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Judicial system under fire

By Willy Fautré, *Human Rights Without Frontiers*

In January 2015, the United Nations (UN) Universal Periodic Review (UPR) examined Armenia's human rights record in the light of the country's national report, the submissions of domestic and foreign NGOs and the reports of various UN mechanisms. The situation of the judiciary was one of the leading thematic concerns. The United States (US) 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.

In April, *Human Rights Without Frontiers* met the chairman of the *Helsinki Committee of Armenia*, Avetik Ishkhanyan, and collected information from other Armenian NGOs. All of them pointed at the main systemic problem: the lack of separation of the legislative, executive and judicial powers and consequently the lack of independence of the judiciary without which there cannot be any sustainable progress in the field of human rights.

Viewpoint of the Ombudsman's Office and the Helsinki Committee of Armenia

Avetik Ishkhanyan told *Human Rights Without Frontiers* that no progress had been recorded in the area of the judiciary since he published the "Human Rights in Armenia/ 2013 Report"¹, in which there was an article referring to the Report of the Human Rights Ombudsman²:

"In 2013, the Human Rights Ombudsman 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 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 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.

¹ See <http://armhels.com/en/publications/ditord-n-1-68>

² The Ombudsman report is only available in Armenian on the website of the "Human Rights Defender of the Republic of Armenia", not in English: <http://www.ombuds.am/en>

In the section on ‘pressure brought to bear on judges’ the Report notes that an “efficient” system has been put in place by the Court of Cassation so that it can pressure judges and force them to bend to its will. Under that system, individual Cassation Court judges have lower courts judges who are assigned to them and are under their control. Those lower court judges have to get approval from Cassation Court judges regarding court cases. Those judges who do not seek approval of the Cassation Court judges are regarded as the “most disfavored” and “unpredictable” and face pressure and a great risk of persecution.

In the ‘Double standards in the judicial system’ section the Report notes, alongside other problems, that a number of instances were registered when the disciplinary committee would not start a disciplinary investigation using as an excuse the fact that “the case is at the examination stage in a higher court.” At the same time, also registered were instances when the disciplinary committee would start a disciplinary investigation, even though the case in question is at the examination stage in the Court of Appeals or under consideration by the same judge. Numerous examples were given to illustrate the point.

In the ‘Double Standards in the Cassation Court’ section the Report notes that gross violations, double standards and arbitrariness in application of law are committed at the stage of making a decision whether to accept complaints for consideration. That, in its turn, is made possible owing to the violation of a clear legal requirement to provide justification for the decision to not accept the complaint.

The description of the situation by the Human Rights Ombudsman’s Report is further supported by the *Judicial Reform Index for Armenia* Report published by the American Bar Association. According to the Report, as of 2012, only in case of 4 out of 30 factors concerning reforms in Armenia the dynamic was assessed as positive.

In 2012, two factor correlations (removal and discipline of judges) registered a decline to negative. The tendency is also negative. The Report highlights the idea that the discipline process is often applied unfairly in order to influence judicial act making or retaliate against judges for their judicial acts.

The factors of judicial decisions and improper influence on judicial acts still receive negative correlations. Improper influence on judicial decisions is a persistent problem. Judges’ decisions are affected both by external influence and pressure from within the judiciary.

From 1998, judicial reforms have been carried out in Armenia from time to time. The latest reform package in this field has to be implemented in the period 2012-2016. In particular, there are plans to adopt a new Criminal Code and Criminal Procedure Code. However, the crux of the matter is that the Armenian authorities are not ready to foster the independence of the judicial system through legislation. The judicial and legal system is a main instrument to retain power but without its independence human rights violations will always have a systemic nature.

Viewpoint of Protection of Rights Without Borders NGO

In autumn 2014, *President of Protection of Rights Without Borders NGO* Haykuhi Harutyunyan participated in the OSCE/ODIHR Human Dimension Implementation Meeting (HDIM) in Warsaw and made a statement on ‘The situation of the rule of law and independence of the judiciary in Armenia’ in which he denounced the lack of independence of the judiciary in the following terms:

“It is recognized by international organizations that the essence of rule of law relies on judiciary³ and efficient justice system is a cornerstone to ensure the application of the rule of law principles⁴. The Rule of law is a main guarantee for effective protection of human rights and for sustainable economic progress and development.

The states aiming to uphold the rule of law principles should guarantee the application of five main qualities for judiciary and effective justice system: independence, integrity, accountability, transparency, and efficiency⁵. For this, the system of court performance evaluation and justice assessment was developed in different European countries with the understanding that the quality of justice does not rely only on individual judge and his decision.

In 2013 the case law of the European Court of human rights was summarized⁶, determining the elements of rule of law within the judiciary.

Several practical criteria were imposed to be followed by the national courts to uphold the application of rule of law principles and to protect individuals from arbitrary power.

Despite the mentioned requirements, the application of rule of law principles and especially the independency of judiciary in the Republic of Armenia still remains a major issue and there are serious concerns in relation to the independence of the judiciary in all levels: 1) Formation of judiciary; 2) Access to the courts; 3) Decision making processes; 4) Execution of court decisions; and legislative obstacles which are posing bans to guarantee the independency of judiciary and to eliminate arbitrariness. Moreover, the public trust in courts is very low⁷ and 67% of Armenian population feels that judiciary is corrupted/extremely corrupted⁸. The existing mistrust is connected with the limited transparency and shortcomings of courts' performance.

As a result, the court decisions mainly have political nature rather than being the grounds of justice.

This list of problems can be complimented and the troubles of judiciary and rule of law principles in the country can be pointed out. But we do not intend merely to state the problems, rather, we are strongly committed to struggle for the independency of judiciary and for the development of the rule of law tradition in the country. To this end we would like to call all interested parties to act adequately, especially:

³ CM(2008)170, 21 November 2008, Council of Europe, par. 39, available at <https://wcd.coe.int/ViewDoc.jsp?id=1374477&Site=CM>

⁴ The World Justice project, *The rule of Index*, World Justice Forum, (2008)

⁵ Herbert A. Igbunugo, *The Rule of Law, Judicial Corruption, and the Need for Drastic Judicial Reform in Sub-Saharan Africa's Nation*, American Bar Association, International Law News, Vol. 42 No. 3, available at http://www.americanbar.org/publications/international_law_news/2013/summer/the_rule_of_law_judicial_corruption_need_for_drastic_judicial_reform_sub_saharan_africas_nation.html

⁶ “The Concept of the Rule of Law and the European Court of Human Rights” Geranne Lautenbach, 2013 Print ISBN-13:9780199671199

Public Perception Political, Social, and Economic Issues in the South Caucasus Countries, Caucasus Research Resource Center, Yerevan, 2012, http://crrc.am/store/di11/CRRC_CB_2011_Eng_19.09.2012.pdf

⁷ *Public Perception Political, Social, and Economic Issues in the South Caucasus Countries*, Caucasus Research Resource Center, Yerevan, 2012, http://crrc.am/store/di11/CRRC_CB_2011_Eng_19.09.2012.pdf

⁸ Transparency International, *Global Corruption Barometer Armenia-2013*, available at <http://www.transparency.org/gcb2013/country/?country=armenia>

- To put continues efforts assisting the State to establish the tradition of rule of law in the Country based on the case law of the European Court of Human Rights.
- To support the development of independency of judiciary through the adjustment of the court performance monitoring and evaluation practice in the five main areas.
- To respond properly to the problems of the rule of law and independency of judiciary raised by the local civil society organizations.
- To encourage local civil society organizations to build partnership and ownership for development of the independency of judiciary and the rule of law principles.

Opinion of the Venice Commission

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 Armenia⁹. It pointed at a number of shortcomings of the judicial system regularly raised by civil society organizations and the lack of improvement planned in the draft law. 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.

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.”

The right to a fair trial¹⁰

A letter of complaint submitted to Prosecutor General on case of false witnesses

Helsinki Citizens Assembly Vanadzor, 30th January 2015

⁹ 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)

¹⁰ Source : Helsinki Citizens' Assembly Vanadzor Office (<http://www.hcav.am>)



On August 2, 2014, Pnjik Teroyan, resident of Vanadzor, applied to the HCA Vanadzor to protect her rights. According to P. Teroyan, back on April 4, 2012, she had reported a crime to the RA Police. The Vanadzor city Taron Investigation Division of the RA Police Lori Marz (region) Investigation Department initiated a criminal case based on the report. P. Teroyan claimed that the investigator had committed numerous violations during the investigative actions; particularly, by involving police officers as witnesses in such actions.

As already mentioned, a crime report on the violations above was submitted to the RA Special Investigation Service (SIS), demanding to take the necessary measures to reveal the crime in question and hold liable the persons responsible for it.

On September 20, 2014, the Organization received the decree of the RA SIS on declining to initiate a criminal case.

Thereafter, on September 27, 2014, the HCA Vanadzor filed a letter of complaint to the RA Prosecutor General to annul the decree of the RA SIS and initiate criminal proceedings.

On October 23, 2014, the RA Prosecutor General responded that the Organization's complaint was upheld, a criminal case was initiated and submitted for reinvestigation. Nevertheless, the complaint upheld by the Prosecutor General failed to form the basis for revealing the crime.

On December 26, 2014, A. Minasyan, RA SIS special investigator for high-profile cases, issued a decree not to instigate criminal prosecution and discontinue the criminal proceedings.

The HCA Vanadzor received the above decree on January 16, 2015, and on the same day Pnjik Teroyan started a hunger strike in front of the RA General Prosecutor's Office demanding to conduct a proper investigation.

On January 22, 2015, the HCA Vanadzor filed another complaint to the RA Prosecutor General demanding to annul the decree of the RA Special Investigation Service not to instigate criminal prosecution and discontinue the criminal proceedings, and to forward the case for reinvestigation.

The witnesses of a soldier's death case detained for 10 days and subjected to violence

Helsinki Citizens Assembly Vanadzor, 14th January 2015



On November 24, 2014, the RA Criminal Court of Appeal, presided by judge A. Petrosyan, proceeded the hearing on the complaint by Arthur Sakunts representing Meruzhan Kaleyanyan. Note that the RA Criminal Court of Appeal examines the legality of the judicial act by the First Instance Court of Syunik Marz (Region), RA dated September 22, 2014.

Armen Bozoyan, a witness of the criminal case regarding conscript Hayk Kaleyanyan's death at military unit in NGK, stated that he and three witnesses were kept in the military police for more than 10 days and were beaten, subjected to violence and forced to testify according to the investigator's dictation.

Based on aforementioned, Hayk Kaleyanyan's successor's representative Arthur Sakunts initiated a crime based criminal case which was dropped later. It needs to be mentioned, that the appealing side learnt about the decision of dismissing the criminal case investigation only due to the request to receive information, and it never had the opportunity to examine the materials regarding the dismissal decision. This decision has been appealed according to procedures: first following the authoritative and then court norms, however the complaints were rejected and decision remained the same.

Sakunts referred to RA Court of Criminal Appeal with an appeal requesting to overturn the judicial act of the inferior First Instance Court of RA Syunik region and send it back to the inferior court for a new examination.

The plaintiff presented to RA Court of Criminal Appeal statements about the improper treatment towards witnesses, locking them, as well as insufficient justification of the judicial act. On November 24, 2014 RA Military Prosecution Office prosecutor A. Harutyunyan and RA MD first garrison investigative department investigator N. Avetisyan did not attend the court hearing. The court announced that A. Harutyunyan was properly informed about the place and time of the court hearing and the court did not have any information regarding the

notification of investigator N. Avetisyan. During the court hearing M. Kaleyan's representative Arthur Sakunts motioned for receiving preliminary investigation materials of the case as those were not presented after preliminary investigation the pre-examination and he left the fact of the absence of the prosecutor and the investigator to judge's consideration.

On December 25, 2014, the RA Criminal Court of Appeal, presided by judge A. Petrosyan, proceeded the new hearing on the complaint by Artur Sakunts representing Meruzhan Kaleyan. Avetisyan, investigator at the First Garrison Investigation Department, RA Ministry of Defense, responsible for the proceedings, again failed to attend the hearing of December 25, 2014.

The Court again adjourned the examination of the complaint.