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PERMANENT MISSION  
OF THE REPUBLIC OF ARMENIA

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The Permanent Mission of the Republic of Armenia to the United Nations Office and other International Organizations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights and, with reference to the Communication from the Special Rapporteur on the Independence of Judges and Lawyers dated 28 June 2019, has the honour to transmit the response received from the Government of the Republic of Armenia.

The Permanent Mission of the Republic of Armenia to the United Nations Office and other International Organizations in Geneva avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights the assurances of its highest consideration.

*Enclosed: 12 pages.*

*Geneva, 25 September 2019*



The Office of the United Nations High Commissioner for Human Rights  
Geneva

**Reply of the Republic of Armenia**  
**to the communication from Special Rapporteur on the Independence of Judges and Lawyers**  
**dated 28 June 2019**

The competent Authorities of the Republic of Armenia namely the Ministry of Justice, the General Prosecutor's Office and the Police thoroughly examined the communication from Special Rapporteur on the Independence of Judges and Lawyers dated 28 June 2019. The following information has been received in connection with regard to the questions contained in the communication:

**Ministry of Justice**

(a) As it is mentioned in the 5<sup>th</sup> paragraph of the communication, "Mr. Kocharyan, who held the post of Armenia's president from 1998 until 2008, is charged with overthrowing the country's constitutional order during the *post-electoral unrest* in 2008, when ten people, including eight civilians and two police officers, died in *the violent clashes* disputing the outcome of the presidential elections." [the *italic* is ours].

For the precise comprehension of the situation, it is important to provide clarifications on the historical background and political implications of the events and to underline certain fundamental facts.

While addressing the events of March 1, 2008, it is essential to refer to the statements of authoritative international organizations and several rulings of the European Court of Human Rights which affirm that in February 2008, after the presidential elections held in Armenia, people who did not trust the election results started peaceful assemblies and protest rallies.

Thus, the report of the OSCE/ODIHR Election Observation Mission<sup>1</sup> noted: "While the 2008 presidential election mostly met OSCE commitments and international standards in the pre-election period and during voting hours, serious challenges to some commitments did emerge, especially after election day. This displayed an insufficient regard for standards essential to democratic elections and devalued the overall election process. In particular, the vote count demonstrated deficiencies of accountability and transparency, and complaints and appeals procedures were not fully effective. [...] Many local government officials actively campaigned for Prime Minister Sargsyan, some whilst performing official duties. There were accounts of local government employees and public-sector workers being obligated to attend Prime Minister Sargsyan's campaign events. This conflicted with legal provisions, blurred the separation of party and State, challenged equal campaign opportunities, and raised concern that citizens could face retribution for their electoral choices. [...] The vote count was assessed as 'bad' or 'very bad' in some 16 per cent of polling stations."

Referring to the events following the election day, the report clearly stated that the assemblies were peaceful: "From 21 February, Mr. Ter-Petrossian's supporters commenced a peaceful protest in central Yerevan. On 1 March violent clashes occurred between protestors and police. Ten persons lost their lives, and some 200 people were injured, including police officers. President Kocharian

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<sup>1</sup>OSCE/ODIHR Election Observation Mission Report, 2008 <https://www.osce.org/odihr/elections/armenia/32115?download=true>. pp.2-3.

declared a state of emergency in Yerevan city, which inter alia imposed a ban on rallies and gatherings and de facto censorship. Subsequently, some 130 persons were arrested and some 100 criminal cases opened.”<sup>2</sup>

Moreover, the report<sup>3</sup> of the Commissioner for Human Rights of the Council of Europe Thomas Hammarberg, who immediately paid a visit to Yerevan after the March 1 events, also clearly estimated, that post-electoral rallies were peaceful and police and military forces were brought to the city to disperse the peaceful protests. In this regard, the report specifically stated: “After nine days of peaceful demonstrations on the Opera square, the national police and military forces tried to disperse the protesters on March 1”. By the way, the same was recorded by numerous human rights organizations.

The judgements of the European Court of Human Rights on cases of “Mushegh Saghatelyan v. Armenia”<sup>4</sup> and “Ter-Petrosian v. Armenia”<sup>5</sup> also indicated that the rallies were peaceful and the people exercised their fundamental right to peaceful assembly.

To summarize, the presidential elections of 19 February 2008 were falsified, and the people protesting against it were exercising their fundamental right to freedom of peaceful assembly and freedom of expression, but the authorities of the day with the use of police and military forces brutally dispersed the peaceful assembly on 1 March 2008 and oppressed the freedom of expression. As a result of that actions of the authorities, 10 persons have been killed in the center of Yerevan, and many persons got injuries of various degree. Upon the order of the President Kocharyan the troops were brought to the city center, in direct contradiction of the Constitution of the Republic of Armenia. Afterwards, a state of emergency was declared with the most serious restrictions of the rights of individuals, as well as political persecutions and imprisonments were carried out in a consistent manner against the participants and organizers of the rallies.

These facts were reflected in the 1609 (2008) PACE Resolution of 2008<sup>6</sup>.

(b) In relation with Prime Minister’s statement of 19 May 2019, it is necessary to note, that after the peaceful popular Velvet Revolution, the newly elected Prime Minister Nikol Pashinyan, from the very first day of assuming the office, raised the issues of the restoration of the independence of judiciary and of public trust towards judicial system.

According to the international rating indices<sup>7</sup> and various reports<sup>8</sup>, estimating the independence of courts, independence of the judiciary in Armenia has been a serious challenge for many years despite the reforms lasting for two decades.

Moreover, in a special report<sup>9</sup> on the “Right to a fair trial” of the Human Rights Defender of the Republic of Armenia from 2013, based on a large number of quantitative and qualitative data on court cases and other materials, the facts of the influence/pressure on judges both from the higher courts and the executive branch have been thoroughly analyzed as well as the bribe schemes and “customary” fees have been brought for specific types of cases, indicating the share of the each

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<sup>2</sup> Ibid, p. 3.

<sup>3</sup> Commission for Human Rights Report, 2008, <https://rm.coe.int/16806db879>

<sup>4</sup> ECHR Judgement, 2018, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-186114%22%5D%7D>

<sup>5</sup> ECHR Judgement, 2019, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-192653%22%5D%7D>

<sup>6</sup> PACE Resolution, 2008, [http://assembly.coe.int/nw/xml/XRef/Xref\\_XML2HTML\\_en.asp?fileid=17643&lang=en](http://assembly.coe.int/nw/xml/XRef/Xref_XML2HTML_en.asp?fileid=17643&lang=en)

<sup>7</sup> i.e. [http://reports.weforum.org/pdf/gci-2017-2018-scorecard/WEF\\_GCI\\_2017\\_2018\\_Scorecard\\_EOSQ144.pdf](http://reports.weforum.org/pdf/gci-2017-2018-scorecard/WEF_GCI_2017_2018_Scorecard_EOSQ144.pdf)

<sup>8</sup> i.e. <https://freedomhouse.org/report/freedom-world/2018/armenia>

<sup>9</sup> <https://www.ombuds.am/images/files/2ddebfe4a4ecb335d3cfd24f3cef719e.pdf> (in Armenian)

instance judge in the mentioned bribe scheme. Obviously, after this report, the Ombudsman has resigned under the political pressure.

The Government formed after the revolution proclaimed the rehabilitation of judicial system and the fight against corruption as its priority, due to the fact that over two decades the deficit of justice, systemic human rights violations, as well as the level of systemic and political corruption were the key factors to condition the upheaval and the justified demand for changes from the Armenian people in spring of 2018. It is indicative that the political force, who claimed that received more than 46% of “vote of confidence” in the 2017 parliamentary elections a year earlier, received less than 4% of votes in the early parliamentary elections only 20 months later<sup>10</sup>.

In May 2018, immediately after assuming the office, Prime Minister Pashinyan addressed the public and the representatives of judiciary mentioning that during the first weeks the new Government received calls from judges of different instances asking for the Government's position on the investigation of particular cases, which manifested how commonly the telephone justice had been exercised. In the same message Prime Minister Pashinyan noted that no call, no impact on the judicial system would be imposed by the executive powers onwards, and the judges should use the new situation to exercise their real independence for the sake of promoting justice. However, over the subsequent 12 months it has been confirmed through a number of cases that although the executive and legislative authorities did not influence the judiciary, the independence of the judiciary continued to be under the serious risk as the former authorities, who had many proven and objectively plausible connections, continued to influence the judicial system.

Referring to Prime Minister Pashinyan's statement from 19 May 2019, and taking into account the overview presented, the Government assures that it has not been directly connected to the case of former President Kocharyan, rather that was a call for symbolic action to show that the independence of the judiciary was still in danger, that public confidence towards courts was not improved in any way and this all should become a basis for the institutional and long-term reforms.

(c) Some clarification is also essential with regard to the following wording in the communication (page 2): “In a public address aired live on Facebook [...] the Prime Minister threatened the adoption of a number of measures against the judiciary, including the establishment of a transitional justice system, the vetting of all judges and the adoption of various measures to force the judges who belong to the “old political system” [...] to resign”.

First, in that address and with regard to the court acts in general, Prime Minister Pashinyan refused to give any evaluation stating that it was not a prime minister's job to give such an evaluation. “Nonetheless, it seems to be obvious that the judiciary's decisions are unacceptable to the public: I am stating this not just as a prime minister, but also as a representative of the Armenian people who has the political right to speak on behalf of the people, that is on behalf of the highest power in Armenia”, added the Prime Minister.

Moreover, referring to the allegations against courts on serving the interests of this or that group, the Prime Minister clearly stated that the investigation of such allegations was another problem, but one thing was clear that the judicial power had no public confidence, so there was a problem with its legitimacy and this became a threat to the country's development and national security. Simultaneously, the Prime Minister noted that although he was loyal to his statement of non-

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<sup>10</sup> <https://www.osce.org/odihr/elections/armenia/413555?download=true>

interference in the judicial system, he was unfortunately unable to guarantee the non-interference of other people, especially he was unable to guarantee the exception of the practice of influence of former corrupt officials on the courts, which were based on many personal, political and other connections.<sup>11</sup>

Concerning the issues of the “establishment of transitional justice” or “the vetting of all judges”, then the essence of the announcements on this topic made by the Prime Minister both in the May 20 address, as well as in his statements before or after May 20, is that there is a problem of distrust, there are various accusations about relations and influences, as a result of which the fundamental right to fair trial by an impartial tribunal is not provided, so these questions should be addressed and the tools of transitional justice on the road of the recovery of judicial system and restoring trust can also be considered to be useful. In other words, the possibility of implementing vetting measures and tools of transitional justice mentioned by the Prime Minister was not an end to itself, rather, according to him, they should be inclined to the solution of those problems which should be implemented in line with the Constitution and the country’s international commitments.

Within the next few weeks, a number of discussions were held with the involvement of competent authorities, Human Rights Defender, consultations were held with high ranking officials of the structures of the Council of Europe<sup>12</sup>. The Prime Minister suggested involving international partners in developing the works of reforms initiated by the authorities from the very beginning of the process<sup>13</sup>.

This suggestion was accepted by various bodies of the Council of Europe<sup>14</sup>. Currently the Ministry of Justice of Armenia has set out to develop long-term and short-term strategies of reforms. As primary short-term problems the questions of clarifying and expanding the grounds for the disciplinary proceedings of judges, as well as questions concerning the efficient mechanisms for checking the integrity of judges as well as illegally acquired properties of judges have been targeted. More detailed information will be presented below.

(d) Referring to statement by the co-rapporteurs of the Parliamentary Assembly of the Council of Europe on May 21, 2019 for the monitoring of Armenia, apart from the citation mentioned in the communication (page 2), it was also noticed: ““However, we recognise that the reaction of the public to this court decision underscores the still low level of public trust in the judiciary. Judicial reforms remain a priority and we welcome Prime Minister Nikol Pashinyan's stated desire for far-reaching reform of the judicial system, particularly with regard to the fight against corruption, as well as his wish to associate the Council of Europe with it”<sup>15</sup>

(e) Referring to the statements made on May 19 by other stakeholders, particularly Human Rights Defender, Supreme Judicial Council and other organs, they should be evaluated in the general context of developments and their assessments. For example, the statement of the Ombudsman made on May 19 was succeeded by his meeting with the Council of Europe high-level delegation on May 31, during which he mentioned about the problems of independence of courts in the judicial system and the lack of trust of citizens towards the judicial system and expressed readiness to

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<sup>11</sup>[https://www.primeminister.am/en/statements-and-messages/item/2019/05/20/Nikol-Pashinyan-Speech/?fbclid=IwAR3fqiJIKVQxR-6l90piQ0vc2S0pAndoBo\\_z6QW9DgVAgbR-M2xwEhm9mE](https://www.primeminister.am/en/statements-and-messages/item/2019/05/20/Nikol-Pashinyan-Speech/?fbclid=IwAR3fqiJIKVQxR-6l90piQ0vc2S0pAndoBo_z6QW9DgVAgbR-M2xwEhm9mE)

<sup>12</sup> [https://www.primeminister.am/en/press\\_release/item/2019/05/31/Experts/](https://www.primeminister.am/en/press_release/item/2019/05/31/Experts/)

<sup>13</sup> <https://www.coe.int/en/web/portal/-/council-of-europe-to-send-experts-to-yerevan>

<sup>14</sup> <https://armlur.am/907885/> (image)

<sup>15</sup> <http://assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=7488&lang=2>

support the Government and the Parliament within his jurisdiction in the fight against corruption and issues of judicial reforms, particularly when there are problems in the field requiring urgent solutions.<sup>16</sup>

Concerning the statement made by the Supreme Judicial Council on May 19, then it was succeeded by the resignation of the Chairman of the Supreme Judicial Council on May 24, and resignations of other members succeeded a few days later. It's quite indicative also, that in the statement made by the General Assembly of Judges of Republic of Armenia<sup>17</sup> on May 27, it was mentioned that the General Assembly of Judges highlights the importance of the right to the freedom of opinion enshrined in the Constitution, and any reasonable criticism as a means of expressing opinion freely is acceptable for the judicial authority, as it gives the opportunity to correct the mistakes. It is also recorded in the statement of the General Assembly of Judges that the inaction of the Supreme Judicial Council does not express the collective will of the judicial system and that body does not practically guarantee the independence of judges.

In other words, in considering the events only within the context of May 19 and 20, there may objectively be an impression that some parties have commented on the Prime Minister's statement at least as "interference" or "interference-seeking" experience, but the statements and events of the following days referred above, as well as the investigation of assessments made by the international organizations during the last decades makes it obvious that this was a case of a statement from responsible political official to attract everyone's attention on the problem of decades and a reasonable tendency of giving solution to the problems through reforms.

(f) Concerning the allegations that criminal cases have been brought specifically against former political officials, it should be noticed that while in the fight against corruption launched by a political power determined to uproot political, systemic corruption and nepotism of more than twenty 20 years, it might be quite logical that within the first year of the activities most of the cases would be brought against the former officials since within last two decades the former political power had been appointing its representatives in key positions endowing them with an authority to make decisions about the usage of public and state resources.

Meanwhile the Government finds it important to mention that the fight against corruption didn't circumvent the officials appointed under Pashinyan's government, in the cases where the law enforcement bodies had sufficient evidence, like the case brought against the former Deputy Minister of Health<sup>18</sup>.

In addition, it would be appropriate to mention also the criminal cases brought against the Head of the State Control Service and senior officials of that service<sup>19</sup>, the officials from the State Revenue Committee<sup>20</sup> etc.

So, the assertion that cases are brought only or specifically against the representatives of former authorities does not hold any ground.

(g) Concerning the assumption that "a number of judges dealing with the Kocharyan's case recused themselves following Mr. Pashinyan's alleged threats against the judiciary", it must be noted the

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<sup>16</sup> [https://www.ombuds.am/en\\_us/site/ViewNews/793](https://www.ombuds.am/en_us/site/ViewNews/793)

<sup>17</sup> <https://www.aravot.am/2019/05/27/1046028/> (in Armenian)

<sup>18</sup> <https://www.panorama.am/en/news/2019/07/08/Ex-Armenian-deputy-health-minister-bribery/2137891>

<sup>19</sup> <https://a1plus.am/en/article/338325>

<sup>20</sup> [https://arka.am/en/news/society/armenian\\_state\\_revenue\\_committee\\_officers\\_arrested\\_as\\_they\\_receive\\_bribe/](https://arka.am/en/news/society/armenian_state_revenue_committee_officers_arrested_as_they_receive_bribe/)

following:

First, during one of the court hearings of Kocharyan's case and other former officials, it was Robert Kocharyan himself that urged the judge to recuse himself, mentioning that "he feels bad that such a negative attitude has been formed against the judge appointed by him and that it is not good to acquire such a reputation after being in the system for years"<sup>21</sup>.

Besides that, an application of self-withdrawal was presented to the third judge dealing with Kocharyan's case by one of his lawyers, mentioning that there is a friendly relationship between him and the presiding judge or his family<sup>22</sup>. Furthermore, Robert Kocharyan has demonstrated pressure and indecent behavior against the public prosecutor.

These examples attest that the former President and the representatives of his defense team, among whom is a former Deputy Minister of Justice, use the fact that certain judges have been appointed by him during his presidency or use their relations to make pressure on the "undesirable" judges.

(h) Summarizing the above mentioned and in reply to the questions of the Special Rapporteur in his communication, the Government notes:

1) The statement of Prime Minister Pashinyan on May 20 was of indicative and symbolic significance, through which an attempt was made by a politician and responsible official to demonstrate once again that judges are under serious pressure by the representatives of the former regime, who make a real influence on them through various relations established during the past decades.

In no way can that statement be interpreted as a "pressure" or "impulse" in connection with a specific trial. Such claims have no grounds and are used by certain circles with a far-fetched aim to create a possible atmosphere of condemnation by international community in order to undermine the judicial reforms and the fight against corruption efforts of the government. It also uses a pressure factor in trying to succeed in a certain court case at a national level.

2) Even the statement made by the General Assembly of Judges confirms the existence of the above-mentioned problem, that this perception is present among the judges themselves and the judicial system in general welcomes the process of recovery.

4) Coming to the phenomenon of so called "telephone justice", unfortunately it should be recorded that although there are no representatives of either executive or legislative bodies on the other end of the telephone, it does not mean that the representatives of the former regime, who have brought the so-called telephone justice to perfection, will not continue using that phone. The new Government of Armenia has been made sure of the existence of such system by a great number of phone calls received from judges, directed to specific cabinets.

The road to eliminating these or other vicious practices, recovering the judicial system and reaching the trust of the public, the Government sees through the judicial and anticorruption reforms. During this time a very effective cooperation was established with the specialized bodies of the Council of Europe, including the Venice Commission, as well as with UN Development Program and the European Union.

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<sup>21</sup> <https://a1plus.am/ru/article/342174> (news in Russian)

<sup>22</sup> <https://www.panorama.am/am/news/2019/06/18/Ռեբրոս-Քոչարյանի-զոնձու-դատավոր/2129741> (news in Armenian)

With the participation of international partners, representatives of civil society and competent authorities the Government now finalizes the reform packages in these two directions. In September the strategic documents will be confirmed, and during the autumn session core legislative packages would be presented to the National Assembly, which will include but will not be limited to the amendments to the Judicial Code, to the Laws on Corruption Prevention Committee and Public Service and to the adoption of new law on Anti-Corruption Committee.

The Armenian Government ensures that it will take all possible measures to prevent any offence, as well as to act in connection with applying liability envisaged by the legislation in case of offences, and the best way to exclude their reoccurrences are long-term and comprehensive reforms, which are now on the agenda.

As a long-time supporter of the mandate of the Special Rapporteur on the Independence of Judges and Lawyers, the Government of the Republic of Armenia reaffirms its readiness and commitment to provide any further information required which will be useful within the framework of implementation of the mandate and also wants to express its gratitude for the references attached to the communication, which will be duly studied in the process of developing and implementing reforms.

### **General Prosecutor's Office**

On 19 May 2019, Prime Minister of the Republic of Armenia Nikol Pashinyan posted on his Facebook page that he would make an important statement on the next day, May 20, on the situation of the judiciary and the establishment of people's democratic power in this area as well. On the same day, Nikol Pashinyan posted a second post on his Facebook page urging Armenian citizens to block all court entrances and exits in the Republic of Armenia on May 20 from 8.30am. onwards<sup>23</sup>.

On 20 May 2019, starting 8.30am. various groups of citizens gathered in front of a number of Armenian courts blocking their entrances and exits.

On the same day at noon, Prime Minister of the Republic of Armenia Nikol Pashinyan came up with the statement on the judicial system. He particularly mentioned that the Republic of Armenia had never had a judiciary enjoying the trust of the people and the judiciary's activities are still fostering major upheavals in our society. He also noted that from the very first day of his election as Prime Minister, he abided by the principle of non-interference with the proceedings of the judiciary, on the other hand, unfortunately, he could not guarantee that the judicial system would not be exposed to shady and illegal influences, that is why he proposed the vision of reforming and improving the judicial system, which consisted of 5 points. At the end of the statement, Nikol Pashinyan commented on the purpose of his public call to block the entrances of the courts of the Republic of Armenia from early morning. According to him "... the key symbol of this action is that there cannot be a judicial system in Armenia that does not enjoy the people's trust; otherwise even the best-grounded rulings will be perceived as an insult because verdicts are made on behalf of the Republic of Armenia, i.e. the people of the Republic of Armenia. Court rulings should only be issued by those who have an institutional right to speak on behalf of the Republic of Armenia, that is, the people of

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<sup>23</sup> <https://hetq.am/hy/article/103816> , <https://www.azatutyun.am/a/29951009.html>

the Republic of Armenia”.<sup>24</sup>

Concluding his statement, Nikol Pashinyan sent a live message mediating his Facebook page to the citizens who have blocked the court entrances calling to end blocking of all the court entrances and exits beginning from 1.30pm. In the same statement he mentioned that the action served its purpose proving that there is a genuine demand for a truly independent judiciary in Armenia and that the people and government are united in it. According to Nikol Pashinyan another purpose of the action was to show the public outrage over the existence of an unjust judicial system. Noting that some judicial cases have been prolonged because of the action, Mr. Pashinyan apologized to the citizens for it and expressed hope that, “They state that the purpose of this action is not to impede the protection of their rights, but to create institutional guarantees that these rights do not depend on the whims of any government.”<sup>25</sup>

Following Nikol Pashinyan's public call the citizens ended blocking of all the court entrances and exits on the same day at about 1.30pm. and the normal operation of the courts continued.

As a result of blocking court entrances, citizens received reports on the exercise of their rights by 1 judge, 4 lawyers, and by the Chief of Staff of the Constitutional Court of the Republic of Armenia.

Reporters requested to institute a criminal case and to conduct an investigation of the acts of the relevant persons in order to find out the existence of the crime characteristics provided for in Articles 300.1, 309, 316, 332, 332.3 and 343 of the Criminal Code of the Republic of Armenia.

There have been reports of the same circumstances through the mass media. The reports were sent to the Special Investigative Service of the Republic of Armenia by the General Prosecutor's Office for the purpose to verify those facts and obtain a legal assessment through criminal procedure.

The Special Investigation Service of the Republic of Armenia has prepared materials in accordance with Articles 180-181 of the Criminal Procedure Code of the Republic of Armenia and the following has been found out:

On the same day of Nikol Pashinyan's statement to block all the court entrances and exits (on 19 May 2019), the Judge of Yerevan City Court of General Jurisdiction [REDACTED] responded: “I'm going to work. If the entrance is blocked, I will try to enter the building. I will explain that no one can do such things and disrupt the work of the court”<sup>26</sup>. On the following day, 20 May 2019 at about 9am., [REDACTED] really tried to get to his workplace at the Court of Shengavit of the General Jurisdiction of Yerevan, and seeing that a group of citizens blocked the main entrance of the court he left the entrance and tried to enter the building through a window. The people, who gathered there, noticed it and did not let him in and pulled him back. A few seconds later after descending from the window still, [REDACTED] slipped and fell and then he stood up and left. A video posted on the Internet revealed that [REDACTED] fell because of the slipping and not because of the contact.

It is also noteworthy that [REDACTED], seeing that the court entrance was blocked, still

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<sup>24</sup> <https://www.yerepouni-news.com/2019/05/20>

<sup>25</sup> <https://168.am/2019/05/20/1124990.html>

<sup>26</sup> <http://henaran.am/418880.html>

wanted to enter the court building through a window, which is not related to the exercise of his judicial powers. The dissatisfaction expressed by [REDACTED] on the blocking of court entrances on the previous day, as well as his statement (“I’ll try to get into the building”), indicated that he wanted to do the opposite action by getting into the court building through a window which resulted in the reaction by the citizens.

During the preparation of the materials it was referred to the issue of the crime characteristics provided for in Article 301 of the Criminal Code of the Republic of Armenia and rightly concluded that there were no grounds for instituting a criminal case under this article, stating that, in the factual circumstances of the matter, the public statement of the Prime Minister was essentially a criticism of the judiciary and a suggestion to perform a specific action which had the significance of the rally, which made the proposed actions extremely temporary - just a few hours of exhortation and contained no exhortation or suggestion to carry out any violent action, under such circumstances there could be no question on both objective and subjective characteristics of the crime of publicly calling for the seizure of power, the violation of territorial integrity or the overthrow of the constitutional order.

It is also noteworthy that the public call for mistrust action towards the judiciary was limited to the exhortation or suggestion to voluntarily participate in the proposed action by the citizens and was in no way coupled with the use of any governmental authority or any kind of administrative leverage, thus there is no room for claiming about the objective characteristics of the abuse of official authority either.

The political statements and public calls to hold political action made by the Prime Minister of the Republic of Armenia or any other official did not also contain any objective characteristics of exceeding official authorities provided for in Article 309 of the Criminal Code of the Republic of Armenia.

As for Article 300 (1) of the Criminal Code of the Republic of Armenia, it establishes criminal responsibility for actions aimed at the overthrowing of the constitutional order of the Republic of Armenia, for the effective abolition of any of the norms provided for in Articles 1 to 5 or Article 6 (1) of the Constitution which is expressed by the termination of this norm in the legal system.

It should be stated that holding an action near the courts, as well as blocking the court entrances and exits for several hours by the participants of the action, cannot be considered as a constitutional failure, since the above-mentioned action lasted only a few hours and did not abolish and could not abolish the above-mentioned norms of the Constitution of the Republic of Armenia and the operation of the above-mentioned norms did not cease.

Reference was also made to the offense provided for in Article 225(1) of the Criminal Code of the Republic of Armenia, which provides a criminal responsibility for intentionally organizing mass disorder in violation of the procedure established by law.

Accordingly, the Law of the Republic of Armenia On Freedom of Assembly regulates the conditions and procedure for exercising and protecting freedom of assembly. According to Article 9 of the above-mentioned law, to conduct a public assembly (hereinafter, assembly), the organizer shall give written notification to the authorized body, with the exception of assemblies with up to 100 participants, urgent and spontaneous assemblies. According to Article 26, a spontaneous assembly

is the one that is conducted with the aim of reacting to an event immediately. Urgent is the assembly, which is organized and conducted with the purpose to urgently respond to an event, and this purpose cannot be attained under condition of following the time limit for presenting a notification. According to Article 27, spontaneous and urgent assemblies may not last longer than six hours.

According to the factual data obtained, it is necessary to state that the assemblies near a number of courts on the mentioned day were spontaneous and urgent, as through the protests citizens responded to the call of the Prime Minister and sought to immediately respond to the urgent issues concerning the judicial system. It's also quite noteworthy that the mentioned protest didn't exceed six hours.

It is also worth mentioning, that no grounds to institute criminal proceedings for obstructing the exercise of lawyer's authority were found, as the offence can be present in those cases when the actions of the offender are intended to interfere with or threaten the actions of the lawyer, connected with the exercise of their authority in a particular case.

The legislature has taken the same approach in defining the crimes impeding the implementation of justice (Article 332 of the Criminal Code of the Republic of Armenia) and showing disrespect for the judge (Article 343 of the Criminal Code of the Republic of Armenia): these offenses exist only in those cases, when the investigation of a particular case is interfered in any way and the judge is offended for the exercise of his official authority. At the same time, criticizing the activity of the court and law enforcement bodies and giving negative assessment to their decisions cannot be considered as interference.

According to the data obtained during the preparation of materials, the protests of blocking the entrances and exits of the court on 20 May 2019 were peaceful. The protesters expressed their dissatisfaction with the whole judicial system, not with the investigation of a particular case. Particularly, they demanded to reform and restore the whole judicial system, exclude any manifestations of corruption. Protesters expressed their complaint by blocking the entrances and exits of the courts, which was not intended to interfering with the authority of a particular judge or lawyer, especially to not allowing them to enter the building, offending them for the exercise of their authority, as well as influencing on a certain judicial case.

Concerning the actions of the police officers, on 20 May 2019 the entrances of the Court of General Jurisdiction of Kentron residence were blocked by 140 protesters, the number of which later turned to 300. Around 25 people had gathered and blocked the entrance of Shengavit residence, which then turned to 40, about 150 people had gathered near the entrance of the Constitutional Court and about 25 people blocked the entrances of the Administrative Court of Appeal (also the Administrative Court)<sup>27</sup>.

At the same time, it was found out, that few police officers were present near the court at that time. According to the explanations given by them, they urged and offered the protesters to vacate the entrances to the courts, but the citizens refused to do so. After all, the protest was peaceful and temporary, and after the Prime Minister's call, the citizens were dispersed.

In order to assess the legality of actions of the police officers, it's worth taking into consideration that according to the first part of Article 5 of Law on Freedom of Assembly, freedom of assembly may be restricted only if the maintenance of state security and public order in a democratic society,

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<sup>27</sup> <https://www.1in.am/2562974.html>

prevention of crime, protection of public health and morals, basic rights and freedoms (hereinafter referred to as the fundamental rights of others) take precedence over freedom of assembly.

However, in case of factual circumstances the necessity of such interference was completely absent. Moreover, pursuant to the second part of Article 32, if the assembly is peaceful, the police should assist it within its jurisdiction.

In such circumstances, the actions of the police were in line with the situation and do not contain any violations, and therefore do not have any characteristics of official crime.

So, with the verification of grounds for criminal prosecution based on the reports on blocking court entrances, it turned out that the data contained in them do not indicate the existence of the characteristics of the offenses discussed above, moreover, the cases described cannot be considered as events containing features of an offense because the incident was not directed against a particular judge or trial participant and did not relate to a specific criminal case, on the contrary, it was of a general character seeking to raise the issue of public dissatisfaction concerning the shortcomings in the field of justice, which means there was no intention to cause or violate any public relations protected by criminal law.

It is also worth noting that the right to participating in peaceful, weapon-free assemblies freely and the right to organizing them is guaranteed by the Constitution of the Republic of Armenia, so in the context of the constitutional fundamental principle of belonging to the people in the Republic of Armenia, it is the right of every citizen to express his indignation, disagreement for the activities of any authoritative body through relevant peaceful actions (protests), and the exercise of the right provided for by law cannot pose a public danger and cause any criminal consequences. What concerns the arguments concerning certain cases of violations, temporary restrictions on the rights of persons, it should be mentioned that criminal law protects public relations from causing any significant harm to them. Thus, the mere formal overlap of the features of an action with the features of an action prohibited by criminal law cannot lead to finding that action as of criminal character if no substantial damage was caused and could be caused to the public relations protected by criminal law.

Action is a process driven by the consciousness and will of the performer, which must be directed to the very outcome (the criminal goal) that results from the actor's action or inaction.

From this very point of view should it be assessed whether the action is legally less significant or not.

It means, that if the consciousness and will of the performer are directed not straight to the cause of the damage, then pursuant to part two of Article 18 of the Criminal Code, the action is considered less significant.

So, with the preparation of materials, it was revealed that the purpose of organizing and participating in the assembly was lawful, at the same time the protests aimed at achieving that goal were in some cases accompanied by actions causing non-significant damage (short-term blocking of entrances or exits of the court, etc.), which do not pose any public danger and are considered to be less important in criminal sense, thus even if the arguments on certain apparent violations used as grounds for the preparation of the material are confirmed, they cannot be considered as crime.

Based on the mentioned above, a decision was made to reject the criminal case on the grounds of the absence of a criminal case on 31 May 2019.

## **Police**

In connection with the 3<sup>rd</sup> question of the communication, the Police of the Republic of Armenia initiated all the appropriate measures to ensure the normal functioning of the courts on 20 May 2019 as well as the security was allocated to maintain public order in the adjacent territories of courts.

On 20 May 2019 an alert was received to the Mashtots division of the police from Yerevan city department of operative management center about the fact that the protesters have broken the window glass in the Ajapnyak residence of Yerevan Court of General Jurisdiction.

During the preparation of the materials, it was revealed that at the time [REDACTED] [REDACTED] was entering the court building through the window and the latter was closed from the inside, the inner layer of the glass got broken, about which [REDACTED] informed court bailiff [REDACTED]. The latter misunderstood what [REDACTED] had informed him, thinking that the window glass had been broken by the protesters gathered near the court. [REDACTED] refused to give any reports. According to the materials prepared on May 24, 2019, pursuant to Article 35 (1) (2) of the Criminal Procedure Code of the Republic of Armenia, a decision was made to reject the initiation of a criminal case.

No other materials have been prepared in the other police subdivisions. The police were not given any directives or instructions for illegal actions.

The police have maintained public order and secured public safety within the limits of the authorities entrusted to them by legislation.