

23 September 2019

Enclosed information material is submitted by "Protection of Rights without Borders" Human Rights
NGO

"Protection of Rights without Borders" Human Rights
NGO



The prospects of judicial independence in Armenia and rule of law establishment

The landscape for meaningful reforms in justice institutions has dramatically changed after the events of April 2018 when the protest movement in Armenia resulted in “Velvet Revolution” and in change of government¹. The new government demonstrated a strong political will to counter corruption and to restore justice with effective civil society cooperation. However, the lack of comprehensive approach and relevant institutional frames for the implementation remains as a main challenge for the meaningful reforms.

Below certain important dimensions for judicial independence and rule of law establishment in Armenia are presented.

Judicial and legal reform strategy

In August 2019 the Ministry of Justice presented the Judicial and legal reform strategy for 2019-2023. The strategy program is inclusive presenting the approaches and recommendations made by civil society. Moreover, the MoJ has taken active steps for effective discussions with all the stakeholders. However, the reform strategy still needs improvements. Below some lacunas in the reform programme presented (not exhaustive list).

- The strategy encompasses several reform goals, however, the logical link between those goals and their impact in the improvement of judiciary is not well presented. From this perspective strategy implementation disproportionately distributes the program goals thus decreasing the scope of those objectives which are directly linked to the reform of judiciary.
- The reform strategy does not lean on institutional amendments of judiciary rather it targets more legislative changes.
- The strategy foresees overall 18 reform sectors, the majority of which has been included in previous reform programs. The broad and comprehensive list of reform sectors is welcomed, however, the practice of implementation of previous reform programs shows that not all the sectors and objectives prescribed are being implemented.

¹ <https://www.aljazeera.com/indepth/opinion/armenia-velvet-revolution-masterclass-socialism-180507093619273.html>



ԻՐԱՎՈՒՆՔՆԵՐԻ ՊԱՇՏՊԱՆՈՒԹՅՈՒՆ ԱՌԱՆՑ ՍԱՀՄԱՆՆԵՐԻ
ՀԱՍԱՐԱԿԱԿԱՆ ԿԱԶՄԱԿԵՐՊՈՒԹՅՈՒՆ

Protection of Rights Without Borders Non-Governmental Organization

The strategy does not target improvement of the existing mechanisms and conceptual changes for selection and appointment of judges, assessment of judges and disciplinary liability procedures. Problems influencing independence of judges related to the absence of clear grounds for disciplinary responsibility, objective criteria of assessment, abuses during appointment process etc have been raised for many years and led to serious concerns. The recent monitoring² of selection and appointment of judges' candidates by Council revealed problems such as lack of objective criteria of selection and absence of reasoned decisions, as well as lack of concrete criteria on formation of examination commission, lack of clear criteria for assessment of exam tasks, lack of individual assessment by each member of examination commission etc.

- In this regard it is recommended to:
 - Target systemic improvement of judicial institutions and amendments of legislative acts ensuring the functioning of those institutions
 - Prescribe the sectoral legislative changes as a means and basis for reform rather than separate reform objectives.
 - Limit the scope of selected reform dimensions and make the strategy more realistic in terms of implementation
 - Include in the strategy the reform of judges selection and appointment procedures, as well their assessment and grounds of disciplinary liability.

The role of Supreme Judicial Council: Selection and appointment of members

Within judicial reform and judicial independence establishment the functioning of Supreme Judicial Council has central role. It should be noted, however, that the nomination and selection of its members, as the main self-governing body of judiciary, remains very much politicized and authorities in power refused to make relevant legal amendments before the selection of new members. The nomination of the candidate for the Supreme Judicial Council by leading My Step fraction in the Parliament reproduced the previous practice and approaches³.

²

<http://prwb.am/new/wp-content/uploads/2019/06/%D4%B6%D5%A5%D5%AF%D5%B8%D6%82%D5%B5%D6%81-%D5%B0%D5%A1%D5%B7%D5%BE%D5%A5%D5%BF%D5%BE%D5%B8%D6%82%D5%A9%D5%B5%D5%B8%D6%82%D5%B6.pdf>

³

<http://prwb.am/new/2019/06/11/%d5%b0%d5%a1%d5%b5%d5%bf%d5%a1%d6%80%d5%a1%d6%80%d5%b8%d6%82%d5%a9%d5%b5%d5%b8%d6%82%d5%b6-%d5%a2%d5%a4%d5%ad->



Practice of pre-trial detention

Lengthy pretrial detention is a chronic problem. The practice of application of detention as a measure of restraint for punitive purposes still remains and presents a matter of concern. After the events of 2018 the later has been obviously witnessed in some politically sensitive cases, explained and justified by the need of fight against systemic corruption and gross violations. However, such practices go against the fair trial standards and right to liberty.

Overall, the strong political will by new Government to combat systemic corruption in the country and establish rule of law is obvious, however, there is ultimate need to consolidate all efforts and to think differently more about re-building justice institutions, less about “regime change”. One of the solutions can be to help shifting actors, prioritizing locals (civil society), putting forward the inclusive mechanisms and extending cooperation with the international organizations.