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First five decisions of the European Court with respect to the Republic of Armenia

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After the collapse of the Soviet Union, the Newly Independent States (NIS) started developing market-oriented societies and their integration into international and European structures became an urgent issue on the agenda. Accession to the United Nations system and the Council of Europe were one of the primary goals for nearly all NIS countries. Armenia joined the Council of Europe on 25 January 2001 and entered into a number of commitments, which were primarily defined in Parliamentary Assembly Opinion No. 221 (2000) on Armenia's Application for Membership into the Council of Europe.1 On the same day, Armenia signed the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), but only ratified it on 26 April 2002. As for other Caucasus States, Azerbaijan ratified the Convention on 14 April 2002. Georgia was the first state in the Caucasus to ratify the Convention - on 20 May 1999. Since 2002, until the end of 2005, 582 applications were lodged with the European Court of Human Rights (the Court) against Armenia, whilst 954 applications were lodged against Azerbaijan during the same

time period. Just 237 cases were lodged against Georgia in the same period.2

The positive impact of the judgments of the Court, as well as the prevention of further similar violations of human rights and freedoms, has been one of the key and important aspects of the whole Strasbourg machinery. For the Caucasus States, the Strasbourg machinery is a relatively new mechanism, therefore further consideration should be given to the impact of the Court judgments on the amendments of domestic legal norms, the adoption of new legal norms and on changes in judicial practice, in terms of the interpretation of the legal acts and the ECHR in compliance with the case law of the Court.

As of 1 September 2006, only five admissibility decisions (one admissible; three partially inadmissible; and one inadmissible) and no judgments were available on the official website of the Court with respect to Armenia, whereas seven judgments had been passed down in respect of Georgia (six judgments on the merits and just satisfaction and one striking out decision). As for Azerbaijan, there were 19 decisions (ten decisions declaring the applications inadmissible, two decisions on partial inadmissibility, five decisions on partial admissibility and one decision on striking out) and one judgment striking the case out of the list.

It is interesting to observe that the aspects of the applications that were declared admissible in relation to the Armenian cases were as follows: the removal of the applicant's counsel from the courtroom and an interference with the applicant's right to freedom of expression (*Noyan Tapan LTD v. Armenia*3); the alleged violation of the right of the applicant to silence and the admission in court of evidence obtained under torture (*Harutyunyan v. Armenia*4); the applicant's complaint under Article 10 (freedom of expression) of the Convention (*Bojolyan v. Armenia*5); and the alleged interference with the right of the applicant to freedom of assembly (*Mkrtchyan v. Armenia*6).

The cases of *Noyan Tapan LTD* and *Bojolyan* are high profile cases in Armenia, both concerning alleged violations of the right of freedom of expression. In *Bojolyan*, the applicant complains that his conviction (for treason) unlawfully interfered with his right to freedom of expression. In *Noyan*

Tapan, the applicant complains that the decision of the National Commission of Television and Radio unlawfully interfered with its right to freedom of expression guaranteed by Article 10 ECHR.
In the case of *Mkrtchyan*, the Court, without prejudging the merits, declared admissible the complaint concerning an interference with his right to freedom of assembly. It is worth mentioning that considerable numbers of applications were lodged with the Court with similar allegations related to the demonstrations led by the political opposition in Armenia before and after the presidential elections in 2003.
As for the case of *Harutyunyan*, the alleged violation - the admission in court of evidence obtained under torture - is one of the prohibited practices and, therefore, the case raises an issue of common importance. The case also involved issues of alleged violation of the right to silence, which is considered an important element of a fair trial.
Since there is, as yet, no judgment concerning Armenia, it is too early to assess the impact of the ECHR on the domestic judicial practice and/or the improvements of the legal system. However, one must note that many judges and lawyers in Armenia have changed their approaches to drafting pleadings and interpreting both domestic laws and the ECHR at the domestic level after Armenia ratified the ECHR and it became the part of the Armenian legal system. Furthermore, Armenia is currently taking steps to incorporate several concepts of the common law system, in particular a jurisprudence based on judicial precedents, into the domestic legal system, which is closer to a civil law system. This will have a significant impact and will allow judicial interpretation of the legal acts, interpretation of the legal meaning of certain provisions of domestic legal acts and clarification of those legal acts. Many lawyers and judges accept that the introduction of these concepts into the Armenian legal system will promote the protection of human rights and freedoms, as positive results at the domestic judicial level may remain rare if the domestic courts are not flexible enough to follow them. Consequently this will enhance the effectiveness of domestic legal remedies and may reduce the level of human rights

violations and the number of the cases submitted to the Court.

It will be interesting to observe how the first judgments of the Court to which Armenia is a party will change the judicial practice and what impact they will have on the legal and judicial systems of Armenia.

1 Opinion No. 221 (2000) of the Parliamentary Assembly of the Council of Europe on Armenia's application for membership of the Council of Europe. Assembly Debate on 28 June 2000 (21st Sitting), text adopted by the Assembly on 28 June 2000. URLhttp://assembly.coe.int/Documents/AdoptedText/TA00/eopi221.htm

2 See the Surveys of Activities of the Court for 2004 and 2005. URL: http://www.echr.coe.int/ECHR/EN/Header/Reports+and+Statistics/Reports/Annual+surveys+of+activity/

3 *Noyan Tapan LTD v. Armenia*, No. 37784/02, dec. 21.10.04

4 *Harutyunyan v. Armenia*, No. 36549/03, dec. 5.7.05

5 *Bojolyan v. Armenia*, No. 23693/03, dec. 6.10.05

6 *Mkrtchyan v. Armenia*, No. 6562/03, dec. 20.10.05