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WORKING SESSION 13
Rule of law II

The Situation of the Right to a Fair Trial and Independence of the Judiciary in Armenia
Europe in Law Association, NGO

There are systemic problems in the area of the exercise of the right to a fair trial in Armenia in view of the fact that Armenian courts do not act as an independent and impartial tribunal in the first place. This is conditioned by the problems of formation of the judiciary, as well as the punitive role of the Cassation Court in the disciplinary proceedings against judges which is entirely arbitrary and based on double standards. There is also rampant corruption in the judiciary. The Armenian HRD touched upon these issues in a report in 2013[1].

The courts are yet incapable of passing independent judgments, especially in cases of political opponents of the ruling party and the incumbent president. The impartiality of the president of the Cassation Court Judge Mkrtumyan was questioned even by ECtHR[2] in the case of *Vardanyan and Nanushyan v. Armenia (app. No 8001/07)*.

The recent trials of the *Sasna Tsrer* group and *Sefilyan and others* are the best proof of the above statement. The defendants in these two cases have very serious problems in defending themselves through legal assistance of their own choosing.

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1 http://www.ombuds.am/resources/ombudsman/uploads/files/publications/8c6abc664ac32d0042d7476a67b4b899.pdf

The first case is split into two cases. However, one and the same judge will be sitting in two cases dealing with the same factual circumstances and once a judgment in the first case is taken, it will not be possible for the same person to act as an impartial tribunal in the second case given the fact that he will have developed and expressed his position on the facts of these cases in the first trial.

Second, the two judges in the mentioned three cases regularly remove the defendants from the court room for contempt of court and are determined to continue the trial in their absence. The protesting defence lawyers are being punished by sanctions and are being substituted by public defenders despite objections from defendants. The public defenders, on the other hand, because of objections from defendants, are unable to act as their defence lawyers. It thus appears that the trials are proceeding in the absence of defendants and their chosen lawyers.

In addition to this, the authorities have introduced new search and seizure procedures for entry into the courtroom in these three cases, which have no basis in the law and which are degrading to the very essence of the legal profession. Those lawyers who refuse to abide by the new procedures, are deprived of the right to be present at the trial and represent their clients by court bailiffs and are being punished by court sanctions and pending disciplinary proceedings.

The Situation of Democratic Law-Making in Armenia

The law-making process in Armenia is not transparent or based on wide public discussions. The civil society is not involved in the process therefore the process is not participatory.

The main law-making process is led by the executive branch of power within under an expedited procedure: the discussion and adoption of legislation in the National Assembly is based on the 24-hour procedure which does not allow civil society organizations or the opposition parties to have any meaningful input into these processes or submit well-thought recommendations.

The best manifestation of the aforementioned are the drafting of the Constitutional Amendments in 2015, the amendments to the Electoral Code in 2016, the amendments to the Judicial Code in 2016, etc.

RECOMMENDATIONS

1. To observe and produce a report with recommendations for the Armenian authorities.