



The judiciary is fighting for its independence

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In 2018, following the change of power in Armenia, an exceptional situation was created to have an independent judiciary, as it was out of the influence of the current government. The new government had a chance to achieve the independence of the system by developing the elements of the fight against corruption. The readiness to establish an independent judiciary was announced, but further actions to be taken within the judiciary to achieve judicial independence were not implemented. Rather, it is quite the opposite: the authorities are using this opportunity to create their own dependent court.

In particular, all branches of government were clearly biased and unfair in their selection of the member of one of the Judicial Self-Government Bodies, a member of the High Judicial Council (HJC). The parliamentary-majority political force rejected, even ridiculed the candidate he had nominated.

Prior to that, the same attitude was expressed during the election of a candidate for the Constitutional Court (CC) judge, forcing the President of the Republic to nominate only their preferred candidate, who was approved in that position. With the election of CC judge, it was already evident that the standard of the judge's choice for the government was not to be a high-level expert and politically neutral, but to select their own candidate.

The independence of the judiciary is a key indicator of justice. The barriers to independence are almost identically visible to those of the general public, with the self-assessments of system specialists and the assessments of professional groups.

Obstacles to the independence of the courts

To date, the executive has clearly intervened in the courts' activities, in particular, in cases of criminal prosecution of persons (post-election protesters) due to political situations. Also, during the implementation of the Government's investment plans, when certain areas have been recognized as a public interest priority and have been taken away violating the citizen's property rights or property has not been properly valued (construction of Northern Avenue, Teghut mine development, etc.). In these cases, mass complaints have been sent to the European Court of Human Rights (ECHR), and the violations of the law have been confirmed.

But let's admit that the courts do not hear such cases every day and not all courts hear such cases. Therefore, the reasons for violating the independence of the court should also be sought elsewhere. For example, what other forms of systemic corruption do courts have besides political situations?

Advocates have recently been upset by the fact that the lawsuits have not been processed for months, the notices have not been sent to the parties on the grounds that there is not stamp. It was more than 10 years ago that the judge was left with all the costs of securing a regular

court process - stationery, cartridge refill, and even the secretary's pay. After that, was it possible to prevent corruption? As a result of analysis, radical changes were made to the judicial system and the situation was remedied. There is a danger of the same situation happening again today.

The situation in the judicial system

During the previous years, before and after each stage of judicial reform, international and local organizations have assessed the satisfaction with the activities of the courts. On this basis systemic problems have been formulated, and today's problems are also mainly formulated.

Monitoring done in the judiciary has shown low efficiency, one of the main reasons being the overloading of the courts. The breaks from one session to another take so long that the parties forget what was discussed at the previous session and where to proceed. As a result, the reasonable timeframes for judicial review are violated and judges are also subject to disciplinary liability.

Naturally, judges look for ways to avoid infraction. One judge hear 30 or more cases per day, and 5 minutes before the end of the working day a hearing is scheduled. This is done not for the purpose of examining the case but merely for not violating a reasonable time. But very often, the previous session does not even finish so that by inviting participants to the next session they can open and close the session by 18:00. Imagine the situation of trial participants who have passed hundreds of kilometers and do not manage to enter the courtroom and return empty-handed.

Judges do not manage to write the acts within the prescribed period, in order to gain time, without justification, they decide to restart the proceedings so as not to violate the time-limit established by law. However, even with these maneuvers, a least one law is always violated.

Much of the burden on the courts, as well as on other institutions in the justice system, lies with the cases of requirement to impose an administrative fine or to assess the lawfulness of the fine.

In recent years, it has been decided without examining to dispatch inspections for compulsory enforcement, and the obligation to issue payment orders has also been transferred to the Judicial Enforcement Service (<https://hetq.am/hy/article/60413>). The lawyers stated that this violated the citizen's right to a fair trial. But what to do so that the citizen's right is not violated and the court is not overloaded at the same time? The proposal to increase the number of judges and public defenders has long been debated. It, in turn, would increase budget spending, but would not insure the courts from the risk of being

overburdened. For this reason, the previous government avoided this option, but at the same time did not provide reasonable solutions to unload the courts.

It is well known that no state structure works effectively, even in the case of condominiums, you can appear in court on the slightest issue. The overloaded judge is not able to delve deeper into the circumstances of the case, make a quality judicial act, and more often fixes a rough decision in the judicial act. This burdens other courts - the number of appeals is quite high.

The current government in its plan had to look for answers to this question of how to increase the efficiency of executive governance to ensure the effectiveness of justice. What to do to get the courts to move from a discharge authority to a legal dispute settlement body, and to develop the legal mindset?

New power perception to make the system independent: transitional justice

On May 24, 2019 with the initiative of the Speaker of the National Assembly Ararat Mirzoyan, parliamentary hearings were held on “The Perspectives in the Application of Transitional Justice Instruments in Armenia”. The aim was to find out how different circles of society evaluate the need for transitional justice in Armenia, what their perceptions are and what they expect from this process.

According to Anna Vardapetyan, when choosing a toolkit, the Republic of Armenia must follow the standards of two international legal platforms - the UN and the Council of Europe. Moving on to the goals of transitional justice, the deputy minister emphasized that this process is mentioned in all international documents as a tool of reconciliation, not a tool of confrontation.

Referring to the instruments of transitional justice, the speaker noted that the toolkit is clearly defined, the first being criminal charges, the second - wetting - the evaluation process. According to him, wetting should ensure proper balance in terms of rights: in any case, a humiliating situation is not assumed between a public official going through the process and the public expecting this process. Reasonable assessment, according to the deputy minister, cannot be degrading.

Where are the problems in the judicial system?

The latest European Union-funded monitoring report on the judiciary, “Public Needs and Expectations on Justice in Armenia,” (http://moj.am/storage/files/legal_acts/legal_acts_1057954891731_Justice_Monitoring.pdf) was published in 2017. The report notes that the level of trust in the system is still below average, and negative associations with the courts prevail. At the same time, it is noted that such

assessments and perceptions of the judicial system were formed by the majority of respondents (63.1%), being completely unaware of the system.

According to the latest assessment, in order to achieve an independent and accountable judiciary, it needs to ensure:

- **access to court,**
- **speed of trial,**
- **the effectiveness of reviewing judicial acts,**
- **unloading the courts of general jurisdiction,**
- **the transparent and effective work of the highest judicial bodies, the General Assembly of Courts and the High Judicial Council.**

According to the above monitoring report, the independence of the judiciary largely depends on the order in which they are elected or appointed, so the guarantor factors are:

- 1) launching of open and transparent tenders for the judiciary,
- 2) limitation of office in the event of violations of laws and human rights,
- 3) formation of public oversight over activities.

Increasing the independence of a judge's work requires a comprehensive and inclusive effort, with each person's participation being crucial. To ensure such involvement, the following is suggested:

- implement effective public awareness activities on the role and function of the judge in order to increase public participation in supporting the independent functioning of the judge.
- introduce procedures for reporting on cases of "illegal mediation" by judges.
- increase the effectiveness of systemic liability rules by excluding the practice of bringing judges to account for system problems or excluding judges from discretionary accountability.
 - The process of qualifying for the appointment of judges consists of two parts. The first, the writing stage, is relatively objective, and the second, the interview, is subjective, excluding any objective criteria.

Transparency: Transparency of court activities is an essential element of public confidence in the judiciary, as well as a guarantee of preventing the threat of political influence. In this regard it is necessary to:

- to ensure the transparency of the appointment and promotion process of judges by disseminating criteria for the appointment of judges and information after appointment.

- Establish a process by which any interested person will be able to verify the election results and be assured that the Supreme Judicial Council has adhered to the rules of procedure and standards of election in the appointment and promotion of judges.

At the beginning of the year, the Supreme Judicial Council discussed how to set up and effectively participate in public oversight mechanisms.

Priorities for ensuring effective justice were:

- the problem of guaranteeing the functional, structural, material and social independence of the judiciary in the power-sharing system,
- steps to be taken to guarantee the judges' optimum workload,
- reducing the cost of justice; maintaining a reasonable timeframe for litigation.

The monitoring report presents the following observations on the influence of executive power on the independence of the courts:

- *Citizens' perception of the influence of the President's staff on a judge's activities is due to the fact that citizens submit a large number of applications to the President's Oversight Service.*
- *The president of the republic has a personal influence on specific cases of the judge's activities.*
- *It is not the legal norms that are decisive within the scope of a judge's activity, but the subjective norms which are manifested through the mediation and influence of the acquaintance.*
- *The office of the president does not directly influence the work of a judge; it is more often manifested through other mediators.*
- *Legislative power can influence through the adoption of legislative acts.*
- *The prosecution's activity to the extent that it prosecutes in court may be perceived as having an effect.*
- *The judge's performance is most influenced by the judge's superior, for example, the judge discusses the case with the superior.*
- *The influence of the executive power is also manifested through mediation of the "acquaintances".*