

CONTINUED POLITICAL REPRESSION AND PERSECUTION IN ARMENIA

Report prepared at the Headquarters of the Popular Movement

The political crisis in Armenia, which has paralyzed the normal political life in Armenia since the rigged elections of February 19 and the subsequent crackdown on March 1, shows no signs of abating. The most important reason for the impasse is the regime's failure to free the several dozen individuals who have been detained or imprisoned for political reasons. Achieving their release and the termination of cases against them remains the opposition's top priority, as well as its non-negotiable precondition for entering into a dialogue with the government. The existence of political prisoners in Armenia is also an outrage and an embarrassment both for our country, which repeatedly swears devotion to the European standards of justice and human rights, and for those European institutions, and particularly the Council of Europe, that are supposed to monitor those standards and to demand adherence to them. This report is yet another attempt to draw attention to the plight of Armenia's political prisoners, to the continued persecution of the opposition and its supporters, and to stress once more how crucial the solution to these problems is for beginning the process of normalization of the political situation in Armenia.

POLITICAL PRISONERS

An even cursory look at the list of individuals detained on and after March 1 reveals that these are primarily people who were proxies and leaders of the campaign of Levon Ter-Petrosyan. Keeping these individuals in jail serves the dual purpose of gutting the opposition and isolating those who are the most important witnesses of the fraud committed on February 19. The Armenian government insists that there are no political prisoners in Armenia, and that these people have in fact been detained, tried, and imprisoned for criminal offenses. This claim can be dismantled quite easily using nothing more than the officially available information, which is what this report will primarily rely on. First, however, we need to revisit the concept of "political prisoner," for it is often subject to different interpretations and overuse. To avoid charges of bias and subjectivity, we accept the definition of the Council of Europe contained in the special report on political prisoners in Armenia and Azerbaijan sponsored in 2001.¹ The definition is quite lengthy, but well worth quoting in full:

The following criteria must therefore be examined with a view to deciding whether a person deprived of his or her liberty is to be regarded as a "political prisoner":

- i. In general terms, a political prisoner is a person who is deprived of his or her liberty for political rather than legally accepted and acceptable reasons.

¹ See "Cases of Alleged Political Prisoners in Armenia and Azerbaijan," SG/Inf (2001) 34 Addendum I, 24 October, 2001, Strasbourg.

- ii. A person imprisoned after conviction for, or on suspicion of having committed, a “pure political offence” is a political prisoner if the interference with his or her fundamental rights cannot be justified in terms of the European Convention on Human Rights (ECHR), as interpreted by the European Court of Human Rights.
- iii. A person imprisoned in connection with a “pure political offence” which *a priori* constitutes a justified interference with his or her fundamental liberties is nevertheless a political prisoner where the length of the imprisonment or its conditions are clearly disproportionate to the offence invoked to justify the said imprisonment.
- iv. A person imprisoned in connection with a pure political offence is a political prisoner if his or her imprisonment is the result of discrimination based primarily on political considerations.
- v. Even if the sentence passed against a person does not constitute an unjustified interference with fundamental rights, is proportionate to the offence and is not discriminatory, a person may still be considered to be a political prisoner if the proceedings in which he or she was tried clearly disregarded the fundamental elements of a fair trial within the meaning of Article 6 of the ECHR, as interpreted by the European Court of Human Rights.
- vi. Persons who are serving a sentence for what may be considered as not a pure political offence, or who are detained on remand on suspicion of having committed such an offence, are not political prisoners. Such persons can nevertheless be political prisoners if the sentence is grossly disproportionate or discriminatory, or if the proceedings against them were clearly unfair.
- vii. Persons imprisoned in connection with non-political offences are, as a rule, not political prisoners. Such persons are, however, to be regarded as political prisoners if, for political motives, they are imprisoned for a length of time which is grossly disproportionate to the offence in question or where the proceedings against them were clearly unfair.
- viii. At the outset, those alleging that a person is being held as a political prisoner must present a *prima facie* case for their allegation; the state against which such an allegation is made must thereafter prove that the person concerned is detained for reasons which are lawful in the light of the ECHR with due regard to the case-law of the European Court of Human Rights; if that fails, the person concerned will be regarded as a political prisoner.²

Our assessment suggests that there are at least 70 individuals imprisoned or in detention in Armenia that unequivocally fit one or more of the criteria listed above,³ plus an additional 9 individuals, who have been arrested on charges of looting and theft, which we are still investigating. The government predictably dismisses this assessment as a biased one. The facts, however, tell a story that is quite damning for the government’s position. One group of such facts has to do with the large number of blatant legal and procedural violations, which fall into six categories.⁴ First, a number of people have been arrested and charged on the basis of certain articles of the Armenian criminal code, but the law enforcement bodies have either failed to name the specific actions that have triggered the charge or insist on interpreting certain acts and statements in a transparently tendentious manner. Thus Mr. Ararat Zourabian has been charged on the basis of article 300, part 1 of the Armenian criminal code (usurpation of power), and article 225, part 3 (provocation of mass disturbances involving loss of life), but specifically which of his actions his accusers have in mind

² Ibid., p. 17.

³ 67 of those are individuals detained or imprisoned in the period of the pre-election campaign and the events following the election. The cases of Arman Babajanyan, Mourad Bojolyan, and Vartan Malkhasyan, predate the campaign and are unrelated to it.

⁴ Some of the cases involve more than one violation, which explains the fact some of the cases appear in more than one of the categories listed subsequently.

are not described in the document of the Special Investigation Unit (SIU) charging Mr. Zourabian with these crimes.⁵ The same problem is apparent in the cases against Vardges Hayotsyan, Mushegh Saghatelyan, Hakob Hakobyan, Gurgen Yeghiazaryan, Miasnik Malkhasyan, Grigor Voskertchyan, Alexander Arzoumanian, Suren Sirounyan, Sasun Mikaelyan, Arshak Banuchyan, Shant Harutyunyan.

Second, there is evidence of law enforcement bodies using guilt by association as the basis of their cases against at least three individuals. The case against Mr. Vartan Ghavalbabunts is an example of this. The document of the Special Investigation Unit against Mr. Ghavalbabunts contains the following extraordinary reference: “Mr. Ghavalbabunts, having been the driver of the former Minister of Interior of the Republic of Armenia, Mr. Vano Siradeghyan, who is wanted for grave crimes...” Similar references can be found in the case material of Vahe Ghazaryan and Suren Sirounyan. The third category of violations includes the cases where the charges and convictions have been obtained solely on the basis of police testimony – something also prohibited by the law.⁶ The list of individuals, who have been convicted or are being kept in detention on such a basis, includes Karen Tarkhanyan, Vartan Ghavalbabunts, Raji Petrosyan, Yura Mamyán, Armen Avagyan, Mkrtich Abrahamyan, Sargis Parunakyan, Nver Stepanyan, Arthur Nazaryan, Edward Ashughyan, David Matevosyan, Vahe Ghazaryan, Grigor Aghamalyan, Roman Mnatsakanyan, Vardges Gaspari, Aslan Avetisyan, Aram Bareghamyan, Armen Abrahamyan, David Aghayan, Melik Grigoryan, Ashot Manukyan, Kristapor Elazyan, Arman Shahinyan, Smbat Ayvazyan.

In the fourth category are cases, where people have been charged with imaginary crimes, such as purchasing bullets for legally registered firearms. An egregious example is the case against Mr. Husik Baghdasaryan. Initially the authorities intended to try Mr. Baghdasaryan for illegal possession of fire-arms. After a proof was presented that the fire-arms in his possession were legally registered, he was tried and convicted for the illegal possession of 16 bullets for a hunting rifle, which in fact he had legally purchased. Mr. Hovannes Harutyunyan’s case also involves bullets, and is equally egregious. He was convicted for possessing bullets that were not designed for the fire-arm that he legally owned. On what basis that decision was made remains a mystery as no independent ballistic analysis was conducted. Similarly baseless charges have been brought against Simon Amirkhanyan, Samvel Karapetyan, and Smbat Ayvazyan, Gagik Jhangiryan.⁷ In the fifth category of violations are the cases where the initial charge has been replaced by something else, when the law enforcement bodies have been unable either to present or to manufacture the necessary evidence. This list includes the cases against Zhora Sapeyan, Mkrtich Sapeyan, Haik Grigoryan, Gagik Jhangiryan, Arshak Banuchyan, Aghasi Mkrtchyan, Smbat Ayvazyan. The final, sixth category includes the arrest and detention of three members of the Armenian Parliament before depriving them of immunity. These are the cases of Myasnik Malkhasyan, Sasun Mikayelyan, Hakob Hakobyan.

In addition to the aforementioned categories of violations, which are easy to establish, there is also indirect evidence of disregard for the law and using the judiciary as a tool of political persecution. Thus it is at least suspicious that arrest has been chosen as the method of detention in every single case initially, and only one

⁵ The document can be obtained at the Office of the Prosecutor General.

⁶ Armenian Criminal Code, article 86, paragraph 2, subparagraph 4; article 121, paragraph 4.

⁷ Recently one of Yerevan’s district courts dismissed a case against someone, who was in illegal possession of 1500 bullets.

appeal for releasing a detainee on bail has been granted by the appellate court. The defense has been denied the opportunity to call witnesses in all but three cases. The defense has similarly been denied to call its own or independent experts. Several protocols of crime site investigations list the names of the same witnesses, which is also quite suspicious, if not a violation of the laws of physics, since those crimes had taken place at the same time. The authorities also stubbornly refuse to initiate criminal proceedings in connection with the credible allegations that some of those detained or arrested have been subjected to abuse and torture. In fact, one detainee – Vartan Jhangiryan – has been shot by the police while being apprehended, but law enforcement bodies have refused to investigate the incident.

The evidence of politically motivated persecution of the opposition activists is not confined to this massive and appalling list of illegalities. There is now direct evidence that law-enforcement bodies, the SIU in particular, are engaged in a self-conscious and deliberate effort of politically motivated harassment and persecution of opposition activists and supporters. We were able to obtain a copy of an extraordinary document, which was an SIU directive addressed to the prosecutor of the Vayots Dzor region,⁸ instructing him to launch a campaign of intimidation of local supporters of the opposition and to obtain evidence by any means necessary for prosecuting those opposition activists that authorities claim were responsible for the violence on March 1.⁹ If this document does not prove politically motivated harassment and persecution of the opposition, nothing will. Finally, it is not only the opposition that insists on the existence of political prisoners in Armenia. Expressions of inadvertent honesty on the part of certain important members of Armenia's ruling elite are quite eloquent in this regard. Thus the head of the parliamentary fraction of the Republican party Samvel Nikoyan has stated the following: “[The opposition] must recognize the results of the elections, as it is unequivocally done in the PACE resolution, and after that those people, who have had nothing to do with the mass disturbances, looting, and violence, who in other words have no problems with the law, must be set free.”¹⁰ In other words, Nikoyan admits the presence of innocent people in jail, implying also that they are kept as hostages to force the opposition to negotiate on the government's terms. And this is the man who has been appointed to chair the commission of inquiry into the events of March 1.

THE LARGER CONTEXT OF REPRESSION AND PERSECUTION

The preceding section detailed the situation with regard to political prisoners, who are currently in detention or have been convicted. The persecution of those individuals, however, is only a part of the larger context of political persecution in Armenia that was unleashed on March 1. There are categories of individuals distinct from the political prisoners, who also have been victimized as part of that campaign. Ten individuals have been tried, convicted and released on suspended sentences. Nineteen people have been released on plea bargains, whereby they have admitted their guilt in exchange for the release. There are reasons to be suspicious about the legality of these plea bargains. Five people, including one of the leaders of the national movement – Aram Sargsyan – have been charged but not arrested. The threat of prosecution against them remains. Then there are those, who have fled persecution

⁸ What we have is the directive to the prosecutor of the Vayots Dzor region, but the same directive has been sent to all the regional prosecutors.

⁹ A translated copy of the complete document is in Appendix 3.

¹⁰ *Hayots Ashkharh*, April 26, 2008.

and who are currently in hiding.¹¹ Finally, we receive periodic complaints from business owners sympathetic to the opposition being unfairly targeted by the tax police.

Political repression of the opposition has taken yet another form in Armenia after March 1. One of the basic constitutional rights of Armenia's citizens – freedom of assembly – is being routinely violated by the office of Yerevan's mayor. The mayor's office has denied permission on to conduct peaceful demonstrations 48 times. When asked to explain why the requests are being denied, we are told that the police has credible information of likely provocations during the rally. The mayor's office simultaneously offers alternative, and not very convenient, venues for the rally without bothering to explain why provocations would not be a problem there. The authorities also go to great lengths to prevent residents of rural areas from reaching the capital by suspending the bus service or threatening drivers who would dare transport people to the city on the days when rallies are planned.

(NON)COMPLIANCE WITH RESOLUTIONS 1609 AND 1620

Following the events of March 1, 2008, PACE adopted Resolution 1609, which confronted the Armenian government with a set of four clearly specified requirements:

- i. to revoke, in line with the recommendation of the European Commission for Democracy through Law of Council of Europe (Venice Commission), the amendments made, on 17 March 2008, to the Law Conducting Meetings, Assemblies, Rallies, Demonstrations;
- ii. to initiate immediately an independent, transparent and credible inquiry into the events on 1 March 2008 and the circumstances that led to them;
- iii. to release all persons detained on seemingly artificial and politically motivated charges who did not personally commit any violent acts or serious offenses;
- iv. to initiate an open and serious dialogue between all political forces in Armenia on the reforms demanded by the Assembly in paragraph 8 of the Resolution with regard to the political system, electoral process, freedom and pluralism of the media, freedom of assembly, independence of the judiciary and police behavior.

The only requirement, which the Armenian government has so far fulfilled was the partial revoking of the Law on conducting Meetings, Assemblies, Rallies, Demonstrations. Even in this case, however, the government's compliance can only be considered formal given the 48 rejections of permission to conduct rallies mentioned above, as well as the fact that the Freedom Square – the traditional venue for rallies – is still cordoned off by the police. The government has appointed a commission for the inquiry into the events of March 1, but people who have been appointed as members of the commission cannot be considered impartial by any reasonable definition. Several members of the commission, including the chairman have expressed views regarding the events, suggesting that they have already come to a conclusion about the opposition's responsibility for the events of March 1 before investigating it.¹² The failure to comply with the third requirement is obvious and merits little further comment. As for the serious dialogue, there can be no serious dialogue between a government and an opposition, when the government keeps members of that opposition hostage. Regrettably, the failure to comply with these

¹¹ We have 17 such registered cases, but we believe the real number is far larger.

¹² Anna Israelyan, "The Members of the Commission Are not Impartial," *Aravot*, June 18, 2008.

requirements was admitted by Council of Europe in resolution 1620, but that failure has had few real consequences. The democratic opposition of Armenia finds this state of affairs unacceptable. The people and the state of Armenia have certain obligations stemming from Armenia's membership in PACE and other European organizations. It should not be forgotten, however, that these obligations are mutual: organizations, where Armenia has a membership, also have certain obligations and responsibilities vis a vis our citizens.