



**HUMAN RIGHTS DEFENDER OF
THE REPUBLIC OF ARMENIA**



**AD HOC
PUBLIC REPORT
ON JULY 2016 EVENTS**

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YEREVAN 2017

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Introduction

On July 17, 2016, early in the morning information was spread about an armed attack on the Republic of Armenia Police Patrol-Guard Service Regiment, police officers taken as hostages, people wounded and about one casualty - a police officer.

In terms of human rights protection, a complicated situation has emerged in the country and attracted the society's and international community's attention.

The armed attack was followed by an unprecedented outburst of hate speech and incitement to violence.

Both peaceful and violent assemblies took place; during these gatherings, the Police committed violations of the freedom of peaceful assembly and the right to personal liberty. In addition, news was disseminated on cases of torture and degrading treatment of demonstrators exercised by the Police.

The hate speech and incitement to violence, as well as the violations by the Police created a tense atmosphere in society. This, in turn, contributed to the increase in the number of violence cases during assemblies, and, on the other hand, new violations committed by the Police, which, despite acute counteraction by the society, peaked during the July 29 assembly convened in Sari Tagh district (assembly participants, journalists, residents of houses close to the assembly location and others were affected).

The behavior, which was dangerous in terms of human rights (burning vehicles, straightforward calls for violent action broadcast live, demonstration of weapons, irregular shootings, etc.), displayed by the armed group members who were in the territory of the Patrol-Guard Service (PGS) Regiment further escalated the tension around the situation. The above mentioned created immediate threat for the inhabitants of the territories adjacent to the PGS Regiment, especially for vulnerable groups, such as children and elderly people. This was evidenced also by the residents' concerns raised by them and addressed to the Human Rights Defender, as well as expressed publicly.

Shootings took place, which resulted in, unfortunately, wounded people both among the group taken over the Patrol-Guard Service Regiment, as well as among law enforcement personnel; two police officers lost their lives.

On July 27, information was disseminated that the medical crew that has entered the territory of the Patrol-Guard Service Regiment for rendering medical care to the armed group members, was taken hostages by the group. This was especially unacceptable considering the doctors' noble humanitarian mission; and this action immediately also brought about concerns among international bodies engaged in the area of human rights protection.

On the same day, another news was spread that some of the group members are kept in the territory of the PGS Regiment against their will and have no way of leaving the territory of the Regiment without risking their lives.

All these have resulted in continuous intensification of intolerance in the society. It was extremely alarming that certain groups in the society publicly and clearly encouraged hatred and even called for violence and unlawful actions. Apparently, private and family lives of the groups against whom the hatred was directed were being constantly disregarded, and all of this was formulated under a clear propaganda of xenophobia. In terms of international requirements, this impermissible situation was further aggravated by such phenomena that were aimed at the creation of an atmosphere of fear and anxiety in the society (such as the alarming news alerts that explosives were installed in Zvartnots Airport and in one of the local TV stations, as well as the information that Azerbaijan has initiated an assault).

This situation hampered the initiation of effective measures aimed at prevention, by relevant state institutions, of human rights violations and properly responding to violations; this was resulting in an issue of trust toward these institutions. Because of this, the whole system of guaranteeing human rights protection in Armenia was being put under serious threat, which negatively affected the supremacy of human rights.

Thus, it was necessary that relevant state bodies and public figures intensify their efforts aimed at the elimination and further prevention of all types of human rights violations. It was necessary to ensure restoration of atmosphere of tolerance in the society and, after all, to peacefully and harmlessly resolve the formed situation.

Finally, on July 31, the armed group laid down the weapons and surrendered to the law enforcement bodies.

The July 2016 events were unprecedented in nature. These events posed a serious challenge to the society and the state. Nonetheless, along with being a challenge, these events gave an opportunity to understand the systemic problems existing in the country, causes and conditions contributing to these problems. These events also helped understand what preventive measures need to be taken in order to avoid similar situations in future.

Report Methodology

While elaborating this special public report, it was especially important to identify and present the issues in a systematized way. First of all, the reason behind was that numerous events took place during the reporting period, and presenting those events in a generalized manner could impede the accuracy and integrity of the report. Thus, a decision was made to divide the report into four thematic chapters based on the substantial meaning of the documented violations.

The first chapter of the report refers to the right to peaceful assembly; the second chapter addresses the right to personal liberty and the safeguards for limitation of that right; the third chapter is on the treatment of assembly participants and the use of special means; and the third chapter refers to the freedom of expression. Accordingly, issues that were recorded during the events on July 17-31 and were related to basic human rights and freedoms are summarized in four chapters; in relation to these issues, the Human Rights Defender's staff has received reports, has recorded violations, has presented recommendations and demands on the elimination thereof, or has initiated other steps provided by the Law. It has to be noted that the order of chapters was decided based on the chronology of events.

This report has no objective of assessing the actions of the armed group members who have attacked the Police Patrol-Guard Service Regiment or actions of officers representing law-enforcement bodies who were engaged in special operations aimed disarming the armed group. Thus, the report also does not discuss questions that are subject to criminal case investigations and are outside of the scope of Human Rights Defender's authority.

Normally, in each of the chapters, firstly the rule, principles and relevant legal documents related to that particular right and prescribed by international and national law are presented briefly. This summary is then followed by presentation of factual circumstances pertaining to concrete events; afterwards, an analysis is conducted based on the outlined rule, principles and relevant legal documents.

Thus, each event or incident presented in this report is analyzed based on a clearly defined methodology: first, the principle is outlined; then evidences are presented; after that, an analysis is conducted based on the proposed principle; and finally a solution is recommended. In this sense, we have refrained from presenting the report analyses and recommendations in a consolidated way at the end of a particular chapter or sub-section. The reason behind this approach was that taking into consideration the massive scope of events and incidents that way of presenting the material could create confusion and additional complications in the process of searching for or comprehension of recommended solutions to each case. Instead, analysis of each event is presented within the same section. This type of consistent approach makes it possible to easily read, perceive and study the report.

For the same reason, this report was elaborated using popular terms. The authors have tried to refrain from using academic wording, phrases and manner of text composition since the report is intended for general public.

Moreover, we have strived to elaborate a report that would also serve the purpose of becoming a certain guidance. To this end, the report not only highlights the instances of violation of concrete rights but also explains, in an unbiased manner, for example, lawful ways of enjoying that particular right. Consequently, the report can be used also for practical purposes, and this is not limited to the legal assessment of events occurred in the period of July 17-31, 2016. This is the reason why the report abundantly makes references to numerous reputable human rights sources, such as United Nations and Council of Europe conventions; decisions of the European Court of Human Rights, Constitutional Court and Cassation Court of the Republic of Armenia; guiding documents prepared by the OSCE and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), etc.

While elaborating the report, mainly the data available in the Human Rights Defender's office were utilized. During and after the events occurred in the period of July 17-31, 2016, the Human Rights Defender's staff received a large number of reports on violations against journalists, assembly participants and other citizens. All these reports were recorded and examined in the frame of discussion procedure stipulated by the Law.

For the conclusions in this report to be well grounded, fact finding works were also carried out. In particular, individual meetings were held with persons adversely affected during the assemblies. In certain cases the territory of the events was also examined (for example, in that particular area of Sari Tagh district where clashes took place between demonstrators and police officers on July 29, affecting, among others, journalists). Statements made by eyewitnesses on various events were also collected and examined. Anonymous surveys were conducted among residents of Sari Tagh district and affected journalists. Materials published in the mass media and social networks, numerous statements made by international and local human rights organizations, public figures, diplomatic missions, expert groups, and state bodies and results of researches were also reviewed. In some cases, the acquired data were verified and adjusted through oral and written inquiries made from state bodies. Based on all the above-mentioned studies, and to make it easier to understand the events described in the report, several maps were also elaborated with indications of titles of locations, approximate numbers of assembly participants and other information.

Chapter 1. The Right to Peaceful Assembly

1. The Right to Peaceful Assembly: Core Principles

The right to freedom of assembly is a fundamental right in and a cornerstone of democratic society. It is enshrined as a fundamental value in international law, international and regional human rights documents. This right is aimed at various groups of persons demonstratively expressing common thoughts and ideas in a public environment, as well as conveying a message. To this end, the right to assembly includes also the right to freedom of expression. Hence, protection of the right to freedom of assembly is essential for creating a tolerant and pluralistic society, where persons with diverse views and intentions, including minority groups, can peacefully coexist.

Only peaceful assemblies are protected under this right. An assembly is deemed peaceful if its organizers have demonstrated peaceful intentions, the assembly is proceeding without violence, and there is no imminent threat of violence. Though any assembly in a public place can cause certain distraction in normal life, such as traffic disturbance, noise, or a certain disturbance of public peace, or other temporary inconvenience for other persons, it does not mean that every such assembly should be deemed non-peaceful, resulting in deprivation of the participants of the exercise of the right based thereon. Even the calls of certain participants of the assembly to engage in violence are still not a basis for completely terminating the assembly. The primary objective of the competent authorities should be to safeguard the exercise of this right by citizens, assisting them in its exercise when necessary, and protecting them from interference by others. To this end, all restrictions must be narrowly construed and carefully imposed, generally minimizing any regulation, so that the right to peaceful assembly is, to the extent possible, enjoyed without regulation. Anything not expressly forbidden by law should be presumed to be permissible, and those wishing to assemble should not be required to obtain permission to do so. The objective of a requirement to notify about conducting an assembly should be to enable state bodies to take the necessary measures to ensure that the assembly takes place without hindrance, rather than to seek permission to conduct the assembly. Thus, **the presumption must always be in favor of the freedom of assembly.**¹

¹ Guidelines on Freedom of Peaceful Assembly. Second edition. OSCE/ODIHR, Warsaw/Strasbourg, 2010, para. 30. The text is available at <http://phsblog.at/wp-content/uploads/2016/04/ODHIR-Guidelines-on-Freedom-of-Peaceful-Assembly-Sec-Ed-2010.pdf>.

The right to freedom of assembly can be restricted only using means that are provided **by law**, pursue **a legitimate aim**, and are **necessary in a democratic society**.

The first implies the fundamental principle of legality. Any provision regulating the conduct of an assembly, including restriction grounds, must be provided by law. Moreover, the law itself must meet two qualitative criteria: firstly, the law must be accessible to citizens, i.e. be published and available. Secondly, the law must be clear and predictable, i.e. all the provisions of the law must be worded with sufficient clarity so that their application is predictable for citizens. If a law contains generalized language, then the courts should ensure their clear and straightforward interpretation so as to address any lack of clarity in the enforcement of the law. The latter is known as the fundamental principle of legal certainty, which is a key element of the general requirement of legality.

In addition to being provided by law, the restriction of the right must pursue a legitimate aim. Under Article 44 of the Republic of Armenia Constitution ("The Freedom of Assembly"), the list of such legitimate aims includes state security, the prevention of crime, the protection of the public order, and the protection of health and morals or of the fundamental rights and freedoms of others. Such grounds are also stipulated in Article 44 of the International Covenant on Civil and Political Rights and in Article 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter, also "Convention"). Thus, even if an assembly is peaceful and lawful, the competent state authorities may, nonetheless, restrict the conduct of an assembly, provided any one of the said grounds exists.

The restriction of the right must also be necessary in a democratic society. This condition essentially reflects the principle of the rule of law, which requires that any restriction, even when it is lawful and pursues a legitimate aim, to be **proportionate** for achieving any one of the aforementioned legitimate aims. The principle of proportionality requires any restriction to be driven by pressing social need, for the means chosen for the restriction to be necessary and sufficient, and for there to exist a rational link between the means and the pursued aim. In other words, in every specific case, a fair balance has to be struck between the restriction and the pursued legitimate aim, between the general interests and the interests of the assembly participants.

The proportionality principle also implies that even when a demonstration is unlawful, but peaceful, state bodies bear the positive obligation to safeguard the exercise of this right. The basic threshold should be the **existence of an imminent threat of violence**.

2. The Republic of Armenia Law on Freedom of Assemblies

The right to the freedom of assembly under the Republic of Armenia legislation is prescribed in the Law on Freedom of Assemblies (adopted on 14 April 2011, hereinafter “the Law”). The Law is an outcome of continuous changes and improvements in the assembly legislation achieved by the Republic of Armenia (RA) Government, in cooperation with the Council of Europe since 2004.²

All of the aforementioned principles are reflected in the Law. The idea that the law must take effect in favor of the presumption in favor of the right to freedom of assembly is expressed in numerous provisions of the Law. The Law defines the state’s positive **obligation** to safeguard the exercise of the freedom of assembly and, to this end, state and local self-government bodies have the obligation to follow the **proportionality** principle in the exercise of their authority.³

Restrictions on conducting assemblies are strictly defined in line with the scope prescribed by the Republic of Armenia Constitution and international documents and include state security, the protection of the public order, the prevention of crime, and the protection of public health and morals and the constitutional rights and freedoms of others. Moreover, it is prescribed that these restrictions must be applied in such a way as to not disfigure the objective of the assembly or otherwise to reduce the potential impact of the assembly on the public audience, including the resulting de-facto prohibition of an assembly. As to the prohibitions of conducting an assembly, they have been reduced to a minimum.

The Law prescribes a procedure of notification, rather than authorization. To conduct an assembly, it is sufficient for the assembly organizer to give written notice to the authorized body, which is done for informing the authorized body of the intention to conduct an assembly, rather than seeking permission, so that relevant state bodies take the measures necessary for securing the natural and peaceful conduct of the assembly and for the protection of the rights and interests of other persons.

Although notification is defined as a rule, the Law also prescribes three exceptions to the rule: **for an assembly with up to 100 participants**, as well as for a **spontaneous** or **urgent** assembly, formal notification is not required: instead,

² Before the adoption of the Law, the right to the freedom of assembly was regulated by the Republic of Armenia Law on Conducting Assemblies, Public Meetings, and Demonstrations, about which the European Commission for Democracy through Law (the Venice Commission) had issued a negative opinion due to its non-conformity with the principles of international human rights law.

³ The proportionality principle is also prescribed as a standalone constitutional provision in Article 78 of the Republic of Armenia Constitution.

there is a simple requirement to inform the police unit of the location where the assembly is taking place.⁴

The Law provides that even when an assembly is conducted without notification and is in that sense unlawful, the police must facilitate the assembly, if it is peaceful, rather than to disperse it. **Thus, the Law prioritizes the importance of defending the right to freedom of assembly even when the assembly is unlawful and inflicts or threatens to inflict some inconvenience and trouble to the lives of others. The most important condition is that the assembly be organized with a peaceful intention and be conducted peacefully. As long as the assembly is peaceful, the state bodies are obliged to exert all efforts for the assembly participants to continue enjoying their right.** To this end, the law also clearly defines a clause on the abuse of the right: violence, hate speech, and racism are defined as absolute prohibitions of the exercise of the freedom of assembly.

3. July 2016 Assemblies by Separate Dates

The Assembly on July 17, 2016

On 17 July 2016, a few hours after the overtaking of the Police Patrol-Guard Service Regiment, members of the “We are the masters of our state” civil initiative distributed an announcement in Facebook, where they urged the public “from this moment on” to convene at the Freedom Square. The initiative urged the Public Confidence Council to undertake the spontaneous assembly of citizens at the Freedom Square and to take steps to form a Transition Government of National Trust.⁵

An announcement was also published by the “Rise, Armenia!” civil initiative, which invited representatives of political and social powers to participate in a consultation with citizens at 8:00pm at the Freedom Square in Yerevan, “with a view to searching for ways out of the current situation.”⁶ Authors of the initiative also stated that the announcement was a notification to the Yerevan City Administration and the Republic of Armenia Police, and that the assembly was lawful, as the matter was urgent and “vitally important” for the state.

The assembly planned for the first half of the day did not take place. Shortly after noon, police officers dismantled the tent of the “New Armenia” Public Salvation Front

⁴ The right to conduct spontaneous assemblies without notification is also prescribed by the Constitution of the Republic of Armenia (Article 44, Para. 2).

⁵ The statement text is available in Facebook at <https://web.facebook.com/Mengeng.am/?fref=ts>.

⁶ See the statement text, for example, at <http://galatv.am/hy/news/157294/>

Civil Union installed at the Freedom Square and apprehended a group of citizens who were in the tent. Sometime after noon, citizens gradually began to assemble at the Freedom Square, but their number was not great. At such time, there was still no assembly taking place. Citizens in various groups were discussing the day's key event — the overtaking of the Police Patrol-Guard Service Regiment and the unfolding of the related events. Numerous police officers arrived at such time and soon began selectively and coercively taking certain citizens toward the police vehicle parked at the Square, from which, as it later became known, they were taken to various police stations. These actions by the police officers agitated and frustrated the apprehended citizens and others who were at the Square. Nevertheless, there was no violence towards the police officers at such time.

These actions of the police officers periodically repeated, with some interruptions, and this situation broadly continued for several hours into the evening. Groups of police officers were walking around the assembled groups of citizens, selecting a citizen, after which several police officers would use force and coercively take the citizen to the police vehicle that would turn on the siren and speed away from the Freedom Square. The police officers would not explain their actions in any way. Every once in a while, they would tell the citizens that complained about and try to prevent the police actions: "Do not obstruct! We are performing an action." In some cases, groups of police officers were also walking around the edge of the nearby Northern Avenue and apprehending certain citizens from there.

The grounds based on which the police officers were selecting certain citizens for apprehension were not clear. As stated already, the police officers refused to provide any explanation of their actions. Moreover, none of the apprehended citizens and none of the citizens assembled at the Freedom Square after noon had engaged in unlawful conduct that could serve as a basis for depriving such person of liberty.

On the same day, the Human Rights Defender of the Republic of Armenia published a statement about his Staff having received a number of reports about police officers apprehending citizens. As part of the rapid response, representatives of the Human Rights Defender undertook visits to police stations, where persons apprehended from the Freedom Square and other parts of the City of Yerevan were reportedly being held.⁷

The assemblies planned on 17 July corresponded to the nature of spontaneous or urgent assemblies with up to 100 participants, as stipulated by Chapter 3 of the Law. It has to be noted that an important event of public importance had occurred a few hours before — an armed group had attacked a police regiment, and its members

⁷ All the statements of the Human Rights Defender cited in this Report are available on the Defender's Facebook page at https://www.facebook.com/Armenianombudsman/?hc_ref=PAGES_TIMELINE&fref=nf.

had raised demands, and there was a need to react to the event immediately or urgently. By convening an urgent assembly, the organizers pursued the aim of reacting to the event by inviting citizens and political and public powers to the Freedom Square “with a view to searching for ways out of the current situation,” preventing potential bloodshed through public pressure. This fell squarely within the definitions of urgent or spontaneous assemblies stipulated by Article 26 of the Law. Under such circumstances, the assembly organizers were not obliged to give advance notice of the assembly to the authorized body. **Any delay would render the public reaction untimely.**

Reviewing the issue of advance notification of assemblies, the European Court of Human Rights has found that the right to hold a spontaneous assembly could prevail over the obligation to give advance notice of a public assembly only in special circumstances when an immediate response, in the form of a demonstration, to an ongoing political event might be necessary. Moreover, such a departure from the general rule could be justified, if a delay could render the response untimely.⁸ Therefore, although the initiators of the said assemblies had not duly notified the authorized body in advance, the absence of notification was due to the necessity to immediately respond to an ongoing important event, and complying with the deadlines required by Article 12 of the Law for notifying the authorized body of the assembly would have made it impossible to respond to the events in a timely manner, which is essentially the justification for a spontaneous assembly. Spontaneous assemblies are to be protected by the state.

Moreover, there was no evidence that the persons initiating the assembly pursued an aim of committing violence, or that the citizens at the Freedom Square who have come to the Freedom Square to participate in the assembly pursued any non-peaceful aims, which would have indicated an imminent threat of violence.

The Republic of Armenia Police or any other authorized body have not presented justifications that would confirm that the planned assembly was going to be non-peaceful, or that there was an imminent threat of violence by citizens when they were being forcibly removed from the Square. **Nevertheless, none of the citizens apprehended from the Freedom Square had engaged in unlawful conduct, while the police officers continued to remove them from the site of the planned assembly even selecting citizens randomly.** Under such circumstances, the impression left by the actions of the police officers was that they were aimed at preventing the assembly.

If the assembly was peaceful, the Police had no power to obstruct holding the assembly. If the Police were to claim that they were exercising

⁸ Judgment in the case of *Bukta and others v. Hungary*, Application No. 25691/04, 2007 July 17, Para. 36.

the power of restricting an assembly in advance, then the Police did not have such authority in that situation. Regulating the restrictions of assemblies, the Law gave the power to restrict assemblies in advance to the authorized body, which under Article 11 of the Law is the **community mayor**, i.e. the Yerevan City Administration in this particular case. Whereas, as of 17 July, the Yerevan City Administration, according to information available in the Office of the Human Rights Defender, had not issued a decision prohibiting an assembly at the Freedom Square. Therefore, instead of obstructing the assembly, the Police had to carry out its obligation under Paragraph 1 of Article 33 of the Law — by arriving at the assembly site and facilitating the assembly participants in conducting the assembly and, if necessary, protecting them from interference by others. As a result of all the above mentioned actions, the assembly did not take place.

The attempts to enjoy the right to the freedom of peaceful assembly on 17 July complied with the domestic and international legal standards on peaceful assembly, unless the competent authorities provide sound evidence *a contrario*. While not notified, the assembly was spontaneous, urgent, and generally peaceful, and therefore, subject to protection by the state. However, the Republic of Armenia Police, by applying an unlawful restriction, violated the fundamental right of persons to participate in peaceful assemblies.

The Assembly on July 18, 2016

On 18 July 2016, members of the “We are the masters of our state” civil initiative distributed a statement proposing citizens to gather around different parts of Yerevan at 10:00am on 18 July, and starting from 11:00am, to move from such parts towards the Erebouni Police Station. The statement suggested to the assembly participants having with them whistles, loudspeakers, and posters. The following was the rally’s message: “*We support the move by the Erebouni Group and their demands. We disagree with this government’s anti-Armenian and traitor policy. We want change!*”⁹ On the same day, another civil initiative group called “No to the robbery!” published a statement proposing to gather from 7:00pm onwards at the Freedom Square for a public discussion. The statement read that the initiative group was opposed to any use of force and any police encroachment upon the right to freedom of expression and freedom of movement.¹⁰

The planned rally did not take place, but shortly after noon, a group of citizens assembled at the park at the intersection between Khorenatsi and Kristapor streets,

⁹ The statement text is available at https://web.facebook.com/577805108932908/photos/pb.577805108932908.-2207520000.1472648013./1107616455951768/?type=3&_rd=1

¹⁰ The statement text is available at https://web.facebook.com/287822698007881/photos/pb.287822698007881.-2207520000.1468841520./927372880719523/?type=3&_rd=1

which was in the part of Khorenatsi Street that led towards the Police Patrol-Guard Service Regiment, from which the police officers had blocked off the street (see Map 4). Some of them started to prepare posters, apparently getting ready to conduct a protest demonstration. In the meantime, the police officers started to apprehend several citizens who were in the park, including the persons that were preparing the posters. The police officers also seized the posters. The police officers were apprehending citizens, grabbing them by their hands and feet, and handcuffed a person who was not resisting. At such time, another group of police officers separated a part of the park with security tape and, instructing and pushing the assembled citizens, forced them over to the other side of the tape. During such time, the police officers were instructing the citizens not to cross the security tape, prohibited them from stepping or standing on the sidewalk, or approaching the barricade installed in Khorenatsi Street. The police officers failed to explain why they apprehended the citizens.

Several dozen citizens and journalists were assembled in the park. In any event, they were not more than 100. Therefore, under Article 24 of the Law, even if they intended to hold an assembly, notice thereof was not required. Moreover, two of the apprehended citizens were preparing posters, while the others were peacefully standing around the park. Under such circumstances, they were deprived of the opportunity to hold a protest demonstration.

At 7:00pm on the same day, a demonstration began at the Freedom Square. One of the demonstration organizers announced at the beginning that the demonstration was aimed at establishing the truth about the actions performed by the armed group that had overtaken the Police Patrol-Guard Service Regiment, and to call for a peaceful struggle. Despite that, a group of police officers encircled him and forcibly took him to the police vehicle parked at the Square. This angered the assembly participants, causing a clash between them and the police officers.¹¹ Thereafter, the assembly participants decided to organize a rally. A group moved towards "Swan Lake," but as the police officers blocked their path, the rally participants moved towards Northern Avenue. To prevent the rally of the assembly participants, the police officers barricaded Northern Avenue, which caused a clash between some participants of the rally and police officers (see Map 1). The police officers were instructing the assembly participants to terminate the assembly and "go home." After a while, the rally participants decided to return to the Freedom Square and to continue the assembly there. After about two hours, the assembly participants rallied, without any hindrance, towards Khorenatsi Street, urging citizens to join their movement, to support the members of the armed group, and to release all of the apprehended.

¹¹ Available at <https://www.youtube.com/watch?v=InRbxriOTJY>

Addressing the events that had occurred during the assembly on 18 July, the Human Rights Defender of the Republic of Armenia demanded from the police officers to comply strictly with the principles of lawfulness and proportionality, and to preclude altogether any groundless interference or violence with respect to the rights of assembly participants that had not broken the law. He also urged the assembly participants to maintain strictly the peaceful nature of the assembly and not to demonstrate any aggression or insults towards police officers that acted in accordance with the law.¹²

At the beginning of the assembly, the organizers announced that the assembly was aimed at establishing the truth about the actions performed by the armed group on 17 July and to call for a peaceful struggle. Any assembly is deemed peaceful **if its organizers have explicitly stated their peaceful intentions**, and such assemblies must be treated in accordance with their stated intentions, unless there is clear and obvious evidence that the organizers and participants of such assembly intend to use or incite violence. To this end, it was problematic that, in the announcement published in the morning, the assembly organizers had stated, among other goals, the goal of supporting the armed group as an objective of the assembly, repeating the same during the rally. The authors of the statement did not clarify what "support" meant. From the standpoint of a reasonable observer, this expression could be perceived as a call for supporting the violence. **In addition, there was no clear or real evidence during the assembly that the organizers or participants intended to use or incite violence. It should also be noted that any competent authority, in the period of elaboration of this report, has not sufficiently proven that the assembly organizers had intentions other than the ones declared by them, or that they intended to use or instigate violence. Therefore, the assembly was generally peaceful, though the statement about supporting the actions of the armed group was problematic.**

As to the lawfulness of the rallies, Paragraph 3 of Article 2 of the Law provides that *an assembly may be conducted by assembling in one place or moving from one place to another (a rally)*. Based on the substance of this Article, it can be argued that Armenia protects static, as well as dynamic rallies (moving from one place to another, a rally); hence, all the assemblies organized during the concerned period as a rally were still lawful.

It is problematic that the assembly organizers did not notify the authorized body about conducting the assembly under Chapter 2 of the Law. For 17 July, notice was not required, because it was necessary to respond urgently to a key event that

¹² See the July 19 statement of the Human Rights Defender. The full text is available on the Defender's Facebook page, see Footnote 6.

happened suddenly, so the 17 July assembly was spontaneous and urgent. However, by 18 July, while the event remained publicly significant, it cannot be argued that the assembly organizers did not have sufficient time and facility as at the morning of 18 July to notify the authorized body about the assembly planned in the evening, especially as the notification procedure is prescribed in the Law in such a way that giving notice would require minimum efforts. Therefore, the simple requirement of the law had to be fulfilled in order to ensure the lawfulness of the assembly. In this particular case, actually, the assembly was unlawful, as notice had not been given.

Nonetheless, even if an assembly is unlawful, the proportionality principle required allowing the assembly participants to enjoy their right to assembly, so long as the assembly was peaceful and real and imminent threats of violence were absent. Real and imminent threats of violence were absent during the 18 July assembly. Moreover, the assembly had not been prohibited by the authorized body — the City Administration. Under such circumstances, it is unclear why the police again tried to prevent the assembly by encircling its participants and depriving them of liberty and using rough physical force. As stated above, if there is no imminent threat of violence, and the authorized municipal body has not issued a decision prohibiting the assembly, the police arriving at the assembly site had only one obligation — to ensure the conduct of the assembly for the participants and, if necessary, to protect them from interference by others.

As none of the grounds prescribed by Article 33 of the Law was present, and an assembly in the form of a rally did not disproportionately violate the constitutional rights of others or public interests, the Republic of Armenia Police imposed an unlawful restriction by terminating the assembly in the form of a rally, while the grounds stipulated by the law were absent.

The Assemblies on July 19-21, 2016

On 19 July 2016, the “We are the masters of our state” initiative distributed an announcement urging the citizens to gather at the area adjacent to the Erebouni Police at 6:30pm every day starting from 19 July for the purpose of daily assemblies in solidarity of the members of the armed group, and with a view to preventing any use of force in resolving the current situation.¹³ In the meantime, starting from the day before, civil activists had been assembling spontaneously in front of the police barricade at the intersection between Khorenatsi and Kristapor streets or in the nearby park, and organizing various small size protests. The main message of those protests was for the police to refrain from the use of force in relation to the members

¹³ The statement text is available at <https://www.facebook.com/events/1802531819982241/>

of the armed group, for the government to resign, and for the negotiations with the members of the armed group to be public.

By undertaking the role of the assembly organizer, the members of the initiative did not notify the authorized body of the assembly, which was required by the Law; the absence of such notice renders the assembly unlawful. As to the exception to this rule, i.e. the waiver of the notice for urgent and spontaneous assemblies with up to 100 participants, there was no longer the urgency of responding to a key public event two days after it had happened, which would have been rendered meaningless in case of fulfilling the notification requirement. Nothing was restraining from fulfilling the clear requirement of the Law and giving notice of the assembly to the authorized body. **It should be reiterated here that the goal of notification is not to seek permission for the assembly, but to enable the competent state authorities to take measures to facilitate the normal and peaceful conduct of the assembly and to protect the rights of others and the interests of the public.**

On the same day, the Police announced that the movement of citizens and transport through a part of Khorenatsi Street had been restricted for reasons of citizens' security. The Police urged the assembly participants to refrain from adventurism, not to organize rallies towards the protected special area, and not to create additional difficulties for the law-enforcement bodies. The Police noted that the assembly participants were trying to present ultimatums to the Police and other law-enforcement bodies by demanding to perform specific actions or to refrain from exercising their functions under the law. The Police warned that, in case of non-compliance with the warnings and obstructing the activities of the law-enforcement bodies against the armed group, adequate measures stipulated by the legislation would be applied towards the offenders. However, citizens continued regularly assembling at the intersection between Khorenatsi and Kristapor streets. The number of citizens participating in the protests was not large.

Through the aforementioned statement, the Police did not prohibit conducting assemblies at the site concerned, because the Police had no such authority. As mentioned above, it is a power of the municipal government, in this case the Yerevan City Administration. On that day, the City Administration had not issued a decision prohibiting assemblies at the concerned section of Khorenatsi Street. As to the decision to restrict the movement of citizens and transport through the concerned section of Khorenatsi Street, insofar as such decision was related to the special operations carried out by the special police units against the armed group, the Police had the power to issue such a decision. In this case, the Police exercised its authority in accordance with the proportionality principle, by prohibiting the movement of citizens and transport not fully, but partially, thereby allowing citizens and residents of the nearby areas not only to move through the area, but also to conduct assemblies.

In the evening, clashes occurred between the police officers and the demonstrators. Some of the demonstrators started to pull and hit the police officers standing near the barricade, and to throw bottles in their direction. The demonstrators broke the window of one police vehicle, and then used metal fences to close off the roads from Nar-Dos street to Khorenatsi Street and from Tigran Mets Avenue to Khorenatsi Street. The police officers did not actively respond to these acts. In the morning of 20 July, the police officers removed the barricades set up by the demonstrators (see Map 4).

Considering that notice had not been given for the assembly held at such site, and that the demonstrators were committing violence towards the police officers, the conduct of the assembly participants was unlawful. Moreover, the police officers did not take measures to terminate the assembly completely, although the Police objectively had such power. The Republic of Armenia Police **has the power to terminate or disperse an assembly during such assembly** if the grounds stipulated by the Law are present. Such a ground is prescribed in Paragraph 1 of Article 33 of the Law as follows: *"...if it is impossible otherwise to prevent disproportionate restriction of the constitutional rights of others or the interests of the public."* In fact, the Police followed the proportionality principle — not taking the violence calls or violent acts of some assembly participants as a basis for terminating or dispersing the assembly completely, thereby allowing other participants to enjoy their right.

In the evening of 20 July, a significant number of demonstrators assembled at the same site — in front of the barricade in Khorenatsi Street — and demanded allowing to transfer food to the members of the armed group (see Map 4). Late in the evening, the demonstrators demanded from the police representative to appear and answer their questions, namely, why their demand to transfer food to the members of the armed group was not being fulfilled. They announced that they would resort to sharp measures if their demand to transfer food to the armed group were rejected.

National Assembly member Nikol Pashinyan, who was conducting public activities aimed at peaceful resolution of the events, assumed the role of a mediator between the demonstrators and the Police, and promised to the demonstrators to convey their demands to the Police. Nevertheless, after some time, the demonstrators again demanded a representative of the Police to meet with them. The demonstrators presented an ultimatum to the Police, threatening that, if their demand is not met by 10:00pm, they would "escalate the situation," "close all the main streets," and "carry out actions," and that the Police would bear full responsibility for it. After several demonstrators threw stones towards the Police lines, a representative of the Police approached the assembly organizers and urged not to resort to violence and not to throw stones in the direction of the police officers, warning that, otherwise,

measures would be taken. The representative of the Police did not respond to the questions of the demonstrators about transferring food.

After the representative of the Police left, the assembly organizers announced that the Police failed to meet their demand, which led to grievance among the demonstrators. Several participants of the Assembly started to demand moving to sharp actions. A demonstrator took the loudspeaker and urged the women to retreat, after which the demonstrators moved very close to the police lines. A scramble ensued, during which a group of demonstrators, following the call by another demonstrator, attacked the police officers standing in the first line. This was immediately followed by the other demonstrators. A clash started with the police officers that was initiated by the demonstrators. They began to hit the police officers with feet, hands, and wooden rods, and threw stones and bottles towards them. Some demonstrators managed to seize the police officers' shields and to hit the police officers with them. The police officers did not respond actively. They were defending themselves with shields, trying to maintain the police lines, behind which was the barricade from the Police Patrol-Guard Service Regiment. This situation continued for several minutes, after which the Police used special means—flashbang explosives and tear gas, whilst moving forward in the direction of the demonstrators. The demonstrators dispersed, and some police officers started to pursue individual demonstrators, including running to chase them in the yards of the nearby buildings. The clashes on Khorenatsi Street ended at around 10:30pm, and the demonstrators mostly assembled at the nearby Tigran Mets Avenue.

Of the demonstrations that began on 17 July, this was the first time the Police had a lawful basis for terminating the assembly. The assembly was by its nature not peaceful. During the assembly, the organizers and the participants were calling for violence, and through such calls exposing their intention to use violence. For some time, the police officers were just defending from attacking actions initiated by the assembly participants. Taking into consideration the dangerous public safety situation that would have emerged if the demonstrators broke through the police cordon, then the barricade, and moved towards the Police Patrol-Guard Service Regiment, the Police had no alternative but to use special means and to disperse the assembly. Thus, the actions of the demonstrators were unlawful, and through such actions, they abused their constitutional right to peaceful assembly. In addition, the Police also committed certain violations when they did not uphold the principles of proportionality of the response (this is in more detail discussed in Chapter 3 of this report).

When the assembly was dispersed, after some time the demonstrators returned and stopped, in waiting mode, at a radius of about 50 meters from the police cordon, at the Khorenatsi-Kristapor intersection. They built barricades between themselves and the police cordon, using trash bins brought from the nearby areas, also blocking

a part of Tigran Mets Avenue that runs parallel to Khorenatsi Street. The police officers continued standing in their positions in several lines, in front of the Khorenatsi Street barricade. This situation went on for several hours. Although both sides were not resorting to active measures, the situation was remaining tense.

At about 4:00am, a senior police officer announced twice through a loudspeaker that the assembly was unlawful, and that the assembly participants violated the public order and the residents' peace, and demanded terminating the assembly, for which he gave 15 minutes. The demonstrators did not leave the area. After the time was up, the police officers opened a corridor through their cordon, from where persons wearing police uniforms and civilian clothes ran out fast, towards the demonstrators, and started to indiscriminately capture and apprehend the demonstrators. Thereafter, the demonstrators dispersed, and the assembly stopped. In the morning, traffic was restored on Tigran Mets Avenue.

Although the police officers were the first to attack in this situation, it can be concluded, in light of the events that had occurred several hours earlier, that an imminent threat of violence lingered, which is a key condition for the police assessing the need for and the lawful grounds of dispersing the demonstration, especially given the potential public danger and unpredictable consequences of the demonstrators' actions, if they managed to break through the police cordon and the barricade behind them.

It is also necessary to evaluate that the events seriously disturbed peace and public order in the area. The events were taking place at late night hours, and this situation had already been continuing for quite long.

Assemblies of small groups of persons at the same site and the nearby park continued throughout the day on 21 July, but there were no major incidents.

Starting from early morning on 21 July, based on reports by citizens, the Human Rights Defender and separate groups of the Defender's staff visited police stations in order to learn about the situation and the legal grounds of apprehending citizens. The Defender also visited police officers and demonstrators that were in healthcare institutions. In a public statement, the Defender expressed his concern about the night's clashes, reminding that the Law on the Freedom of Assembly requires to maintain the peaceful nature of the assembly and to refrain from actions aimed at endangering the peaceful nature of the assembly.¹⁴

On 21 July, the European Union Delegation to Armenia, with the consent of the heads of diplomatic missions of EU Member States accredited in Armenia, published

¹⁴ See the Statement made by the Human Rights Defender on the Defender's Facebook page, Footnote 7.

a statement expressing concern about reports of the use of disproportionate force and mass arrests by the Police, and urging the authorities to respect the proportionality principle in peaceful assemblies, as well as public protests accompanied with violence. The statement also urged the demonstrators to refrain from violent acts in the exercise of their civil rights. Acknowledging the statements by the Human Rights Defender, in its statement, the EU Delegation urged the authorities to carry out a comprehensive investigation into all reports of violations of rights by police officers, including ill-treatment and refusal to provide lawyers and health care.¹⁵

The Assemblies on July 22-25, 2016

During 22-25 July, assemblies continued at the Khorenatsi-Kristapor intersection area. Sometimes, there were few participants (up to 100 persons), and sometimes, there were many. The organizers did not notify the authorized body about the assemblies, similar to all of the previous assemblies. The municipal authorized body had not issued a decision to prohibit the assemblies.

During the assemblies, speeches were delivered by politicians, civil activists, and members of various initiatives. The assemblies were peaceful. Although the typical assembly rhetoric was present, there were no calls for violence or incidences of violence. The participants and organizers of these assemblies clearly stated their peaceful intentions. The Police did not interfere with the conduct of the assemblies, because there was no imminent threat of violence.

Thus, with the exception of assemblies with up to 100 participants, all the assemblies were unlawful, because they were conducted without notification. These were not spontaneous or urgent, which would have exempted them from the notification requirement. Nonetheless, as the participants had peaceful intentions, and there was minimal interference with the public order and the rights of others, and not more than usually happens during assemblies, the authorities demonstrated tolerance and did not interfere with the exercise of the participants' right to the freedom of assembly.

The Assemblies on July 26-28, 2016

On 26 July, the Police made an official statement, according to which there was a real and imminent threat of a sharp escalation of tension at the blocked part of Khorenatsi Street, with unpredictable consequences, and as proof of the existence of

¹⁵ The statement text is available at http://eeas.europa.eu/.../all_news/news/2016/2016_07_21_hy.htm

such threat, the law-enforcement body noted that the investigation of the initiated criminal cases had revealed credible information that the armed group members were directly guiding and giving direct instructions to the persons outside to organize and carry out criminal acts threatening citizens' life and health, including acts mongering panic and inciting clashes, under which circumstances the threat to the life and health of the assembly participants, as well as the threat to the public order could not be prevented unless the assembly were moved to a different location. Therefore, the Police demanded, in its statement, that the de-facto leaders of the assembly move the assembly elsewhere in a short time period, where the safety of the assembly participants could be secured within the responsibilities of the Republic of Armenia Police to facilitate peaceful assembly.

Despite the statement, a rally of numerous people was held through the streets of the Kentron Administrative District of Yerevan on 26 July. Around midnight, the rally participants returned to the blocked part of Khorenatsi Street. The Police terminated the assembly and apprehended more than 60 assembly participants.

On 27 July, the Police announced again that, due to security considerations, it is prohibited to conduct an assembly at the blocked part of Khorenatsi Street. In the morning of the same day, police officers indiscriminately apprehended citizens from Khorenatsi Street, including not only citizens intending to demonstrate at such place, but also random passers-by and residents of the nearby buildings. This step undertaken by the Police further increased the tension.

In the evening of the same day, a rally of numerous people started from Freedom Square towards Khorenatsi Street, where large numbers of police units had concentrated. During the rally, the organizers of the assembly and demonstrators repeatedly announced that the rally was conducted with a peaceful purpose. Reaching Khorenatsi Street, the demonstrators announced a sit-in and demanded the Police to release the persons apprehended during the day before. However, after some time, the assembly discontinued because the participants left the site. The assembly organizers announced that an assembly would be conducted on the next day, in the evening, at Freedom Square.

On 28 July, it was announced that an evening assembly would be organized in Khorenatsi Street.¹⁶ From the morning on, the Police prohibited citizens from stopping at the prohibited section of Khorenatsi Street, and from 7pm on, it started to apprehend the persons that showed up for the assembly. The assembly organizers decided to move the assembly to the Freedom Square. An assembly of numerous persons took place there, after which the participants rallied towards Khorenatsi Street. The Police did not prohibit their entry into the prohibited part of Khorenatsi

¹⁶ See the following link for information about the statement: <http://www.azatutyun.am/a/27886270.html>

Street. The assembly participants decided to carry out a sit-in on Khorenatsi Street. At such time, one of the assembly organizers proposed to pierce the police cordon, to reach the area of the Police Patrol-Guard Service Regiment, and to join the armed group, but the assembly participants did not accept the proposal. After some time, the assembly stopped because of the participants going away.

As to the events during 25-28 July, it should be reiterated that the Republic of Armenia Police is not an authority that has the competence to prohibit assemblies. Therefore, the announcements on 26 and 27 July could not have legal significance or serve as a basis for concluding that the assemblies in Khorenatsi Street were unlawful and terminating them.

The authority to prohibit assemblies rests with the Yerevan City Administration, which had not issued decisions prohibiting the assemblies during such days. On the other hand, a number of new circumstances should be taken into consideration, which forced the Police to publish the announcements on 26 and 27 July. On 26 July, the situation around the Police Patrol-Guard Service Regiment had sharply escalated. During the early morning hours of 26 July, there had been shooting between the Police and the armed group; the armed group members were committing acts outside the Regiment that were dangerous for life and health of citizens, including the inhabitants of nearby houses, to which the police officers had to respond with firearms. This was also escalating the situation and intensifying the tension atmosphere in the country. During the continuing assemblies, the assembly organizers, including participants, were making more and more frequent statements about moving to sharp actions, piercing the police cordon and joining the armed group members, and carrying out armed actions in order to reach the resignation of the authorities. Furthermore, the Police informed about new facts obtained during the investigation of the criminal case, according to which the armed group was giving instructions from inside the Police Patrol-Guard Service Regiment to the assembly participants on the other side of the police cordon to organize and carry out acts mongering panic and inciting clashes. Publicly available information allows noting that on the backdrop of the entirety of such facts, the Police could reasonably conclude that there was an imminent threat of violence, which posed public danger. Nonetheless, even under such circumstances, the Police did not have the power to issue an advance decision prohibiting an assembly. That is a power of the local authorities; in this concrete case – of Yerevan City Administration, while the latter have not made such a decision.

As to the indiscriminate apprehension of the citizens, their deprivation of liberty without the suspicion of individual citizens having committed an offence, even for a relatively short period, is a grave interference with the rights to personal liberty and freedom of assembly.

On 26 July, the Human Rights Defender issued a comprehensive statement, where he elaborated, in nine paragraphs, his position and recommendations on the events surrounding the Police Patrol-Guard Service Regiment. The Defender proposed, in particular, that state authorities exert all efforts to properly investigate every allegation of violation of the right to freedom of assembly, the right to personal liberty, and the prohibition of ill-treatment, and to hold every official who committed a violation liable under the most severe application of the law.

Subsequently, he demanded from every competent state body to present regular and systematic public reports on measures already taken or being taken by it. The Defender noted that such a systematic approach would be key to preventing such violations in the future and securing trust in the work of the law-enforcement bodies. It would also safeguard the practical application of the prohibition of violence against citizens or the groundless interference with the exercise of citizens' rights. The Defender once again urged the assembly participants to strictly maintain the peaceful nature of the assembly and to preclude any aggression or insult against police officers acting in accordance with the law.¹⁷

On 27 July, the United States Embassy in Armenia disseminated a press release welcoming the Human Rights Defender's statement and joining his call for all sides to continue exercising self-restraint. Taking into account the developments on 26-27 July, the US Embassy urged all sides to exercise utmost discretion, to act under the law, and to show commitment to resolving the situation peacefully.¹⁸:

The Assemblies on July 29, 2016

On 29 July 2016, at 7:30pm, a regular demonstration started at the Freedom Square, which was in the beginning attended by several hundred participants, but their number increased rapidly during the first hour. At the beginning of the demonstration, the speakers announced that, half an hour earlier, two more members of the armed group had been wounded, that the time had come, and that it was necessary to come together and to go to "our boys," because little time remained, and it could possibly be the last demonstration. Another speaker stated that acts of peaceful civil disobedience should be initiated in the capital city and the regions. The next speaker said that they were opposed to bloodshed, and that attacking anyone was not their goal, and that their goal was to prevent bloodshed at the Police Patrol-Guard Service Regiment, which required them to rally, in large

¹⁷ Position and Recommendations of the Human Rights Defender on the Events Occurring in Yerevan, Para. 5, July 26, 2016. The full text is available at <https://web.facebook.com/Armenianombudsman/posts/551780361676099>

¹⁸ The text of the Embassy's statement can be accessed from the following webpage: <http://www.lragir.am/index/arm/0/country/view/136697>.

numbers, and to stay at Khorenatsi Street. The last speaker announced the route of the rally. He said: *"We shall now rally towards Khorenatsi to support our boys... we must go to Khorenatsi and stay there... we are now moving through Tumanyan, Abovyan, Pushkin, Vardanants, Nar-Dos streets... you will then find out."*¹⁹ After this announcement, the organizers stated that the demonstration was over and suggested that the participants prepare for the rally.

The rally began from Tumanyan Street, after which the rally participants, chanting, moved towards Pushkin Street, and then through Vardanants Street they reached Nar-Dos Street. The rally was accompanied with different expressions chanted, while the rally organizers were walking at the front throughout the rally. The rally was moving through Nar-Dos street, and when the front of the rally reached the intersection with Aghyusagortsner Street, the first rows suddenly started chanting "Sari Tagh, Sari Tagh," at which time the rally organizers, who were marching in the front, suddenly turned left onto Aghyusagortsner Street, taking some of the rally participants with them, while the rest of the participants continued moving towards Khorenatsi Street (see Maps 2 and 3).

The police officers accompanying the rally, who obviously did not expect this turnaround, tried to stop the rally participants marching towards Sari Tagh and to instruct them to return to the pre-announced route, but they failed. The rally participants, continuing to chant various calls, rapidly moved towards Sari Tagh, where certain participants of the rally guided others towards Sari Tagh 3rd Street. Thus, the rally entered into Sari Tagh, and the participants started to move rapidly through the narrow streets of Sari Tagh. During such time, the rally participants were chanting, whistling, and shouting. Finally, the rally participants reached the Sari Tagh district's part where the road down merged, through two turns, with Khorenatsi Street, and the Police Patrol-Guard Service Regiment could be clearly seen from the hill (see Map 4). Here, the rally organizers stopped the rally and announced the following: *"We have planned to reach the nearest location from where our voice could be heard, and we will now try to express our support. Let me tell you that part of our society, our citizens have reached Khorenatsi street; they are there, so from two sides let us encourage our boys and diminish the spirit of the opponent."*²⁰ The rally participants started to chant calls in support of the armed group.

At about the same time, there was a clash between the police officers and the rally participants that had reached the Khorenatsi-Kristapor intersection. The police officers used special means, namely flashbang explosives, and apprehended many of the participants.

¹⁹ The video material covering these events can be accessed at <http://galatv.am/hy/news/159118/>.

²⁰ Ibid.

At such time, the rally participants at Sari Tagh began to disagree. Some thought it was useless to wait there, and that it was necessary to go down and join the demonstrators in Khorenatsi Street, while others thought that it was necessary to wait and express support to the armed group through chanting. After a while, some of the participants split from the rest of the rally and started to walk down towards Khorenatsi Street. After some time they returned and announced that the Police forces were moving up the street (see Map 4). Some of the demonstrators approached the Police cordon and began negotiating, while the majority of demonstrators remained in a waiting situation on a distance of around 50 meters from the police cordon. Meanwhile, the demonstrators started throwing stones towards police officers and the latter responded by throwing flashbang explosives. This situation lasted several minutes, and after that, the parties calmed down. Both the police officers and demonstrators remained standing in their locations. Soon afterwards, representatives of the Police and demonstrators started negotiations.

The Police demanded that the demonstrators leave the place and gave them 5 minutes, while the demonstrators demanded not to interfere with running the assembly. The process of negotiations was very tense, during which there were mutual insults, including swearwords and phrases of racist nature.

Shortly after the negotiations ceased, police officers started throwing flashbang explosives towards demonstrators. As a result of the used special means, a fire broke out in a nearby house yard, and many people, including persons that did not participate in the assembly, received bodily injuries of different degrees; material damage was inflicted, and the residents of the nearby houses were intimidated.²¹ In parallel to the use of special means, police forces started moving towards the demonstrators, forcing them to disperse and terminate the assembly. After some time, all the demonstrators left the territory of Sari Tagh district.²² Immediately after the use of special means, many of the demonstrators found shelter in nearby private houses. The emerging problem was that police officers were intruding these houses and, without any distinction and justification, were apprehending also residents of these houses. This was one of the consequences of the assembly in Sari Tagh, which, because of being conducted during night hours and in a district that was not envisaged for public assemblies, caused material, physical and mental damages to the residents (this risk was higher in case of children, elderly and other vulnerable groups).

The assembly organized at Freedom Square on 29 July and the ensuing rally had not been notified. Thus, with the exception of the assemblies planned on 17 July, all

²¹ Ibid.

²² The manner and methods of apprehending people used by the Police are in more detail discussed in Chapter 3 of this report.

of the other assemblies, which were held virtually every day, most of them with over 100 participants, were not notified assemblies. The organizers of these assemblies, most of which were the same people or members of the same public groups, did not fulfill the clear requirement of the Law on giving advance notice of an assembly. As all of these assemblies were not spontaneous or urgent, the notification requirement of the Law applied. While **notifying about an assembly is a rule, and absence of a notification is an exception to the rule**, which requires the existence of concrete and specific circumstances prescribed by Article 26 of the Law. As noted above, those circumstances existed on 17 July, but in the days that followed, they were absent. How is it possible to consider an assembly spontaneous, if the organizers publicly announce its location and time in advance? Thus, for the 29 July and all the other assemblies, except for the one on 17 July, the assembly organizers should have just complied with the simple and clear requirement of the law. The fact that the authorized municipal body had not been notified of the 29 July demonstration and rally *per se* rendered those assemblies unlawful.

Nonetheless, even an assembly conducted in violation of the law can be considered legitimate if the proportionality principle is respected. In this particular case, though notice had not been given, the municipal authority had not issued an advance decision prohibiting the assembly or rally. The Police in turn did not interfere with the assembly and the rally up until the use of special means in Sari Tagh district and in Khorenatsi Street.

What was problematic was that the rally organizers deviated from the rally route announced to the rally participants in advance. Though they declared during the demonstration that their goal was to rally and reach Khorenatsi Street, to stay there, and “to support” the armed group members, they eventually steered the rally participants towards Sari Tagh. The more problematic fact was that neither during the demonstration, nor during the rally, the organizers did not disclose their real intention, and, actually, did not inform the participants, including women and children, about the rally route beforehand. This means evasion of the responsibilities prescribed by Article 31 of the Law, which provides that the assembly leader must take measures to ensure the regular flow of the assembly. Overall, according to the OSCE Guidelines on Freedom of Peaceful Assembly, organizers of an assembly must cooperate with law-enforcement bodies and other authorized state and community level bodies both before organizing the assembly and during the assembly, in order to ensure security of assembly participants, running the assembly securely and without hindrance, and compliance with requirements of lawfulness.²³ The Guidelines even sets out a requirement for assembly organizers to cooperate with law-enforcement bodies and other relevant institutions to assess possible threats that can

²³ See OSCE Guidelines in Footnote 1, Paras. 186-187.

emerge during the assembly, and on ways to face and overcome such threats.²⁴ Moreover, the Guidelines stipulates that national legislation on assemblies can lawfully require from assembly organizers to abide by the lawful demands of law-enforcement body officers, and in case of refusal, to bring the organizers to responsibility.²⁵ Thus, the above noted requirements of national legislation and international law were violated by the rally organizers, and these violations were committed deliberately, because nothing showed that the rally organizers were forced to change the rally route due to an unexpected obstacle. The circumstances rather show that possibly that was the reason why one of the organizers, when he was explaining the rally route during the demonstration, listed all the streets, and after Nar-Dos Street, said "you will then find out."

Moreover, leading the rally to Sari Tagh district was a disproportionate interference with the constitutional rights and freedoms of others. Particularly, the rally proceeded through the narrow and semi-lit streets of Sari Tagh, late in the evening, with several hundred people loudly chanting, shouting, whistling, and crying. Though any public assembly normally inflicts some inconvenience to the surroundings, for instance to the residents, the inconvenience caused in this particular case was greater than is usually the case in rallies, demonstrations, or other public protests.

The assembly organizers, including some participants, announced multiple times that, by moving towards Sari Tagh, their goal was to convey a message of support to the members of the armed group that were inside the Police Patrol-Guard Service Regiment. During the demonstration, they also announced the necessity of starting acts of civil disobedience.

Both of these acts are consistent with the right to freedom of assembly so long as the intention is peaceful. If that was their intention, why was it necessary to conduct the rally and the ensuing assembly in the semi-dark streets of Sari Tagh, late in the evening, causing significant disturbance to the residents, and endangering their safety, especially as the situation had been lingering for the residents of the area for quite some time (about 12 days)? This was aggravated by the circumstance that because of the clash that happened between a number of Sari Tagh residents and police officers a couple of days ago, Sari Tagh district already became associated with violence. Under such circumstances, the residents' rights to privacy and home were disproportionately restricted during the rally, which gave the Police a formal lawful basis, under Paragraph 1 of Article 33 of the Law, to terminate the assembly **for the purpose of preventing disproportionate restriction of the constitutional rights of other persons, although the Police acted with grave**

²⁴ Ibid., Para. 189.

²⁵ Para. 190.

and unacceptable violations of the Law, thus bringing about justified complaints among citizens.

In addition, the Police had essential authority to interfere with the right to assembly under the second ground prescribed by Paragraph 1 of Article 33 of the Law, i.e. **for preventing a disproportionate limitation of public interests**. At the time when the demonstrators had gathered on Sari Tagh hill, the situation was as follows: during the day and in the days before, in assemblies, as well as from other public platforms (such as the mass media and online news media), the assembly organizers and many participants of the assemblies had already explicitly spread numerous calls for violence, especially against police officers, repeatedly stating that it was necessary to interfere with the activities performed by special police units around the area of the Police Patrol-Guard Service Regiment. In some cases, such interference had already occurred, involving violence, namely in the evening of 20 July, when the demonstrators initiated an attack on the police cordon in Khorenatsi Street, while the latter were defending the road towards the Police Patrol-Guard Service Regiment. Moreover, on that day there was already significant tension around the Police Patrol-Guard Service Regiment: for several days, members of the armed group had been carrying out armed acts outside the territory of the Police Patrol-Guard Service Regiment.

The Police had announced that it had facts showing that members of the armed group were steering the assembly participants and trying to incite clashes between the demonstrators and the police officers. By that time, clashes were already occurring between police officers and another group of participants of the same assembly at another section of the blocked street — the Khorenatsi-Kristapor intersection — whilst rounds were being shot in the direction of the police officers from within the Police Patrol-Guard Service Regiment. And finally, in Sari Tagh, the assembly organizers were announcing straightforward about the necessity to interfere with the activities of police special forces around the Police Patrol-Guard Service Regiment aimed against the armed group. The Police could reasonably conclude, based on the totality of these facts, that **at the time** when the rally participants assembled on Sari Tagh hill, from which the territory of the Police Patrol-Guard Service Regiment was directly visible and close, there was **a real and imminent threat** that the demonstrators could descend from Sari Tagh to Khorenatsi Street and interfere with the activities of the special police units in the direction of the Regiment. In that case, a real threat could emerge for the life and health of police officers, assembly participants and journalists, and residents of Sari Tagh district. This was also proved by the report (including video materials and audio recordings) disseminated by law-enforcement bodies, which stated that on July 29, in the period from 9:00pm to 11:00pm, from the territory of the Police Patrol-Guard Service Regiment, in particular, from one of the windows in the roof of the three-

floored building of the Regiment, as well as from the Regiment checkpoint members of the armed group have repeatedly opened fire from different weapons towards police officers on duty in the territory of Sari Tagh district, houses located in the district and officers of law-enforcement bodies who controlled the restricted section of Khorenatsi Street, while flashbang grenades were thrown on the cordon on Khorenatsi Street constructed with trucks.²⁶ Besides, fact-finding works carried out immediately after the assembly in Sari Tagh district by the Human Rights Defender and representatives of the Defender's staff demonstrated that throughout streets in the above mentioned area in Sari Tagh the police and civil vehicles were driving with headlights turned off because of shootings from the territory of the Police Patrol-Guard Service Regiment. During individual meetings, residents of nearby private houses have mentioned, independently from each other, about shootings from the territory of the Police Patrol-Guard Service Regiment. Another unacceptable incident was that under the mentioned circumstances the assembly organizers, while leading the rally to Sari Tagh, did not take into consideration the fact that children, women and elderly people were among the participants, who would become more vulnerable in the described situation and would need urgent protection.

Therefore, considering that actions aimed against public safety had been committed and were continuing to be committed in and around the territory of the Regiment (an attack on the Police Regiment, seizure of the building, hostage taking, and unlawful acquisition, carrying, and use of firearms, which had resulted in the death of and gunshot wounds among police officers), which as such threatened the safety of society as a whole, the Police, under the second ground of Paragraph 1 of Article 33 of the Law, was pursuing a **legitimate aim** by instructing to cease the Sari Tagh assembly, thereby **preventing a disproportionate restriction of public interests** by the assembly participants. In doing so, the Police applied the proportionality principle, at first warning the demonstrators that the assembly must stop, giving them some time, and proposing to move the assembly to a different location.

As to the use of the special means selected to restrict the assembly, it must be noted that this was a highly disproportionate restriction. Accordingly, under Article 31 of the Republic of Armenia Law on the Police, it is prohibited to use special means when terminating assemblies and public events conducted peacefully, without arms, but in violation of the procedure stipulated by law. The assembly could have been restricted by virtue of Paragraph 5 of Article 44 of the Constitution (to safeguard the public order and to protect the fundamental rights and freedoms of others), if, for instance, the assembly had been terminated through proportionate acts for the purpose of protecting the rights of persons living in Sari Tagh, especially as certain

²⁶ <http://www.lragir.am/index/arm/0/country/rss/136939> (in Armenian).

residents had been regularly complaining about the noise and inconvenience created by both the police officers and the assembly participants. However, in this situation, the Police used highly disproportionate means, including explosives (even some thrown into the homes of residents),²⁷ as well as indiscriminate force and destruction of the homes and other property of residents.

In numerous cases, studies carried out by the Human Rights Defender revealed that police officers had destroyed the property of residents (including through explosives), exerted physical violence against persons, some of which were not related to the demonstrations, including violence against persons in their own homes, inflicted serious bodily injuries, threatened to use physical violence, and caused psychological suffering to children and women. These acts are not in any way consistent with the **proportionate** means that may be used to restrict assemblies.

On 29 July, the Human Rights Defender has personally visited the homes of affected residents, and he saw the damage inflicted. Moreover, in the days that followed staff members of the Human Rights Defender, during regular visits, documented the serious damage inflicted upon the residents caused by the use of special means by the Police; the damage was not only material, but also physical and psychological.

It has to be noted that as a result of cooperation between the Human Rights Defender and the Yerevan City Administration, many people that had suffered material damage at Sari Tagh received and continue to receive compensation from the City Administration.

The Human Rights Defender has sent to the Office of the Prosecutor General, for the purpose of determining whether or not to initiate criminal prosecution, the allegations and materials concerning violence against citizens by police officers during the peaceful assemblies on 29 and 30 July, the use of special means by the Police, and the resulting damage inflicted upon the assembly participants and the residents of Sari Tagh. The materials sent to the Office of the Prosecutor General concern the actions of both police officers and the persons wearing civilian clothes.

On 30 July, the EU Spokesperson published a statement about the events occurring in Armenia, urging the Armenian authorities to refrain from the use of rough force when handling public manifestations, and urging the demonstrators to refrain from violence in the exercise of their civil rights.²⁸ The United Nations

²⁷ One of the explosive devices was thrown on a balcony where inhabitants were standing, and one of them tried to make a video of the operations. The explosion hurt the inhabitants and broke the window glasses of the house. The inhabitants' explanation of this act was that the police officers had thought that there was a journalist on the balcony, and that the explosive was thrown for intimidating him.

²⁸ Statement by the EU Spokesperson, 30 July 2016, available at https://eeas.europa.eu/headquarters/headquarters-homepage/7556_fr. The Armenian text of the

Armenia Office also issued a statement, where, expressing condolences on the passing of the police officer, criticized actions committed by the Police and the armed group (for taking medical personnel hostage). The UN Office also joined the Human Rights Defender in calling for tolerance.²⁹ During those days, statements made by the United States Embassy in Armenia were also important. Specifically, with its statement made on 30 July, the Embassy expressed deep concerns regarding those credible reports of violence and excessive use of force by the police to disperse protestors during the night of July 29-30, and that journalists and their equipment were specifically targeted by the police. Along with urging the Armenian government to take immediate steps to prevent violations and their possible recurrence and to exclude such in future, the Embassy also urged the protestors to responsibly exercise their freedom of assembly by exercising restraint, eschewing violence, and avoiding the active standoff at Erebuni Police station.

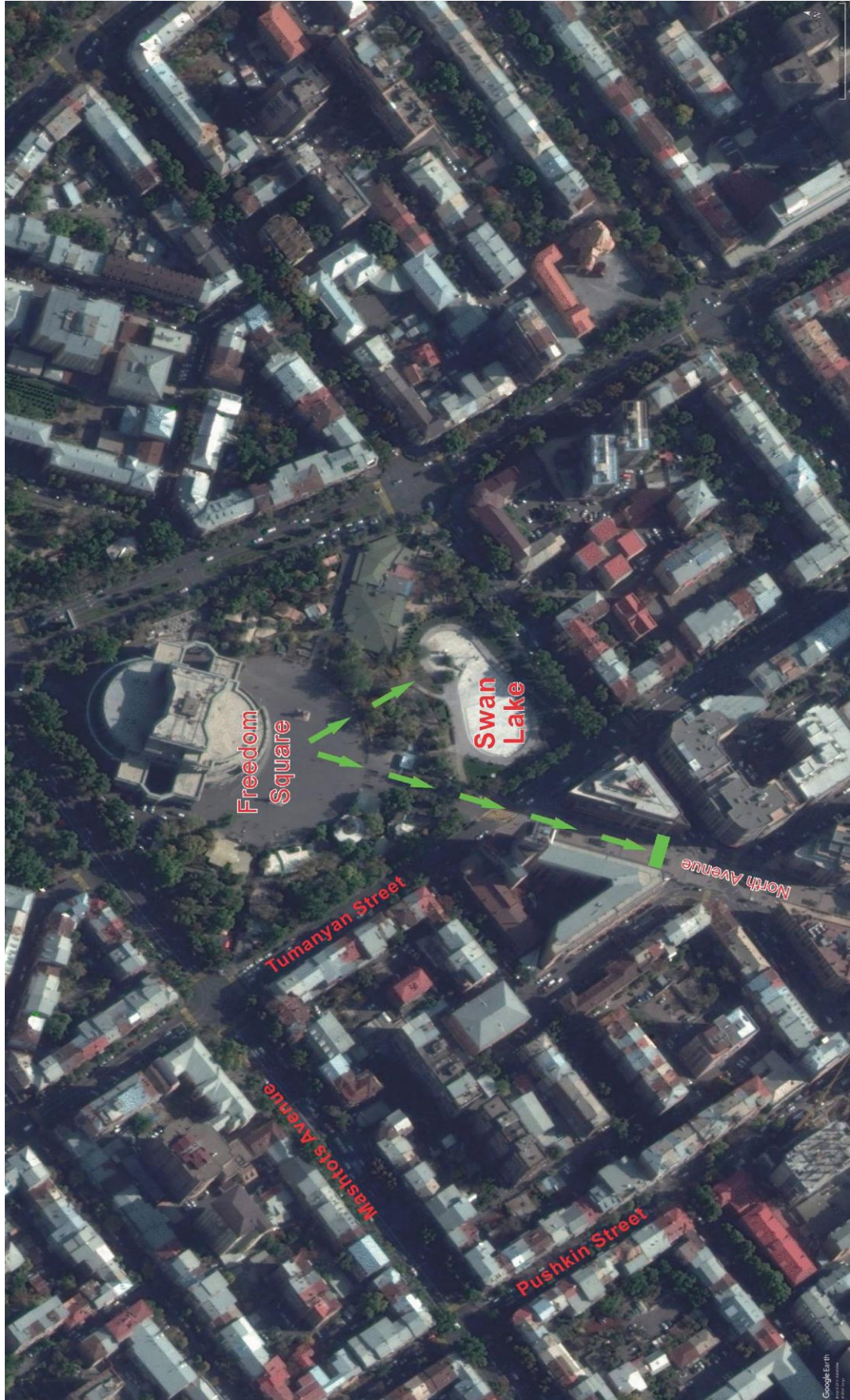
The US Embassy also welcomed the Armenian Human Rights Ombudsman's efforts to document the reports of violence against protestors, journalists, and passersby, and to advocate for the rights of those in detention. One of the important parts of the statement noted that the Embassy remained committed to working in partnership with civil society and individuals within the government who are truly committed to strengthening rule of law.³⁰

statement is also available on the Facebook page of the EU Delegation to Armenia at https://web.facebook.com/eudelegationtoarmenia/?_rdr

²⁹ <http://newspress.am/archives/39540>.

³⁰ <https://armenian.armenia.usembassy.gov/news073016.html>.

Map 1.



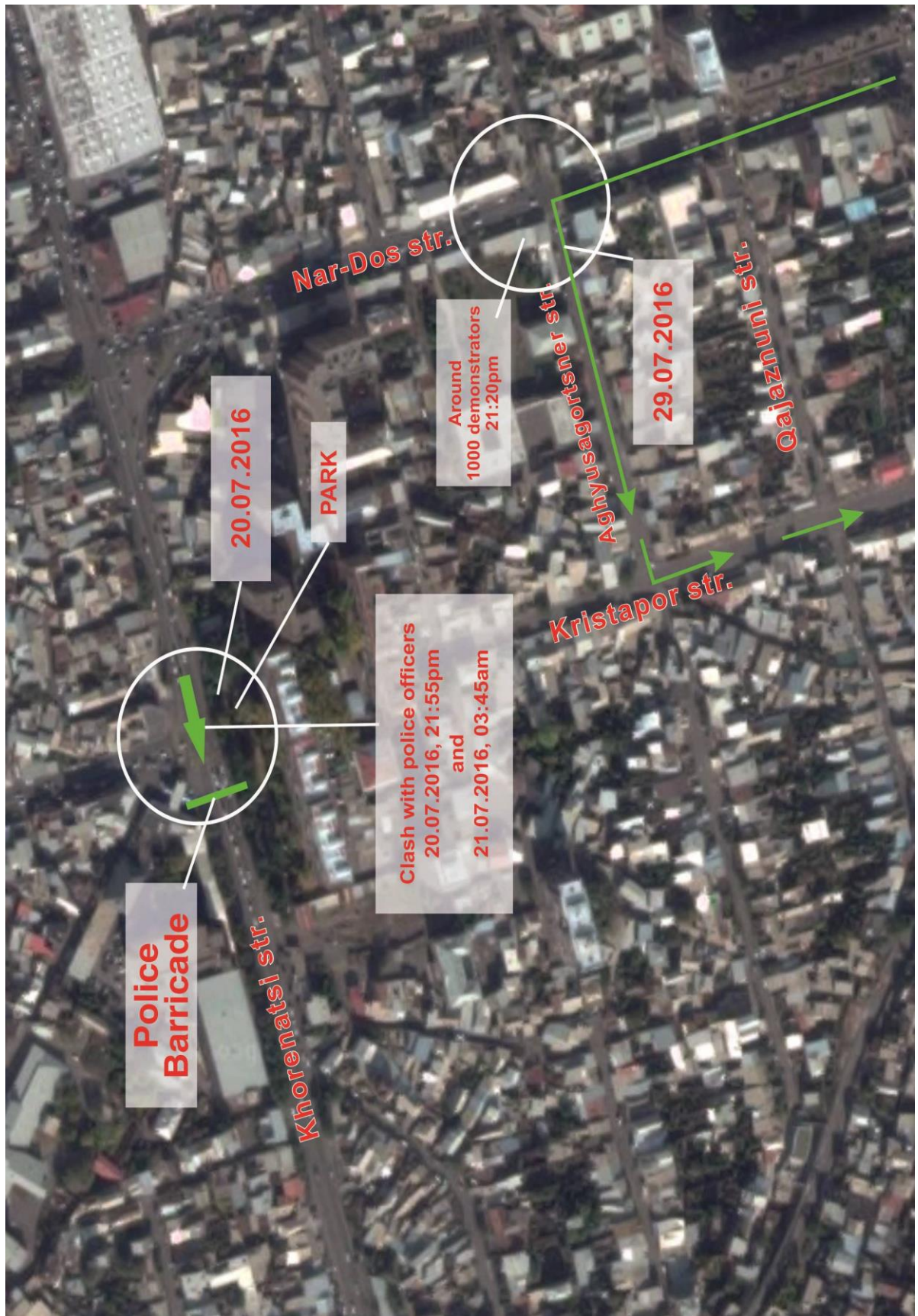
Map 2.



Map 3.



Map 4.



Chapter 2. The Right to Personal Liberty and Safeguards against Limitation Thereof

1. Legal Framework for Deprivation of Liberty

The right to personal liberty is the ability stemming from natural human rights, recognized by the State and manifesting physical liberty of a person.³¹ The guaranteeing and real protection of the right to personal liberty that, along with other fundamental values, comprises the basis for a democratic state and determines the level of development of the legal system of a given state.

The right to personal liberty has been substantially identified in international legal documents. Thus, Article 3 of the Universal Declaration of Human Rights stipulates that Everyone has the right to life, liberty and security of person. According to Article 9 of the International Covenant on Civil and Political Rights, everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedom sets out that everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in cases provided by the Convention and in accordance with a procedure prescribed by law. Paragraph 1 of Article 5 of the European Convention points to there being a presumption that everyone should enjoy liberty;³² this presumption excludes any behavior aimed at deprivation of a person of liberty that is not prescribed by the Law.

One of the most common cases of deprivation of liberty is when a law enforcement officer – whether or not force is actually used – makes it clear that a person either cannot leave a particular place or is obliged to come with the officer to some other place, or when a person is forced to follow the will of a police officer.

In this sense, for example, the European Court rules that even stopping a person on the street for several hours and forbidding him to leave from that location is a “deprivation of liberty,”³³ or, for instance, when a person is required to stay in a police station after having originally come there of his or her own free will, without use of force by law enforcement bodies.³⁴ It has to be noted that in this situation it

³¹ <http://www.osce.org/hy/yerevan/74940?download=true>.

³² [http://www.echr.coe.int/LibraryDocs/DG2/HRHAND/DG2-EN-HRHAND-05\(2004\).pdf](http://www.echr.coe.int/LibraryDocs/DG2/HRHAND/DG2-EN-HRHAND-05(2004).pdf), page 7.

³³ Case of *Gillan & Quinton v. the United Kingdom*, 12 January 2010, Application No. 4158/05.

³⁴ [http://www.echr.coe.int/LibraryDocs/DG2/HRHAND/DG2-EN-HRHAND-05\(2004\).pdf](http://www.echr.coe.int/LibraryDocs/DG2/HRHAND/DG2-EN-HRHAND-05(2004).pdf), pages

is probably irrelevant that the person deprived of liberty is unaware of this fact; it is sufficient that he or she is no longer free to leave.³⁵

In Armenia, Constitutional grounds for the right to personal liberty are set forth in Article 27 of the Constitution, which stipulates the following: "Everyone shall have the right to personal liberty. No one may be deprived of personal liberty otherwise than in the following cases and as prescribed by law (...)". This very provision of the Constitution sets forth those legal safeguards that are envisaged to ensure full realization of minimum rights of a person deprived of liberty, as well as to exclude any manifestation of such treatment of that person that is prohibited by the Law. In this sense, the Constitution has clearly defined those rights that must be guaranteed from the very first moment of deprivation of liberty.

When interpreting the provisions on fundamental human rights and freedoms safeguarded by the Constitution, international legal requirements must be taken into consideration. This is the requirement of Article 81 of the Constitution. In other words, at the level of Constitution it was set forth that international legal approaches must be used as basis for ensuring that safeguards are in place for the determination of constitutional and legal substance and effective realization of rights and freedoms of a person. It is unacceptable to limit fundamental rights and freedoms of a person disproportionately and incompatibly with the international legal requirements, including without provision of adequate legal guarantees.

The Constitution of the Republic of Armenia, in line with the convention model, provides an exhaustive list of the cases based on which a person's deprivation of liberty may be considered lawful. Moreover, it prescribes a rather strict model of the presumption in favor of liberty, which renders it unacceptable to define any new case of deprivation of liberty.

Nevertheless, the quoted constitutional guarantees have a universal significance and do not link emergence of rights with the circumstance whether the person was deprived of his/her liberty in the scope of criminal, administrative or even disciplinary proceedings.

The value of these guarantees is that these are directly applicable requirements and for practical realization do not require any intermediate legal regulation.

Despite the described requirements, during the events in July 2016, cases of clear violation of human rights occurred. These cases were documented by the Human Rights Defender during continuous visits to Police units as well as based on individual complaints.

For the identification of violations, the complication was that the major part of apprehension and arrest cases throughout those days occurred during nighttime. This was also the reason why starting from the

³⁵ Case of *De Wilde, Ooms and Versyp v. Belgium*, 18 November 1970, Application No. 2832/66, 2835/66, 2899/66.

very first day of the events, i.e. from July 17 the Human Rights Defender's staff shifted towards a 24-hour work schedule, regardless of the apparent lack of resources for that.

In the period of July 17-31, more than 200 reports on 335 cases of deprivation of liberty were received on 116 hot line for rapid response managed by the Human Rights Defender's staff. These reports and studies of based on visits to police units testify that on the mentioned days more than 500 persons were apprehended to police stations. Representatives of the Rapid Response Department and the Torture and Ill-Treatment Prevention Department of the Defender's Staff have conducted 48 visits to those police stations where around 300 persons were privately interviewed.

From the very beginning of July events, the Human Rights Defender voiced demands directed to the Police on the necessity of strictly adhering to constitutional regulations while depriving a person from his or her liberty. These demands were voiced both publicly and through separate complaints communicated to the Police in a written form.

Notwithstanding the voiced demands and appeals, the Police continued committing violations related to apprehending persons from the assembly location to Police stations, arresting or depriving him/her in any other way. The analysis of violations demonstrates that the majority of these breaches occurred in the period from the moment a person was taken from the assembly site (in other words, from the street) into *de facto* custody until he/she was apprehended to a police station, including in the process of transferring persons to police stations by vehicles and during the first hours the apprehended persons were in police stations.

The violations, specifically, were related to the failure to present to the person the grounds for his/her deprivation of liberty, failure to explain his/her rights, failure to promptly inform a person chosen by the apprehended person (for example, family members) of his/her whereabouts, refusing to grant lawyers and doctors access to police units, wrongly calculating the time period of administrative arrest, and other violations of human rights.

These violations were especially troublesome in the sense that they contributed to the emergence of an atmosphere of tension and to the diminishing of the society's trust toward state bodies in a situation that was already complicated and unprecedented in terms of problems with human rights protection in the society.

Unfortunately, the Republic of Armenia legislation does not provide any serious safeguard for the prevention of the mentioned violations. In particular, the RA Code of Administrative Offences, which is based on Soviet formal approaches and structurally does not correspond to contemporary requirements, in terms guaranteeing rights protection has become useless long ago. From a systemic viewpoint, this issue can be resolved with a new Code of Administrative Offences,

the adoption of which, however, is delayed because of unacceptable reasons. Necessary amendments are not done also in the acting Code.

Regarding this issue, the international jurisprudence is unequivocal: regardless of the type of proceedings, every person deprived of liberty must enjoy rights that safeguard against any form of prohibited treatment. The State must ensure the realization of these rights of a person regardless of his/her formal status, be that a witness, victim, suspect, defendant, person invited, etc. It has to be noted that the acting legislative regulations even do not provide for appealing the lawfulness of deprivation of liberty and being released if the deprivation of liberty is unlawful.

Moreover, there are contradictory regulations in the acting Code of Administrative Offences that negatively affect the practice of safeguarding human rights. In particular, the Code prescribes **administrative arrest, apprehension, and bringing the offender**. These mechanisms, however, do not provide for a person's rights as real safeguards against ill-treatment of the person deprived of liberty. Moreover, in addition to the lack of clear delineation between the objectives and grounds of applying the procedures of apprehension, bringing, and arrest, the law fails to prescribe the list of persons in relation to whom such interference may be imposed.

The correct determination of the moment from which the person is deprived of liberty and safeguarding his/her rights is crucial from the viewpoint of excluding any form of ill-treatment toward that person, including torture. These are the rights that have significant importance in terms of prevention of ill-treatment. Thus, failure to comply with this requirement results in violation of Article 3 of the European Convention.

During assemblies related to July 2016 events, cases of mass apprehensions also occurred. Moreover, these were carried out in an unacceptable manner, i.e. without providing clarifications on the necessary grounds to the persons deprived of liberty.

In reality, however, cases of mass apprehensions or mass arrests must be exceptions. In international practice, high requirements for compliance are applied in relation to these procedures. Authorized state bodies, and in this concrete case – the Police, are obliged to exert all efforts to avoid mass arrests or mass apprehensions. This practice threatens the safeguarding of rights since spontaneous and mass actions make it impossible to apply individual approach while depriving of liberty, which increases arbitrary forms of behavior. This practice also contradicts the right to the freedom of peaceful assembly because consequently that very right is not enjoyed.

Participants of assemblies should not be deprived of the right to freedom of peaceful assembly merely for the reason that law enforcement bodies do not possess sufficient resources or quality personnel for carrying

out individual (targeted) arrests. Assembly participants may be arrested only when there are reasonable grounds for depriving them of liberty.³⁶

The visits to Police stations, private interviews with apprehended or arrested persons, and discussions with Police officers conducted in the process of those discussions demonstrated that **in many cases Police officers themselves were not knowledgeable about legislation and, without doubt, about their responsibilities ensuing from constitutional and conventional regulations.** This is especially pertinent to those officers who directly contact a person in the framework of their patrol guarding or other service. Therefore, in this sense it is necessary to make urgent changes to the RA Police Educational Complex educational and training curricula for Police officers. For an effective achievement of this outcome, it is also necessary to make changes to all those internal rules and regulations of the RA Police that are relevant to the noted problems. This has to be the priority objective of the Police.

Each police officer who communicates with a demonstrator or any other person needs to be completely knowledgeable about those rights that the person being apprehended or arrested by him possesses, as well as about the responsibilities that safeguard the enjoyment of those rights. The Police officer also must clearly understand starting from which moment the person whom he has approached will be considered a person deprived of liberty, and from which moment he must ensure enjoyment of rights by that person. Moreover, this has to be done in a manner for every person to personally benefit from that comprehensive knowledge the Police possesses. Lack of this type of knowledge should be considered as a sufficient ground for dismissing the police officer or taking strict disciplinary measures against him/her.

Having summarized all of the aforementioned cases, the Human Rights Defender sent letters to the Special Investigative Service of the Republic of Armenia, requesting to clarify them and proposing, based on their investigation, to impose sanctions upon the guilty officials. According to clarifications received from the Special Investigative Service, Police officers, allegedly misusing their official status in contradiction to the Police interests or intentionally committing such actions that were apparently outside their scope of authority, have committed violence against persons being apprehended from different parts of the City of Yerevan to RA Police stations, have inflicted bodily injuries, and have kept them for longer than the time period prescribed by law, thus inflicting substantial damage to the rights and legitimate interests of persons and legitimate interests of the society and the State.

³⁶ Footnote 1. See Para. 161.

According to the Special Investigative Service, internal investigation in the frame of this criminal case is in process.³⁷

Civil society organizations and civic activists made statements condemning the violations committed by the Police during July 2016 events and demanded ending those violations.³⁸ The mass media and journalists were also rapidly responding to these, and helped disseminating information on the rights of persons deprived of liberty and steps aimed at prevention of violations. These activities were of significant support to the Human Rights Defender both in terms of identifying human rights violations and providing additional clarifying information to citizens.

Finally, several times concerned statements on depriving citizens of liberty without reasonable grounds and on the practice of violating their rights were made by the European Union Delegation to Armenia, United States Embassy, United Nations Armenia Office, along with other international agencies. All these institutions called for precluding altogether human rights violations or cases of groundless deprivation of liberty. In all these statements activities performed by the Human Rights Defender in relation to the protection of rights of persons deprived of liberty was welcomed; in addition, the statements underlined the importance of continuing the work with the same approach.³⁹ Immediately after the July events, the Eastern Partnership Civil Society Forum also made a statement, which also emphasized the importance of work done by the Human Rights Defender and the latter's active role.⁴⁰

This kind of feedback received from international partners on the activities performed by the Human Rights Defender during those days was of significant importance. First of all, it was an important support to the activities underway; in addition, these opinions confirmed that the Human Rights Defender's activities during this complicated and unprecedented situation were organized with right approaches.

³⁷ This topic is further discussed in the next chapter of this report.

³⁸ Armenian Helsinki Committee, Helsinki Citizens' Assembly-Vanadzor Office, Foundation Against the Violation of Law, Protection of Rights without Borders non-governmental and other organizations.

³⁹ <https://armenpress.am/arm/news/855422/amn-despanatuny-mtahogich-e-hamarum-ppts-gndi-taratsqum.html>; <https://armenian.armenia.usembassy.gov/news073016.html>; <http://newspress.am/archives/39540>; http://eeas.europa.eu/archives/delegations/armenia/press_corner/all_news/news/2016/2016_07_21_hy.htm, etc.

⁴⁰ <http://www.civilnet.am/news/2016/08/01/statement-by-the-co-chairs-of-the-steering-committee-of-the-eastern-partnership-civil-society-forum-on-the-recent-developments-in-armenia/297964>.

2. Minimum rights of a person deprived of liberty and the State's duty to guarantee the enjoyment of those rights

Determination of the moment from which a person is deprived of liberty and time periods of keeping in deprivation of liberty

During July 2016 events, the situation related to the right to personal liberty demonstrated that Police officers who were in direct contact with people had no correct perception of determination of the initial moment from which a person is deprived of liberty. In reality, the *de facto* taking a person into custody must be considered as the initial moment of application of the mechanism of deprivation of liberty, regardless of the applied means of influencing him/her or the formal naming of the person's status. As it was noted above, the initial moment must be linked with the following: whether the person is *de facto* deprived of the possibility of movement at his/her own free will and is obliged to follow the will of a police officer or representative of any other law enforcement body. The calculation of the time period of deprivation of liberty shall also be linked with that very moment.

The correct determination of the moment from which a person is *de facto* deprived of liberty has essential importance because that moment preconditions person's acquisition of rights and the onset of the state's bearing of respective obligations.

Accordingly, any person deprived of liberty shall have the following minimum rights:

1. the right to be promptly informed about the reasons for deprivation of liberty in a language that he/she understands;
2. the right to keep silent;
3. the right to promptly inform a person of his/her choosing about being deprived of liberty;
4. the right to invite a lawyer;
5. the right to undergo medical examination at his/her request, including by a doctor of his/her choice;
6. the right to challenge the lawfulness of his deprivation of liberty and the right to be released by the court if the deprivation of liberty is not lawful.

This list is the minimum scope of the rights a person just deprived of liberty shall enjoy. This means that a person shall not have fewer rights than listed above. In other words, the State is free to preserve additional rights for a person deprived of liberty, but ensuring the listed rights is the mandatory minimum scope. **The meaning of this concept is that safeguarding these rights or ensuring enjoyment of these rights are aimed at prevention of possible ill treatment of a person, including prevention of torture. These rights are also meant to safeguard security of person against possible unlawful criminal persecution.** Moreover, the scope of these rights by nature is such that it envisages

that the Police or other bodies depriving a person from liberty carry out their duties aimed ensuring that the person has a real opportunity to enjoy these rights.

For a full implementation of this concept, firstly it is necessary to ensure existence of comprehensive legal foundations. In particular, these foundations must be stipulated in fundamental legislative documents. The acting Criminal Procedure Code of the Republic of Armenia, for example, does not suggest any effective solution in this regard. Moreover, the existing regulations negatively affect the legal practice. With regards to criminal proceedings, the issue of safeguarding the rights under discussion is specifically resolved with the 18 December 2009 decision of the Cassation Court of the Republic of Armenia on the case concerning Gagik Mikayelyan; nevertheless, along with important solutions, that decision ultimately had no complete impact because of absence of systemic foundations. In contrary to this, the draft of the new Criminal Procedure Code of the Republic of Armenia, for example, not only stipulates a clear scope of rights, but also prescribes respective responsibilities of the State related to safeguarding the practical enjoyment of those rights.⁴¹ The draft of the new Code of Administrative Offences also contains such legal solutions that can contribute to the resolution of the above-mentioned issue.

Paragraph 3 of Article 262 of the Code of Administrative Offences, for example, prescribes that the time period of administrative arrest shall be calculated from the moment of bringing the offender for purposes of preparing the protocol. For purposes of this Article, the expression "**the moment of bringing**" should imply, in the context of deprivation of liberty, that it is the de facto deprivation of liberty phase of the arrest process. Whereas, in practice, violations of the rights related to arrest periods indicate that the concerned provision has been construed and applied in a way that contradicts the constitutional requirements. This situation in the legal practice of the Republic of Armenia is also due to the fact that certain elements of the mechanism of deprivation of liberty have been artificially delineated. In reality, those elements should be viewed as parts of a single mechanism, where the violation of even one element may cause the whole mechanism to fall apart.

Nevertheless, taking into consideration the recurring nature of violations recorded during those days and the urgent necessity for further prevention of these violations, the Human Rights Defender of the Republic of Armenia submitted an application to the RA Constitutional Court challenging the constitutionality of all those legislative regulations and legal practice that resulted in violations of human rights. The mentioned violations were related to the following issues: the grounds for deprivation of liberty were not presented to the person; his/her rights and responsibilities were not explained, including the right to inform another person of his/her whereabouts; refusing to grant lawyers and doctors access to police units; wrongly calculating the time period of administrative arrest, etc. Based on this

⁴¹ It is worrisome that for several years, the draft of the new Criminal Procedure Code of the Republic of Armenia is with the RA Parliament, and no step is taken aimed at the adoption thereof.

application, by the Constitutional Court Decision No. DCC-1339 of 24 January 2017, it was stated that "...an unlawful legal practice was formed in the area of safeguarding the right to personal liberty, which has enabled continuous application by the Police of a legal provision that was even recognized by the Constitutional Court as non-conforming to the RA Constitution and void, which, in turn, is a serious threat to constitutional lawfulness in the country." Moreover, **with the same Decision the RA Constitutional Court stated that delaying the adoption of the new Code of Administrative Offences and, consequently, continuation of the mentioned practice are a serious threat to the security of the legal system acting in the Republic of Armenia.**

The right of a person to be informed promptly about the reasons for deprivation of liberty in a language that he/she understands

Everyone deprived of liberty shall be promptly informed, in a language that he understands, of the reasons for being deprived of liberty, and in case of criminal charges filed, also of such charges. This is a right guaranteed under Paragraph 2 of Article 27 of the Republic of Armenia Constitution, which directly follows from Article 5 of the European Convention.

This rule is formulated to guarantee that each person deprived of liberty clearly perceives why he/she has been deprived of liberty. It also safeguards enjoyment of other rights and is an important component of that system. For example, when a person is informed about his/her right to invite a lawyer, this creates a real possibility of utilizing legal assistance in the initial phases of the proceedings, and these phases are risky from the viewpoint of safeguarding rights.⁴²

The grounds of depriving the person of liberty must be explained to him/her in a clear language that he/she understands; these grounds must be based on evidence and have legal justification. This must be done in a manner that the person deprived of liberty, if needed, would be able, for example, to invite a lawyer or apply to court challenging the lawfulness of deprivation of liberty. A routine approach to this issue is unacceptable. Whether or not a person was informed promptly about the reasons for his/her deprivation of liberty should be determined on a case-by-case basis, taking into account the circumstances of the case. In any event, the reasons for deprivation of liberty must be communicated at the very moment of actually taking into custody.

The analysis of violations of this right during July 2016 events demonstrated that these violations were mainly manifested in the following ways.

First of all, the above said refers to those cases when no explanation or

⁴² On the safeguarding function of this right see, for example, the ECHR judgment in the case of *Fox, Campbell and Hartley v. the United Kingdom*, Applications No. 12244/86 12245/86 12383/86, 30/08/1990, Para. 40.

information on the grounds of deprivation of liberty is provided to a person in the process of de facto taking him/her into custody. This type of violations was recorded in the majority of cases under review.

The next group of violations refers to the practice that instead of explaining the grounds of depriving a person of liberty, police officers used to make references to the Police Department of Public Relations and Information or advised to apply to the mentioned Department, or simply noted that the person was being apprehended on grounds that were already explained or presented in public statements made by the Department of Public Relations and Information. This type of practice is also prohibited: **no one is obliged to be aware of the statements made by the Police Department of Public Relations and Information; moreover, the generic type of information presented in those statements in no way can be considered a lawful ground for depriving a person of liberty.** Furthermore, even if a person has become aware from a public source of the respective statement, that circumstance does not exempt police officers from the constitutional responsibility of explaining to the person the grounds of depriving him/her of liberty. Features of a concrete violation of the law allegedly committed by the person must be present as the grounds for depriving anyone of liberty. Consequently, the explanation of these grounds must be individual in nature (there are several exceptions referring to mass apprehension cases only in special circumstances, and these were discussed above).

Another group of violations was related to the practice of stating, at the time of deprivation of liberty, not the reasons for deprivation of liberty, but that the reasons will be explained at the police station or on the way to there. Moreover, private interviews with persons deprived of liberty testified that in case of this type of violations explanations were mostly not provided just the same.

In private interviews with both the Human Rights Defender and with the Defender's staff, the apprehended persons have noted that even when they were in police stations, no one explained to them the grounds of depriving of liberty. As the reason for not explaining the grounds at the moment of de facto taking into custody, frequently an unacceptable justification was being presented that grounds would be provided at the moment when the person kept in police station would receive a status of an arrested person on the basis of the respective protocol or decision.

Whereas, the Constitutional Court, for example, has ruled, based on the Human Rights Defender's application, that "informing promptly" about the reasons of depriving a concrete person of liberty is the direct responsibility of public authorities, and a discretionary approach to this responsibility shall be unacceptable. Referring to the common practice of the European Court, the Constitutional Court of the Republic of Armenia has correctly pointed out that the above mentioned is an elementary guarantee for every person to know why he/she was arrested or detained. Moreover, the failure to inform about deprivation of liberty means complete denial of fundamental safeguards stipulated in Article 5 of the European Convention and a

grave violation of that right.

The right of the person deprived of liberty to have a person of his/her choosing informed promptly about his/her deprivation of liberty

During the period from 17 to 31 July 2016, 155 complaints related to the violation of the right to inform a person of his/her choosing while being kept in the Police station were received on the hot line for rapid response managed by the Human Rights Defender's staff or were received in writing.

In relation to this right, Paragraph 3 of Article 27 of the Republic of Armenia Constitution provides that **everyone deprived of personal liberty shall have the right to have a person of his choosing informed promptly thereof. The RA Constitution provides for an exception only for the purpose of prevention or solving of crimes, when the exercise of this right may be adjourned only in cases prescribed by the law.**

The right to inform a relative or another person of his choosing about the arrest is also enshrined in the legal standards of the European Court and of organizations working in the area of prevention of torture.

The right to inform other persons of being deprived of liberty is regulated in Paragraph 3 of Article 260 of the Code of Administrative Offences of the Republic of Armenia: "Upon the request of a person arrested for committing an administrative offence, his relatives or the administration of his work or study place shall be informed of his whereabouts. Informing parents or their proxies about the arrest of a minor shall be mandatory."

It is clear from the foregoing that, unlike the constitutional provision safeguarding the person's right to inform promptly a person of his choosing about being deprived of liberty, the Republic of Armenia Law on Administrative Offences prescribes a narrower scope of the exercise of such right. Specifically, the Law prescribes the right to inform, in an intermediated manner, only relatives or the administration of work or study place.

On this subject, the RA Constitutional Court, based on an application filed by the Human Rights Defender, with its Decision No. DCC-1059 had expressed serious concern about the legal provisions and practice related to persons under administrative arrest exercising the right to inform another person about such arrest.

As a result, the Constitutional Court found that Paragraph 3 of Article 260 of the Code of Administrative Offences does not conform to the Constitution. Regardless of the Constitutional Court Decision, still no changes were made aimed at safeguarding the above mentioned right. The inconsistency in fulfillment of the Constitutional Court decisions and elimination of violations of rights is the reason why in practice these violations are continuous. Concerning this, with its Decision No. DCC-1339 adopted on 24 January 2017, the Constitutional Court once again stated that the mentioned right is a directly applicable right and must be guaranteed in practice.

Articles 63 and 65 of the Criminal Procedure Code of the Republic of Armenia stipulate that respectively the suspect and the defendant, immediately but not later than during the first 12 hours after being taken into custody, have the right, through the body conducting criminal proceedings and by telephone or by any other available means, to inform his/her close relatives, and in case the person is a military officer, to also inform the commander staff of the military unit, about his/her location and grounds of taking him/her into custody. Nevertheless, this norm does not conform to international requirements, since it only refers to persons who have the above mentioned procedural status and the scope of persons to be informed is limited to close relatives only.

The specificity of this right is that its fulfillment is possible also to postpone. In particular, such a possibility is prescribed in legal criteria of the European Court and of other international institutions operating in the area of prevention of torture.

According to Paragraph 3 of Article 27 of the Constitution of the Republic of Armenia, the exercise of this right under review may be postponed only in cases, by procedure, and for the time period prescribed by the Law, with the aim of preventing or solving crimes. Thus, the Constitution has prescribed possibility for postponement of the fulfillment of this right only for the purpose of criminal proceedings. This exception is not applicable in case of persons apprehended or arrested for administrative violations.

In any case, even in the framework of criminal proceedings, while resolving the issue of postponement of the right under review, it is necessary to validate the simultaneous existence of the following legal preconditions: 1) a written decision on the postponement of fulfillment of the right; 2) a concrete justification for the postponement of fulfillment of the right; 3) postponement for a maximum of 7 or 8 hours; and 4) making the decision on postponement with the consent of the respective higher-standing authority or the prosecutor.

In subsequent phases of deprivation of liberty, the right to have visits by close relatives or a person of his choosing is also linked, in essence, with the above mentioned issue. That right is reviewed in the frame of the fundamental right of arrested or detained persons to maintain communication with external world.

In the course of July 2016 events, the examination of enjoyment of this right demonstrated that the problematic practice was caused by just legislative regulations. This refers to both the arrested and the detained persons, whose constitutional rights apparently were not being respected by officials representing law-enforcement bodies. Moreover, in that sense, ensuring communication with members of family or close relatives is especially important.

In its 2011 Report on Armenia, the European Committee for the Prevention of Torture recommended, for example, that the Armenian authorities take effective steps to ensure that the rights of detained persons to receive visits and to have

access to the telephone are not unduly restricted.⁴³

Paragraph 24.1 of Part 2 of Recommendation No. Rec(2006)2 of the Council of Europe Committee of Ministers to member states on the European Prison Rules also emphasized the importance of contact with family members and the outside world for detained persons: "Prisoners shall be allowed to communicate as often as possible by letter, telephone or other forms of communication with their families, other persons and representatives of outside organizations and to receive visits from these persons."

These standards are also reflected in various case-law decisions of the European Court of Human Rights.

In fact, ensuring communication of a detained person with his/her family members has considerable importance. Especially an arrested or detained person must have the possibility to maintain relations with his/her family members from the first moment of being deprived of liberty. This are the ties that also enable preventing possible cases of self-injury, death and other problematic situations in places of deprivation of liberty.

The fact of ongoing preliminary inquiries or investigations per se shall not be a justification for limiting the right to receive visits from members of family or close relatives.

Any limitation of such communication must have clear and individualized justification. Especially in terms of family ties, there are high standards in international practice applied on such justifications, as well as strict time limits.

Any limitation of visits or communication with family members must be specifically substantiated by the needs of proper investigation process or considerations of ensuring security and such a limitation must be applied for a specified period of time, with reasons stated in detail. Further, any such decision must have individualized substantiation.

International requirements pertaining to the fulfillment of the right to maintain communication with external world also provide for a possibility of state interference with the fulfillment of this right. Nevertheless, that interference must conform to necessary conditions and be carried out in compliance with the clear procedure prescribed by the Law.

In this regard, the Republic of Armenia legislation contains certain regulations but these are not sufficient for actual safeguarding of this right. Namely, under Paragraph 9 of Article 15 of the Republic of Armenia Law on Holding Arrested and Detained Persons, the body conducting criminal proceedings may, in view of the interests of the investigation, prohibit visits to arrested or detained persons by their lawful representatives, close relatives, mass media representatives and other

⁴³ Report of the CPT to the Government of Armenia on the visit to Armenia during 10-21 May 2010. Document No. CPT/Inf (2011) 24, Paragraphs 124-126. The full text of the Report is available at <http://www.cpt.coe.int/documents/arm/2011-24-inf-eng.pdf>.

persons, except for cases provided by law, giving written notice of such decision to the administration of the place where arrested or detained persons are held.

As both general practice and the practice applied regarding the cases related to July 2016 events indicate, the decisions limiting the possibility for receiving visits or other types of communication were not based on individualized justifications. These decisions were generic and did not meet the necessary criteria for being well grounded. **Moreover, the examination of the practice of making such decisions indicates that there is a serious risk of arbitrary limitations, which, in turn, in such cases can be manifested in causing additional sufferings to the person deprived of liberty through prohibiting his/her communication with close relatives, including family members.** In relation to the above, another issue emerges: the absence of individualized justifications in decisions limiting visits makes it impossible for the body inspecting those decisions to properly conduct verification and prepare a well-grounded legal act. This practice is impermissible; it has an apparently negative effect also on the psychological state of persons being kept in places of deprivation of liberty. Thus, urgent legislative changes have to be made and eliminate the above mentioned alarming practice in the country.

First, the content of the "interests of investigation" concept referred to in the Law has to be clarified; the reason is that because this concept has a generic formulation that does not correspond to the purposes of legal regulations, it is interpreted in a way that threatens the safeguarding of these rights and is applied with abuse.

Second, from the scope of persons having the right to visit, it is necessary to separate family members or close relatives of the person deprived of liberty, and for the possibility to limit his/her right to receive visits from these persons stricter requirements have to be in place.

Third, the body conducting investigations should not have authority to limit the right of an arrested or detained person to receive visits from family members or close relatives. The practice indicates that this authority results in misuse and does not comply with international obligations of our country. Only the prosecutor (in the phases of pre-trial proceedings of the case) and the court (in the court trial phases of the case) can be vested with such authority.

Fourth, decisions limiting this right must be properly justified. In addition, these decisions must be immediately handed over to the arrested or detained person for the latter to fully utilize the legal opportunity to appeal the decision.

Fifth, decisions limiting the right of persons deprived of liberty to receive visits by family members or close relatives must be regularly reviewed regardless of the wish or attitude of the person deprived of liberty (say, once per month).

Sixth, in the decision to transfer the case for court hearing it is also mandatory to make a special reference to the prosecutor's above mentioned decision made in the phase of pre-trial proceedings. In case of maintaining the prohibition, a

requirement has to be stipulated for the court to justify the necessity of maintaining the prohibition.

The right to invite a lawyer and the right to undergo medical examination

In the course of July 2016 events, 179 complaints related to obstructing a lawyer's entry into the police station were received by the Human Rights Defender through written complaints and phone calls, and during the Defender's visits to police stations.

The obstructing of lawyers' entry into the police station was frequently justified by a non-lawful explanation that the apprehended person who was kept in the police station had no status, and the entry of the lawyer would be allowed once he/she acquires a status of an arrested person.

Lawyers themselves also submitted complaints to the Human Rights Defender related to obstructing a lawyer's entry into the police station. These complaints referred, among others, to such situations when, to the lawyer's knowledge, his/her client was apprehended but he/she was unaware of the concrete place of deprivation of liberty where the client was kept; because of this, the lawyer was unable to visit his/her client. For example, on July 27, Haykuhi Harutyunyan, lawyer of human rights activist Levon Barseghyan, has submitted a report telling that her client was being kept in Shengavit Station of the Police, whom she is unable to visit. In all such cases, a rapid response was ensured, and in the framework thereof, it has been possible to assist to the proper fulfillment of the right of lawyers to enter different Police stations.

From the viewpoint of safeguarding the rights of persons deprived of liberty, rapid response is especially important, since obstructing a lawyer's entry may result in negative consequences, including the ones related to being kept deprived of liberty in future or to being subject to criminal prosecution.

In its case law, the Cassation Court of the Republic of Armenia, too, addressed the question of safeguarding the right of access to a lawyer. Specifically, in its decision on the case concerning G. Mikayelyan (rendered on 18 December 2009), the Cassation Court outlined the scope of specific rights of a person at the initial stage of arrest, which, among other rights, includes **the right to invite his/her lawyer**.

Another key safeguard of the right of access to a lawyer is the criminalization of conduct obstructing the exercise of their powers as lawyers.

Paragraph 1 of Article 332³ of the Criminal Code of the Republic of Armenia defines an official's obstructing of the exercise of powers by a lawyer as a criminal crime.

Based on the above-described legal norm, only a state official can be the subject of obstructing the exercise of a lawyer's powers. From our viewpoint, this

kind of regulation defines a narrower scope of persons (subjects) in terms of criminal and legal impact. The scope of persons obstructing a lawyer's activities can be much wider. In this case, the scope will not cover situations when, for example, it is not a state official that directly obstructs the lawyer's activities, but rather persons who are not state officials and they may even act at the instigation or incitement of that very state official.

Thus, it is necessary to make such changes in Paragraph 1 of Article 332³ of the Criminal Code of the Republic of Armenia that would expand the scope of subjects of this criminal offense and would include not only state officials but also any other person who obstructs lawful activities of a lawyer.

In addition, it is necessary to amend the above mentioned Article with a revised version of Paragraph 1, which will prescribe legal liability for obstruction of a lawyer's activities if that has been manifested by a non-lawful refusal to allow the lawyer's entry into any place of deprivation of liberty with the purpose of visiting his/her client.

The right to undergo medical examination has fundamental significance. The State has an obligation to ensure examination of the person by a doctor if there is such a necessity, or the person deprived of liberty has voiced such a demand. This right includes also the right of the person to be examined by his/her own doctor; it is a key safeguard that is meant to exclude any type of ill-treatment of a person. The proper fulfillment of this right also makes it possible to record any manifestation of possible ill-treatment and ensure that the guilty person is brought to responsibility.

The complaints submitted to the Human Rights Defender, the research conducted in Police stations in the framework of these complaints and private interviews with persons deprived of liberty have indicated that in practice there exist cases when a person deprived of liberty claims, for example, that he/she has suffered from violence committed by Police officers; nevertheless, the protocol prepared by the Police does not contain any mentioning of violence and, hence, of medical examination. In addition, there are cases when apprehended persons note that they have undergone necessary medical examinations but no information is possible to find in the registration book for apprehended persons because initially there has been no indication that signs of physical violence have been found on them, or there was a necessity of medical examination.

Such practice, without doubt, cannot be acceptable: it is necessary to ensure strict fulfillment of the right to undergo medical examination and recording of cases of such examination in respective documents.

Thus, the rights to invite a lawyer and undergo medical examination are crucial safeguards that are developed to protect a person from possible non-lawful criminal prosecution and ill-treatment. These safeguards must be ensured from the very first moment of deprivation of liberty, i.e. from the moment a person is forced to stay in

the police station, including from the moment of deprivation of liberty for administrative purposes (rather than at the time of preparing a protocol).⁴⁴ The thing is that the risk of threats and physical violence is the greatest in the period immediately following the deprivation of liberty. Therefore, access to a lawyer and a doctor for persons being kept under custody especially during the mentioned period is a fundamental safeguard against ill-treatment. Moreover, these rights must be safeguarded not only for persons suspected of committing crimes but also for any person who, on the basis of a demand or decision of the police or any other law enforcement body, is deprived of the possibility of free movement of his/her own free will.

The right to challenge the lawfulness of deprivation of liberty and the right to be released by court

In the context of safeguarding the minimum rights related to deprivation of liberty, it is also important to provide the possibility of appealing the lawfulness of deprivation of liberty and the possibility to be released by the court. This right has both Constitutional and Conventional bases.

According to the letter of Article 27 of the Constitution, the imperative of having adequate legislation reflecting the notion that the rights of a person deprived of liberty must be guaranteed in their totality implies that the person must have certain minimum rights (including the right to challenge the lawfulness of his deprivation of liberty in court) in any procedure of deprivation of liberty, namely administrative arrest, as well as in the procedure of apprehension and the procedure of bringing the offender. The constitutional prescription of this right is not an end in itself: its fundamental significance is to provide a legal avenue for a person to be released on the basis of a court decision finding his deprivation of liberty unlawful.

Article 266 of the Code of Administrative Offences, however, provides that administrative arrest, inspection of the person, inspection of items, and the taking of objects and documents may be appealed by the person concerned to a higher-standing authority (official) or to the prosecutor.

This legislative regulation directly shows that the Code prescribes a non-judicial procedure of challenging the lawfulness of arrest. As to safeguarding the right to challenge the lawfulness of other procedures of deprivation of liberty, namely the apprehension and of the bringing of the offender, the Code simply lacks any provisions about them.

The Constitutional Court, however, in Paragraph 8 of its decision adopted based on the Human Rights Defender's application related to the above topic, has expressed a clear legal position. In particular, according to the Court, regardless of

⁴⁴ See the Committee's 2002 report on Georgia (<http://www.cpt.coe.int/documents/geo/2002-14-inf-eng.pdf>).

the fact that Article 266 of the Republic of Armenia Code of Administrative Offences prescribes that administrative arrest may be appealed by the person concerned to a higher-standing authority or to the prosecutor, and, along with this provision, does not specify the court to appeal to, this does not mean that the mentioned provision excludes the right of the person to receive judicial protection, as stated in the RA Constitution and regulated by the Republic of Armenia Administrative Court Procedure Code.

The same Constitutional requirements are relevant also in case of persons deprived of liberty in the process of criminal proceedings, regardless whether it is an arrest, detention, or any other means of compulsion that deprives a person of his/her liberty. In this respect, the acting Criminal Procedure Code of the Republic of Armenia does not stipulate clear regulations concerning the release of an arrested person, which creates complications for the enjoyment of this fundamental Constitutional right in the context of the new Constitutional regulations.

Chapter 3. Treatment of the assembly participants and the use of special means

1. The treatment of participants of assemblies and the necessity to conduct investigation of cases of prohibited treatment

The human being is a supreme value in the Republic of Armenia. The person's inalienable dignity is the inviolable foundation of human rights and freedoms. Human dignity is inviolable.

Every state official must always remember these absolute Constitutional rules and respect those in his/her everyday work. These rules must be used as the basis for decisions made by all state bodies and officials.

Any state official must show respect toward citizens and be tolerant in relations with citizens. Only by upholding these principles, it is possible to achieve a consistent practice of *de facto* safeguarding of rights in a democratic state. This practice also presumes an effective fight against violations of rights and, along with this, application of inevitable and strict measures of responsibility upon state officials who have abused their authority or unlawfully used their powers.

More specifically, any case of exerted physical force or use of special means by authorized state bodies against a person for the purpose of prevention of violations of rights or an action that poses threat for the public at large must be properly justified from the viewpoint of the concrete situation. It must be necessary and proportionate in order to prevent the violation of rights or other threat that otherwise would not be possible to prevent.

Any exertion of treatment prohibited by the law⁴⁵ must be excluded toward any person deprived of liberty who is suspected or accused by the State of committing an alleged violation of right. This absolute prohibition is also based on the fundamental concept that the State, by depriving a person of liberty, also assumes the responsibility for his/her guaranteed protection. Therefore, any deviation from this absolute rule must become a subject for criminal proceedings.

Paragraph 1 of Article 26 of the Constitution stipulates, in this regard, that no one may be subjected to torture or inhuman or degrading treatment or punishment. Paragraph 3 of the same Article provides that persons deprived of liberty, too, have the right to humane treatment.

Article 3 of the European Convention provides that no one shall be subjected to

⁴⁵ For the purposes of this report, "prohibited treatment" phrase is used to refer to treatment prohibited by the law, such as exertion of disproportionate physical force or degrading treatment, including torture.

torture or to inhuman or degrading treatment or punishment. Article 5 of the United Nations Universal Declaration of Human Rights provides that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Article 7 of the United Nations International Covenant on Civil and Political Rights provides that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Starting from the very first days of July 2016 events, the Human Rights Defender's staff, based both on their own observations and received complaints, recorded cases of prohibited treatment of participants of assemblies by the Police. In addition, mass media outlets also disseminated such information. The complaints and information reported in open public sources referred to cases of prohibited treatment of participants of assemblies by Police officers. There were also media publications on cases of torture.

On July 18 and 19, the Human Rights Defender's staff already started receiving reports on cases of Police officers exercising violence against participants of assemblies and on cases of degrading treatment of these persons.

In particular, according to a message left on the Human Rights Defender's rapid response telephone number, as well as according to publicly accessible data, on 18 July police officers have tortured civic activists, have committed acts of violence against them and have demonstrated inhuman and degrading treatment. According to received information, in the process of apprehension these persons were handcuffed without sufficient grounds. According to the report, as a result, the above mentioned persons sustained numerous bodily injuries, including brain concussion.⁴⁶

Based on these data, a procedure of discussion of the mentioned issue was immediately launched in the Office of the Human Rights Defender. The information referred to above was compiled and submitted to the General Prosecutor's Office of the Republic of Armenia, with a recommendation to initiate criminal proceedings. As a result, a criminal case was filed.

In another case, during a visit conducted to a Police station at night time, representatives of the Human Rights Defender's staff found out that one of the apprehended persons had bilateral mandibular fracture, had received care in a medical institution, after which had come to the police station to take his personal items, but he was not allowed to leave the territory of the Police stations and then was arrested. He said that the police officers had beaten him brutally while apprehending him. Representatives of the Human Rights Defender's staff found that the person's jaw was bandaged, he was unable to speak properly and could only take liquid food because of the mandibular fracture.

The Human Rights Defender immediately sent this information to the Special

⁴⁶ The information is available at <https://www.youtube.com/watch?v=JpzegoJCzm0>.

Investigative Service. The problematic issue connected with this case was related to the lawyer's and the apprehended person's claims that the Special Investigative Service continuously refused to recognize the apprehended person as victim, while the forensic medical examination was ordered with a delay.⁴⁷

The information on cases of violence against civic activists, including cases of torture and degrading treatment, rapidly spread and received a harsh and criticizing reaction in the society. **These cases apparently aggravated the already tense situation. This was the type of information that contributed to a steep decrease in the level of trust toward the RA Police and, in general, toward the law-enforcement and judiciary systems.**

In parallel to receiving information on violations committed by the Police, certain groups of the society continued using hate speech against the Police and in general against state institutions and impermissible calls for resolving issues by the use of violence, including the use of arms. In case of the police officers that lost their lives during the events, encouraging calls, along with comparisons of racist nature, were being disseminated through social networks (this issue is discussed in more details in the next chapter of this report).

In the course of July 2016 events, Police officers started apprehending assembly participants to Military Units No. 1032 and No. 1033 of the RA Police Troops, and this brought about serious concern and complaint among general public. Concerning this issue, the Human Rights Defender immediately made a decision to start a discussion on his own initiative. On 18 July, in Military Unit No. 1033 representatives of the Human Rights Defender witnessed that the apprehended persons were kept in the sports hall where no proper conditions were maintained for them. Such conditions were in fact impossible to ensure since the sports hall of a military unit has entirely different functionality.

The described situation further increased the tension and resulted in mistrust toward the Police. Therefore, the Human Rights Defender demanded from the Police to immediately release the apprehended persons and bring to responsibility those Police officers who have committed violations. On the same day, including during nighttime, as a result of activities carried out in the territory of the military unit by representatives of the Human Rights Defender, around 50 people were released.

The described impermissible practice continued during the following days as well. The problematic aspect, for sure, is the following: why were the demonstrators being taken to the military unit of the Police Troops? Police divisions have their separate assigned functions, and each of the divisions addresses issues assigned to that particular division. Along with it, the apprehension of a person should not become an end in itself. Apprehending a person or in any other way depriving a

⁴⁷ The information is available at <http://www.azatutyun.am/a/27888853.html>.

person of liberty is aimed at ensuring that particular person's participation in proceedings initiated with regard to a concrete violation of rights. Thus, a person should be apprehended to a place where proceedings shall be conducted against him/her or with his/her participation. In such circumstances, a question has to be raised: why were the assembly participants being apprehended to the military units of the RA Police Troops? **In this situation, the State bears double responsibility to explain the link between apprehension to military units and the proceedings and to clarify the reasons for not ensuring the necessary safeguards for apprehended persons from the moment of de facto deprivation of liberty.**

One of the issues that increased the tension within the society was the widely disseminated information that police officers wearing plain clothes also participated in apprehending demonstrators and committing acts of violence against them. It was even more alarming that on July 29 information was publicly made available claiming that, along with police officers, persons who were wearing plain clothes and have used drugs participated in acts of violence against demonstrators and dispersing the assembly.

During private interviews, the apprehended persons also informed about cases when police officers had taken their personal belongings without any formal registration or documentation of the process and without presenting any explanation to them. All the actions that each representative of law enforcement bodies interacting with the citizens carries out in relation with or with the participation of a citizen must be registered, as a duty, by him/her. This is especially relevant in cases of taking personal belongings of others.

It was an impermissible practice that cases of obstructing the entry of lawyers into police stations took place and were registered. In fact, no police officer has the right to obstruct the entry of a lawyer into the police station or the place of keeping an apprehended person. Any state official who has violated this requirement shall be subject to criminal responsibility. One of the primary objectives of the visits conducted by representatives of the Human Rights Defender to Police stations was to ensure the fulfillment of this right (this topic is discussed in detail in the previous section of this report).

In addition to the above, all the cases of violence committed against demonstrators during July events were recorded and submitted to the body conducting criminal persecution for a review in the framework of the procedure stipulated by the Criminal Procedure Code of the Republic of Armenia. Namely, this refers to reports on acts of violence committed by Police officers against demonstrators during assemblies held both on Khorenatsi Street and in Sari Tagh district in Yerevan, on cases of special means used by Police officers, on the resulting damage inflicted upon the assembly participants and the residents of Sari Tagh.

On July 23 and on the following days the Special Investigative Service of the Republic of Armenia published official statements related to the initiation of a

criminal case and conducting investigations. The Special Investigative Service has presented clarifications to the Human Rights Defender on filing a criminal case based on reports received from the Human Rights Defender, a number of citizens and their lawyers, and mass media publications. These reports and publications indicated that in the course of July 2016 events Police officers, by exceeding the scope of their authority and abusing their official position allegedly in contradiction to the interests of the Service, as a result of using special means, have inflicted serious bodily injuries to numerous persons, have committed acts of violence and have impeded the lawful professional activities of journalists and the exercise of powers by lawyers. According to the Special Investigative Service, another criminal case was initiated on the basis of information testifying about apparent attributes of committing violence against journalists covering the circumstances of the rally of demonstrators taken place in July 29 in Sari Tagh and in other ways impeding their lawful professional activities.

On 12 August 2016, the Special Investigative Service of the Republic of Armenia published a statement that, as of 12 August 2016, the Special Investigative Service was investigating six criminal cases regarding police officers exceeding their official authority whilst apparently using violence, obstructing the lawful professional work of journalists whilst using their official position, and obstructing the exercise of powers by lawyers during the period from 17 to 31 July in Khorenatsi Street, Freedom Square and the nearby areas, Sari Tagh, the Theatrical Square of the City of Gyumri, as well as the Ashtarak Police Station.

In addition, it has to be noted that, for example, according to explanations provided by the Police to the Human Rights Defender, 88 persons were arrested by investigative bodies and transferred to the Police venues for keeping arrested people; based on the results of medical examinations, it was found out that 66 persons among them had bodily injuries (this figure refers only to the criminal proceedings and does not include persons apprehended in the framework of administrative proceedings).

In general, in relation to any case of manifestation of prohibited treatment the State must initiate a formal investigation procedure in the frame of criminal proceedings. Moreover, this investigation shall be conducted in the framework of criminal procedure by authorized independent bodies specifically established for that purpose by the State. It is internationally acknowledged that the requirement of conducting investigations does not automatically entail guaranteeing an end result. Yet, by the means of these investigations it should be possible to record the facts pertaining to the case, and, in cases when it becomes clear that the allegations of prohibited treatment, including allegations of probable torture are substantiated, it should also result in complete disclosure of persons guilty of committing the crime and, in case their guilt is established, should result in application of inevitable means of bringing them to responsibility. The investigation also envisages unequivocal application of the acceleration principle. This means that immediate measures must

be taken aimed at disclosing the circumstances of the alleged crime and, in addition, guaranteeing the necessary result (ensuring the affected person's primary involvement in the investigation; his/her interrogation; appointment of forensic medical examination, etc.).

The official bodies conducting investigations shall also appropriately and in due time frames respond to complaints.

In response to the inquiry submitted by the Human Rights Defender of the Republic of Armenia, the RA Police has presented an explanation on the following: based on the results of internal investigation conducted in the Police of the Republic of Armenia on events that took place on 19 July 2016 in Khorenatsi Street and on the night of July 29 to 30 in Sari Tagh district, by the Order of the Head of the RA Police, disciplinary measures were taken against 22 Police officers; namely, nine officers received reprimands, four officers received severe reprimands, four officers were dismissed from their positions, and in case of five officers their powers were suspended. According to the Police, disciplinary sanctions have been imposed for the improper performance of official duties, for the incorrect distribution of forces for purposes of maintaining public order and public security, for failing to take proper measures in the situation, for failing to limit the entry of rally participants into the guarded security area in a timely manner, and for failing to take sufficient measures to prevent plainclothes persons from exerting violence against journalists and damaging the equipment of journalists.

Despite public information regularly disseminated by the investigative body during those days, eventually, the main question remaining among general public was whether Police officers or other state officials are held criminally responsible in the frame of these cases. After July 29 events, among questions that specifically created tension were, as noted above, the following: eventually, were the persons wearing plain clothes Police officers, and had they used drugs? As of the date of finalizing this report, the investigation of the criminal case in the framework of which the actions of Police officers were to be legally assessed, was not completed yet. This cannot be acceptable since it also affects the trust toward official bodies conducting investigations; in addition, it does not promote the prevention of possible violations in future.

Details of the granting of victim status in cases of violence against journalists and other issues of effective investigation are addressed in detail in Chapter 4 of this Report.

The practice of prevention of prohibited treatment and the practice of apprehension of persons indicated that in the course of July events the prosecutorial supervision of lawfulness of these practices was not effective as well. The described violations in their essence are such that require rapid response by a prosecutor vested with constitutional authorities of initiating criminal persecution, carrying out supervision over the lawfulness of preliminary and pre-trial investigations in the framework of pre-trial criminal proceedings, and of the use of enforcement

measures. Every single case of violation must qualify for an immediate intervention by the prosecutor, and this is especially important in case of initial stages of depriving a person of liberty. The prosecutor should utilize measures of prosecutorial influence and directly intervene with an aim to eliminate any type of violation, and this shall be done without waiting for any special complaint or appeal from a person allegedly affected by ill-treatment or a person allegedly unlawfully deprived of liberty. This requirement also stems from international standards adopted in the area of human rights, which establish the primary role of the prosecutor in relation to the prevention and elimination of above mentioned violations. Thus, the prosecutor's office shall exert continuous efforts with the purpose of increasing the operational efficiency and effectiveness of prosecutorial supervision in the described areas.

2. The use of special means during assemblies

On 20 July, in Khorenatsi Street, in the area adjacent to the Police Patrol-Guard Service Regiment, the Police used non-projectile flashbang grenades of "Zarya 3" type (24 grenades), 40-mm "Svirel" flashbang projectiles (6), "Fakel-S" handheld single-element flashbangs (4), and "Drofa" handheld irritant flashbang (3).⁴⁸

On 29 July, the Republic of Armenia Police applied 56 flashbang grenades in Sari Tagh district. According to published data, on 29 July, in Sari Tagh, the Republic of Armenia Police applied 20 "Fakel-S" handheld single-element flashbangs, 22 "Zarya 3" non-projectile flashbang grenades, 13 40-mm "Svirel" flashbang projectiles, and one "Plamya-M" flashbang grenade against the demonstrators. According to the published report, the application of the grenades caused 60 citizens to seek healthcare, of which five had burns, 22 had fractures, and many had projectiles in their bodies.⁴⁹

Furthermore, in the course of July 2016 events 77 Police officers were affected, including 14 cases of exogenous intoxication and 63 cases of bodily injuries (eight officers suffered firearm injuries, and the remaining 55 suffered head injuries and injuries to upper and lower limbs). Fifty-nine police officers were taken to various hospitals.

On the same day, a grenade explosion in Sari Tagh damaged the eye of a resident of the Gegharkunik Region, and the eye was subsequently surgically removed.

According to the description provided in Republic of Armenia Police Chief Order dated 23 October 2009 on "Approving the Procedure of Allocating Special Means to Riot Police Officers and the Use of Special Means by the Riot Police," the "Fakel-S" grenade is used in enclosed areas, and according to the technical description, does

⁴⁸ The information is available at <https://news.am/arm/news/341947.html>.

⁴⁹ Available at <http://yn.am/?p=68460&l=am>.

not inflict projectile injuries. "Svirel" ASZ-40 is a flashbang fired from an underbarrel grenade launcher, which according to the technical description also does not inflict projectile injuries.

The technical description and technical specifications of the "Zarya 3" grenade are not contained in the aforementioned Order, but judging from the Police response to the inquiry, it does not inflict projectile injuries, either.

The aforementioned description also does not contain any information on the "Plamya-M" flashbang grenade or its ability to generate projectiles, but the available public information on this grenade shows that its explosion can damage the inner ear of 1% of adults, and the projectiles from the grenade shell can also damage soft tissue and cause intradermal hematomas, while the explosive part of the grenade can cause a fire or ignition. There is no publicly available information on the "Zarya 3" grenade, but it is apparently a modernized version of the "Zarya 3" grenade, the impact of which is virtually the same as that of the "Plamya M" grenade.

According to the aforementioned Order, the explosion of flashbang elements at about 5 meters from the place where the "Drofa" handheld irritant grenade falls, causes a flashbang signal, and the smoke ignition causes an irritant mist.

According to the Republic of Armenia Minister of Health Order 09-N (dated 20 April 2012) Approving the Permissible Standards of Application of Special Means in Relation to Human Beings, "Fakel S" and "Plamya M" must be applied at least 2.5 meters away from persons.

The said Order does not cover the conditions of use of the "Svirel" shot and the "Zarya 3" grenade.

The Appendix to the Republic of Armenia Police Chief Order 2760-A dated 11 October 2011 approves the Guide on the conduct of riot police officers in protecting the public order, as well as the use by them of physical force, special means, and weapons during mass disorders. According to Paragraph 22 of the Guide, every time special means or tactical techniques are used, the conduct of the Police must be utmost targeted, whilst complying with the principles of lawfulness and proportionality, and in situations endangering human life and health, before the use of non-targeted special means, the Police must use rubber bullets (unless the crowd is so aggressive that it is impossible to distinguish the conduct of the specific offenders).

The cited provision of the Guide shows that the application of non-targeted special means can be considered only when the application of targeted means is inappropriate.

Whereas, while the possibility of applying targeted means was not exhausted, the Police immediately preferred to use non-targeted special means with a large area of impact, which violates the provisions of the aforementioned Guide on the application procedure of special means and is impermissible in terms of safeguarding the rights of peaceful participants of demonstrations.

Under Paragraph 23 of the Guide, all police officers are required during mass disorders to exercise utmost restraint, because the disproportionate conduct of one police officer, unit, or platoon may sharply escalate the situation and unexpectedly complicate the incident. In this sense, every police officer must refrain from individual action in these situations, unless it is necessary for self-defense. However, in the clashes with the demonstrators, the conduct displayed by certain police officers did not help to calm down the situation, rather in some cases unnecessarily escalated the situation and posed a threat to the life and health of numerous persons.

Paragraph 24 of the said Guide needs special discussion: it provides that if the crowd has no exit path (especially when the crowd is blocked off or encircled), it shall be prohibited to use special means the impact of which may cause panic or sudden move of the crowd; this happens, for instance, when the police uses tear gas with bullets in order to disperse or break off the crowd, but the crowd is encircled by police officers, barbed wire, or other barricades, or the movement of persons is limited to the breadth of the street. Due to the impact of tear gas, the crowd will move towards the area that is relatively more open (or towards the police officers), which will be perceived as another aggressive act, resulting in escalation of the force used. Thus, non-thoughtful conduct of the police can complicate the situation. Therefore, before using any tactical technique or special means, one must reasonably assess not only the police intention, but also the potential behavior of the assembly participants.

During the events in Sari Tagh on 29 July, the crowd found itself in a part of the Sari Tagh district, in which there was a barricade that hindered movement of the demonstrators, and on the opposite side, the police forces were standing. Under such circumstances, in violation of the said Guide, non-targeted special means were applied, which escalated the situation and triggered further tension and violence.

The Police also failed to comply with its obligation to inform the demonstrators about the use of special means. Under Paragraph 4 of Article 29 of the Republic of Armenia Law on Police, a police officer shall, prior to using physical force, special means, and firearms, warn about their use and give sufficient time for complying with lawful demands and ceasing the offence, unless a delay in their use poses an imminent threat to the life or health of citizens or the police officer or may have other grave consequences, or when such warning is impossible in the current situation. The aforementioned Guide suggests the following wording of police warning about the intent to use special means during mass disorders:

a) "This is the Police. Stop the mass disorder and leave the area! Otherwise, special means [specify the type] will be used!"

b) "This is the Police. Stop the mass disorder and leave the area! Otherwise, special means [specify the type] will be used! There will be no more warnings."

Warnings by the Police must be in language that is clear to people and in the most expedient and understandable manner, such as a loudspeaker,

an amplification system, a poster, a billboard, an electronic screen, and the like. If possible, reasonable time should be allowed between different warnings aimed at groups of people or the crowd, so that the groups of people respond adequately. It is also necessary to video-record on electronic media the warnings and the responses by individuals or by the crowd (Part 1 of Paragraph 1 of Article 20 of the Republic of Armenia Law on Police may serve as such a ground). However, the Police failed to honor its obligation to inform about the special means to be used. It is proven by the video recording of the day's events.⁵⁰

The European Court, too, has reviewed the lawfulness of the use of special means. The European Court has emphasized the firing of a tear-gas grenade with a grenade launcher.

Given the dangerous nature of this equipment and the damage it could inflict upon human health, the European Court considered that its case-law on the use of potentially lethal force should apply in the instant case. The European Court went on to note that although police actions were authorized under domestic law, they should nonetheless also be sufficiently delimited, under a system of adequate and effective safeguards against arbitrary action. The Court noted that it is necessary to have instructions for the utilization of grenades, and that police officers should not have excessive discretion and ill-considered initiatives to use special means, for which it is required that police officers undergo the necessary training and have access to clear instructions.⁵¹

To this end, it should be noted that the legislation of the Republic of Armenia does not sufficiently regulate the Procedures of using special means. The health guides on the use of certain special means (such as the "Svirel" flashbang launch, which, similar to the equipment referred to in the aforementioned case examined by the European Court, is intended to be launched from an underbarrel grenade launcher, as well as the "Zarya 3" grenade) are missing altogether.

The European Court has also examined the proportionality of the force (especially the tear gas) used against demonstrators when dispersing assemblies. The Court has noted that the unjustified use of tear gas is incompatible with the prohibition of ill-treatment.⁵²

It flows from the foregoing that the Police, undoubtedly, is vested with powers of using special means. Nevertheless, as noted above, for the use of special means the Police needed to verify the compliance thereof with concrete requirements. In this sense, in the mentioned situation the special means were used in violation of the procedure of their use stipulated by the aforementioned Guide. The Police used the

⁵⁰ Available at <https://www.youtube.com/watch?v=Risy6Yl3taU>.

⁵¹ *Abdullah Yasa and Others v. Turkey*, application number 44827/08, 16/07/13.

⁵² ECtHR judgment in the case of *Ali Güneş v. Turkey*, application number 9829/07, 10/04/2012, Para. 43.

special means without a legal basis, because guidelines prescribing the health criteria on the use of special means did not exist. Some special means were used not in compliance with the health guidelines, causing numerous cases of burns and projectile injuries.

The July 2016 events were apparently peculiar given the treatment of participants of 29 July assembly held in Sari Tagh. In this sense, as much as relocating the assembly to Sari Tagh was troublesome (which was discussed in detail on Chapter 1 of this report), the actions of the Police carried out on the site were far more troublesome. Specifically, the aforementioned refers to the damage inflicted upon assembly participants as a result of the use of special means. During the mentioned period, as a result of using special means, residents of nearby houses also witnessed damages.

In particular, because of the lack of necessary conditions for the use of these special means, considerable damage was inflicted upon the houses of residents living not far from the assembly location because the grenades fell on one of these houses. Throwing grenades on one of the houses that was located immediately next to the assembly venue was especially worrying: the grenades not only started fire but also created a real threat of harming six children that were in that house during that time. The Human Rights Defender personally verified the above described by visiting the residents of these houses. Another troublesome practice, which must be totally ruled out, was revealed from private conversations with these people. The aforementioned refers to those cases when the Police started apprehending persons from houses together with residents of those households. It has to be noted that because of the use of special means, many participants of the assembly were forced to hide in Sari Tagh houses adjacent to the assembly location, and the Police was entering these houses with the purpose of apprehending these persons and was apprehending the residents of these houses without providing clear explanations. The above mentioned was also verified during the Human Rights Defender's visit to Saint Gregory the Illuminator Medical Center conducted in the same night.

This visit also demonstrated that there were also police officers who have suffered from the use of special means.

The Human Rights Defender demanded from the Police to immediately suspend the services of all the police officers who may have any relation to the acts of prohibited treatment of assembly participants, while the collected materials were submitted to the General Prosecutor's Office for the resolution of the issue of filing a criminal case.⁵³

⁵³ <https://news.am/arm/news/339732.html>; <http://www.aravot.am/2016/08/01/722652/>.

Chapter 4. Freedom of Expression

1. Obstructing journalistic activity

From 17 to 31 July 2016, the staff of the Human Rights Defender received numerous reports of cases of obstructing the lawful activities of journalists. All the reports were documented and reviewed under the respective procedures. Members of the staff of the Human Rights Defender met with and interviewed the victims, and in some cases also checked and corroborated the data through oral and written queries. A number of sites were inspected, such as the part of the Sari Tagh district, where the clashes had occurred between the demonstrators and police officers, during which journalists had suffered. Eyewitness statements, mass media reports, social media publications, and numerous statements and studies of local and international human rights organizations, public figures, diplomatic missions, and state bodies about the cases were collected and studied.

According to the collected facts, during the days in question, there had been grave violations of the rights of journalists and operators of *Azatutyun.am*, *A1plus.am*, *Panorama.am*, *Lragir.am*, *Armlur.am*, *Panarmenian.net*, *PAN-Photo*, *1in.am*, *NewsPress.am*, and *Haikakan Jamanak* news units, as well as the *Armenia TV Jameh* news program, and the Russian LifeNews news medium. The violations were accompanied with violence, threats, persecution, damaging and destruction of property and news material, including the apprehension of journalists and operators, which was done by groups of police officers and plainclothes persons. There was one documented case of firearms injury: while video recording the events around the Police Patrol-Guard Service Regiment, a round shot from inside the Regiment injured an operator of the *02* news agency.

The first cases of police violence against journalists were reported during the period from 17 to 21 July. On 17 July, in Freedom Square, when a group of civil activists were getting ready to hold an assembly, a police officer exerted violence against a journalist after the latter had asked the police officer why they were forcibly moving a citizen to the nearby police vehicle. The police officer saw that the journalist was recording a video of the sight of apprehending the citizen, approached the journalists, and started kicking him, after which a group of police officers forcibly took him to the police station, from which he was soon released, having first deleted the news video from his phone. A similar incident occurred on 18 July in Khorenatsi Street, where one of the police officers hit the journalist after the latter asked why they were apprehending citizens from the nearby park. In two of the above described cases, the journalists have intervened into the police operations by asking a question about the reasons of apprehending citizens, while in the third case the

journalist has not abided by the police officers' instructions, which has resulted in a conflict between the journalist and the police officers.⁵⁴ In this sense, it is necessary to underline that the journalist must abide by a police officer's instructions and refrain from interfering with the actions of police officers. As noted by the European Court of Human Rights, journalists cannot, in principle, be released from their duty to obey the ordinary criminal law merely on the basis that, as journalists, Article 10 of the European Convention on Human Rights (ECHR) affords them defense. It is acceptable that journalists may sometimes become involved in situations when, on the one hand, they must abide by the requirement of the law, and on the other, shall perform their professional duty of acquiring and disseminating information, thus enabling the mass media to perform their watchdog function. Nevertheless, in the light of the described conflict of interest it is necessary to note that the concept of responsible journalism requires the following: when a journalist has to choose between the above mentioned two duties, and his/her choice is to the detriment of the duty of obeying the criminal law, he/she should be aware that thereby he/she assumes the risk of being brought to legal, including criminal responsibility for not abiding by the police officer's lawful instructions.⁵⁵

On 19 and 21 July, there were documented cases of interfering with the professional activities of journalists in Sari Tagh and in Khorenatsi Street: in one case, the police officers destroyed the videos recorded by a journalist, and in another, plainclothes persons exerted violence, seized the camera, and destroyed the video of a clash between a group of activists and other persons in Khorenatsi Street.

The Human Rights Defender condemned the violence and called it an extremely negative practice of obstructing the professional activity of a representative of the mass media. The Defender announced that obstructing the performance of professional duties of a journalist is a crime, and that all of the related materials would be sent to the respective authorities for criminal prosecution. The Defender invited all persons that had unpublished videos or information about violence against journalists to transfer them to the staff of the Human Rights Defender.⁵⁶

The United States Embassy welcomed the statement of the Human Rights Defender.

The Delegation of the European Union in Armenia also joined this statement of the Human Rights Defender. In a statement published with the consent of the heads of diplomatic missions of EU Member States accredited in Armenia, the Delegation of the European Union in Armenia acknowledged the aforementioned statement of the Defender and underlined that the use of force for political change is unacceptable

⁵⁴ Materials on the July 18 incident are available at <http://www.aravot.am/2016/07/24/719343/>.

⁵⁵ See ECtHR Judgement on the case of *Pentikainen v. Finland*, Application No. 11882/10, 20/10/2015, Para. 110.

⁵⁶ See Footnote 7, the Defender's statement of 21 July.

and urged the Armenian authorities to conduct a full investigation into all reports of police misconduct.⁵⁷

Nonetheless, the violence against journalists and operators did not subside in the days that followed. Moreover, the violence was marred by cases of apprehending and arresting journalists, which did not trigger criminal prosecution or appropriate administrative proceedings. For example, on 24 July, a journalist was apprehended on suspicion of participating in the mass disorders of 22 July, which was followed by the preparation of an apprehension protocol, his engagement as a witness, and his subsequent release, while the journalist had been carrying out journalistic activities in Khorenatsi Street on that day.

On 26 July, in his nine-paragraph statement, the Defender again expressed concerns, among other things, over the allegations of bodily injuries inflicted upon journalists and of the obstruction of their lawful professional work, calling those cases “particularly condemnable.”⁵⁸ The Delegation of the European Union in Armenia reposted this statement in its social media, referring to it as a call for inquiry, accountability, and transparency.⁵⁹

All of the aforementioned acts constituted unlawful interference with journalistic freedom. **No law prohibits journalists from video-recording police conduct in the public environment, because by doing so, a journalist is fulfilling a mission of public importance — that of disseminating information on cases of concern to the public, in view also of the public's right to receive such information.** Hence, the police conduct interfered with not only the journalists' freedom to impart information, but also the public's right to receive information.

Apprehending a journalist as a witness and preparing a protocol cannot be understood. A journalist should not be engaged as a witness to the events or incidents that he/she has covered. In relation to this, the Constitutional Court of the Republic of Armenia has expressed its position on cases when journalists have been engaged as witnesses for the disclosure of their sources of information, stating that only in very exceptional circumstances, such as **the purposes of protecting the life of persons, preventing a grave (or particularly grave) crime, or safeguarding the judicial protection of a person charged with a grave (or particularly grave) crime,**⁶⁰ it can be justified to engage a journalist as a witness; the opposite would seriously undermine the media's freedom to impart information, which in turn would affect the free flow of information of public significance. If a journalist is apprehended based on reasonable suspicion of having committed a crime, then it is unlawful to engage him

⁵⁷ See Footnote 15.

⁵⁸ See Footnote 7: Statements of the Human Rights Defender.

⁵⁹ Available on the Facebook page of the EU Delegation to Armenia at <https://www.facebook.com/eudelegationtoarmenia/>.

⁶⁰ Republic of Armenia Constitutional Court, decision SDO-1234. See the Final Part of the Court's opinion, Para. 1.

as a witness. As to violence against journalists by civilians and the destruction of news materials, media reports of such cases are sufficient as a basis for the competent authorities to initiate criminal proceedings.

The encroachments upon journalistic freedoms undoubtedly peaked during the events in Sari Tagh on 29-30 July. Various journalists, who were at different sites during the events in Sari Tagh, in response to anonymous inquiries made by expert members of the staff of the Human Rights Defender gave similar statements, independently of each other, that some people using civilian clothes had approached them a few minutes prior to the use of special means and instructed to stand away from the demonstrators, because the police officers were going to use special means, which was then followed by the launching of flashbang explosives — the special means. Although some journalists were standing away from the demonstrators, explosives were launched in their direction, as well, inflicting burns and projectile injuries.

Different journalists have noted in their testimonies that certain groups of persons wearing civilian clothes had attacked the journalists, coming from the side of the police cordon, when they had noticed that the journalists were broadcasting the events. One journalist also told that one of the two persons beating him was wearing a police uniform, and the other civilian clothes. Those persons hit the journalists with truncheons, kicked and punched them, different parts of their bodies, demanding to stop the video recording and broke their cameras, the live broadcasting equipment, and the backup batteries, as well as destroyed the news material; whoever managed to escape from them was chased by the persons wearing civilian clothes, caught and beaten again, after which they tore off the journalistic badge from the journalist's clothes, tore or threw aside the badge, and threatened to punish them again if they continued to take photos or videos of the events. There was even a documented case in which a journalist was beaten by about 10 persons wearing civilian clothes: as in the other cases, they had come out from behind the police cordon, thrown the journalist on the ground, broken two cameras, kicked him around and hit with truncheons, while asking what he was recording on video. Even after the journalist showed the journalistic badge, they did not stop; on the contrary, they tore it off and threw it aside. The Defender's staff also received reports of violence against journalists by persons wearing masks and police uniforms.

The aforementioned violence is a consequence **targeting** journalists, rather than the negligence of police officers. It raises, among others, a question of discriminatory treatment. This is confirmed firstly by the fact that the violence was exerted especially at the time when the journalists or operators were covering the police operations, especially the use of special means. Hence, the violent conduct was specifically targeted at disrupting the journalistic coverage of the police conduct. **These two facts, taken together, indicate that journalists were selected from the whole as an identifiable group based on their professional activity. This *per se* raises an issue of discrimination.**

Secondly, the facts indicate that **the ill-treatment against journalists was manifested with the intention to punish them**. Otherwise, how can one explain that, in the aforementioned cases, even when the journalists stopped recording videos, the violence against them continued? Plainclothes persons, which essentially operated in groups, continued to kick, punch, and hit journalists with truncheons even after the latter had stopped recording videos or live broadcasting of the events. There were numerous documented cases of several persons simultaneously exerting violence against one journalist. In those cases, several persons would encircle the journalist, grab his arms and legs, depriving him of the ability to defend himself, and continue hitting various parts of his body, whilst breaking the journalistic equipment. As noted above, in some cases, when the journalist somehow managed to escape from those persons, the latter continued to chase the journalist, reached him, continued hitting him, and tore off and threw aside the journalistic badge attached to his clothes. In his testimony, one journalist told how he and several other journalists were hiding in a nearby bakery, but plainclothes persons broke the door, entered, and exerted violence against the journalists that were hiding inside. This persistence in the violent behavior can be explained only with the desire to punish, to degrade, and to diminish human dignity. Such acts are not only inhuman, but also degrading.

Thus, the analysis of the aforementioned and similar cases shows that the violence was targeted against the professional activities of journalists and operators; they were targeted only because they were journalists who were performing journalistic activities at the material time.

It is noteworthy that most of the violence against journalists in Sari Tagh was committed by groups of plainclothes persons. Though these groups were operating in sight of the police officers, none of the police officers, including the nearby police leadership, tried to prevent such violence. This supports the assumption that the plainclothes persons were most probably acting with the direct acquiescence of the police officers at the site. The criminal case investigation must identify them and whether they were plainclothes police officers, or operating under instruction by police officers.

It is also unobjectionable that the journalists suffered treatment prohibited under Article 26 of the Constitution and Article 3 of the European Convention on Human Rights. If the plainclothes persons were not police officers, then their conduct towards the journalists raises an issue of the authorities' positive obligation (such as the obligation to conduct an effective investigation into the incidents). The police officers' use of **special means** in respect of journalists raises an issue of negative obligations (the obligation of state bodies or officials to refrain from ill-treatment). The journalists, as persons covering the events who were not participating in the protest and were recording the events, suffered from the use of special means.

The aforementioned violence rightfully provoked a wave of protest by the journalistic organizations. On 21, 28, and 30 July, a number of journalistic

associations and non-governmental human rights organizations published joint statements expressing their frustration about violence against journalists and demanding the Republic of Armenia Police to immediately stop the use of rough force and the obstruction of the performance of their professional duties by journalists and operators.⁶¹ The situation was so worrisome that, in their statement of 30 July, journalistic and human rights organizations announced that they consider it pointless to demand anything any longer from the Police and reserve themselves the right “to resort to other lawful means of protecting the interests of journalists.”⁶² A protest rally was held by journalists at the Freedom Square; the Human Rights Defender also took part as a sign of solidarity with the protest.

In fact, any person committing an unlawful act against a journalist must be subject to strict measures of responsibility, which, in turn, will have a preventive role. There can be no justification for exerting violence against a journalist carrying out his/her professional activities.

A number of international organizations and diplomatic missions made statements about the events on 29-30 July. The US Embassy in Yerevan expressed concerns about the fact that, according to credible reports, journalist and their equipment were specifically targeted by the police during operations, and welcomed the Armenian Human Rights Ombudsman’s efforts to document the reports of violence against protesters, journalists, and passersby, and to advocate for the rights of those in detention.⁶³ The Spokesperson for the European Union urged the Armenian authorities to refrain from using excessive force in managing public assemblies.⁶⁴ The Council of Europe Secretary General Thorbjørn Jagland urged the parties to return to democratic dialogue which precludes the use of force,⁶⁵ while the Head of the OSCE Yerevan Office called on all sides to show maximum restraint from violence and to refrain from provocations.⁶⁶ On 30 July, the US Ambassador, on 31 July, the Acting Head of EU Delegation in Armenia visited the injured journalists in the Saint Gregory the Illuminator medical center.

The OSCE Representative on Freedom of the Media, Dunja Mijatović, also responded to the events: her office is called to signal encroachments upon the freedom of expression and media and to promote the implementation of OSCE commitments in the field of freedom of media by the Participating States. In an

⁶¹ All three statements are available in the “Statements” section of the Committee to Protect Freedom of Expression, www.khosq.am.

⁶² Ibid.

⁶³ Official statement by the US Embassy on 30 July, 2016, available at <https://armenian.armenia.usembassy.gov/news073016.html>

⁶⁴ See Footnote 23.

⁶⁵ The statement text is available at http://www.coe.int/en/web/secretary-general/news/-/asset_publisher/EYIBJNjXtA5U/content/council-of-europe-secretary-general-concerned-over-hostage-crisis-in-yerevan

⁶⁶ The statement text is available at <http://www.osce.org/node/257281>

official letter addressed to the Minister of Foreign Affairs of Armenia, she indicated that she expected **reassurance** that journalists' rights and safety during times of civil unrest would be protected, and that the Government "*should implement practical steps to ensure restraint on the part of law enforcement representatives toward members of the media and suggested steps should be taken by the authorities to guarantee that the press is not targeted by the police or thugs. The police should be protecting journalists and members of the media.*"⁶⁷

2. Investigation on the ground of obstructing the work of journalists

Based on mass media reports on violence against journalists, as well as reports by citizens and organizations, and based on Paragraph 3 of Article 11 of the Republic of Armenia Law on the Human Rights Defender, the Human Rights Defender issued a decision to initiate review of the matter *ex officio*. On the same day, the Human Rights Defender visited the part of Sari Tagh, where the clashes had happened, and studied the consequences of using special means and the damage inflicted to citizens at the site. The data collected during the visit was documented in the framework of the review initiated *ex officio*.

On 30 July, the Human Rights Defender made a statement, demanding the Police immediately to present clarifications about the violence against journalists and the possible involvement of plainclothes police officers in obstructing their activities. In the same statement, the Defender demanded immediate initiation of criminal prosecution based on the mass media publications, a thorough investigation, and identification of all the guilty ones.⁶⁸ The Defender also urged citizens to provide the videos showing the potential involvement of police officers or the violence against journalists of *1in.am*, *azatutyun.am*, *armlur.am*, *a1plus.am* online media outlets, and *Armenia TV*, guaranteeing the confidentiality of the identity of authors.⁶⁹

With respect to the events in Sari Tagh and Khorenatsi Street during the early morning hours of 30 July, the Office of the Prosecutor General initiated a criminal case on 30 July in connection with features of the crimes proscribed by Paragraphs 1 and 3 of Article 164 of the Criminal Code of the Republic of Armenia for obstructing the lawful professional work of journalists by exerting violence posing danger to the health of the journalist and by other means. The Office of the Prosecutor General

⁶⁷ The statement text is available at <http://www.osce.org/fom/257336>.

⁶⁸ See Footnote 14.

⁶⁹ Ibid.

sent the case to the Special Investigative Service of the Republic of Armenia for pre-trial investigation.⁷⁰

In view of the official statement of the Office of the Prosecutor General on 30 July 2016, the Human Rights Defender, governed by Article 12 of the Republic of Armenia Law on the Human Rights Defender, sent to the Prosecutor General on 30 July the facts collected through his *ex-officio* review of the cases (namely the mass media publications and the reports sent to his staff by citizens and organizations), requesting to use them in the initiated criminal proceedings and to share information on the outcomes. Considering that there were also reports of violence against Marut Vanyan (NKR citizen, journalist of *Iragir.am* online new portal), the Human Rights Defender asked to provide information about him, as well, in order to be presented to the Human Rights Defender of Artsakh.

In addition, the Human Rights Defender informed the Prosecutor General that his staff have received numerous reports about police violence against citizens during the assemblies in Khorenatsi Street and Sari Tagh, as well as police officers invading people's homes and beating them, violence against citizens by persons wearing plain clothes, and mass media publications about such cases, and requested within the shortest possible timeframe to consider, based on such information, the initiation of proceedings under the procedure stipulated by the Criminal Procedure Code of the Republic of Armenia, and informing the Human Rights Defender about the outcomes of such consideration. In response, the Office of the Prosecutor General informed the Human Rights Defender on 4 August that the presented data was sent to the Special Investigative Service of the Republic of Armenia for checking in the framework of the investigation of criminal case number 61205016 initiated under Article 164 of the Criminal Code of the Republic of Armenia.

With a view to obtaining a summary of the measures implemented by the Human Rights Defender and the incidents, as well as exchanging ideas, the Acting Head of EU Delegation and the US Embassy Chief of Political and Economic Section met with the Human Rights Defender on 2 August. During the meeting, the Defender presented the activities undertaken within his authority, including the fact collection, monitoring, and the processes initiated as a result of *ex officio* review of the facts, which was followed by an exchange of views about the violations of human rights, the freedom of assembly, and journalistic freedoms in the course of the events.⁷¹

⁷⁰ Press statement of the Office of the Prosecutor General of the Republic of Armenia, 30 July 2016. The full text is available at <http://www.prosecutor.am/am/mn/4162/> (in Armenian).

⁷¹ See Footnote 29.

Internal investigation

According to the Police response to a query by the Human Rights Defender, the disciplinary penalty of “severe reprimand” was imposed on four police officers, and the disciplinary penalty of “reprimand” — upon nine police officers, for committing violence against citizens and for failing to take sufficient measures to prevent the damaging of journalistic equipment, among other grounds. Considering that the internal investigation revealed information about a number of police officers applying disproportionate force, the powers of five police officers were suspended, and the materials of their internal investigations were sent to the Special Investigative Service for determining whether or not to carry out criminal prosecution for their acts. According to the information provided by the Police, the media publications about damaging journalistic equipment and the operational reports from police stations were attached to the internal investigation file pending the outcome of the investigation by the Special Investigative Service into such allegations. As a result, the internal investigation was suspended on the basis of Paragraph 1(a) of Article 22 of the Republic of Armenia Law on Approving the Disciplinary Rulebook of the Police, which provides that the internal investigation shall be suspended until a decision is taken on the basis of materials concerning such police officer sent to the Special Investigative Service for review.

According to the Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), though the effective investigation of ill-treatment can include criminal, disciplinary, and/or administrative proceedings, the disciplinary proceedings and disciplinary sanctions are not an adequate measure against ill-treatment, **if the ill-treatment involves the infliction of physical or mental suffering upon the person by an official.**⁷² A similar approach has been adopted by the Cassation Court of the Republic of Armenia, which has noted that a decision rendered as a result of an internal investigation may not be viewed as a sufficient response to the fact of torture, and that the Cassation Court relies on the position of the European Court of Human Rights, according to which torture must lead to criminal responsibility and punishment.⁷³ Therefore, imposing disciplinary penalties upon a number of police officers for failing to act sufficiently (to prevent violence against journalists by plainclothes persons or the damaging of journalistic equipment) can be an

⁷² European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Effective investigation of ill-treatment Guidelines on European standards, by Eric Svanidze. Directorate General of Human Rights and Legal Affairs Council of Europe. Para. V-V.1.1. and its interpretation in the attached explanatory report, pp. 70-71. Available at <http://www.coe.int/t/dgi/hr-natimplement/publi/materials/1121.pdf>

⁷³ Decision of the Cassation Court of the Republic of Armenia dated 12 February 2010 in case number EAKD/0049/01/09 concerning Ara Gzoyan, Para. 25.

inadequate legal remedy. Meanwhile, it is welcomed that the materials of the internal investigation concerning the five suspended police officers were sent to the Special Investigative Service, if there are sufficient facts showing that they personally committed acts of violence against journalists or citizens (torture, or inhuman or degrading treatment).

Investigation of the criminal case by the Special Investigative Service

Based on the data obtained through the review of reports from the Office of the Prosecutor General, the Human Rights Defender, citizens, and lawyers, as well as information published in the mass media, the Special Investigative Service initiated criminal cases under the Criminal Code of the Republic of Armenia, namely: Paragraph 1 of Article 308 (abuse of official authority), Paragraph 2 of Article 309 (exceeding official authority, which was accompanied with the use of violence, weapons, or special means), Paragraph 2 of Article 164 (obstructing the lawful professional work of journalists, which was committed by an official using his official position), and Paragraph 1 of Article 332.3 (obstructing the exercise of powers by an advocate or notary or, threatening with respect to the exercise of his powers).

During the investigation of the criminal cases, the Special Investigative Service published official statements, repeatedly calling the participants, eyewitnesses, or victims of the events in Sari Tagh to collaborate with the body conducting the proceedings in order to ensure a comprehensive, complete, and impartial investigation. In some cases, the Special Investigative Service directly appealed to the journalistic community, urging the journalists who suffered from violence to seek participation in the urgent investigative and procedural actions by the investigative authorities. In the framework of one criminal cases investigated on the basis of charges filed against a person, for instance, it was established that the person broke the Sony camcorder, which was the video-recording tool of a journalist. As a result of measures taken, the Sony camcorder was found, and a forensic merchandise examination was ordered for assessing the inflicted damage. The Special Investigative Service published an official statement urging the journalist who had been recording videos with the Sony camcorder concerned to visit the investigative authority in order to participate in the investigative operation of "recognition of the camcorder," as well as learning about the procedure of exercising his right to receive compensation for the inflicted damage.⁷⁴ Moreover, the Special Investigative Service urged participants, eyewitnesses, and victims of the events in Sari Tagh during the early morning of 30 July 2016 to collaborate with the body conducting the

⁷⁴ Official statement of the Special Investigative Service, 13 September 2016. The full text is available at <http://www.ccc.am/en/1428493746/3/5324>.

proceedings in order to ensure a comprehensive, complete, and impartial investigation.

According to the official statement of the Special Investigative Service dated 31 August 2016, among 99 citizens who have allegedly suffered from events on the night of July 29 to 30 in Sari Tagh, 23 were journalists, of whom, 19 persons were granted a victim status.⁷⁵ As of 31 October 2016, in the framework of the criminal case under investigation by the Special Investigative Service, charges were brought against eight persons for *prima facie* commission of crimes, including obstructing the lawful professional activities of journalists; the preliminary investigation of seven cases concerning the prevention of professional legal activities of employees of *Azatutyun* radio station, *Armenia* TV channel and *News.am* website was over, and the indictment was sent to court.⁷⁶ In the framework of a number of criminal cases forwarded to court, charges have been brought under not only Paragraph 1 of Article 164 of the Criminal Code, but also Paragraph 3(1) of Article 258 (hooliganism committed by a group of persons or an organized group). Specifically, such persons are charged with gravely violating the public order — loudly cursing for a long time, kicking and punching demonstrators, and after seeing that their conduct was recorded on video by a journalist carrying a journalistic badge, attacking the journalist and demanding not to video them, afterwards seizing the camcorder from him, throwing him to the ground, and kicking and punching different parts of the journalist's body, inflicting bodily injuries. Subsequently, having noticed the approaching police officers, they escaped and took with them the camcorder seized from the victim in order to destroy the video recording about them, which was in the camcorder.

Recommendations

As noted above, the analysis of the events supports the conclusion that the violence against the journalists was intentional and targeted and pursued the aim of **obstructing and undermining** the coverage, live broadcasting, and video recording of the events by journalists. The analysis of the facts also supports the conclusion that the violence was aimed at not only obstructing the professional work of journalists, but also **punishing** journalists and intimidating them. Hence, the journalists were **targeted** for their profession and the performance of professional duties. This raises an issue of a grave violation of human rights — discrimination.

⁷⁵ Official statement of the Special Investigative Service, 31 August 2016, available at <http://www.ccc.am/en/1428493746/3/5313>.

⁷⁶ Official statement of the Special Investigative Service, 31 October 2016, available at <http://www.ccc.am/en/1428493746/3/5366>.

Discrimination is the differentiated treatment of identifiable groups of persons relative to other persons in an essentially similar situation without objective grounds and a reasonable explanation, without reasonable proportion between the means and the end.

Violence due to discrimination may be motivated by prejudice, intolerance, and hate towards a certain group of persons. When investigating violent incidents State authorities have the additional duty to take all reasonable steps to unmask any political motive and to establish whether or not intolerance towards a dissenting political opinion may have played a role in the events. Therefore, the official body responsible for criminal proceedings, in addition to investigating the *actus reus* of violence, **shall also establish the incentives for committing violence and existence of possible motives for intolerance.** Failing to do so would be to turn a blind eye to the specific nature of acts that are particularly destructive of fundamental rights, thereby allowing discrimination in the investigation of a criminal case.⁷⁷

Therefore, the investigation of criminal cases should focus specifically on identifying such motivation of violence and determining the existence of potential discrimination therein. To this end, it will be necessary to identify not only the identity of police officers that committed violence, but also the ones that allegedly gave the order to target and punish the journalists. It is especially important to identify the plainclothes persons and their possible ties to the police, and if relevant, the identity of the person (persons) who gave the order to engage such persons in the police operations.

It is also necessary to establish the grounds of using special means towards journalists in violation of Article 29 of the Law on Police (grounds, conditions, and limits of using physical force, special means, and firearms). This Article requires applying special means as an exception, if other means cannot secure public order, requires, when choosing to use physical force, special means, and firearms, **to take into account the current situation, the nature of the offence, and the person of the offender.** It is necessary to find out, in the framework of proceedings, the name(s) of the official (or officials) who were responsible for the use of special means against journalists performing their professional duty, and especially find out the motives for issuing such an order, such as, for example, possible **political intolerance.**

In the criminal case investigation, the failure to investigate or improper investigation of whether or not discrimination played a role in the violence against journalists may result in non-fulfillment of Armenia's commitments under Article 3

⁷⁷ See the conclusion of the European Court in the judgment in the case of *Virabyan v. Armenia*, application number 40094/05, 2/10/2012, para. 218.

(prohibition of ill-treatment) and Article 14 (prohibition of discrimination) of the European Convention on Human Rights.⁷⁸

3. The mass media coverage of the events

During 17-31 July 2016, the armed attack on the RA Police Patrol-Guard Service Regiment and the events unfolding around it were undoubtedly in the center of the public's attention. Various public platforms were used to develop open public debates about the lawfulness or dangerousness of the actions of the armed group members, their political programs, the lawfulness and appropriateness of pursuing such programs through violence, or their adherence to democratic values.

The open public debate unfolded largely due to the mass media, including the print media, television, the radio, online media, social media, the representatives of foreign mass media, and even the journalistic associations and non-governmental, human rights organizations. The information flow was broadly uninterrupted and swift. There was pluralism, as the news of the private media and social media was spreading fast, parallel to the official news.

From the very beginning of the events, there was a public debate on whether or not the actions of the armed group constituted terrorism. In this context, the fact that the acts of the group were, in any event, dangerous acts aimed against public safety skipped the attention of the mass media. The mass media extensively covered not only the events that were happening, but also the armed group members, their acts, and their supporters. In the beginning, there was some uncertainty as to whether the mass media coverage of the group members' actions calling for violence or their public statements encroached the commonly-accepted rules of journalistic ethics. There was particular uncertainty as to whether or not the actions of the armed group legally constituted terrorism, and this fact somewhat restrained the journalistic community, because the international standards of human rights protection, including also the commonly-accepted rules of journalistic ethics imply limitations on the publishing of calls that contain hate speech and incitement to violence. Therefore, the issue was whether or not the coverage of violence as a means to struggle, within the framework of the underlying facts and events, fell within the permissible scope of the right to freedom of expression and to freedom to impart information and ideas.

The issue became particularly acute with respect to the press conference of the armed group members on 23 July, held inside the Police Patrol-Guard Service Regiment: the armed group members appeared at the press conference armed and thereby surprised the interviewing journalists. Some members of the journalistic

⁷⁸ Ibid, Para. 224.

community said that the journalists should not have participated in a press conference with armed persons, and that by participating, they violated the rules of journalistic ethics. Some said that, as the armed group members had not been charged with terrorism, there was no concern over the journalists' contacts with "terrorists," which would violate ethics rules.⁷⁹ Nonetheless, during the same press conference, one of the armed group members made the following appeal: "... *let them pierce, with gasoline bottles, stones, Armenians know well how to fight. Let them not brag in their backyards, let them take the gasoline bottles, strike those who block the street on the head, and let the respected policemen open the way*":⁸⁰ this is nothing but a call for violence, made in the mass media. In this respect, the Human Rights Defender made a statement on 26 July, where he expressed concern that, starting from 23 July, the mass media had been used to disseminate video materials and publications containing calls for violence from within the Police Patrol-Guard Service Regiment.

Some mass media strived only to describe the actions, avoiding any legal definitions, while others condemned the violence and its dangerous nature for the public. While the international press mostly reported the events, many of the local mass media started an extensive analysis of the events, their root causes, the potential ways out of the situation, and their political, economic, and social consequences, which was quite a commendable process.

Nonetheless, as the events unfolded, more and more of the mass media tended to present the events as a rebellion, an uprising of public masses, the start of a struggle for liberation, or a method of political struggle, thereby trying to legitimize the armed act against a state body. Moreover, a number of mass media started to present the events as an epic tale about heroes.

The mass media and online media started to circulate photos of civilians walking around the urban environment with guns, generally presenting them as epic heroes. Calls for violence and the violence were starting to be presented as permissible, legitimate methods of a liberation struggle or a political struggle, and as the only means of restoring violated human rights in the country.

In this connection, the publications by some of the mass media mostly presented the discourse that violence is justified, because all legitimate means of struggle had been exhausted by the fault of the authorities, and that the public at large approved of a government change through violence, which the armed group members were steering. In this light, many mass media widely publicized the statements by the armed group members, or persons or public groups or public

⁷⁹ Interview of Boris Navasardyan, President of the Yerevan Press Club, with *Aravot.am* dated 23 July 2016. Available at <http://www.aravot.am/2016/07/25/719722/> (in Armenian).

⁸⁰ *Ibid.*

initiatives supporting them, which were full of calls for intolerance and calls justifying violence.

Unlike the social media, where the calls for hate and intolerance and the calls for payback to the police were explicit, targeted, and without any reservations, to the point that there could be criminal prosecution for such calls, the mass media published the calls for violence, made by other persons or groups, along the general lines of preventing a bloodshed between the armed group and the police, enabling citizens to exercise their right to an uprising, and the need for restoring social justice in the country.⁸¹

A number of mass media published mostly interviews with such citizens and well-known public figures, who were urging the population to join the struggle by the armed group members and to achieve a government change through armed struggle. In such articles, the armed group members were presented as “martyrs of the nation,”⁸² “heroes,” “fighters for the homeland,” and “political prisoners.”⁸³

As a result, the information flow towards the public became one-sided; the coverage of events and the judgments expressed did not fully reflect the mood prevailing in different groups in society. Many mass media preferred not to publish materials criticizing the acts of the armed group. There were cases of self-censorship: on 13 September, www.azatutyun.am published Emil Danielyan’s English-language article entitled “Civil Society Support for Armenian Gunmen Raises Questions,” in which the author criticized civil society for being passive with respect to the armed group acts, and some others even for being supportive. The author and the news outlet were criticized by numerous readers; some even said that the author was fulfilling an order by the authorities. On the following day, the website removed the article, claiming that the article did not meet the standard of “balanced reporting” adopted by the medium. Removing the article in turn gave rise to criticism by those readers and civil society representatives, which concurred with its author. Censorship and self-censorship seriously harm the public’s right to receive information and are, as such, not needed in a democratic society.

The hate speech and incitement to violence, as well as the violations by the police created a tense atmosphere in society. On 29 July, the Human Rights Defender published a statement in which he expressed concern over the “unprecedented” outburst of hate speech and incitement to violence that followed the armed attack, over the fact that certain groups in society publicly encouraged

⁸¹ The “Rise, Armenia!” (*Votki Hayastan*) civil initiative’s appeal to the people to go to the streets and prevent the bloodshed, published on www.armtimes.com on 20 July 2016. Available at <http://armtimes.com/hy/article/89985>

⁸² See, for example, “Not armed, but a rebel: anchor urges to stand by the nation’s martyrs.” The full text is available at <http://armtimes.com/hy/article/89988>

⁸³ “A hero must be the cure of the nation’s ills: Pavlik Manukyan’s new letter from prison.” The full text is available at <http://www.1in.am/1979940.html>

calls for hate and violence, and over the widespread abuses of the right to freedom of expression. The Defender expressed the opinion that such a situation undermined the ability of competent state institutions to take effective measures to prevent violations of human rights, thereby seriously threatening the whole system of human rights guarantees in Armenia.⁸⁴ At the end of the statement, the Defender urged all sides to refrain from disseminating such publications or information that has not been corroborated or disregards the legislation of Armenia, because they endanger peaceful resolution of the whole process.

With the gradual increase in tension, responsible journalism was becoming increasingly more important. While events were unfolding around the Police Patrol-Guard Service Regiment, the journalistic community faced a dilemma: while journalists enjoyed the right to freedom of expression and the public had the right to receive information on events of general interest, one needed to consider the lawfulness of spreading, in parallel to the provision of information, of the armed group's and its supporters' statements and calls spreading hate speech and inciting violence.

From the standpoint of human rights, the organization of a meeting of journalists with members of the armed group on 23 July with live broadcast raised questions. The international legal practice does not find such activities acceptable. For example, in one of the judgements of the European Court made on the basis of an application by a number of journalists, a judgement that is still considered to be highly relevant, it is stated that in the modern society radio and television possess considerable power of mass dissemination of information. The impact thereof is more direct than that of print media and the ability of broadcasters to correct, improve, translate or comment on a statement disseminated by the radio or television is more limited in comparison to what journalists in print media enjoy. Statements made during live broadcast may also contain a specific risk of conveying confidential information; this is a type of risk that even cautious journalists are unable to control when they voice their professional opinions.⁸⁵ Along with this position, by evaluating the relevant legal document adopted by Ireland, the European Court found that it did not contradict Article 10 of the European Convention taking into consideration that the above noted legal act did not limit the content of publications by the mass media in general, but rather was deriving from the position that **leaders or spokespersons of organizations threatening the constitutional order by**

⁸⁴ Statement of the Human Rights Defender dated 29 July 2016. The full text is available at <http://www.armenpress.am/arm/print/855581/zinvats-hardzakmany-hajordec-atelutyanyev-brnutyan-garozchutyany.html>

⁸⁵ Judgement of the European Court on the case of *Purcell and others v. Ireland*, "As to the Admissibility of Application"; Application No. 15404/8. The European Court has expressed this position in a number of other judgements as well.

violence or any other unlawful means may not be given access to live interviews or any other broadcasts. These broadcasts can be used for inciting unlawful actions that threaten the State's constitutional order, while that very order safeguards the constitutional right to the freedom of speech.

In this sense, it was highly appreciated that, for example, *Azatutyun* Radio Station refused to livestream the territory of the Patrol-Guard Service Regiment, and journalists of this Radio Station carried out their work in the territory of the Regiment and later covered the respective events without live broadcast. In general, observations made by the Human Rights Defender testify that *Azatutyun* Radio Station was the only media outlet that worked with ultimate restraint in terms of video broadcasting of calls for violence and armed resistance.

During July 2016 events, speeches or opinions full of exaggerations were being disseminated that presented public demands to certain state institutions without taking into consideration the powers or legal authorities vested by the Law in those bodies.

One of such apparent manifestations was the formation, by voicing opinions and later also by making speeches, of an impression among general public that the Human Rights Defender has an authority to resolve the issue of ensuring provision of food for the armed group dislocated in the territory of the Police Patrol-Guard Service Regiment, obviously disregarding the fact that the Human Rights Defender is a state official, acts on the basis of an exhaustive scope of powers prescribed by the Law, and may not carry out any action outside that scope. Moreover, while interpreting this, most frequently a reference was being made to the presumption that the Human Rights Defender possesses the status of the National preventive mechanism prescribed by the Optional Protocol of the United Nations Committee against Torture, and, therefore, the mentioned issue falls under to his authority. This pressure intensified so much that on 26 July the Defender was forced to make the following statement: "[...] the powers of the RA Human Rights Defender, including as the National preventive mechanism, cover the detention conditions of exclusively those persons, who have been deprived from liberty against their will by the state for committing of alleged crime, that is they are in custody (in detention place, penitentiary, etc.) and they are unable to leave such place freely, or, in other words, they have no possibility of *de-isolation*. It means that in this case any interference by the Human Rights Defender would be treated as misuse of his powers, defined by the law. There is no any international standard, which could suppose the opposite." Rightfully, the members of the armed group have voluntarily chosen to commit such actions that would inevitably result in self-isolation. In addition, they in no way were deprived of the possibility of de-isolation at any moment. In such circumstances

neither the Human Rights Defender, nor state bodies had a positive obligation to provide the members of the armed group with food.

The situation was particularly complicated by the fact that a part of society, including some civil society circles, was overtly supportive of the armed group's actions. More surprisingly, throughout the events, including the time period that followed, civil society as a whole or certain respected representatives of civil society did not ever clearly and unequivocally condemn the violence and encroachments upon freedoms of others by the armed group. The well-known human rights organizations and human rights advocates limited themselves to ambiguous statements, in anticipation of further developments.

The scope of the freedom to impart information and ideas is rather broad. The European Court has repeatedly noted that tolerance and broad views are foundations of democracy, and that the right to the freedom of expression defends not only speech that is generally considered acceptable, but also expressions that can be deemed by some as shocking, offensive, provocative, or disturbing, provocative. However, as far as hate speech and incitement to violence and intolerance are concerned, such speech is absolutely rejected by the national and international legal frameworks for human rights protection, irrespective of the goal pursued by the hate speech or the calls for intolerance. To this end, **spreading hate speech is an abuse of the right to the freedom of expression**, which is clearly prohibited by the international legal documents and the Republic of Armenia Constitution and laws.

Article 20 of the UN's International Covenant on Civil and Political Rights provides: "*Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.*"⁸⁶ Article 17 of the European Convention on Human Rights provides: "*Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.*" While Article 77 of the Republic of Armenia Constitution prohibits using fundamental rights and freedoms for violently overthrowing the constitutional order, inciting national, racial, or religious hatred, or incitement to violence or war.

Thus, Article 20 of the Covenant, Article 17 of the Convention, and Article 77 of the Republic of Armenia Constitution prescribe the principle of **abuse of the rights**, according to which any right set forth by those documents, including the right to the

⁸⁶ See UN Human Rights Committee General Comment no. 34 on the links between Articles 19 and 20 of the Covenant, Paras. 50-52. The term "racial" used in this provision is construed widely and includes groups of persons with **biological, economic, social, cultural, and historic** commonalities. Therefore, hate speech against a certain group of society, such as police officers, is also an unlawful exercise of the freedom of expression.

freedom of expression, may not be used to destroy or deny fundamental values that make up the foundation of the rights set forth by such legal documents—tolerance, the prohibition of hatred, discrimination, racism, and denialism. The aforementioned documents would become void of substance and goals, if incitement to intolerance were allowed under the disguise of the freedom of expression.

The meaning and object of Article 20 of the Covenant, Article 17 of the Convention, and Article 77 of the Republic of Armenia Constitution show that the mass media and journalists cannot claim the protection of the right to freedom of expression **to justify the dissemination of hate speech or incitement to violence or intolerance**. If a journalist encounters a situation in which he is obliged to impart information on current events of public interest, the journalist must show restraint when the information contains justification of violence and incitement to intolerance.

The armed group's attack on the Police Patrol-Guard Service Regiment and the developments around it were clearly events of general public interest, and as such, it was important that the journalists secured the free flow of correct, impartial, and balanced information about such events to the public, with due regard for the rules of journalistic ethics. Many of the mass media were able to respect the aforementioned principles in their coverage of the events. Interestingly, some of the journalists covering the events persistently cited various information sources — thereby clearly delineating their person, as journalists, from the messages of the author of the information, so that the hate speech of another person were not attributed to the journalist or mass medium publishing it. However, in their reporting on the events, the mass media often did not ensure the simple and balanced coverage of the events, which would have enabled the readers to afterwards form their own opinions about the events, free from the undue influence of the mass media, the justification of the violence or its presentation as heroism, the praising of persons that had allegedly committed grave crimes, and the overt desire to portray them as epic heroes. This type of news reporting contradicted the aforementioned international legal documents, as well as the Constitution and laws of the Republic of Armenia. The European Court of Human Rights holds that even in cases when a mass media outlet disseminates a quote authored by another person, and the journalist clearly delineates his/her personality from that news material, publication of such a news material is unlawful if it contains "hate speech and the glorification of violence."⁸⁷ Thus, dissemination of a text authored by another person with the aim of providing information is unlawful, if that text contains glorification of violence, hate

⁸⁷ ECtHR Judgement on the case of [Surek v. Turkey](#) (no.1), Application No. 26682/95, 08/07/99, Para. 53.

speech and incitement to violence. Justification of violence, irrespective of its goal, **is not necessary in a democratic society.**

4. Freedom of Expression in the Social Media

By virtue of its reach and ability to fit and communicate an immense volume of information, the Internet plays a key role with respect to the public's right to seek and impart information. As interactive platforms for information sharing, the social media are quite effective in this area. The OSCE has recognized the accessibility of the Internet as a standalone right.⁸⁸ Hence, any interference with the information flow in the Internet, which can take the form, for instance, of blocking or filtering content or removing it from the Internet, will be considered an interference with the right to the freedom of expression.

In the morning of 17 July, many Facebook users as well as a number of IT experts reported that Facebook cannot be accessed. According to numerous sources, that situation lasted about 40 minutes, starting from around 10:05am. Nevertheless, limiting access to this social network did not considerably affect the public's right to receive information about the events in question, because the intervention had lasted a short time and affected a limited number of users. However, any case of blocking or filtering Internet content or removing it is a serious interference with human rights.

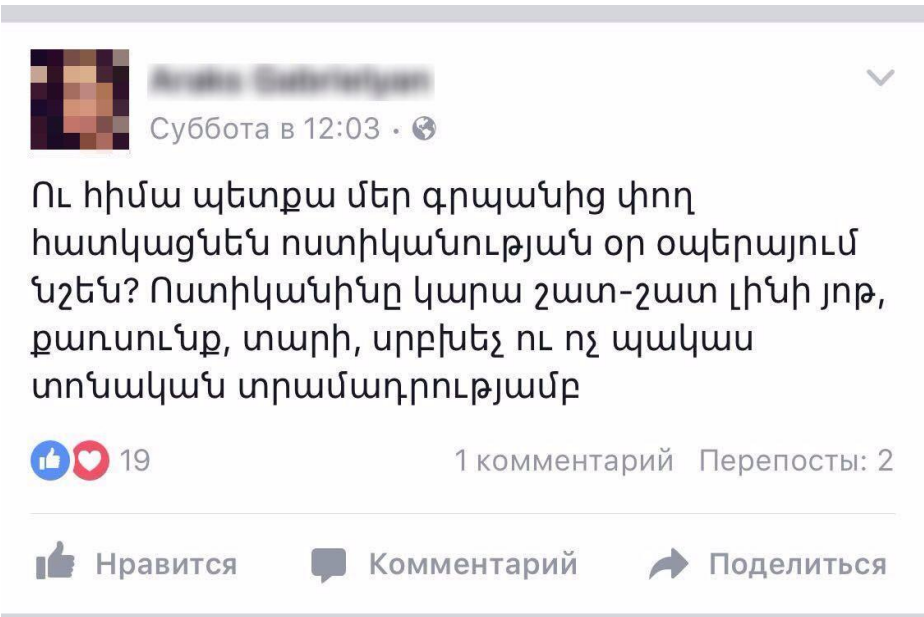
A public discourse on the events of 17-31 July unfolded also in the social media. There were generally two opinions: one part condemned the Police Regiment overtaking by the armed group and the accompanying violence, while others justified these acts. The first group considered that the violence is impermissible in a democratic society, that an armed attack on a state body, property destruction, hostage-taking and use of firearms are serious crimes against public safety, especially in view of the social-economic and geopolitical vulnerable situation in Armenia. Those who justified the acts by the armed group mostly argued that all possible legitimate means of restoring justice, getting the authorities to cease violations of human rights, and returning the power to the people have been exhausted, and that a rebellion and an armed attack are the only possible way to change government, which would be the only avenue to restoring justice. The latter group of users expressed one of the following two opinions in the social media: some harshly criticized the authorities, but without hate speech or incitement to violence,

⁸⁸ Organization for Security and Co-operation in Europe. The Office of the Representative on Freedom of the Media. Dunja Mijatović. Report on the Freedom of Expression on the Internet. A study of legal provisions and practices related to freedom of expression, the free flow of information and media pluralism on the Internet in OSCE participating States. See page 37. The full text is available at <http://www.osce.org/fom/80723?download=true>.

while others criticized the authorities with incitement to hate, intolerance, and violence.

Calls for violence, such as the following, started to spread rapidly in the social media, mostly Facebook: "Go out to the street with gasoline bottles!", "On, to an armed attack!", "You should have slaughtered them!", "Rise up and step over all of them!", "Against this government — only with arms!", "To act, to fight, to arms!", "Take your arms, daggers, batons, the iron bars!" and the like. These calls were frequently accompanied with videos, photos, and posters showing violence, violations of the public order, demonstrators clashing with police, armed persons wearing civilian clothes in urban environment, and other scenes of violence.

The hate speech was mostly targeted at the police officers, for instance: "A cop is dead? Who cares!", "A cop gets no more than the funeral, and surely a reason for a good mood!", "The cop that took a dirt nap," "Who needs a cop's life? Let them die! They don't even deserve to die!", "The nation should destroy the cops," "Even if a thousand of those die, a hundred of them are not worth our one boy!" and so on. Some users even expressed their satisfaction about the death of police officers, others called for "eliminating" more. Some were spreading calls related to the doctors, for instance: "Doctors, you are animals!" and the like.





Զատիկ Մարտիկյան



Вчера в 20:52 · Erevan · Երևան

մլիցայա մեռել... ոչինչ, ինչ անենք... բա 100-ից
ավել ջահել տղա զոհվեց սրանց ապաշնորհ
արտաքին քաղաքականության պատճառով,
մի մլիցեն ինչ ա, որ չզոհվի՝ սրանց
ապաշնորհ ներքին քաղաքականության
արդյունքում...

Перепосты: 5



Нравится



Комментарий



Поделиться



Զատիկ Մարտիկյան и еще 38



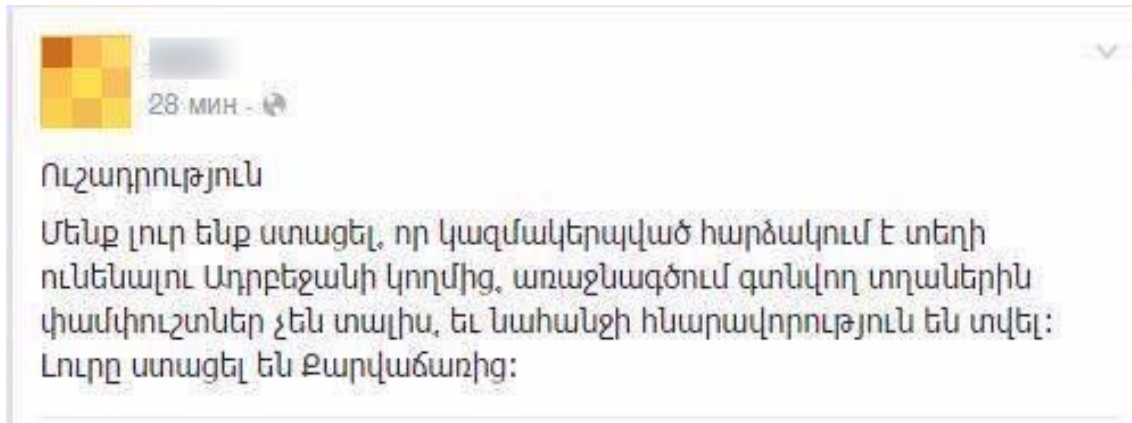
Զատիկ Մարտիկյան



1 ժամ առաջ · Երևան

Մլիցայա սատկե?
Ջհանդամ չի սատկե, սաղ էլ սատկեն
սրտիս դարդ չի...

Some social media users even made specific proposals and tactical recommendations on how to destabilize the situation in the capital city and the regions, presenting them as “civil disobedience tricks.” One user, for example, suggested studying where the police are concentrated, and if they are concentrated in one place, then “*it is necessary to quickly block the traffic elsewhere and paralyze the city.*” Perhaps also as a tactical trick, some anonymous users tried to use the Nagorno Karabakh conflict by spreading alleged news from Karvajar about an upcoming planned attack by Azerbaijan, and that “*they are no longer giving the boys bullets at the front line and have allowed them to retreat.*”



As a rule, below the hate-speech posts, other users would leave threats, insults, curses, and ridiculing comments about the police and state bodies in general. Third party comments on a user's page also create responsibility for the user, if the latter is able to control and manage the flow of other persons' comments on his page, and therefore, also able to remove unlawful content. Removal of hate speech and content inciting violence from a social network, especially an online one, can by no means be equated to "private censorship."⁸⁹

The hate speech was often accompanied with racist expressions. To this end, they often used the word "Turk" in reference to the police officers, thereby adding an undertone of racist discrimination to the hate speech. This expression was also used in unaddressed calls, such as the following: "Join the struggle if you are not a Turk!"

The social media were also prevailed by overt **intolerance** towards users that criticized the acts of the armed group. The latter were being insulted, through public reprobation, labeling them as "traitors of the nation" and "souls sold to the government."

The OSCE Office for Democratic Institutions and Human Rights notes that a feature of hate crimes is **bias** or **prejudice** towards particular people or groups of people (identifiable group) based on a characteristic of theirs, such as race, sex, nationality, skin color, ethnicity, or **other personal and social characteristics**.⁹⁰

The Facebook terms prohibit posting content that is hate speech, threatening, or incites violence, as well as using Facebook to do anything unlawful, misleading, malicious, or discriminatory.⁹¹ Therefore, in the aforementioned situations and all similar cases, the users also violated the online terms with the social platform.

⁸⁹ ECtHR (GC) judgment in the case of *Delfi AS v. Estonia*, Application No. 64569/09, 16/06/15, Para. 157.

⁹⁰ Definition of hate crimes by the OSCE Office for Democratic Institutions and Human rights (ODIHR). The text is available at <http://hatecrime.osce.org/what-hate-crime>

⁹¹ Facebook online agreement, Statement of Rights and Responsibilities, subsection 3. The text is available at <https://www.facebook.com/legal/terms>

The users that were spreading hate speech mostly acted anonymously or used pseudonyms. Their pages normally either lacked personal data or contained false data. Acting anonymously (without a name or with a pseudonym) in the Internet and exercising the right to freedom of expression is recognized as a standalone right, an expression of the right to freedom of expression, which is necessary for protecting the safety of users and persons expressing themselves freely in the online environment, as well as augmenting the possibility of free expression of information and ideas in the online environment.⁹²

However, the right to remain anonymous in the Internet, as important a value as it may be, should be balanced against others' rights and interests. Anonymity cannot be used for spreading hate speech or incitement to violence, because such speech is not protected under the right to freedom of expression.⁹³

Registration in the social media with false personal data also violates the terms of some social media. As the issues mostly concerned Facebook, the Facebook online agreement with the users provides that users provide their real names and surnames, undertake not to create more than one personal account, not to provide any false personal information, and not to create an account for anyone other than themselves without permission.⁹⁴ In effect, all of the users discussed above violated their obligations vis-à-vis the social platform, which they undertook when registering as users by signing the online agreement.

Spreading information with false names or information taken from anonymous sources by journalists or mass media in the social media also contradicts the professional journalistic principles of responsible journalism and fair comment, as well as the lawfulness and Convention requirement. The European Court of Human Rights has noted: "*By reason of the "duties and responsibilities" inherent in the exercise of the freedom of expression, the safeguard afforded by Article 10 to journalists in relation to reporting on issues of general interest is subject to the proviso that they are acting in good faith in order to provide accurate and reliable information in accordance with the ethics of journalism.*"⁹⁵ The principle of responsible journalism requires the mass media to use credible sources, because, firstly, it is essential that the disseminated information be correct and credible, and secondly, the medium may be held liable for information taken from an anonymous

⁹² Council of Europe, Committee of Ministers, Declaration on Freedom of Communication on the Internet, Principle 7. The full English text is available at

https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805dfbd5

⁹³ Judgment of the European Court in the case of *Delfi AS v. Estonia*, Application No. 64569/09, 16/06/15, Paras 140 and 149.

⁹⁴ Facebook online agreement, Statement of Rights and Responsibilities, subsection 4. The text is available at <https://www.facebook.com/legal/terms>

⁹⁵ ECtHR (GC) judgment in the case of *Bladet Tromsø and Stensaas v. Norway*, Application No. 21980/93, 20/05/99, Para. 65.

source, especially if it contains hate speech. This principle is also reiterated in the case law of the Cassation Court of the Republic of Armenia, which has noted that the one disseminating information cannot seek protection for reproducing and disseminating information that insults or defames another person, if such person is not a natural person or a legal entity.⁹⁶ This interpretation follows from Paragraph 9 of Article 1087.1 of the Civil Code of the Republic of Armenia, which provides that the publisher shall be liable for defamation or insults, if “the information source (author) is not known.”

During and after the July events, a number of public groups were created in the Internet for sharing information and holding open discussions about those events. One such initiative was the creation of the “**Sasna Tsrer-Bacahaitum**” (lit. “Daredevils of Sassoun-Exposure”) page and fact-finding group in Facebook, which aimed at collecting information about the officials that committed crimes and violations of human rights during the July events and sharing such information with the competent authorities and the public. Though the group’s mission is to be welcomed for being consistent with the important function of a public watchdog over state bodies, it should be noted that the page often posts insults, hate speech, and incitement to violence, which is incompatible with the public mission undertaken by the group to protect democratic values. Users of the page often publish insulting and ridiculing comments and curses about police officers, which as such are not at all related to the public functions of officials or the July events. The group mainly targets police officers, whom the users insult by labelling as “cops” or “pigs.”

The fact-finding group continuously makes public inquiries about specific individuals. While collecting information about offences committed by officials or the performance of their official duties from public sources could be relevant for the group's mission, it is unclear why the fact-finding group continuously urges the public to send information about a particular person being married or unmarried, their family members, relatives and family members living in the USA, or ties in Russia.

From the very outset of July 2016 events, from 17 July, the Human Rights Defender urged to refrain from disseminating unchecked information in the mass media and social media, because they were unnecessarily increasing the tension in what was already an extremely strained situation. Obviously, the Defender primarily meant incitement to violence and intolerance, which was already then spreading in various platforms, including the social media. Considering that a few days into the events, hate speech was openly spread through various public platforms, the Defender addressed the issue in his conceptual statement on 26 July: he made specific proposals about reducing tension in society and addressing the violations of

⁹⁶ Cassation Court decision in civil case EKD/2293/02/10 dated 27 April 2012 regarding *Skizb Media Kentron LLC*.

human rights, and said that encouraging hate speech in the social media and any threats or incitement to armed resistance or any form of violence in the social media should be unacceptable, urging all the sides to refrain from such publications and from spreading unchecked information and information that disregarded the requirements of the Armenian legislation.⁹⁷

⁹⁷ Position and Proposals of the Human Rights Defender on the Events Occurring in Yerevan, Para. 5, 26 July 2016. The full text is available at <https://web.facebook.com/Armenianombudsman/posts/551780361676099>