



JUDICIAL REFORM IN ARMENIA: SYSTEMIC PROBLEMS AND NEW CHALLENGES

Independence of Judiciary

As repeatedly reported by the local human rights defenders and international bodies, Armenian judiciary lacks independence and accountability due to internal and external pressure on judges, as well as corruption in the system.¹ The Constitutional amendments of 2015, followed by revision of the Judicial Code and other related laws, were in part meant to resolve these systemic problems. As the analysis below shows, the draft Judicial Code still does not address a number of key issues, such as lack of objective selection and promotion criteria for the judges, arbitrary imposition of disciplinary sanctions, and conflict of interests of judges.

Lack of independence of the judiciary remains an overarching issue in Armenia. According to the Freedom House, Armenia's 2016 judicial framework and independence score was 5.50 out of 7, where 7 stands for the lowest level of democratic progress.² GRECO assessed the independence of the judiciary – from external and internal actors – as unsatisfactory.³ Abuse of powers by the Justice Council is among the internal factors that restrict independence of judges. The Council, a self-governance body for the judiciary, is empowered to bring disciplinary sanctions against judges, which are often used arbitrarily to punish the “non-obedient” judges. The legislation regulating the disciplinary sanctions against judges lacks clarity, which results in imposition of unlawful sanctions. Specifically, the Justice Council is not required to provide reasoning for its decisions on dismissing judges or instituting disciplinary procedure against them. Furthermore, the decisions on the disciplinary sanctions are not subject to appeal. The draft Judicial Code (Draft) does not resolve the above-mentioned issue and contains new challenges, as discussed below.

Appointment and Promotion of Judges: Absence of a merit-based promotion for judges in the Draft is a potential leverage in the hands of the executive branch over the judiciary. The Draft suggests promoting the judges based on the quality of their decisions. It undermines judges' independence, since the quality of the judicial acts can be assessed solely through appeal or cassation. Similarly, the proposed model for selection of judges lacks clear criteria. Under the current regulations, the President has a significant role in formation of the judiciary. The proposed Draft foresees only formal appointment of judges by the President, but does not provide objective criteria for their appointment. Particularly, to become a judge, the candidate is required to pass several exams, including a psychological test. The latter lacks clear criteria and standards, undermining the credibility of the overall selection process.

Decisions of SCJ: According to the Draft, the Supreme Judicial Council (SCJ), a new self-governance body under the amended Constitution, is empowered to impose disciplinary penalties upon judges and terminate their powers. While exercising these powers, SCJ acts as a court. However, unlike courts' decisions, the decisions of the SCJ are not subject to appeal, depriving judges of the opportunity to defend themselves from the arbitrariness of the SCJ.

Trade unions: Similar to the current legislation, the Draft bans establishment of trade unions by judges, which not only violates their labor rights, but also the principle of self-governance of the judiciary. The restriction on formation of the trade unions amounts to the breach of Armenia's international obligations under the Revised European Social Charter to secure the labor rights.⁴

Recommendations:

- Provide objective criteria for appointment and promotion of judges in the law through:
 - outlawing evaluation of judicial acts for promotion reasons,
 - removing the psychological test from qualification exams,
- Foresee in the law that judges can be disciplined only for committing ethical violations and crimes,
- Prescribe mechanisms for the judges to appeal the decisions of the Supreme Judicial Council rendered against them,
- Provide the right of judges to form and join trade unions.

¹ Ad Hoc Report on the Right to a Fair Trial, Human Rights Defender of Armenia, 2013; <http://pashtpan.am/resources/ombudsman/uploads/files/publications/8c6abc664ac32d0042d7476a67b4b899.pdf>; <https://www.coe.int/en/web/commissioner/-/armenia-should-address-gender-inequality-and-enhance-the-independence-of-the-judiciary>

² Freedom House, World Bank World Development Indicators, <https://freedomhouse.org/sites/default/files/NIT2016%20Armenia.pdf>

³ GRECO, 4th evaluation round report, Armenia

⁴ European Committee of Social Rights, Findings on Armenia, 2014; https://www.ecoi.net/file_upload/1226_1422348351_armenia2014-en.pdf

Accountability of Judiciary

Corruption in the judiciary is one of the main impediments for ensuring fair trial in Armenia. According to the 2016 Global Corruption Barometer, 41% of judges in Armenia are believed to be involved in corruption, meanwhile 65% of respondents rated the steps taken by the Armenian government to fight corruption “very badly” or “fairly badly”.⁵ In 2014, reports published by the Ombudsman and the Commissioner for Human Rights of the Council of Europe alarmed improper influence upon judges through bribes and gifts.⁶ Moreover, the report of the Ombudsman touched upon, inter alia, the issue of exploiting unfair disciplinary proceedings against judges to influence their decisions or retaliate against them. To remedy the current situation, the Draft should address the following issues.

Financial independence: Existing regulations on declaring the assets/income of judges are not effective in terms of ensuring accountability of the judiciary. The Commission on Ethics of High-Ranking Officials has long been restrained in its functions of examining the asset and income declarations of judges and had no sanctioning powers in case of data fraud. Recent legislative amendments, effective since July 2017, empowered the Commission to examine the declarations submitted by judges and, when necessary, refer them to the Prosecutor for a probe into illicit enrichment. Nevertheless, so far no case of corruption of judges based on the declaration submitted by them has been revealed by the law enforcement, despite numerous corruption reports in media. The Draft allows judges to be engaged in some form of “entrepreneurial activity”, specifically, become a participant in a commercial organization. The legislation does not provide a comprehensive definition of “entrepreneurial activity” to preclude possible conflict of interests, when trying the case. Secondly, the law does not prevent judges’ financial dependency on any party to a case, especially if one of the parties is a bank providing loans to the judge. To avoid conflict of interests in the described cases, the other party to the case should possess the necessary information on the relations between the judge and the bank in order to demand recusation of the judge from the case.

Case Assignment: Under the current software of electronic assignment, the case is assigned to a particular judge by 8:00 p.m. of the day the case data are incorporated into the system. In practice, some judges have personal interest to seek assignment of specific cases from the operators in the Judicial Department. Instead of remedying the issue, the Draft contains a significant step back in ensuring transparency of the cases assignment. In particular, the Draft vaguely states that the cases should be assigned during the same day, thus providing more opportunities for human interference into the procedure.

Recommendations:

- Ensure effective examination of the assets/income declarations of judges to reveal the cases of corruption,
- Provide effective mechanisms for preventing conflict of interests during the trial, including through introduction of absolute ban on entrepreneurial activities by judges,
- Prevent dependence of judges on financial institutions, requesting declarations from judges on the banks, which give loans to them and their close relatives, as well as the terms of the loans,
- Revise the case assignment system in the courts to secure assignment of cases to judges immediately after incorporation of the case file data into the system.

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⁵ Global Corruption Barometer 2016, People and Corruption: Europe and Central Asia; https://transparency.am/storage/GCB2016_Tables_en.pdf

⁶ Ad Hoc Report on the Right to a Fair Trial, Human Rights Defender of Armenia, 2013;