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ՄՇՏԱԿԱՆ ՆԵՐԿԱՅԱՑՈՒՑՉՈՒԹՅՈՒՆ
PERMANENT MISSION
OF THE REPUBLIC OF ARMENIA

2203/1487/2023

The Permanent Mission of the Republic of Armenia to the United Nations Office and other International Organizations in Geneva presents its compliments to the UN Office of the High Commissioner for Human Rights and with reference to the June 12, 2023 AL ARM 1/2023 Joint Communication from Special Procedures has the honour to transmit hereby the attached information.

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 UN Office of the High Commissioner for Human Rights the assurances of its highest consideration.

Enclosed pages 7



Geneva, 8 August, 2023
A.H.

UN OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
Geneva

Information from the Republic of Armenia in response to the joint communication by the UN Special Rapporteur on the Situation of Human Rights Defenders, the Working Group on the issue of human rights and transnational corporations and other business enterprises, the Special Rapporteur on a safe, clean, healthy and sustainable environment, the Special Rapporteur on freedom of opinion and expression on subjecting journalist, environmentalist Tehmine Yenoqyan¹ to criminal liability

To ensure the implementation of the UN Convention on Access to Information, Public Participation in Decision-making and Access to Justice on Environmental Matters (hereinafter referred to as Aarhus Convention), the Ministry of Justice is co-operating with the Ministry of Environment and the national coordinator of the Aarhus Convention. In the framework of the Convention, it is envisaged to make legislative amendments to the law "On Public organisations" and the Code of Administrative Procedures of the Republic of Armenia, to eliminate the legal barriers that hinder non-governmental organizations involved in environmental protection from filing claims in administrative courts.

In the Republic of Armenia, activities concerning soil use undergo environmental impact assessment and examination. Any individual or organization is allowed to participate freely in this process and express their views regarding the proposed activity.

On 3 May 2023 the Parliament of the RA passed the law on Amendments to the Law "On Environmental Impact Assessment and Expertise" (hereinafter referred to as the Law). The law facilitates public engagement and improves the processes for notifications and public hearings. As per the law, the timeframes for public hearings following notifications have been extended, allowing for more time to submit written or electronic feedback, suggestions, and opinions by the public. The law also mandates that the initiator and authorized body consider the comments and suggestions presented during the hearings. The law further stipulates that in case comments are not taken into account, valid reasons must be provided for such a decision ([ԱԺ,03.05.2023,ՀՕ-150-Ե](#)).

Enokyan was a member of the Public Council adjunct to the Minister of Environment, thereby she had the opportunity to communicate her concerns directly to the Minister, as well as participated in the public hearings on the Law of the Republic of Armenia "On making an amendment to the Law 'On Amendments to the Law on Environmental Impact Assessment and Expertise'".

¹ Ms. Yenoqyan's surname is Enokyan, and her full name is Tehmine Mkhitari Enokyan.

In 2022, there were meetings held by the Minister of Environment, with persons engaged in environmental issues and around thirty representatives of environmental NGOs and initiating groups, with the participation of Tehmine Enokyan.

Article 44 of the RA Constitution grants the right to freely participate in peaceful, unarmed assemblies and to organize such assemblies. It also outlines the criteria for restricting the freedom of assembly.

In relation to this matter, Article 32 of the RA Law "On Freedom of Assemblies" delineates the responsibilities of the police during the assembly, while Article 33 of the same law outlines the reasons for halting the assembly.

Therefore, if the actions of the participants are in accordance with the existing legal regulations of the RA, the Police is responsible for ensuring the peaceful assembly can proceed without any obstruction or interference.

It should be noted that no criminal proceedings were investigated at the Investigative Committee of the Republic of Armenia from 2018 to 21 July 2023 with regard to commission of a *prima facie* criminal offence by Tehmine Enokyan and no public prosecution was conducted against the latter.

At the same time, the following criminal proceedings have been investigated (are being investigated) from 2018 to 21 July 2023 under the reports of crime filed by Tehmine Enokyan:

- criminal proceeding initiated under part 1 of Article 257 of the Criminal Code of the Republic of Armenia with regard to the incident of illegal taking of AMD 40000 from Tehmine Enokyan's bank card is examined at the General Department for Investigation of Particularly Important Cases of the Investigative Committee of the Republic of Armenia. The preliminary investigation into the criminal proceeding is pending;
- criminal proceeding initiated under part 1 of Article 264 of the Criminal Code of the Republic of Armenia with regard to the incident of cutting around 30 trees in the orchard belonging to Tehmine Enokyan in Gndevaz settlement, Jermuk Community, is examined at Vayots Dzor Marz Investigative Department of the Investigative Committee of the Republic of Armenia. The preliminary investigation into the criminal proceeding is pending;
- criminal proceeding initiated under part 1 of Article 164 of the Criminal Code of the Republic of Armenia of 2003 with regard to the incident of hindering the professional activities of journalist Tehmine Enokyan in 2018 is examined at the Investigative Division of Kentron and Nork-Marash Administrative Districts of the Investigative Department of the city of Yerevan of the Investigative Committee of the Republic of Armenia;
- The preliminary investigation under the criminal proceeding was completed and it was

forwarded — along with the indictment — to the court with regard to charges against [REDACTED] [REDACTED] under part 1 of Article 164 of the Criminal Code of the Republic of Armenia (YeD/0456/01/18);

- 4 criminal proceedings were examined at the Investigative Division of Avan and Nor Nork Administrative Districts of the city of Yerevan of the Investigative Committee of the Republic of Armenia, which were joined into a single proceeding. The indicated criminal proceedings were initiated under part 1 of Article 334, part 1 of Article 335, part 1 of Article 194 of the Criminal Code of the Republic of Armenia and point 1 of part 2 of Article 185 of the Criminal Code of the Republic of Armenia of 2003 with regard to the [REDACTED]
[REDACTED]

- The criminal proceeding was forwarded — along with the indictment — to the court on the charge against [REDACTED] under part 1 of Article 194, points 6 and 7 of part 2 of Article 194 and part 1 of Article 335 of the Criminal Code of the Republic of Armenia (YeD/0643/01/23);

Besides, a part was severed from the above-indicated criminal proceeding under point 2 of part 2 of Article 264 of the Criminal Code of the Republic of Armenia, the preliminary investigation into which is pending;

- On September 14, 2018, the Jermuk Police Department received a telephone letter from the RA Police Department of Criminal Investigation, stating that Ms. Enokyan has filed a police report to the RA Police General Department of Criminal Investigation on 11th September 2018. In her report, Ms. Enokyan alleged that between July 1 and August 10, unknown individuals had been monitoring her activities at her residence. They collected personal data related to her private life, contacts, and photos that she considered to be confidential. Subsequently, these individuals distributed the collected information through the "Vahagn Hovhannisyan" personal page on Facebook.

Based on Ms. Enokyan's report, a criminal case (No. 35152418) was initiated under Article 144 of the former RA Criminal Code. The case was forwarded to the Vayots Dzor province Investigative Department for a preliminary investigation. On February 25, 2019, in accordance with Article 35 part 1 clause 2 of the former Criminal Procedure Code of the Republic of Armenia, a decision was made to dismiss the criminal case due to the absence of criminality in the actions reported by Ms Enokyan.

Within the scope of the criminal proceeding examined in 2018 under part 4 of Article 258 of the Criminal Code of the Republic of Armenia of 2003 at Vayots Dzor Marz Investigative

Department of the Investigative Committee of the Republic of Armenia, the circumstance indicated in Tehmine Enokyan's application — publishing of the recording of her private conversation on "Facebook" was made a subject of examination and a legal assessment was given thereto, under which a decision was rendered on not conducting criminal prosecution upon the ground of point 1 of part 1 of Article 35 of the Criminal Procedure Code of 1998.

On May 20, 2018, at 16:55, the Jermuk Police Department received an alert from the Vayots Dzor Regional Department of the RA Police regarding a call received from a resident of Gndevaz village, Ms Tehmine Mkhitar Enokyan. Ms. Enokyan had notified the authorities that the construction activities conducted by "Lydian Armenia" had caused damage to the waterline in Gndevaz village, leading to the distribution of contaminated water to the community. In light of this, she urged for an investigation to assess the full extent of the damage and to ascertain whether the water was suitable for consumption.

During the verification process, no concrete evidence was discovered indicating any intentional destruction or harm to the water pipeline belonging to Gndevaz village. Instead, it was revealed that the damage had occurred due to the actions of a subcontractor providing services to "Lydian Armenia" CJSC during the execution of construction works. Fortunately, the damage did not result in any adverse effects on the community, and there were no instances of mass illness or poisoning of people. Consequently, the incident did not fall under the provisions of Article 287 of the RA Criminal Code.

Instituting a criminal case based on the materials prepared on the basis of Enokyan's alert call was rejected with the reasoning of absence of the incident of crime provided for by Articles 185, 186, 277 and 287 of the previous Criminal Code of the Republic of Armenia.

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On 2nd of May 2019 "Lydian Armenia" CJSC issued a statement on their official Facebook page, titled "Distortion of facts in the petition of Jermuk residents". A claim was made in the statement that on December 18th 2018 the Council of Aldermen of Jermuk had approved of the collective petition on "turning community of Jermuk an eco-economic area and prohibiting metal mining in the community". The decision was widely publicized through mass media and other public channels as being based on approximately 3000 signatures from Jermuk residents. Despite the government representatives deeming the council of Aldermen's decision unlawful, information persisted from different public sources that the people of Jermuk remained opposed to the Amulsar project.

As the issue of the "3000 signatures" was continually being manipulated, "Lidian Armenia" CJSC felt it was imperative to disclose the findings of the signature analysis to the public. The analysis revealed that the actual total number of valid signatures was 2654, rather than the previously claimed 3000. Additionally, it was discovered that 322 signatures came from individuals residing in areas such as Her-Her, Karmrashen, Kotayk region of Vayots Dzor province, Echmiadzin, Gyumri, Yerevan, and other areas, which were not part of the villages and towns affected by Amulsar project. Furthermore, 111 signatures were found to be duplicates on different pages, 325 individuals listed in the signatures did not reside at the provided addresses, and there were also 60 signatures from minors.

Many citizens have claimed that they had no knowledge of who signed the petition on their behalf or stated that they were asked to confirm their support for the Amulsar project by marking a plus next to their name which was later used as indication of their endorsement for the “turning community of Jermuk an eco-economic area and prohibiting metal mining in the community” project.

On the materials provided by the Jermuk police department, it was determined that although the employees of "Lidian Armenia" CJSC in the Jermuk municipality had access to leaflets containing personal data of citizens, which were attached to the collective register, they utilized this information to spread a statement on the Internet. However, it was concluded that the sheets attached to the collective register contained publicly available information. Therefore, the actions of the "Lidian Armenia" CJSC employees in collecting, storing, or distributing such information could not be classified as the collection, storage, or use of confidential information, and as a result, no criminal offense had occurred in this particular case.

Based on the provisions of article 35 part 1 clause 1, article 57, article 181 clause 2, and article 185 of the former RA Criminal Procedure Code and the materials that were prepared, a decision was taken to dismiss the initiation of a criminal case based on the report provided by the "Armenian Environmental Front" civil initiative. The decision was made due to the absence of elements constituting a crime under Article 144 of the RA Criminal Code.

[REDACTED]

During the criminal investigation conducted by the RA Investigative Committee, Ms Enokyan provided statements both as a witness and a victim concerning the purported offenses. The Vayots Dzor investigative department is presently looking into an incident involving the destruction of 714 cherry trees owned by Ms Enokyan in the Gndevaz settlement of Jermuk Municipality, Vayots Dzor province. This act was perpetrated by an unidentified individual and falls under the criteria described in the first part of Article 264 of the RA Criminal Code.

As of May 4, 2023, the aforementioned case has been allocated the criminal proceedings number 35102623.

Ms Enokyan was acknowledged as a victim in the above mentioned case and provided her testimony regarding the circumstances surrounding the incident. As part of this criminal proceeding, essential evidentiary and procedural measures are being conducted to ascertain the details of the case and to identify the individual responsible for committing the crime.

In the same investigative department, the authorities examined criminal proceedings No. 35200118, which was initiated under the provisions of Article 258 part 4 of the former Criminal Code of the Republic of Armenia. Within the framework of these criminal proceedings (No. 35200118), Enokyan was summoned and questioned as a witness during the trial. She provided her testimony regarding the circumstances of a dispute that occurred on August 27, 2018. The incident involved employees of "Lidian Armenia" CJSC and citizens who had been protesting against the operation of the Amulsar gold mine by the company since June 2018.

Ms Enokyan's report on the publishing of her personal correspondence on Facebook was also subject of investigation in the same proceedings. However, no evidence was discovered to indicate any acts which may constitute a crime in accordance with the Criminal Code of the Republic of Armenia.

The civil case (ԵՂ/1629/02/23) between Tehmine Enokyan and Zangezur Copper Molybdenum Combine CJSC is currently in the Court of first instance of Yerevan. A hearing of the case is scheduled for 28th September 2023.

Furthermore, in the case between Tehmine Enokyan and "Lydian Armenia" CJSC, the court of first instance of general jurisdiction of Ararat and Vayots Dzor provinces has partially satisfied the claim of Ms Enokyan on 15.12.2021. On July 22, 2022, the RA Appellate Civil Court rendered a decision to reverse and modify the judgment of the court of the court of first instance. On November 9, 2022, the RA Court of Cassation issued a decision to reject the cassation appeal. Therefore, the decision by the appellate court has entered into force and a writ of execution was drawn up on 28 November 2022.

According to Article 6, Part 1 of the RA Constitution, state and local self-government bodies and officials are authorized to perform only those actions for which they are authorized by the constitution or other laws of the Republic of Armenia.