

## **ANNEXE : POINT DE VUE DU GOUVERNEMENT**

### **L'annexe qui suit ne fait pas partie de l'analyse et des propositions de l'ECRI concernant la situation en Arménie.**

Conformément à sa procédure de monitoring par pays, l'ECRI a ouvert un dialogue confidentiel avec les autorités d'Arménie sur une première version du rapport. Un certain nombre des remarques des autorités ont été prises en compte et ont été intégrées à la version finale du rapport (qui ne tient compte que de développements jusqu'au 17 mars 2016, date de l'examen de la première version).

Les autorités ont demandé à ce que le point de vue suivant soit reproduit en annexe du rapport de l'ECRI.

**OBSERVATIONS BY THE REPUBLIC OF ARMENIA IN RESPECT OF THE FOURTH REPORT BY THE EUROPEAN COMMISSION AGAINST RACISM AND INTOLERANCE (ECRI) ON ARMENIA**

<b>Report</b>	<b>Comment</b>
<p><b>Summary, page 7</b>  <i>“In the field of integration, ECRI notes that Armenia has not yet adopted a comprehensive integration policy.”</i></p>	<p>It should be noted that Armenia has undertaken the development of the draft “Concept on integration policy for persons recognized as refugees and granted asylum as well as long-term migrants in the Republic of Armenia” (see also comments on paragraph 78). Moreover, the structure of the State Migration Service of the Ministry of Territorial Administration of the Republic of Armenia has been changed by Decision of the Government of the Republic of Armenia No 212-N of 6 March 2014, pursuant to which a division on integration issues has been established.</p>
<p><b>Paragraph 23</b>  <i>“In addition, ECRI recommends that the authorities amend the Law on the Human Rights Defender to give him/her the power to examine complaints concerning discrimination, also on grounds of interest to ECRI, in the private sector. Alternatively, the authorities should establish an independent equality authority dealing inter alia with the discrimination grounds that are of interest to ECRI, as recommended in General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination and No. 2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level.”</i></p>	<p><b>Clarification</b>  Pursuant to part 1 of Article 191 of Chapter 10 of the Constitution of the Republic of Armenia as amended on 6 December 2015, the Human Rights Defender is an independent official that oversees the maintenance of human rights and freedoms by state and local self-government bodies and officials, and in cases provided for by the Law “On the Human Rights Defender” – also by organisations, and contributes to the restoration of violated rights and freedoms, improvement of regulatory legal acts related to the rights and freedoms.  Taking into consideration the requirements of part 2 of Article 210 of the Constitution of the Republic of Armenia as amended on 6 December 2015, as well as Decree of the President of the Republic of Armenia No NH-170-A of 10 February 2016, the Draft Law (Constitutional Law) of the Republic of Armenia “On the Human Rights Defender” is currently being developed, which will prescribe the cases where the Defender will also have the opportunity to oversee the maintenance of human rights and freedoms by organisations, and contribute to the restoration of violated rights and freedoms.  Besides, the Financing Agreement of “Support to human rights protection in Armenia” EU budget support programme envisages reinforcement of discrimination prevention mechanisms through expanding the relevant powers of the Human Rights Defender.</p>

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<p><b>Paragraph 29</b>  <i>“Following an arson attack on the DIY club, a gay-friendly bar in Yerevan [...].”</i></p>	<p>It should be noted that the persons having committed the mentioned crime have been identified and subjected to criminal liability.</p>
<p><b>Paragraph 31</b>  <i>“ECRI notes intolerant statements against Azerbaijanis [...].”</i></p>	<p>The wording is not acceptable since it has been written in order to create an equality between Azerbaijani attitudes towards Armenians and vice versa, but it is obvious that these are incomparable.</p> <p>The Azerbaijani sponsored anti-Armenian propaganda, incitement and dissemination of hatred towards Armenians in Azerbaijani society, constant threats to resort to military means of the solution of Nagorno-Karabakh conflict, attempts to undermine the peace process and provoke hostilities across the line of contact, as well as the cases of torture and killing of Armenian civilians and soldiers held captive by Azerbaijani military forces, pose an immense threat to the establishment of regional peace and security.</p> <p>Being guided by the principles and norms of the public international law as well as by the USSR laws in force at the time, the people of Nagorno-Karabakh decided by the referendum of 10 December 1991 to create an independent state, thus exercising their right to self-determination<sup>1</sup>. However, the policy of ethnic cleansing and pogroms conducted by the Azerbaijani authorities against the Armenian population of Nagorno-Karabakh and in those cities of Azerbaijan where there was a large Armenian population (e.g. Baku, Sumgait, Kirovabad, etc.) over the time escalated into an obvious aggression and large scale war of Azerbaijan against Nagorno-Karabakh. In 1994, Azerbaijan, Nagorno-Karabakh and Armenia signed a trilateral ceasefire with no time limitations, which, despite violations, is still in force. Currently, the negotiation process over the peaceful settlement of the conflict continues with the mediation of OSCE Minsk Group co-chairs (Russia, USA and France), which is the only internationally mandated format of negotiations recognized by all the conflict parties.</p> <p>The results of Azerbaijan’s systematic policy of incitement and dissemination of Anti-Armenian hatred and intolerance have been clearly reflected in early April events of 2016. Disregarding the calls of the international community to settle the Nagorno-Karabakh conflict by peaceful means, Azerbaijan unleashed a large scale</p>

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<sup>1</sup> For detailed information on legal status of Nagorno-Karabakh see “Nagorno-Karabagh: Legal Aspects” by Shahen Avakian, Moscow 2015 (A PDF version is available at the following link - [http://karabakhfacts.com/wp-content/uploads/2010/01/Legal-Aspects\\_Nagorno-Karabagh\\_en\\_2015.pdf](http://karabakhfacts.com/wp-content/uploads/2010/01/Legal-Aspects_Nagorno-Karabagh_en_2015.pdf) ).

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	<p>military offensive against the Nagorno-Karabakh Republic (NKR) by using heavy artillery, multiple rocket launchers, tanks and attack helicopters. Azerbaijani aggression was accompanied by flagrant violations of human rights and international humanitarian law such as deliberate shelling of civilian settlements and infrastructure, killings and torture of civilian population and NKR Defense Army soldiers and mutilation of bodies of the deceased servicemen. In the very beginning of hostilities the shelling of an Armenian school by Azerbaijani artillery resulted in the death of a 12-year old schoolboy and the wounding of two other schoolchildren of the same age<sup>2</sup>. These events were followed by the incursion of Azerbaijani forces in the Talish village of Nagorno-Karabakh, which resulted in the torture and killing of three elderly civilians with a severe cruelty<sup>3</sup>. During the hostilities NKR Army's three servicemen were savagely beheaded by the Azerbaijani military. Moreover, the chopped head of one of those soldiers was publicly demonstrated in Azerbaijani villages, and the footage of this action was widely shared on social media and gathered generally positive reactions and comments from the side of Azerbaijani users<sup>4</sup>. It should be also noted, that all the 18 bodies of the killed soldiers of the NKR Defense Army that were handed over by the Azerbaijani side had signs of torture and mutilation which had been registered also by independent international bodies.</p>
<p><b>Paragraph 31</b>  <i>"In addition, some public surveys, which were furnished to the delegation subsequent to the visit, suggest a considerable level of prejudices towards Jews."</i></p>	<p>The claim is based only on single research, i.e. the study of the Anti-Defamation League (ADL)<sup>5</sup>, according to which 58 per cent of those surveyed in Armenia have anti-Semitic stereotypes. First, it is not clear what research and scientific and methodological tools have been used by the respective organization for its studies conducted in Armenia. The preliminary study within the framework of the ADL research relating to Armenia shows that the mechanisms of in-depth interviews have not been used during the implementation of the research by the organization. Thus, references of the ECRI to such sources may not be reliable, and the approach of the ECRI in giving such a formulation in the Report is simply not substantiated and lacks material basis. Moreover, Jewish</p>

<sup>2</sup> See Interim public report of NKR Ombudsman, p. 16-15 -

[http://www.ombudsnkr.am/Interim\\_Public\\_Report\\_NKR\\_Omb\\_FINAL.pdf](http://www.ombudsnkr.am/Interim_Public_Report_NKR_Omb_FINAL.pdf)

<sup>3</sup> Ibid., p. 17-15:

<sup>4</sup> Ibid., p. 21-23:

<sup>5</sup> Actually, there exists serious criticism in relation to the research activities carried out by this organisation in the whole world, and the scepticism about their surveys forces many scholars and institutes to question the quality and objectivity of the studies conducted by them.

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	community of Armenia claims exactly the opposite, assuring that Armenia is an exceptional country in terms of the atmosphere of tolerance, and anti-Semitism is simply foreign to the consciousness of Armenian people having survived genocide. President of the Jewish Community of Armenia, Rimma Varzhapetyan-Feller reaffirms: “No representative of any political force, political party or NGO in Armenia has ever uttered any anti-Semitic remarks. Rights of the Jewish community have never been questioned here. The Armenian people always have respected the Jews and admired the rich history of our people. Since time immemorial the Jewish community of Armenia has found favourable environment for free existence and enrichment of their culture on this land of rich culture” <sup>6</sup> .
<p><b>Paragraph 39</b>  <i>“In its 3rd report, ECRI recommended that the authorities look into the conditions under which this Aryan party operates and that they consider whether further action is required. ECRI is surprised that no measures have been taken in this respect.”</i></p>	The “Armenian Aryan” political party of Armenia was registered on 27 March 1998 and regularly submitted financial statements reflecting a zero balance. This proves that the above-mentioned political party is legally registered in the State Register of Legal Persons of the Ministry of Justice of the Republic of Armenia but it does not carry out activities, and accordingly there are no factual grounds for holding the political party legally liable.
<p><b>Paragraph 41</b>  <i>“The third case concerned the sale of photo albums and various other publications about alleged Armenian propaganda and terrorist acts against Turkey and Azerbaijan; these allegedly amounted to incitement to racial and religious hatred. A suspect was arrested in April 2011. In April 2012, he was sentenced to four years’ imprisonment, but the Criminal Court of Appeal reversed this judgment. In July 2012, the General Prosecutor appealed against this decision, but ECRI understands that no date has yet</i></p>	The Court of Appeal decision of 20 <sup>th</sup> July 2012 on case No EKD/0253/01/11 concerning the “The sale of photo albums about alleged Armenian propaganda and terrorist acts against Turkey and Azerbaijan” is in force.

<sup>6</sup> See Open letter to Mr. David Harris, Executive Director at AJC Global Jewish Advocacy by Rimma Varzhapetyan-Feller, 15.05.2015 - [http://www.jewishjournal.com/opinion/article/open\\_letter\\_to\\_mr.\\_david\\_harris\\_executive\\_director\\_at\\_ajc\\_global\\_jewish\\_adv](http://www.jewishjournal.com/opinion/article/open_letter_to_mr._david_harris_executive_director_at_ajc_global_jewish_adv)

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<i>been fixed for the hearing.”</i>	
<p><b>Paragraph 43</b>  <i>“Different claims have been made, one of them being that the police have reacted to hate speech complaints by bringing charges against the plaintiffs, in particular when the latter are sex workers.”</i></p>	<p>This claim is not substantiated as certain actions have been undertaken in the Republic of Armenia in recent years in the fight against trafficking, in particular the Law of the Republic of Armenia “<i>On identification of and support to persons subjected to trafficking in and exploitation of human beings</i>” was adopted by the National Assembly of the Republic of Armenia on 17 December 2014 which entered into force on 30 June 2015.</p>
<p><b>Paragraph 43</b>  <i>“The authorities have reminded ECRI that the Special Investigation Service is responsible for dealing with criminal complaints; however, ECRI recalls that an independent mechanism is needed that would deal with all manner of complaints including those that do not involve criminal charges.”</i></p>	<p>This recommendation is not justified, as according to Article 17 of the Law of the Republic of Armenia on “<i>Special Investigation Service</i>”, the Special Investigation Service is an <i>independent</i> state body and shall be independent when exercising its powers and obey only the law.</p>
<p><b>Paragraph 52, footnote 46</b>  <i>“ECRI notes that, regarding the homo/transphobic articles published in newspapers (see §37), Iravunk’s editor-in-chief Hovhannes Galajyan received a special “Medal of Appreciation” from President Serzh Sargsyan for his contribution to the creation of this newspaper, its continuing commitment and successful work.”</i></p>	<p>H. Galajyan was, indeed, decorated according to the decree of the President of the Republic of Armenia. However, it was based on grounds other than those presented in the Report. The text of the decree of the President is presented below:  “Guided by point 16 of Article 55 of the Constitution of the Republic of Armenia and taking as a basis the Law of the Republic of Armenia on “State awards and honorary titles of the Republic of Armenia”, I hereby decide:  To decorate editor-in-chief of the newspaper Hovhannes Galajyan with a Medal of Appreciation on the occasion of the 25<sup>th</sup> anniversary of “Iravunk” newspaper, for his contribution to the establishment of the newspaper, as well as long-term commitment and fruitful work”<sup>7</sup>.</p>
<p><b>Paragraph 54</b>  <i>“ECRI recommends that all cases of public incitement to violence and hatred, threats against LGBT people on grounds of their alleged sexual orientation and/or gender identity, or against human rights defenders promoting their rights, be investigated and prosecuted accordingly.”</i></p>	<p>The recommendation is not justified, as all cases of public incitement to violence are investigated and prosecuted.</p>

<sup>7</sup> See decrees of the President of the Republic of Armenia: <http://www.president.am/hy/decrees/item/1556/>

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<p><b>Paragraph 58</b>  <i>“On 13 September 2013, three unidentified young men tried to kidnap Pastor Bardakjian’s secretary. On 18 September 2013, shots were allegedly fired at a car driven by two members of the Church near the town of Sevan.”</i></p>	<p>The description of the incidents connected with Pastor of the Evangelical Church of Yerevan Levon Bardakjian among several cases of racist violence by no means may be defined as “racist violence”. The inquest conducted by the police and the court procedure with regard to the case do not provide any grounds for drawing such a conclusion.</p>
<p><b>Paragraph 61</b>  <i>“[...] PINK Armenia mentioned cases where the police initiated criminal proceedings for false crime reporting against complainants on grounds of their alleged sexual orientation or gender identity.”</i></p>	<p>The Commission referred to cases related to the examination of complaints filed with the police and mentioned by PINK Armenia in page 7 of the PINK Armenia 2014 report, noting that the Police of the Republic of Armenia initiated criminal proceedings for false crime reporting against complainants on grounds of their alleged sexual orientation or gender identity. Please note that according to Article 4 of the Law of the Republic of Armenia “On the police”, the activities of the Police shall be regulated by the Constitution of the Republic of Armenia, this Law, other laws and legal acts, as well as international treaties of the Republic of Armenia.</p> <p>The principle of everyone’s equality before the law is stipulated by international treaties, as well as domestic legislation. Therefore, the Police of the Republic of Armenia, while exercising its functions, is guided exclusively by the mentioned principle and under no circumstances shows any form of discrimination, including that arising from the sexual orientation of individuals; any deviations from this order may only be exceptions, and if there is a relevant complaint with regard to such deviations, the case may be reinvestigated.</p>
<p><b>Paragraph 70</b>  <i>“ECRI’s delegation noted that several rooms in this Centre were unoccupied.”</i></p>	<p>The occupation of rooms of the Integration Centre depends on whether there are any applicants at a given moment.</p>
<p><b>Paragraph 71</b>  <i>“ECRI recommends that a proportion of rooms in the State Migration Service “Integration Centre” be allocated to refugees who are not from Syria or are not of Armenian ethnic background.”</i></p>	<p>The residence at the Centre does not depend on a person’s ethnic background or state of origin and is provided as and when necessary.</p>
<p><b>Paragraph 74</b>  <i>“ECRI has noticed that these measures, which were adopted with a view to easing the integration of people fleeing Syria, have fuelled growing</i></p>	<p>The low rate of recognising those asylum seekers who are not of ethnic Armenian background as refugees in the Republic of Armenia is not caused by discrimination against them. Applications for asylum in the Republic of Armenia, irrespective of the ethnic background of the person seeking asylum, shall be considered as prescribed</p>

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<p><i>resentment among migrants who are not of ethnic Armenian background, and who consider these measures discriminatory.”</i></p>	<p>by the Law of the Republic of Armenia “On refugees and asylum”, and a person is recognised as a refugee and granted asylum in the Republic of Armenia upon the decision of the Service, where there are grounds provided for by law. The studies show that the data of the majority of asylum-seekers who were not of ethnic Armenian background did not comply with the requirements of the law, the fact of having a well-founded fear of being persecuted in their country was not substantiated, as a result of which their applications were rejected by the Service.</p> <p>It is also necessary to note that the absolute majority of asylum-seekers are ethnic Armenians who are mainly citizens of Syria, Ukraine and Iraq. They have left their countries because of the military operations taking place there, which is a ground for recognising them as refugees and granting them asylum in the Republic of Armenia pursuant to the Law of the Republic of Armenia “On refugees and asylum”.</p>
<p><b>Paragraph 78</b>  <i>“ECRI recommends that a national integration strategy be developed. This strategy should be prepared in consultation with representatives of the vulnerable groups concerned. It should also establish clear co-ordination mechanisms between all relevant ministries, implementing agencies and potential donors.”</i></p>	<p>The draft “<i>Concept on integration policy for persons recognised as refugees and granted asylum as well as long-term migrants in the Republic of Armenia</i>” provides for a number of target measures for persons recognised as refugees in the Republic of Armenia, such as Armenian language and civic orientation courses, temporary housing solutions, etc. The concept also provides measures aimed at making the existing services more accessible for these persons.</p>
<p><b>Paragraph 84</b>  <i>“ECRI again recommends that a law be adopted on facilitating access to higher education for ethnic-minority secondary-school graduates.”</i></p>	<p>Article 38 of the Constitution of the Republic of Armenia guarantees the right to education. Pursuant to part 1 of the mentioned Article, everyone shall have the right to education. The mentioned provision guarantees the right to education for every person, including ethnic minorities. Pursuant to part 2 of the same Article everyone shall, in the cases and under the procedure provided for by law, have the right to receive free education on a competitive basis in state higher and other vocational education institutions. The mentioned provisions of the Constitution have been regulated in detail by the Laws of the Republic of Armenia “On education”, “On higher and postgraduate professional education” and a number of other sectoral laws and other legal acts.</p>
<p><b>Paragraph 91</b>  <i>“Similarly, these grounds are not specified in Article 63 of the Criminal Code stipulating that,</i></p>	<p>It can be assumed from this paragraph that §7 refers to Article 63 of the Criminal Code of the Republic of Armenia; however, it should be noted that the committing of a criminal offence for national, racial or religious</p>



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<p><i>for any offence not referred to in relevant specific national-law provisions, a racist motivation shall be considered an aggravating circumstance (see §7 above)."</i></p>	<p>hatred, religious fanaticism, revenge for other persons' lawful actions as a circumstance aggravating the liability and punishment is prescribed by point 6 of part 1 of Article 63.</p>
<p><b>Paragraph 92</b>  <i>"Armenian law does not contain any provisions on the change of legal gender. Legally, transgender individuals in Armenia are unable to receive sex change operations or to change their civil status. No legislation exists concerning legal recognition of transgender individuals' new and/or preferred gender. Armenian legislation neither prohibits gender reassignment surgery, nor regulates it."</i></p>	<p>Pursuant to Article 39 of the Constitution of the Republic of Armenia, "A human being shall be free to do everything not violating the rights of others and not contradicting the Constitution and laws. No one may bear obligations that are not prescribed by law."</p>
<p><b>Paragraph 92</b>  <i>"As regards change of name, Article 58 of the Civil Status Act provides for the possibility to change one's name, but does not specify whether transgender persons can change their names. ECRI considers that this situation possibly amounts to a breach of Article 8 of the European Convention on Human Rights (right to respect for private and family life)."</i></p>	<p>The Armenian legislation does not provide for grounds prohibiting change of name of a person on the ground of being transgender. Moreover, Article 58 of the Law of the Republic of Armenia on "Civil Status Acts" comprehensively prescribes an exhaustive list of grounds for refusing the registration of change of name, which are: the submitted documents do not comply with the requirements of the this Law and other legal acts, a criminal case has been instituted against the person wishing to change his or her name, he or she serves a criminal punishment, has a criminal record.</p>
<p><b>Paragraph 93</b>  <i>"ECRI recommends that the authorities carry out a study on the compatibility of legislation with Article 8 of the European Convention on Human Rights (right to respect for private and family life) with regard to the possibility of changing one's civil status in connection with recognition of new and/or preferred gender. It also recommends that all relevant laws be amended where required."</i></p>	<p><i>See the first comment on Paragraph 92.</i></p>

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<b>Paragraph 100</b> <i>“ECRI recommends that the government task an appropriate authority with preparing an action plan concerning LGBT issues [...].”</i>	The Republic of Armenia has adopted a comprehensive Human Rights Strategy and Action Plan, which address the issues of discrimination. Moreover, the Draft law on Anti-Discrimination, which will comprehensively address all grounds of discrimination, is currently under discussion.