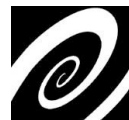


Shadow Report

On the Convention on the Rights of Persons with Disabilities



Helsinki Citizens'
Assembly-Vanadzor



Open Society Foundations
Armenia

Prepared by

The Helsinki Citizens' Assembly - Vanadzor non-governmental organization

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Introduction

On 22 September 2010, the Republic of Armenia ratified the United Nations Convention on the Rights of Persons with Disabilities (hereinafter, “the Convention”), thereby undertaking obligations to safeguard and to protect the rights of persons with disabilities. However, the Republic of Armenia has still not ratified the Optional Protocol to the UN Convention on the Rights of Persons with Disabilities.¹

This Shadow Report presents the current state of protection of the rights of persons with mental health issues in the Republic of Armenia, including in particular how a number of articles of the Convention have been reflected in the domestic legislation and implemented and practiced in the Republic of Armenia, and the relevant issues have been revealed through a comparative analysis of the Convention and the domestic legislation, as well as direct monitoring of the practical application of the legislation.

Since 2007, the HCA Vanadzor has focused specifically on the protection of the rights of persons with mental health issues.

The HCA Vanadzor carried out human rights monitoring in the neuropsychiatric medical institutions of the Republic of Armenia in 2007, 2009, and 2013;² mass media publications on mental health have been monitored, and the state budget financing for mental health has been reviewed. Based on the findings, recommendations have been presented on improving the legislation and practice.

¹ One of the actions designated by the Republic of Armenia Government Decree on Approving the 2014-2019 Strategy of Preserving and Improving Mental Health in the Republic of Armenia and the List of Actions Ensuring the Implementation of the Strategy is the following: “Carry out preparatory activities aimed at ratification of the Optional Protocol to the UN Convention on the Rights of Persons with Disabilities.”

² The HCA Vanadzor carried out monitoring in the Lori Region Psychoneurological Ward operating under the Lori Regional Governor’s Office in 2007, and in 2009, it conducted monitoring in the Sevan Psychiatric Hospital operating under the Ministry of Health, the Nubarashen Psychiatric Clinic, the Avan Psychiatric Clinic, the Nork Psychiatric Clinic, the Kasakh Clinic of Neuroses, the Syunik Region Neuropsychological Ward operating under the Syunik Regional Governor’s Office, the Armash Health Center after A. Hayriyan operating under the Ararat Regional Governor’s Office, and the Gyumri Mental Health Center operating under the Shirak Regional Governor’s Office. In 2014, it carried out monitoring in the Vardenis Neuropsychological Boarding Home operating under the Ministry of Labor and Social Issues.

Article 5. Equality and Non-Discrimination

1. The Constitution and a number of other legal acts of the Republic of Armenia prescribe everyone's equality before the law and non-discrimination. Some provisions on non-discrimination and equality are prescribed in domestic legal acts, but considering that the Republic of Armenia does not have unified and comprehensive legislation and mechanisms defining and safeguarding the person's right to be free from [all forms of] discrimination, discrimination against persons with mental health issues, as a vulnerable group, is rather worrisome.
2. The protection of the rights of persons with mental disabilities is inadequate due to discriminatory attitudes, especially in the institutions that provide care and treatment services in the frameworks of government support. The reasons for the discrimination are as follows:
 - The existence of stigma and stereotypes in society in relation to persons with mental health issues;
 - The training of the staff of psychiatric medical institutions, especially their inadequate awareness of human rights; and
 - The fact that persons with mental health issues are treated and cared for in closed-type psychiatric medical institutions.
3. Stigma and stereotypes in society in relation to persons with mental health issues promote their isolation from family and from society—the rupture of social ties.
4. Mass media publications largely contribute to these social attitudes. A large number of publications (86 out of 431 (20 percent) publications collected during 2011-2013) cover crimes committed by persons with mental health issues and contribute to the formation of the opinion that these persons are dangerous from society and need to be isolated from society. This attitude causes discriminatory treatment of persons with mental health issues even in the family.³
5. In the Republic of Armenia, the care and treatment of persons with mental health issues is mostly conducted in large closed-type psychiatric medical institutions. Mere presence in such institutions results in discriminatory treatment. It is a fact that, in psychiatric medical institutions, persons with mental health issues are not perceived by the staff as individuals that have human dignity and rights.
6. Although the legislation prescribes the rights of the person during stay in a psychiatric medical institutions, including the right to benefit from legal assistance, to access the telephone, to address directly the head of the medical institution or the warden chief for treatment, testing, discharge, or for the protection of other rights stipulated by law, and the like, persons in psychiatric medical institutions are unable to exercise their rights, because they undergo discriminatory treatment.

7. Recommendations

- Adopt the Republic of Armenia Law against Discrimination;
- Increase public awareness of the problems faced by persons with mental health issues with a view to eradicating stigma and discrimination in relation to such persons; and
- Organize and conduct training courses on human rights for persons with mental health issues, as well as for medical personnel, persons caring for persons with mental health

³ See Annex E (“Human Rights Situation in the Area of Mental Health as per Materials Published in Official Websites and the Mass Media”) to the *Report on the Human Rights Situation in Neuropsychiatric Medical Institutions of the Republic of Armenia* (in Armenian), HCA Vanadzor, http://hcav.am/wp-content/uploads/2014/09/main_zekuyc_FINAL.pdf

issues, relatives, journalists, and employers, with a focus on the dignity and respect for autonomy of persons with mental health issues, which will address their needs.

Article 12. Equal Recognition before the Law

8. Although Article 12 of the Convention, as well as Article 14 of the Constitution of the Republic of Armenia prescribe the equality of persons with disability before the law, and Paragraph 2 of Article 12 of the Convention specifically provides that “persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life,” persons with mental health issues may, in accordance with the procedure stipulated by the legislation of the Republic of Armenia, be declared as having no legal capacity, as a consequence of which they lose the possibility of duly and fully exercising their rights, making decisions, and acting autonomously in crucial aspects of life, as well as in ordinary everyday matters, and lose the liability for their actions. A person does not have the right to file a court application demanding to reinstitute his legal capacity: under Article 173 of the Civil Procedure Code of the Republic of Armenia, the court shall make a judgment recognizing the legal capacity of the recovered person only on the basis of an application by his guardian, family member, or administration of the psychiatric institution, subject to the relevant report of the psychiatric forensic expert assessment.
9. Under the legislation of the Republic of Armenia, a citizen recognized as having no legal capacity shall lose:
 - The possibility of concluding various civil-law transactions on his own behalf;
 - The possibility to become and to be employed;
 - The possibility to vote and to be elected;
 - The possibility to enjoy the safeguards of the right to the liberty and security of person;
 - The possibility to receive information;
 - The possibility to live a fully-fledged personal and family life; and
 - The possibility to exercise and protect his rights in person, as well as access to justice.
10. None of these restrictions of the rights of persons have any justification.
11. Moreover, the Action Plan under the National Human Rights Protection Strategy approved in 2014 contemplates the action of defining and clarifying the grounds for recognizing a person with having mental health issues and/or mental issues as having no legal capacity, and to develop differentiated criteria for assessing the absence of legal capacity.
12. From 1 January 2010 to June 2012, first instance general jurisdiction courts of the Republic of Armenia received a total of 739 applications to recognize a person as having no legal capacity, of which they granted 447, i.e. about 60 percent of the applications.⁴ During the same period, the same courts received no applications to recognize a person as having legal capacity.⁵ In 2011 alone, 213 citizens were recognized as having no legal capacity.
13. The Vardenis Neuropsychological Boarding Home is the only institution that offers government-supported full-time care services for above-18 persons with mental health

⁴ See *Review of the Provisions of the Republic of Armenia Legislation on Recognizing an Adult as Having No Legal Capacity and Appointing a Guardian* (in Armenian), HCA Vanadzor, <http://hcav.am/wp-content/uploads/2014/05/Legal-capacity-1.pdf>

⁵ See *The Right to Liberty, the Right to a Fair Trial, and the Right to Privacy for Persons with Mental Disorders in Armenian Law and Practice* (in Armenian), HCA Vanadzor, <http://www.hra.am/i/up/pmdARMFINALweb.pdf>

issues, which operates under the RA Ministry of Labor and Social Affairs and admits only persons recognized as having no legal capacity. These patients may not make a decision on leaving the institution. At present, the institution is performing round-the-clock care for 450 persons. Persons recognized as having no legal capacity can be found in neuropsychiatric medical institutions under the RA Ministry of Health as well, where they are receiving long-term care or treatment with the consent of their lawful representatives, and may leave the institution only with the consent of such lawful representatives.

14. Arguably, the family members of persons with mental health issues sometimes try to have their relative recognized as having no legal capacity so as to take control of the social security benefits payable to such persons. Moreover, they sometimes try to place them in a government-supported care- or treatment-providing institution so as to gain full control the person's assets.

15. Recommendations

- Eliminate the system of full deprivation of legal capacity, including the guardian's exclusive authority to make decisions in lieu of the person;
- Develop and implement a system that will enable persons with mental health issues to enjoy accessible support required for making decisions in all possible matters in line with their requirements and abilities, and create safeguards against abuse and violations of their rights by other persons and the responsible state authorities; and
- Prior to the implementation of a new system, carry out reforms that will enable the person whose legal capacity has been limited or a representative chosen by such person to apply to the competent body with a demand to reinstitute his legal capacity.

Article 13. Access to Justice

16. In the Republic of Armenia, the right to a fair trial is not safeguarded for persons with mental health issues, although Article 13 of the Convention requires States Parties to "ensure effective access to justice for persons with disabilities on an equal basis with others." The problem is related to the absence of a number of procedural safeguards for persons with mental health issues and to the enforcement of the laws.
17. Under the Republic of Armenia Law on Stamp Duties, a governmental stamp duty is required for court claims, petitions, complaints, and appellate and cassation complaints against the judicial acts of courts. This Law also provides exemptions for psychiatric institutions with respect to the payment of the stamp duties when they file applications for ordering in-patient (in a psychiatric hospital) compulsory treatment of a citizen. This exemption is also enjoyed by persons that apply to recognize another citizen as having no legal capacity. However, in the course of appeals against such decisions, the exemption is not available to the person against whom compulsory treatment or recognition of having no legal capacity was sought.
18. In addition to persons with mental health issues not receiving sufficient support for exercising the protection of their rights, including for instance due notice of the possible avenues and procedures of appealing against decisions concerning them, they do not receive appropriately specialized legal assistance. As a consequence, persons with mental health issues rarely follow upon the protection of their rights (either personally or through a representative), and the success rate is even lower in cases when they do follow up. No appeals were lodged against the 82 decisions granting the requests for performing

compulsory treatment of citizens in psychiatric institutions in 2011-2012.⁶ Persons with mental health issues find themselves in an even more unfavorable situation because of discriminatory attitudes against them: the experience of the HCA Vanadzor has shown that when a person's application does not meet the form requirements prescribed by law, the application is not admitted, while an application by the psychiatric institution, prepared in the same manner, will be admitted.

19. Moreover, although the legislation of the Republic of Armenia provides some safeguards for the protection of the rights of persons with mental health issues, they often do not operate effectively. For instance, under Article 176 of the Civil Procedure Code, a representative of the person concerned shall be present at the hearing of the application on such person's compulsory treatment. The experience of the HCA Vanadzor shows that a representative's presence may be formalistic or even contradict the person's interests.⁷

20. Recommendations

- Amend the Republic of Armenia Law on Stamp Duties and grant the stamp duty payment exemption also to citizens involved in cases related to in-patient compulsory psychiatric treatment and recognition of no legal capacity;
- Organize in-depth professional training courses for judges in the general jurisdiction, appellate, and cassation courts so as to provide the required knowledge on the rights of persons with mental health issues; and
- Organize training of judges, advocates, and law-enforcement officers on the rights of persons with mental health issues.
- Ratify the Optional Protocol to the UN Convention on the Rights of Persons with Disabilities

Article 14. Liberty and Security of Person

21. Considering that, in the Republic of Armenia, the treatment and care of persons with mental health issues is still performed in psychiatric institutions, and the lack of alternative community-based services, there are still problems of unnecessary and arbitrary deprivation of liberty of persons with mental health issues.
22. Other factors contributing to the arbitrary deprivation of liberty in psychiatric institutions are:
- The failure to provide the legal assistance stipulated by law;⁸
 - The person's coerced consent to treatment in a psychiatric institution; and
 - The lack of any measures to raise the awareness of persons with mental health issues about their rights in psychiatric medical institutions.
23. The monitoring conducted by the HCA Vanadzor, as well as cases aimed at the protection of the rights of individual citizens have shown that, although the domestic legislation prescribes the provision of legal support to persons in psychiatric institutions, they do not receive legal assistance in the decision-making process on their compulsory treatment,

⁶ Materials related to the jurisprudence of the courts (in Armenian), http://court.am/?l=lo&id=50&cat_id=0&page_num=5

⁷ See the materials of the case of Juleta Amarikyan (in Armenian), <http://hcav.am/?s=%D4%BA%D5%B8%D6%82%D5%AC%D5%A5%D5%BF%D5%A1+%D4%B1%D5%B4%D5%A1%D6%80%D5%AB%D5%AF%D5%B5%D5%A1%D5%B6&lang=hy>

⁸ Amendments to the Republic of Armenia Law on Psychiatric Assistance entered into force on 1 January 2014. According to these amendments, legal assistance shall be provided by an advocate appointed by the Office of the Public Defender of the Chamber of Advocates of the Republic of Armenia on the basis of an application by the person with mental disorder receiving treatment in a psychiatric organization or an application by such person's lawful representative.

including their deprivation of liberty. In many cases, they are not duly notified of their rights, including the right to receive legal assistance. Moreover, psychiatric institutions may pose obstacles to accessing legal assistance, for instance, when a person tries to use the services of a private lawyer hired by him. The directors of some institutions are not even informed of their obligation to provide such assistance to these persons and claim that the law does not provide this possibility to persons in psychiatric institutions.

24. Persons often undergo “compulsory treatment” and deprivation of liberty without a court decision. The reason for this practice is that the person’s consent to treatment is obtained under pressure and threats by relatives and the staff of the medical institution.⁹
25. The recognition of a person as having no legal capacity, too, promotes the practice of arbitrary deprivation of liberty.

26. Recommendations

- Introduce legislative provisions requiring the participation of an advocate from the very beginning of the process of admitting a person to a psychiatric medical institution.
- Perform effective judicial oversight of the treatment and discharge of persons undergoing compulsory treatment in psychiatric medical institutions; and
- Conduct training courses on the international and domestic legislation on mental health and the problems in the sector for persons with mental health issues and for their service providers.

Article 15. Freedom from torture or cruel, inhuman or degrading treatment or punishment

27. Ill-treatment, including inhuman and degrading treatment, can be found in institutions providing government-supported care and treatment services to persons with mental health issues. Ill-treatment and inhuman treatment of persons with mental health issues occur especially during the use of physical restraints, which is due to the gaps in the law, as well as the way in which it is enforced.
28. The use of physical restraints on persons with mental health issues amounts to interference with their natural rights, their constitutional rights, and their rights safeguarded under a number of international legal instruments. Such interference cannot be lawful unless carried out “in accordance with the procedure provided by law.” However, the current legal provisions are generic and require more detailed legal provisions to be properly enforced. Although Decree 691-A of the Republic of Armenia Minister of Health (dated 3 May 2010) somewhat regulates the issues at stake, the Republic of Armenia Minister of Health did not have this power and could not have such power delegated to him, because limitations of rights and freedoms, including the procedures of imposition and application, may be prescribed only by laws adopted by the parliament.
29. Nonetheless, even the provisions of the Minister’s decree are applied with grave violations: various physical restraints are applied not only for the person’s treatment based on a decision of the doctor, but also as punishment and a tool for intimidation of the others. The method, duration, and oversight of the application of physical restraints, too, cause concerns: the bonds used inflict harm upon health, the physical restraints are sometimes used on adults throughout the night or for a whole day without any interruption, and the control and care are usually performed by other residents of the institution. The

⁹ See *Report on the Human Rights Situation in Neuropsychiatric Medical Institutions of the Republic of Armenia* (in Armenian), HCA Vanadzor, http://hcav.am/wp-content/uploads/2014/09/main_zekuyc_FINAL.pdf

aforementioned decree fails to define the place where physical restraints may be applied and the persons who may apply them, hence they are used in the presence and with the assistance of other residents.¹⁰

30. Furthermore, the Republic of Armenia does not have a comprehensive policy against torture. The definition of the crime of torture in the Criminal Code of Armenia is inconsistent with the definition in the UN Convention against Torture. Thus, there are no effective mechanisms to protect the person's right to be free from torture in care and treatment institutions.

31. Recommendations

- Introduce legislation permitting the use of physical restraints only for medical purposes and with a medical justification; and
- Amend the definition of torture in the Criminal Code of Armenia to become consistent with the definition in the UN Convention against Torture, and prescribe the motivation for torture as an aggravating circumstance.

Article 16. Freedom from Exploitation, Violence and Abuse

32. In institutions providing government-supported care and treatment services, persons with mental health issues undergo labor exploitation and psychological and physical violence.¹¹ This problem is mainly due to the improper professional training of the psychiatric institution personnel and their inadequate staffing.
33. Psychological and physical violence against persons with mental health issues takes the form of beating, threats, pressure, anger, and the like. Persons with mental health issues undergo psychological and physical violence by not only the staff, but also other residents.
34. Physical and psychological violence very often causes the residents to be used for various activities needed within the institution. Persons with mental health issues clean the wards and the yards, transfer the food, and do other work for which they are compensated in the form of "good treatment," coffee, and tobacco.
35. Public oversight of the activities of institutions providing care and treatment services is performed by the Human Rights Defender in the capacity of the National Preventive Mechanism under the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (the "OPCAT"), as well as by non-governmental organizations. However, the right of persons with mental health issues to be free from torture and abuse is not adequately safeguarded to the absence of a specialized monitoring group to conduct public oversight of psychiatric institutions.

36. Recommendations

- Create and implement a permanent group of public observers to monitor institutions providing government-supported care and treatment services;
- Develop educational courses for persons providing psychiatric services and develop and introduce regular training courses in educational institutions; and

¹⁰ See *Report on the Human Rights Situation in Neuropsychiatric Medical Institutions of the Republic of Armenia* (in Armenian), HCA Vanadzor, http://hcav.am/wp-content/uploads/2014/09/main_zekuyc_FINAL.pdf

¹¹ *Report on the Human Rights Situation in Neuropsychiatric Medical Institutions of the Republic of Armenia* (in Armenian), HCA Vanadzor, http://hcav.am/wp-content/uploads/2014/09/main_zekuyc_FINAL.pdf; *2011 Report on the Human Rights Defender of the Republic of Armenia as an Independent National Preventive Mechanism* (in Armenian), file:///C:/Users/computer6/Desktop/pdf_3101540_arm_xoshtang.pdf

- Develop and implement systems for the provision of social-psychological services to persons with mental health issues inside institutions providing care or treatment services or outside of such institutions.

Article 19. Living Independently and Being Included in the Community

37. About 46,000 persons with mental health issues are registered in the Republic of Armenia. They do not have any possibilities for exercising their Convention rights to living independently and being included in the community. There is no domestic legislation on the provision of community-based services. As a rule, there are no community-based services for being included in the community, either. There are some community-based services run by non-governmental organizations, but they are fragmented and concentrate in the capital city.
38. Over 1,000 citizens are currently in closed-type institutions providing care and treatment services on a long-term basis. Instead of being integrated and included in the community, these citizens are isolated from the community and lose the possibilities of exercising their rights, living an autonomous life, and making decisions on their own. They cannot leave the institution on their own or make phone calls to their relatives.
39. Moreover, persons in institutions providing care and treatment services, as well as those receiving home-based treatment face stigma, stereotypes, and discrimination. Those persons with mental health issues, which are in the community, too, are isolated from the community and do not receive the support required for being included in the community and not becoming isolated.

40. Recommendations

- Carry out a thorough study and assessment of the needs for community-based services and introduce services accordingly; and
- Develop, adopt, and enforce legislation regulating the mechanisms of provision of community-based services to persons with mental health issues in the Republic of Armenia.

Article 22. Respect for Privacy

41. In the case of persons with mental health issues, respect for privacy is not safeguarded in psychiatric medical institutions.
42. Psychiatric medical institutions do not make it possible for the individual residents to store their personal items safely. Moreover, the beds, bedside cupboards, rooms, and pockets of the residents are regularly checked by the staff; the beds and the bedside cupboards are sometimes checked in the absence of the resident.
43. The right to confidentiality of correspondence, telephone communication, and other communication of the person is not secured in psychiatric medical institutions. Letters written by persons with mental health issues are censored by a staff member, who then decides whether or not to send it. Staff members listen in on phone conversations.¹²

¹² *Report on the Human Rights Situation in Neuropsychiatric Medical Institutions of the Republic of Armenia* (in Armenian), HCA Vanadzor, http://hcav.am/wp-content/uploads/2014/09/main_zekuyc_FINAL.pdf

44. Recommendations

- Provide conditions for respecting the privacy of persons with mental health issues and for safekeeping of their personal items;
- Enable residents of psychiatric institutions to have means of communication and respect the principles of confidentiality of personal correspondence.

Article 25. Health

Article 10. Right to Life

45. Psychiatric assistance tailored to the special and individual needs of persons with mental health issues is not provided in the Republic of Armenia. The psychiatric services are inaccessible for persons with mental health issues. Moreover, the proper exercise of their right to health is not safeguarded in the Republic of Armenia.
46. 10 psychiatric institutions carry the bulk of the burden of providing psychiatric assistance; four of them are in Yerevan and are closed and centralized institutions. Psychiatric services are provided by several non-psychiatric institutions, as well, which are also located in Yerevan; some services are provided by psychiatric offices in 21 polyclinics. Social-psychological and rehabilitation services as such are lacking. In the majority of Armenia's communities outside of the capital city, psychiatric services are inaccessible, although the Convention contemplates the provision of the relevant health services as close as possible to people's own communities, including in rural areas.
47. Psychiatric institutions do not have a permanent supply of the necessary quantity and quality of medication, which makes it impossible to regularly deliver the free medication stipulated by law to persons with mental health issues. The drugs used in the field of mental health are mostly manufactured in Armenia, and doctors that are well aware of the sector have expressed concerns about their quality, despite the fact that medication is currently the main method used to treat persons with mental health issues.
48. Persons with mental health issues are not properly informed about their health condition, diagnosis, the possible medical interventions, the consequences, and the treatment effects.
49. Psychiatric medical institutions fail to pay proper attention to the treatment and prevention of the somatic disorders of persons with mental health issues, which causes a high mortality rate (during 2010-2012, the total number of deaths in psychiatric institutions was 117, including 115 caused by somatic disorders). These death cases are not properly investigated. Criminal cases were initiated with respect to only 32 of them, but all of them were discontinued due to the absence of *corpus delicti*.
50. The exercise of the right to health by persons with mental health issues in psychiatric medical institutions is negatively affected by the competence of junior and middle-level medical personnel. The latter do not have appropriate skills for working with persons with mental health issues. Moreover, they do not participate in any training courses.

51. Recommendations

- Implement and apply the modern methods of treatment, including the treatment of somatic disorders during the treatment of mental health issues;
- Implement educational, awareness-raising, and structural measures in order to prevent violations of the rights of persons with mental health issues by the personnel working them and to avoid their treatment and care in an institutional setting; and
- Ensure the training of the personnel by means of implementing specialized training curricula.

About HCA Vanadzor

Helsinki Citizen's Assembly-Vanadzor NGO (HCA Vanadzor) is a nonpolitical, non-religious, non-profit, NGO, which unites individuals who support the supreme principles of Democracy, Tolerance, Pluralism, and Human Rights, as values.

HCA Vanadzor was founded in 1998 as a branch of Helsinki Citizens' Assembly Armenian Committee. It was registered as an independent organization in 2001 and was re-registered in 2005 at the Ministry of Justice. The Headquarters of the organization is in Vanadzor – Lori Regional Center. HCA Vanadzor has representative offices in Spitak and Yerevan. The geographical scope of the organization's activity covers both the Lori Region and the entire territory of the Republic of Armenia.

The Vision of HCA Vanadzor is a society formed with the supreme values of Human Dignity, Democracy and Peace.

The Mission of HCA Vanadzor is the promotion and support of civil initiatives, the strengthening of human rights protection, and peacebuilding activities on national and regional levels.

Helsinki Citizens' Assembly – Vanadzor

59 Tigran Mets, Vanadzor 2001,

Republic of Armenia,

Tel. (+374 322) 4 22 68; Fax: (+374 322) 4 12 36,

Website: www.hcav.am, E-mail: hcav@hcav.am