

Joint intervention by the IHF and the Armenian Helsinki Committee

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Working Session 13, Rule of Law III, including independence of the judiciary and the right to a fair trial

Reforming the judicial system in Armenia

In light of ongoing efforts to reform the legal system in Armenia, the International Helsinki Federation for Human Rights (IHF) and the Armenian Helsinki Committee would like to highlight a number of major issues of concern.

Amendments to the Armenian constitution adopted in 2005 brought a number of positive changes, such as reducing the president's powers in the appointment of judges, as well as in disciplinary and dismissal procedures, and allowing courts and citizens to directly challenge laws in the Constitutional Court. These and other progressive provisions have, however, largely remained unimplemented, and the executive still continues to influence procedures affecting the status of judges, while not a single court had made use of the possibility to request the Constitutional Court to revise laws by the end of 2006.

A major remaining problem with respect to the functioning of courts is the prevalence of Soviet-era thinking, which negatively affects especially the principle of equality of parties. The procuracy is still perceived as the key player in trials, and many judges continue to see it as their task to defend the state, rather than to render impartial decisions.¹ As a result, not-guilty verdicts are rare. It is also a relic of the Soviet era that courts often continue to protect the letter of individual, outdated, laws even if they are clearly at variance with the constitution. In a more promising development, however, some courts have started applying and citing case law of the European Court of Human Rights in their judgments.

Another matter of serious concern is that courts do not deal adequately with allegations of torture and ill-treatment, in violation of international human rights law. In the courtroom about 80% of defendants renounce statements made during pre-trial interrogations, but judges typically ignore such retractions, although abusive practices are known to be widespread in pre-trial detention.

The right to a fair trial is, further, undermined by frequent procrastinations of judicial proceedings; failure to notify parties about hearings; and hearings held in the absence of defendants and their legal counsel. Access to justice for common citizens is also restricted by disproportionately high lawyers' honoraries and lack of sufficiently developed *ex officio* legal service schemes to provide quality assistance to everyone who needs it.

Because of low salaries, judges remain susceptible to corruption, which contributes to weak public trust in courts. Respondents to a survey carried out in 2005 considered courts and prosecutors' offices to be the most corrupt state institutions in Armenia and generally believed that corruption was on the increase in these field, despite an anti-corruption campaign launched in 2001.

While Armenian legislation provides for several alternatives to detention for restraining the liberty of crime suspects (such as bail and signed pledges not to leave the place of residence), courts rarerly reject requests for detention filed by law enforcement authorities, regardless of the gravity of the crime of which a suspect is accused.

Recommendations:

The IHF and the Armenian Helsinki Committee call on the Armenian authorities to adopt further constructive reforms to improve the independence and functioning of the judicial system and ensure respect for fundamental rights in the administration of justice. In particular, we recommend that the Armenian authorities:

1. Ensure adequate implementation of the recent changes to the constitution limiting the influence of the executive on the appointment and dismissal of judges as well as other legislation regulating the separation of powers between the judicial and executive branches of government;
2. Review and develop the education and training of judges so as to make sure that they are equipped to efficiently perform their duties within the framework of the current legal system and with due respect for rights protected by the constitution and international human rights law;
3. Improve the position of legal counsel during the pre-trial period and ensure that allegations of torture and ill-treatment that arise during court hearings are adequately investigated;
4. Raise salaries and improve social guarantees (such as pensions) of judges in order to improve their standing and combat corrupt practices;
5. Develop existing schemes for provision of *ex-officio* legal services with a view to improving their availability and quality.

¹ American Bar Association's Central European and Eurasian Law Initiative (ABA/CEELI), *Judicial Reform Index for Armenia*, December 2004, at http://www.abanet.org/rol/publications/judicial_reform_index.shtml.