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Behind the Glass Wall - the Right to a Fair Trial in the Sasna Tsrer Cases

Report of a fact-finding mission to Armenia



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Executive summary

This report summarizes the findings of a fact-finding mission to Armenia, organized by the International Partnership for Human Rights (IPHR) within the framework of the Civic Solidarity Platform (CSP). The mission took place from 3 to 9 September 2017 in Yerevan, the capital of Armenia, and aimed to establish the facts with regard to allegations of obstacles faced by defence lawyers acting for the accused in the “Sasna Tsrer” trials (see below for more information). The mission delegates conducted 33 interviews with 45 people, including lawyers, NGO activists, journalists, and representatives of the Chamber of Advocates (“CoA”) as well as the Armenian authorities.

The mission delegates concluded that fair trial standards were violated and that the rights of defence lawyers to conduct their professional activities had been obstructed in the course of the Sasna Tsrer trials which commenced in June 2017. Based on interviews and trial observations on 6 and 8 September, mission delegates noted that the defence lawyers in the Sasna Tsrer cases faced difficulties accessing the court building due to unprecedented, selective verification procedures carried out by court bailiffs. The lack of clear legal status of these procedures, as well as their arbitrary and discriminatory nature prevented lawyers from performing their professional duties, and thus posed a threat to the defendants’ right to a fair trial. In addition, some lawyers experienced difficulties in accessing their clients whilst in pre-trial detention and there were attempts by detention security staff to interfere with confidential attorney-client case material. During the court hearings, lawyers were at times prevented from filing oral motions with the court and from making valid objections or delivering statements. The mission delegates also noted that judicial sanctions resulting in the initiation of disciplinary proceedings against defence lawyers were used more than usual during the Sasna Tsrer trials. Finally, some of the defence lawyers reported experiencing threats, harassment and intimidation from state officials as well as unidentified persons.

One of the underlying causes of the problems presented in this report is the general state of crisis of the rule of law and absence of effective separation of powers in Armenia. Many of those interviewed by the mission delegates expressed a lack of trust in the judiciary, and in the judges hearing the Sasna Tsrer cases in particular. Several other problems were raised during the interviews which go beyond the scope of this report and which require further research, such as allegations of ill-treatment and the use of force towards defendants in the Sasna Tsrer cases, including during pre-trial detention, as well as the lack of adequate access to health care for the defendants and poor detention conditions.

Introduction

On 17 July 2016, protests in Yerevan ensued after an armed group known as the Sasna Tsrer (“Daredevils of Sassoon”) seized the Police Patrol Service (“PPS”) station located in Erebuni, a district in southern Yerevan.¹ During the events one police officer - Colonel Artur Vanoyan - was killed and several other police officers were taken hostage and wounded.² The Sasna Tsrer group demanded the release of the imprisoned leader of the Founding Parliament Jirair Sefilyan, the resignation of Armenian President Serzh Sargsyan, and the so-called “restoration of the Republic.”

1 International Partnership for Human Rights, *Beaten, Burnt and Betrayed Armenians awaiting accountability for police violence*, available at: <http://iphronline.org/wp-content/uploads/2016/09/Beaten-Burned-and-Betrayed-Armenia-report-Sept-2016.pdf>.

2 Ibidem.

From 17 until 19 July 2016, some 200 demonstrators gathered daily to demand guarantees that the authorities would not act violently towards the representatives of Sasna Tsrer. On 18 July reportedly over 1,500 anti-government protesters held a rally in Yerevan, and called for a peaceful resolution to the crisis.³ The public were angry about the way the government handled the hostage situation and the use of excessive force by police officers against protesters and people took to the streets.

On 20 July 2016, violence erupted during a protest on Khorenatsi Street where some 500 protesters demanded the right to pass food and other supplies to the “Sasna Tsrer” group occupying the PPS station. At one point several protesters started throwing stones and attempted to pull off police officers’ helmets and shields. In response, the police used stun grenades with a blinding and deafening effect.⁴ The stun grenades also wounded peaceful protesters, who were standing at some distance from the place where the clash took place. In addition, police officers chased protesters who were running away and beat them severely. Over 50 people, including police officers and protesters, were taken to hospital. Reportedly, 136 people were apprehended and accused of organizing public unrest. On 27 July 2016, a four-person ambulance crew was held hostage by the gunmen. On 30 July 2016, the Sasna Tsrer surrendered. Peaceful marches continued for several days before they finally died down.

During the protests civil society organizations provided assistance, including legal aid, to the victims and their families.⁵ The Armenian government and President Sargsyan were criticized for lack of effective action and for leaving the problem-solving to the police and the National Security Service (“NSS”), which further escalated the tensions. The use of disproportionate and excessive force by the police was also widely condemned.⁶ The Armenian National Platform of the Eastern Partnership Civil Society Forum (EaP CSF) called upon both sides to resolve the situation peacefully.⁷ The Human Rights Defender of the Republic of Armenia called for a full investigation into all cases of alleged wrongdoing by the police, including mistreatment, denial of access to lawyers and medical care. On 21 July 2016, the European Union Delegation to Armenia condemned the use of violence and called upon the authorities to observe the principle of proportionality in handling public demonstrations, which applies both to peaceful and violent gatherings, as well as calling on demonstrators to refrain from violence in the exercise of their civil rights.⁸ The US Embassy and the UN office in Armenia expressed their concerns with regard to reports of detentions, the use of force resulting in injury and violations of press freedom and the right to peaceful assembly.⁹

On 8 June 2017, the criminal trials in Sasna Tsrer cases began.¹⁰ The defendants were initially divided into two groups, namely “Sasna Tsrer-14” with regard to 14 defendants and “Sasna Tsrer-18” in relation to 18 persons from the group.¹¹ At the beginning of October 2017, the court split the Sasna Tsrer cases into three trial groups.¹²

3 https://en.wikipedia.org/wiki/2016_Yerevan_hostage_crisis.

4 Human Rights Watch, Armenia: Excessive Police Force at Protest, available at: www.hrw.org/news/2016/08/01/armenia-excessive-police-force-protest.

5 Eastern Partnership Civil Society Forum, Report of the Monitoring Mission, available at: http://eap-csf.eu/wp-content/uploads/Report_AM_Mission_final.pdf, Transparency International, Statement on the Mass Violation of Human Rights in the Republic of Armenia, available at: <https://transparency.am/en/news/view/1565>.

6 <http://prwb.am/new/2017/06/08/human-rights-violations-armenia-july-30-2017/>.

7 Transparency International, EaP CSF ANP Statement on the Ongoing Events related to the Armed Assault by “Sasna Tsrer” Group, available at: <https://transparency.am/en/news/view/1548>.

8 European Union, Local EU statement on recent events in Armenia, 21 June 2016, available at: http://eeas.europa.eu/archives/delegations/armenia/press_corner/all_news/news/2016/2016_07_21_en.htm

9 <http://armenia.usembassy.gov/news073016.html>, <http://www.un.am/en/news/463>.

10 <https://armenianweekly.com/2017/06/08/members-of-sasna-tsrer-go-on-trial-in-yerevan/>.

11 In total two cases involve 30 members of Sasna Tsrer who were located in the police station and four individuals who have been accused e.g. of assisting and attempt to commit a crime.

12 <http://hetq.am/eng/news/82397/>.

The trial of Jirair Sefilyan began separately in May 2017.¹³ The trial of Andreas Ghukhasyan, a member of the opposition movement “New Armenia” who was arrested during the July protests, has only just begun, and the oppositional activist remains in pre-trial detention.¹⁴

At the moment, Sasna Tsrer cases are being heard by Judge Arthur Ohanyan, the Chairman of the Court of General Jurisdiction of Erebuni and Nubarashen Administrative Districts; Mesrop Makyan, Judge of General Jurisdiction of Kentron and Nork Marash Administrative Districts and Artush Gabrielyan of the Court of First Instance of Erebuni and Nubarashen districts of Yerevan. At least 21 lawyers are involved in the Sasna Tsrer cases as defence lawyers. Additionally, some of the defendants are represented by lawyers appointed by the Public Defender’s Office.

Since the trials began, defence lawyers have reported facing various obstacles in carrying out their professional activities. The Civic Solidarity Platform (CSP) was informed that independent defence lawyers working on high-profile cases in Armenia had been subjected to harassment and obstruction by state agents in the performance of their professional duties.¹⁵ In response to the CSP statement, the Armenian Chamber of Advocates called for an objective and comprehensive analysis of the situation with regard to the disciplinary measures against attorneys. In order to establish the facts and collect reliable information, the CSP deployed a fact-finding mission to Armenia.

Already after the mission was completed, in September 2017 more than 180 advocates went on strike to protest “against such outrageous manifestations regarding human rights defence in Armenia as insults of advocates and violations with regard to inviolability of their professional and personal space and property.” On 27 September 2017, the defence lawyers acting for Sasna Tsrer defendants protested against what they felt were intrusive security checks at the entrance of court buildings by coming to court wearing T-shirts bearing the slogan “Stop raping the law!” with a photo of the presiding Judge Artush Gabrielyan.

Additionally, a number of developments took place after the work on the report had been concluded. Some of them are positive in nature, such as the introduction of body scanners upon the entry to courts where Sasna Tsrer cases are heard, while others, including changes in disciplinary proceedings before the Chamber of Advocates or legislative proposals allowing judges to impose fines on lawyers, may raise various concerns.¹⁶ The authors would only briefly like to signal them at this point, since even though not included in the main body of the report, these changes did influence the shape of recommendations in some cases.

13 <https://news.am/eng/news/392097.html>.

14 www.hrw.org/news/2017/01/30/armenian-activist-stuck-detention, <http://hcav.am/en/events/armenian-national-platform-of-the-eap-civil-society-forum-is-deeply-concerned-about-the-over-12-month-detention-of-andreas-ghukhasyan-member-of-new-armenia-opposition-movement/>. Interview with advocate Karen Mejlumyan, 6 September 2017.

15 Civic Solidarity Platform, Armenia: harassment of lawyers working on high-profile cases, available at: www.civicsolidarity.org/article/1490/armenia-harassment-lawyers-working-high-profile-cases.

16 Information received from the Helsinki Association Human Rights NGO, 1 March 2018.

Methodology

The mission took place from 3 to 9 September 2017 and was organised by the International Partnership for Human Rights within the framework of the Civic Solidarity Platform. The mission team consisted of five persons from four non-governmental organisations who are members of the Civic Solidarity Platform – the Committee against Torture Moscow (Russia), Helsinki Foundation for Human Rights (Poland), Social Action Centre (Ukraine) and Truth Hounds (Georgia). The Helsinki Foundation for Human Rights performed the role of mission leader.

During the mission, methods used to gather reliable and comparable data included:

- ◇ In-depth, semi-structured individual and group interviews,
- ◇ Unstructured interviews,
- ◇ Trial observation,
- ◇ Desk research.

In the course of the mission, monitors interviewed 45 people in 33 interviews. Respondents included 14 practicing lawyers who were involved in the cases of Sasna Tsrer, Jirair Sefilyan and Andreas Ghukhasyan. Information from this group was gathered in individual or group interviews in accordance with a brief questionnaire. The interviews focused on six issues – access to clients, case files and courts, respect for procedural rights, disciplinary proceedings, and pressure or persecution outside the court. Prior to the interview the lawyers were asked to give written consent to participate in the interview. They were also able to grant or refuse consent to their name being quoted in this report.

Another important respondent group included representatives of public authorities responsible for the administration of justice and oversight, including:

- ◇ Four officials from the Office of the Human Rights Defender of the Republic of Armenia,
- ◇ Two officials from the General Prosecutor's Office,
- ◇ Deputy Head of the Judicial Department of the Republic of Armenia,¹⁷
- ◇ Chief of Staff of the Council of Justice,¹⁸
- ◇ Deputy Chairman of the National Assembly's Standing Committee on State and Legal Affairs and Human Rights Protection.

Altogether, nine officials were interviewed. Additionally, the team also met with the President of the Chamber of Advocates of the Republic of Armenia. The mission delegates first gathered testimonies of the lawyers and then met with representatives of the authorities and the Chamber of Advocates to raise and discuss key issues of concern.

Other respondent groups included five journalists who report on the Sasna Tsrer cases, eleven representatives of the civil society – NGOs and five representatives of international stakeholders. Their testimonies, as observers

¹⁷ The Judicial Department is, among others, responsible for financing of courts and the management of the Bailiffs' Service. It facilitates the performance of the judiciary power, providing administrative support and management. More information on the Judicial Department can be found at: www.court.am/?l=en&id=42

¹⁸ The Council of Justice is a state body composed of nine judges elected by the General Assembly of Judges of the Republic of Armenia and four legal scholars appointed by the President of the Republic and the National Assembly. Among others, it is closely involved in the appointment and promotion of judges, as well as disciplinary proceedings. More information on the Council of Justice can be found at: www.court.am/?l=en&id=25

of the conflict between the Sasna Tsrer lawyers and the state authorities, were to complement the picture and provide a more objective insight.

Although the mission delegates were able to observe some court proceedings, it is important to note two factors which affected the interpretation of the results. Firstly, the team arrived in Armenia some three months after the initial reports were received concerning lawyers' problems with access to court buildings. The information gathered suggests that the authorities modified access procedures as time went on. Secondly, the team only had the opportunity to observe trials in two courts on two separate occasions for a couple of hours. The observations took place on 6 September 2017 at the Court of General Jurisdiction of Avan and Nor Nork Administrative Districts of Yerevan and on 8 September 2017 at the Court of the First Instance of Shengavit Administrative Region of Yerevan. Although such observations did not allow for a comprehensive overview of the situation, they provided the mission members with a clearer sense of the situation in general.

Main concerns

Access to courts

In its August 2017 statement, the Civic Solidarity Platform raised concern that:

“ Some lawyers have been subjected to lengthy and intrusive security searches when arriving to court. The fact that other participants in the proceedings, such as prosecutors and other lawyers have not had to undergo similar searches suggests that these procedures have been selectively applied.”¹⁹



Lusine Sahakyan, lawyer, trying to enter the court

One of the main tasks of the mission was to identify to what extent lawyers offering legal aid to defendants in the Sasna Tsrer and Jirair Sefilyan cases faced difficulties accessing the court buildings. The mission gathered information on the types of hindrances encountered by Sasna Tsrer lawyers and the implications of these difficulties.

The lawyers interviewed expressed a number of concerns about the security measures used by the authorities upon entry to court buildings. This information was, in general, corroborated by NGO representatives, journalists

¹⁹ Civic Solidarity Platform, Armenia: harassment of lawyers working on high-profile cases, 9 August 2017, available at: www.civicsolidarity.org/article/1490/armenia-harassment-lawyers-working-high-profile-cases

and, to some extent, by the Human Rights Defender and the Chamber of Advocates of the Republic of Armenia. Where differences appeared, they concerned primarily the legal assessment of the security procedures upon entry to courts under Armenian law. The accounts presented by other public authorities, in particular the General Prosecutor's Office and representatives of the judiciary, differed from those provided by the lawyers interviewed, not only in terms of the legal assessment of procedures, but also with respect to the facts.

UNPRECEDENTED CHARACTER OF SECURITY MEASURES

The lawyers and representatives of CSOs interviewed agreed that the use of security measures and sanctions (see "Use of disciplinary proceedings"), in the Sasna Tsrer and Jirair Sefilyan cases was unprecedented. In addition to the security checks of lawyers as they entered the court, other security measures included such visible elements as a glass wall separating the audience from the parties and a strong police presence in the court room, including police officers in plain clothes.²⁰ Interviewees raised additional concerns about these measures (see "Other issues").

Lawyers, representatives of civil society and journalists agreed that the security checks of attorneys as they entered the court building were first observed during the Sasna Tsrer cases in June 2017.²¹ According to those respondents, in the past, such security checks were conducted only with respect to the general public.²² The interviewees also reported that defence lawyers in other less politically sensitive cases did not have to undergo such rigorous security checks, although some lawyers observed that the practice had been spreading to other trials. One interviewed lawyer perceived this development as part of the authorities' strategy to give the impression that such security checks were standard procedures.²³

The position of the Armenian authorities on the nature of the security checking procedures differed. Representatives of the Prosecutor General's Office claimed that provisions regulating such security checks had been in place for a long time. They also maintained that the procedures had been applied consistently to everyone, be they lawyers, general public or prosecutors.²⁴ A similar stance was expressed by the Deputy Chairman of the National Assembly's Standing Committee on State and Legal Affairs and Human Rights Protection who also observed that some lawyers involved in the Sasna Tsrer cases had practiced for 20 years and had always been examined by court bailiffs upon entry to court buildings, and entered freely and without raising objections. The Deputy Chairman also noted that security checks are common practice in other countries. The representatives of the authorities interviewed emphasized that the applied measures were implemented for security purposes.²⁵

*“ Until the Sasna Tsrer cases personal searches were never carried out, even in other political cases. Now the court bailiff staff ask people to open their bags. I was not asked, but I know that others have been.
(Liparit Symonyan, lawyer)*

20 E.g. Interview with lawyer Tigran Hayrapetyan; 4 September 2017; Interview with Avetic Ishkhanyan, President of the Helsinki Committee of Armenia, 8 September 2017; Interview with lawyer Liparit Symonyan, 4 September 2017, etc.

21 Interview at the Legal Analysis and Development Centre, 5 September 2017; Interview with lawyer Liparit Symonyan, 4 September 2017.

22 Interview with an NGO representative, 5 September 2017.

23 Ibidem.

24 Interviews with representatives of the General Prosecutor's Office, 8 September 2017.

25 Interview with the Deputy Chairman of the National Assembly's Standing Committee on State and Legal Affairs and Human Rights Protection, 8 September 2017.

In terms of the actual procedures as established through interviews, the first step was conducted with the use of a metal detector. This step was applicable to every person who wanted to enter the court building. If the metal detector gave off a signal, further checks followed. One of the journalists whom we interviewed noted that, at times, the metal detector recognised and beeped at small amounts of metal, such as a chewing gum wrapping or medication packaging.²⁶ This was confirmed during the observations conducted by the fact-finding mission at the court. While entering the building, one of the mission members was requested to open her bag because a medication packaging had caused the metal detector to go off. The mission members noted that those lawyers who carried only a telephone or a wallet entered the court building unchallenged, while those who were carrying bags, backpacks or laptops were requested to undergo further checks. A prosecutor holding a phone in his hand was also allowed in without further checks.

“ You are coming in with your case, there is something that makes the scanner beep, they ask you to open the bag and remove the restricted items. They tell you “pull everything out and we will see”. There is no justification or need for this kind of search. A laptop is not a knife or a gun. There is also no respect towards to the institution of the defence. The defence is a part of the court. The court is not [just] a judge, it is all sides of the process. Disrespect towards the defence is disrespect towards the court. (Tigran Yegoryan, lawyer)

It should be acknowledged here that imposition by the state of security measures upon entry to court buildings is not in itself a rare phenomenon and that the authorities' aim to ensure security in the court during the administration of justice cannot in itself be considered illegitimate. In fact, the lawyers interviewed did not, in principle, object to the metal detector checks. Their objections centred rather on three main issues related to the process of verification that follows once the metal detector goes off: the intrusive nature of the subsequent security checks (which in the lawyers' view amount to a search); their arbitrariness and the selective nature of the court bailiffs' actions, which will be described below.

INTRUSIVE SECURITY MEASURES

The lawyers interviewed reported that when the metal detector signalled an irregularity, they were asked to open their bags and, sometimes, remove certain or all of the items. On some occasions, the actions of the court bailiffs apparently went as far as trying to look at the lawyers' documents.²⁷ Most of the lawyers interviewed refused to open their bags and remove items, claiming that such a procedure constitutes a search under Armenian law. Further still, they noted that searches cannot be performed towards a lawyer who is carrying out his or her professional duties. In this respect, the lawyers referred to Article 21 of the Law on Advocacy which prohibits interventions by state bodies in the practice of the advocates' profession.

²⁶ Interview with Armenian journalists, 5 September 2017.

²⁷ Interview with lawyer Arayik Papikyan, 4 September 2017.

Article 21 of the Law on Advocacy

“Advocates, when practising their profession, shall act independently and shall abide only by the Constitution of the Republic of Armenia, this Law, the Code of Conduct for Advocates and the Charter of the Chamber of Advocates.

Intervention by state or local self-government bodies, officials thereof, political parties, nongovernmental organisations and mass media in the practice of the profession of advocate shall be prohibited. [...]”²⁸

The lawyers claimed that the ‘searches’ of their belongings conducted by court bailiffs interfere with the performance of their professional duties as advocates. They were also concerned that the intrusive character of this verification procedure may lead to violations of the attorney-client privilege, e.g. by allowing potential opportunity for court staff to read confidential, sensitive documents.

The mission delegates noted from the interviews that the legal status of the verification procedure conducted by bailiffs upon entry to courts is unclear under Armenian law. The interviewees used terms such as a “search,” “examination,” “security check” and others. The terms “search” and “personal search,” as well as “examination” are, for example, used in the Armenian Code of Criminal Procedure (Articles 225, 229 and 217 respectively); however, it must be noted that these refer to separate legal concepts specific to criminal proceedings.²⁹ Representatives of the Ombudsman’s Office described an “examination” as a superficial check of what is easily visible without further active attempts to uncover items which might be hidden, while a “search” as a more intrusive procedure whereby the person conducting the search takes an active role to try to find hidden items.³⁰ However, the line between these two legal instruments is not clearly defined, leaving space for broad interpretation in practice.³¹

“ [...] it is a bigger problem than just one case being lawful or unlawful because it’s not as if the law says ‘you cannot search a lawyer, you cannot ask a lawyer to open their bag’ and then somebody asks a lawyer to open their bag. You see, the legal regulations are not clear. And when the law is not clear you can interpret it in this way and another person can interpret it that way. So the regulations are now open to interpretation, and this is what we’re trying to fight; you cannot have regulations that lead to a broad range of interpretations, [and] one where whichever interpretation used is fine. (Representative of the Ombudsman’s Office)

In his recent legal analysis of guarantees for the performance of an advocate’s professional activities, the Human Rights Defender of the Republic of Armenia observed that an “advocate’s professional work is an inseparable part of administration of justice and is subjected to special guarantees. The advocate’s public reputation is an important guarantee for the effective protection of the client’s rights and for the development of human rights protection in the country.” For this reason, the Human Rights Defender concludes that:

28 Law on Advocacy, available at: www.legislationline.org/topics/country/45/topic/8

29 The text of the Code of Criminal Proceedings is available at: www.parliament.am/law_docs/010998HO248eng.pdf?lang=eng

30 Interview with representatives of the Office of the Armenian Human Rights Defender, 6 September 2017.

31 Interview with the Office of the Armenian Human Rights Defender, 6 September 2017; Interview with the Chairman of the Chamber of Advocates, 7 September 2017.

- ◇ each state representative, including penitentiary officials or judicial bailiffs shall be guided by the presumption of the advocate's integrity and honesty;
- ◇ the state shall ensure advocate-client privilege and the protection of advocate-client confidentiality, irrespective of the availability of technical supplies;
- ◇ any inspection activity shall be carried out in when there are appropriate grounds and a balance between interests of the client and the advocate;
- ◇ it follows from the examination of the practice that judicial bailiffs did not take into consideration, from the perspective of proportionality, the reasons provided by advocates for their refusal to be examined. Refusal to undergo examinations, a procedure not limited to a range of specific activities, in any case resulted in grave consequences, namely a restriction to enter the courtroom;

it is required to clearly differentiate between the concepts “examination” and “search”, clarify the scope of activities falling under the meaning of each of those concepts, taking into consideration the specific legal features in a particular field. The prohibition to examine the advocates must be reflected in the legislation in an appropriate manner; [...] ³²

In light of the information gathered by the monitoring mission, the organizations issuing this report share these conclusions. Legislative uncertainty cannot be used to the disadvantage of lawyers performing their professional duties nor to the disadvantage of their clients. The legitimate interests of securing the right to a fair trial, including the right of access to a lawyer and related attorney-client privilege need to be protected in law. Any measures which would interfere with those rights should be clearly defined in law, proportionate, and in pursuit of other legitimate aims, and should not infringe upon the essence of those rights or lead to their denial.

It is also worth noting that, while in court, the monitoring mission observed that those who did not carry bags – both lawyers and prosecutors – were checked over by the metal detector and let into the court. Some lawyers also stated during interviews that they did not experience difficulties entering the court building as they only carried their mobile phone or a tablet, etc. ³³ Other lawyers interviewed reported that they had changed their behaviour in order to pass the metal detector test without having to undergo a more detailed search. ³⁴

*“ As my client's health and life is in danger, I want to be present in the courtroom. In order to be present, I have to choose a bag with no metal parts, as they will be detected by the metal detector. I also have to carry my notebook in my hand, as it has a metal part.
(Hayarpi Sargsyan, lawyer)*

While this could be an effective strategy for lawyers, it should not be seen as a solution to the problem. The lack of clear legislation and appropriate guarantees reflecting the status of lawyers in the judicial process mean that there is no mechanism which would prevent the current checking procedures from becoming even more intrusive. ³⁵

32 Human Rights Defender of the Republic of Armenia, information on the report in English available at: www.ombuds.am/en/media/iravakan-verlucutyun.html

33 Interview with lawyer Harutyun Baghdasaryan, 4 September 2017; Interview with lawyer Karen Mejlumyan, 6 September 2017.

34 Interview with lawyer Hayarpi Sargsyan, 4 September 2017.

35 Interviews with NGO representatives, 7 September 2017.



Tigran Hayrapetyan (left side), advocate, trying to enter the court; Ara Zahrobayan (centre), Chairman of the Chamber of Advocates. Source: www.azatutyun.am/a/28588638.html

Interviews conducted by the mission team with lawyers and representatives of NGOs confirmed that court bailiffs lacked consistency: in their treatment of different groups of people; in applying the rules of conducting the procedure, e.g. technical measures or limitations with respect to particular groups etc., and in enforcing the consequences of refusals to undergo a more thorough checking procedure. Therefore, in a number of instances the conduct of the Bailiffs' Service can be deemed selective and arbitrary.

Interviews with lawyers, journalists and NGO representatives demonstrated that the scope of the security measures implemented by court bailiffs has changed over time. Whilst initially the checks only affected certain lawyers working on the Sasna Tsrer cases, those working on other cases and other professional groups, such as prosecutors, were not affected.³⁶ In fact, as some lawyers noted, the checks were not even consistently applied to lawyers working on the Sasna Tsrer cases. They would sometimes be checked, but not always.³⁷ In one instance, a lawyer who would otherwise have been searched was allowed to enter the court after an unsolicited intervention by the Chairman of the Chamber of Advocates who saw what was happening. This was presented to the lawyer as a favour.³⁸

According to the lawyers, journalists and NGO representatives interviewed, once the public discussions ensued concerning the selective character of conducted verifications, the court bailiffs expanded the scope of their checking procedures to include prosecutors as well.³⁹ At the time of the mission, the mission members were able to observe that although the metal detector went off as the prosecutor entered the court room for the Sasna Tsrer trial, he was allowed to proceed unchallenged. He was not, however, carrying a bag and perhaps for this reason was not asked by bailiffs to undergo a further check. As noted above, the representatives of the Prosecutor General's Office and the National Assembly who were interviewed claimed that the checking procedures had always been in place and concerned everyone equally.⁴⁰ However, this was not confirmed in any other interviews.

³⁶ Legal Analysis and Development Centre, Reference on the results of court trials of criminal cases initiated in respect to the seizure of RA Police Patrol and Guard Service Regiment Premises in Yerevan on the 19th of July, 2016 by Sasna Tsrer group.

³⁷ Interview with lawyers Tigran Yegoryan and David Gyurjyan, 4 September 2017; Interview with lawyer Tigran Hayrapetyan, 4 September 2017; Interview with lawyer Lusine Sahakyan, 5 September 2017; Interview with lawyer Liparit Symonyan, 4 September 2017.

³⁸ Interview with lawyer Tigran Hayrapetyan, 4 September 2017.

³⁹ Legal Analysis and Development Centre, op.cit.; Interview with lawyer Lusine Sahakyan, 5 September 2017.

⁴⁰ Interviews with representatives of the General Prosecutor's Office, 8 September 2017; Interview with the Deputy Chairman of the National Assembly's Standing Committee on State and Legal Affairs and Human Rights Protection, 8 September 2017.

In the course of the interviews, all interlocutors – including representatives of the Human Rights Defender’s office and the Chamber of Advocates – noted that there is no list of prohibited items for those entering court buildings which could guide court bailiffs in their work. As representatives of the Human Rights Defender’s office told mission delegates, a list of prohibited objects had only been adopted in relation to penitentiary institutions. The lack of an official document left it to the discretion of individual court bailiffs as to what can and cannot be taken into court. The lawyers reported that when they were told to show the contents of their bags, they would ask court bailiffs for a list of prohibited items, but they never saw one.⁴¹ During interviews with the Chairman of the Chamber of Advocates and the Deputy Chairman of the National Assembly’s Standing Committee on State and Legal Affairs and Human Rights Protection, the mission members learnt that work on preparing such a list was ongoing,⁴² and since the mission took place a list of prohibited items has been adopted.

A refusal by a lawyer to undergo the court bailiff’s ‘search’ could have various consequences. Most often, the lawyers were denied access to the court building and could not therefore participate in the trial. For example, Arayik Papikyan estimated that he had been denied access to the court after he refused to be searched some 10 times. Those interviewed also reported that some lawyers were almost entirely excluded from the proceedings on account of refusing to undergo a checking procedure which in their view constituted a search. This was not, however, always the case. Sometimes lawyers were eventually allowed to enter the court building despite refusing searches or after having argued their point with officials from the Bailiffs’ Service.⁴³ On the other hand, other lawyers were denied access despite having been checked successfully.⁴⁴

“ There were days when after searching us they let us in, and there were days when we were not allowed. And we took notes to record when they said we passed the examination, but still did not allow us to enter the courtroom. We raised our voices and then they started to let us [in]. When we started to raise our voices - they permitted us [access] for some days. We were allowed in more often than we were refused. (Lusine Sahakyan, lawyer)

The mission noted that Armenian law does not clearly stipulate when court bailiffs can carry out security checks and who should or should not be subjected to them.⁴⁵ The Judicial Code states in Article 198 that the task of the Bailiff Service is, among others, the maintenance of public order and security on the territory of the court.⁴⁶ While Article 199 sets out the principles guiding the work of the Bailiff’s Service, for example that it should operate “in strict accordance with the principles of lawfulness, respect for the individual’s rights, freedoms, honour, and dignity, humanity, and transparency.” In each case where human rights and freedoms are restricted, judicial bailiffs must immediately explain the grounds for such restrictions to the person affected, and explain their rights and responsibilities.

41 For example, interview with lawyer Hayk Alumyan, 4 September 2017.

42 Interview with the Chairman of the Chamber of Advocates, 7 September 2017; Interview with the Deputy Chairman of the National Assembly’s Standing Committee on State and Legal Affairs and Human Rights Protection, 8 September 2017.

43 Interview with lawyer Tigran Hayrapetyan, 4 September 2017; Interview with lawyer Lusine Sahakyan, 5 September 2017.

44 Interview with lawyer Lusine Sahakyan, 5 September 2017.

45 Legal Analysis and Development Centre, op.cit.

46 Armenia, Judicial Code, available at: www.court.am/upload/file/Judicial%20Code%20Eng%20final%20-%20290607.pdf

Article 198 of the Judicial Code

“The task of the Service of Judicial Bailiffs is to ensure, in accordance with this Code and other laws:

- 1) Protection of the life, health, dignity, rights, and freedoms of the judge, parties to proceedings, and other persons in court from criminal and other unlawful encroachment;
- 2) Maintenance of the public order and security in the territory of the court;
- 3) Execution of court orders subject to immediate execution on the spot; and
- 4) Protection of court assets, buildings, and support premises.”

Additionally, Article 214 of the Judicial Code states that court bailiffs have the authority to examine persons and their belongings upon entry to the court or the courtroom and that they must exercise their rights in accordance with the law and ensure that their activities do not violate the rights and lawful interests of individuals.⁴⁷ However, no further details are set out in legislation or executive acts concerning the implementation of the tasks of the Bailiff Service, including how checks should be conducted or guidelines on the use of technical equipment. This creates a legislative vacuum whereby the court bailiffs are in a position to interfere with human rights such as the right to private life and the right to a fair trial.

INTERNATIONAL STANDARDS AND RECOMMENDATIONS

There are no specific international standards related to security measures and procedures on physical access to courts. However, any measures undertaken have to be in line with states' international human rights obligations. With respect to verification procedures (checks or searches), key obligations include respecting the right to private and family life (the right to privacy) and the right to a fair trial.

The right to privacy is foreseen by a number of international instruments. In the European context, the strongest standard is set out in Article 8 of the European Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR) which addresses the right to private and family life and sets forth conditions for possible limitations of this right.

Article 8 of the ECHR

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Based on the conditions established in Article 8 ECHR, the European Court of Human Rights (further ECtHR; the Court) has developed a test which it applies to alleged violations. The Court first examines whether there has been an interference with the right. It then proceeds to assess if the interference was in accordance with the law, served a legitimate aim and was necessary in a democratic society. For example, ECtHR considered violations of the attorney-client privilege in light of Article 8.⁴⁸ This standard should also be ensured in the context of security

⁴⁷ Ibidem.

⁴⁸ See e.g. Spronken T., Fermon J., “Protection of Attorney-Client Privilege in Europe,” *Pen State International Law Review*, Vol. 27.2, p. 447, available at: <https://elibrary.law.psu.edu/cgi/viewcontent.cgi?article=1252&context=psilr>

procedures imposed by the Armenian authorities upon entry to courts. Any security measures that the state decides to apply should be in accordance with the law (which is e.g. foreseeable), legitimate in terms of its goal and proportional (necessary and sufficient).

Given the lawyers' important role in the administration of criminal justice, it is also possible to view interference in their work as a potential violation of the right to a fair trial. Although, as noted above, the ECtHR considered attorney-client privilege in terms of the right to privacy, it also noticed the potential problems that such interferences may pose for the respect of Article 6 ECHR constituting the right to a fair trial:

“More importantly, having regard to the materials that were in fact inspected, the search impinged on professional secrecy to an extent that appears disproportionate in the circumstances; it has, in this connection, to be recalled that, where a lawyer is involved, an encroachment on professional secrecy may have repercussions on the proper administration of justice and hence on the rights guaranteed by Article 6 (art. 6) of the Convention. In addition, the attendant publicity must have been capable of affecting adversely the applicant's professional reputation, in the eyes both of his existing clients and of the public at large.”⁴⁹

The guarantee of the right to a fair trial consists, among other things, of the right to defend oneself in person or through counsel. This right has been expressed in a number of international legal instruments, in particular in the International Covenant on Civil and Political Rights (“ICCPR”) and the ECHR:

Article 14 (3) (d) of the ICCPR

“[...] 3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: [...] d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it [...]”⁵⁰

Article 6 (3) (c) of the ECHR

“[...] 3. Everyone charged with a criminal offence has the following minimum rights: (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require. [...]”⁵¹

What is more the United Nations Basic Principles on the Role of Lawyers state the obligation of lawyers to, among other things, uphold the dignity of the profession, assist their clients before courts and uphold human rights and fundamental freedoms. This is coupled with the obligation of the authorities to refrain from harmful interference in the performance of lawyers' duties.

49 ECHR Judgement of 16 December 1992, *Niemietz v. Germany*, application no. 13710/88.

50 UN, International Covenant on Civil and Political Rights, available at: www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx

51 Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, available at: www.echr.coe.int/Documents/Convention_ENG.pdf

Basic Principles on the Role of Lawyers

“12. Lawyers shall at all times maintain the honour and dignity of their profession as essential agents of the administration of justice.

13. The duties of lawyers towards their clients shall include: [...]

(c) Assisting clients before courts, tribunals or administrative authorities, where appropriate.[...]

14. Lawyers, in protecting the rights of their clients and in promoting the cause of justice, shall seek to uphold human rights and fundamental freedoms recognized by national and international law and shall at all times act freely and diligently in accordance with the law and recognized standards and ethics of the legal profession.[...]

16. Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; [...] (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.”⁵²

The situation as observed by the monitoring mission affects the defendants’ right to a fair trial, since it often results in a defence lawyers’ absence from the courtroom. The practice applied by court bailiffs intrudes upon the responsibilities of lawyers and at times poses a threat to the confidentiality of attorney-client communication, in particular when lawyers are required to remove documents from their bags. The Special Rapporteur on the independence of judges and lawyers noted that “[p]reconditions for lawyers to adequately provide legal counselling include [...] the confidentiality of their relationship with their clients” and that “[l]awyers’ files and documents should be protected from seizure or inspection by law and in practice [...]”⁵³ In the absence of regulation, the court bailiffs’ actions can take on a selective and arbitrary character. For this reason, in light of the gathered information, in some instances echoing the conclusions of the Ombudsman’s report, the fact-finding mission to Armenia recommends that the Armenian authorities:

- ◇ Swiftly adopt legislation which sets out a clear distinction between a security check and a search in the context of accessing court buildings;
- ◇ Organise the checking procedures in a way which:
 - is not discriminatory, arbitrary or disproportionate, and which eliminates the element of discretion from officials of the Bailiffs’ Service;
 - takes into account the particular status of lawyers and their importance for the administration of justice, ensuring respect for the defendants’ right to counsel, the attorney-client privilege and the dignity of the legal profession;
- ◇ Adopt legislation which prohibits searches of lawyers performing their duties, unless this is based on clearly formulated grounds, necessary in a democratic society to secure a legitimate aim and without prejudice to the defendants’ right to a fair trial, in particular the attorney-client privilege;
- ◇ Make the list of items prohibited upon entry to court readily available for all persons who want to attend trials, in Sasna Tsrer or other cases.

52 UN, Basic Principles on the Role of Lawyers, available at: www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx

53 UN Special Rapporteur on the independence of judges and lawyers, Report on the independence of judges and lawyers submitted to the General Assembly on 28 July 2009, no. A/64/181, available at: www.un.org/ga/search/view_doc.asp?symbol=A/64/181

Right to a fair trial

During their trip to Armenia, the members of the fact-finding mission also gathered information concerning other obstacles that lawyers working on Sasna Tsrer and other high-profile cases faced in their work. This concerned lawyers' access to clients and case files, and in particular their ability to take an active part in the trial. These rights for lawyers are a derivative of their clients' right to a fair trial. The need for the lawyer to be able to access their client is auxiliary to the right of the client to defend him or herself in person or through counsel; the lawyers' access to case files is part and parcel of the client's right to information during criminal proceedings, etc.



Hayk Alumyan, lawyer, in his office in Yerevan

ACCESS TO CLIENTS / RIGHT OF ACCESS TO A LAWYER

In its statement the Civic Solidarity Platform wrote:

According to information available to us, these and other lawyers working on the Sasna Tsrer and similar high profile cases have been prevented from visiting their clients in detention and denied the opportunity to hold private discussions with them. In other cases, officials at detention facilities have confiscated or destroyed notes from lawyer-client meetings when searching the defendants after the meetings. In this way, the lawyers have been hindered in their efforts to prepare the defence of their clients.⁵⁴

The interviews conducted with lawyers confirmed that some of them had experienced difficulties in freely accessing their clients. Some lawyers reported that their clients were subjected to additional searches after consultations or that there had been attempts to interfere with the attorney-client privileged case material prepared by defendants together with their lawyers.

Most often, the lawyers we interviewed stated that they were allowed to see clients, but after substantial delays.⁵⁵ At times, the waiting period amounted to a couple of hours.⁵⁶ One of the lawyers suspected that the longer waiting period was related to the fact that the clients in Sasna Tsrer cases had to undergo more thorough, humiliating searches before meeting their lawyers (for information about the treatment of defendants in Sasna Tsrer cases see below "Other issues") and to additional restrictions on items allowed in the facility.⁵⁷

⁵⁴ Civic Solidarity Platform, Armenia: harassment of lawyers working on high-profile cases, statement available at: www.civicsolidarity.org/article/1490/armenia-harassment-lawyers-working-high-profile-cases

⁵⁵ Interview with lawyer Liparit Symonyan, 4 September 2017; Interview with lawyer Ara Zakaryan, 4 September 2017; Interview with lawyer Hayk Alumyan, 4 September 2017 – however, the interviewee saw the long waiting period as a general problem.

⁵⁶ Interview with lawyer Liparit Symonyan, 4 September 2017; Interview with lawyer Lusine Hakobyan, 5 September 2017.

⁵⁷ Interview with lawyer Ara Zakaryan, 4 September 2017.

*“ There was a time when 30 people were detained, but the SIZO [pre-trial detention facility] was designed for 12 persons. There were days we had to wait long hours for the meeting, as the facility was overcrowded ,there was no space. The prosecution had to wait as well.
(Liparit Symonyan, lawyer)*

Lawyer Lusine Sahakyan stated that she had not been able to see one of her clients who was being held in the Yerevan Centre, prison controlled by NSS for four months. This was due to the fact that the director of the prison demanded that Ms. Sahakyan leave her bag at reception or open it for inspection. The procedure was officially called an examination, but in the lawyer's view it amounted to a search. Ms. Sahakyan recalled that the searches started at the time of the trials. She noted that in 20 years' of professional experience, she had never before had difficulties accessing this particular institution. Prior to the initiation of court proceedings, she had been able to see the same client without being subjected to such procedures. However her contact with the defendant is now mostly limited to the courtroom.

Lawyer Tigran Hayrapetyan reported that the personnel of the SIZO where his client is detained keeps reading the client's confidential documents. Lawyer Arayik Papikyan described a situation when he held a meeting with his client in prison which lasted for about two hours. In the course of the meeting, they prepared documents together which Arayik Papikyan left with his client. Prison officers searched his client while Arayik Papikyan was present, but after he left they also searched the documents. The client tore up the documents in an attempt to prevent this from happening. Mr. Papikyan maintains that the prison officials were looking for political content. Another of Arayik Papikyan's clients, Gevorg Iricyan, was an older man with memory problems. The police seized the documents that he had prepared specifically for the trial. Arayik Papikyan reported both these incidents to the prosecution, but there was no official reaction.

ACCESS TO CASE FILES / RIGHT TO INFORMATION IN CRIMINAL PROCEEDINGS

In comparison to other elements of the right to a fair trial we monitored, the mission members did not note as many problems concerning access to case files.

Some lawyers noted problems with timely access to certain documents, in particular the medical records of their clients.⁵⁸ One of the lawyers observed that the waiting period in other cases is not as long as it is in the cases of the Sasna Tsrer group. Although under Armenian law, there is no obligation to provide copies of official documents immediately, in practice it does not usually take long.⁵⁹

Other problems reported by the lawyers we interviewed seemed to have a more systemic character. For example, the necessity to pay a fee to obtain copies of case files. Some lawyers noted that there is a lack of legal clarity about such payments.⁶⁰

58 Interview with lawyer Liparit Symonyan, 4 September 2017; Interview with lawyer Lusine Hakobyan, 5 September 2017; Interview with lawyer Tigran Yegoryan and lawyer David Gyurjyan, 5 September 2017.

59 Interview with lawyer Liparit Symonyan, 4 September 2017.

60 Interview with lawyer Ara Zakaryan, 4 September 2017; Interview with lawyer Hayk Alumyan, 4 September 2017.

Access to case files in pre-trial proceedings constituted another systemic issue. Under Armenian law, the decision on whether or not to make the case file available in pre-trial proceedings depends on the prosecutor.⁶¹

RIGHT TO A FAIR HEARING / “EQUALITY OF ARMS”

In the course of the mission, delegates asked lawyers working on the Sasna Tsrer cases if they had been able to actively represent their clients in court. The question aimed to assess the defendants’ right to equality before the law and their right to be tried by a competent, independent and impartial tribunal, the right to a fair hearing, the right to defend oneself and to be present at the trial, etc. Mission delegates noted that as the Sasna Tsrer hearings were only at the preliminary stages thus far the breaks have taken much more time than the actual procedural activities. The report by the Legal Analysis and Development Centre expands on this point.⁶²

The lawyers, journalists and representatives of CSOs which monitor trials we interviewed noted that lawyers had been prevented from filing oral motions with the court, from making valid objections and from delivering statements and announcements.⁶³ Some lawyers we interviewed said that they were only able to submit written motions.⁶⁴ Prosecutors, however, are allowed to speak during the court hearing,⁶⁵ although they allegedly do not make use of this possibility very much.⁶⁶ This was by far the most serious problem related to ensuring the right to a fair trial in the Sasna Tsrer court proceedings. The situation led to a sense of helplessness amongst some of the lawyers who felt the defence was merely a charade.

“ We see that the judges are ignoring or rejecting all defence motions, nothing in line with the principles of the fair trial. No standard is secured, so it’s even hard to compare.

(Haykuhi Harutyunyan, representative of the Protection of rights without borders)

“ When I make submissions, I get no response. They are ignored. I cannot make objections. So I cannot use any of the instruments that I have at my disposal as a lawyer. It makes me a mock lawyer. I cannot fulfil the role of defender, even when I am allowed in the courtroom. My appeals to other institutions are also met with no response.

(Tigran Hayrapetyan, lawyer)

61 Interview with lawyer Lusine Sahakyan, Interview with lawyer Karen Majlumyan, and 6 September 2016.

62 Legal Analysis and Development Centre, Reference on the results of court trials of criminal cases initiated in respect to the seizure of RA Police Patrol and Guard Service Regiment Premises in Yerevan on the 19th of July, 2016 by Sasna Tsrer group

63 Interview with lawyer Tigran Hayrapetyan, 4 September 2017; Interview with lawyer Hayarpi Sargsyan, 4 September 2017; Interview with lawyer Arayik Papikyan, 4 September 2017; Interview with lawyers Tigran Yegoryan and David Gyurjyan, 5 September 2017. Legal Analysis and Development Centre, op. cit.

64 Interview with lawyer Arayik Papikyan, 4 September 2017; Interview with lawyer Ara Zakaryan, 4 September 2017.

65 Interview with lawyer Lusine Sahakyan, 5 September 2017.

66 Interview with journalists from Armenia, 5 September 2017.

Lawyers and journalists reported that one of the arguments used to deny lawyers the right to intervene at a specific moment during the trial was that the time for submitting motions and statements was not appropriate.⁶⁷ Some lawyers additionally stated that there were situations when no appropriate time was found for the lawyer to speak.

“ I am not permitted to speak during the hearings. I mean that when I want to speak, the judge warns me that I will be sanctioned. I have already been sanctioned for speaking. When I wanted to make an statement, I got a sanction. (Hayarpi Sargsyan, lawyer)

According to Armenian law, there is no specific time to file motions during a trial. The Code of Criminal Procedure (CPC) states in Article 102 that motions and demands shall be considered and resolved immediately when they are raised, unless the CPC states otherwise. The CPC also provides that the consideration of motions can, at times, be deferred.

Lawyers also reported that judges do not treat motions equally. For example, one lawyer recalled that his motions to remove restrictions on meetings with his client was not allowed due to the fact that not all sides were present, while at the same time his motion to disqualify the judge was considered (although eventually denied).⁶⁸ Additionally, the lawyers also noted that judges proceed with the court hearings even the absence of lawyers or defendants.

“ The court hearings take place without attorneys and defendants. It seems to me the judges want to finish the case as soon as possible. (Ara Zakaryan, lawyer)

Some lawyers reported that they also had difficulties participating in trials due to other reasons. In one case the authorities failed to inform the lawyer about the hearing date on time, in another this occurred due to the conflicting dates and times of hearings. Lawyer Tigran Yegoryan observed that everyone is aware of the days when Sasna Tsrer trials take place, and yet some of the hearings were set up to overlap with these cases. Mr. Yegoryan suggested that the authorities purposefully schedule other hearings in such a way so as to prevent lawyers from participating in the Sasna Tsrer hearings. Apparently, this was also confirmed by different judges in private conversations.

“ I only got to know about the hearing when I came back from another trial and I found out from the internet. I asked the court to change the date but they didn't react and the cases are taking place as decided. (Liparit Symonyan, lawyer)

67 Interview with lawyer Tigran Hayrapetyan, 4 September 2017; Interview with lawyer Hayarpi Sargsyan, 4 September 2017; Interview with lawyer Arayik Papikyan, 4 September 2017; Interview with journalists from Armenia, 5 September 2017.

68 Interview with lawyer David Gyurjyan, 5 September 2017.

CRISIS OF THE RULE OF LAW AND SEPARATION OF POWERS

During the mission, those people we interviewed reported many problems related to the proceedings in the Sasna Tsrer cases. However, the interviews revealed that the root causes lie in the situation of general crisis of the rule of law and lack of clear separation of powers in Armenia.⁶⁹ The lack of trust in the judiciary, and judges sitting on the Sasna Tsrer cases, was a common sentiment in almost all conducted conversations.

“ We have good laws and imperfect laws. But it does not matter if we adopt good or bad laws, because the good laws are not applied anyway. In the Sasna Tsrer and Seflyan cases, the quality and level of our judicial system has been damaged.

(Tigran Hayrapetyan, lawyer)

The current report does not aim to provide a detailed analysis of the problems related to the rule of law, separation of powers and judicial independence in Armenia.⁷⁰ However, it is important to note these issues as forming part of the overall context in which the monitoring mission took place.

INTERNATIONAL STANDARDS AND RECOMMENDATIONS

International human rights standards provide that everyone has the right to a fair trial. The “ingredients” of this right have briefly been summarized above (see “Access to courts”). Crucially, enjoyment of this right, and other human rights and freedoms shall be free from discrimination, since all person are equal before the law and courts.

The guarantee of equality with respect to fair trial has various key elements, such as the prohibition of discriminatory laws, the right to equal access to the courts and equal treatment by the courts.⁷¹ Equality before the law means, on the one hand, that laws will not be discriminatory and, on the other, that judges will not act in a discriminatory manner in their implementation. Equality of treatment in court foresees that both parties to criminal proceedings – the prosecution and the defence – are awarded equal opportunities to prepare and present their case, and also that defendants in similar situations are treated equally. This means that “a person charged with a criminal offence [...] should be afforded the same guarantees whether or not the offence occurred in a “political” or “ordinary criminal” context.”⁷²

Universal Declaration

Article 2 “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. [...]”

69 Freedom House, Freedom in the World 2016, Armenia, available at: <https://freedomhouse.org/report/freedom-world/2016/armenia>;

70 See e.g. concerns expressed in relation to the judiciary in: the Report by Nils Muiznieks Commissioner for Human Rights of the Council of Europe following his visit to Armenia from 5 to 9 October 2014, available at: [https://rm.coe.int/ref/CommDH\(2015\)2](https://rm.coe.int/ref/CommDH(2015)2); Armenia Corruption Report, available at: www.business-anti-corruption.com/country-profiles/armenia;

71 Amnesty International, Fair Trials Manual, December 1998, p. 71.

72 Ibidem, p. 73.

Article 10 “Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.”

Article 14 (1) of the ICCPR

“1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. [...]”

The information gathered in the course of the mission interviews suggests that defence lawyers in the Sasna Tsrer cases experience difficulty in preparing and, especially, presenting their clients’ cases in court. They report that the behaviour of judges in these proceedings differs from other trials (see also “Use of disciplinary proceedings”). Thus it is fair to say that the defendants’ right to a fair trial may be violated. For this reason, the mission recommends that the Armenian authorities:

- ◇ Ensure the equal enjoyment of the right to a fair trial for defendants in the ongoing Sasna Tsrer cases;
- ◇ Make sure that lawyers representing defendants’ in the Sasna Tsrer cases are not hindered in the performance of their professional duties, in particular regarding the assistance of clients in court, and that they are able to make oral motions and submissions in the course of the trial.

Use of disciplinary proceedings

In its statement, the Civic Solidarity Platform noted that:

“The absence of the lawyers from the courtroom has, again, resulted in court orders, requesting the country’s Chamber of Advocates to take disciplinary measures against the lawyers. Such court orders have also been issued when lawyers have refused to continue to take part in hearings after their clients have been temporarily removed from the courtroom for alleged violations of court regulations.”

“ I was told by the judge that he is informing the Chamber of Advocates about my absence in the court room. I am aware of four to five disciplinary proceedings against me. (Ara Zakaryan, lawyer)



Ara Zohrabyan, Chairman of the Chamber of Advocates of the Republic of Armenia

UNPRECEDENTED USE OF JUDICIAL SANCTIONS

In Armenia judges can “impose sanctions”⁷³ on lawyers for misconduct. These sanctions do not automatically lead to punishment. The court’s motion to the Chamber of Advocates (“CoA”) constitutes obligatory grounds for the Chairman of the CoA to initiate disciplinary proceedings. Therefore, when a court sanctions an attorney, the Chairman of the CoA is obliged, by law, to initiate proceedings. According to the Code of Criminal Proceedings, the court’s decision to apply a sanction is effective from the date of its publication. The decisions of the Court of the First Instance and the Court of Appeal on applying a judicial fine may be appealed within a three-day period. The Sasna Tsrer trials are clearly characterized by an increased and unprecedented use of this mechanism. An increased number of court sanctions results in more disciplinary proceedings (See “Disciplinary proceedings in the Chamber of Advocates”). However, the situation with regard to disciplinary proceedings against lawyers developed gradually long before the Sasna Tsrer cases.⁷⁴

The practice with regard to sanctions reportedly differed between the courts where hearings in the Sasna Tsrer and the Jirair Sefilyan cases were heard. Reportedly, in the Sefilyan trial the judge did not issue sanctions, whereas in the Sasna Tsrer cases judge Gabrielyan was reported by those we interviewed to issue sanctions at each hearing. The mission delegates were not able to confirm this information as the judge on the Sefilyan case refused to talk to the mission delegates during the court monitoring on 8 September 2017 at the Court of First Instance of Shengavit Administrative Region of Yerevan. During the court monitoring of the Sasna Tsrer cases on 6 September 2017 at the Court of General Jurisdiction of Avan and Nor Nork Administrative Districts of Yerevan, the mission members noted that the judge announced a break in order to decide on sanctions against the defence lawyers who were absent at the hearing.

Several defence lawyers we interviewed, including Arayik Papikyan, Tigran Hayrapetyan, Ara Zakaryan, Inessa Petrosyan, Hayarpi Sargsyan, Lusine Sahakyan, had had disciplinary proceedings initiated against them upon request of the court. Arayik Papikyan reported that he had received 14 notifications from the CoA informing him that he was under disciplinary investigation.

REASONS FOR IMPOSING JUDICIAL SANCTIONS

“ There is an element of humiliation in front of the client. The client may think that you cannot protect your own rights, how then will you be able to protect their rights? (Aramazd Giviryan, lawyer)

In most of the cases, the reason for imposing disciplinary measures against an attorney in the Sasna Tsrer case was his or her absence from the court hearing due their refusal to undergo security checks when entering the court building. This was seen by some of the defence lawyers we interviewed as a systemic problem, as defendants cannot be represented without their lawyers. This situation sometimes resulted in the court appointing a public attorney who was not acceptable to the defendant – an issue which also has repercussions for the defendants’ right to a fair trial.

⁷³ This is how the lawyers we interviewed described the process. In fact, it means that the court motions the Chamber of Advocates to initiate disciplinary proceedings.

⁷⁴ Interview with lawyer Aramazd Giviryan, 5 September 2017.

Another issue of concern was the use of sanctions against defendants which results in their removal from the courtroom. If the defence lawyer does not have the client's consent to represent them in the client's absence, when the defendant is removed from the courtroom the lawyer also leaves, for which he or she is subsequently sanctioned. This for example occurred to Sasna Tsrer case defence lawyers Hayk Alumyan, Tigran Hayrapetyan and Liparit Symonyan. What is more, Hayk Alumyan's client was subjected to ill-treatment during investigation procedures. The man was not physically able to stand up in court. Because of that he was expelled from the courtroom. When the judge announced a break in the hearing, the lawyer left the courtroom for ten minutes, and was not there when the judge returned, so the judge filed a complaint with the CoA. In another case, the judge imposed sanctions on Liparit Symonyan's client for not standing up for the court and ordered him to be removed from the courtroom. Liparit Symonyan stated that he would not defend his client in his absence. In other cases when lawyers tried persistently to file a motion during a hearing they were sanctioned for being disrespectful towards the court.

In addition, in some cases the prosecutor or the police also motioned for sanctions.⁷⁵ For example, lawyer Arayik Papikyan posted a video on Facebook which showed him reading out a statement from his client Arayik Khandoyan, saying that "the police are a gang of criminals." The prosecution found this to be a violation of the lawyers' Code of Conduct and filed a motion with the CoA, which initiated disciplinary proceedings against Papikyan. It should be noted that, unlike with judicial sanctions, in this case the CoA was not legally obliged to initiate proceedings.

PROCEEDINGS IN THE CHAMBER OF ADVOCATES

The mission noted that according to the Armenian Law on Advocacy "a disciplinary proceeding is initiated based on evident presence of elements of a violation of the requirements stipulated by the following law and the Code of Conduct of Advocates" (Art. 39.1 clause 4). The Code of Conduct stipulates that "for violation of the Charter's requirements a lawyer can be subjected to disciplinary sanction in accordance with the RA Law on Advocacy and the Charter of the Chamber" (Art. 32.1). The 12-member Board of the Chamber of Advocates is responsible for conducting disciplinary proceedings. The law does not provide for the possibility to appeal against the CoA's decision on disciplinary measures.

There has been a notable increase in the number of disciplinary proceedings initiated by the CoA since the Sasna Tsrer trials started. The Chairman of CoA himself confirmed that the use of judicial sanctions in Sasna Tsrer cases is much higher than in other cases. For example: there were 39 disciplinary cases in 2015, 56 cases in 2016 and 91 cases in nine months of 2017 (January- September). Out of 91 cases 65 were initiated based on judicial motions for disciplinary sanctions, seven as a result of lawyers' complaints, nine based on the complaints of lawyers' clients and the opposite party and 10 on other grounds. Twenty-nine disciplinary proceedings were dismissed by the Committee of the Chamber and 16 ended in disciplinary sanctions. Five cases ended with a reprimand, four with severe reprimand, four with a fine, three with a request to participate in additional trainings. None of the 91 cases initiated in 2017 ended with the lawyer's licence being withdrawn.⁷⁶

Despite the fact that the most severe penalty, namely the withdrawal of a lawyer's licence, has not yet been imposed, the practice of frequently initiating disciplinary proceedings is regarded by defence lawyers as a violation of their right to conduct their professional activities. They see disciplinary proceedings as part of a

⁷⁵ Interview with lawyer Arayik Papikyan, 4 September 2017.

⁷⁶ According to the statistics received from the Chamber of Advocates.

strategy to discourage them from representing the Sasna Tsrer defendants.⁷⁷ Some NGO representatives confirm that the removal of lawyers of defendants' choosing and replacement by defenders appointed by the state (so-called public defenders) whose independence is questionable is frequently employed by the authorities.

“ There is a big problem with public defenders. They are involved by the judge, while the defendants refuse to be represented by them. In some cases, we are already appointed lawyers, but the judge nevertheless appoints a public defender. (Tigran Yegoryan, lawyer)

One of the lawyers interviewed felt that his professional activity is threatened by CoA's lack of independence. “The Committee does what the head tells them to do” he added. Several lawyers highlighted that this is an unprecedented and worrying development, as the frequent use of disciplinary proceedings against lawyers started only with the Sasna Tsrer trials. They are also concerned by the fact that when sanctions are imposed by the court, the CoA is legally obliged to initiate disciplinary proceedings.

INTERNATIONAL STANDARDS AND RECOMMENDATIONS

Lawyers can, of course, be subject to disciplinary liability. However, international human rights standards provide that they should not face sanctions for any action taken in accordance with their recognized professional duties, standards and ethics. According to the Basic Principles on the Role of Lawyers the state “shall ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference.”⁷⁸ Disciplinary proceedings against lawyers “shall be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court, and shall be subject to an independent judicial review.” According to the Council of Europe, lawyers should not suffer or be threatened by any sanctions or pressure when acting in accordance with their professional standards.⁷⁹ Disciplinary proceedings should be conducted with full respect of the principles and rules laid down in the European Convention on Human Rights, including the right of the lawyer concerned to participate in the disciplinary proceedings and to apply for a judicial review of the decision.

Principle 12 of the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems

“States should ensure that legal aid providers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; are able to travel, to consult and meet with their clients freely and in full confidentiality both within their own country and abroad, and to freely access prosecution and other relevant files; and do not suffer, and are not threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.”

⁷⁷ Interview with lawyer Aramazd Giviryan, 5 September 2017; Interview with NGO representatives, 7 September 2017.

⁷⁸ Principle 16 of the Basic Principles on the Role of Lawyers adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba 27 August to 7 September 1990.

⁷⁹ Council of Europe, Recommendation on the freedom of exercise of the profession of lawyer (2000).

Principle 27 and 28 of the UN Basic Principles on the Role of Lawyers

“27. Charges or complaints made against lawyers in their professional capacity shall be processed expeditiously and fairly under appropriate procedures. Lawyers shall have the right to a fair hearing, including the right to be assisted by a lawyer of their choice.

28. Disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court, and shall be subject to an independent judicial review.”

Disciplinary proceedings are a de facto consequence of the restrictions placed on accessing the courtroom as well as the court sanctions issued to lawyers for their absence at the trial. According to information gathered in the course of the mission, the use of disciplinary proceedings against lawyers is unprecedented and is closely related to the Sasna Tsrer cases. Although the vast majority of disciplinary proceedings have not yet been completed and therefore disciplinary sanctions have not been imposed, the lawyers are under constant threat of punishment, which could mean being deprived of the right to practice law. This can significantly hamper the defendants' rights to legal counsel and fair trial. The lack of any independent review of the CoA's decisions on disciplinary sanctions raises concerns as to the conformity of the Armenian law with international standards. For this reason, the mission recommends that the Armenian authorities and the CoA:

- ◇ Ensure that lawyers, regardless of criminal charges against the person they defend, can conduct their professional functions without intimidation, hindrance, harassment or improper interference;
- ◇ Ensure standards of fairness in disciplinary proceedings, so as to provide lawyers with the opportunity to contest the motions of the court and decisions on sanctions made against them through an independent judicial review;
- ◇ Ensure that disciplinary proceedings or other sanctions are not initiated and imposed on lawyers for reason of their refusal to undergo unclear security procedures exercised by court bailiffs;
- ◇ Ensure that disciplinary proceedings are not initiated against lawyers on account of their exercise of the right to freedom of expression.

Alleged targeting of lawyers outside the courtroom

In addition to restrictions on accessing the court buildings and during the court hearings, some interviewees were concerned about threats and violence they faced outside the court. The main concerns included phone surveillance, threats on social media, and “warnings” both from private persons and government agents.

Some lawyers were unsure as to the confidentiality of their phone conversations. At least four lawyers suspected that their phones had been tapped. One of them, Arayik Papikyan, recalled a situation when he and other colleagues were receiving phone calls supposedly from each other while sitting in the same room and not ringing anyone. Another lawyer recalled that when the conversation was intercepted by a third party, the voice changed and weird noises were audible.

Lawyer Arayik Papikyan also received threats to him and his family on Facebook, leading him to initiate criminal proceedings for interference with his professional activity. He also received “friendly warnings” from people who would warn that he had “crossed the line” and something “bad could happen” in connection with his involvement in the Sasna Tsrer cases.

Ara Zakaryan, who represents defendant Jirair Sefilyan, received a phone call from the National Security Services (NSS) and was invited to a meeting with an NSS representative. During the meeting, he was warned that something might happen to him or his family. He believed that the threats were made in connection with his defence activities in political cases in order to discourage him from defending Sefilyan.

*“ Since 26 July 2016, the harassment started against me. I was the first lawyer involved in the Sasna Tsrer case. I even was subjected to harassment in public places.
(Hayarpi Sargsyan, lawyer)*

Hayarpi Sargsyan, a lawyer defending one of the members of Sasna Tsrer group reported that she was harassed by a man in the street at the very beginning of her involvement in the Sasna Tsrer cases. The man followed her and at one point said that he would kill her. She also recalled that in October 2016 posts had appeared on Facebook stating that she was a government agent and worked against Sasna Tsrer. Those rumors reached Ashot Pertrosyan, Hayarpi Sargsyan's other client, who subsequently refused her services. What is more, at the beginning of 2017, some police officers tried to search her apartment without a warrant. She would not let the police in, arguing that her apartment is also her office and all her documents are kept there.

*“ On 28 June 2017 the police didn't allow the public to access the courtroom. One of the person was arrested, I said “I am his lawyer and will defend him”. They asked which rights were violated and they grabbed my hand and didn't allow me to approach him.
(Ara Zakaryan, lawyer)*

In addition to the incidents described above, on 28 June 2017 the police used force against lawyers in the courtyard outside the Court of General Jurisdiction of Avan and Nor Nork Administrative Districts of Yerevan. It was independently confirmed by both lawyers and journalists that police officers pushed Lusine Sahakyan, Inessa Petrosyan, Arayik Papikyan, Mushegh Shushanyan and Ara Zakaryan and prevented them from intervening to support a young man being taken to a police car.

RECOMMENDATIONS

Under international standards, including the UN Basic Principles on the Role of Lawyers, Armenia has an obligation to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment, or improper interference. Where lawyers are threatened due to their professional activities, the authorities must ensure they are adequately protected. Lawyers cannot be subjected to any physical violence, ill-treatment or impeded in the course of their professional activities.

The mission noted that the threats outside the courtroom as well as the physical violence were isolated incidents, however it is clear that such situations are not acceptable. If improper treatment occurs the authorities are obliged to carry out a prompt and impartial investigation into allegations of ill-treatment of lawyers and their relatives and hold those responsible accountable for the violations.

Other issues of concern

The objective of the mission was specifically to investigate the problems that lawyers face in performing their professional duties; however, other serious problems came to light. Although these will not be developed further in this report, the mission would like to list them here for potential future investigation.

One of the problems raised during interviews was the ill-treatment of defendants during proceedings. A number of lawyers stated that force was used towards their clients in the Sasna Tsrer cases.⁸⁰ In some cases force was used during arrest. In other cases defendants were reportedly ill-treated during the trial in the basement of the court building while serving a sanction or, in some cases were ill-treated in the court room with lawyers watching. There are also reports of beatings of defendants in detention facilities. Additionally, the defendants were prevented from seeing anyone apart from their lawyers.⁸¹

“ *If a defendant is beaten up in the court room and the judge does not react, he is breaking the law. The greatest violation against me is that my defendant was beaten in the court. (Hayk Alumyan, lawyer)*

Another problem raised concerned the health of the defendants, some of whom were seriously wounded in the course of events in July 2016. In particular, problems consisted of refusals to provide medical services to detainees or to take their medical conditions into account during trial.⁸²

Lawyers often mentioned the poor conditions in detention facilities and during transport. One of them noted that defendants were transported in metal vans. In the summer, they were kept in these vans in extreme heat for much longer than necessary. When defendants were brought into court they were often quickly removed from the courtroom for various reasons, including e.g. alleged disrespect for the court. For this reason, some of the accused refused to suffer the poor transport conditions and tried to refuse to attend court. They were nevertheless taken to court by force.⁸³

The extent of security measures in the Sasna Tsrer proceedings was also repeatedly raised by lawyers and other respondents, including:

- ◇ The glass wall separating the parties from the audience – Some interviewees noted that the wall prevented the audience from hearing the parties during the proceedings.⁸⁴
- ◇ Police presence – Police officers are present in large numbers both inside and outside the court. In the court building, the police create a cordon surrounding the parties behind the glass wall, and are present among the audience, some wearing civilian clothing. The interviewees complained that sometimes the

80 Interview with lawyer Lusine Hakobyan, 5 September 2017; Interview with lawyer Hayk Alumyan, 4 September 2017; Also noted in an interview with Avetik Ishkhanyan, 8 September 2017;

81 Interview with lawyers Tigran Yegoryan and David Gyurjyan, 5 September 2017.

82 Interview with lawyer Hayarpi Sargsyan, 4 September 2017.

83 Interview with lawyer Tigran Hayrapetyan, 4 September 2017.

84 Interview with journalists from Armenia, 5 September 2017.

police interfere in lawyer-client communications. There is also uncertainty as to the legal basis for such a police presence in the court.⁸⁵

- ◇ List of trial attendees – As noted by some people we interviewed, attendees of the Sasna Tsrer cases are requested to fill in a form with details such as name, passport/ID number, relation to the defendant, address.⁸⁶ This was confirmed by two independent interviews with NGO representatives who are not engaged in Sasna Tsrer cases. The Legal Advocacy and Development Centre observed in its report that “this process creates an atmosphere of fear in a politically sensitive case.”⁸⁷

Conclusions and recommendations

The obstacles reported by lawyers in exercising their professional activities with regard to Sasna Tsrer cases are closely interconnected with existing deficiencies with the rule of law, separation of powers and judicial independence in Armenia. Since the beginning of the Sasna Tsrer trials, the authorities have introduced a series of questionable security measures which potentially threaten to undermine fair trial safeguards.

Lawyers play a crucial role in the judicial process, as they bear the responsibility for realization of the defendants’ rights in the proceedings. The Armenian authorities should take immediate measures to ensure that they are not obstructed or hindered in performing their professional duties.

Based on the findings of this report, we recommend that the Armenian authorities:

- ◇ Ensure the equal enjoyment of the right to a fair trial for defendants in the currently ongoing Sasna Tsrer cases;
- ◇ Make sure that lawyers representing defendants’ in the Sasna Tsrer cases are not hindered in the performance of their duties, in particular assisting their clients in court, and that they are able to make oral motions and submissions in the course of the trial;
- ◇ Adopt legislation which allows for a clear distinction between a security check and a search in the context of accessing court buildings;
- ◇ Organise the security procedures in a way which:
 - is not discriminatory, arbitrary or disproportionate, and which limits discretion in the Bailiffs’ Service’s decision-making process;
 - takes into account the particular status of lawyers and their importance for the administration of justice, ensuring respect for the defendants’ right to counsel, the attorney-client privilege and the dignity of the lawyers’ profession;
- ◇ Adopt legislation which prohibits officials from searching lawyers performing their professional duties, unless they are based on clearly formulated grounds and necessary in a democratic society to secure a

85 Reference published by the Legal Analysis and Development Centre, op. cit. Interview with Tigran Hayrapetyan and Harutyun Baghdasaryan, 4 September 2017.

86 Interview with journalists from Armenia, 5 September 2017.

87 Reference published by the Legal Analysis and Development Centre, op. cit.

legitimate aim, and do not prejudice the defendants' right to a fair trial, and in particular the attorney-client privilege;

- ◇ Ensure that defence lawyers, regardless of alleged crimes committed by the defendant, are able to conduct their professional activities without intimidation, hindrance, harassment or improper interference by the state;
- ◇ Ensure that standards of fairness are upheld at all times in all disciplinary proceedings, so as to provide lawyers with the opportunity to contest the motions of the court and decisions on sanctions made against them through an independent judicial review;
- ◇ Ensure that disciplinary proceedings or other sanctions are not initiated or imposed on lawyers for refusals to cooperate with checking procedures carried out by court bailiffs;
- ◇ Ensure that disciplinary proceedings are not initiated against lawyers on account of them exercising their right to freedom of expression;
- ◇ Carry out a prompt and impartial investigation into the allegations of ill-treatment, threats and intimidation of lawyers and their relatives and bring those responsible to account.

