful residents (the documented facts are held by S. Cholakhian, specialist on the ramshackle buildings registered with the Cadastre department of the city of Yerevan). Of the remaining 38 families, 9 families were resettled to sections 1, 2 and 3 of the building at 6 Shinararneri Street. They paid the accounting office of the district community 20 percent of the apartments' prices as set in the Decree # 1070. Thus, there remained 20 families out of 48 families that did not have the documented rights to the housing and for whom 98 million AMD were allocated.

In December 2002, the City Hall transferred 58 million AMD (out of 98 million AMD) to the account of the district community Town Hall. The remaining 40 million AMD were, according to the agreement reached during the meeting with Armenian President, to be provided by the district community from the grants-in-aid given to the community by the State. In early 2003, urgent assistance was given to the residents at 6 Shinararneri Street and 19 Futchik Street and those buildings were demolished. 18 more families received compensation in 2003. 11 families were left, of which 2 resided at 16 Sissakian Street and 9 at 10 Futchik Street. Until now those 11 families have been denied assistance for unknown reasons.

In January 2004, nine families were summoned to the district community Town Hall and were coerced to take the 70% of the apartments' value as designated by the Government's Decree # 1070. They were told that "if I wish so, I will not give even that to you." It should be pointed out that after 2001 the apartments' prices almost tripled. It should also be noted that the Town Hall of

Ajapniak district community saved a considerable amount of the above-mentioned 98 million AMD earmarked for those families.

6 out of 11 families did not withstand pressure and signed the agreements, while 5 families were literally thrown out into streets, despite the fact that there were children and sick elderly persons in those families, in the period from November 10-20 by the officers from the Department for Enforcement of Writs following the sentence passed by the court of appeal. The eviction was done in a brutal fashion with the officers smashing the residents' property.

The residents did not agree to sign the agreements since they are offered 70% of the market values of the apartments as at 2000. That amount was not sufficient in 2004 to purchase an apartment even on the outskirts of the city. The residents demand that the Town Hall pay them the compensation based on the apartments' value as at the fourth quarter of 2003. The Town Hall did not give the allocated money to the residents on time, which (the money) would have been then sufficient. The desperate residents petition all relevant State entities, *viz.* the Armenian President, the National Assembly, the Government, the City Hall, the Ministry of Justice, the court of appeal, the court of cassation and the Ombudsman, but to no avail.

## PUBLIC PERCEPTIONS OF THE INSTITUTION OF OMBUDSMAN

DITORD

The *Caucasus Center for Peace-building Initiatives* NGO conducted a monitoring of the 11-month operation of the institution of the Human Rights Defender (Ombudsman). In particular, the prerequisites and the process of the passage of the RoA Law *On Human Rights*, the compliance of that Law with the obligations assumed vis-à-vis the Council of Europe and with international criteria as well as the formation, modus operandi and activities of the Office of the Ombudsman were studied.

Within the framework of that monitoring in January 25-29, 2005 a telephone survey was conducted in order to find out the level of public awareness and public perceptions of the institution of Ombudsman. The survey sample consisted of 1,000 Armenian citizens, of which 70% were from Yerevan and 30% from 10 regions of Armenia. 63.3% of the respondents were women and 36.7% men.

The age breakdown was as follows: 20-30-year-olds constituted 28.8%, 31-40-year-olds -21.1%, 41-50-year-olds - 22.9%, 51-60-year-olds - 15.2% and 60-and more-year-olds - 11.9%. 19.4% of those surveyed were employees of the State-owned enterprises and institutions, 24% - employees from the private sector, 26.8% were unemployed, 18.6% - students and 11.2% - pensioners.

The study of the findings has revealed that there are no marked differences in the responses of various sub-groups of the population (broken down by place of residence, sex and social status).

42.5% of the respondents answered in the positive to the first question of the questionnaire, viz. "Are you aware that the Office of the Ombudsman operates in Armenia?" The second question was used to ask the name of the Ombudsman. Merely 12.1% of those surveyed were able to give the name of the Ombudsman currently in office. 3.4% of the respondents who were aware of the existence of the Office of the Ombudsman mentioned the names of the former Chairperson of the Presidential Human Rights Commission and of the leaders of one or two human rights NGOs.

The third question was used to solicit perceptions about the main function and powers of the Ombudsman. Only 2.1% of the respondents have correct perceptions about the main function and powers of the Ombudsman. Over half of those obtained information about the institution of the Ombudsman from media publications about the international practices and from other publications. The perceptions of the 30.2% of the respondents are bro-

ken down as follows:

- the Office of the Ombudsman was established so as to inform citizens about their rights (8.1%),
- the Ombudsman represents the interests of Armenia in the international structures that deal with human rights (6.2%),
- it is an entity affiliated with the President (6%),
- it deals with the Karabakh- and Genocide-related issues (3.5%),
- it is a Parliament member of a new type (3.4%),
- it deals with the issues of a death penalty sentence to be given to the Azeri murderer in Budapest (1.7%),
- it defends women's rights (0.9%),
- it deals with the social cards issues (0.4%).

The majority in that group held the view that the Ombudsman is funded by international organizations; most often mentioned was the Council of Europe (20.3%).

Even though 11.2% of the total number of respondents have information about the Office of the Ombudsman, they mentioned that they are absolutely unaware of the Ombudsman's function and powers.

It is noteworthy that the majority of those respondents who were absolutely unaware of the existence of the Office of the Ombudsman, when they received detailed information from pollsters, asked the address and the telephone number of the Office of the Ombudsman (29.8%).

When asked whether they deem important the strengthening of the Office of the Ombudsman among other obligations assumed vis-à-vis the Council of Europe 98.1% of the respondents answered "yes" thus enabling the researchers to cite as a collective opinion the clarification provided by one respondent, "For Armenia, it is a necessity rather than merely an obligation." Notwithstanding the importance they attached to the strengthening of the Office of the Ombudsman, the majority of the respondents nevertheless believed that that will happen in a distant future. Those respondents who answered "no" (1.9%) were of the opinion that they can defend their rights by themselves.

Summing up the results, the experts who conducted the monitoring think it important to note that when they made telephone calls seeking to poll 1,000 persons, many citizens were angered by the phrase "human rights" and refused to answer the questions.

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Erratum Issue # 8-9 of Ditord/Observer 2005 was translated by **V. Osipov**



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3A Pushkin Str., Yerevan. Tel. 56 03 72  
E-mail: hca@xter.net  
<http://www.hra.am/ahc/index.htm>

200 circulation.

AMARAS Printing House  
Yerevan, Terian st. 44