

Human Rights Without Frontiers Int'l

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OSCE Human Dimension Implementation Meeting

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Working Session 6

Independence of the judicial system, with a particular focus on accountability and integrity of judges and prosecutors

Armenia: The right to a fair trial

Recommendations

Human Rights Without Frontiers calls upon Armenia

- to remove the President's discretionary power in endorsing the list of judges from the Judicial Code; the list proposed by the Justice Council should be deemed as final and the President's signature should simply be a matter of protocol;
- to ensure internal independence in adjudication by removing the pressure placed on first instance courts by the Court of Cassation;
- to modify the grounds for disciplinary liability of judges by establishing clear and precisely defined criteria, in compliance with well-recognized international standards and best practice, including an appeal procedure;
- to abolish depositions of defendant confessional testimonies during criminal proceedings;
- to provide effective access to the Court of Cassation, so that private parties of criminal or administrative cases are able to bring complaints to the Court of Cassation without a licensed attorney.

UN Universal Periodic Review

In January 2015, when the UN Universal Periodic Review (UPR) examined Armenia's human rights record, the state of the country's judiciary was a leading concern. The United States representative said he was seriously concerned about systemic corruption and the absence of an independent judiciary. His position was supported by several other countries such as Canada, Costa Rica, Czech Republic, Lithuania and Namibia.

The main human rights NGOs in Armenia agree that a systemic problem in their country is the lack of separation between the legislative, executive and judicial powers. Consequently the judiciary is not independent, being a major obstacle to sustainable progress in the field of human rights.

Armenia's Ombudsman's Report

In 2013, the Human Rights Ombudsman in Armenia published an Ad-hoc Report on the right to a fair trial. The Report describes the corruption mechanism, the methods through which pressure is brought to bear on judges, the double standards used by the Cassation Court and the Justice Council. It addresses other issues as well.

In the section on 'corruption', the Ombudsman's Report notes high levels of corruption in the judicial system, large amounts of money circulating and the ways in which it changes hands as well as the bribe amounts given to judges.

According to the Ombudsman's Report, the bribe amounts in the courts of first instance range from USD 500 to 10,000, in the Court of Appeals from USD 2000 to 15,000 and in the Court of Cassation from USD 10,000 to 50,000.

Opinion of the Venice Commission on draft amendments and addenda to the Judicial Code

At its 99th Plenary Session (13-14 June 2014), the Venice Commission issued an Opinion about the Draft Law on introducing amendments and addenda to the Judicial Code of Armenia¹. It pointed out a number of shortcomings of the judicial system regularly raised by civil society organizations and the lack of a strategy for making improvements to the proposed legislation. Among other points:

34. The Venice Commission draws, however, attention to the fact that the Draft Law grants totally free discretionary power to the President of Armenia for appointment or rejection of the person (judge) elected by the Council of Justice. The President is not obliged to give reasons for his decision; the only consequence of rejection of the proposal of the Council of Justice is restarting the election process.

¹ See [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2014\)021-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2014)021-e)

35. The Venice Commission recognised that ‘discretionary power is necessary to perform a range of governmental tasks in modern, complex societies.’ However, ‘such power should not be exercised in a way that is arbitrary. Such exercise of power permits substantively unfair, unreasonable, irrational or oppressive decisions which are inconsistent with the notion of rule of law.’ Discretionary power granted to the President of Armenia can lead to conflict between the President and the Council of Justice, what may not only cause difficulties in proper administration of courts but it can harm citizens' trust in the independence of the Judiciary. Rethinking of the power of the President (obligation to motivate rejection, limitation of his/her right to reject the elected person on certain reasons, e.g. irregularities in election process or election of more than one candidate and obligation of the President to appoint one of them) may reduce either the undesirable opportunities mentioned above or the danger of politicization of the election/appointment process.”