

CONCLUSION

**OF THE AD HOC COMMITTEE OF THE NATIONAL
ASSEMBLY OF THE REPUBLIC OF ARMENIA ON
INVESTIGATION OF THE EVENTS TAKEN PLACE IN THE
CITY OF YEREVAN ON 1-2 MARCH 2008 AND THE REASONS
THEREOF**

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PREAMBLE

The Ad Hoc Committee of the National Assembly of the Republic of Armenia on Investigation of the Events Taken Place in Yerevan on 1-2 March 2008 and the Reasons Thereof (hereinafter referred to as “the Committee”), undertaking hereunder the elaboration of the conclusion to be presented to the National Assembly and the Armenian public, recognises the whole importance of this document for the development of democracy, public accord and earliest establishment of the atmosphere of national unity, as well as acts with the desire to uproot hostility from the political field of Armenia. We are convinced that in the light of the difficult and critical situation that resulted from the events of 1-2 March, the purpose of this document is to evaluate the events in a way that would help our people and the emerging democratic-political system preventing the occurrence of such events in the future. The document presented to your attention is elaborated with the mentioned concern in mind.

I. FORMATION OF THE COMMITTEE; THE TASK AND COMPETENCES; ORGANISATION AND IMPLEMENTATION OF THE WORKS

1.1. FORMATION OF THE COMMITTEE

1. The Committee was established upon the Decision of the National Assembly of the Republic of Armenia No. N-086-4 of 16 June 2008 (hereinafter referred to as “the Decision”).

2. Part 5 of the Decision stipulates that the Committee is composed of two members from each of the factions of the National Assembly, and one member of the National Assembly who is not a member to any faction. Within three days after its establishment, the Committee shall send an invitation to Levon Ter-Petrossian and extra-parliamentary political forces - the list of which shall be approved by the Committee - to participate in its works with a right to consultative vote. One representative of each of the mentioned parties shall take part in the sittings of the Committee.

3. According to Part 6 of the Decision, the members of the National Assembly shall be involved in the works of the Committee upon nomination by the head (secretary) of the relevant faction; and according to Part 7 of the same Decision, candidates who are not members to any faction shall be nominated by the members of the National Assembly at the sitting. The nominee receiving the majority of votes in an open ballot shall be deemed elected. According to

Part 8 of the Decision, the Committee shall elect a chairperson and a deputy chairperson from among its members.

4. On 16 June 2008, four out of five factions of the National Assembly have submitted proposals to be involved in the works of the Committee: Republican Party of Armenia [Hayastani Hanrapetakan Kusaktsutyun] faction (Samvel Nikoyan, Hermine Naghdalyan), Prosperous Armenia [Bargavach Hayastan] faction (Naira Zohrabyan, Aram Safaryan), Armenian Revolutionary Federation [Hay Heghapokhakan Dashnaktsutyun] faction (Artsvik Minasyan, Artyush Shahbazyan), and Rule of Law [Orinats Yerkir] faction (Hovhannes Margaryan, Artashes Avoyan, replaced by Ishkhan Khachatryan as of 21 August 2008, who in turn was replaced by Artsruni Aghajanyan as of 2 February 2009). With regard to the members of the National Assembly who are not members to any faction, Levon Khachatryan was involved in the works of the Committee upon the Decision of the National Assembly of 16 June 2008, who later filed a resignation application on 24 June 2008, and Samvel Balasanyan was involved in the works of the Committee upon the Decision of the National Assembly of 8 September 2008.

5. Samvel Nikoyan was elected as Chairperson of the Committee at its first sitting held on 16 June 2008. It was decided that it would be expedient to discuss the matter of electing a deputy chairperson of the Committee in the presence of the other members of the Committee, giving priority to the representatives of Heritage [Zharangutyun] faction or of Levon Ter-Petrosian.

6. Following its establishment and upon the Decision of the Committee, invitation letters were sent to the Human Rights Defender of the Republic of Armenia, to the political parties having passed the three-percent threshold in the 2007 parliamentary elections, but not having factions in the National Assembly, as well as to those parties which nominated candidates in the 2008 presidential elections, proposing them to delegate a representative to be included in the staff of the Committee.

7. The invitation was accepted by Armen Harutyunyan, Human Rights Defender, as well as five parties, namely National Democratic Union [Azgayin Dzhoghovrdakan Miutyun] (Artavazd Vardanyan), National Unity [Azgayin Miabanutyun] (Sargis Muradkhanyan), National Accord [Azgayin Hamadzaynutyun] (Aram Harutyunyan), United Labour Party [Miavorvats Ashkhatankayin Kusaktsutyun] (Gurgen Arsenyan), and as of 4 December 2008 - New Age [Nor Dzhamanakner] party (Aram Karapetyan).

8. According to the Decision, the representatives of Heritage faction of the National Assembly of the Republic of Armenia and Levon Ter-Petrosian (in person or through his representative) had the right to be involved in the works of the Committee, whereas they failed to

exercise this right. Despite this, on 19 June 2008, the Committee referred, in writing, to Levon Ter-Petrossian, the First President of the Republic of Armenia, Raffi Hovhannisyan, leader of Heritage party, Tigran Karapetyan, Chairperson of People's Party [Dzhoghovrdakan Kusaktsutyun], inviting them to participate in the works of the Committee; however they did not accept the invitation.

9. Thus, the Committee was formed with 15 members only, instead of the maximum capacity of 19.

1.2. THE TASK AND COMPETENCES OF THE COMMITTEE

1. According to Article 73 of the Constitution of the Republic of Armenia, Article 22 of the Law of the Republic of Armenia "On the Regulations of the National Assembly", and this Decision, the task of the Committee is to examine the events taken place in the city of Yerevan on 1-2 March 2008 and the reasons thereof and submit a conclusion to the National Assembly on the following issues:

- (a) violence that has taken place, lawfulness and proportionality of police actions;
- (b) identification of the death circumstances of the deceased;
- (c) submission of recommendations on political, legal, and other solutions excluding the recurrence of such events.

2. The term of operation of the Committee was set until 25 October 2008, which was later extended twice by the decisions of the National Assembly of the Republic of Armenia; initially, the term of operation was extended until 25 February 2009 upon the Decision of 22 October 2008, and later until 15 September 2009 upon the Decision of 24 February 2009.

3. According to the Decision, the Committee shall be entitled to:

- (a) file an inquiry to state and local self-government bodies, including the police and other law-enforcement authorities, which shall provide the required information in the earliest possible terms, but not later than the terms prescribed by law;
- (b) invite officials to provide clarifications on issues discussed by the Committee;
- (c) involve in its works relevant specialists and experts, including international specialists and experts.

4. Members of the Committee may, upon its decision, visit police holding facilities and remand facilities, meet with detainees in the manner prescribed by legislation.

1.3. ORGANISATION AND IMPLEMENTATION OF THE WORKS OF THE COMMITTEE

1. For the purpose of effectively organising its works, the Committee invited experts, adopted its regulations, rules of procedure, and offered cooperation to other authorities, persons, and the wider public.

2. For this purpose, the Committee applied to Gianni Buquicchio, Secretary of the European Commission for Democracy through Law (Venice Commission), to the OSCE, and to Levon Ter-Petrossian, suggesting to delegate their experts as well, in order to form a balanced expert group with participation of international experts as well. However, they have not delegated experts.

3. Based on the requirements of the legislation in force, the Committee approved its regulations on 24 June 2008, and its rules of procedure on 1 July 2009.

4. According to the regulations, the Committee shall, as a rule, hold its regular sittings each Tuesday at 12:00, and when impossible, on the day and at the time proposed by the Chairperson of the Committee. Working discussions are held on Fridays.

5. During the term of its activities, the Committee held 47 sittings and 64 working discussions.

6. Through its regulations and rules of procedure, the Committee has secured its every member - irrespective of the fact of the member's participation through the right to vote or consultative vote - with equal opportunities to participate in the works of the Committee.

7. Thus, according to the rules of procedure, for the purpose of effective exercise of its powers laid down in Part 3(a) of the Decision (*i.e.*, filing an inquiry to state and local self-government bodies, including the police and other law-enforcement authorities (hereinafter referred to as the "competent authorities"), which shall provide the required information in the earliest possible terms, but not later than the terms prescribed by law), each member of the Committee may, within three days following its regular sitting, submit in writing questions which, in his or her opinion, shall be referred to the competent authorities. Failure to submit a written proposal in the specified time period does not restrict the right of the Committee member to come up with a relevant written or verbal proposal. A written proposal - aimed at fulfilling the tasks provided for by the Decision and submitted within a different term - shall be discussed at the subsequent working discussion convened by the Chairperson of the Committee.

8. According to the rules of procedure, the submitted written proposal shall undergo mandatory discussion by the Chairperson of the Committee at a working discussion. During or prior to the working discussions, the experts and/or specialists of the Committee shall categorise

the proposals addressed to the Committee. The results of the working discussion shall determine the content of the inquiry and/or the agenda of the next regular sitting of the Committee.

9. During the discussions, the Chairperson of the Committee shall endeavour to conciliate various points of view, in order to achieve consensus. In case of failure to do so, the proposals shall, in order to identify the position of the Committee on the pending issues (including on making the inquiry, content of the inquiry, ensuring the opportunity of holding a hearing, the agenda, and determination of the composition of the group of persons invited to the hearings, etc.), be included in the agenda of the Committee's sitting for further discussion and voting.

10. According to the rules of procedure, no voting shall, as a rule, be held during the discussions, whereas in certain cases, voting - to which members of the Committee with a right to consultative vote are also entitled to participate - shall merely have a consultative nature, and voting for or against or abstaining with regard to any position shall not serve as a ground for registering voting results at the sitting of the Committee.

11. Equal time is provided to each member of the Committee for reporting, posing questions, and answering questions, and delivering speeches during the sittings and working discussions of the Committee. Minutes of the sittings and working discussions shall be taken.

12. The Committee has adhered to the practice of acting publicly and adopting decisions through consensus (voting considered as last resort). As a result, no decision was adopted in violation of this principle, and the sittings and discussions of the Committee were open to the mass media. The latter covered the sittings and presented their comments on the discussed matters and conducted works through press, TV, and other means of mass media.

13. Representatives of the OSCE Office in Yerevan and the US Embassy in Armenia, having accepted the relevant invitation, have always attended the meetings of the Committee and familiarised themselves with the documents obtained, if so desired.

14. The Committee met with Thomas Hammarberg, Council of Europe Commissioner for Human Rights, John Prescott and Georges Colombier, co-rapporteurs of the PACE Monitoring Committee, Silvia Zehe, Council of Europe Secretary General's Special Representative to Armenia, Peter Semneby, EU Special Representative for the South-Caucasus and his political advisor Andrey Didenko, as well as Günter Nooke, Commissioner for Human Rights of the Federal Government of Germany, and informed them about the works accomplished and further envisaged.

15. Upon the invitation of the Committee, experts of the ad-hoc commission of inquiry into 11 September 2001 terrorist attacks against the United States (U.S. National Commission on Terrorist Attacks upon the United States) arrived in Armenia and met with the

members of the Committee, shared their working experience, and rendered professional support. In this regard, the Committee would like to extend its gratitude to the Government of the USA.

16. When performing its works and drawing up this Conclusion, the Committee used press publications, reports of the Human Rights Defender of the Republic of Armenia, Human Rights Watch, international election observer organisations, PACE resolutions, and other sources.

17. The Committee has also made relevant inquiries to Alik Sargsyan, Head of the Police of the Republic of Armenia, and received answers regarding the nature of actions undertaken by the police in the city of Yerevan on 1-2 March 2008, the legal grounds thereof, number and deployment of the police forces involved in the actions, attached weapons, types and quantity of special means and the necessity of using thereof, as well as regarding other circumstances.

18. The Committee has applied to Aghvan Hovsepian, Prosecutor General of the Republic of Armenia, as well as to the Special Investigation Service, and has received answers with regard to the circumstances of the death of the deceased as a result of the mentioned events, investigation operations carried out in this regard, weapons and ammunition and other physical evidence discovered and seized as a result of site inspection, process of the instituted criminal case, number of remand prisoners, and the results of evaluation of other evidence obtained.

19. The Committee has requested and received from the Ministry of Health of the Republic of Armenia summary data on persons deceased and those that suffered bodily injuries as a result of the events, including the conclusions of forensic-medical examinations.

20. The Committee has required and received from the Expertise Centre of the Ministry of Justice of the Republic of Armenia conclusions on weapons, ammunition, clothing which have undergone forensic ballistic, explosion-technical and trace examinations, as well as conclusions of examinations of “Cheremukha-7” special means from the Centre of Criminological Expertise of the Ministry of the Interior of the Russian Federation.

21. In order to have a complete and comprehensive understanding of the mentioned events, the Committee has also referred to Levon Ter-Petrossian, ambassadors of the Russian Federation, the Italian Republic, the United States of America, and the French Republic to the Republic of Armenia with a request to provide video, audio recordings and any other facts and materials relating to the events concerned. However, they either did not respond to the requests or replied that they had no useful materials in their possession.

22. Members of the Committee made 16 visits to the police holding facilities and remand facilities, including: “Nubarashen” penitentiary institution (3 visits), meeting with detainees Armen Sargsyan, Gevorg Manukyan, and Aghasi Mkrtchyan; “Yerevan-Kentron”

penitentiary institution (11 visits), meeting with detainees Tigran Melkonyan, Lyova Khachatryan, Sasun Mikayelyan, Hakob Hakobyan, Myasnik Malkhasyan, Alexander Arzoumanyanyan, Armen Sirunyan, Vahagn Melkonyan, Feliks Gevorgyan, Hovik Babayan; “Vardashen” penitentiary institution (2 visits), meeting with detainees Mushegh Saghatelyan, Shant Harutyunyan, Suren Sirunyan, and Husik Baghdasaryan. The Committee has applied to the Prosecutor General of the Republic of Armenia with a request to transfer several remand prisoners to hospital facilities for treatment.

23. During the meetings, the members of the Committee tried to identify the cause-and-effect relationship of the events, the attitude of the mentioned remand prisoners towards the actions incriminated thereto, compliance of the law-enforcement authorities with procedural rules during the inquest and preliminary investigation, as well as identify the term of detention, conditions of custody at the detention facility, health conditions, as well as to hear their complaints.

24. For the purpose of clarifying the information acquired during the visits, the Committee has, during its sittings, presented publicly their views, without any comments on its behalf.

25. Representatives of the preliminary investigation body were invited to participate in the sittings of the Committee, responding to the questions posed. In this way, the Committee tried to make public the preliminary investigation and all the circumstances relating to the situation of remand prisoners.

26. The members of the Committee familiarised themselves with the materials of a number of criminal cases the Criminal Court of Appeal of the Republic of Armenia was seized of (*e.g.*, criminal case materials of A. Nazanyan (Article 225(2) of the Criminal Code of the Republic of Armenia)) and participated in a number of court hearings (*e.g.*, legal proceedings of defendants A. Shahinyan, S. Ayvazyan at the Court of General Jurisdiction of Kentron and Nork-Marash Communities of Yerevan, and of the “Case of the Seven” at the Court of General Jurisdiction of Shengavit Community, etc.).

27. On 3 November 2008, the members of the Committee visited the Unit No. 10/33 of the Police Troops of the Republic of Armenia and met with the servicemen who were on duty at the site of the incident with deceased serviceman Tigran Abgaryan, in order to identify the circumstances of his death and details of the actions of the servicemen and demonstrators on the day of the events.

28. The following persons were invited to participate in the sittings of the Committee: Colonel General Hayk Harutyunyan, former Head of the Police of the Republic of Armenia; Lieutenant General Hovhannes Hunanyan, Deputy Head of the Police of the Republic

of Armenia; Major General Armen Yeritsyan, Deputy Head of the Police of the Republic of Armenia; Major General Sashik Afyan, Deputy Head of the Police of the Republic of Armenia; Major General Grigor Grigoryan, former Commander of the Police Troops; Colonel Hovhannes Tamamyan, Head of the General Department of Criminal Intelligence; Shota Vardanyan, Director of the Republican Scientific-Practical Centre of Forensic Medicine of the Ministry of Health of the Republic of Armenia; Vigen Adamyan, Head of the Medical-Criminological Section of the same Centre; Stepan Manukyan, Head of the Expertise-Criminological Department of the Police of the Republic of Armenia; Arthur Hovhannisyan, Deputy Head of the Criminological Examination Division of the mentioned department; Gagik Harutyunyan, expert; Mesrop Movsisyan, Director of A1plus TV company, and Hovsep Hovsepyan, cameraperson; Gagik Shamshyan and Gohar Veziryan, journalists; Roman Grigoryan, Tigran Karakhanyan, and Hayk Hovakimyan, eyewitnesses. They provided facts on the events - and details of certain circumstances thereof – taken place in the city of Yerevan on 1-2 March 2008, as well as responded to questions of interest to the members of the Committee.

29. Vahagn Harutyunyan, Head of the Investigation Group - in charge of the given case - of the Special Investigation Service, was also invited to the four sittings of the Committee, who provided clarifications to the Committee on the process of the preliminary investigation with regard to the criminal case the Service was seized of, the necessity and substantiation of imposing remand detention as a measure of restraint on the detainees, on substantial evidence, and other questions of interest.

30. The Committee invited and heard the parents, relatives and friends of the deceased Tigran Abgaryan, Gor Kloyan, David Petrosyan, Tigran Khachatryan, who provided details known to them of the circumstances of the death of the deceased; as well as Vazgen Harutyunyan, Khachik Davtyan, Suren Hovhannisyan that suffered bodily injuries during the events, who provided clarifications on the circumstances of the wounds received and responded to the questions of the members of the Committee.

31. The Committee received a 2266-page investigation package on the events taken place on 1-2 March and other materials from the Fact-Finding Group (hereinafter also referred to as “the Group”) - set up by the President of the Republic of Armenia on 23 October 2008 - and, after the dissolution of the Group, from the former members thereof, as well as conducted a detailed analysis of the materials.

32. Having been involved in the working group set up by the Order of the Chairperson of the National Assembly of the Republic of Armenia, the members of the Committee actively participated in the process of making amendments to Articles 104, 225, 300,

and 301 of the Criminal Code of the Republic of Armenia. The Code was also supplemented with a number of new articles.

33. The Committee actively participated in the discussions on the draft law of the Republic of Armenia “On making amendments and supplements to the Law of the Republic of Armenia on the Police”, as well as the draft law of the Republic of Armenia “On Police Troops”, made recommendations mainly regarding the issue of immediate reporting to the superiors in case of exerting (applying) physical force, special means, and firearms, as well as informing the health care bodies and the prosecutor's office - by the head of the police authority or his or her alternate - about bodily injuries and all cases of deaths resulting from such actions.

34. Responding to the Statement of the President of the Republic of Armenia of 28 May 2008, the Committee referred to the President of the Republic of Armenia with a petition on the necessity and appropriateness of applying amnesty, taking into consideration that it is in concurrence with the recommendations submitted upon the PACE resolutions as well. The President of the Republic of Armenia, exercising the powers vested in him upon the Constitution, referred to the National Assembly of the Republic of Armenia with a proposal to declare amnesty. Upon its Decision of 19 June 2009, the National Assembly declared amnesty which, according to the provided substantiation, should apply to around 2000 people, including to persons convicted with regard to the events of 1-2 March 2008.

35. The Committee expressed its opinion regarding the declaration of amnesty and was a proponent of this proposal. Having regard to the rationale of the Decision of 19 June 2009 on Declaring Amnesty, as well as the remarks and concerns mentioned in the Resolution 1677 of the Parliamentary Assembly of the Council of Europe, particularly the fact that the Assembly has urged the Armenian authorities to allow persons in hiding, in relation to the events of 1-2 March 2008, to remain free during their trial if they present themselves to the authorities before the prescribed period, the Committee has applied to the Prosecutor General of the Republic of Armenia - in view of a possible application of amnesty - to change the measure of restraint of remand detention imposed against persons charged and in hiding in relation to the events of 1-2 March 2008, by another measure of restraint if such persons present themselves to the authorities seized of the case before 31 July 2009. The proposal was accepted, except for one case.

36. The Committee sent to the Prosecutor General of the Republic of Armenia the report of the Group on the results of investigation of the death of Hamlet Tadevosyan and on the results of the investigation of facts brought forward by Andranik Kocharyan and Seda Safaryan, former members of the Group, on the application of special means, dated 5 June and 28 July 2009 respectively, as well as on the circumstances of the death of Tigran Abgaryan, serviceman of the Unit 10/33 of the Police Troops of the Republic of Armenia, with an expectation to

provide for the progress of the case and furnish clarifications through the Special Investigation Service.

37. Experts Aram Hambardzumyan and Karen Abrahamyan were invited to participate in the sitting of the Committee of 7 September 2009 with the purpose of providing explanations regarding the individual report submitted to the Committee by Andranik Kocharyan and Seda Safaryan, former members of the Group, in particular with regard to the “three tangential and perforating injury marks of irregular shape on the jacket collar and fur-like collar”.

38. For the purpose of conducting inspections at the Logistics Warehouse of the Ministry of Defence of the Republic of Armenia with regard to the report of 25 August 2009 submitted by Andranik Kocharyan and Seda Safaryan, former members of the Group, to the Committee on “Setting up and involving armed units not provided for by law for the 1 March events”, the Committee has also established a working group at its sitting of 7 August 2009 with the following composition: Gurgen Arsenyan, Head of the Group, Artyusha Shahbazyan, and Aram Harutyunyan, members of the group.

As a source of information, an invitation was sent to Levon Ter-Petrossian to have his representative in the working group and to participate in the works thereof; a similar proposal was made to the authors of the report; however, they rejected the invitation.

Aram Karapetyan, member of the Committee, also refused to participate in the works of the group.

Following the inspections, the members of the working group stated that *the flow of the materials of the Supply Unit No. 98360 (warehouse) of the Logistics Service of the Ministry of Defence of the Republic of Armenia, during the period of 20 February to 1 March 2008, is not related with the involvement of the Logistics Service of the Ministry of Defence of the Republic of Armenia in the events taken place on 1 March 2008.*

II. PRE- AND POST-ELECTION DEVELOPMENTS OF THE PRESIDENTIAL ELECTION OF THE REPUBLIC OF ARMENIA

When analysing the developments of the presidential elections, it shall be considered that the emergence of the pre- and post-election situation was fostered by numerous objective and subjective issues existing in our country, which still lacked appropriate solutions, thus resulting in a reasonable protest among certain layers of the population.

1. Referring to the pre- and post-election developments of the presidential elections in Armenia, the Human Rights Defender of the Republic of Armenia stated in the Ad-hoc Public Report of 25 April 2008 that *"the obvious socio-economic polarization, the lack of public trust in public bodies, especially the law-enforcement agencies, as well as the over-centralization of the power, the ineffectiveness of checks and balances between the three branches of government, the inadequacy of safeguards for human and civic rights, and the emergence of a privileged "inner circle" of the elite impelled a significant share of society to seek drastic change as a way of solving those problems"*.

The presidential elections could serve a state-authorized chance for the manifestation thereof; which, however, was erroneously estimated by the political forces, thus failing to demonstrate complete political maturity for directing the political processes towards serving the formation of a political culture.

Moreover, taking advantage of the situation, certain political forces further intensified the polarisation among the public, created an atmosphere of intolerance, and put forward proposals meeting the demand for extreme actions.

Pre-election campaign developed in the atmosphere of tension; debates on programmes with regard to socio-economic, foreign and internal-political issues, as well as effective mechanisms for state administration were merged into the background, thus giving way to black PR, expletive-laden labelling, which started much earlier than the official launch of the election campaign.

The Human Rights Defender states, *"it must be noted that the de-facto campaign started much earlier than the official launch of the campaign under the Electoral Code of the Republic of Armenia. Abusing the legislative gaps, mass media and political parties were essentially campaigning for or against presidential hopefuls from as early as November 2007."*

According to HUMAN RIGHTS WATCH (page 17) *"Ter-Petrosian gave his first public speech since his resignation on September 21, 2007, sharply criticizing the Kocharyan administration, calling it a "criminal regime" and denouncing widespread corruption in the*

country. In another speech on October 26 he confirmed publicly his intention to run for president against Sargsyan”.

On 26 October 2007, in his speech delivered at the Freedom Square, Levon Ter-Petrossian qualifies the ruling authorities as a “*regime that is criminal and corrupt from the top down, conducting its affairs not according to the rule of law, or the will of the people, and not through political dialogue, but by the rules of the criminal underworld. That is to say – a thoroughly mafia-style regime, institutionalized to the last detail, that has already relegated us to the rank of similar regimes in the third world. In the terminology of classical statecraft, such a regime is called a “kleptocracy” - literally, “rule by thieves.” But I would prefer “bandocracy” i.e., “rule by bandits”.*”

Afterwards, he continues, “*I am deeply convinced that the principal issue facing Armenia today is not who the next President will be, but whether this regime can be prevented from reproducing itself, for it is a depraved, humiliating regime, which treats its citizens as a foreign ruler would, and it is a disgrace to the Armenian people. Therefore, from this moment forth I declare myself a candidate for President of the Republic of Armenia.*”

In his speech of 1 November 2007 at the Freedom Square, Levon Ter-Petrossian called the government a “*brothel*”, and the ruling authorities a “*gang, banda*”.

During the pre-election campaign, the public was divided into two opposite poles. The opposition considered its followers as “*national movement*”, the opposition candidate as “*people’s candidate*” or “*people’s representative*”, whereas the authorities were representatives of “*bandocracy*”, “*Mongol-Tatar khanate*”, trying to enroot this state of mind among people, thus furthering hostility among citizens of different political orientation against each other, and viewing voters not adhering to Ter-Petrossian's political views as *supporters of “Mongol-Tatar khanate”*. Such rigid tactics was adopted by mainly one of the opposition wings, led by Levon Ter-Petrossian.

Perhaps it would be naïve to assume that only authorities or only opposition was responsible for aggravating the atmosphere of intolerance. Both had their contribution, along with active participation of the mass media.

By voicing and polarising long-lasting social, economic, and political issues that were not solved due to a number of objective and subjective reasons, as well as particular cases of permissiveness among certain circles of authorities and actions of officials and executives, and instead of presenting and interpreting these within the causal relationship, but rather from the oppositionist point of view and very often in exaggerated colours, Levon Ter-Petrossian managed to incite to action not only the permanently active parts of the public, but also those

that are usually indifferent, neutral and inactive. He preferred to run his campaign through mass public assemblies and rallies.

As the assemblies became more frequent, the number of participants increased as well, and in this respect the electronic mass media, in particular, was of invaluable service to Ter-Petrosian.

Comprehensive, unbiased, and proportional coverage of the campaign through the mass media could create conditions for holding elections in an atmosphere of mutual tolerance, as prescribed by the Electoral Code of the Republic of Armenia. The one-sidedness of information provided through electronic media, and sometimes merely its absence, as well as the black PR conducted in parallel through the printed and online media led to the shortage of objective information. Many preferred to participate in the mass events in order to obtain impartial and not over-coloured information.

From the very first day of his nomination, Levon Ter-Petrosian declared that he was acting as *“a fighter against power based on corruption, nepotism, and cronyism”*. He was presented as the *“fighter”* for unification, ready to struggle *“to the end”* against *“the hated authorities”*, a *“wise politician”* who had only shaped victories and presented Armenia *“as an equal and dignified partner”* to the rest of the world. As a result, the election process was implanted in the conscience of the public as a *“struggle for national liberation”*.

Application of such techniques not only led to a gradual increase in the number of participants to assemblies, but also made them more active and manageable.

In the opinion of the Human Rights Defender, *“The authorities’ campaigners failed to notice that the opposition was critical of the social conditions of a large number of people, the desperate state of human and civic rights and freedoms, and numerous drawbacks in the sphere of public administration, rather than challenges to economic development.”*

Gradually, representatives of various strata of the Armenian society - with different social and legal status, level of education, personalities - started to assemble at the Freedom Square. *“They shared a concern over the absence or lack of values that certain psychologists or lawyers later characterized as “purely neurolinguistic” expressions. “Fatherland, Family, Justice, Democracy, Equality, Human Rights, and Freedoms”*. (Ad-Hoc Public Report of the Human Rights Defender of the Republic of Armenia)

As it is usually the case during election campaigns, the image of the authorities was personified with a view to giving the movement a clearer target, relying on and reinforcing such emotional stereotyped expressions already existing in the society as are *“Karabakhis versus Armenians of Armenia,” “the Karabakh clan”*, or *“the Karabakh junta”*. *In parallel, the movement initiated by Ter-Petrosian was viewed by a part of the society as a “political sect”*.

Protest demonstrations and sitting strikes with slogans such as “Beware of Levon’s Witnesses”, “Dangerous for Civilisation”, “Levon, Go Away”, “Go away, Murderers” were organised near the campaign headquarters and Levon Ter-Petrossian’s residence.

From the very beginning of the campaign, doubts on the legitimacy of the elections were cultivated among the electorate through the use of expressions like *“there is no alternative to our victory”, “victory is unstoppable”, and “we have won already”*. Thus, the further actions of the opposition were already predetermined; they were ready to accept - solely - election results stating their victory, and in case of no victory, there would be only one conclusion, *i.e.*, the results were *“falsified”*, therefore, it is necessary to struggle. An assembly was called and the course of further actions was defined, *“None of us shall go home unless we stand up for our victory and our will”*.

In the period preceding the election campaign and throughout the campaign, opposition candidate Levon Ter-Petrossian and his team conducted their propaganda by mainly creating a negative image of the ruling authorities, breeding among his followers the perception of absolute truthfulness of their own words and inevitability of their victory.

In his speech of 22 January 2008, Levon Ter-Petrossian mentioned, *“Everything depends on how willing, resolute, and ready for self-sacrifice each one of you will be. Me, personally, and tens of thousands of my followers are ready to fully devote ourselves to the struggle for national liberation.*

We are ready to exert all our energy and contribute all our efforts, and suffer any hardship and sacrifice for the better tomorrow of Armenia”.

Cultivating the image of the authorities as *“immoral and dumb-minded thieves, robbers, and oppressors”* versus the image of people who are *“freedom-loving, wise, resolute, honest, and determined to stand up against the dictatorship”*, formed a sense of intolerance in the masses accompanied by promises to *“punish the culprits”*; *“... his whole gang, which, together with him, will either end up behind bars, or somehow flee from our country”*.

On the other hand, Levon Ter-Petrossian declared, *“The major part of wealth is concentrated in the hands of tycoons, it will be seized from them as well...”*.

Thus, protection or redistribution of the ownership also became one of the important directions of the campaign, which naturally led to the strive for protection, by all means, of the right of ownership or demonstration of extreme contradictory behaviour.

The largest part of political and public forces supporting the authorities, employees of state administration system, as well as large- and medium-size entrepreneurs experienced collective feeling of fear and uncertainty towards the future.

In order to understand fully the picture of propaganda against the authorities, it is necessary to consider the deepening of the objectively existing mistrust in tax and law enforcement bodies, the judiciary and other public administration bodies, as well as the dissemination of opinions aimed at breeding intolerance.

It should be mentioned that propaganda conducted by other opposition candidates also contributed to the increase of tension in the election campaign. The emphasis of their campaign was only criticising the ruling authorities, reiterating and underlining the unsolved social and economic problems of the country, and the existing issues related to the protection of human rights. Absence of debates on programmes, and inadequate actions of different government agencies contributed to the polarisation of anti-government sentiments among the public.

2. Polarisation and disruption among the society, which started prior to the commencement of the presidential elections and during the election campaign, reached its peak on the voting day, which passed in an atmosphere of extreme tension and with incidents incompatible with democratic elections. The opposition and the authorities discredited and criticised each other by all possible means. Under such election battle, the voting could not go calmly and without mutual accusations.

The opposition mainly complained about the inaction of the members of the Electoral Commission and the police personnel (mainly about failure to perform their duties as prescribed by law or exceeding thereof), whereas the pro-government forces mainly complained about the conduct of Levon Ter-Petrosian's proxies.

Tension persisted both during voting and at the time of tabulation of voting results and recount of votes.

Tens of international and local organisations observed the presidential elections in Armenia. The OSCE/ODIHR Election Observation Mission in particular addressed the issues which have occurred during the tabulation of votes. According to their Interim Report, the conduct of the vote count was assessed as 'bad' or 'very bad' in some 16 per cent of polling stations visited.

The observers noted that on some occasions the Electoral Commission did not conduct the recount requested by other candidates.

The tension created in the society in the context of the presidential election was exacerbated by the inconsistent findings of different international observation missions. For instance, the OSCE/ODIHR International Long-Term Election Observation Mission reported in its Statement of Preliminary Findings and Conclusions, published on 20 February 2008, "*The 19 February presidential election in the Republic of Armenia was administered mostly in line with OSCE and Council of Europe commitments and standards. However, further improvements and*

commensurate political will are required to address remaining challenges...". Conveying the overall impression of about 400 international observers, Anne-Marie Lizin, Special Co-ordinator of the OSCE short-term observers, said that there was progress compared to the previous elections. *"Compared to the previous presidential elections, significant progress was noted with regard to the preparation and conduct of the electoral process,"* said Marie Anne Isler Beguin, Head of the Delegation of the European Parliament.

The Joint International Observation Mission of the OSCE, PACE, and the European Parliament initially approved the elections by publishing a preliminary report on 20 February, which stated that *"the elections were mostly in line with international commitments undertaken by the country"*. Similar statements were made by Javier Solana, European Union High Commissioner, Benita Ferrero-Waldner, Commissioner for External Relations and European Neighbourhood Policy, the EU Presidency, and the Special Representative of the Council of Europe.

At the same time, in an interview with Radio Liberty on 29 February 2008, Geert Ahrens, Head of the Long-Term Observation Mission of the OSCE Office for Democratic Institutions and Human Rights, said, *"In our assessments of the previous elections, we have said that the elections were largely in line with the European standards; now we say that the elections have been administered mostly in line with the international commitments undertaken by the country. When last year, with respect to the parliamentary elections, we were saying 'largely', we meant an 80-90 percent compliance with the accepted standards; whereas this time we say 'mostly', which may assume a 51 percent compliance, a 70 percent compliance, but not more."*

It is perplexing, to say the least, that such reputable organisations can make statements entirely contradicting one another or, what is more, to present such statements in their reports.

Probably, these inconsistent statements may be due to the opposition's rather harsh criticism of the OSCE/ODIHR Election Observation Mission. Particularly, in a demonstration on 23 February, Levon Ter-Petrossian declared that "he had reason, based on a certain attitude, to conclude that the West was not interested in Armenia's democracy or democratic or intellectual power, as the West did not, in his opinion, want to speak with the Armenian authorities as equals, but rather, wanted Armenia to have weak and submissive authorities".

3. Post-election developments began with assemblies - starting on the day following the elections and lasting for 10 days - organised by the opposition in breach of the procedure defined by law.

Forces acting at the opposing ends of the political spectrum made completely different comments on the February 19 elections and its results.

Under such circumstances, information circulating in the form of hearsay became more influential, which contributed to the escalation of the overall tension in the society. The tension escalated also on account of accusations addressed by different specialists and political figures to the organisers and participants of the assemblies, and one-sided interpretations of their actions.

In the current atmosphere of mistrust, the statements and calls of different non-governmental organisations, people of art, and scientists on terminating the protests and being tolerant proved ineffective for the part of the society which adhered to the radical behaviour; the message of 29 February of primates of dioceses and pontiffs of the Armenian Apostolic Holy Church - which urged to be sensible, prudent, alert, and law-abiding, as well as not to respond to any calls inciting hatred and hostility, and take every step with due concern for the reputation of our country, our present and future - also remained unresponded.

Oppositionists, in turn, capitalised on this situation.

A comparison of pre-election and post-election campaigns shows that pre-election campaigns, as well as the announcements voiced and the actions carried out on the voting day were primarily focused on the post-election developments. The propaganda spread at the Freedom Square during 20-29 February concentrated on messages about the authorities exerting violence against the people, falsifying the elections, trying to take the victory away from “*the people’s candidate*,” and not deserving to be tolerated.

To further intensify the emotional state, Levon Ter-Petrossian and his followers used various means to inspire the masses that they had the right “to punish”: “*If those deadlines run out, and our demands are not fulfilled, we shall together do what we have to do*”; “*no one can stop us*”; “*the people must find the will to punish those culprits*”.

With the prevalence of opposite impulses, the tension in the society continued escalating. Many political scientists characterised the post-election period in Armenia as “*a struggle of nerves between the authorities and the opposition*”. In this situation, the mass media mainly continued to provide polarising information. In the same period, the sense of psychological alarm was even more intensified due to the information about the arrest - by the authorities - of opposition figures and their supporters.

During the post-election campaign, the leaders of the radical opposition continued to apply the already tested intolerance-breeding techniques, including dissemination of fabricated information. For example, Levon Ter-Petrossian’s campaign headquarter knew from the very beginning that Levon Ter-Petrossian did not win the elections, yet publicly declared the opposite with the purpose of securing the participation of the electorate in the assemblies. In the words of Tigran Hakobyan, head of Levon Ter-Petrossian’s PR team, “*the declaration of Alik Arzumanyan about Levon Ter-Petrossian winning the elections with more than 60% of votes is a*

normal campaign element used during elections in any country. Ultimately, it should be considered that demonstration speeches have their own logic; there is the issue of attracting masses of people". The spread of partially exaggerated information on election fraud might as well be designed to serve this goal. For example, according to the proxies of Levon Ter-Petrosian of different poll stations located in Shirak marz, as well as to his maternal cousin Martin Gharibyan, no cases of open voting, ballot stuffing or vote-buying in their poll stations were registered on the voting day and during the tabulation of vote results. According to the materials of criminal cases, "Complaint applications were submitted based on "conversations heard outside"" – upon the initiative of Karen Igityan, head of Levon Ter-Petrosian's electoral headquarter of polling district No 33 – for creating false evidence of mass vote-buying at the given polling district.

Abundance of such false reports resulted in the confusion of what was real and what fabricated, and served as a ground for the law enforcement bodies to declare that proxies of candidates lodge complaints that are fabricated and do not correspond to reality, thus attempting to justify the failure to effectively respond to the cases of real fraud.

The detailed study conducted by the OSCE/ODIHR Election Observation Mission concluded, *"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 assessing the 2008 presidential election, PACE Resolution 1609 stated that although the ad-hoc committee which observed this election considered that it was *"administered mostly in line with Council of Europe standards"*, it found a number of violations and shortcomings, the most important of which were: unequal campaign conditions for the candidates, the lack of transparency of the election administration and a complaints and appeals process that did not give complainants access to an effective legal remedy.

In its Resolution 1609, the Parliamentary Assembly regrets that the violations and shortcomings observed did nothing to restore the currently lacking public confidence in the electoral process and raised questions among a part of the Armenian public with regard to the credibility of the outcome of the election. According to the Resolution, *"this lack of public confidence was the basis for the peaceful protests – held without prior official notification – that ensued after the announcement of the preliminary results, and which were tolerated by the authorities for ten days."*

Already in the post-election period, Armenian authorities have accepted most of the recommendations made in the OSCE/ODIHR/IEOM final report for the purpose of eliminating the violations, drawbacks, and shortcomings noted during the elections and witnessed by the international observers, as well as reiterated their intention to ensure the compliance with PACE Resolutions 1609, 1620, 1643, and 1677 and cooperate with the CoE. Measures were undertaken to detect the electoral violations during the campaign of the Presidential Elections of the Republic of Armenia and on the voting day, as well as the cases of rigging voting results. 18 criminal cases with regard to 26 persons were referred to the court.

The International Observation Mission, comprising the observers from PACE, the European Parliament, and the OSCE PA, has studied in detail the errors, drawbacks, inaccuracies, and shortcomings that occurred in all the components of the election process. The final report already studies the atmosphere which shaped since the pre-election campaign period, in view of which the actions of the players of the political process, campaign headquarters, and civic activists supporting the candidates resulted in utmost tension among the public, fired the intolerance and mistrust between different layers and groups of the society, with the latter finally splitting and becoming polarised under the pressure of fear, hatred, and hostility. In these conditions, the radical opposition figures supporting Levon Ter-Petrossian, the presidential candidate and the First President of the Republic of Armenia, and the politically steered core of the discontented electorate refused to accept the results of the elections.

On 26 February, President-elect Serzh Sargsyan had already offered to collaborate with the other presidential candidates. On 29 February, Serzh Sargsyan signed a political cooperation agreement with Arthur Baghdasaryan, the third-placed candidate of presidential elections.

Consolidation and cooperation of several candidates and their followers with President-elect Serzh Sargsyan was confronted with anger by Levon Ter-Petrossian's team and further aggravated the radical sentiments. Levon Ter-Petrossian rejected the cooperation offer made by Serzh Sargsyan to all the political forces.

In this situation of post-election tension, on 23 February the then president Robert Kocharyan qualified the actions of Levon Ter-Petrossian's followers as an "*illegitimate attempt to take over power*" and stated that the response "*will be determined and sharp*".

On 27 February, Tigran Karapetyan, leader of People's Party, filed an appeal with the Constitutional Court seeking to invalidate the election results. On 29 February, a case on the same grounds was also filed by Levon Ter-Petrossian. His representatives alleged that the violations during the pre-election campaign, on the voting day, and during the recount amounted to such a scale that it was necessary to invalidate the overall results of the election.

On 8 March, the Constitutional Court confirmed the Decision of the Central Electoral Commission (CEC) No. 24-A of 24 February 2008, according to which on 19 February Serzh Sargsyan has been elected President of the Republic of Armenia. Despite the decision of the Constitutional Court did not contain special references to the election process and the allegations of Levon Ter-Petrossian regarding the effect of the violations during the campaign, the Constitutional Court criticised the National Commission on Television and Radio (NCTR) and CEC for not performing their legal obligation of supervising the election campaign, although recognising that their inaction did not affect the results of the election. Although the Constitutional Court confirmed the inaccuracies found in the reports of the Territorial Election Commissions (TECs) sent to the General Prosecutor, it, however, found that these were not sufficient to affect the results of the elections. As a result, the Constitutional Court recommended to review the provisions of the Electoral Code of the Republic of Armenia which refer to the admission of applications and complaints.

This was the overall atmosphere of the 2008 presidential elections, which received the most positive assessment by the international observer organisations as compared to any election held previously in Armenia, but resulted in mistrust and frustration among radical opposition and its electorate. Mass protests of radical opposition continued until 1 March 2008.

Summarising the pre- and post-election developments of the 2008 presidential elections, the Committee states:

- 1) during the presidential election campaign, the achievements and success gained by the State during the previous decades were disregarded in the election battle between different political forces, unresolved issues were brought forward and speculated upon, thus concentrating the attention of voters on negative phenomena and circumstances existing in the country, as well as the incapacity or lack of will of the country's leadership to eliminate these phenomena and circumstances;

- 2) from the very first day of the election battle, a hostility- and hatred-propagating policy was adopted, and the pre- and post-election battle was built upon it;

- 3) unequal and disproportionate, often intentional and one-sided coverage by the mass media contributed to the deepening of mistrust towards the authorities and raised interest in radical opposition among the society;

- 4) the unauthorised assemblies - organised by the opposition on the election day and during the ten days following the elections - destabilised the situation in the country; the obviously tense atmosphere required a discharge, which could have been and had to be achieved through peaceful intervention by reaching tolerance and mutual understanding; however the

mutual intolerance of the authorities and the opposition and their incapacity to compromise resulted in the events of 1-2 March.

III. INVESTIGATION OF THE EVENTS TAKEN PLACE AT THE FREEDOM SQUARE OF YEREVAN ON THE MORNING OF 1 MARCH 2008 AND FINDINGS OF THE COMMITTEE

3.1. EXAMINED FACTS

Below is the conclusion of the investigation conducted for assessing the lawfulness and proportionality of the actions of the Police of the Republic of Armenia in the morning of 1 March 2008 at the Freedom Square:

On 28 February 2008, Gorik Hakobyan, Head of the National Security Service of the Republic of Armenia, in his letter addressed to Hayk Harutyunyan, Head of the Police of the Republic of Armenia, informed, *“According to the operational data obtained by the National Security Service of the Republic of Armenia, the participants of the assembly held in Yerevan will be distributed with firearms, explosive substances, metal bars, and bats, which may be used by the participants during possible provocative and illegal actions”*. The Head of the Police of the Republic of Armenia instructed his deputies, Armen Yeritsyan and Sashik Afyan, to examine the information contained in the letter through operational methods and, in case the information was confirmed, to undertake operational intelligence measures. Afterwards, on 29 February 2008, Nerses Nazaryan, Head of Yerevan Department of the Police of the Republic of Armenia, Ashot Giziryan, Head of the General Department of Fight Against Organised Crime (FOC), and Hayk Militonyan, Head of the General Department of Criminal Intelligence (GDCI), reported to Hayk Harutyunyan, Head of the Police of the Republic of Armenia, that *“during the preceding several days, the operational officers of the above-mentioned subdivisions linked with human intelligence network obtained information therefrom that the participants of the unsanctioned assembly held at the Freedom Square plan to destabilise the situation; participants of demonstrations were noticed to possess firearms, explosive substances, iron bars, specially assembled iron devices (“hedgehogs”), bottles with inflammable substance, wooden bats, and other objects which could possibly be used against police officers and political figures not adhering to the opposition”*.

Hovik Tamamyanyan, Deputy Head of General Department of Criminal Intelligence of the Police of the Republic of Armenia, filed a motion to Hayk Militonyan, Head of the Department, on carrying out a “site inspection” operational intelligence measure for the purpose of *“obtaining information on the presence of explosive substances, arms, iron bars, bottles filled with inflammable substance, and other objects adjusted to inflict bodily injuries. Start of the*

operation: 07:00, 1 March, duration: 45 minutes; in case of resistance to police officers: as required.”

The same day, the Head of the General Department of Criminal Intelligence rendered a decision on sanctioning the “site inspection” operational intelligence measure at the Freedom Square, at 07:00, 1 March 2008.

The same day, an operational consultation was held with Sashik Afyan, Deputy Head of the Police of the Republic of Armenia, during which the operation plan for 1 March 2008 and the estimate of principal and auxiliary forces to be used in the operation was discussed and approved.

This decision was rendered on the basis of the requirements of Articles 2, 11, and 19 of the Law of the Republic of Armenia “On the Police”, and Articles 14(1)(10), 24, 36-38 of the Law of the Republic of Armenia “On Operational Intelligence Activity”.

At the same time, the Committee states that the information provided by the Police of the Republic of Armenia contains certain discrepancies. Gorik Hakobyan, Head of the National Security Service of the Republic of Armenia, in his letter dated 28 February 2008 to Hayk Harutyunyan, Head of the Police of the Republic of Armenia, informed that the participants of the event would be distributed with firearms, explosive substances. The communication of the Police of the Republic of Armenia of 1 March 2008 reads, “*Operational information was obtained on 29 February that a large quantity of firearms, grenades, explosive substances, metal bars, and bats would be distributed to the participants of the event. Similar operational data were obtained by the National Security Service of the Republic of Armenia*”. However, the decision of Hayk Militonyan, Head of the General Department of Criminal Intelligence of the Police of the Republic of Armenia, of 29 February 2008 on carrying out the “site inspection” measure reads that the demonstrators possess weapons and ammunition. Therefore, it can only be assumed that the Police obtained the information - with regard to the possession of weapons and ammunition by the demonstrators - referred to in the decision rendered by Hayk Militonyan in the evening of 29 February 2008, and an immediate decision was made to carry out the “*site inspection*” measure on the following day, 1 March 2008.

Meanwhile, the Committee finds that the legal grounds for conducting the measure are sufficient, meaning that the “site inspection” operational intelligence measure was carried out in the manner and in accordance with the conditions prescribed by the legislation of the Republic of Armenia.

The site inspection at the Freedom Square has been assigned to a group of 133 police officers, which included members of the personnel of the Police operational services. At the same time, according to the estimate of the police forces to be used during the measure, the

auxiliary police forces - 602 police officers - were deployed in the areas adjacent to the Freedom Square for ensuring the security of the population and preserving public order in case of aggravation of the situation. The Police Troops regiment for preserving public order was not involved in the measure; the regiment was deployed at the Mashtots-Sayat Nova intersection, at the France Square, and was held as reserve forces. The Police Troops regiment for preserving public order was used in the blockading operations of the Freedom Square starting only from 11:30.

The police officers that arrived at the Freedom Square for carrying out the site inspection were unarmed and without individual protective means. The auxiliary police forces were also unarmed; only the police officers of the patrol regiment were armed with special protective means such as shields, clubs, and helmets.

The Committee finds that unarmed participation of the police officers directly engaged in the operational intelligence measure is acceptable, since they had to immediately carry out site inspection which is, in practice, difficult when carrying an arm; moreover, the auxiliary police forces could ensure the required level of security.

Nevertheless, taking into account the situation and the nature of the measure concerned, the Committee considers unacceptable that the police forces engaged in the measure were not equipped with individual protective means (helmets). The Committee recommends discussing and setting forth definite rules for ensuring individual protection of police officers.

Major General Sashik Afyan, Deputy Head of the Police of the Republic of Armenia, headed the police operation at the Freedom Square on the morning of 1 March 2008, and Police Colonel Hovik Tamamyanyan, Deputy Head of the General Department of Criminal Intelligence, headed the operational intelligence activity.

According to the police, “133 officers of the operational service, unarmed and without individual protective means, proceeded to the Freedom Square at 07:00 for conducting site inspection, where for several times they addressed the assembled people with a loudspeaker to enable the police to carry out the measure. However, 800-900 participants of the mass public event (hereinafter referred to as the “participants of the event”) blocked the way and did not allow the police officers to approach the venue of the site inspection, and then offered active resistance. From among the participants of the event, the drunk and more aggressive people standing in the first line cursed at the police, threatening to revenge. Inspired by their attitude, other participants of the event attacked the police, threw stones at them, beat them with wooden bats and metal bars. Based on the situation and the nature of offences, the commander of the measure made an operational decision to immediately start measures aimed at preventing the collective defiance through involving the auxiliary police forces deployed in the areas adjacent to

the Freedom Square for the purpose of ensuring the security of the population and preserving public order in case of aggravation of the situation.”

First of all, taking into consideration that the starting time of the measure became a matter of public discussion, the Committee examined the divergences regarding the time when the measure started, although this issue does not have any legal consequences. According to the police statement and the submitted materials, the measure was conducted at 07:00. The Committee states that the “site inspection” operational intelligence measure was actually planned to be conducted at 07:00. The Committee, however, cannot agree with the fact that the measure started at the said hour, since it becomes clear from the video footage of “H-1” TV channel that the measure was already in process at 06:55. The decisions of the investigators of the Special Investigation Service on assigning forensic medical examinations, and in the communications issued by the Prosecutor’s Office of the Republic of Armenia indicate that the measure started at around 06:00. Six police officers and four citizens who were sent to undergo forensic medical examinations testified the same, when informing the experts that they suffered the injuries at about 06:00, 1 March.

By comparing the mentioned facts, the Committee concludes that the measure at the Freedom Square most probably started at about 06:40, and not at 07:00, as claimed by the police.

According to the facts examined by the Committee, at the time the police was approaching the Freedom Square, the organisers of the public mass event were already aware that the police officers were approaching, and therefore had enough time to coordinate the participants of the event and persuade them to avoid clashes with the police. The video footage available to the Committee shows that the participants of the public mass event have shown aggressive behaviour. The interview with Levon Ter-Petrossian of 1 March 2008 placed on the website of Radio Liberty comes to prove the above statement, in which he states that he “*persuaded the demonstrators with a loudspeaker not to enter into contact with the police*”, yet, evidently, not all of the demonstrators followed his request. In the same interview he also presents the following description of the events, “*They didn’t start immediately, they lined up and stood in front of the people... People also offered resistance, it was not like they surrendered, I don’t know, maybe there are injured from both sides...*”.

In these circumstances, the Committee states that the organisers of the public mass event should have taken all the necessary measures to prevent clashes with the police. In this respect, the Committee finds that it is the duty of the organiser of any public mass event as prescribed by law to ensure the compliance of the event’s participants with the requirements of the legislation, moreover, in case of dealing with a situation when the public is so tense.

In the opinion of the Committee, the “site inspection” measure failed before it started, since there was a leak of operational information, which is substantiated by the evidence obtained through the preliminary investigation and the judgment having entered into legal force. As a result of a leak of operational information, the participants of the event managed to prepare and show resistance to the police.

The Committee considers the subsequent actions of the police as a measure aimed at terminating the public mass event, which turned into a compulsory termination. The above statements are also proved by the video footage provided by the police, where the “Vacate the square” call of the police - reiterated over and over with a loudspeaker -addressed to the participants of the event is clearly audible, as well as by the communication disseminated on 1 March by the Prosecutor’s Office of the Republic of Armenia which reads, “...*during the actions carried out by the police forces at about 06:00, 1 March 2008 in compliance with Article 14 of the Law of the Republic of Armenia “On Conducting Meetings, Assemblies, Rallies and Demonstrations” aimed at compulsory termination of the public mass event held in violation of the procedure prescribed by law...*”, etc.

At the same time, the video footage available to the Committee proves that the police has, for several days, repeatedly addressed and informed the organisers and the participants of the public mass event held at the Freedom Square that their actions were unlawful, demanding to terminate the public mass event and vacate the Square. Moreover, apart from warning about the unlawfulness of holding the mass event and demanding its termination for several days in a row, the police did not exert any other action for the compulsory termination of the mass event, thus providing the organisers and the participants of the mass event with an opportunity to voluntarily terminate it. However, the calls of the police remained unattended and were neglected by the organisers and the participants of the mass event.

In these circumstances, the Committee states that the police had given the organisers and the participants of the mass event a reasonable time and opportunity to voluntarily terminate the mass event.

The auxiliary police forces deployed in the areas adjacent to the Freedom Square entered the square, in three directions, in order to enable the participants of the event leave through Teryan and Tumanyan streets. The police officers engaged in the measure were unarmed, and only officers of patrol service regiment were equipped special protective means (shields, clubs, and helmets). The requirements laid down in Articles 2, 11, 29-31 of the Law of the Republic of Armenia “On the Police” were the legal basis for the police actions.

As a result of the site inspection carried out after the events taken place at the Freedom Square, the following was discovered and seized (according to the materials of the criminal case):

Czech make pistol of 6.35 mm calibre, with 4 bullets in the magazine; a 7.62 mm calibre pistol of "TT" type, with 5 cartridges in the magazine; a 9 mm calibre pistol of "Astra" type, with 5 bullets in the magazine; two "Zarya" type grenades with detonating fuses; seven "F-1" grenades with detonating fuses; two "RGD-5" type grenades with detonating fuses; two "ATE-92" type grenades with detonating fuses; two "RG-42" type grenades with detonating fuses; 2 magazines loaded with respectively 45 and 30 cartridges of 5.45 mm calibre; one unit of 5.45 mm calibre bullet; 200 gram TNT block; one "MUV" type firing device; 25 units of 7.62mm calibre rifle cartridges; 27 units of 7.62mm calibre submachine-gun cartridges; 75 pieces of metal bars; five wooden bars and two rubber clubs; 30 pieces of metal arrangements called "hedgehog"; 3 bottles filled with inflammable substance ("Molotov cocktail"); 3 plastic vessels with inflammable substance; 18 gas masks; two knives; metal vessel with an inscription "Borondifluoromethane-13,6 kg"; 10 pills of "Cycladol"; 48 pills of "Triftazine"; 2 empty syringes, and 4 scissors.

The discovered physical evidence was sent to undergo relevant expert examinations. According to the conclusions of the expert examinations, the 3 pistols are firearms, 172 cartridges and 12 grenades are ammunition, 38 metal items called "hedgehog" are cold missiles, and 48 pills are psychotropic substances. Metal bars and wooden bats were not identified as cold weapons. The discovered firearms and ammunition had no fingerprints suitable for identification, and the holders were not identified as a result of the conducted investigative actions.

The Fact-Finding Group of Experts set up by the Executive Order of the President of the Republic of Armenia of 23 October 2008 and the other interested parties submitted no materials regarding the events taken on the morning of 1 March 2008 at the Freedom Square.

3.2 FINDINGS OF THE COMMITTEE

By examining, comparing, and analysing the obtained information on the events taken place on 1 March 2008 at the Freedom Square, the Committee made the following findings:

1. The Committee states that the Decision on carrying out the “site inspection” operational intelligence measure derives from the requirements of Articles 14(1)(10) and 36-38 of the Law of the Republic of Armenia “On Operational Intelligence Activity”.

Thus, Article 14(1)(10) of the Law of the Republic of Armenia “On Operational Intelligence Activity” envisages that during operational intelligence activity the police may conduct examination of buildings, structures, locality, premises and means of transport. Article 36(1) of the same law defines that operational intelligence measures are conducted on the basis of the decision of the head of operational department of the operational intelligence body.

Article 37(1) of the Law of the Republic of Armenia on Operational Intelligence Activity defines that, for obtaining an authorisation to conduct operational intelligence measure, the officer of operational department shall submit a substantiated motion to the head of the operational department, which shall include:

- (a) the type of the operational intelligence measure;
- (b) circumstances substantiating the need to conduct the measure;
- (c) information, materials or facts which are expected to be acquired;
- (d) the place, beginning and end of conducting the measure.

Point 7 of the same Article reads:

“The motion is discussed by the head of operational department with the participation of the officer who has made the motion. After the discussion of the issue, the head of operational department renders a decision on granting authorisation or rejecting the motion.”

2. In the opinion of the Committee, the information obtained by the Police and the National Security Service of the Republic of Armenia regarding the weapons and ammunition at the Freedom Square of Yerevan was not subjected to detailed operational processing, which would enable gaining a clearer understanding of the types and quantity of weapons and ammunition discovered there and of the holders thereof, as well as determine the place from where it was brought, the person who has brought it, and the purpose for which it was brought to the Freedom Square.

It is possible that the clarification of the mentioned circumstances would have given an opportunity for timely prevention of the accumulation of weapons and ammunition at the Freedom Square and identification of the persons who had brought them. Yet, this was not done, and the holders of the weapons and ammunition discovered and seized during the measure were

not identified. The Committee considers that the preliminary investigation body should provide additional explanations in this regard.

Missile metal items called “hedgehogs” were discovered at the Freedom Square, which were made and transferred to the Square by the participants of the mass event, as verified by the judgment having entered into legal force.

As to the necessity and expediency of carrying out the operational intelligence measure, the Committee considers that it would have been more appropriate to prevent the accumulation of weapons before they reached their destination. The Committee finds that in view of the circumstances and perhaps due to the time shortage, it was a necessity to carry out the measure since any delay of such measure could lead to even more undesired consequences.

3. In the opinion of the Committee, the “site inspection” measure failed before it started, since there was a leak of operational information, which is substantiated by the evidence obtained through the preliminary investigation and the judgment having entered into legal force. As a result of a leak of operational information, the participants of the mass event managed to prepare and show resistance to the police. Whereas the organisers - having been already informed that the police forces were approaching - were obliged to coordinate and persuade the participants of the public event to avoid clashes with the police. In the opinion of the Committee, the organisers, however, had enough time to take effective measures to prevent aggressive behaviour against the police officers.

In this respect, the Committee finds that any organiser of the public mass event is obliged to undertake all the necessary measures to ensure that the participants of the event comply with their obligations of not violating the public order and other obligations envisaged by law, which the organisers of the public mass event have not effectively fulfilled.

5. The Committee considers the subsequent actions of the police as a measure aimed at terminating the public mass event, which turned into a compulsory termination. The above statements are also proved by the video footage provided by the police, where the “Vacate the square” call of the police - reiterated over and over with a loudspeaker - addressed to the participants of the event is clearly audible, as well as by the communication disseminated on 1 March by the Prosecutor’s Office of the Republic of Armenia which reads: “...during the actions carried out by the police forces at about 06:00, 1 March 2008 in compliance with Article 14 of the Law of the Republic of Armenia “On Conducting Meetings, Assemblies, Rallies and Demonstrations” aimed at compulsory termination of the public mass event held in violation of the procedure prescribed by law...”, etc.

6. Although the participants of the mass event behaved aggressively, the Committee finds that the police should have used all the possible measures for preventing possible clashes. The

police should have undertaken measures to enter into dialogue with the participants of the public mass event and to cooperate with them.

The Committee finds it noteworthy that the police should have refrained from any such actions that could cause a threat of violence and should have been guided by the principle of showing mostly cooperative behaviour to the participants of the public event.

In this respect, the Committee considers that all the police subdivisions engaged in the protection of public order, especially during mass events, should involve officers having passed special training courses on establishing cooperation and dialogue with the participants of public mass events.

Such dialogue will enable cooperation between the participants of mass event and the police, leading to coordinated management of the crowd by the police and the organisers.

Such measures may exclude or at least minimise the necessity for exerting physical force, special means, and weapons by the police. Police shall use force as a last resort, as an extreme measure which may be exerted only after exhausting all other means.

7. A video footage provided by the police proves that the police has, for several days, repeatedly addressed and informed the organisers and the participants of the public mass event held at the Freedom Square that their actions were unlawful, demanding to terminate the public mass event and vacate the Square. Moreover, apart from warning about the unlawfulness of holding the mass event and demanding its termination for several days in a row, the police did not exert any other action for the compulsory termination of the mass event, thus providing the organisers and the participants of the mass event with an opportunity to voluntarily terminate it. However, the calls of the police remained unattended and were neglected by the organisers and the participants of the mass event. For this reason, the Committee states that the police had given the organisers and the participants of the mass event a reasonable time and opportunity to voluntarily terminate the mass event.

Wiretapping of phone conversations between Alexander Arzumanyan and Suren Sirunyan makes it clear that the organisers of mass events intentionally disseminated false information on the full compliance of the public events with the law.

Thus:

the phone conversation held at 14:26, 21 February 2008 - between Alexander Arzumanyan and Suren Sirunyan, who was at the venue of the mass event at the Freedom Square - had the following content:

“Suren Sirunyan: They’re constructing something here, located a car here and are making announcements that today’s meeting is illegal, asking to leave and so on.

Alexander Arzumanyan: Yes.

Souren Sirunyan: But don't we have a document?

Alexander Arzumanyan: No, no, and you can say that they are lying, ... their mother, we do have."

8. Meantime, the Committee finds that the police lacked professionalism and organisational skills in organising and implementing its actions. The Committee finds that, taking into account the leak of information on the "site inspection" measure, all the possible measures shall be taken in the future to ensure the secrecy of operational intelligence measures, which will enable not only to raise the effectiveness of the measure but also to exclude possible provocative manifestations.

9. The video footage provided to the Committee by the police on the operational measure implemented at the Freedom Square is not complete: the time is not indicated, and the footage starts with shots of already ongoing clashes between the participants of the event and the police. Considering as illogical the reasoning of the police in relation to starting the video recording of the measure from that moment, the Committee finds that, for the purpose of ensuring sufficient evidential database, it is more expedient to carry out video recording of the whole process of measures, especially in cases envisaging such public repercussions.

10. At the same time, according to eyewitnesses, the police apprehended and ruined the video materials of journalists (ALM, Yerkir-Media, and A1+ TV). Under these circumstances, the Committee was unable to reproduce - based on the video footage - the real and complete process of the events which have taken place at the Freedom Square, namely when and under what circumstances the clashes between the police and the participants of the event have started.

11. The Committee considers unacceptable this as well as any other action of the police officers which are aimed or even indirectly impede or may impede the freedom of speech in our country. The Committee finds that the police personnel should take relevant training courses on the organisation of work with journalists for not only not restricting but also for ensuring and rendering the assistance necessary for the efficient performance of professional activities by journalists.

12. Moreover, the materials video-recorded by mass media could have not only ensured the overall picture of morning events, but also could have been of important evidentiary value. Such conduct by the police should become an object of examination by the competent authorities.

13. The Committee finds unacceptable the process undertaken by the Police of registering as evidence the weapons and ammunition discovered at the Freedom Square. The Police should have taken all necessary measures for obtaining the discovered weapons, ammunition, and any other evidence strictly in compliance with the requirements of the law. In the opinion of the

Committee, the procedure for registering as evidence the weapons and ammunition discovered at the Freedom Square, which is visible in the video recording, was carried out in serious violation of the provisions of criminal procedure, which has not only discredited their evidentiary value, but has also been perceived by the society as not trustworthy.

Meanwhile, the Committee considers it obligatory that the police show proper professional attitude towards the obtaining and maintaining of evidence.

14. In some cases, the police personnel have demonstrated unwarranted intervention against participants of the event who had already left the Freedom Square, exerting violence in separate cases. The Committee condemns such conduct by these police officers and finds that regular training courses should be arranged for the police officers on cases and conditions of the application of physical force, so that the force is applied by the police officer as a last resort, only after the futile application of other possible means.

In this respect, the Committee welcomes the fact that disproportionate actions of the police officers have been taken into examination by the Special Investigation Service of the Republic of Armenia; three criminal cases have been instituted based on the materials submitted by the Committee. The Committee deems those actions of the police officers as unlawful and finds that any such instance performed by the police officers should be discovered and taken into examination.

15. It is clear from the materials at the disposal of the Committee that police officers in civilian clothing also participated in the event. The Committee considers this instance unacceptable and finds that Police officers are obliged to be in police uniform while on duty during mass events in order to be identified as a police officer by the participants of the mass events.

16. The Committee also states that providing for the possibility of the identification of each police officer by the society and by each person is of considerable significance in ensuring the vigilance of police personnel. The Committee finds that such measures of police uniform and armaments should be developed which shall allow a person to identify the police officer. Among such measures is, for example, the availability of ID numbers on the uniform of a police officer.

17. The Committee states that the events taken place at the Freedom Square of Yerevan on the morning of 1 March 2008 were also conditioned by the actions of the organisers and participants of the mass public event. The Yerevan City Hall responded to our inquiry, stating that Levon Ter-Petrossian and his supporters had informed them of the assembly to be held at the Freedom Square on 20 February 2008, from 17:00 to 22:00. This means that it was sanctioned only on 20 February until 22:00. In the ensuing days, from 21 February to 1 March no notice on

carrying out a mass public event at the Freedom Square or any other place has been received by the City Hall. Therefore, the assemblies held on those days have been illegal.

18. The Committee considers the mass events which have lasted about 240 hours, from 21 February to 1 March 2008 included, as a single mass event which has been carried out through demonstrations, rallies, and sit-down strikes during which public order and traffic have been regularly disrupted and the operation of state bodies has been paralysed. Many times during several days, police personnel have warned, by loudspeakers, the organisers and participants of the unlawful nature of the mass public event being held at the Freedom Square, demanding to end it, which is clearly visible in the video material provided by the Police of the Republic of Armenia. However, the organisers not only have not taken steps for terminating the unauthorised public event, but, on the contrary, have arranged for the continuity of the mass event and the overnight stay of the participants at the Freedom Square through their actions – through calls, public statements.

The Committee finds that the organisers of the public event should demonstrate respect towards the current legal order of the country and defend their violated or allegedly violated rights through possible legal means. Any political force demanding legality and rule of law should demonstrate such a claim within the framework of legality, otherwise their such claim becomes irrational and meaningless.

19. On the morning of 1 March 2008, in response to “Vacate the Square” calls made by the police at the Freedom Square, some of the participants of the event began to show resistance to the police personnel, and, as visible in video recordings, a group of participants of the event struck the police personnel with wooden bats, bars, threw stones, pieces of wood, and other random objects within reach. The Committee considers unacceptable any manifestation of resistance and, moreover, any use of violence against police officers. Even the allegedly unlawful actions of a police officer cannot justify such behaviour; therefore, the Committee finds that in any such case guilty persons must be discovered and held liable.

20. The Committee considers impermissible the involvement of juveniles by event organisers in the mass public events taken place on 1 March and the preceding days and in similar political events in general, particularly, the overnight stay at the Square, which is evidenced by the video recording, the press conferences of Levon Ter-Petrossian, and the testimony of witnesses. We all know of the fabricated news that was spreading in the days of the events, as if a child was killed during the event carried out at the Freedom Square. Fortunately, those news were refuted very soon.

21. The news of the murder of the child has initially pursued an objective, in case of the possible termination of the mass event, of making it possible to agitate and act upon the

sentiments of the society, which essentially took place. The Committee considers unacceptable the dissemination of false and fabricated information by the organisers with the purpose of affecting the participants of the mass event. Such conduct is condemnable.

22. Based on the abovementioned arguments, the Committee concludes that the actions performed by the Police of the Republic of Armenia at the Freedom Square of Yerevan on the morning of 1 March 2008 have been on the whole lawful and proportionate and were based on Articles 19, 29, 30, 31 of the Law of the Republic of Armenia “On the Police” as well as Article 8(2)(7) and (8) and Article 14(1) and (3) of the Law of the Republic of Armenia “On Conducting Meetings, Assemblies, Rallies and Demonstrations” of 28 April 2004.

As evidenced by further actions, the participants of the mass event had doubts on the proportionality of police actions, which was conditioned by the aforementioned objective and subjective circumstances.

IV. EXAMINATION OF FURTHER EVENTS TAKEN PLACE IN THE CITY OF YEREVAN ON 1-2 MARCH 2008 AND FINDINGS OF THE COMMITTEE

4.1. EXAMINED FACTS

The Committee has made the following observations on the further events that took place in the city of Yerevan on 1-2 March 2008.

On 1 March, at approximately 10:00 some of the participants of the event began to assemble at the square adjacent to the French Embassy in order to continue the 10-day unlawful mass event of the Freedom Square which was terminated by the Police.

Following the event carried out at the Freedom Square, the regiment forces of the Patrol Service of the Police of the Republic of Armenia were divided into groups, which were commanded to secure proper order in Yerevan and not allow new gatherings of event participants in the territory of Kentron Community.

According to the police, *“At 11:00 information was received from one of the mentioned groups that around 300 demonstrators have assembled near the French Embassy, demonstrating aggressive behaviour”*. 50 officers of the Patrol Service were immediately dispatched to the vicinity of the French Embassy. Grigor Lusavorich, Arshakunyats, Khorenatsi, V.Sargsyan, Italakan, and Argishti streets were closed by Traffic Police Forces.

In just one hour, due to the organisational actions of the organisers of the mass event, the number of event participants multiplied, amounting to around 2000, which intensively increased throughout the day. The wire tapping of the conversation of Nikol Pashinyan and Alexander Arzumanyan attest this.

Thus, *“at 11:38*

Nikol Pashinyan: “Whoever you contact, tell them to assemble at the French Embassy, please, lots of people are gathering over there at this moment”.

According to video recording No. 1 at the disposal of the Committee, *“At about 11:30 on Grigor Lusavorich street, from the side of the circus, in front of the Sundukyan Theatre, one trolleybus was derailed and fixed perpendicularly by the demonstrators, thus blocking the traffic and creating a barricade, and substantial amounts of chunks of rocks and metal bars were brought from the vicinity of a nearby building under construction. Later at 13:07, the demonstrators positioned a garbage truck in the mentioned barricade, which had previously unloaded the garbage collected from the Freedom Square at the square adjacent to the City Hall*

under the coercion of the demonstrators. At 14:18, the participants of the mass event derailed the second trolleybus and blockaded the entrance to the square with it”.

According to the HUMAN RIGHTS WATCH, *“Bakhshyan, together with other women, made a line between the police and the protestors, trying to calm the angry crowd”*. In an interview given to the same source, Anahit Bakhshyan, oppositionist Member of Parliament, noted, *“Police allowed me to use their loudspeaker to address the protestors, calling for calm. Some people threw stones at police. We managed to calm people a bit...”*.

As a result of the initiated group actions, the public order, traffic, and the operation of nearby organisations – the French, Italian, Russian embassies, the Yerevan City Hall, “VivaCell” office, “Gladzor” University, and other organisations – were paralysed.

In such conditions, according to the police, *“A decision to thwart the unlawful actions of the uncontrollable crowd was made based on the provisions of Article 31(1)(7) of the Law of the Republic of Armenia “On the Police”*. However, the crowd attacked the police officers, throwing stones, various objects in their direction. The situation was not resolved through small scale police forces, for which reason at 12:00, different sections of Gr. Lusavorich street were closed off by the police, and the police troops deployed at the scene under the command of S. Afyan, Deputy Head of the Police of the Republic of Armenia, and in order to avoid undue confrontation; it was decided to proceed with negotiations.”

In the area adjacent to the French Embassy, Sashik Afyan and Hovik Hunanyan, deputy heads of the Police of the Republic of Armenia and Ashot Giziryan, Head of the General Department of Fight Against Organised Crime, commenced negotiations with Vardan Khachatryan, Zaruhi Postanjyan, Anahit Bakhshyan, Armen Martirosyan, oppositionist members of the National Assembly, and Yerdjanik Abgaryan and Samvel Gevorgyan, oppositionist activists. Armen Harutyunyan, Human Rights Defender of the Republic of Armenia, also participated in the negotiations. For holding the mass event, the event participants were suggested to transfer to the square adjacent to the station through Arshakunyats Avenue, to which they did not consent, reasoning that it was far from the Centre. Subsequently, it was suggested to choose the vicinity of the Republican Stadium for the mass event, which was also rejected by the negotiators for the event participants. In Anahit Bakhshyan’s words, (HUMAN RIGHTS WATCH (p. 34)), *“We were afraid it would be too easy to entrap people there and beat them”*.

At 13:45 Levon Zurabyan and David Shahnazaryan of the opposition leaders joined those negotiators for the participants of the event. David Shahnazaryan suggested to provide the vicinity of Matenadaran for the mass event, to which, according to the police, *“the police gave its consent in order to alleviate the tension, at the same time providing security guarantees for the*

march and mass event.” The aforesaid is also substantiated according to HUMAN RIGHTS WATCH (p. 34), “*Police allowed David Shahnazaryan to address the crowd a police loudhailer to announce that the police would withdraw soon to allow the crowd to move to Matenadaran*”. For this purpose, according to the agreement obtained, the chain of police forces separating the event participants was pulled back at around 14:00 and, together with the other forces, was redeployed along the two sides of Gr. Lusavorich street in the direction of Mashtots Avenue for ensuring the escorting of the march of the event participants to Matenadaran.

In Levon Zurabyan’s words, (HUMAN RIGHTS WATCH (p. 34)): “*The police seemed genuinely engaged in negotiating a new venue and in deescalating the situation, and even provided a car for him to travel to Levon Ter-Petrossian's residence to talk to him about a possible new venue for the assembly.*”

Right upon the withdrawal, as a result of negotiations, of the chain of police forces separating the event participants, Levon Zurabyan called upon the crowd not to obey the instructions of David Shahnazaryan to move to Matenadaran, to remain where they were until Levon Ter-Petrossian made a respective decision, to which the event participants responded with shouts of consent. Thus, at 14:20, the negotiations ended without result. Thereafter, Nikol Pashinyan called upon the protestors and delivered the appeal of Levon Ter-Petrossian that “this is the most appropriate and secure place, especially since the entrances can be easily closed, and that we should gather as many people as possible and to establish protective posts”. (Haykakan Zhamanak [Armenian Times] 26 March 2008, N44)

Afterward, Nikol Pashinyan has called upon the participants of the event “*to arm with iron bars, wooden bats, stones and anything in reach, as well as to involve other people in the event by any means* ”. Subsequently, a part of the demonstrators moved to the area adjacent to the City Hall, breaking the windows of the City Hall and neighbouring buildings.

According to video recording No. 1, at 15:28 the participants of the mass disorder pursue and throw stones at the police car of UAZ model, which is trying to leave Myasnikyan square, but stops upon reaching the sidewalk in front of the French Embassy, and the police personnel get out of the car and escape. The participants of the disorder break the car and then burn it.

The participants of the disorder chase Grisha Ayvazyan, Head of the Gugark Department of the Police, and beat him.

According to the Police, “*The participants of the disorder have seized Grisha Ayvazyan’s government-issue weapon*” for which there is a court judgement in legal force. “*Then, the fire-fighting truck which had arrived at the scene of the fire was attacked and destroyed. Meanwhile, a significant portion of the mass, arming themselves with metal bars, stones, and pieces of wood*

obtained from a nearby construction site, caused damage to the Moscow House, "VivaCell" building, and other neighbouring objects".

The aforesaid was also substantiated by an interview given to HUMAN RIGHTS WATCH by Gevorg G., *"We went into the construction site and collected the iron and wooden bars..."*, and according to Vigen V. *"People were getting makeshift weapons from a construction site". Almost everyone was under the impression that the protestors were violently dispersed in the morning and there were rumours about several deaths. People were very angry. They wanted to see the leader, but we heard on the radio that Levon Ter-Petrossian was under house arrest"* (same source, p. 37).

According to the police, *"At 15:00, a new order was given to reinforce service in the vicinity of the Residence of the President of the Republic of Armenia, the Government Building of the Republic of Armenia, and the Public Television Building, which involved 200 officers of the regiment of Protection of Important Objects of the State Protection Department of the Police of the Republic of Armenia and 300 servicemen of the Police Troops, whereas the rest of the forces were transferred to Freedom Square. Also, the reserve - comprised of 150 servicemen of the State Protection Department - closed the Shahumyan Square, blocking the crowd's access to the Republic Square"*.

According to video recording No. 1, *"At 15:41, a group of participants of the mass disorder push and bring out the police car of UAZ model parked by the "VivaCell" building and rob it of police shields and clubs, and from 17:20 to 17:40 a group of young people tear off pieces of iron pipes from sidewalk fences and from the construction in process neighbouring the "Gladzor" University and join the participants of the event with those objects in hand"*.

Concerned about the unpredictable development of events, His Holiness Karekin II, Supreme Patriarch and Catholicos of All Armenians, made an attempt to meet Levon Ter-Petrossian and urge him to intervene and prevent the dangerous development of events, yet Levon Ter-Petrossian refused to meet.

According to the information, at 18:00 the aggressive part of the crowd closed the sections of the road leading to Yerevan City Hall and Mashtots avenue from "Metropol" hotel, thereby paralysing traffic, and the cars coincidentally approaching those sections were captured, looted, and used for building barricades. A gradual movement of the aggressive part of the crowd towards Mashtots avenue and Republic Square was observed.

From 18:00, the command of police forces positioned at the Shahumyan Square and its vicinity was assigned to Sashik Afyan, Deputy Head of the Police.

The command of police forces positioned at the intersection of Mashtots avenue and Gr. Lusavorich street was assigned to Armen Yeritsyan, and the command of the police troops was assigned to Grigor Grigoryan.

At around 18:00, Sashik Afyan made his regular report on the development of the situation to Hayk Harutyunyan, Head of Police of the Republic of Armenia. Hayk Harutyunyan, recognising the importance of the direction towards the Republic Square – the Government, the Central Bank, and other institutions - ordered Sashik Afyan to transfer to the Shahumyan Square with a part of the police forces positioned at the Freedom Square and block the crowd's access to the Republic Square, and ordered Armen Yeritsyan and Grigor Grigoryan to move to the intersection of Mashtots Avenue and Gr. Lusavorich street with the rest of the forces at the Freedom Square, blocking the crowd's movement towards Paronyan street, the National Assembly, and the Residence of the President of the Republic of Armenia.

According to video recording No. 1, at 18:22, Nikol Pashinyan announced at the Myasnikyan Square, "Levon Ter-Petrossian is under house arrest and he urges not to leave this square".

Meanwhile, according to the statement of 1 March 2008 of the State Protection Service of the Republic of Armenia, "*Guided by the Law of the Republic of Armenia "On ensuring the security of persons under special state protection" and based on considerations for ensuring the security of the former President of the Republic of Armenia, Levon Ter-Petrossian, as well as given the fact that the former President's leaving the protected venue may lead to an unpredictable development of events and endanger his security, the State Protection Service of the Republic of Armenia warned Levon Ter-Petrossian that he should refrain from attempting to leave the house, noting that otherwise the Service refuses to bear responsibility for the security of L. Ter-Petrossian, since it cannot escort him for taking part in the unlawful event.*"

According to the information of the police and data obtained during the preliminary investigation, "*At about 19:45, the participants of the mass disorders, through regularly recurring armed attacks at the police officers protecting the public order, tried to advance along Gr. Lusavorich street and later through Paronyan street to Proshyan street, where, at 77a Dzorap street, the governmental private residences of the staff of the President of the Republic of Armenia are located, and advance along Proshyan street to Marshal Baghramyan street, where the Residence of the President of the Republic of Armenia and the National Assembly of the Republic of Armenia are located*".

In order to stop the movement of the participants of the mass disorder in that direction, the staff of the police troops formed a chain and advanced, armed with shields, rubber clubs, and helmets. Non-commissioned officers of the police troops were positioned at the rear of the

mentioned chain, armed with special means. The police troops chain was stoned with basalt curb stones and flagstones broken in advance, and the aggressive part of the crowd threw glass bottles filled with inflammable substance and various objects intended to injure and. This is also affirmed by the following citation on page 38 of HUMAN RIGHTS WATCH, *“demonstrators have started to throw stones and even self-made explosive bottles filled with petroleum.”*

According to the police, *“At 20:15, the first shots were fired from different firearms and at approximately the same time the first grenades were thrown from among the crowd, as a result of which the Police Troops officers received the first wounds, one of which was fatal. To prevent the increase in the number of wounded among the personnel, the commander of the Police Troops decided to withdraw the personnel, to apply special means for preventing the attacks, and to fire blank cartridges for psychological impact”*.

In this respect, according to Gevorg G., *“when the police fired tear gas, that’s when we started to struggle. We hid behind cars and buses and threw stones in return. Some also threw Molotov cocktails made with petrol.”* (HUMAN RIGHTS WATCH (p.43))

To solve the issue facing the Police Troops, the commander of the Police Troops has decided to unexpectedly send forward the barbed wire installing vehicle and try to install barbed wire. Yet the assault of the crowd has made the driver and staff of the vehicle to leave the vehicle. Five minutes later, a similar action was carried out at the intersection of Mashtots Avenue and Gr. Lusavorich street as well, which also failed since the crowd attacked and the barbed wire remained half-open. A part of the aggressive crowd managed to capture some of the transportation means of the police, including the two barbed wire installing vehicles of UAZ model, the bus and other vehicles, some of which were burned on the spot, and the rest were used in attacking the police rows and were later burned at the intersection of Leo and Paronyan streets. At that moment, exerting considerable pressure upon the police rows, the attacking crowd gradually started to fire and throw grenades and other objects in their direction. Based on the situation, in order to subdue the crowd and prevent the attacks, in addition to the use of special means and submachine guns firing blank cartridges, it was decided to permit the officers and non-commissioned officers of the Police Troops armed with submachine guns to fire in the air, using tracer bullets exerting psychological impact upon the attacking people.

According to Gevorg G.’s testimony (HUMAN RIGHTS WATCH p. 43), *“police tried to block the street with barbed wires, but [the barrier] did not prevent the people [from advancing]. It was simply pushed aside. A lorry carrying barbed wires set on fire”*, and eyewitness GURGEN G saw, *“five police vehicles burning and a civilian car turned upside down as a result of the first clashes.”* (HUMAN RIGHTS WATCH (p. 43-44))

In order to reduce the pressure of the crowd exerted upon the police rows, at around 22:00 three water canons were put to use. They temporarily pushed back the crowd and suspended it from advancing, but were forced to retreat once the water finished. The crowd again advanced along Gr. Lusavorich street towards Paronyan street, meanwhile attacking the water canons, throwing metal bars, stones and “Molotov cocktail” bottles filled with inflammable substances at the police officers and the police troops servicemen. Taking into account the possibility of personnel losses during clashes with the crowd in the situation concerned, the police decided to form a battle array and retreat towards the Leo street. To subdue their actions and stop the attacks, seven police troops officers, armed with submachine guns and located at that section, fired in the air, whereas approximately 200 servicemen of the Headquarter Services of the Police and the Yerevan City, Lori, Aragatsotn, Gegharkunik Regional Departments of the Police formed a chain from the “Nairi” medical centre and blocked Paronyan street. According to the facts submitted by the police and investigated by the Committee, the explosion of the ball grenade, which was thrown by the crowd near the “Svin” shop after entering Leo street, wounded a police troops officer, and a submachine gunshot fatally wounded a police troops serviceman. Noticing a person positioned in the corner of the building at the Leo-Paronyan intersection, armed with firearms and firing in the direction of the police forces deployed on Leo street, a sniper of the police troops opened fire at his direction and, according to the preliminary data, injured his leg.

The Committee attaches importance especially to the aspect that all cases of death have occurred at the Mashtots-Leo-Paronyan intersection, that is, at the place where the particularly aggressive part of the mass disorder was located.

According to Police Troops Commander Grigor Grigoryan, *“The actions of the participants of the mass disorder were of organised nature; they were bypassing the Police Troops Forces from various places, coming out on their rear, or were blocking the path of fire-fighting trucks which were to supply water to the water canons”*.

At 23:00, March 1, the Decree of the President of the Republic of Armenia, Robert Kocharyan, on declaring a state of emergency in the city of Yerevan to prevent the dangers threatening the constitutional order and to protect the rights and lawful interests of the population, was pronounced. Despite this fact, the mass disorder still continued, coupled with the breaking and looting of stores in the vicinity.

According to the Police, *“During the operations, the police troops have had the following special means: 16 units of “AK-74” submachine gun with 1920 units of 5.45mm calibre tracer bullets, 8 units of “AK-74” submachine gun with 480 units of 5.45mm calibre blank cartridges, 10 units of “Kornet” type pistols with 130 rubber cartridges, 4 units of “KS-23” rifles for firing*

“Cheremukha-7”, “Siren-7” and “Volna R” type cartridges, 7 units of “SPSh” type pistols for firing “Cheremukha-4” type cartridges, 15 units of “Cheremukha-1”, 15 units of “Cheremukha-5”, 80 units of “Siren-6”, and 16 units of “Dreif” tear gas grenades, 7 units of “Zarya” and 5 units of “Kasset” type stun grenades, 154 units of “Cheremukha”, 89 units of “Cheremukha-7”, and 5 units of “Siren-7” type of tear gas cartridges, 180 units of “Volna R” type rubber cartridges. Of the aforementioned special means and blank cartridges, 79 units of “Cheremukha-4”, 56 units of “Cheremukha-7”, 129 units of “Volna R”, 29 units of “Siren-6”, 4 units of “Dreif”, 4 units of “Zarya”, 2 units of “Kasset”, 280 units of 5.45mm calibre blank cartridges and 62 units of “Kornet” type rubber cartridges were used. Of the 1920 units of 5.45mm calibre service cartridges, 1405 units were used, and the remaining 515 units were returned to the arsenal. Also, the Police Troops sniper was armed with one unit of “SVD” type sniper rifle and 20 units of 7,62 mm calibre bullets, of which one was used and 19 were returned to the arsenal”.

According to the Special Investigation Service of the Republic of Armenia, “In the framework of the criminal case instituted at the Special Investigation Service in relation to the instances described:

Criminal charges have been brought against 152 persons, of which:

- detention has been applied in the initial phase as a measure of restraint towards 122 persons,

- personal recognisance has been applied towards 30 persons,

as a measure of restraint, detention was changed as applied towards 33 persons, of which:

- 8 by courts,

- 25 by the preliminary investigation body with the instruction of the overseeing prosecutor.

criminal prosecution against 29 persons was terminated and that part of the criminal case was dismissed, of which:

- 8 by the overseeing prosecutor,

- 21 by the preliminary investigation body.

93 criminal cases against 116 persons were referred to the court, of which:

- 87 by detention,

- 29 - other (personal recognisance, bail).

Judgements have been delivered against 112 persons in the cases examined in court, of which:

- pursuant to the application of Article 70 of the Criminal Code of the Republic of Armenia, the punishment imposed on 38 persons was conditionally not applied and a probation period was set;

- 5 persons were fined as punishment;

- 62 persons were convicted to imprisonment;

- 5 persons were acquitted, two of whom due to the prosecutor dropping the charges;

- a criminal case against one person was dismissed in accordance with Article 183 of the Criminal Procedure Code of the Republic of Armenia;

- a criminal case against one person was dismissed on grounds of being in a state of insanity while committing a dangerous act;

Of the convicts:

- 11 convicts have been acquitted in separate parts of the criminal charges brought;

- in respect of three convicts, the criminal charges have been mitigated;

- in respect of one convict, a punishment lighter than the one provided by law has been imposed, based on Article 64 of the Criminal Code of the Republic of Armenia;

- in respect of 28 convicts, pardon has been granted by the Decree of the President of the Republic of Armenia;

- of 29 convicts serving their sentence in detention facilities at the moment of adopting the Decision of the National Assembly of the Republic of Armenia on declaring amnesty, 19 have been relieved of their sentence by virtue of the decision declaring amnesty;

In the criminal case:

- 1 accused is searched for;

- in respect of 2, personal recognisance has been applied;

- 1 accused is under detention.

During the events taken place at the Freedom Square of the Republic of Armenia

- The following have received bodily injuries:

34 police personnel members,
22 civilians.

- An inspection of the venue at the Freedom Square has yielded:

- a 6.35mm calibre “Z” model pistol, No. “B 274141”, Czech make, with 4 bullets in the magazine;
- a 7.62mm calibre pistol of “TT” type, with 5 bullets in the magazine;
- a 9mm calibre “Astra A-75L” model pistol, No. “23589-95A”, with 5 bullets in the magazine;
- two units of “Zarya 2” type stun grenades;
- two units of “RGD-5” type hand grenades;
- seven units of “F-1” type hand grenades;
- two units of self-made “ATE-92” type hand grenades;
- two units of “RG-42” type hand grenades;
- 200g of TNT block;
- one unit “MUV-2” type firing device;
- a magazine of one factory-made 5.45mm calibre submachine gun (AK-74, AKS, AKSU) and one 5.45mm calibre machine gun (RPK-74);
- 76 units of 5.45mm calibre service cartridges;
- 25 units of 7.62mm calibre rifle service cartridges, 30 units of 5.45mm calibre and 27 units of 7.62mm calibre submachine gun service cartridges;
- one unit of 5.45mm calibre bullet;
- 5 wooden bars with slant cut;
- 2 rubber clubs;
- 72 pieces of metal bars, reinforcement bars, and pipes of various length and diameter;
- 38 pieces of metal arrangements called “hedgehog”;
- 3 “Molotov cocktail” bottles filled with inflammable substance;
- 3 plastic vessels with inflammable substance;
- a metal cylinder of light green colour containing chlorodifluoromethane;
- 18 gas masks and one container;
- 2 knives with plastic and wooden handles;
- 48 pills containing “Trifluoperazine” type of psychotropic components;
- 10 pills containing “Trihexyphenidyl” type of psychotropic components;
- 4 surgical forcep-scissors and 2 empty syringes;

During the mass disorders taken place in the vicinity of Yerevan City

Hall and central streets:

8 civilians,

one police officer and one serviceman of the police died;

35 civilians,

186 police personnel members and servicemen received bodily injuries;

- 92 transportation means were burned and damaged (material damage amounts to AMD 70 854 525), of which:

27 are public transportation means (material damage amounts to AMD 5 736 825),

46 belong to the Police of the Republic of Armenia (material damage amounts to AMD 39 362 600),

19 are personal transportation means of civilians as well as of police personnel members (material damage amounts to AMD 25 755 100).

- The overall material damage caused to the city of Yerevan and “Kentron” district community of Yerevan is AMD 69 288 760.

- 12 objects have been damaged and looted, resulting in AMD 339,954,866 overall material damage caused to civilians and legal persons.

- The investigation of the vicinity of the Yerevan City Hall and central streets yielded the following:

around 1600 units of bullet cases of various calibre;

more than 50 units of cartridges of various calibre;

more than 1000 metal bars and bats;

61 “Molotov cocktail” bottles filled with inflammable substance;

2 units of 20-litre vessels filled with inflammable substance.

According to data provided by the Republican Scientific-Practical Centre of Forensic Medicine of the Ministry of Health of the Republic of Armenia, 10 persons died during the events taken place in Yerevan on 1-2 March 2008. Among them, there was one police officer and one police serviceman. Of them, Hamlet Tadevosyan died of a grenade explosion, and Tigran Abgaryan died of a firearm bullet. The other eight casualties were civilians; four of the

casualties, Davit Petrosyan, Zakar Hovhannisyan, Hovhannes Hovhannisyan, and Grigor Gevorgyan, died of firearm bullets, three of the casualties, Gor Kloyan, Tigran Khachatryan, and Armen Farmanyanyan died of “Cheremukha-7” type gas grenade cartridges, and Samvel Harutyunyan died of craniocerebral injuries caused by a blunt object.

4.2 FINDINGS OF THE COMMITTEE

The Committee has made the following findings on the further events taken place in the city of Yerevan on 1-2 March 2008.

1. Despite separate instances noted in this Report, the Committee has drawn the conclusion that the actions of the Police, aimed at thwarting the further events taken place in Yerevan on 1-2 March 2008 and later the mass disorders, were generally lawful and in line with the requirements of Articles 2, 10-12, 16, 19, 21, 25, 30-32 of the Law of the Republic of Armenia “On the Police” and of Articles 8 and 14 of the Law of the Republic of Armenia “On Meetings, Assemblies, Rallies and Demonstrations”.

2. There are parts in the video recording at the disposal of the Committee where it is clearly visible that in some scenes, certain personnel members of the police are applying undue force and violence towards civilians. The Committee condemns any instance of applying unlawful force by the police officers and finds that any incident of exerting violence by a police officer should undergo due examination.

3. In the opinion of the Committee, the actions carried out by the police have not been so operatively arranged and organised whereas the actions of separate police officers have been of low professional competence; otherwise it might have been possible to reduce the occurrence of serious consequences.

4. The studies of the Committee revealed that the “Cheremukha-7”, as a special means, was applied by the Police Troops of the Republic of Armenia, particularly by the non-commissioned officers of the Unit No. 10/33 and the Special Operations Detachment, who, in applying the means, did not always follow the provided safety rules, according to which “Cheremukha-7”, as a special means, is prohibited to use in the direction of gatherings of people; this has been affirmed by the technical expert examination conclusion of the Ministry of the Interior of Russia. (As a result, six civilians have received bodily injuries from the cartridges of “Cheremukha-7” special means, three of whom died. The instance that those tear gas cartridges were used in breach of provided safety rules is supported by the fact that 11 servicemen of the police troops were also poisoned and received bodily injuries of different degrees due to the gas emitted during the use of the cartridges). As a result, the application of “Cheremukha-7” special means, while probably compelled by the situation, has nevertheless been unlawful.

5. The Committee finds it necessary to note that, in terms of effectiveness, the cartridges of special means “Cheremukha-7” are intended for closed areas. (In response to the Committee’s inquiry, the Police of the Republic of Armenia has stated that the “Cheremukha-7” type gas cartridges, considered as special means, which were used against the participants of the event,

were last acquired in 1990, meaning that they are 18 years old, whereas their storage life is five years. It is probably because of being expired that a part of those cartridges has not maintained the intended qualities.

Conclusion No. 1466 of the forensic ballistic expert examination, carried out by the Expertise Criminological Department of the Police of the Republic of Armenia, states that the experimental shots of “Cheremukha-7” cartridges provided for examination have revealed that in 40% of the fired cartridges, there has been no discernible gas leakage from the gas grenades; meanwhile, low flying speed of gas grenades has also been observed.)

6. The Committee concludes that in technical, organisational, and moral-psychological terms, the police has not been adequately prepared to prevent the mass disorders and similar difficult situations. Several facts attest to this, including the two futile attempts of installing the barbed wire, the ineffective use of water canons, and in general the other actions aimed at preventing the mass disorders.

7. The Committee finds that the police has been unprepared and has not been able to foresee such developments of events in advance, which would have allowed them to control and manage the overall course of events, whereas they have resisted the actions of the participants of the mass disorder with great difficulty.

8. Moreover, the Committee admits the fact that the 1 March events were unprecedented in their nature and scale; in fact, not only the police, but also our whole society were taken aback by this, and evidently the police could objectively be unprepared for such developments.

9. In this respect, the Committee considers it important that the police troop forces engaged in ensuring public order and public safety should gradually be remanned with professional staff.

10. The police officers and police troops servicemen engaged in ensuring public order and public safety should regularly undergo professional re-qualification.

The Committee welcomes the cooperation between the gendarmerie of the Ministry of Internal Affairs of the Republic of France and the Police of the Republic of Armenia, as well as the OSCE Office in Yerevan, aimed at ensuring public order during mass disorders.

11. The Committee states that the actions of various subdivisions of the Police of the Republic of Armenia have not been coordinated and organised, and certain personnel members have fallen panic. (In Grigor Grigoryan’s words, “*the moral-psychological condition of the police troops was not so astounding*”.)

12. The Committee considers as requisite the technical-material re-equipping of the police with technical and special means which will be more effective and safe when applied.

13. The Committee also considers as important the establishment of a legal framework for carrying out actions aimed at ensuring public order and safety, particularly as to the use of physical force, special means, and weapons.

14. The Committee finds that officers of all power structures engaged in ensuring public order, defending the safety, and involved in states of emergency are obliged to wear appropriate uniform with distinctive emblems, an aspect which was not adhered to in certain cases. (Video recording No. 2 shows a young person in civilian clothing arming with a submachine gun in the presence of police officers. Yet it turned out that this person is a serviceman driver of the Ministry of Defence who reported to duty in civilian clothing due to the urgent call.)

The Committee has made the following findings regarding the actions of the organisers and participants of the mass event in further events.

15. Refraining from presenting criminal law qualifications, the Committee states that the organisers and participants of the mass event have regularly committed serious violations of the Law of the Republic of Armenia “On Meetings, Assemblies, Rallies and Demonstrations”. (Among the responsibilities of the organisers of a public event, Article 6(2)(3) of the Law of the Republic of Armenia “On Meetings, Assemblies, Rallies and Demonstrations” provides that the organiser is obliged “to undertake measures aimed at ensuring the adherence of the participants of the public event to the requirements of legality and public order”. Among the responsibilities of the participants of a public event, Article 7(4) of the said Law provides that “during public events, participants of the public events are forbidden to bear, use, exert, apply weapons, ammunition or explosive, toxic, inflammable or such other objects or substances, which may cause harm to the life, health, or property of persons”. Whereas, Article 7(7) prescribes that participants of public events are obliged “to maintain public order, obey the legal orders of the police representative and not to obstruct their legal actions, to immediately leave the public event venue in case the public event is terminated, not to damage the property, trees, bushes, the green of the public event venue”.)

16. The Committee states that, with their actions, the organisers and participants of the mass event have in fact paralyzed the traffic in that area and have prepared for showing active resistance to possible actions of the police. (At around 11:30, two trolleybuses were derailed by the participants of the events and fixed perpendicularly on G. Lusavorich street, in front of the Sundukyan Theatre, blocking the traffic of the street and forming a barricade, and a considerable amount of stones and metal bars were brought from the construction site of a nearby building under construction. The participants of the event have also captured the garbage truck and positioned it within the barricade.)

17. The Committee considers unacceptable such behaviour and actions of the organisers which particularly agitated and incited the sentiments of the crowd and provoked to disobedience (Nikol Pashinyan called on the participants of the event to arm with iron bars, wooden bats, stones, and whatever may be “*to organise for self-protection*”). In one of the video recordings, Nikol Pashinyan, addressing the demonstrators, announces: “...*guys, you can't imagine how my spirit uplifted when I learned that you've grabbed shields and clubs from the police officers*”. While before this Vardan Khachatryan, Zaruhi Postandjyan, Anahit Bakhshyan, Armen Martirosyan attempted to call on the demonstrators to show self-control and restraint, to hold them back from possible clashes and violence with the police, Nikol Pashinyan's such call encouraged the participants of the mass event to confront the police.)

18. The Committee considers as highly unacceptable the behaviour of Levon Zurabyan, one of the organisers of the mass event, as he in fact obstructed the agreement on continuing the event in another place, obtained between the police and David Shahnazaryan, one of the organisers of the event. The Committee finds that if the mentioned agreement was implemented, it may have been possible to avoid such development of events.

19. In respect of the “house arrest” of Levon Ter-Petrossian and the fact that the State Protection Service of the Republic of Armenia did not guarantee his security, the Committee finds that at that time, in the vicinity of the City Hall, it was already completely impossible to guarantee anyone's security, which became evident from further events; nevertheless, given the situation at hand, Levon Ter-Petrossian, who for over ten days had lead the mass event held in violation of the procedure provided by law, was morally obliged to defy the appeals of the protection service and appear before the demonstrators even without protection and use his great influence over them to prevent the further development of events. Such behaviour resulted in serious consequences. The fact that Levon Ter-Petrossian had great influence over the participants of the mass event is also affirmed by the instance that after the Decree of the President of the Republic of Armenia on Declaring a State of Emergency was pronounced, according to HUMAN RIGHTS WATCH p. 47, “*The main participants of demonstration dispersed at about 2.00-3.00 in the morning after Levon Ter-Petrossian addressed them by telephone persuading to leave the area for not having more victims*”. The Committee finds that if Levon Ter-Petrossian had admitted and attended to His Holiness Karekin II, Supreme Patriarch and Catholicos of All Armenians, or had addressed the participants of the event earlier through his supporters, he could have prevented such development of events.

That is, in the atypical situation at hand, Levon Ter-Petrossian should have adhered to those moral values, inspired in his constituents during the pre-election period, which he had put

in the famous words of the Armenian poet Charents, " ...Let no man but me, the only victim be,...".

V. THE EXAMINATION OF THE CIRCUMSTANCES OF THE DEATH OF THE DECEASED AND FINDINGS OF THE COMMITTEE

5.1. EXAMINATION OF THE CIRCUMSTANCES OF DEATH

For the purpose of examining the circumstances of the death of the deceased as a consequence of the events taken place on 1-2 March 2008 in Yerevan, the Committee has invited the following persons to its sittings: Hayk Harutyunyan, former Head of the Police of the Republic of Armenia; Hovhannes Hunanyan, Armen Yeritsyan, Sashik Afyan, deputy heads of the Police of the Republic of Armenia; Grigor Grigoryan, former commander of the Police Troops; Hovhannes Tamamyán, Head of the General Department of Criminal Intelligence; Vahagn Harutyunyan, Head of the Investigation Group of the Special Investigation Service of the Republic of Armenia; Shota Vardanyan, Director of the Republican Scientific-Practical Centre of Forensic Medicine of the Ministry of Health of the Republic of Armenia; Vigen Adamyan, Head of the Medical-Criminological Section of the same Centre; Stepan Manukyan, Head of the Expertise-Criminological Department of the Police of the Republic of Armenia; Arthur Hovhannisyán, Deputy Head of the Criminological Examination Division of the mentioned department; Mesrop Movsisyan, Director of A1+ TV company, and Hovsep Hovsepyan, cameraperson; Gagik Shamshtyan and Gohar Veziryan, journalists; Roman Grigoryan, Tigran Karakhanyan, and Hayk Hovakimyan, eyewitnesses. The parents and relatives of the deceased Tigran Abgaryan, Gor Kloyan, Davit Petrosyan, Tigran Khachatryan, provided the Committee with details known to them on the circumstances of their death and responded to questions of interest to members of the Committee. On 3 November 2008, the members of the Committee visited the Unit No. 1033 of the Police Troops and met with the servicemen who were on duty with Tigran Abgaryan at the scene of the incident in order to learn the circumstances of his death. The Committee requested and received from the Republican Scientific-Practical Centre of Forensic Medicine of the Ministry of Health of the Republic of Armenia the conclusions of forensic medical expert examination of the corpses and from the Expertise Criminological Department of the Police of the Republic of Armenia the conclusion of expert examinations of firearm bullets, "Cheremukha" special means cartridges, and various fragments removed from the corpses and seized, as well as the conclusions of expert examination of the clothing. The Committee also received from the General Prosecutor's Office of the Republic of Armenia the conclusions of the expert examinations performed for the identification of "Cheremukha" special means cartridges by the Expertise Criminological Centre of the Ministry of the Interior of the Russian Federation, as well as the response of Colin Burrows – an

Irish expert with respective knowledge and experience, recommended by Thomas Hammarberg, PACE Human Rights Commissioner – who was cooperating with the Special Investigation Service.

The Police of the Republic of Armenia has provided information on the weapons and ammunition received and used by the police personnel in connection with the events. The Special Investigation Service has provided to the Committee the photographs of the bodies of the deceased, the ground-plans of the scenes, reports on the bullets, bullet cases, “Cheremukha” type special means gas cartridges, and other physical evidence discovered and seized at those scenes, as well as the results of comparing these with the samples available in the bullet inventory. Upon the request of the Committee, the results of the official investigation, in respect of those police servicemen who have applied “Cheremukha” special means, was also provided. The preliminary investigation body has also submitted to the Committee all the materials of the criminal case related to the circumstances of death, which, in furtherance of PACE Resolution 1677, were also submitted by the General Prosecutor of the Republic of Armenia upon the request of the Committee.

Further to an agreement with the Committee and in fulfilment of the requirements of PACE Resolution 1677, the General Prosecutor of the Republic of Armenia regularly reports on the materials of the criminal case.

The Committee has received one official report from the Fact-Finding Group, on the circumstances of death of Hamlet Tadevosyan, as well as the individual reports of former members of the former Fact-Finding Group, Andranik Kocharyan and Seda Safaryan, on the circumstances of death of Tigran Abgaryan and the application of special means. Adhering to the principles of impartiality and openness, the Committee has included in the Conclusion the reports of the Fact-Finding Group and of the former members of the Group as well as the objections of the Special Investigation Service, thus allowing interested parties to make their own conclusions and deductions.

The Committee has also examined and analysed the documents, obtained with regard to the events, submitted by the Fact-Finding Group.

The examination of the extensive and varied documents at the disposal of the Committee has revealed the following. As a result of the events taken place in Yerevan on 1-2 March 2008, ten citizens have died, two of whom are servicemen of the Police Troops, and eight are civilians. Of them, one has died of fragments caused by the explosion of an explosive device, five have died of firearm bullets, three have died of "Cheremukha-7" gas grenade cartridges, and one has died of bodily injuries to the head caused by a blunt object.

Thus:

1. Hamlet Aghas Tadevosyan, born on 15 May 1976, in Kotayk marz, city of Yeghvard, 86 Shirak street, served in Unit No. 1032 of the Police Troops of the Republic of Armenia as commander of the first company of the motor rifle battalion, has been a captain of police (posthumously ranked a major).

On 1 March 2008, at around 21:15, while on duty in Unit No. 1032 of the Police Troops of the Republic of Armenia, Hamlet Tadevosyan has received, due to the explosion of an explosive device in front of Building No. 17 on G. Lusavorich street, several fragmentation injuries to the upper and lower pair of extremities, hips, the abdomen, and groin and has been hospitalised at Clinic No. 3 of Yerevan, where he died at 03:00. According to forensic medical expert examination opinion, H. Tadevosyan died due to hemorrhagic-traumatic shock which was conditioned by several explosion, fragmentation injuries.

Forensic ballistic examination has been ordered for identifying the origin of one metal fragment found on the surface of the right pair of short boots and of three metal fragments found in both calves of H. Tadevosyan. According to the conclusion of expert examination, "1) the mentioned metal fragments have been fragmented as a result of an explosion; one of them is probably a fragment of the upper part of the connecting bushing of a factory-made "UZRGM" type fuse, whereas the origin of the other two fragments is not possible to determine due to their small sizes and the absence of identification features on them; 2) "UZRGM" type fuses are intended for firing factory made "F-1", "RGD-5", and "RG-42" type grenades and are considered to be munitions".

According to the theory of the police and the preliminary investigation body, H. Tadevosyan died from the explosion of a grenade thrown by the participants of the mass disorders. However, according to the statement delivered by the preliminary investigation body, the preliminary examination has not yet revealed the actual person whose actions caused Hamlet Tadevosyan's death.

The Fact-Finding Group of experts, established by the Executive Order of the President of the Republic of Armenia of 23 October 2008, has submitted a document to the Committee according to which "*the Fact-Finding Group of experts, established by the Executive Order of the President of the Republic of Armenia of 23 October 2008 (hereinafter referred to as "the Group")*", has studied the material in connection to the criminal case instituted in relation to the mass disorders - accompanied with provoked and organised violence, burnings, destruction of and damage to property, exertion of firearms and explosives, showing armed resistance to representatives of the authorities, and killings - in the vicinity of the Yerevan City Hall and central streets on 1 March 2008, and has received clarifications on the circumstances of the death of Hamlet Tadevosyan from: A. Tadevosyan, H. Terteryan, K. Hovsepian, H. Mangoyan,

V. Khanzadyan, H. Khedoyan, investigators performing investigative operations; V. Adamyan, A. Hovsepyan, experts; A. Papayan, Head of the Investigation Division of the Kentron Community of Yerevan of the Police of the Republic of Armenia; Anzhela Verdyan and Varuzhan Kostanyan, attesting witnesses; the Republican Clinical Hospital No. 3 of Yerevan; Paraksya Yeloyan, senior nurse, and Kandukht Grigoryan, nurse, as well as the medical staff which performed the surgery on police troops officer Hamlet Tadevosyan. The Group has studied all the material available on the circumstances of the death of Hamlet Tadevosyan, for which the Special Investigation Service (hereinafter referred to as "SIS") has assured that there are no other material, at their disposal, with regard to that".

Following the examination of the material of criminal case No. 26602688 and the conducted interviews, the Group has drawn the conclusion that there are blatant contradictions in the material of the case in relation to the circumstances of the death of Hamlet Tadevosyan and that a number of violations have taken place during the preliminary investigation, for which the Group has expressed its concerns and has informed the Committee of those concerns in writing on 22 April 2009.

The report of the Fact-Finding Group and the objections of the SIS (in italics) on the examination of the body of police troops officer Hamlet Tadevosyan follows below.

1. According to Article 191(3) of the Criminal Procedure Code of the Republic of Armenia, the investigator may assign the performance of investigation operations to another investigator in case it is necessary to conduct the investigation operation at another site. Thus, according to the Group, it is evident that this provision is not applicable in this case, since the head of the investigation group has instructed to conduct investigation operations right at the site of the investigation group's activity, where the instruction was given – that is, in Yerevan. The Fact-Finding Group has noted that V. Harutyunyan, head of the investigation group, has violated the procedure for delivering the investigation instructions in writing, prescribed by Articles 55 and 193 of the Criminal Procedure Code of the Republic of Armenia. Given these conditions, the investigators were obliged to refuse carrying out the unlawful instructions".

1.1. As to this, the SIS has clarified that "even if he so desired, *the head of the investigation group could not have been guided by Article 193 of the Criminal Procedure Code of the Republic of Armenia, since the said Article prescribes the authorities of the head of the investigation division, whereas the head of the investigation group and the head of the investigation division are officials and have different authorities.*

Given the heavy workload of the members of the investigation group established for the criminal case and the fact that several reports have been received from hospitals and the Republican Scientific-Practical Centre of Forensic Medicine of the Ministry of Health of the

Republic of Armenia on the cases of death of various persons, and thus for the purpose of performing external examination of the bodies, the seizure of clothing, as well as other investigation operations arising thereof, an investigation assignment has been delivered in writing on 2 March 2008 to the General Investigation Department of the Police of the Republic of Armenia pursuant to Article 191 of the Criminal Procedure Code of the Republic of Armenia. For fulfilling the requirements of the investigation assignment, H. Shahumyan, V. Khanzadyan, and H. Khedoyan, investigators of the Police of the Republic of Armenia, who were not included in the investigation group set up for criminal case No. 62202608, have immediately reported to the SIS and, upon receiving more specific information on the actions to be performed, have gone to the autopsy clinic and have conducted respective investigation operations; they have submitted the documents compiled based on the results of investigative operations to A. Grigoryan, SIS investigator for particularly important cases, member of the investigation group for the criminal case No. 62202608, and a transfer notice has been prepared for this, which has been confirmed by investigator H. Khedoyan”.

2. According to the Group, “H. Mangoyan, investigator for particularly important cases of the General Investigation Department of the Police of the Republic of Armenia, has explained the instance of examining the body and later not instigating a criminal case by the fact that he was a member of the investigation group for the criminal case. Whereas, the investigation group established for criminal case No. 62202608 by the decision of A. Mirzoyan, Head of SIS, of 2 March 2008 comprised, as members, the following investigators: Hovik Gevorgyan, Lyudvig Avetisyan, Gor Shahinyan, Artak Kalashyan, Arman Bayatyan, A. Poghosyan, and N. Mangasaryan. In relation to this, investigator H. Mangoyan has stated that his surname is incorrectly written as “N. Mangasaryan”.

To receive further clarification and in response to the Group’s inquiry, the Police of the Republic of Armenia has provided the list of police investigators, which did not include an investigator by the name N. Mangasaryan”.

2.1. In that respect, the SIS has clarified that, “*H. Mangoyan, investigator for particularly important cases of SIS of the Police of the Republic of Armenia, has been included in the investigation group set up for criminal case No. 62202608 and has conducted investigation operations; however, a typographical mistake has been made in the decision on establishing an investigation group, particularly, “N. Mangasaryan” has been typed instead of “H. N. Mangoyan”, which has been confirmed by the list of investigators working in the police provided to the Group for further clarification*”.

3. According to the Fact-Finding Group, “Further to studying the reports on the examination of bodies by the investigators and the opinions of the forensic medical expert

examinations, the Group has taken note that investigators H. Mangoyan, H. Shahumyan, V. Khanzadyan, and H. Khedoyan have committed the following violations of law:

(a) none of the reports contain an indication on the time of starting and ending the examination;

(b) as stated by the investigators, the examinations and forensic medical expert examinations of the bodies have been performed simultaneously, with the same person operating as a specialist and an expert, which is a violation of Article 97 of the Criminal Procedure Code of the Republic of Armenia;

(c) according to the expert conclusion, on 2 March 2008, from 14:30 to 17:30, investigator H. Mangoyan has simultaneously performed the examination of the bodies of Z. Hovhannisyanyan and G. Gevorgyan, with different attesting witnesses, with the involvement of various specialists (experts);

(d) as attesting witnesses, the same persons have participated in the examination of different bodies performed simultaneously by the investigators, confirming the legality of the performance of these examinations with their signatures. Thus, Varuzhan Kostanyan and Sahak Karapetyan – the attesting witnesses mentioned in the report on the examination of the body of G. Gevorgyan by investigator H. Mangoyan – have been involved in the examination of the body of Gor Kloyan performed at that same period by investigator H. Shahumyan, whereas Varuzhan Kostanyan has also been involved in the examination of the body of A. Farmanyanyan performed by investigator H. Khedoyan. Anzhela Aleksanyan and Lusine Aleksanyan – participating as attesting witnesses in the examination of the body of Z. Hovhannisyanyan by H. Mangoyan – have also been involved at that same time in the examination of the body of H. Hovhannisyanyan by investigator H. Shahumyan, again as attesting witnesses, whereas Anzhela Aleksanyan has also been involved in the examination of the body of A. Farmanyanyan by investigator H. Khedoyan. Moreover, on 2 March, from 17:30 to 19:30, investigator H. Mangoyan has examined the body of Hamlet Tadevosyan with Varuzhan Kostanyan and Sahak Karapetyan attending as attesting witnesses, whereas from 17:30 to 19:20, Varuzhan Kostanyan has also been involved as an attesting witness in the examination of the body of T. Khachatryan by investigator V. Khanzadyan. Anzhela Verdyan and Lusine Aleksanyan have signed as attesting witnesses the report on the examination of the body of Z. Hovhannisyanyan performed by H. Mangoyan, whereas the investigator has not even acquired the personal information of Anzhela, personnel member of the Republican Scientific-Practical Centre of Forensic Medicine of the Ministry of Health of the Republic of Armenia, whose surname is Verdyan, not Aleksanyan. Moreover, as notified to the Fact-Finding Group by Anzhela Verdyan (so-called “Aleksanyan”), Lusine Aleksanyan is her relative, who immediately left the autopsy clinic after entering it. Moreover, as notified by

Anzhela Verdyan, the signature on the report on the examination of the body is not that of Lusine Aleksanyan. A. Verdyan did not rule out that she signed the report instead of Lusine. Similarly, another attesting witness, Varuzhan Kostanyan, is the guard of the Republican Scientific-Practical Centre of Forensic Medicine of the Ministry of Health of the Republic of Armenia, and his participation in the examination has been of episodic nature.

The Group has taken note that investigators H. Mangoyan, H. Shahumyan, V. Khanzadyan, and H. Khedoyan have violated the requirements of Article 81(1) and Article 81(3)(4) of the Criminal Procedure Code of the Republic of Armenia, according to which an attesting witness is not an interested party to the criminal case and participates in the performance of the investigation operation and confirms with his or her signature the fact, content, process, and results of the performance of the investigation operation. During the performance of the investigation operation, the attesting witness does not have the right to leave the site of the performance of the respective investigation operation without the permission of the person performing the operation. The investigator was obliged to explain to the attesting witnesses their rights and responsibilities and not permit them to violate their responsibilities after involvement as attesting witnesses, including signing under the report on one another's behalf. The investigator, as an official responsible for the investigation operation, should have been aware that without following the complete process of operations, the same attesting witness cannot confirm the content, process and results of different investigation operations performed simultaneously by different investigators and that evidence obtained in violation of law could not be a ground for a criminal charge (Article 105(1)(5) of the Criminal Procedure Code of the Republic of Armenia).

The investigators were obliged to seize from the forensic medical expert the fragments and firearm bullets found in the bodies through the forensic medical expert examination pursuant to Chapter 31 of the Criminal Procedure Code of the Republic of Armenia, based on a decision which must have mandatorily been preceded by a decision on instituting a criminal case. In breach of the law, the investigators have included those in the report on the examination of the body as evidence discovered through the examination”.

3.1. In this respect, the SIS has clarified that, *“the claim that the experts of the forensic medical centre have performed the expert examination in violation of the requirements of Article 97 of the Criminal Procedure Code of the Republic of Armenia is not true, since there are no grounds for excluding the participation of the experts who performed the expert examinations. As to the participation of the same expert in the examination of the body performed in conjunction with the expert examination, this has also been conducted in the manner prescribed by law. Article 85(6)(3) of the Criminal Procedure Code of the Republic of Armenia prescribes*

that the expert shall have the right to participate in the investigation and other procedural operations, insofar as those operations relate to the object of the expert examination and are necessary for delivering a conclusion. In this case, the examination of the bodies has been performed after the decisions on commencing forensic medical expert examination were made, and the personnel of the Republican Scientific-Practical Centre of Forensic Medicine of the Ministry of Health of the Republic of Armenia had already been involved as experts.

Persons involved in the examination of the bodies as attesting witnesses have not been interested parties to the criminal case. The Fact-Finding Group and the preliminary investigation body are not aware of any circumstances which may cast doubt upon the fact that the persons involved as attesting witnesses were disinterested in the outcome of the criminal case. The law also does not restrict the involvement of the same person as an attesting witness in performing various investigation operations.

The instance that the investigators were supposedly obliged to seize from the expert the fragments and firearm bullets found in the bodies through the forensic medical expert examination pursuant to Chapter 31 of the Criminal Procedure Code of the Republic of Armenia, based on a resolution, which must have mandatorily been preceded by the decision on instituting a criminal case, does not stem from the requirements of the law, since those seizures were conducted based on the decisions made within the framework of the instituted criminal case No. 62202608 and it is not necessary to institute a new criminal case when performing various investigation or procedural operations in connection with the same criminal case (Article 217 and 218(3) of the Criminal Procedure Code of the Republic of Armenia)”.

4. According to the Fact-Finding Group, “Three metal fragments were seized as a result of the examination of the body by investigator H. Mangoyan, which were noted to be found in both calves without specifying the injuries in the calves where the fragments were detected. Also, in the report, investigator H. Mangoyan has specified “approximately 0,8x0,2cm and 0,4x0,3cm” as the sizes of the fragments. As it later turned out, the dimensions of one of the metal fragments obtained by investigator H. Mangoyan, without a decision on seizure, did not correspond to the 11x4,8x2,3 mm sizes of the fragment registered by an expert during the explosion-technical expert examination. That same fragment was allegedly identified by the expert as a fragment of the upper part of the connecting bushing of “UZRGM” type fuse.

Investigator H. Mangoyan also did not perform an investigation operation such as the retrieving of the explosion traces with swabs from the surface of untreated fragmentation injuries not treated during the surgery (as prescribed by Articles 253-256 of the Criminal Procedure Code of the Republic of Armenia) for the purpose of determining their content through complex

forensic chemical and forensic explosion-technical expert examination, especially given the fact that certain marks are visible on H. Tadevosyan's hands in the colour photographs of the body”.

4.1. As to the stated discrepancy – that the sizes of one of the fragments taken during the examination by investigator H. Mangoyan do not correspond to the sizes registered by the expert during explosion-technical expert examination – the SIS has clarified that, *“the investigator does not possess and is not obliged to possess special knowledge in the fields of science and relevant technical research methodology, for which reason he has registered the sizes of the fragments in centimetres, without accuracy to the millimeter, and has given a general description of them. According to Article 243 of the Criminal Procedure Code of the Republic of Armenia, expert examination is conducted when special knowledge in the fields of science, technique, arts or crafts, as well as in relevant research methodology is required for determining the circumstances essential to the criminal case, and in this case possessing special knowledge by the investigator does not excuse the need to order a relevant expert examination. Within the expert examination ordered for the purpose of determining the circumstances essential to the criminal case – the source and origin of the fragments found in H. Tadevosyan’s body as well as a number of other issues – the expert has examined the submitted fragments and has provided the sizes of the fragment, with the accuracy to the millimeter, as part of his responsibilities.*

The SIS has considered unacceptable that the members of the Group are able to distinguish, through the photographs, the post-mortem stains from the marks resulting from explosion or gunshot traces. The point that the investigator did not retrieve explosion traces is due to the situation that the patient, upon admission to the clinic, has been immediately transferred to the surgery room, where initial surgical treatment of the wounds and haemostasis has been performed, stitches have been put, and therefore explosion or gunshot traces could not have been retrieved after the surgery and the treatment of wounds”.

5. According to the Fact-Finding group, “The Group has learned from Yerevan Clinic No. 3, particularly from senior nurse P. Eloyan, that Hamlet Tadevosyan’s clothing has been taken by A. Tadevosyan, investigator of the Investigation Division of Yerevan Kentron Community Police, and two other investigators, whereas the report on "presenting of the clothing" bears only the name and signature of A. Tadevosyan, although the latter has not been a member of the investigation group established for the criminal case No. 62202608.

A. Tadevosyan, investigator of the Investigation Division of Yerevan Kentron Community Police, has prepared a report “on presenting of the clothing” with respect to the one polyethylene sack with H. Tadevosyan’s clothing submitted by P. Eloyan, senior nurse of the hospital. It should be noted that criminal procedure law does not consider “presenting of the

clothing” to be an investigation operation. In the report, investigator A. Tadevosyan has also missed the date and place it was prepared.

In the report “on presenting of the clothing”, investigator A. Tadevosyan has made a reference to Articles 217 and 218 of the Criminal Procedure Code of the Republic of Armenia, but has not described in detail the positioning, number, and sizes of the damages to the clothing. Not being a member of the SIS investigation group, A. Tadevosyan was obliged to first institute a criminal case on this matter and then make a decision on seizing the clothing and seize the clothing based on the report. Instead, investigator A. Tadevosyan prepared a report, not provided for by the Criminal Procedure Code of the Republic of Armenia, “on presenting of the clothing” of H.Tadevosyan. In this respect, A. Papayan, Head of the Investigation Division of Yerevan Kentron Community Police, who was called on by the Group, admitted that investigator H. Tadevosyan has in fact conducted an “examination of the clothing” investigation operation and considered the failure to institute a criminal case a neglect .

In the report, investigator A. Tadevosyan has mentioned that nurse P. Eloyan has provided him a polyethylene sack with H. Tadevosyan’s clothing. Among the “presented clothing”, investigator A. Tadevosyan has also noted the chest and back protection shield (bulletproof jacket) worn by H. Tadevosyan, specifying that it is black and has damages on it. The report does not contain any indication of packaging and sealing the clothing.

At the Fact-Finding Group, investigator A. Tadevosyan has admitted that he has not been a member of the investigation group and that he has performed an investigation operation at the hospital further to the verbal instructions of A. Papayan, Head of the Investigation Division of Yerevan Kentron Community Police.

Investigator A. Tadevosyan has also stated that he has transferred the reports “on presenting of the clothing”, in relation to the death of three persons, to the Head of Division, A. Papayan, and has placed the clothing, packaged and sealed, in the physical evidence room.

The Head of the Investigation Division of Kentron community, A. Papayan, submitted a letter to the Group confirming that the clothing of the deceased H. Tadevosyan, G. Kloyan, and Z. Hovhannisyan (in three packages) and the reports on their submission by clinic No. 3 have been sent to the SIS on 2 March 2008. A. Papayan has also stated that he has received a letter from the SIS on 2 February 2009, stating that the black bulletproof jacket – obtained by A. Tadevosyan, investigator of the investigation section of the Kentron community, from clinic No. 3 along with the clothing removed from H. Tadevosyan’s body – has not been submitted, and on the same day he has discovered in the physical evidence room a sealed package with "H. Tadevosyan’s bulletproof jacket" writing on it, packaged in a polyethylene sack.

A. Papayan, Head of the Investigation Division, has submitted to the Fact-Finding Group the letter, bearing his signature, prepared on 2 March 2008, by which the three polyethylene sacks were sent to the SIS along with the reports. Noting that the letter was missing an outgoing issue number, the Group visited the Investigation Division of the Kentron community on 27 March 2009 to determine whether the document has been listed in the register of out-going documents. The Group has first discovered, that A. Papayan was replaced by S. Yeghiazaryan, who has refused to provide the register of out-going documents and the register for recording physical evidences. In the meantime, S. Yeghiazaryan personally checked and confirmed that during the period of 2-4 March 2008, there are no letters on sending those physical evidence and reports to the SIS.

After H. Tadevosyan's clothing were examined by A. Tadevosyan on 2 March 2008, they were also examined on 3 March 2008 by Karapet Hovsepyan, investigator of the Yerevan garrison of the Investigation Department of the Ministry of Defence of the Republic of Armenia. The Group has stated that except for the second examination of H. Tadevosyan's clothing, in no other case has a second examination of the clothing of victims been performed.

Investigator K. Hovsepyan has been engaged in the investigation group established for the criminal case No. 62202608 on 6 March, upon the decision of A. Mirzoyan, Head of SIS, on remanning the investigation group of the SIS. Consequently, he did not have the right to perform an examination of H. Tadevosyan's clothing on 3 March. Further, K. Hovsepyan's report does not note whom the examined clothing belongs to, and whether they were packaged and sealed. The report on the examination does not mention H. Tadevosyan's bulletproof jacket, which, according to senior nurse P. Eloyan, "has been taken" by A. Tadevosyan, investigator of the Investigation Division of Kentron community, and the bulletproof jacket has been mentioned in the report he prepared.

In order to clarify the issue of the missing bulletproof jacket, which is of substantial importance in determining the circumstances of H. Tadevosyan's death, the Group called on investigator K. Hovsepyan. On the issue of H. Tadevosyan's missing bulletproof jacket, investigator K. Hovsepyan has stated that he arrived at the SIS building at the time when H. Terteryan, member of the investigation group, had already started the examination of the clothing and, further to Terteryan's suggestion, he has only prepared the report, and there was no bulletproof jacket in the clothing. Moreover, in breach of the requirements of Article 218(6) of the Criminal Procedure Code of the Republic of Armenia, investigator K. Hovsepyan did not include in the report the personal information of investigator H. Terteryan, participating in the examination, and the latter did not sign the report. As a result of the examination performed by investigator K. Hovsepyan, two protruding fragments were found on H. Tadevosyan's left shoe -

a fact which was not mentioned by A. Tadevosyan, investigator of the Police of Yerevan Kentron community , during the examination of the those same shoes although the latter had taken note of the damages to and blood-resembling traces on the shoes.

After studying the report on the examination of the clothing performed by investigators K. Hovsepyan and H. Terteryan, the Group has found that, as in A. Tadevosyan's instance, this examination has also been performed improperly, namely, the number, positioning and sizes of the damages to the clothing are not mentioned. In this respect, A. Tadevosyan's omissions have not been corrected upon the second examination, and the need for performing a second examination is incomprehensible".

5.1. The SIS has clarified that, "there have been *omissions during the examination and ensuing expert examinations of H. Tadevosyan's clothing: specifically, after A. Tadevosyan, investigator of the investigation division of the Yerevan Kentron Community Police of the Republic of Armenia, had obtained H. Tadevosyan's clothing from the hospital and had transferred them to the Investigation Division, the bulletproof jacket has not been sent to the SIS along with the rest of the clothing and has remained in the physical evidence room of the Division until 3 February 2009, whereas the investigation group has not discovered this omission in time, for which the bulletproof jacket has been examined months later; despite this, the examination and expert examination of the bulletproof jacket have been performed in compliance with the requirements of the law and the evidence has been obtained in the manner prescribed by law. For this matter, a line-of-duty investigation was assigned at the General Investigation Department of the Police of the Republic of Armenia.*

As to the issue of A. Tadevosyan, investigator of the Investigation Division Yerevan Kentron community Police of the Republic of Armenia, not being included in the investigation group, according to the letter received on 2 March 2008, A. Tadevosyan has reported to the hospital upon the instruction of the Head of the Investigation Division as prescribed by Article 180 of the Criminal Procedure Code of the Republic of Armenia. When obtaining the clothing submitted at the hospital, A. Tadevosyan was not obliged to institute a criminal case, since Article 55(2) of the Criminal Procedure Code of the Republic of Armenia provides that the investigator is authorised to prepare materials on the case of crime. Also, in case it is required to determine the sufficiency of grounds and the legality of instituting a criminal case according to Article 180 of the Criminal Procedure Code of the Republic of Armenia, within a ten-day period additional documents, explanations and other material may be requested, samples may be taken for examination, and expert examination may be assigned. Taking into account that a criminal case had already been instituted in connection to the mass disorders accompanied with killings in Yerevan on 1-2 March 2008, after H. Tadevosyan's clothing were delivered to the

Investigation Section of Kentron community, the material prepared by A. Tadevosyan and the clothing obtained from the hospital were transferred to the SIS, by the letter of the Head of the Investigation Division, to settle the process within the framework of the criminal case instituted. As to the bulletproof jacket, A. Tadevosyan has clarified that because of its large size, he has packaged the bulletproof jacket separately, and it has not been taken into account that the bulletproof jacket was not included in the package of H. Tadevosyan's clothing submitted to the SIS, which further affirms that it was packaged separately from the clothing".

6. The Fact-Finding Group has stated that, "Upon examining opinion No. 248 of 3 April 2008, included in the criminal case, on the forensic medical expert examination of H. Tadevosyan's body, the Group has determined that V. Adamyan has failed to perform the expert examination properly and that the examination in fact did not respond to the questions posed by the investigator.

(a) Expert V. Adamyan did not examine all the bodily injuries present on H. Tadevosyan's body, which would have allowed to discover all of the fragments within them. Investigator V. Adamyan has justified this approach by his concern of "not ruining" the body and by the aspect that the information obtained was sufficient to respond to the investigator's inquiries. Expert V. Adamyan has not performed an X-ray of the bodily injuries of the body as well as has not requested the X-ray photo of H. Tadevosyan's injuries from the hospital which would have helped discovering the fragments within the body's injuries without "ruining" the body.

(b) Through an internal examination of the body, the expert has found metal fragments of irregular shape in the soft tissues of the calves, the quantity of which is not mentioned in the opinion. The expert has only noted that they have been seized by the investigator. It should be noted that although three fragments are illustrated in the photograph attached to the conclusion of the expert, it has been found that these fragments, when measured against the drawing scale of the photograph, do not correspond to the dimensions of 0,6x0,3 cm to 0,8x0,4 cm as noted in the report, on the basis of which we state that not all the fragments are illustrated in the photograph.

(c) In point 11 of the deductions of the conclusion, the expert has noted that H. Tadevosyan died of hemorrhagic-traumatic shock, which was caused by several explosion fragmentation wounds to the upper and lower parts of the left eyelid, abdomen, perineum, scrotum, testicles, penis, both arms, left forearm, both thighs, calves, and nail phalanx of the first toe of the right foot. However, investigator V. Adamyan has not ascertained by expert examination the factor of the explosion which caused the mentioned bodily injuries: whether it was due to fragments, shock wave, or thermal effect. Moreover, he has not noted which injuries have caused the hemorrhagic-traumatic shock and have resulted in Tadevosyan's death.

The expert's external examination has revealed that the left testicle is crushed, the scrotum is hanging from the testicular duct, the right testicle is torn, the penis is sutured with Catgut stitches, whereas a probe of the abdomen yielded a large haematoma in the retroperitoneal space. However, the expert did not note in the conclusion whether the injuries to the abdomen, perineum, scrotum, testicles, and penis – especially the large haematoma in the retroperitoneal space – could have resulted only from fragmentation, based on which the source of the explosion could have been determined. After examining the several fragmentation wounds on the upper and lower extremities, the expert has not noted whether those wounds included injuries which have been incompatible with life.

The expert has noted that there are fragmentation wounds on the primary wall of the abdomen and on the left thigh, without stating the number of wounds. These wounds have damaged the arteries and the veins of the thigh. The expert did not specify the fragmentation wound where the artery and vein injuries of the thigh were found.

In point 7 of the deductions, the expert has noted that H. Tadevosyan's body has been subjected to expert examination completely unclothed, whereas the investigator has put forth an issue in his decision: to determine whether the positioning, nature, and amount of the injuries found on the body correspond to the damages to the clothing. Despite the fact that in the decision on assigning forensic ballistic expert examination, the investigator has noted that he is providing H. Tadevosyan's body and clothing to the expert, he has not included the clothing in the attached letter and has not delivered them, for which the expert has noted on the attached letter that there are no clothing. In turn, the expert did not refer to the investigator with the motion to receive the clothing.

Forensic medical expert V. Adamyan did not determine whether there have been explosion traces in forms of burns and soot in the injuries area.

In connection with the abovementioned, the Group has called on V. Adamyan, forensic medical expert with 12 years of work experience, who has been specified as a specialist in the report prepared by investigator H. Mangoyan on the examination of H. Tadevosyan's body. In response to the questions raised above, V. Adamyan has stated that he has failed to act in a proper manner. V. Adamyan has avoided responding to the question raised by the Group as to which is the source of the explosion, given the positioning of the bodily injuries on the body; however, he has noted that the large haematoma in the retroperitoneal space is a result of a shock wave and not fragment impact, since fragments do not cause haematoma. In the opinion of the Fact-Finding Group, the aspect that the large haematoma in the retroperitoneal space has resulted from the shock wave of the explosion affirms that the explosion has taken place in the area of the genitals of H. Tadevosyan, which the expert did not note in his conclusion.

The Group has also studied conclusions No. 735 of 25 April 2008 and No. 494 of 15 April 2008 of forensic trace and explosion-technical examinations, assigned for discovering the circumstances of H. Tadevosyan's death. These expert examinations were conducted by Deputy Head of Division of the Expertise Criminological Department of the Police of the Republic of Armenia, A. Hovhannisyan.

The study of the conclusions revealed that (conclusion No. 735) upon examining the three metal fragments retrieved from H. Tadevosyan's calves, expert A. Hovhannisyan has presumed that one of them, with 11x4,8x2,3 mm sizes, is probably a fragment of the upper part of the connecting bushing of a factory-made "UZRGM" type fuse. Describing the mentioned fragment, expert A. Hovhannisyan has noted that it has ragged edges, structural changes in the metal -- cracks, micro-cracks, and traces of thermal effect attesting to an explosion of strong tearing physical, thermal effect, -- and that the mentioned fragment as well as the other two fragments are deformed and twisted. A. Hovhannisyan has substantiated his deduction exclusively by certain factory-made parallel lines found on the mentioned fragment. The expert has not been able to answer the question as to what structure and size the bushing has, particularly its upper part.

When expert A. Hovhannisyan has been explained that the 2.3mm width of the mentioned fragment does not correspond with the sizes of the width of the upper part of the bushing, he has not been able to give a clear answer. He also has not answered the question as to whether, given the width of 4.8mm, there should have been a thread on the inside and outside of the fragment on the upper part of the bushing, for which he has not noted anything in the opinion. How could it be that the thread has not been found on the deformed, twisted fragment subjected to structural changes and thermal effect, whereas some parallel lines have been discovered from which he has assumed that the fragment is from the upper part of the connecting bushing of a "UZRGM" type fuse.

The expert has stated at the Group that the mentioned thread can only be on the outside of the bushing. Whereas it is known that there is a thread also on the inside of the bushing.

On 17 March 2008, only a forensic trace examination of clothing has been assigned pursuant to the decision of A. Yepremyan, investigator of particularly important cases of the SIS; expert A. Hovhannisyan, joined with chemist-expert L. Safaryan, performed a complex forensic explosion-technical and forensic-chemical expert examination, which has been noted in the conclusion No. 494. By this, the expert has exceeded his powers. Expert A. Hovhannisyan has not been able to answer the questions as to why he has conducted an explosion-technical expert examination of the fragment given that the investigator had not made such a decision and as to why he has exceeded his powers in case such an expert examination was necessary and has not

referred to the investigator with the motion to assign an explosion-technical expert examination of the mentioned fragment.

During the expert examination, A. Hovhannisyan has found one metal fragment on H. Tadevosyan's right shoe. Whereas, upon examination of H. Tadevosyan's clothing, investigator K. Hovsepyan has recorded two metal fragments on the left shoe, and investigator A. Tadevosyan has not found any fragments on the shoes during the examination. K. Hovsepyan and H. Terteryan have insisted at the Group that they have seen two metal fragments on the left shoe, whereas there has not been any fragment on the right shoe. In his turn, investigator A. Hovhannisyan has insisted that there have been no fragments on the left shoe and that he has seen only one fragment, on the right shoe.

Expert A. Hovhannisyan, in conclusion No. 494, came to the deduction that the fragment on H. Tadevosyan's right shoe was probably a fragment of the connecting bushing of a factory-made UZRGM fuse. Moreover, he did not support his findings by any arguments, and failed to specify which characteristics of the connecting bushing of factory-made UZRGM fuse he had compared with the identified fragment to conclude that there was a match. It is worth mentioning that in the conclusion No. 735, the expert mentioned that the other two fragments were impossible to identify due to their small size and the absence of individual characteristics. Whereas the maximum difference between the sizes of the identified fragment (12,5x2,8x2,4mm) and the other two fragments (8,3x3,3mm and 6,7x5,7x2,3mm) was 2-4 mm, and as individual characteristics of the identified fragment, the expert stated that it was crescent-shaped, with sizes of 12,5x2,8x2,4mm, had undergone deformation and structural changes in the form of micro-cracks and traces of thermal exposure. All individual characteristics of the identified fragment stated by the expert may witness that the fragment is a result of explosion, but cannot serve as a basis for identifying the fragment as a part of the connecting bushing of factory-made UZRGM fuse. To the question posed to him by the Fact-Finding Group concerning the characteristics he compared to make such an assumption and concerning the reason of not performing additional examinations to substantiate his findings, expert A. Hovhannisyan stated that it was his neglect. To the question why he and chemist-expert L. Safaryan failed to determine the metal composition of the fragments, A. Hovhannisyan replied that they did not have such a possibility, but failed to make a relevant statement in the conclusion.

Without any clear substantiation, expert A. Hovhannisyan stated that the explosion took place near H. Tadevosyan's feet. The finding of the expert is not trustworthy, especially if we take into account the fact that the expert made the finding with regard to the source of the explosion without being informed of and not considering the fact that H. Tadevosyan had a bulletproof jacket on.

Expert A. Hovhannisyan concluded that the fragments subjected to examination are fragments of an explosive device with a rigid casing. Expert A. Hovhannisyan noted that it was one of the “F1”, “RG-42”, “RGD-5” grenades that exploded. The casing of “F1” grenade is made of cast iron, whereas the other two have a casing with embedded metal mesh. Thus, taking into account this circumstance, the expert could state that an “F1” grenade exploded, or, excluding the possibility of “F1” grenade explosion, state that one of the other two grenades exploded.

While describing the damages to the clothing, expert A. Hovhannisyan did not examine the position of damages, which, if examined, would make it clear that the absence of damages on the chest area of the jacket and on the area of the abdomen - whereas 57 damages were present on the sleeves and on the lower part of H. Tadevosyan’s military jacket - indicates that he had a bulletproof jacket on. Expert A. Hovhannisyan admitted before the Fact-Finding Group that such position of damages indicates that H. Tadevosyan had a bulletproof jacket on. He interpreted this omission as his neglect.

Expert A. Hovhannisyan did not provide a reply to the question why he did not examine the traces of explosion during the examination of clothing and why there was no relevant statement in the conclusion, whereas there are references to the concept of "traces of explosion" in the literature referenced in the expert’s conclusion.

To the question as to why expert A. Hovhannisyan did not file a motion with the investigator to provide him with the report of examination of the scene of the incident, the report of seizure of clothing, data on the number of soldiers who received injuries as a result of grenade explosion, and the positions of damages on them, he replied saying that he did not find it expedient.

Based on the aforementioned, the Fact-Finding Group found out that:

- the materials of criminal case 62202608 relating to the circumstances of H. Tadevosyan’s death contain obvious inconsistencies, the investigation group made infringements of law in the course of the preliminary investigation, as a result of which, in particular in the course of the preliminary investigation, H. Tadevosyan’s bulletproof jacket disappeared, there is contradicting data on the existence or absence of fragments on H. Tadevosyan's shoes,

- conclusions made by the experts are not always substantiated, do not provide complete answers to all questions put forward by the investigators, which has limited the possibilities of the investigating body to consider all possible hypotheses of officer H. Tadevosyan’s death,

- the Prosecutor's Office, supervising the process of the preliminary investigation, did not detect the drawbacks (infringements) stated in this document, and did not undertake measures to eliminate them.

The Fact-Finding Group has found that it is necessary to:

- conduct an additional complex forensic medical and forensic explosion-technical examination with the participation of international experts to determine the circumstances of H. Tadevosyan's death,
- consider the issue of subjecting persons who committed infringements and drawbacks during the preliminary investigation to disciplinary or criminal liability as prescribed by law”.

6.1 With respect to the aforementioned, the Special Investigation Service made the following clarification, *“All bodily injuries of the body of H. Tadevosyan were examined by forensic medical examination, the injuries were homogeneous and of the same nature (fragmentation). Not all wound canals were examined to detect fragments since there were numerous fragmentation injuries on the body, and in case of making the same number of incisions, damages would be caused to the body, thus fully deteriorating the wholeness of the body. Moreover, the obtained data were sufficient to answer all the questions put forward by the examination.*

The Scientific-Practical Centre of Forensic Medicine of the Ministry of Health of the Republic of Armenia does not possess equipment necessary for conducting X-ray imaging of corpses, whereas H. Tadevosyan, during his life time, did not undergo X-ray imaging at the hospital - which the Group could be convinced of by examining H. Tadevosyan's medical history under its disposal – and, therefore, the expert could not require non-existent X-ray images.

All three fragments removed from the soft tissues of the calves of H. Tadevosyan's body are presented in the Annex of images attached to the conclusion; it is also stated in the report of the examination of the body conducted parallel to the autopsy. The fragments were measured by a ruler and photographed, whereas the task of detailed examination of the fragments is under the authority of a criminology expert.

The members of the Group did not carefully familiarise themselves with the conclusion, since points 1, 2, 3, 4, 6 and 8 of the deductions of the expert conclusion No. 248 clearly state that the forensic medical examination of H. Tadevosyan's body detected multiple explosion, fragmentation wounds to the upper and lower parts of the left eyelid, abdomen, perineum, scrotum, testicles, penis, both arms, left forearm, both thighs, calves, and nail phalanx of the first toe of the right foot (injury of soft tissues and vessels, fracture of nail phalanx of the first toe of the right foot, retroperitoneal haematoma, excessive external bleeding). All the aforementioned injuries were caused not as a result of heat or shockwave, but as a result of fragments produced by the explosion during the life time, and are in an immediate causal relationship with his death.

All existing injuries taken together caused hemorrhagic and traumatic shock (pain, bleeding) that resulted in the death of H. Tadevosyan. The conclusion did not mention about injuries incompatible with life, since there were no such injuries.

The forensic medical examination did not detect burns and soot – produced by explosion - around H. Tadevosyan’s injuries, since there were no such injuries. Before H. Tadevosyan died, he underwent intensive surgical intervention, and the injuries were debrided.

Explanations of the expert V. Adamyan given to the Group are presented in a distorted manner. In particular, the Document states, “The expert evaded to answer the question of what was the source of explosion taking into consideration the placement of bodily injuries present on the body; however he mentioned that a large haematoma in the retroperitoneal space was a result of explosion shockwave, and not a result of fragments effect”. In reality, when giving explanations to the Group, the expert replied that the mere results of forensic medical examination were not sufficient to answer the question; whereas as regards the haematoma in the retroperitoneal space, the expert clarified to the Group that it might be not only a result of shockwave, but also a result of falling down due to receiving fragmentation injuries.

The Group - unequivocally declaring that the mentioned haematoma was caused by explosion shockwave, not possessing special professional knowledge in the forensic medical, forensic ballistic, forensic criminological, forensic explosion-technical fields - came to the finding that the explosion occurred near H. Tadevosyan’s genitals. In fact, the Group - neglecting and distorting the data of the preliminary investigation, the conclusions of the relevant expert examinations, as well as the experts’ clarifications given in that respect - came to an obviously preconceived and groundless finding with respect to the injuries received by H. Tadevosyan.

As a result of the examination, the expert does not make assumptions, but makes deductions, including probable deductions based on the nature of the examination.

The Group stated that the expert was not able to clarify the structure and the sizes of the connecting bushing of the grenade fuse, was not able to answer a number of questions posed by members of the Group; the fact that the fragment submitted to examination is a fragment of the top part of the connecting bushing of UZRGM type fuse is, according to the expert, based only upon the availability of some factory-made parallel lines detected on the fragment.

The expert’s clarifications and interpretations given to the Group were completely distorted.

Thus:

The connecting bushing is the part of UZRGM fuse by which the fuse is fitted into the grenade. The bushing is cylindrical, and its length is 14-14.5mm. In the cylindrical part it has an

external thread, with 15mm diameter, that starts 4,5-5mm down the top edge of the bushing, and ends at the bottom edge of the bushing. That is, the top part of the bushing - 4,5-5mm long - does not have a thread, therefore on the fragment with 11x4,8x2,3mm overall size examined in the expert conclusion No. 735 is probably, according to the conclusion, from the top part of the connecting bushing of factory-made UZRGM fuse; there could be no fuse thread in a 4,8mm space, and, consequently, the expert conclusion could not contain indications about the thread.

As regards the 2,3mm size of the fragment, it is a part of the front surface of the top part of the bushing on which factory-made (machine-made) parallel lines stand out. The width of the top part of the bushing is 3mm, with an inclined metal processing from the inside, due to which the width of the surface of the frontal part is 2,3mm.

It was explained to the Group that 11x4,8x2,3mm sizes mentioned in the expert conclusion are the maximum sizes of the fragment, the fragment is not a longitudinal, as they imagined, but a latitudinal fragment of the bushing, and due to explosion the fragmented piece underwent certain changes with respect to its structure, shape, and size; and the ideal size match cannot serve as a basis for comparison.

As regards the fact whether the bushing had or did not have an internal thread, the connecting bushings of UZRGM type fuses do not have a thread from inside. Their internal surface is even; they have one spherical projection on the top part (from inside) that fits into the cut made on the body of the fuse and does not allow the bushing to move around the body of the fuse; the bushing from the bottom is fixed by the detonator threaded in the body of the fuse.

The Group did not mention about such an important fact that the expert directly compared the fragment, with 11x4,8x2,3mm overall sizes, with the connecting bushing of UZRGM fuse, taking into account its shape, structure and the magnetic attraction quality. As a result, the matching characteristics were sufficient to make a probable deduction.

To the question of the Group on what structure and sizes the bushing and especially the top part thereof has, the expert precisely described the structure of the bushing, he even made an external and sectional drawing of the bushing. Data on the sizes - with the accuracy of millimetres - was not provided to the Group, since the expert is not obliged to memorise the sizes of all parts with the accuracy of millimeters.

The fact that the expert was not able to provide answer to the question on why he exceeded his powers and, instead of forensic trace examination of clothing, conducted a complex forensic explosion-technical and forensic chemical examination with chemist-expert L. Safaryan, was also presented incorrectly. In reality, the Group was explained that Article 246(4) of the Criminal Procedure Code of the Republic of Armenia defines, "Where the implementation of examination is instructed to an expert institution without a requirement to conduct complex

examination, the head of the institution may, where appropriate, arrange a complex examination.” Based on this provision, the management of the Expert Criminological Department of the Police of the Republic of Armenia arranged a complex forensic explosion-technical and forensic chemical examination, which was assigned to experts A. Hovhannisyan and L. Safaryan. Clothing affected by the explosion were the objects of the forensic explosion-technical examination, and trace examination is included in forensic explosion-technical examination. Moreover, Article 85(4)(4) of the Criminal Procedure Code of the Republic of Armenia prescribes that the expert is obliged to give conclusion not only on issues put forward but also on circumstances under his authority and arising during the examination.

The explanations of investigators K. Hovsepyan and H. Terteryan with respect to the inconsistencies in the location of fragments detected - by the examination and expert examination - on H. Tadevosyan’s shoe are distorted. Particularly, investigator K. Hovsepyan clarified to the Group that he conducted the examination of clothing with the participation of H. Terteryan, drew up the report as dictated by the latter, and could not precisely tell whether the fragments were detected on the right or on the left shoe. In his turn, H. Terteryan explained the fact of conducting the examination of clothing with investigator K. Hovsepyan and did not firmly insist that the fragments were detected on the left shoe, not excluding that he might have confused the right and left shoes during the examination.

The Group stated that expert A. Hovhannisyan, in the conclusion No. 494, did not substantiate the finding that the fragment on H. Tadevosyan’s shoe was probably a fragment of the connecting bushing of the factory-made UZRGM fuse. Instead, the Group came to the conclusion that the existing characteristics cannot not serve as a basis to identify the fragment as a part of the connecting bushing of UZRGM fuse.

The Group also stated: “To the question concerning the characteristics the expert compared to come to such a finding and concerning the reason of not performing additional examinations to substantiate his finding, expert A. Hovhannisyan stated that it was his neglect”.

The mentioned does not correspond to the reality as well.

Thus:

A probable deduction concerning the examined crescent-shaped fragment, with 12,5x2,8x2,4mm sizes, was made in the conclusion No. 494, stating that it was probably a fragment of the connecting bushing of a factory-made UZRGM fuse. To the question posed to the expert in the Fact-Finding Group concerning the characteristics he compared to come to such a deduction and concerning the reason of not performing additional examinations to substantiate his finding, expert A. Hovhannisyan stated that he conducted all possible examinations: the fragment was directly compared with the connecting bushing of UZRGM fuse taking into

account its shape, sizes, structure and the magnetic attraction qualities, as mentioned in the conclusion. The expert did not make any statements. As to the fragments of sizes 8,3x3,3x1,3mm and 6,7x5,7x2,3 examined in the conclusion No. 735, these fragments do not bear sufficient identification characteristics despite the fact that there is only a difference of several millimetres with the examined fragment of size 11x4,8x2,3mm and the fragment of size 12,5x2,8x2,4mm examined by the conclusion No. 494, which retain the characteristics that enable to arrive at a probable deduction. To the question why the experts did not identify the metal composition of the fragment, the expert replied that they did not have proper equipment to conduct such an examination, and even in case such equipment was available, it would be impossible to compare the fragment with the connecting bushing of another factory-made UZRGM fuse since there is no information on where the fuses and their parts were manufactured and what their composition was, whether their composition had not changed, and whether other parts with similar composition existed.

The expert's clarifications given to the Fact-Finding Group with respect to the examination of damages detected on H. Tadevosyan's clothing were also distorted. It was stated as if the expert interpreted certain "omissions" as his neglect.

In the expert's conclusion No. 494, a deduction was made that the damages on H. Tadevosyan's clothing were of fragmentation nature, caused by the explosion of an explosive device with rigid casing - subject to fragmentation - which exploded near H. Tadevosyan's feet. In the examination part, there is a clear substantiation with respect to the place of explosion: the damages on H. Tadevosyan's clothing are mostly concentrated in the bottom part, while gradually becoming less concentrated towards the top, the damages have a bottom-to-top direction; there are numerous fragmentation damages in the front part of the short boots, including a rather large number of densely concentrated damages in the form of minor holes.

As regards the absence of the bulletproof jacket, the expert stated in the Fact-Finding Group that the absence of the bulletproof jacket might not impact the deduction since the damages on the parts surrounding the bulletproof jacket did not indicate otherwise. The places of damages on H. Tadevosyan's clothing are described in the examination part of the conclusion. The expert stated at the Fact-Finding Group that the absence of damages on the clothing in the part of the bulletproof jacket might be conditioned both by the presence of the bulletproof jacket, as stated by the Fact-Finding Group, and the presence of a barricade located between the source of explosion to the said part. The expert did not state anything about any omission or neglect.

Neither in the conclusions nor at the Group did the expert mention that any of "F-1", "RG-42", "RGD-5" grenades exploded, rather he mentioned that UZRGM type fuses were

intended for firing factory-made "F-1", "RG-42", "RGD-5" grenades; however they might also be used for exploding self-made explosive devices. The expert gave clarifications to the Fact-Finding Group that the casing of "F-1" grenade is of cast iron, and the fragments resulting from explosion of that grenade differ by their structure from the fragments submitted to examination.

To the question why the expert did not examine the traces of explosion during the examination of clothing and did not make a relevant statement in the conclusion, the expert allegedly did not provide an answer. The Special Investigation Service clarified that the expert informed the Fact-Finding Group that traces of explosion such as burns, soot and avulsed wounds of considerable size caused by shockwave were not found on the clothing, and, consequently, no indication on non-existent traces could have been included in the conclusion; with regard to traces of explosion such as traces of explosive agents, the expert's conclusion No. 494 provided a detailed description of the chemical examination conducted for detecting traces of the explosive agent, and the "Deductions" part of the conclusion provided the results of the examination.

It is impossible to give a logical interpretation to the statement of the Group that during the examination of clothing the expert did not examine the traces of explosion and did not mention about it in his statement, while in an other point of the document submitted by the same Group, the latter condemned the expert for exceeding his authority and conducting a complex forensic explosion-technical and chemical examination".

Based on the aforementioned, the preliminary investigation body determined that "the Document titled "Circumstances of the death of H. Tadevosyan, officer of the Unit No. 1032 of the Police Troops of the Republic of Armenia" by the Fact-Finding Group of experts set up by the executive order of the President of the Republic of Armenia of 23 October 2008 does not reflect the objective reality".

Findings of the Committee

By comparing the arguments provided by the Fact-Finding Group and the preliminary investigation body, the Committee came to the following conclusion:

Although the Special Investigation Service mainly refuted the arguments of the Group through its objections, on 17 March 2008 upon the decision of A. Yepremyan, senior investigator for particularly important cases of the Special Investigation Service, the expert was provided with Hamlet Tadevosyan's military jacket, wool sweater, shirt, trousers, underwear, socks, short boots, protective knee-caps and elbow-rests, which fully correspond to the clothing mentioned in the expert conclusion. However, according to the report, without indication of the date, on "submitting the clothing" - which is not envisaged by the Criminal Procedure Code as an

investigative action - drawn up by A. Tadevosyan, investigator of Kentron Community Investigation Unit, the Chief Nurse of Clinical Hospital No. 3, in the presence of attesting witnesses, submitted also the protective shield for the chest and the back (bulletproof jacket) in a plastic bag, which was not included in the report of 3 March 2008 on examination and seizure of Hamlet Tadevosyan's clothing prepared by K. Hovsepyan, member of the investigation group of the Special Investigation Service. As a matter of fact, in the report on "submitting the clothing", investigator A. Tadevosyan made a reference to Articles 217 and 218 of the Criminal Procedure Code of the Republic of Armenia. Whereas, the mentioned Articles refer exclusively to examination, but not to submitting anything.

Later, on 23 March 2009, the bulletproof jacket was subjected to complex forensic explosion-technical, forensic chemical, forensic biological and forensic genetic examination. Pursuant to the expert conclusion, superficial and penetrating damages of fragmentation nature were detected on the bulletproof jacket; the blood on the bulletproof jacket and on Hamlet Tadevosyan's clothing belonged to Hamlet Tadevosyan.

The Committee agrees with the observation of the Group that failure to timely submit the protective shield for the chest and the back (bulletproof jacket) to examination by the preliminary investigation body is, indeed, an infringement of criminal procedural norms. However, in the opinion of the Committee, the omissions specified by the Group could not hinder the full determination of the circumstances of the death, since these omission were exclusively of criminal procedural nature which, as a matter of fact, even in their entirety could not serve as a basis for refuting the hypothesis put forward by the preliminary investigation or for putting forward other hypothesis concerning the circumstances of the death.

However, the Committee finds that such omissions are impermissible, and henceforth the preliminary investigation body should conduct the investigation on the incident of crime in a proper manner and in compliance with the procedural norms.

The Committee also states that although certain work has been performed by the preliminary investigation body, it failed to produce satisfactory results for disclosing the incident of Hamlet Tadevosyan's death.

2. Tigran Edik Abgaryan, born on 17 March 1983, in village Taperakan, Ararat marz, served in the Unit No. 10/33 of the Police Troops of the Republic of Armenia as a serviceman (enlisted).

On 1 March 2008, at about 23.00, Tigran Abgaryan, while on duty with the military unit No. 1033 of the Police Troops of the Republic of Armenia near "Svin" shop on Leo street, received a perforating gunshot wound to the neck and was taken to "Erebuni" Medical Centre

and later transferred to Surgical Institution named after A.L. Mikaelyan, where he died on 11 April 2008, at 18.20. According to the conclusion of forensic medical examination, Tigran Abgaryan died as a result of disorder of the vital functions of the spinal cord, caused by a perforating gunshot wound to the neck.

Since the bullet causing the gunshot wound to Tigran Abgaryan was not found, a complex forensic trace, forensic ballistic and explosion-technical examination of his uniform was therefore ordered. The conclusion of the examination states, “Damages present on the military winter jacket are that of a firearm, have a bullet nature, are caused by a bullet containing copper and as a result of at least one shot in front-to-back direction. The described firearm damages on the military winter jacket are exit damages”. According to the hypothesis of the Police and the preliminary investigation body, T. Abgaryan died of a gunshot fired from a firearm by a participant of the mass disorder. However, since the preliminary investigation has not yet revealed the identity of the person whose firearm gunshot caused the death of Tigran Abgaryan, the Committee may not refute the hypothesis put forward by the Police and the preliminary investigation body, or put forward another hypothesis.

The Committee referred to the document titled “Circumstances of the death of Tigran Abgaryan, serviceman of the 2nd battalion of the Unit No. 1033 of the Police Troops of the Republic of Armenia” (hereinafter referred to as the Document), addressed to the Committee by Seda Safaryan and Andranik Kocharyan, former members of the Fact-Finding Group, and demanded from the Special Investigation Service corresponding clarifications thereon.

Seda Safaryan’s and Andranik Kocharyan’s (hereinafter referred to as the rapporteurs) report and the objections of the Special Investigation Service (in italics) are presented below.

1. The rapporteurs found out that the investigator did not immediately go to the hospital to seize Tigran Abgaryan’s clothing. Moreover, to establish the presence of traces of a gunshot, the investigator did not take, with the help of the physicians, swabs using tampons from the injuries, nostrils, ears and face areas of Tigran Abgaryan.

Having regard the fact that Tigran Abgaryan received a gunshot wound from the front, the investigator, while carrying out the examination, did not mention whether there were traces resembling blood or traces of burns on the front side of the jacket corresponding to the area of the damage.

In the report of the examination, the investigator also did not indicate the location of the blood resembling traces on the collar that he mentioned about, the sizes of the traces, as well as the sizes of the other two small roundish holes on the collar.

While studying the report of the examination, the following questions arise:

Why did the investigator perform the seizure as late as 8 March and not on the day of the incident, how did Tigran Abgaryan's winter jacket appear in the Unit, where were the rest of the clothing he wore on the day of the incident, *i.e.*, bulletproof jacket, military jacket and shirt, why these were not seized and examined, why there was no investigation conducted in that regard?

1.1. "As a matter of fact, the rapporteurs have assumed powers that were not vested in them by law, i.e., the powers of a body conducting procedural guidance over the preliminary investigation, or of the court.

Thus, numerous servicemen of the Police Troops of the Republic of Armenia, who had received bodily injuries during the events that took place on 1 and 2 March 2008, were taken to various hospitals. During the days following the incident, the commanders of the relevant units of the Police Troops of the Republic of Armenia and – upon their instructions - also the heads of the subdivisions visited all the hospitals, from where special means and clothing of the wounded servicemen were taken to the units. In the same manner, from Tigran Abgaryan's clothing only the military winter jacket was taken to the Unit No. 1032 of the Police Troops of the Republic of Armenia, which was seized by the investigator and submitted to examination".

2. The document states that the "rapporteurs", after familiarising themselves with the decision of 17 March 2008 of the senior investigator for particularly important cases of the Special Investigation Service of the Republic of Armenia, A. Yepremyan, on ordering forensic trace examination of Tigran Abgaryan's winter jacket, had the following questions:

"a. Why did the investigator order forensic trace examination instead of a forensic ballistic examination of Tigran Abgaryan's jacket, if it was a firearm injury?

b. Why the investigator did not assign the expert to find out whether there were traces of gunshot on the jacket, which would have made it possible to determine the shooting distance?

c. Why was the examination ordered as late as on 17 March?"

2.1. "To receive answers to the mentioned questions, the "rapporteurs" had an opportunity to refer to the preliminary investigation body and to officially receive their answers, but they did not use the provided opportunity and, without having answers to numerous questions, hurried to draw up the Document under consideration.

First of all, the investigator could not assume that the jacket would only bear gunshot damages, therefore he made a decision to order a forensic trace examination which implies comprehensive criminological examination of the object submitted. Moreover, Article 246(4) of the Criminal Procedure Code of the Republic of Armenia clearly provides that the director of expertise institution may arrange a complex examination even in those cases when the investigator's decision does not require to conduct such an examination. In this case, the investigator ordered a forensic trace examination, and a complex forensic-trace, forensic-

ballistic, and explosion-technical examination was arranged upon the decision of the director of the expertise institution conducting the examination.

The issue of clarifying the occurrence mechanism and nature of damages on the military winter jacket includes clarification of all issues related to the occurrence of the damage, including the clarification of the shooting distance; thus, while providing answers to the said issue, the expert should also clarify the shooting distance.

As regards the fact that the examination of the military winter jacket was ordered on 17 March 2008, there is nothing extraordinary since both the mentioned and other examinations may be ordered at any stage of the preliminary investigation of a criminal case”.

3. As omissions and shortcomings of the complex forensic-trace, forensic-ballistic, and explosion-technical examination, the “rapporteurs” have stated the following in the Document, “The expert did not indicate the sizes of the three tangential and three perforating damages, their position against and the distance from the main damage,”. By describing the three separate tangential and the three separate perforating damages, they were described as continuation of the main damage, without any substantiation (artificially) and without specifying the number of damages. According to the conclusion of the examination, there is one 19x9 mm damage on the collar of the jacket, as well as three independent tangential and three independent perforating damages, that is to say - seven damages. However, the expert has not provided a clear statement to that effect, especially taking into account the fact that the investigator, while examining the jacket, had described the distance of those damages from the main damage.

3.1. *“The conclusion of the complex forensic-trace, forensic-ballistic, and explosion-technical examination clearly states the position of the 19x9 mm size damage. Further it is stated, “The described damage extends to the jacket collar and fur-like collar in the form of three tangential and three perforating damages of irregular shape”; consequently, the other described damages - three tangential and three perforating damages of irregular shape - are the continuation of the first one, are in a single direction and are secondary damages due to their morphological (shape, sizes, direction of damaged fibres) and chemical characteristics, i.e., these damages are the continuation of the primary damage - the 19x9 mm size damage - and occurred due to the design of the given part of the collar of the clothing, i.e., the natural bend of the collar, are located at the back surface of the collar and damage only the outer layer. All those damages together, in combination, were evaluated as one single exit damage; they have a simultaneous and common occurrence mechanism”.*

4. The authors of the Document have also mentioned, “Describing the damages as exit holes, the expert has tried to detect traces of gunpowder soot, partially burned gunpowder grains,

traces of lubricants and metal traces of gunshot around them. Such examination is conducted to confirm the fact of point-blank fire”.

4.1. *“During ballistic examination, examinations conducted for revealing additional factors of shooting in the area of damages are mandatory, irrespective of the occurrence mechanism; these are conducted to ensure the completeness of the examination. The above mentioned is envisaged by the applied methodology, which is mandatory in the process of examination of any gunshot wound”.*

5. As a shortcoming, the “rapporteurs” also stated: “The expert has applied the diffused contact method and, as a result, detected low intensity traces of copper metallisation on the inside surface of the damages on the collar of the winter jacket. The expert has not found traces of metallised copper on the outside surface. The rapporteurs especially find it necessary to touch upon the circumstance that the expert, by confirming the presence of copper, has evaded to make any interpretations (deductions) in relation to that. It is common knowledge that during “point-blank fire” partially burned gunpowder grains, traces of gunpowder soot, lubricants and traces of copper and antimonite metallisation as residual traces of gunshot are present in the wound canal and near the exit hole”.

5.1. *“Detection of low intensity traces of copper metallisation on the inside surface of the collar of the jacket and the absence of copper metallization trace on the outer surface of the collar of the jacket indicate that the mentioned gunshot damage has been caused by a bullet containing copper, and it is an exit damage. Such topography of copper metallisation traces is one of the grounds for the finding on the occurrence mechanism of the damage”.*

6. In the next section of the Document, the "rapporteurs" have stated, "It is necessary to add that the examination was suspended on 19 March 2008, since the expert filed a motion with the investigator to provide him with the conclusion of Tigran Abgaryan’s forensic medical examination. Thus, having the conclusion of Tigran Abgaryan’s forensic medical examination in hand and being informed that the entrance hole of the gunshot was from the front, the expert did not make any attempt to reveal the presence of traces of gunpowder soot, partially burned gunpowder grains, traces of lubricant, as well as traces of copper and antimonite metallisation as residual traces of gunshot in the area adjacent to the gunshot “entrance” damage on the front side of the jacket, through which the shooting distance would be determined and clarified".

6.1. *“We would like to clarify: according to Article 85(6)(1) of the Criminal Procedure Code of the Republic of Armenia, the expert has the right to demand from the authority conducting criminal proceedings necessary objects, samples and other materials for providing a conclusion, and for conducting a comparative analysis. As regards the suspension of the examination, it is regulated by point 29 of the Procedure put into effect by the Order No. 29-N of*

15 March 2006 of the Director of the “Expertise Centre of the Republic of Armenia” State Non-Commercial Organisation.

For the purpose of detecting gunshot traces, the expert conducted appropriate examinations of the described damages and their adjacent surfaces, which includes the entire collar of the jacket as a single object. That is to say, when fully examining the collar of the jacket, the relevant part of the clothing near the entrance hole of the gunshot wound - detected on Tigran Abgaryan's body - was also examined, since, according to the conclusion of forensic medical examination, the gunshot entrance hole is in the right side of the frontal part of Tigran Abgaryan's neck. The examination of the collar of the jacket did not reveal any traces of effects of additional factors of a gunshot at close range, which is clearly stated in the conclusion”.

7. When addressing the conclusion of the complex forensic-trace, forensic-ballistic, and explosion-technical examination, the “rapporteurs” stated: “The expert conclusion does not contain any indication on the shot. Whereas one of the main objectives of forensic ballistic examination is the determination of the shooting distance. In the presence of one 19x9 mm size damage, as well as three tangential and three perforating damages, in the deductions of the conclusion the expert has not mentioned their number, sizes and their position on the collar of the jacket. By blurring the existing data, the only thing that the expert mentioned was that the described damages were caused by a firearm (*i.e.*, he meant the presence of more than one gunshot damage), and at least one shot was fired (admitted the fact of the presence of more than one shot). Nevertheless, the forensic ballistic experts stated that “the described gunshot damages on the jacket are an “exit” damage”. A logical question arises: how is it possible to consider several gunshot damages as one exit damage?”.

7.1. *“It is clearly stated in the said conclusion that traces of effects of additional factors of a shot at close range have not been detected by the examination of the clothing.*

The described damages on the clothing together comprise a single exit damage, which is clearly stated in the conclusion”.

8. The “rapporteurs”, with respect to the conclusion of the forensic medical examination of Tigran Abgaryan's body, have found that “the expert neglected the fulfilment of his task and did not address, in his deduction, the other damages as well as did not indicate their occurrence mechanism and their remoteness”.

8.1. *“The following was detected on Tigran Abgaryan's body: one entrance and one exit hole of a gunshot injury; wounds in the sub-scapular area of the back surface of the chest, as well as in the areas of both heels, which were bed sores that occurred due to long-term confinement to bed, resulting in nourishment disorder in those areas; as well as scars of healed wounds resulting from medical interventions, which is directly stated in the medical record filled*

in for Tigran Abgaryan. We consider it unnecessary to explain the difference between wounds and injuries”.

9. The “rapporteurs” have stated with bewilderment, “It is incomprehensible why the forensic medical expert, for the purpose of forensic histological examination, did not take cutaneous samples from the area surrounding Tigran Abgaryan’s gunshot wound “entrance” hole, and did not order conducting a relevant examination that would have enabled to detect the presence of gunshot traces and, thus, to determine the shooting distance. Whereas the same expert took samples from different internal organs of the body (brain - 2, heart - 2, liver - 1, lung - 5, kidney - 2, spleen - 1, pancreatic gland - 1, adrenal gland - 2) for the archive of forensic-histological unit. Instead, the forensic medical expert, making a reference to the data of the medical record only, determined that the shot was fired from a distance beyond the range of effect of the additional factors of a gunshot fired from the given type of weapon, not mentioning, however, the medical data which lead to such a conclusion”.

9.1. “The “rapporteurs” bewilderment - in relation to not taking a cutaneous sample from the gunshot wound entrance hole during the examination conducted in March and in relation to not subjecting it to examination - might have been dispersed had they read the conclusion of the forensic medical examination a little carefully, where it was clearly stated: “The person undergoing expert examination is under sedation and is connected with tracheostomic tubes to VP-shunt, the neck is fixed and bandaged with gauze”. In general, a cutaneous sample is not taken when a person is alive.

As regards the fact of not taking a cutaneous sample from the entrance hole during the forensic medical examination, it is explained by the fact that the forensic histological examination of the body was conducted about 40 days after the incident (Tigran Abgaryan died on 11 April 2008). During the mentioned 40 days, Tigran Abgaryan’s gunshot wound has undergone surgical debridement with various antiseptics (rubbing alcohol, iodine, etc.), as a result of which the skin, undoubtedly, has been cleaned, and the outer layer of skin i.e., the epidermis was replaced by the new one.

In case there existed foreign residues, i.e., additional factors in the area surrounding the gunshot entrance hole, the physicians must have made indications thereon in the medical record. It is the duty of the physicians in charge and the examining physicians, therefore the indications of the physicians on the absence of additional factors were taken as a basis while conducting the examination”.

10. Instead of addressing the question – still unclear to them - to the expert or to the corresponding bodies, the “rapporteurs” have stated them in the Document, “It is incomprehensible whether the physicians practicing in regular hospital conditions were able to

perform functions that were under the authority of forensic medical experts, and whether such functions have been performed? At the same time, the forensic medical expert has stated that the issue of additional gunshot traces may be more precisely clarified by trace examination of the clothing. The rapporteurs arrived to the following question: if the forensic medical expert is not certain about his findings and proposes the investigator to order a complex forensic-medical and forensic-trace examination to resolve the issue of the shooting distance, why did he make a finding on the “distance” in his deductions, moreover, based solely on the data of the medical record? Furthermore, how should a complex examination be conducted without forensic histological examination of the cutaneous sample and the wound canal?”

10.1. “The rapporteurs have neglected the fact that the physicians practicing at hospitals and forensic medical experts study in the same educational establishment, with the same curriculum, including the course of “forensic medicine”, and have the command of the mentioned subject. All physicians know that the medical record is a legal document, and the detection and record of presence of injuries, foreign residues - i.e., additional factors of a gunshot - on a patient’s body is the professional duty of each physician.

Based on the data of the medical record, the expert came to the finding that the shot was fired from a distance beyond the range of the effect of additional factors of a gunshot fired from the given type of weapon. To precisely clarify the issue, the forensic medical expert made a reference to the trace examination of the clothing, taking into account that the clothing - being the first barrier for additional factors - could bear all the additional factors”.

11. The “rapporteurs”, endowed with a great ability not understanding, have stated in the further paragraph of the Document, “It is incomprehensible why the forensic medical expert did not make any reference to the sizes of the gunshot wound “entrance” hole and did not mention the shooting distance from which a gunshot could cause a 5cm long “entrance” hole discovered by the external examination of the body. The rapporteurs state that as a result of the external examination of the body, the forensic medical expert has not described at all the skin around the gunshot wound “entrance” hole, nor has he mentioned whether there were any additional factors characterising the gunshot. It is common knowledge that the shooting distance can be determined based on the sizes of the “entrance” hole. This matter is clearly stated in different sources of professional literature”.

11.1. “First, as a result of the examination conducted on 1 March 2008, the physician on duty recorded in the medical record No. 403/36 filled in for Tigran Abgaryan in the “Clinical Hospital No. 1” CJSC the sizes of the injury: 2x2mm size hole with round, smooth edges, on the front surface of the neck, in the upper right side of the throat. The fact that the wound was small and roundish, definitely indicates that it was a single, not point-blank shot. Then it is mentioned

about the medical interventions undertaken: on 2 March 2008, an initial surgical debridement, examination and stitching up of the neck wound, as well as tamponage of the exit wound were performed.

In the forensic medical expert conclusion, the expert described that a surgery was performed on the injury, and later on it was regularly debrided and underwent medical interventions. Obviously, the wound that underwent surgery and regular debridement could not retain the former sizes, and during the forensic medical examination of the body the expert recorded the actual sizes of the wound at that moment: 5 cm.

In addition to the above described, the “rapporteurs” obviously distorted the explanations given to the Fact-Finding Group of experts by the servicemen of the Police Troops of the Republic of Armenia for the purpose of clarifying the circumstances of Tigran Abgrayan’s death.

Explanations given to the Fact-Finding Group of experts by the persons specified in the Document are completely video recorded. During the explanations, Seda Safaryan and Andranik Kocharyan, shouting at and insulting the persons giving explanations, tried, by all possible means, to confuse them and receive answers acceptable for them, or artificially reveal contradictions. The explanations “extorted” under such conditions are presented in an obviously distorted manner in the mentioned Document drawn up by the very two members.

It is worth mentioning that the Document contains a vast number of “a question arises” and “it is incomprehensible” expressions. The Expert Fact-Finding Group was set up for the very purpose of comprehension, as well as for transferring facts to the Ad Hoc Committee of the National Assembly for determining the circumstances of the death of the persons during the events. Whereas, instead of receiving necessary information and explanations from the preliminary investigation body and relevant experts on issues that remained incomprehensible, certain members of the Group, without understanding, drew up a document which included various questions together with distorted information. Logically, it is first necessary to receive the necessary answers to the questions, and only after that make findings or draw up a document on the summary of results of the investigation.

Moreover, the Fact-Finding Group had under its disposal all the necessary data (expert conclusions, medical records, testimonies, etc.) in relation to almost all issues, which were deliberately neglected, intentionally falsified and distorted by the said two members of the Fact-Finding Group.

Anyway, the “rapporteurs” Seda Safaryan and Andranik Kocharyan, based on distorted data included in the said irrational document, came to senseless, groundless and fictitious findings”:

1. “As a result of a gunshot fired from a far distance, it would have been impossible to find traces of metallisation around the exit holes present on the collar of the jacket. However, the forensic ballistic examination detected light traces of copper metallisation around the 19x9 mm damage, the three tangential and three perforating damages on the collar of Tigran Abgaryan’s jacket.

“In the analytical part of the document, the authors, in the style typical of forensic ballistic, forensic medical, and forensic trace specialists, conducted analysis, examinations, and came to “irrefutable” findings. In the given case it is greatly surprising how persons possessing such professional knowledge could not be aware that the detection of traces of metallisation in the area of gunshot exit wound does not have a causal relationship with the determination of the distance of the gunshot causing the wound. In case of a gunshot fired from a far distance, traces of copper metallisation in the area of exit wound may or may not be detected, meaning that its presence should not be unequivocally excluded or linked to the distance of the gunshot. The issue of gunshot distance is clarified by the presence or absence of traces - in the area of the entrance wound - of effects of additional factors (gunpowder soot, well-distinguished homogeneous or heterogenous traces of antinome, copper or other metals, partially burned gunpowder grains, thermal effect) of a gunshot at close range”.

2. “In the deductions of their conclusion, the forensic ballistic experts, mentioning a number of gunshot wounds, tried to blur and present them as one single exit wound. Meanwhile, the experts, mentioning in the deductions of the conclusion that at least one gunshot was fired, in fact accepted the occurrence of more than one gunshot”.

3. “In the deductions of their conclusion, the forensic ballistic experts did not specify the number of gunshot injuries, their positions against each other, as well as their sizes, despite the fact that various gunshot injuries were examined in the examination part”.

“The conclusion of the complex forensic-trace, forensic-ballistic, and forensic explosion-technical examination is written clearly, no attempt has been made to “blur” any issue, there is no indication in the deductions on several gunshot injuries, rather it is stated that the damages described on the clothing comprise a single exit damage. The examination of Tigran Abgaryan’s jacket did not detect traces of a gunshot at a close range, particularly traces of a point-blank gunshot”.

4. “The forensic ballistic experts did not examine the front part of Tigran Abgaryan’s winter jacket corresponding to the “entrance” hole on the body, which would enable to further determine the shooting distance. As a result thereof, the rapporteurs state that nothing is mentioned on the shooting distance in the deductions of the conclusion”.

“For the purpose of detecting gunshot traces, the expert conducted appropriate examinations of the described damages and their adjacent surfaces, which includes the entire collar of the jacket as a single object. That is to say, when fully examining the collar of the jacket, the relevant part of the clothing near the entrance hole of the gunshot wound - detected on Tigran Abgaryan's body - was also examined, since, according to the conclusion of forensic medical examination, the gunshot entrance hole is in the right side of the frontal part of Tigran Abgaryan’s neck. The examination of the collar of the jacket did not reveal any traces of effects of additional factors of a gunshot at close range, which is clearly stated in the conclusion”.

5. “The sizes of the “entrance” hole (length - 5 cm) on Tigran Abgaryan’s body exceed for several times the sizes of the bullet, which is typical of a point-blank gunshot”.

“To receive the answer to this question, it would have been sufficient for the authors of the Document to familiarise themselves with the medical record No. 403/36 filled in for Tigran Abgaryan at the “Clinical Hospital No. 1” CJSC, where the physician that performed the initial medical examination recorded the sizes of the injury: 2x2 mm size hole with round, smooth edges, on the front surface of the neck, in the upper right side of the throat. The fact that the wound was small and roundish, definitely indicates that the gunshot was not point-blank. Then it is mentioned about the medical interventions undertaken: on 2 March 2008, initial surgical debridement, examination and stitching up of the neck wound, as well as tamponage of the exit wound were performed.

In the forensic medical expert conclusion, the expert described that a surgery was performed on the wound, and later on it was regularly debrided and underwent medical interventions. Obviously, the wound that underwent surgery and regular debridement could not retain the former sizes, and during the forensic medical examination of the body the expert recorded the actual sizes of the wound at that moment, i.e., 5 cm.

In other words, the reasons for the change in the sizes of Tigran Abgaryan’s gunshot wound entrance hole were more than obvious for the authors of the Document, which the authors not only neglected, but deliberately distorted and falsified.

6. “One “entrance” hole is present on the front part of the neck of Tigran Abgaryan’s body”.

“This is the only fact that has not been distorted by the authors of the Document”.

7. “The presence of one gunshot wound canal on Tigran Abgaryan’s body is a result of the first bullet hitting the 5-7 vertebrae of the spine, which produced a multi-fragment gunshot wound with displacement of bone fragments and penetration into the spine canal, opening a wide path for the other bullets to fly out from the same “exit” hole. The next bullets, flying out from

the same “exit” hole on the body, as expected, left separate “exit” holes on the collar of the jacket”.

“The “finding” of “the rapporteurs” that in case of firing submachine gun burst it is possible for the bullets to fly out from the same wound canal, is an irrational, even close to absurdity nonsense. It is practically impossible.

The fact that there is a wound canal in the area of Tigran Abgaryan’s neck caused by one single gunshot is approved by the conclusion of the forensic medical examination, pursuant to which a buttonhole cylindrical fracture with 0.6x0.8 cm diameter was recorded in the area of the 6th vertebra of the neck by the internal examination of the body. In such conditions, there could be not more than one bullet flying out through the said hole, even in case of a point-blank fire”.

8. “There is an evasive deduction in the conclusion of the forensic medical expert: according to the data of the medical record, the gunshot was fired from a distance beyond the range of effects of additional factors of a gunshot fired from this type of weapon; however, this matter can be more precisely clarified based on a trace examination of the clothing, and, moreover, by a complex examination”.

“There is no evasive deduction in the conclusion of the forensic medical examination. Based on the data of the medical record, the expert made a finding that the shot was fired from a distance beyond the range of effects of additional factors of a gunshot fired from this type of weapon, and at the same time mentioned that it will be possible to precisely clarify the issue through a trace examination of the clothing, taking into account that the clothing - being the first barrier for additional factors - could bear all additional factors”.

9. “Tigran Abgaryan’s bulletproof jacket and other clothing, which could contain evidences on the shooting distance, were not seized by the investigators, and were not subjected to expert examination”.

10. “Complex forensic ballistic and forensic medical examination, which could once again determine the shooting distance, was not ordered by the investigators”.

“It is nonsense. Detailed substantiations on the mentioned issues are provided in the descriptive part of these objections”.

11. “According to the testimonies of the Unit command, Tigran Abgaryan was positioned in the centre of the line, which excluded the ricocheting bullet hit. From such a distance the bullet hitting the wall might not cause a direct wound canal and possess enough kinetic energy to produce multi-fragment fractures of the 5-7 vertebrae. Besides, ricocheting bullet hit would result in a blind gunshot wound and would not produce numerous exit wounds on the collar of the jacket”.

“Analyses related to any ricochet of the bullet can even not be a subject for interpretation, since neither the investigation, nor the expert conclusions found any data to the effect that Tigran Abgaryan received a gunshot wound as a result of a fired bullet ricocheting due to hitting the wall.

The authors of the Document once again surprised with their unique “knowledge” in the field of forensic ballistics. For their information, we consider it necessary to state that even in case of a ricochet, a penetrating gunshot injury can occur depending on the shooting distance, angle of collision with an object, type of the fired bullet, and a number of other circumstances.

12. The forensic medical expert did not examine other injuries on Tigran Abgaryan’s body, as well as did not determine their occurrence mechanism and their remoteness”.

“No other bodily injuries have been detected, except for one entrance and one exit gunshot wound holes on Tigran Abgaryan’s body. For information of the authors of the Document, except for the described gunshot wounds, on Tigran Abgaryan’s body there were bed sores, as well as scars of healed wounds due to medical intervention, which are wounds but not bodily injuries”.

13. “The deductions of the conclusion of the forensic medical examination state that there are scars: vertical, pink, 4.5 cm long, of linear shape - in the back area of Tigran Abgaryan’s left forehead; vertical, 4.0 cm long - in the left temple area; and 10.0 cm long - in the front surface of the left part of the neck; 10.0 cm long - in the front surface of the right part of the neck starting from the angle of the jaw up to the area of the collar bone; in the cervical area there are four wounds of roundish shape covered with brown scab positioned symmetrically against each other at four angles of a rectangle from 2,0x1,0 cm to 3,0x2,0 cm diameters; there is no indication of their origin, as well as their connection to the gunshot wound to the neck. It is unclear why the forensic medical expert described them as “a gunshot wound complication which is in a causal relationship with the cause of the death”. It is obvious that these cannot have any relation to the gunshot wound, and that these are a result of a physical force impact”.

“This is an apparent cynicism and a barefaced lie. Nothing of the kind is mentioned in the deductions of neither the conclusion of the forensic medical examination conducted while Tigran Abgaryan was alive, nor of the forensic medical examination of the body.

Moreover, in the forensic medical examination of the body, clearly, with Mesropian Armenian letters, it is written that the gunshot wound is in direct causal relationship with the cause of the death, whereas the revealed illnesses (post-traumatic obstructive hydrocephalus, condition after placement of ventriculoperitoneal shunt, condition after placement of tracheostomy, two-sided purulent aspiration pneumonia) are the main illness, i.e., complication of the gunshot wound to the neck, and are in causal relationship with the cause of the death”.

14. “There are contradicting data in the explanations regarding the scene of the incident given by the command of the Unit. A number of servicemen invited to the Fact-Finding Group stated that they eye-witnessed the incident which took place near the first archway on the intersection of Paronyan and Leo streets, the others stated that it happened at the beginning of Leo street, next to “Svin” shop, and according to the third version, the incident occurred near the building of the Hydro-Meteorological Centre situated on Leo street. Explanations regarding the place where Tigran Abgaryan was taken after having been wounded are also contradicting. Thus, according to the explanations of some, he was taken to the territory of the polyclinic located on Leo street, breaking the gates thereof in advance; whereas, according to the other version, Tigran Abgaryan was taken up the staircase of the Hydro-Meteorological Centre after having been wounded.

“In the descriptive part of these objections, the conditions of “interrogations” at the Fact-Finding Group of Experts have already been presented, during which contradictions in explanations were artificially revealed, and which were later presented in a distorted manner in the Document drawn up by “the rapporteurs”.

Based on the above described distorted and false information and data, the “rapporteurs” Seda Safaryan and Andranik Kocharyan came to a senseless, illiterate and wan finding verging on the absurd: “Gunshot injuries caused to Tigran Abgaryan were caused by point-blank submachine gun burst... Finally, the investigation in connection with the fact of Tigran Abgaryan’s death was deemed to be completed, charges for plotting his murder were brought within the “Case of Seven,” and the case was referred to the court”.

“It is noteworthy that “the smart authors” of the Document came to the finding that “The existence of the aforementioned scars on Tigran Abgaryan’s body is a result of physical force impact, during which it is likely that his head was not covered by a helmet”.

As already stated, the mentioned scars detected on the body are the result of medical intervention. To the disappointment of the authors of the Document, it should be stated that so far the medicine does not know a method of surgical intervention in a human head with a helmet on.

Moreover, for many times it was publicly announced, and we once again underline that the investigation for revealing the circumstances of Tigran Abgaryan’s death, identifying the person that caused a gunshot injury to him, and for detecting that person, is ongoing, it has never been suspended, moreover, it has not been completed, and will continue unless all circumstances are disclosed. Preliminary investigation is pending also in connection with the disclosure of the circumstances of death of the other nine persons.

Based on the aforementioned, the preliminary investigation body finds that the Document titled “Circumstances of the death of Tigran Abgaryan, serviceman of the 2nd battalion of the Unit No. 1033 of the Police Troops of the Republic of Armenia” by former members of the Fact-Finding Group of Experts set up by the executive order of the President of the Republic of Armenia of 23 October 2008 does not reflect the objective reality”.

Findings of the Committee

The Committee, disagreeing with the statements and the style of the Special Investigation Service, and evaluating the arguments stated in the Document, the objections thereon received from the Special Investigation Service, testimonies of servicemen who were carrying out service with Tigran Abgaryan at the time the incident occurred, and of the command of the Unit during the visit of the Committee to the Unit No. 10/33 of the Police Troops, clarifications of the head of division of the Republican Scientific-Practical Centre of Forensic Medicine of the Ministry of Health of the Republic of Armenia, Gagik Harutyunyan, who performed the autopsy of Tigran Abgaryan’s body and who was invited to the Committee, as well as by examining other materials submitted to the Committee by the preliminary investigation body, states that the position of the “rapporteurs” is inconclusive. The Committee, discussing the contradictory opinions provided, invited experts Hambartsumyan and Abrahamyan to the sitting of the Committee of 7 September 2009 to give clarifications on the aforementioned contradiction. The Committee arrived at a conclusion that the hypothesis brought forward by the rapporteurs is inadmissible.

However, the Committee is not satisfied with the actions of the preliminary investigation body, since so far the circumstances of Tigran Abgaryan’s death, and particularly the perpetrator, as well as the instrument of crime, etc. have not been completely detected.

As regards the conclusions of the forensic medical examinations, the Committee finds that a number of conclusions provided by the Republican Scientific-Practical Centre of Forensic Medicine of the Ministry of Health of the Republic of Armenia are sometimes incomprehensible even for professionals, and, of course, resulted in various interpretations, assumptions, and ambiguities. The same refers to forensic-chemical, forensic-ballistic, forensic explosion-technical, and other examinations.

The Committee finds necessary to attach importance to and to further exclude the cases like the one when employees of the Republican Scientific-Practical Centre of Forensic Medicine of the Ministry of Health of the Republic of Armenia did not accurately register the time when the bodies of the deceased during the events of 1 March were brought to the Centre of Forensic Medicine (Tigran Khachatryan) that gave rise to various interpretations.

3. Grigor Hovhannes Gevorgyan, born on 30 May 1980, 14 Zaryan street, Yerevan. He worked at “SPS” petrol filling station as a shift head.

On 1 March 2008 at about 20:00, G. Gevorgyan with his brother-in-law, Romik Baghdasaryan, went to G. Lusavorich street and lost each other due to the chaotic situation at about 21:00 at the intersection of G. Lusavorich and Zakian streets. At about 21:15, G. Gevorgyan, together with a group of participants of the mass disorders, went to the intersection of Paronyan and Leo streets, where he was wounded and died in front of a shoe repair shop located next to the archway adjacent to the intersection.

According to the conclusion of the forensic medical examination, “Gevorgyan received a gunshot bullet perforating wound to the head, with a firearm bullet entrance hole in the middle area of the nose, exit hole in the front-parietal area with smash of medullar substance and with cephalocele; these have been caused during the life time, are the result of effect of a gunshot fired from a firearm charged with bullets, and which caused the death. Injuries detected on the body were caused by one single gunshot. The forensic medical examination of G. Gevorgyan’s body did not detect additional factors of a gunshot in the area of the gunshot entrance hole: particles of soot, burn, as well as partially burned or burned gunpowder grains; hence, the gunshot was fired beyond the range of additional factors of a gunshot typical of the given weapon”.

Since the firearm bullet was not detected (the injury was a perforating one), the type of the firearm remained unknown.

4. David Afrent Petrosyan, born on 16 April 1975, Yerevan, resided in Vanadzor, Taron 2, building 84, apt. 12.

On 1 March 2008, at about 20:00, David Petrosyan, together with his brothers-in-law, Vahe and Karen Dalalolyans, and his maternal cousin, Narek Vardumyan, went to the G. Lusavorich street. Before receiving a bodily injury, he took photos of the events with his cellular phone next to the building No. 2 on Paronyan street. Later, at about 21:00 at the same place D. Petrosyan separated from his relatives for a couple of minutes, and after a short period of time the his relatives found him with bodily injuries, and took him to the Clinical Hospital No. 2, where he died on 2 March 2008 at 00:30.

David Petrosyan’s forensic medical examination detected the following bodily injuries: gunshot bullet entrance hole on the back surface of the right part of the chest, perforating injuries of the right kidney, liver, diaphragm and of the right lung, which have been caused during the life time, are the result of effect of a gunshot fired from a firearm charged with bullets; such injuries have characteristics of grave harm to health, which caused the death. Copper-coloured

bullet of 0,9 mm calibre was detected in the fifth inter-costal space on the right side of the chest. The conclusion No. 389 of the forensic ballistic examination states: “The bullet removed from D. Petrosyan’s body is a fired bullet belonging to a factory-made cartridge of 9 mm calibre. These types of cartridges are intended for “PM” and “APS” pistols. The traces of shooting on the bullet are typical of traces of a shot fired from a “PM” pistol. The scratch deformation on the bullet is a result of collision with a solid body; it may possibly be a result of a ricochet or passing through an obstacle”.

5. Hovhannes Gharib Hovhannisyan, born on 13 March 1961, Yerevan, 47 Andranik street, apt. 26. He did not have a permanent job and was involved in repair of sanitary equipments.

On 1 March 2008, at about 21:00, he received a gunshot wound at the intersection of Mashtots Avenue and G. Lusavorich street, and died instantly.

Conclusion No. 245 of the forensic medical examination states: a blunt gunshot bullet wound in the front surface of the left part of the chest was detected on H. Hovhannisyan’s body. He died from acute internal haemorrhage caused by the blunt gunshot wound of the chest. During the autopsy, one bullet of 5.45 mm calibre was removed from H. Hovhannisyan’s body. Conclusion No. 389 of the ordered forensic ballistic examination states: the bullet removed from H. Hovhannisyan’s body is a fired bullet being belonging to a factory made 5.45 mm service cartridge. The bullet with its traces of shooting is typical of bullets fired from “AK-74” submachine guns and their modifications.

6. Zakar Saribek Hovhannisyan, born on 30 August 1977, Yerevan, 68 Gagarin street, apt. 100. He was unemployed.

Zakar Hovhannisyan received a gunshot wound next to the market on Mashtots Avenue on 2 March 2008 at about 01:30; at 02:00 he was brought to the Clinical Hospital No. 3 by an random vehicle, and died there at 02:55.

Conclusion No. 247 of the forensic medical examination states: a gunshot entrance wound on the front surface of the abdomen was detected on Z. Hovhannisyan’s body. The death was caused by significant blood loss due to the injury. During the autopsy, one 9 mm calibre bullet was removed from Z. Hovhannisyan’s body.

Conclusion No. 389 of the forensic ballistic examination states: the bullet removed from the Z. Hovhannisyan’s body was a fired bullet belonging to a factory made 9 mm calibre cartridge. The traces of shooting present on the bullet are typical of traces of a shot fired from a “PM” pistol.

The bullets removed from the bodies of D. Petrosyan, H. Hovhannisyan and Z. Hovhannisyan were sent to the Expertise Criminological Department of the Police of the Republic of Armenia to determine the specific units of weapon from which they were fired. The conclusion No. 389 of the forensic ballistic examination states: those bullets were compared with the bullets taken from the scenes of undisclosed crimes in the territory of the Republic of Armenia and with the bullets registered in the republican bullet and cartridge inventory. No matches have been recorded as a result of comparison, due to which it is impossible to answer the question as to whom the weapons that fired those bullets belonged to.

7. Samvel Edik Harutyunyan, born on 5 December 1979, Ararat marz, village Lusarat, resided in the village of Eghegnavan of Ararat marz. He was unemployed, was involved in farming.

On 1 March 2008, Samvel Harutyunyan went to the scene of mass disorders together with his friend Aram Barseghyan and his maternal cousin Gegham Gevorgyan; according to the testimonies of the latter, they went there out of interest. At about 21:00, S. Harutyunyan, leaving A. Barseghyan and G. Gevorgyan, went to the bridge at the intersection of Mashtots Avenue and G. Lusavorich street. There at that very moment S. Harutyunyan received a bodily injury to the head and was taken to Clinical Hospital No. 3, and later to "Armenia" Republican Medical Centre, where he died at 19:40 on 11 April 2008.

The conclusion No. 396 of the forensic medical examination states: S. Harutyunyan received an open, blunt, penetrating craniocerebral injury, *i.e.*, contused wound in the left parietotemporal area with avulsed defect of dura mater, crush injury of and efflux from brain, multi-fragment fractures of the left parietal and temporal bones, which were caused during the life time with a brute article, and were in an immediate causal relationship with his death.

8. Tigran Hovsep Khachatryan, born on 30 January 1985, Yerevan, Avan, 6th street, Lane 2, house #17. Unemployed.

On 1 March 2008, Tigran Khachatryan went to the scene of mass disorders with his friend Artyom Abovyan. At about 20:00, they lost each other due to the chaos. The preliminary investigation found out that T. Khachatryan, together with a group of participants of mass disorders, went to the intersection of Paronyan and Leo streets, where next to the archway he was wounded and died.

The conclusion No. 250 of the forensic medical examination states: T. Khachatryan received an open, blunt brain injury. He died from serious disorder of vitally important functions

of the brain, resulting from the brain injury. During the autopsy, a piece of metal has been retrieved from T. Khachatryan's skull.

The conclusion No. 389 of forensic ballistic examination states: the piece of metal removed from T. Khachatryan's body is a gas grenade of a factory-made "Cheremukha-7" type fired cartridge. The plastic plugs of the gas grenade were probably separated due to colliding with any solid body or passing through any obstacle.

9. Armen Vachagan Farmanyán, born on 25 November 1974, 46 Shrjanayin street, Yerevan. Unemployed.

On 1 March 2008, Armen Farmanyán brought iron bars and bottles filled with inflammables to the scene of the event and distributed them to the participants of the mass disorders, directing their actions. At around 21:00, he was wounded and died on Paronyan street, in front of school No. 24.

The conclusion No 252 of the forensic medical expert examination states: a contused wound with a bone tissue defect has been found on A. Farmanyán's body, in the parietotemporal area of the left side of the head. He died from a serious disorder of the most vitally important functions of the brain. During the autopsy, a foreign body with a cylindrical metal casing has been found in the right cerebral hemisphere, emitting a specific strong smell. Also, a whitish plastic cylindrical item has been found, with three parallel grooves on the cylinder.

The conclusion No. 389 of the forensic ballistic expert examination states: the plastic and metal items retrieved from A. Farmanyán's body are from a gas grenade of a fired "Cheremukha-7" type factory-made cartridge, separated by a single plug. The shot traces on the plug are typical of the special means "KS-23" carbine. The distortion and avulsions of the upper part of the plug could have been caused by colliding with any solid item or passing through any obstacle.

10. Gor Sargis Kloyan, born on 15 December 1979, South-West B-2 block, Yerevan. Unemployed.

According to his parents' testimonies, G. Kloyan left home at around 20:00 on 1 March 2008. At about 20:30, he called home and informed that he was on G. Lusavorich street, after which he has no longer answered to phone calls. The preliminary investigation revealed that at around 21:00, G. Kloyan went to the bridge at the intersection of Mashtots Avenue and G. Lusavorich street together with a group of participants of the mass disorders, where he received a gunshot wound and was taken to Clinical Hospital No. 3 at 21:30, where he died at 04:30. During the surgery, a foreign cylindrical body with a metal core and plastic casing, emitting a

lachrymatory smell, has been retrieved from the left inguinal area. In the right half of the back surface of the thorax, under the skin, six small foreign bodies with black irregular edges have been found.

The conclusion No. 249 of the forensic medical expert examination states: Kloyan has received a crushed fragment wound in the left iliac area, with thigh artery avulsion, thigh vein damage, and fracture of the left crest of the pubic bone – accompanied with diffused bleeding and 4th degree hemorrhagic and traumatic shock, a result of fragments with substantial kinetic energy during life time – causing his death.

The conclusion No.389 of the forensic ballistic expert examination states: the object retrieved from G. Kloyan's body is a "Cheremukha-7" type fired cartridge case, *i.e.*, a gas grenade with its plastic plugs. The shot traces on the plugs are typical of "KS-23" carbine. The distortion and avulsion of the plug could have been caused by colliding with any solid body or passing through any obstacle. As to the six small particles retrieved from his body, it is not possible to determine what particles those are due to small sizes and the absence of features necessary for criminological identification on them.

5.2 NECESSITY AND LAWFULNESS OF APPLYING SPECIAL MEANS

Issues related to the lawfulness of applying special means by the Police Troops of the Republic of Armenia and to the adherence of safety rules during their application became a subject of special examination and consideration by the Committee, taking into account the fact that in particular the application of these means led to the death of three people and bodily injuries of various degrees of another three, as well as intoxication by tear gas caused bodily injuries to eleven servicemen of the Police Troops.

The examination revealed:

On 1 March 2008, at about 19.30, Grigor Grigoryan, Commander of the Police Troops of the Republic of Armenia, together with about 800 servicemen of the Police Troops were at the crossroad of G. Lusavorich street and Mashtots Avenue. According to his instruction, 350 servicemen were taken to Shahumyan square, and about 450 servicemen of the Police Troops remained at place, standing in three lines. The servicemen of the Police Troops that stood in the 1st and 2nd lines had only rubber clubs and protective shields, whereas the non-commissioned officers positioned in the 3rd line were also armed with special means.

According to the clarifications provided by G. Grigoryan during the sitting of the Committee, only the non-commissioned officers of the Unit No. 1033 of the Police Troops and those of the Special Operations Detachment were armed with special means. At about 19.45, a

large group of participants of the mass disorders, coming out from behind the barricade constructed next to the Russian Embassy, moved towards the intersection of Gr. Lusavorich street and Mashtots Avenue. With the view to block their movement towards Mashtots Avenue, the staff of the troops moved forward; whereas the barbed-wire installing vehicle tried to block Gr. Lusavorich street, across the width, with barbed-wire. However, the servicemen of the Police Troops encountered the active resistance of the participants of the mass disorders, who threw at them stones, metal bars, as well as bottles filled with inflammable substances *i.e.*, the so-called “Molotov cocktails”. During the clash, various servicemen of the Police Troops received bodily injuries of various degree and of different nature, whereas the barbed-wire installing vehicle was captured by the participants of the mass disorders. In order not to increase the number of the wounded among the personnel, and to provide them with medical assistance, G. Grigoryan decided to withdraw the personnel and move them towards the Leo-Paronyan streets, creating a turtle formation called “testudo”, and to apply special means, rubber and blank cartridges with the purpose of preventing the attacks.

The second big clash among the participants of the mass disorders and the servicemen of the Police Troops took place in the territory of Leo-Paronyan streets, at about 21:00, where Police Troops Officer Hamlet Tadevosyan received fragmentation injuries from the explosion of a grenade fuse, and the police troops were again compelled to use special means to suspend the advancement of the participants of the mass disorders and to prevent the attacks on them.

During the operations, the police troops had the following special means: 10 units of “Kornet” type pistols intended for firing rubber cartridges, 4 units of “KS-23” rifles intended for firing “Cheremukha-7”, “Siren-7” tear gas cartridges and “Volna R” type rubber cartridges, 7 units of “SPSh” type pistols intended for firing “Cheremukha-4” type tear gas cartridges, 15 units of “Cheremukha-1”, 15 units of “Cheremukha-5”, 80 units of “Siren-6”, and 16 units of “Dreif” type tear gas grenades, 7 units of “Zarya” and 5 units of “Kasset” type stun grenades, 154 units of “Cheremukha-4”, 89 units of “Cheremukha-7” and 5 units of “Siren-7” tear gas cartridges, 180 units of “Volna R” type rubber cartridges and 130 rubber cartridges for “Kornet” pistol. Of the aforementioned means, 79 units of “Cheremukha-4”, 56 units of “Cheremukha-7” tear gas cartridges, 29 units of “Siren-6”, 4 units of “Dreif” tear gas grenades, 4 units of “Zarya”, 2 units of “Kasset” stun grenades, 129 units of “Volna R” rubber cartridges, and 62 units of rubber cartridges for “Kornet” pistol were used. Of the used 56 units of “Cheremukha-7” tear gas cartridges, 39 were used by two non-commissioned officers of the special operations detachment of the Police Troops of the Republic of Armenia (20 units and 19 units), whereas 17 units were used by two non-commissioned officers of the Unit No. 10/33 (8 units and 9 units).

The document titled “The findings on examination of the facts related to the application of special means” (hereinafter referred to as the “Document”), prepared by Seda Safaryan and Andranik Kocharyan, former members of the Fact-Finding Group and the objections of SIS (in italics), are presented below.

1. “Taking into account the fact that the Police of the Republic of Armenia acquires special means from the Russian Federation, the Fact-Finding Group examined the documents laying down the procedure and safety measures for their application in the Russian Federation.

Gegham Petrosyan, former deputy commander of the Police Troops of the Republic of Armenia, Head of the Headquarter, informed that the special means were acquired from the Russian Federation and the procedure for the application of the mentioned means laid down by the manufacturing country is binding upon them”.

1.1. The documents laying down the procedure for application of the special means in the Russian Federation are analysed in the Document, without making references to those documents and the sources of their acquisition.

Moreover, Gegham Petrosyan, former head of the headquarter of the Police Troops of the Republic of Armenia, in his explanations given to the Fact-Finding Group does not mention that the special means are acquired from the Russian Federation. He just informed that they remained from the USSR internal troops.

The statement made in the Document as to no serviceman, who has suffered intoxication from the special means, has been recognised as a victim, is not correct.

2. “None of the civilians was hospitalised with a diagnosis of intoxication from the use of the special means. The Fact-Finding Group found out that none of the servicemen, intoxicated from the special means, was recognised as a victim in the criminal case.

2.1. First, it is incomprehensible how the authors of the document could find out the reason of intoxication when the precise reasons of intoxication were impossible to find out by the preliminary investigation and the forensic medical examination. Moreover, all the servicemen who have received injuries, including those intoxicated on 1 March 2008 were recognised as victims.

3. In the Fact-Finding Group, B. Khachatryan admitted that “Cheremukha-7” tear gas grenades are intended to be used in closed areas, whereas “Cheremukha-4” – in open areas during mass disorders. He also stated that it is prohibited to use the mentioned two types of grenades towards gatherings of people.

3.1. The explanation of Bagrat Khachatryan, commander of the special operation detachment of the Police Troops of the Republic of Armenia, is falsified in the Document where

he allegedly admits that “Cheremukha-7” tear gas grenades are intended to be used in closed areas, whereas “Cheremukha-4” – in open areas during mass disorders.

As a matter of fact, Bagrat Khachatryan both in his pre-trial testimonies and in the Fact-Finding Group has informed that “Cheremukha-7” type cartridges are applicable both in closed and open areas, describing the procedure for their application, and excluding their application in both cases towards the gatherings of people.

Moreover, the same methodical manual - which has been examined by the members of the Fact-Finding Group and interpreted, in respect to various issues, in a manner favourable to them - clearly states that “Cheremukha-4” type gas grenade is intended for influencing the gatherings of people but its application towards the gatherings is prohibited.

Thus, the mere fact that the application of “Cheremukha-7” type gas grenade towards the gatherings of people is prohibited does not exclude its application in open areas.

4. “Gegham Petrosyan, Head of the Headquarter of the Police Troops of the Republic of Armenia, first declared that nobody issued an order to fire towards people a “Cheremukha-7” special means from KS-23 carbine, as a result of which three demonstrators died, and another three were wounded. According to him, it was ordered to fire at the vehicle moving towards them and, as G. Petrosyan mentioned, the officers of the special means application group fired at the demonstrators. To the question of the Fact-Finding Group whether the Police Troops have the right to fire “Cheremukha-7” special means at a driver of a vehicle, G. Petrosyan replied that they have the right to fire at a driver of a vehicle and that they are not accountable to anybody to issue such an order”.

4.1. *It is not truly stated in the Document that Gegham Petrosyan, in his explanations given to the Fact-Finding Group, informed that the officers of the special means application group fired at the demonstrators. Neither Gegham Petrosyan nor any servicemen of the Police Troops in their testimonies or explanations given to the Fact-Finding Group ever mentioned about firing towards the demonstrators. Instead, all persons invited to the Fact-Finding Group described in details and explained how “Cheremukha-7” type gas grenade was applied.*

As regards the firing of “Cheremukha-7” type gas grenade with the purpose of forcibly stopping the advancement of the vehicle driven by the participant of the mass disorder towards the subdivisions of the Police Troops and preventing the danger threatening various servicemen, it is more than obvious that in the given case the policemen have acted in the manner prescribed by Article 33 of the Law of the Republic of Armenia “On the Police” and in a lawful manner.

5. “G. Petrosyan, Head of the Headquarter of the Police Troops of the Republic of Armenia, also informed that their special means were outdated. After firing the special means, the smoke did not dissipate as a result of which the servicemen were intoxicated. That question

has been put forward by him before the administration of the Republic; however, funds were not been allocated for the acquisition of the special means".

5.1. *In the next point of the Document, the explanation of Gegham Petrosyan was falsified, stating that the letter allegedly informed "...their special means were outdated. After firing the special means, the smoke did not dissipate as a result of which the servicemen were intoxicated. That question has been put forward by him before the administration of the Republic; however, funds were not been allocated for the acquisition of the special means".*

As a matter of fact, Gegham Petrosyan has informed the Fact-Finding Group that since the cartridges were outdated they did not serve their intended purpose, and not that people were intoxicated due to that.

It is worth mentioning that the members of the Fact-Finding Group, when building their examinations upon the regulations of the Russian Federation and combat characteristics stipulated with respect to the procedure for application of special means, have not, with a "surprising" carelessness and neglect, anyway referred to the conclusion of the expert examination - provided by the preliminary investigation body - carried out by the "Special Equipment and Communication" Research and Production Association State Institution of the Ministry of the Interior of the Russian Federation, manufacturer of the special means, where it is clearly stated: "In case of expiration of the storage life, the performance characteristics of "Cheremukha-7" ("Cheremukha-7M") type gas grenade cartridges may undergo changes, i.e., reduced combat characteristics, reduced duration of tear smoke emission, reduced maximum flying distance of gas grenade, failure of cartridges due to malfunction of percussion caps. Application of expired "Cheremukha-7" ("Cheremukha-7M") type gas grenade cartridges against people will not cause injury to their health and life".

6. "According to Bagrat Khachatryan, invited to the Fact-Finding Group, people came out of the arch of the left sidewalk near the "fish store", threw stones towards them and he issued an order to fire "Cheremukha-7" type gas grenade, which, as a matter of fact, is in breach of the requirements of the order No 127.

6.1. *It is not truly stated in the Document that Bagrat Khachatryan, commander of the special operations detachment of the Police Troops of the Republic of Armenia, in his explanations provided to the Fact-Finding Group informed that people came out of the arch of the left side-walk near the "fish store", threw stones towards them, and he issued an order to fire "Cheremukha-7", concluding that Bagrat Khachatryan violated the requirement of the order No. 127.*

Bagrat Khachatryan did not issue such an order and did not give such an explanation to the Fact-Finding Group.

7. Bagrat Khachatryan informed the Fact-Finding Group that a truck was advancing towards them on the intersection of Leo and Paronyan streets, and that he ordered Avetik Atabekyan to fire a "Cheremukha-7" at the windscreen of the truck, in the direction of the seat next to the driver; however, he was unable to explain how it happened that Tigran Khachatryan died from a bodily injury caused by "Cheremukha-7" - moreover, from an injury to his head and back - near a similar truck not yet disclosed by the investigation.

7.1. It is recorded in the Document, *“Moreover, Bagrat Khachatryan informed the Fact-Finding Group that a truck was advancing towards them on the intersection of Leo and Paronyan streets, and that he ordered Avetik Atabekyan to fire a "Cheremukha-7" at the windscreen of the truck, in the direction of the seat next to the driver; however, he was unable to explain how it happened that Tigran Khachatryan died from a bodily injury caused by "Cheremukha-7" - moreover, from an injury to his head and back - near a similar truck not yet disclosed by the investigation”.*

It would be surprising if Bagrat Khachatryan was able to explain “how it happened that Tigran Khachatryan died from a bodily injury caused by "Cheremukha-7" - moreover, from an injury to his head and back - near a similar truck not yet disclosed by the investigation”.

First of all, we think that only Seda Safaryan and Andranik Kocharyan are in a position to explain what “a similar truck not yet disclosed by the investigation” means; i.e., it turns out that those members of the group are able to identify undisclosed items and objects.

Investigation into Tigran Khachatryan’s death revealed that T. Khachatryan, together with a group of participants in mass disorders, went to the archway on the intersection of Paronyan and Leo streets, where he was wounded and died in circumstances not yet disclosed by the investigation.

Moreover, if we follow the morbid logic of the said members and accept that Tigran Khachatryan was in the cabin of the truck / on the seat of the driver or the passenger / which tried to drive through the servicemen of the units of the Police Troops, then - even under the condition of having the imagination of these members of the Group and being gifted with the unnatural abilities of the said members of the Group to predict, it is difficult to visualise being wounded in the back of the head in case of frontal shot.

Or otherwise, if Seda Safaryan and Andranik Kocharyan were aware of the incident of crime, in this case of the attempt by Tigran Khachatryan to deliberately inflict harm on the servicemen of the units of the Police Troops, a question arises on why they had concealed the incident of crime and had not reported to the law-enforcement authorities.

8. Martiros Davranyan, who was invited to the Fact-Finding Group, informed that "Cheremukha-4" and “Cheremukha-7” are designed for using during mass disorders. He also

informed that "they" fired "Cheremukha-4" and "Cheremukha-7" in the direction of the crowd, but those did not affect the people.

8.1. *The statement in the document, according to which Martiros Davranyan, deputy commander of the Special Operation Detachment of the Police Troops of the Republic of Armenia, allegedly informed in his explanations provided to the Fact-Finding Group that "they" fired "Cheremukha-4" and "Cheremukha-7" in the direction of the crowd, but those did not affect the people", is not correct.*

As already stated above, neither Martiros Davranyan nor any serviceman of the Police Troops have ever mentioned about firing at demonstrators or the crowd in their testimonies or explanations given to the Fact-Finding Group.

Seda Safaryan and Andranik Kocharyan, members of the Group, have resorted to fraud in a manner typical of them, both in the document under consideration and while giving explanations to the Fact-Finding Group. Particularly, while questioning Armen Antonyan, who was invited to the Fact-Finding Group, Seda Safaryan, obviously falsifying Armen Antonyan's testimony provided by the preliminary investigation body to the Group, indicates in her question that Armen Antonyan allegedly gave testimony, according to which all six "KS-23" type carbines available in the military unit were used on 1 March 2008, whereas the testimony records that six carbines were taken out from the military unit, but only two of them were actually used. Although at the Fact-Finding Group Armen Antonyan insisted on and confirmed his testimonies given in the course of preliminary investigation, the document records the same fraud that Armen Antonyan allegedly informed in his testimony that all six "KS-23" type carbines available in the military unit were used on 1 March 2008.

Moreover, the examination of video records of the explanations of persons invited to the Fact-Finding Group makes it clear that in all cases the same two members of the Group by all means distort, falsify the factual circumstances of the events, the documentary data, the conclusions of the experts, try - even to the extent of insulting and exerting pressure - to get their desirable answers from persons giving explanations or reformulate the received answers and state them in another interpretation, which has been later used by them in the document and for political speculations.

*It is worth noting that the authors - distorting the information available on the procedure for the application of special means, as well as the explanations of the persons who applied those means - state in the beginning of the document that "Cheremukha-7" gas grenade is applicable **only** for enclosed spaces, whereas later, developing their "professional" findings, mention that its application in open spaces **is prohibited**, ignoring the fact that the Methodical Manual never mentions that it is designed **only** for enclosed spaces or its application in open*

spaces **is prohibited**. Moreover, point 2.4 of Chapter 2 of the Methodological Manual reads: "the type of special means and the frequency of its application shall be determined with due account of the established situation, the nature of the offence and the personality of the offender, as well as the performance characteristics of the special means". Interpreting the Methodological Manual in their own way, the members of the Group, while analysing the intended purpose of "Cheremukha" type special means, have unequivocally determined - with the right of a person having excellent knowledge in all scientific fields, as typical of them - when and what type of special means is applicable, referring to point 5.3 of Chapter 5 of the Methodological Manual. Whereas, point 5.3 of Chapter 5 of the Manual uses the term "**it is expedient**" with regard to the choice of special means for prevention of anti-public manifestations in residential areas, which is of consultative rather than imperative nature.

In our opinion, the authors of the Methodological Manual, who master specialised professional knowledge, also failed to properly fulfil their obligations since they did not consult with Seda Safaryan and Andranik Kocharyan when providing such definitions.

Making a reference to point 5.7 of the Manual and stating that only "Cheremukha-7" gas grenade is applied for neutralisation of offenders in enclosed spaces, probably the knowledge of Russian of the above-mentioned members of the Group did not suffice to fully translate point 5.7, according to which "Cheremukha 6" type special means may also be applied for neutralisation of offenders in enclosed spaces.

There is no interpretation of the fact that while carrying out the aforementioned analyses, the document does not mention anything concerning the conclusion of the expert examination carried out at the "Special Equipment and Communication" Research and Production Association State Institution of the Ministry of the Interior of the Russian Federation, which manufactures special means, where it clearly states: application of "Cheremukha-7" type gas grenade cartridges is not prohibited in open spaces. Firing directly at a human being, while using "Cheremukha-7" ("Cheremukha-7M") type gas grenade cartridges, is prohibited. Fire may be opened against sites or objects around the offenders; moreover, the direction of the wind that provides the spread of the fume cloud over the offenders should be taken into account."

9. Mkrtych Gharibyan invited to the Fact-Finding Group informed that "he fired "Cheremukha-7" special means also in the archway on Leo street, where demonstrators were gathered."

9.1. It is not correctly recorded in the document that allegedly, according to Mkrtych Gharibyan, he fired "Cheremukha-7" special means was also fired in the archway on Leo street where demonstrators were gathered. M. Gharibyan did not provide such information in his

explanations given to the Fact-Finding Group and testimonies provided during the preliminary investigation.

It is recorded in the document that the specifications essential for identification of gas grenades did not become clear to the Fact-Finding Group. Whereas the expert invited to the Fact-Finding Group explained to the members of the group - in a more than comprehensible manner - the nature, type, and the procedure for comparative examination of specifications essential for identification.

10. At the Fact-Finding Group, Khachik Davtyan stated that "he was not declared a victim, meanwhile he was subjected to violence in the office of investigator Hovakimyan located on the 6th floor of the building of the General Prosecutor's Office of the Republic of Armenia, and was forced to write the testimony that the investigator demanded...."

10.1. *Khachik Davtyan's aforementioned statements do not correspond to the reality.*

Thus:

On 4 March 2008, when being interrogated as a witness, Khachik Davtyan - trying to conceal his immediate participation in the mass disorders which took place in Yerevan on 1 March 2008 and the fact that he got injured during these disorders - gave false testimony that he got the said injury by accident, when, on 1 March 2008, at about 19.00-20.00, he, together with his friend Norayr Gevorgyan, was trying to leave by a taxi service car from the place of a friend of the latter, which was located not far from M. Mashtots avenue, and Norayr Gevorgyan was also present when he got the said injury. Khachik Davtyan withdrew his false and untrue testimony and acknowledged the fact of his immediate participation in mass disorders only when Norayr Gevorgyan in his testimony informed that Khachik Davtyan was lying, that he did not witness his receiving a bodily injury and that he was not next to him at that moment.

On 16 May 2008 Khachik Davtyan, presenting the real picture of the events to the preliminary investigation body and acknowledging his immediate participation in mass disorders as well as the fact of committing violent acts against government representatives, later informed the Fact-Finding Group, as well as the journalist of "Haykakan Zhamanak" daily that in spite of the allegation that the testimony of 16 May 2008 was written by himself, in his own handwriting, it does not correspond to the reality since they were extorted as a result of violence and pressure exerted by the investigators.

Khachik Davtyan's mentioned allegations were refuted by the additional testimonies he gave in the course of preliminary investigation, particularly by his illogical and incomprehensible responses, discrepancies between the allegations given to the Fact-Finding Group and testimonies given during the preliminary investigation, as well as by face-to-face

interrogation with Ashot Khachatryan, investigator of the investigation group of the Special Investigation Service of the Republic of Armenia.

Thus:

1. *He informed the Fact-Finding Group that he witnessed the incident of a young person being wounded, whereas while being interrogated as a witness by A. Khachatryan at the Special Investigation Service of the Republic of Armenia on 16 May 2008, Kh. Davtyan, in his written testimony, gave no information on the wounded young person.*

2. *Kh. Davtyan informed the Fact-Finding Group as well as "Haykakan Zhamanak" daily dated 13 May 2009 that he saw cartridge cases of different calibres, including of "Sniper", at the place of wounding of the said young person, whereas during the interrogation of 19 June 2009 he informed that all of that was an assumption.*

3. *Kh. Davtyan did not see and did not inform about the direction the shot - that had wounded the said young person - came from.*

4. *He informed the Fact-Finding Group that when the said young person fell down, tear gas was already being used at that time, whereas he did not mention anything about it while being interrogated at the Special Investigation Service of the Republic of Armenia.*

5. *He informed the Fact-Finding Group that the wounded young person was wearing a black "Jacket", whereas during the interrogation of 25 May 2009 he mentioned that the said young person was wearing dark trousers; he could not remember the colour of the top garment.*

6. *He informed the Fact-Finding Group and "Haykakan Zhamanak" daily that the wounded was a young person, whereas in his testimonies he mentioned that he did not see the face of the young person, but he assumed that the wounded was a young person.*

7. *On 17 August 2009, during the face-to-face interrogation, investigator A. Khachatryan refuted Kh. Davtyan's allegation that during the interrogation of 16 May 2008 he was subjected to violence and pressure, as a result of which testimony was extorted. Moreover, he refuted the fact that during the interrogation it was not permitted to record the circumstances - mentioned by Kh. Davtyan - of the incident of receiving bodily injuries by the said young person, which is illogical since Kh. Davtyan was summoned for interrogation in connection with participation in mass disorders on the main streets of Yerevan on 1-2 March 2008 and clarification of other circumstances known to him in connection with the criminal case.*

He informed the Fact-Finding Group that G. Hovakimyan, PIC investigator (investigator for particularly important cases) of the Special Investigation Service of the Republic of Armenia, summoned him to the Special Investigation Service of the Republic of Armenia on 27 April 2009 and took testimonies, and then told him not to tell anybody, including the Fact-Finding Group,

about his visit to the Special Investigation Service of the Republic of Armenia. Kh. Davtyan's mentioned allegation is also concocted and illogical, since the particulars of the interrogating investigator, as well as the day, place, and time of interrogation were clearly indicated in the protocol of the interrogation; moreover, at the checkpoint of the administrative building of the Special Investigation Service of the Republic of Armenia there is a pass filled out for Kh. Davtyan and signed by PIC investigator G. Hovakimyan; therefore, even if G. Hovakimyan wished to do so, he would not be able to conceal the fact that on 27 April 2009 Kh. Davtyan entered the administrative building of the Special Investigation Service of the Republic of Armenia.

5.3. FINDINGS OF THE COMMITTEE

Considering the fact that during mass disorders in the mentioned locations three citizens - Armen Farmanyan, Gor Kloyan and Tigran Khachatryan – died of special means cartridges, particularly of “Cheremukha-7” type gas grenades cartridges, the Committee made a finding that they were probably used either in the direction of congregations of people or it happened as a result of rebounding shots at concrete walls, other barricades or barriers.

During the sitting of the Committee of 30 April 2009, in response to the question of Naira Zohrabyan, member of the Committee, on how it is possible to explain the fact that people died as a result of using “Cheremukha-7” special means, Hayk Harutyunyan, former Head of the Police of the Republic of Armenia, answered that injuries may be caused if it is fired in the direction of people at a close range. He continued: “Maybe it was not fired at a right angle; maybe there were clashes, since at that time the situation was chaotic”.

The circumstance of using those tear gas cartridges in contravention of prescribed safety rules is also supported by the fact that 11 servicemen of the Police Troops were also poisoned and received bodily injuries of different severity. This is also supported by conclusions No. 296, 300, 309, 320, 372, 388, 410, 415, 418, 430, and 438 of experts Adamyan, Bisharyan, Sevoyan, Harutyunyan et al of the Republican Scientific–Practical Centre of Forensic Medicine of the Ministry of Health of the Republic of Armenia.

Page 55 of the conclusion describes in details that the gas grenades of 40% of the fired cartridges did not have noticeable gas leaks; low flying speed of gas grenades was recorded, the gas cartridges were received in 1990, and their prescribed storage life is five years.

The Committee expresses its hesitation with regard to the attitude of the Police of the Republic of Armenia since despite the fact that the Committee applied to the Police requesting to provide the relevant Instruction on safety rules for application and use of special means, the latter was not provided. Only in connection with the termination of the activities of the Fact-Finding Group, the Instruction that the Police had provided to the Group, was transferred to us together with the other documentation.

The Instruction on the Procedure for the Application of Special Means by the Bodies of Internal Affairs and Internal Troops was approved by the Order No. 127 of the Minister of Internal Affairs of USSR of 6 July 1989, which, however, was repealed in the Republic of Armenia in 2006, together with other legal acts. It means that up to the present moment the Police Troops of the Republic of Armenia do not have a procedure which prescribes the rules for keeping and using special means, as well as the safety rules thereof.

Point 1.3 of the said Instruction defines the cases of application of special means; in particular, point 1.3.1 provides that special means shall also be used to prevent mass disorders, as well as group violations of public order accompanied by violence. According to “General Directions” chapter of the Instruction, “KS-23” carbines are designed for opening aimed fire with “Cheremukha-7” gas grenade cartridges /page 14 /; however, it is prohibited to open fire in the direction of congregations of people, as well as to fire at the offenders at point-blank range.

Point 2.6 of the Instruction explicitly states: ““Cheremukha-7” type gas grenade is designed for opening aimed fire inside buildings, creating gas cloud therein”. Although the same Instruction does not contain any direct ban on the application of “Cheremukha-7” special means in open spaces; however, we think that its use was inappropriate and inexpedient, since it could not lead to desirable results.

The Committee also notes that although the above-mentioned Instruction was repealed in 2006, the Police of the Republic of Armenia have not yet adopted a new instruction replacing it.

In spite of detailed investigations carried out by the preliminary investigation body and by ourselves, the Committee states that, unfortunately, it was technically impossible to identify the “KS-23” carbines and, consequently, the persons armed with them, whose shots caused the death of three citizens and bodily injuries of other three citizens. For this purpose, forensic ballistic examinations were arranged both in the Republic of Armenian and the Russian Federation. Particularly, “KS-23” carbines that fired “Cheremukha-7” cartridges, as well as “Cheremukha-7” cartridges removed from the bodies of dead and wounded persons were sent to the Expert Criminological Department of the Police of the Republic of Armenia to find out the following:

1. whether it is possible to identify “Cheremukha-7” type gas grenades with the weapons which fired them;
2. whether there are traces - useful for identification - on "Cheremukha-7" type cartridges removed from the corpses and from the bodies of the victims.

According to the Conclusion No. 1466 of the Expert Criminological Department of the Police of the Republic of Armenia, the experts arrived at the following conclusions:

1. “In case of ricochet after having collided with a wall or any other obstacle, as well as after passing through any obstacle, “Cheremukha-7” type gas grenades may, depending on the collision angle and characteristics of the material of the obstacle, cause bodily - including lethal - injuries to a human being”.

2. As a result of gas leak from "Cheremukha-7" type gas grenade cartridges, the plastic floating plugs undergo thermal reaction, melt, and become not useful for identification. As a

result of collision or contact with an obstacle, side mechanical traces - damages, scratches - occur on them, and those also impede the identification.

3. Traces of shooting on the plastic floating plugs of “Cheremukha-7” type gas grenades submitted for expert examination are unsuitable for identification of a specific unit of weapon, since the specifics of the bore are not clearly marked on them, and metallic corpuses of gas grenades do not bear traces of contact with the bore, and thus are unsuitable for identification of the shooting unit of weapon.

The Special Investigation Service also applied to the “Special Equipment and Communication” Research and Production Association State Institution of the Ministry of the Interior of the Russian Federation, providing “KS-23” carbines that fired “Cheremukha-7” gas grenades cartridges, as well as “Cheremukha-7” gas grenades removed from the corpses and the bodies of the victims, and asked to provide answers to the following questions:

a. what is the maximum storage life of "Chermukha-7" type cartridges? Are cartridges produced in 1986 and 1989 suitable for intended use?

b. When the storage life of cartridges has expired, is their use for intended purpose possible, taking into account the threat of causing injury to the health and life of people?

c. Is the application of “Cheremukha-7” type gas grenade cartridges prohibited in open spaces? If not, what are the manners of their application?

d. Is there any methodology developed, and is identification of “Cheremukha-7” type gas grenades with those rifles from which they were fired possible?

The following answers were received:

a. The maximum storage life of “Cheremukha-7” type gas grenade cartridges is not more than five years.

b. In case of expiration of the storage life, the performance characteristics of "Cheremukha-7" type gas grenade cartridges may undergo changes, i.e. reduced combat characteristics, reduced duration of tear smoke emission, reduced maximum flying distance of gas grenade, failure of cartridges due to malfunction of percussion caps. Application of expired “Cheremukha-7” type gas grenade cartridges against people will not cause injury to their health and life.

c. Application of “Cheremukha-7” type gas grenade cartridges in open spaces is not prohibited.

While using “Cheremukha-7” and “Cheremukha-7 M” type gas grenade cartridges, firing directly at a human being is prohibited. Fire may be opened against sites or objects around the

offenders; moreover, the direction of the wind that provides the spread of the fume cloud over the offenders should be taken into account.

d. Our organisation is not entitled to conduct ballistic examinations and does not have any information on the methods of identification of the given type of cartridges and units of weapon. It is expedient to address this question to the Expert Criminological Centre of the Ministry of the Interior of the Russian Federation.

To obtain answer to the last question, both the Committee and the Special Investigation Service applied to the Expert Criminological Centre of the Ministry of the Interior of the Russian Federation, which provided the Conclusion No. 913 stating that:

“Traces of bore of a firing weapon on the surface of metal shells of gas grenades were not detected.

This is conditioned by the fact that there is no direct contact between the surface of the shell and internal surface of the bore of gas grenades, since polymeric obturators - designed for sliding the grenade through pilot segment of the barrel of the carbine and blocking the powder gases - cover the shell from both sides.

Traces of bore on the polymeric plugs are unsuitable for identification of the unit of weapon originating those traces”.

With a request to identify "Cheremukha-7" type gas grenade cartridges with the units of weapon from which they were fired, the Committee also applied to the group of experts who arrived from the USA and who had investigated the events of 11 September 2001, as well as to the Council of Europe Commissioner for Human Rights Thomas Hammarberg, for conducting a relevant examination by international experts; however, the answer was that it is technically impossible. This is also supported by the answer of Irish expert Colin Burrows addressed to the Special Investigation Service, “I think it is not possible to establish which particular weapon it was fired from as grenades unlike bullets do not have a forensic signature”.

However, the Committee gave a positive assessment to the efforts of the Prosecutor General’s Office of the Republic of Armenia and the Special Investigation Service of the Republic of Armenia aimed at revealing the circumstances of the death of three persons and those of causing bodily injuries to three persons by "Cheremukha-7" type gas grenades; specifically, a criminal case was instituted against four servicemen of the Police Troops, who applied special means during the prevention of the mass disorders; they were charged with breaching the rules of handling “KS-23” carbines – a special means firearm.

Based on the examination of the findings of the above-mentioned circumstances, the Committee recommends to the Police of the Republic of Armenia to:

1. Rapidly elaborate and adopt a relevant instruction on the procedure for application of special means and observation of safety rules during their use.

2. Clearly indicate, in the instruction, the rules of their use.

3. Carry out verification of technical and quality characteristics of the special means in the arsenal of the Police of the Republic of Armenia, to determine their workability, and destroy all special means that do not comply with those standards.

The Committee expresses its concern that the investigation group consisting of 105 persons composed in connection with the criminal case the Special Investigation Service is seized of, being endowed with broad powers, has not yet revealed the majority of the persons who caused bodily injuries of different severity to 221 persons during mass disorders in the city of Yerevan.

4. Upon the assignment of the President of the Republic of Armenia, the Prosecutor General of the Republic of Armenia transferred to the Committee all materials at the disposal of the preliminary investigation body with regard to the death of ten persons; based on the examination of these materials, the Committee finds that the preliminary investigation body has undertaken all possible measures aimed at revealing the circumstances of the case.

Nevertheless, the Committee assigns high priority to the issue of regular provision of information to the public by the preliminary investigation body on the circumstances of the death of ten persons and, particularly, on further actions aimed at revealing and bringing the perpetrators to justice.

The Committee welcomes the fact that four Police officers were charged under Article 309 of the Criminal Code of the Republic of Armenia for using excessive physical force and violence against citizens during the events, and the cases were taken to the court.

One of the most important tasks of the Committee is to clarify the circumstances of the death of the deceased. In this regard, one fact should be initially stated: the Committee, within the scope of the powers vested in it, as well as based on the comparison of materials and facts under its disposal, should and may make findings only concerning circumstances such as the type of the weapon which caused the death, as well as the time, place, and conditions of death, etc. Meanwhile, the Committee did not provide an answer to one of the most problematic issues, constituting a matter of public concern, i.e. whose actions caused the death, since, even if the Committee desired so, it would not be able and it is not entitled to become a preliminary investigation body and exercise powers vested exclusively in the preliminary investigation body under the criminal procedure legislation.

However, the Committee is hopeful that the ongoing preliminary investigation will be able to solve the task it was assigned. In connection with this, it is recommended that the Special

Investigation Service undertakes all necessary measures to reveal the cases of death, violence, causing bodily injuries, as well as other cases.

The Committee states that so far the operational-investigative activities were not effective, particularly:

(a) it has not been fully discovered who are the owners of the units of weapon, ammunition and other objects intended for causing bodily injury found, on 1 March 2008, in Freedom Square and territories adjacent to it, and the circumstances of their occurrence in the area;

(b) all circumstances of the death of ten persons during mass disorders, the perpetrators thereof, as well as persons who caused bodily injuries to different people have not been revealed;

(c) all persons who prepared and used explosives and bottles filled with flammable liquids have not been revealed;

(d) all units of weapon applied during mass disorders and the persons who applied these units of weapon, except for the case of Felix Gevorgyan, have not been revealed;

(e) persons who were actively participating in mass disorders and who are clearly pictured in circulated video records have not been found;

(f) the identity of the person who fired at Tigran Abgaryan, serviceman of the Police Troops, and made an attempt of firing at other servicemen has not been revealed, whereas the sniper of the Police Troops noticed and neutralised him by wounding (the sniper clearly described the given person, the precise locations of injuries received);

(g) locations of the defendants searched for have not been revealed in about 1,5 years. Moreover, Nikol Pashinyan and Hamlet Hovhannisyanyan, who voluntarily appeared before the law-enforcement authorities, had not even left the Republic of Armenia;

(h) three persons who made an attempt to break the line of the police troops by using two buses and one truck in the vicinity of Paronyan and Leo streets have not been revealed;

(i) the person who captured the barbed-wire laying vehicle of the Police and who ran down a participant of mass disorder has not been revealed;

(j) all persons who smashed, burned vehicles belonging to the Police of the Republic of Armenia and to citizens and beat servicemen of the Police have not been revealed;

(k) the person who stabbed Armen Martirosyan, Member of the National Assembly, has not been revealed;

(l) all the policemen who used physical force and violence against the participants of mass disorders have not been revealed;

(m) the two members of the National Security Service who, while performing their official duties, used violence against citizens in Freedom Square, have not been revealed, and no criminal case has been instituted against them.

The Committee conveys its condolence to the families and relatives of all victims, assessing the events that took place as a tragedy for all of the Armenian people.

The events left their negative moral and physiological impact on different layers of the Armenian people; to some extent they also deepened the environment of hatred and intolerance, caused grave damage to the international reputation of the Republic of Armenia as a democratic state. Both the authorities and the opposition had their portion of guilt in what happened.

Currently the Republic of Armenia faces serious problems - both the foreign challenges, and the raging economic crisis in the whole world. The Committee is hopeful that our ancient nation, which resisted different challenges throughout centuries, will find power in itself, demonstrate its collective wisdom, overcome all current problems through joint effort and continue to go ahead with firm steps.

VI. EXAMINATION OF THE CIRCUMSTANCES OF ADOPTING THE DECREE ON DECLARING A STATE OF EMERGENCY AND FINDINGS OF THE COMMITTEE

6.1. EXAMINATION OF THE CIRCUMSTANCES OF ADOPTING THE DECREE ON DECLARING A STATE OF EMERGENCY

It is well known that with regard to the events of 1 March in Yerevan, Robert Kocharyan, the President of the Republic of Armenia, having consulted with the Chairperson of the National Assembly and the Prime Minister of the Republic of Armenia, signed the following Decree on Declaring a State of Emergency (hereinafter referred to as “the Decree”).

“DECREE OF THE PRESIDENT OF THE REPUBLIC OF ARMENIA ON DECLARING A STATE OF EMERGENCY

Acting in accordance with Article 55(14) and Article 117(6) of the Constitution of the Republic of Armenia and for the purpose of preventing the threat to the constitutional order in the Republic of Armenia and protecting the rights and lawful interests of the population,

I hereby decide:

1. To declare a state of emergency in the city of Yerevan from 1 March 2008 for a period of 20 days.
2. To entrust the President of the Republic of Armenia with the governance of elimination of the circumstances serving as a ground for declaring a state of emergency, as well as of regulation and implementation of other urgent issues.
3. To entrust the Police of the Republic of Armenia adjunct to the Government of the Republic of Armenia, as well as the Ministry of Defence of the Republic of Armenia with securing the legal regime of the state of emergency.
4. To establish the following temporary limitations in the area under the state of emergency:
 - (1) banning of meetings, assemblies, demonstrations, rallies, and other mass events;
 - (2) banning of strikes and other activities that terminate or suspend operations of organisations;
 - (3) restricting, where appropriate, the movement of individuals and means of transportation, and carrying out inspections by law-enforcement authorities;

(4) publication or dissemination by mass media of obviously false or destabilising information on state and internal political issues, or of calls to participate in un-notified (illegal) activities, as well as publication and dissemination of such information and calls by any other means and forms shall be banned;

(Sub-point 4 amended by Decree NH-38-N of 13 March 2008)

(5) banning of political propaganda through leaflets or other means without permission from relevant public authorities;

(Sub-point 5 repealed by Decree NH-38-N of 13 March 2008)

(6) temporary suspension of activities of political parties and other non-governmental organisations that impede the elimination of the circumstances serving as a ground for declaring a state of emergency;

(Sub-point 6 repealed by Decree NH-36-N of 10 March 2008)

(7) expulsion of persons breaching the legal regime of the state of emergency and not residing in the area concerned, on their own account, or, in the absence of means, on the account of the State Budget of the Republic of Armenia, with further refund of the expenses incurred;

(Sub-point 7 repealed by Decree NH-36-N of 10 March 2008)

5. To the Government of the Republic of Armenia: undertake necessary measures to ensure the implementation of this Decree.

6. This Decree shall enter into force upon notification thereof.

1 March 2008, NH-35-N”

Upon signing the Decree, Robert Kocharyan, the President of the Republic of Armenia, conveyed the following message to the people:

“Dear compatriots, the self-nominated candidate Levon Ter-Petrossian who lost the 2008 presidential elections in the Republic of Armenia, and a group of adventurers surrounding him, not acknowledging the reality of their defeat, resorted to illegal actions. These include accumulation of weapons and ammunition and their transportation to crowded areas where their presence may pose a serious threat to the life and health of citizens, as well as holding un-notified assemblies and rallies. Despite the fact that the recounts requested by the candidates who participated in the 2008 presidential elections did not reveal any serious violations, and that no complaint was lodged with the administrative court of the Republic of Armenia, and that examination of the complaint of the results of the elections at the Constitutional Court, in accordance with the procedure established by the Electoral Code, is ongoing, candidate Ter-Petrossian’s supporters continue to dispute the outcome of the elections through illegal means. On the 1st of March, a group of opposition representatives committed disorders in the centre of

Yerevan, causing damages to the property of citizens and of the state, as well as creating a direct threat to the security of citizens, which renders the situation uncontrollable. The target of these actions is the stability gained by the Republic of Armenia, and the consequence is the destruction of its international reputation.

As a guarantor of the Constitution of the Republic of Armenia, I will not allow anyone to endanger the constitutional order of our State.

In order to prevent the immediate threat to the constitutional order of the Republic of Armenia and acting in accordance with Article 55(14) of the Constitution of the Republic of Armenia, I consulted with the Chairperson of the National Assembly and the Prime Minister, after which I signed a decree, whereby I declared a state of emergency in the city of Yerevan from 1 March 2008, for 20 days”.

In accordance with Article 55(17) of the Constitution of the Republic of Armenia, upon declaring a state of emergency a special sitting of the National Assembly was immediately convened by virtue of law. Prior to touching upon the issue under consideration, the National Assembly adopted a decision on not broadcasting the special sitting live on the Public Radio.

At the special sitting, Gevorg Danielyan - representative of the President of the Republic of Armenia, Minister of Justice of the Republic of Armenia - introducing the Decree of the President of the Republic on Declaring a State of Emergency, pointed out that the following limitations were established in the area under state of emergency: banning of meetings, assemblies, demonstrations, rallies, and other mass events; banning of strikes and other activities that terminate or suspend operations of organisations; restricting, where appropriate, the movement of individuals and means of transportation, and carrying out inspections by law-enforcement authorities; mass media may provide information on state and internal political issues only within the limits of official information; banning of political propaganda through leaflets or other means without permission from relevant public authorities; temporary suspension of activities of political parties and other non-governmental organisations that impede the elimination of the circumstances serving as a ground for declaring a state of emergency; expulsion of persons breaching the legal regime of the state of emergency and not residing in the area concerned, on their own account, or, in the absence of means, on the account of the State Budget of the Republic of Armenia, with further refund of the expenses incurred.

At the same time Danielyan informed that under the Decree, the state of emergency was established from 1-20 March 2008, and the securing of the legal regime of the state of emergency was vested in the Police of the Republic of Armenia adjunct to the Government of the Republic of Armenia and the Ministry of Defence of the Republic of Armenia.

After introducing the issue, Danielyan answered the questions of the members of the National Assembly.

During the sitting there were numerous speeches expressing serious concern in connection with the created situation.

The members of the National Assembly assessed the Decree of the President of the Republic of Armenia as a forced but at the same time a necessary step and the only way out of the created situation. According to them, the stability and the international reputation of Armenia are endangered, and everyone should do their best to resolve the created unprecedented situation.

Tigran Torosyan, former Chairperson of the National Assembly, delivered an extraordinary speech where he particularly mentioned that: "...what has happened should be a lesson, and the only thing to do is to be clear and frank, sincere and honest. Such behaviour towards the people has not always been a common practice, and that is why it happened. Yes, of course, unfortunately, the democracy is not well established in Armenia. Yes, unfortunately, throughout all this period we were unable to achieve that there are no persons in this country who bear illegal weapons, could not ensure the complete rule of law. These are indeed problems and extremely serious problems. But what does it have to do with firing firearms from the crowd at the policemen, what excuse can it have, what excuse do those sticks have, are those holding bars in their hands normal people? I think the Decree of the President of the Republic is quite pertinent, and the Parliament, being also responsible for the country, for the situation and for the future, should by all means express its support to this Decree."

Tigran Torosyan also noted that as no member of the National Assembly had submitted a written text of draft decision of the National Assembly on revoking the implementation of the measures to the Chairperson of the National Assembly, in accordance with Article 55(14) of the Constitution and under Articles 52 and 92 of the Law of the Republic of Armenia on "Regulations of the National Assembly", the Decree of the President of the Republic of Armenia is deemed to be approved.

On 1 March 2008, in his speech related to the events, Serzh Sargsyan, the then Prime Minister of the Republic of Armenia, mentioned the following:

"Dear compatriots,

Our people suffered severe losses due to the events of recent days. It suffered irretrievable losses: there were human losses both among the Police officers performing their official duties, and among the demonstrators who fell under the influence of a group of persons. Hundreds of citizens suffered as a result of the illegal actions of radical oppositionists.

The revolutionary leaders of the so called “movement” made the public order defenders and their own supporters a target for discharging their unquenched ambitions. For all of this, the organisers and provokers of mass disorders will be held liable before the law, the history and the generations. I regret to mention that some of our compatriots have become victims of the blind hatred of some people.

Today I share the sorrow of each of you and wish you will, strength and vigour to overcome this disaster.”

Upon the instruction of the President of the Republic of Armenia Robert Kocharyan, the Chief of Staff to the President, Armen Gevorgyan, met with representatives of international organisations and the ambassadors of OSCE member states accredited in Armenia. During the meeting, the situation created in the evening of 1 March in Yerevan was presented.

The diplomats were provided with clarifications as to the actions of the authorities of Armenia, particularly in regard to the circumstances of declaring a state of emergency. The diplomats were informed that the Armenian authorities undertook all necessary measures provided for by law to establish order in Yerevan and stop illegal actions under the existing conditions.

The Chief of Staff to the President stressed that the authorities are determined to bring the organisers, inciters and perpetrators of disorders to justice.

Based on the Decree, the plan of measures to be urgently implemented by the Police and the Ministry of Defence of the Republic of Armenia was approved and put into effect upon the protocol of the operational consultation held on 2 March 2008 with Colonel-General Hayk Harutyunyan, Head of the Police of the Republic of Armenia. With a view to implementing the plan, as well as ensuring, by the servicemen of the Police and of the Ministry of Defence of the Republic of Armenia, the legal regime of the state of emergency and strengthening the protection and security of a number of facilities subject to state protection of the Republic of Armenia and of critical infrastructure, a General Staff for the management of the state of emergency was established under the leadership of the Head of the Police of the Republic of Armenia and the Minister of Defence of the Republic of Armenia; the Staff comprised Lieutenant-General G. Grigoryan, Deputy Head of the Police of the Republic of Armenia, Commander of Police Troops, Lieutenant-General Yu. Khachaturov, Head of Yerevan Garrison, Major-General A. Afyan, Deputy Head of the Police of the Republic of Armenia, Major-General A. Yeritsyan, Deputy Head of the Police of the Republic of Armenia.

On 2 March 2008, an extraordinary sitting of the National Assembly was also convened upon the initiative of 60 members of the National Assembly to discuss the draft statement of the National Assembly on the events that took place in Yerevan on the 1st of March; it was

introduced by Rafik Petrosyan, member of the National Assembly. The Statement of the National Assembly of the Republic of Armenia on the events that took place in the city of Yerevan on the 1st of March is presented below:

“Expressing anxiety on the occasion of the events, denouncing:

- the provocation of barbarism in the capital city by the well known forces on the 1st of March, as a result of which several dozen of people, representatives of law-enforcement authorities received injuries, and the capital suffered significant moral and material losses;

- the propaganda of hatred and evil in political processes;

- any action distorting the stability of the country, its international reputation and the national unity;

- recognising the importance of re-establishing order and restoring the normal life in the capital;

- neutralisation of the threat to the life and property of people;

- resolution of political issues through dialogue;

- settlement of issues concerning the legal, particularly electoral processes in accordance with the Constitution and the legislation of the country;

- respect for tolerance as a basis for excluding splits in the society;

The National Assembly of the Republic of Armenia:

- considers the Decree of the President of the Republic of Armenia of 1 March 2008 on Declaring a State of Emergency necessary and lawful;

- urges our citizens to show restraint and common sense in order to overcome this complicated situation as soon as possible and return the country to normal course of life.”

The statement was adopted unanimously by 81 members of the National Assembly present at the sitting.

With regard to the events, Colonel-General Seyran Ohanyan, Head of General Staff of Armed Forces of the Republic of Armenia, and Gegham Petrosyan, Head of Staff of the Police Troops of the Republic of Armenia, also made relevant statements and, addressing the citizens of the Republic, called them to refrain from attempts to circumvent the bans envisaged by the state of emergency, show high civil consciousness, and understanding for the implementation - by the State, including the Armed Forces and the Police Troops - of the measures emanating from the state of emergency. At the same time they warned that any attempt to be engaged in arrangement of activities banned by the state of emergency, will immediately receive equivalent and severe reaction with all the consequences deriving therefrom.

6.2 FINDINGS OF THE COMMITTEE

The Committee finds that each country in the course of its history experiences moments which impede the development of the country; we, unfortunately, have experienced such moments. Regardless of what resolution we will arrive at, it is a fact that mutual hatred and enmity has already arisen within a part of the society. That is why the Decree of the President of the Republic of Armenia on Declaring a State of Emergency was not the solution of the situation, but a forced and also a necessary step, as well as the only way to overcome the created situation. Delay in taking this measure would mean allowing a part of our people to continue illegal actions - provoked by a group of people - in our country, particularly in the city of Yerevan.

Considering that especially from the afternoon of the 1st of March the mob around the Yerevan City Hall was gradually getting uncontrollable, and in the evening their actions finally turned into carnage and looting; they burned and smashed about 100 private and police vehicles, as well as ambulance vehicles, buses and trolleybuses; devastated and looted the “Moscow House”, nearby shops and offices; smashed the windows of the administrative buildings of the City Hall and “VivaCell” offices; the demonstrators attacked police officers and servicemen of the Police Troops; imposing a state of emergency was a necessity.

Meanwhile, the Committee finds that if the Decree of the President of the Republic of Armenia on Declaring a State of Emergency was announced earlier, when the first explosions, shots and cases of death occurred, it might have been possible to avoid such grave consequences.

VII. RECOMMENDATIONS OF THE COMMITTEE

With regard to the recommendations on political, legal and other settlements preventing the recurrence of 2008 March events, the Committee chronologically classifies them into the following three stages:

1. The recommendations of the Committee, which were submitted in the course of operation of the Committee - conditioned by the necessity of quick response by the Committee at the given moment or urgent regulation of some social relations - and the implementation of which is completed, are presented in the first chapter of the Report.

2. The recommendations of the Committee, which were submitted in the course of operation of the Committee, but are chronologically still in the process of implementation.

3. The recommendations of the Committee, which are presented upon publication of this Report (both in this and other chapters of the Conclusion) and are mostly conditioned with the actions to be taken in the near future.

RECOMMENDATIONS OF THE SECOND STAGE

1. Taking into account that according to the expert conclusion, “Cheremukha-7” type special means available in the arsenal of the Police of the Republic of Armenia are expired, and their application may cause undesirable effects, the Committee recommended the Police of the Republic of Armenia to destroy the mentioned expired special means, as well as to instruct the personnel on special means storage procedure, storage life, workability, procedure for application and safety rules.

2. The Committee requested the Government of the Republic of Armenia to review all legal acts relevant to the actions of the Police, which will guarantee that the laws and legal acts relating to the use of force are in full compliance with the International Covenant of Civil and Political Rights, the European Convention of Human Rights, and the United Nations Principles on the Use of Force and Firearms by Law Enforcement Officials.

3. Moreover, having regard to the Law of the Republic of Armenia HO-199-N of 28 November 2006 on repealing a number of laws of the former USSR, SSRA, and the Republic of Armenia, as well as a number of regulatory legal acts of the Supreme Council of the Republic of Armenia, according to which the regulatory legal acts of USSR are not effective on the territory of the Republic of Armenia, the Order No. 127 of the Minister of Internal Affairs of USSR of 1989 on approving the procedure for application of special means was also repealed; the Head of

the Police of the Republic of Armenia was recommended to take measures to define a new similar procedure.

4. As a legislative initiative, the Chairperson of the Committee put into circulation the draft law of the Republic of Armenia on Making a Supplement to the Law of the Republic of Armenia on Legal Acts HO-320 of 3 April 2002, the objective of which is to define clear-cut terms for the adoption of legal acts - the adoption of which is envisaged by different laws - which will enable full and complete implementation of laws and ensure the complex legal regulation of different issues.

5. As a legislative initiative, the Chairperson of the Committee put into circulation the draft law of the Republic of Armenia on Making an Amendment to the Law of the Republic of Armenia on Control Chamber of the Republic of Armenia HO-4-N of 25 December 2006, the objective of which is to make the provision binding, which, in case of any doubts of criminal nature in the course of control, will oblige the Control Chamber to compulsorily send the protocols and progress reports prepared in the course of control to the Prosecutor General's Office of the Republic of Armenia upon the decision of the Council of the Control Chamber, this being one of the effective measures for combating impunity and corruption.

RECOMMENDATIONS OF THE THIRD STAGE

1. With regard to the recommendations of this stage, the Committee deems important that these recommendations - directed at overcoming the main reasons of the occurred events, preventing and/or neutralising possible negative developments, as well as ensuring the development of democratic, legal and social structures in the Republic - have a nature of legal and political, as well as socio-economic priorities, and require systematic approaches.

2. In this regard, the Committee, attaching value to the positive steps undertaken after March events, finds that democratic development is a continuous process, the implementation of which requires not only proclamation of rights under the Constitution and international instruments, but also ensuring consistency and systematic actions in their implementation, based on the imperative of establishing sufficient guarantees for the security and sustainable development of the Republic of Armenia.

LEGAL AND POLITICAL PRIORITIES

1. The Committee expresses its concern in relation to a number of negative developments, including the absence of multi-polar political and free economic systems, in the

internal life and the democratic system of the Republic, addressed by the reports of the Human Rights Defender of the Republic of Armenia and of international institutions, and finds it appropriate to underline that these developments should be duly considered by competent authorities.

2. Ensure freedom of speech; provide conditions ensuring pluralism and impartiality in electronic media.

3. From the point of view of development of democratic structures, the Committee also appreciates the recommendations to the Republic of Armenia under PACE resolutions, and finds that the implementation thereof is necessary for further strengthening of democracy in the country, replacing intolerance with civil solidarity, and recovering the political system.

4. The complete assessment of the electoral process requires trust of the majority of the public in fairness of elections in all of its stages, including pre-election processes, elections day and post-election period. It is obvious that the lack of public trust in the electoral processes in general also diminishes the trust of a part of public in the election results. The insufficient transparency in the procedure of voting ballot counting and vote results tabulation further complicates the problem. It is necessary to establish a complaints and appeals system which will enable the participants of the electoral process to receive legal protection to the fullest possible extent in case of alleged electoral violations, as well as to ensure in practice equal opportunities for all political forces both during the official electoral campaign period and the period preceding it. In this regard the Committee finds that there is a need to make amendments to the Electoral Code of the Republic of Armenia.

5. In spite of positive changes, the Committee finds that notifications on holding meetings, assemblies, demonstrations and rallies are often rejected on technical grounds, or improper restrictions are imposed on them. In this regard, it is also necessary to make amendments to the Law of the Republic of Armenia on Holding Meetings, Assemblies, Rallies and Demonstrations.

5. In spite of successful legislative reforms, the courts do not yet possess the necessary level of independence to command public confidence in them as impartial judicial authorities. The courts should pay increased attention to the issue of imposing remand detention on persons as a measure of restraint. In this regard, the Committee recommends making amendments to the Criminal Procedure Code and the Judicial Code of the Republic of Armenia.

The Committee has also focused its attention on the legal proceedings in connection with the events concerned. Indeed, the Committee is not entitled to provide any evaluation to the administration of justice by the courts; however it finds it appropriate to address three important issues relating to legal proceedings that caused the concern of the Committee.

The first issue relates to those - although quite unique - cases, when the witness withdraws the testimonies given in the course of pre-trial proceedings. The witnesses justify the changing of the testimonies during the trial by the fact that the pre-trial testimonies were extorted as a result of violence, threat or deception (Arsen Mkrtchyan, Edik Khachatryan, and Yasha Melkonyan in Sasun Mikayelyan's case, and Gevorg Muradyan in Hakob Hakobyan's case). Within the framework of criminal cases instituted in connection with this, these witnesses, bringing different reasons and under the conditions of availability of evidences, withdrew their testimonies given during the trial.

There are also cases when in the course of trials, finding out about incriminating testimonies given by different witnesses, a group of people, terrorising these witnesses and their relatives, forced them to withdraw pre-trial testimonies incriminating in the commitment of crimes.

Five criminal cases were instituted in connection with the said events; three of them were examined in the proceedings conducted by the Investigation Department of the National Security Service of the Republic of Armenia, one case was examined by the General Investigation Department of the Police of the Republic of Armenia, and one case was examined by the Special Investigation Service of the Republic of Armenia. The proceedings in connection with two cases and a part of one case were dismissed, and preliminary investigation in connection with two cases is ongoing.

Without discussing the issue of whether such "reasons" for withdrawing the testimonies are justified or not, the Committee states the fact that such phenomena have a severe negative public perception and impugn the confidence in justice, especially in the case when the court neglects these allegations and acknowledges pre-trial testimonies as more reliable.

Studying the international practice pertaining to this issue, the Committee has arrived at the conclusion that many countries effectively resolved the issue of measures aimed at the protection of witnesses and victims. In this regard, the Committee draws the attention of the legislative authority to the necessity of finding effective solutions to the said issue.

The second issue addressed by the Committee relates to holding assemblies, during the legal proceedings concerned, in the immediate vicinity of courts. It is apparent that in a democratic state governed by the rule of law, courts should not be subjected to pressures, including physiological, and threats in the administration of justice. However, we believe that assemblies held in the immediate vicinity of the courthouse, may, most probably, negatively affect the conduct of fair trial, constituting a measure for exerting pressure on the court and aiming at the formation of a relevant biased opinion of the court. Moreover, they may also influence witnesses.

Indeed, the Committee is far from the opinion that in the course of administration of justice a complete ban should be imposed on holding of assemblies in the vicinity of the court, since not in all cases assemblies in the vicinity of the court may significantly distort the administration of justice. In our opinion, such assemblies should be allowed, save for cases when they are held in the immediate vicinity of the courthouse (the distance should be clearly defined by law). Holding such assemblies obviously has a negative impact on fair and effective administration of justice, which should be assessed on a case-by-case basis. It is worth mentioning that the recommended approach is fully in compliance with the approaches of the Venice Commission; thus, we recommend settling this issue through making a relevant amendment to the Law of the Republic of Armenia on Holding Meetings, Assemblies, Rallies and Demonstrations.

The third issue relates to cases of imposing remand detention as measure of restraint. Analysis show that the majority of the motions on imposing remand detention as a measure of restraint with regard to the criminal cases instituted in connection with the events of 1-2 March were granted. Indeed, the high percentage of granted motions does not imply that the court granted those motions without having sufficient grounds; however, reasonable doubts still arise with respect to this issue. In this regard, the Committee, considering that the issue, first of all, requires professional analysis, finds it necessary to pay attention to the compliance of the provisions of the Criminal Procedure Code of the Republic of Armenia on remand detention with the European Convention on Human Rights and Fundamental Freedoms and with the judgments of the European Court of Human Rights.

6. The Committee finds that the immediate adoption of the Law of the Republic of Armenia on the Legal Regime of State of Emergency - which will be also in line with the approaches enshrined in the Constitution of the Republic of Armenia - is a necessity. As a matter of fact, the draft law of the Republic of Armenia on the Legal Regime of State of Emergency has been put into circulation by the Government of the Republic of Armenia since 31 July 2007 (Document code – K-057-31.07.2007).

SOCIO-ECONOMIC PRIORITIES

1. With regard to socio-economic priorities of the elimination or prevention of the events, the Committee finds it appropriate to highlight that these priorities are directly linked with the socio-economic circumstances that served as the main reason for March events: continuous high level of poverty; social polarisation of the society; lack of effective state guarantees for establishing social justice; lack of trust in the legal system, and in the judicial system in

particular; widespread practice and desire of acquiring property through political power, or the threat of losing it; insufficient confidence in the protection of property rights; imperfection of the systems for securing and protecting human rights, and of political systems, etc.

2. The 2008 statistical analytical report of National Statistical Service of the Republic of Armenia, covering the results of 2007 complete survey of household standards of living, shows that the poverty level in Armenia by consumption and income was 25% and 40.5% respectively. According to the Sustainable Development Programme approved by the Decision No. 1207-N of the Government of the Republic of Armenia of 30 October 2008, the poverty in 2006, when calculated using the minimum basket of goods, was 39.8%, or 1,283,000 inhabitants of the Republic are considered poor. It is also worth mentioning that in case of applying the 11 international dollars per day poverty line used for the comparison of poverty levels in developed countries (in 2005 monetary terms it was worth 48,972 monthly drams per capita) in Armenia, the poverty level would be 85.6%. This is a vivid evidence of the fact that poverty is considered one of the top reasons, if not the major one, of social tension in the Republic.

3. Another evidence of social tension is the unequal income distribution, which, according to the Sustainable Development Programme, made 0.359 in 2006 if calculated using the Gini coefficient, and the ratio of the incomes of the poorest 20% as compared to that of the richest 20% was 7.6.

4. Reviewing the findings of the public opinion poll on corruption, carried out among the population of the Republic of Armenia (within the framework of the *USAID Mobilizing Action Against Corruption* Activity), the Committee finds it appropriate to underline that, according to the Report, the unemployment was considered the main problem in Armenia (65% of respondents). Poverty (37%), high prices (32%), general economic issues (21%), corruption (16%), and emigration (14%) were considered to be among other priority issues.

5. The mentioned problems appear in an acute form also in case of insufficient state guarantees for the social rights protection system. Usually it is conditioned by a number of objective and subjective circumstances such as limited realisation of the economic potential of the Republic due to the blockade; continuously insufficient level of budget revenues, especially tax collections; many shortfalls present in the targeting and distribution systems of providing the socially vulnerable groups with income; undesirable level of monopolies in the economy, and existence of a system of promotion of free economic competition and entrepreneurship, which is still underdeveloped; an imperfect organisational, technical, professional and proper remuneration system with regard to the provision of quality public services, etc.

6. In spite of the economic outcomes and continuous growth of the state budget (i.e. the GDP and the state budget expressed in AMD, have increased three-fold in 2007 as compared to

1998) registered in the Republic during the recent years, the current proportional structure of the GDP and the size of the state budget still restrain the full loosening of the social tension within the framework of public expenditures policy.

7. All this, as well as a number of issues existing in the judicial system and in the fields of human rights protection pose a threat to the national security of Armenia.

8. The Committee finds that these issues - a significant part of which, as internal threats, are justly reflected in the National Security Strategy approved by the Decree NH-37-N of the President of the Republic of Armenia of 7 February 2007 - comprise challenges targeted against the survival of the state, the society, the family and the individual, and impairing the fundamentals thereof.

9. Consequently, the Committee finds that consistency, coordinated, planned and in-depth works are required to resist these challenges and overcome the major issues concerned.

10. The Committee particularly highlights that although these issues are reflected in the socio-economic development programmes of the Republic of Armenia (Law of the Republic of Armenia on the State Budget, Action Plan of the Government of the Republic of Armenia, Sustainable Development Programme, Anti-Corruption Programme, etc.), as well as in the political coalition agreement, they have not yet been resolved and require new efforts, consolidation of the society and a new quality of civil society seeking to ensure full harmonisation of the real life with the social state governed by the rule of law and the social life as declared by the Constitution.

11. In this regard, the Committee highlights the following socio-economic priorities:

(a) establishment of social cohesion and justice, determination of the minimum basket of goods and the budget, and bringing the poverty threshold in conformity with it, as well as consistent increase of salaries, pensions, benefits based on the calculation thereof, ensuring consolidation of the society and internal political stability;

(b) systematic, consistent and effective fight against corruption;

(c) significant reduction of shadow economy, ensuring tax to GDP ratio comparable with averaged indices of the European countries, provision of level and fair competition playing field, exclusion of artificial economic monopolies;

(d) establishment of effective economic sectoral structure, implementation of an export-oriented industrial policy, proportional territorial development;

(e) reduction of the unemployment level through creation of new jobs based on the state initiative and/or encouragement of the private sector, and implementation of an active demographic policy;

(f) consistent implementation of a comprehensive system of social partnership and state, community and individual corporate social responsibility;

(g) improvement of the ownership right protection system, and protection of the rights and legitimate interests of investors, support to small and medium-sized businesses, as well as implementation of a consistent policy for the formation of middle class;

(h) approximation of the judicial system with the European standards, providing for the restoration of the public confidence in the impartiality and independence of the system.

In this regard, the Committee recommends to adopt laws of the Republic of Armenia on the Community Police, on Guaranteed Legal Aid, on Exemption from the Obligation to Give Testimony, on Compensation for the Caused Damage, on Private Detective, as well as Social Code of the Republic of Armenia. The necessity of adopting the latter is conditioned by the large coverage of social issues and the imperative of establishing a complex and uniform legal framework - void of contradictions and ambiguities - for the solution of various multifaceted social issues in the Republic of Armenia. At present, the mentioned social issue and problems are regulated in the Republic of Armenia by separate laws (including those with a very narrow scope), which, being adopted in different years, not only often contradict each other and contain different principles and approaches, but do not facilitate the effective legislative supervision over the implementation of these separate laws or the assessment of the effectiveness of their implementation. Whereas Article 9(5) and (6) of the Law of the Republic of Armenia on Legal Acts clearly define the main requirements pertaining to codes.

Therefore, legislative regulation through codes will, obviously, be much more appropriate and effective, than the adoption of separate laws - currently applied in practice – which govern homogeneous social relations and often ignore the requirements and approaches of each other.

12. For the fulfilment of the above-mentioned, the Committee recommends to the Standing Committees of the National Assembly of the Republic of Armenia to carry out studies and conduct hearings of the priorities presented with regard to the fields reserved to their authority, through involvement of the Government of the Republic of Armenia, the Human Rights Defender and representatives of the civil society.

13. The Committee finds that the implementation of the presented priorities should be monitored, and the public needs to be continuously informed on each stage of their implementation and the progress made.

In the opinion of the Committee, dismissal of several high-ranking officials of the Police and changes in the staff after the events of March 2008 were mostly connected with the events of 1-2 March.

All documentation and materials at the disposal of the Committee, including responses and other documents received from state authorities, reports and other documents received from the Fact-Finding Group and its former members, conclusions of experts, protocols of sittings and working consultations of the Committee, applications and letters received from citizens and interested bodies and responses thereto, report of the working group established by the Committee for carrying out inspection in the baggage warehouse of the Logistics Service of the Ministry of Defence of the Republic of Armenia, etc., are attached to this Report.