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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 Joint Communication from Special Procedures (Ref.: AL ARM 2/2019), dated 18 April 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: 9 pages.

Geneva, 18 June 2019



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

REPUBLIC OF ARMENIA

Communication sent on 18 April 2019 by Special Procedures of the Human Rights Council

In response to the letter of April 18 2019 the Government of the Republic of Armenia would like to communicate the following:

After the Velvet Revolution (peaceful mass rallies and equally peaceful transition of power on April-May 2018) Armenia has achieved the highest standard of freedom of expression. One of the key factors of the Velvet Revolution was the widespread use of the Internet and social networks. Later on, the electoral campaign came up and on December 9, 2018 the early parliamentary elections were held. As stated in the ODIHR Election Observation Mission (EOM) final report, these elections “were held with respect for fundamental freedoms and enjoyed public trust”. One of the key factors of the election campaign was open public debate, including in the media. On December 5, 2018 the nine political parties and two alliances participating in Armenia’s upcoming parliamentary elections took part in a political debate on national television. The parliamentary debate was the first in the Republic’s history.

Armenia achieved unprecedented freedom of speech and considered to be “Free” according to **the Country Report 2019 of the Freedom House**.¹

However, the freedom of expression creates its own paradox: a society doesn't truly have freedom of speech if people are not allowed to make assertions that are distasteful or unpopular to the bulk of the population, yet these statements can be hurtful to others.

The dangerous volume of hate speech becomes even more alarming in the digital era, when social media may lead to unprecedented consequences. Nowadays, the public call for violence using abusive language, especially on social media, is widespread. It is a very sensitive issue not only in Armenia but all over the world, it is a challenge for the freedom of speech. Abusive language, harassment, and threats are a pervasive problem on social media.

Following his visit to Armenia in November 2018, the UN Special Rapporteur on the rights of peaceful assembly and association stated that “it is fundamental that as part of the effective measures that need to be put in place, the Government effectively combats hate speech and incitement to hatred towards minority groups, condemns the

¹ Country Report: Freedom House: <https://freedomhouse.org/report/freedom-net/2018/armenia>

use of discriminatory statements in public discourse, including by public figures and ensures security and safety of participants when reasonably required².”

Legal framework

According to Article 29 of the Constitution, any discrimination based on any ground such as sex, race, color, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property status, birth, disability, age, or other personal or social circumstances shall be prohibited.

It should also be noted that the development of new Criminal Code is now in its final stage of summarizing. Thus, in accordance with Article 307 of the Draft Criminal Code: “Inciting ethnic, racial, political, ideological or religious hatred, enmity or intolerance, as well as inciting hatred, intolerance or enmity towards another social group, is punished with a fine in the amount of 20-fold to 30-fold of the minimum wage or with public works, for one hundred or two hundred hours, or with the restriction of liberty for up to 2 years, or with imprisonment for a term of up to 3 years.” The same action committed by abusing official position, is punished with a fine in the amount of 300-fold to 500-fold of the minimum wage, or with imprisonment for up to 3 years with deprivation of the right to hold certain posts or practice certain activities for up to 3 years”.

The Ministry of Justice has already elaborated a draft law “On Ensuring Equality”³, the adoption of which is envisaged by the Action Plan for Human Rights Protection for the period 2017-2019. This law is to ensure equal opportunities for the implementation of the rights and freedoms of each individual and citizen without any discrimination. This Draft Law defines the concept of discrimination and its types, subjects and the mechanisms for ensuring equality before the law, as well as the status, objectives and activities of the Equality Council. It has to be mentioned that the Draft Law is in line with the principles set out in the EU Council Directive 2000/43 (Articles 2, 7 and 8), International Convention on the Elimination of All Forms of Racial Discrimination, as well as with the Article 1 of the protocol 12 of the European Convention on Human Rights. The Draft Law, in particular, envisages all grounds of discrimination prescribed in the abovementioned Article.

² Statement by the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletsossi Voule, at the conclusion of his visit to the Republic of Armenia: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23882&LangID=E>

³ Draft Law “On Ensuring Equality”:
https://www.equalrightstrust.org/ertdocumentbank/180311%20Equal%20Rights%20Trust%20-%20Law%20on%20Ensuring%20Equality%20-%20Armenia%20-%20Legislative%20Analysis_0.pdf

On May 4, 2017, the 2017-2019 Action Plan for Human Rights Protection of the Republic of Armenia was adopted by N 483-N decree of the Government. Point 26 of the Annex 1 of the Action Plan relates to the examination of the expediency of introducing possible models for hate speech criminalization in line with recommendations of CoE Committee of Ministers from 1997 and PACE 2007. This will create a solid base for legal amendments in the field of fight against hate crime and is expected to be implemented by the end of 2019.

On June 8, 2019 the MP from the ruling “My Step” faction Armen Khachatryan initiated the circulation of the Draft on the “Criminalization of the public call for violence” that later on will be added to the Criminal Code of the Republic of Armenia.⁴ The draft implies that the term “**real danger**” should be extracted when we speak about the public call for violence. Particularly, it proposes that the public offense of a person in connection with his duties shall be punished with a fine in the amount of 100-fold to 300-fold of the minimum wage or with an imprisonment. Although, the issue of the abuse of the freedom of speech is widespread, the Government initiates preventive mechanisms to overcome the obstacles and to protect people from the hurtful insults and abusive language.

The details of the procedures related to the cases of Lara Aharonian and Lilit Martirosyan will be provided below. The questionnaire of a series of special procedures were sent to the Police, Investigative Committee, The Ministry of Justice and to the Office of the General Prosecutor of the Republic of Armenia. The relevant institutions provided thoroughly all the information on the measures and procedures that were taken up by them to ensure that all the people are equal before the law and no case of abuse or hatred stays unnoticed.

With the use of the criminal procedures, 3 cases of alleged crime were checked, as a result of which 2 decisions were made to refuse to institute a criminal case and one case to initiate a criminal case. Thus:

1. Lara Aharonyan, Head of the Women's Resource Center Armenia NGO, on March 11, 2019 reported to the Police Main Department for Combating Organized Crime, that since January, 2019 various users of the Facebook social network have threatened her life and health through personal messages.

Lara Aharonyan, who gave explanations during the preparation of the materials, said that in 2003 she founded the Women's Resource Center Armenia NGO, which is engaged in the protection of women's rights. She then added that she

⁴Բ ռ ն ու թ յ ա ն հ ր ա պ ա ր ա կ ա յ ի ն կ ո չ ը ք ր ե ա կ ա ն ա գ ն ե լ ու ն ա խ ա գ ի ծ`
https://www.youtube.com/watch?time_continue=4&v=5sAkoJ5gIvA

was subject to offensive expressions, insults and sometimes threats in connection with her activities, that is why during that same year she appealed to the Central Department of the Yerevan City Police Department, where an appropriate procedure was filed for her complaint. Lara Aharonyan also informed that in December, 2018 during the pre-election campaign, acting Prime Minister of Armenia Nikol Pashinyan referred positively to her personality as a board member of "Trustees of the Civil Treaty Foundation", after which various users of Facebook began to threaten and insult her through personal messages, particularly, on January 23, 2019, a user named [REDACTED] sent a link containing a video of an image of a burning woman to Lara Aharonyan, saying that "you should be burnt with gas" in English, after which Lara Aharonyan blocked the user and he/she could no longer write to her. Lara Aharonyan also reported that on March 8, 2019 after her speech on "Women's Rights" at the National Assembly of the Republic of Armenia, somebody named [REDACTED] [REDACTED] insulted and threatened her through personal messages saying "we know where you live and who you are, be careful" as well as on March 9, 2019 along with the insulting expressions by the user named [REDACTED], she received the following message "(...) the whores like you should be burnt", and on the same day the user named [REDACTED] posted on his personal page a photo of Lara Aharonian with insults, which received the following comment "who will kill her?" by the user named [REDACTED]. **On March 20, 2019, according to the 1st Part of the Article 137 the criminal case was initiated, which on April 4, 2019 was sent to the Investigative Department of Arabkir administrative district of the Investigative Committee of the Republic of Armenia. A decision was made to recognize Lara Aharonyan as a victim.** The preliminary investigation is under way, investigative and other procedural actions are being taken to find out the circumstances. Within the framework of the initiated criminal case based on Lara Aharonyan's statements, for the period January 1, 2019 to March 21, 2019 the request was made to the "web.facebook.com" company for information on the personal pages of the Facebook users in the framework of the international cooperation.

2. On April 6, 2019, Lilit Martirosyan reported to the Central Department of Yerevan Police that the delivery guy of the "SAS" supermarket [REDACTED] [REDACTED] published the personal details of Lilit Martirosyan via Facebook. Later, somebody named [REDACTED] threatened to kill Lilit Martirosyan through the video via the same website. By the materials prepared in the Central Department of the Police, the data that was received on [REDACTED] the delivery guy from the "SAS" supermarket, about the using, storing, collecting and disseminating the personal and secret information on Lilit Martirosyan without the consent of the latter was unsatisfactory. Simultaneously, the alleged

acts of ██████████ contain no corpus delicti that is prescribed by the Article 137 of the Criminal Code of the Republic of Armenia, as there was no real danger that this threat would be carried out, that is why on April 16, 2019 according to the 2nd Clause of the 1st Part of the 35th Article of the Criminal Procedure Code the decision was made to refuse initiation of a criminal case. The complaint filed by Lilit Martirosyan's representative was rejected by the decision of the superior prosecutor on May 13, 2019. There is no data on filing a complaint against the above-mentioned prosecutor's decision. One month deadline for appeal is not yet over.

According to the 144th of the Criminal Code, the criminal case should be initiated in case of illegal collecting, keeping, use and dissemination of information pertaining to personal or family life. According to the 11th Article of the Law on Protection of Personal Data⁵, a regime of publicly available information of personal data (phone directories, address books, biographical directories, private announcements, declaration of income, etc.) may be established by the data subject's consent or in cases provided for by law. The name, surname, year, month and day of birth, place of birth, place of death, year, month and day of death, as well as the personal data which by conscious operations carried out by the data subject aimed at making publicly available becomes publicly available for certain scope of persons or public at large, shall be considered as publicly available. Information on the data subject, except for information provided by part 1 of this Article, may be removed from publicly available sources of personal data at the request of data subject or through judicial procedure. The data being processed on the basis of an agreement may be removed from publicly available sources of personal data by **mutual consent or through judicial procedure**. The addresses of citizens of the Republic of Armenia are publicly accessible and are posted on the official website of the Central Electoral Commission of the Republic of Armenia.

The body carrying out the proceedings, taking into account the provisions of the above-mentioned legal acts, found that the published information is not a subject of crime envisaged by the Article 144 of the Criminal Code. The specificity in this context means the circumstance that the offense threatens to cause the victim to be killed, causing serious health damage, or causing large-scale property damage. According to the Court of Cassation, the declaration of threats is also of no significance to the offense. The threat is considered to be real when the victim has enough grounds to be afraid of it. In other words, the victim should think that the threat is possible. **Although the subjective perception of the victim is crucial to assert that the threat is real, it is of paramount importance for the qualification of the offense, however the primary goal is to evaluate the objective situation.** Assessment of an objective situation

⁵ Law on Personal Data Protection: https://www.arlis.am/Annexes/4/Law_Personal_data_protection_EN.pdf

assumes that it is necessary to take into consideration such circumstances as the content of the threat, the way of threatening, the place and time of the crime, the nature of the relationship between the perpetrator and the victim, the identity of the offender and so on. The act prohibited under the Article 137 of the Criminal Code is characterized only by the direct intention. Meaning, the perpetrator realizes that by threatening to kill, causing heavy damage to his health, or threatening to destroy large amounts of property, will have a psychological impact on the victim, causing fear, distrust to the latter. The perpetrator also should **wish for the occurrence of latter consequences.**

3. On April 9, 2019 at 00:11, Lilit Martirosyan reported to the Central Police Division that a day before at 11:00 [REDACTED] a YouTube user, threatened to kill her. It was found out through the materials prepared in the Central Department of the Police of the Republic of Armenia, that the alleged acts of [REDACTED] contain no corpus delicti that is prescribed by the Article 137 of the Criminal Code, as there was **no real danger** that this threat would be carried out, that is why on April 19, 2019 according to the 2nd Clause of the 1st Part of the 35th Article of the Criminal Procedure Code the decision was made to refuse to initiate a criminal case. Lilit Martirosyan was properly informed on the decision and on the procedure defined by the 185th Article of the Criminal Procedure Code about the appealing the decision dismissing the initiation of criminal prosecution within 7 days.

In fact, regarding all of the above-mentioned cases, the appropriate measures have been taken under the Criminal Procedure Code.

A criminal case, filed on March 2, 2019 according to the Article 137 of the Criminal Code on the basis of Lara Aharonyan's report on March 11, 2019 at the Criminal Investigation Department of the Police of the Republic of Armenia, is examined in the Investigation Department of the Investigative Committee of the Arabkir district of Yerevan. The case concerns the death and damage to health threats against Lara Aharonyan by various anonymous Facebook users through personal messages since January 2019.

Lara Aharonyan has been recognized as a victim in the mentioned criminal case. During the preliminary investigation, the ID addresses of personal pages of the Facebook users who threatened Lara Aharonyan as well as other significant information have been found out. The Inquiry body has been instructed to identify the identity and location of the persons involved, as well as the request of the maintenance of the

information on personal pages was sent to the Facebook company, which later on was satisfied.

Currently, according to the Court decision on “Cybercrime,” based on the provisions of the European Convention, the request was sent to the U.S. authorized bodies in order to provide legal assistance. Particularly, request was sent to the Facebook company to find out about the registration data of the personal pages of Facebook users who were of utmost interest for the investigation as well as the IP addresses of the Internet access, the equipment numbers used when accessing the Internet and other identification data.

The preliminary investigation is still ongoing.

The Constitution of the Republic of Armenia

Article 29. Prohibition of Discrimination

Discrimination based on sex, race, skin color, ethnic or social origin, genetic features, language, religion, world view, political or other views, belonging to a national minority, property status, birth, disability, age, or other personal or social circumstances shall be prohibited.

Article 77. Prohibition of Abuse of Basic Rights and Freedoms

The use of basic rights and freedoms for the purpose of violent overthrow of the constitutional order, incitement of national, racial or religious hatred or propaganda of violence or war shall be prohibited.

The Criminal Code of the Republic of Armenia

Article 143. Breach of citizens’ legal equality

Direct or indirect breach of the human rights and freedoms of citizens, for reasons of the citizen’s nationality, race, sex, language, religion, political or other views, social origin, property or other statuses, which damaged the citizen’s legal interests, is punished with a fine in the amount of 200 to 400 minimal salaries, or with imprisonment for up to 2 years.

The same action committed by abusing official position, is punished with a fine in the amount of 300 to 500 minimal salaries, or by deprivation of the right to hold certain posts or practice certain activities for 2 to 5 years, or with imprisonment for up to 3 years.

Article 226. Inciting national, racial or religious hatred.

Actions aimed at the incitement of national, racial or religious hatred, at racial superiority or humiliation of national dignity, are punished with a fine in the amount of

200 to 500 minimal salaries, or with correctional labor for up to 2 years, or with imprisonment for the term of 2-4 years.

The actions envisaged in Part 1 of this Article committed:

- publicly or by mass media, with violence or threat of violence;
- by abuse of official position;
- by an organized group, are punished with imprisonment for the term of 3 to 6 years.

The Draft of the Law “On Ensuring Equality”

The Law "On Ensuring Equality" was developed by the Ministry of Justice of the Republic of Armenia and posted on the e-draft website for the public discussion. At present, the draft law is in the process of elaboration and it is expected that by the end of July it will be submitted to the Government for approval.

The purpose of this draft law is to ensure the equal treatment of each person and provide equal opportunities for the exercise of their rights and freedoms, without any discrimination. The given draft law defines the concept and types of discrimination, the equity assurance mechanisms and subjects, as well as the status, problems and principles of the activity of the Equality Council.

The Criminal Code of the Republic of Armenia

Article 226. Inciting national, racial or religious hatred.

Actions aimed at the incitement of national, racial or religious hatred, at racial superiority or humiliation of national dignity, are punished with a fine in the amount of 200 to 500 minimal salaries, or with correctional labor for up to 2 years, or with imprisonment for the term of 2-4 years.

The actions envisaged in part 1 of this Article committed:

- publicly or by mass media, with violence or threat of violence;
- by abuse of official position;
- by an organized group, are punished with imprisonment for the term of 3 to 6 years.

Article 316. Violence against a representative of authorities.

1. Violence or threat of violence, not dangerous for life or health, against a representative of authorities or close relatives, concerned with performance of his official duties, as well as hindrance to the representative of authorities in the

execution of duties under law, is punished with a fine in the amount of 300 to 500 minimal salaries, or with imprisonment for the term of up to 5 years.

2. Resistance to the representative of the authorities while in the line of duty or forcing him to perform obviously illegal actions, committed with violence or threat thereof, is punished with a fine in the amount of 300-500 minimal salaries, or arrest for up to 2 months, or imprisonment for up to 1 year.
3. Violence against the persons mentioned in part 1 or 2 of this Article, which is dangerous for life or health, is punished with imprisonment for the term of 5 to 10 years.
4. In this Code, by a representative of authorities we mean, the official of state and self-government bodies who is vested with the power to command to persons who are not under his subordination.

Article 137. Threat to murder, to inflict heavy damage to one's health or to destroy property.

1. The threat to murder, to inflict heavy damage to one's health or to destroy property of big volume, provided there was real danger that this threat would be carried out, is punished with correctional labor for up to 1 year, or arrest for up to 2 months, or imprisonment for up to 2 years.
2. The term "property of big volume" in this article shall mean to the amount of 500 to 3000 minimal salaries.