

Dear Mr. Sorokin,

Firstly let me welcome your initiative to examine and assess the legislative process of the Republic of Armenia with experts' assistance, which hasn't been profoundly analysed since the independence of Armenia.

In the report "The assessment of the legislative process in the Republic of Armenia" the authors have tried to briefly introduce the scope of the role and authorizations of relevant structures, but, as to me, the picture of the issue presented for monitoring is not complete, as the current situation in Armenia hasn't been taken into account otherwise the following causes and obstacles would be detached:

1. Armenia is actually governed by one party, which makes the majority in the National Assembly, in the RA Government and in the regional and local self-governance bodies. Consequently, the legislative body of Armenia doesn't serve its purpose, in fact accepts laws and decrees which are presented by their party or fraction and which have already been discussed and "agreed upon" with their party.
2. As a rule, the civil society (NGOs, civil initiatives, mass media, independent experts) are isolated from the legislative processes, even if they take part in them, this bears formal nature and which depends on the caprice of officials.
3. The Republic of Armenia doesn't have a clear regulation on what order and conditions the representatives of civil society organizations can take part or involved in the process of adoption of legislative acts, in what terms and how they should submit their remarks and suggestions (opinion) to the legislative body or authors of the drafts. The whole problem lies in the fact that the current legislation doesn't clearly regulate how CSOs can take part in the discussion of the drafts of legislative acts from the very beginning.

There are more than 3000 registered NGOs in Armenia, but it's not realistic that all these 3000 NGOs can participate in the discussions of the drafts of the laws. This issue only needs regulation according to their spheres, their charter goals and objectives, scope of beneficiaries, biography, capacities and abilities and results of activities. This regulation will allow both legislative and executive bodies, both civil society and local self-governance bodies be informed on which NGOs should be informed on participating in discussions of the drafts of laws of a definite sphere and on making suggestions and all this must be done on open and public manner. Of course, it's possible to raise the role of NGOs by involving them in monitoring processes of the sphere.

State governance structures have criticized the quality (and quantity) of the opinions and remarks received from civil society organizations on draft laws. I must mention that it's not the duty of these organizations to know the language of legislative technique but state servants' who are to provide the quality of the legislative acts. It's worth to mention that the RA Constitution Court recognizes the legal acts adopted by the same state governance structures as anti-constitutional application on which are mainly submitted by individuals and legal entities. There are lot of success stories, but let's not enumerate them, as you can study the decisions of the RA Constitutional Court and make your own analysis.

4. The role and significance of the RA highest court instance- the RA Constitutional Court has not been mentioned in this report, the scope of its authorizations and restrictions has not been profoundly examined. After adoption of the RA law “On Creation of the RA Constitutional Court and on the RA Constitutional Court” it’s de jure and de facto is a decision-making body, doesn’t have “supervision” authorization over the legislative and executive bodies. The RA Constitutional Court must have supervision authorization so that it can demand from the mentioned bodies to what extent and in what terms and how the decisions adopted by the court have been implemented.

Of course there is no a state independent authorized body which in its turn will supervise and monitor the processes of implementation of the decisions adopted by the RA Constitutional Court. The conclusions provided by this body must serve as a basis during adoption and ratification of laws and legal acts. Departments and divisions in all state governance bodies in fact do technical work- they change commas and full stops, but never make serious professional analyses.

As a vivid example I mention the issue of introducing the system of compulsory accumulative pension, which profoundly was studied by the civil society and a non-authority MP, which showed the inaction and weakness of the legal departments. In fact, for 10 years the executive body and not the civil society had studied a system, which was recognized as anti-constitutional by the RA Constitutional Court.

By the way there are no accountability mechanisms for representatives of legislative, executive and other structures who as inactive and who prepare improper legal acts. Consequently, we always have the same picture.

5. Besides, the decisions adopted by court instances are on low level, particularly those adopted by the RA Court of Cassation, the majority of which contradict each other, there are no serious professional grounds and justifications or they just copy the decisions of Human Rights European Court and even don’t try to explain why that precedent is or isn’t applicable in that case.
6. There is no structure which supervises the process, terms and quality of implementing its international agreement authorizations by the state, as well as implementation of already adopted laws and legal acts in legal-application practice.
7. In Armenia laws are not adopted in package, as a rule laws are adopted and begin to be applied without adoption of self-regulating normative acts or they are adopted later than envisaged by laws, which in future complicates the process of applying the laws.
8. It’s not possible to solve these issues by creating a separate structure “adjunct to the RA Ministry of Justice”, as mentioned in during the discussion. Even if created, that structure will be adjunct to the RA National Assembly or the RA Constitutional Court or in best case will be a completely independent structure, which will be accountable only to the RA National Assembly.
9. Our other issue is the provision of the quality of laws and legal acts. Of course, in this concern the quality and level of preparing corresponding specialists in higher educational institutions plays a significant role, but it seems no steps are taken in this direction, and the role of civil service council is the other side of the issue. The reason of it is the fact that corporative/party, family and relative relations still dominate in our republic, which don’t allow real specialists occupy positions, consequently they leave without a desire to

contribute their professional capacities in state and public governance sphere. Today our authorities seriously lack specialists, they can't interest young specialists.

10. I think a legal culture must be formed: before adopting any law or preparing any draft of a law there should be serious professional grounds and impact assessment indicators on the efficiency of adopting and later applying the mentioned law. In case of its absence the circulation of that draft must be prohibited by law.
11. The same is with regional and local self-governance bodies: acts adopted by them seem as if they are adopted by non-professionals. Of course, in this case the RA Ministry of Justice is to be blamed as well, which according to the RA law "On Legal Acts" legally expertize all legal acts, but the picture in reality is different.

By summarizing the above mentioned considerations I think that they are necessary but not sufficient and I'm sure that OSCE Yerevan Office will assist Armenia to address and regulate the issues raised in the report, which in its turn will provide the participation of civil society structures in the process of adopting legal acts.

P.S. Taking into consideration the fact that during the meeting on October 30 because of time constraints our representative was not allowed to speak, we represent our considerations in written form.

Sincerely,

Levon Nersisyan
Executive Director

Mary Khachatryan
Tel: (010) 58 78 64