



REPORT ON INDEPENDENCE OF JUDICIARY

For Universal Periodic Review (35th session)

Following the Universal Periodic Review taken place in 2015, systemic changes have made in the judiciary of the Republic of Armenia. Taking into account proposal 120.27 of Tajikistan and proposals 120.126-120.134 of the United States of America, Lithuania, the Netherlands, Mexico, Namibia, Germany, Czech Republic, France, and Sweden, which concern the separation of executive and judicial powers, as well as the strengthening of the independence of the latter, radical changes in the judicial system have been announced by the constitutional amendments of 2015. These changes have been further affirmed in the RA Constitutional Law on the “RA Judicial Code”, as well as the RA Constitutional Law on the “Constitutional Court”, which were adopted in 2018. By contributing to increasing the independence of the judiciary, structural and functional changes have been made in the judicial system, which are:

1. Election and appointment of judges of first instance courts and appeal courts have been altered. As a result, powers of the President of the Republic were diminished on account of powers of the Supreme Judicial Council, which have been expanded (the latter is an independent state body, ensuring the independence of courts and judges). More specifically, in the past, the appointment of judges was done by the exercise of absolute discretion of the President. Now, by virtue of the constitutional amendments of 2015, the powers of the President, with respect to the appointment of judges, have become mostly ceremonial, with the main role being reserved to the Supreme Judicial Council.

2. Likewise, powers of the President relating to the appointment of judges to the Court of Cassation, which is the supreme judicial body, have also become ceremonial. The main role is reserved to the National Assembly, entrusted with the primary democratic mandate, which elects judges of the Court of Cassation among candidates nominated by the Supreme Judicial Council.

3. Election and appointment of Constitutional Court members (judges) have also been modified. Prior to the constitutional amendments of 2015, 4 out of the 9 members of the Constitutional Court were appointed by the President of the Republic, whereas the remaining 5 members were appointed by the National Assembly. At present, the only body responsible for the election of Constitutional Court judges is the National Assembly upon nomination of candidates by the President, the Government and the General Assembly of Judges.

4. The order of termination of powers of judges has also been subject to change. Notably, the mandate of terminating the powers of judges was reserved to the President upon the mediation of the Council of Justice. In case of members of the Constitutional Court, that power was reserved to the President and the National Assembly based on the opinion of the Constitutional Court. Due to the foregoing amendments, the Supreme Judicial Council has the power to terminate the powers of a judge. As for judges of the Constitutional Court, powers of the latter are terminated on the basis of relevant decisions of the Constitutional Court.

5. A mechanism for the alteration of presidents of courts has been implemented. According to this mechanism i) the term of office of presidents of the Constitutional Court and the Court of Cassation is 6 years, whereas ii) the term of office of presidents of first instance courts and courts of appeal is 3 years, whereas, in the past, this period was not defined and/or limited. In such a way, the possibility of other branches of government “controlling” presidents of courts through sustainable influence has been reduced.

6. The scope of powers of the Supreme Judicial Council has been enlarged. Particularly, along with the increase of its role with respect to the regulation of the courts activities, the Supreme Judicial Council deals with financial can i) adopt sub-legislative normative acts ii) submit proposals to competent state bodies on the improvement of normative legal acts that concern the judiciary iii) submit opinions regarding projects on normative legal acts that concern the judiciary.

Hence, due to the constitutional amendments of 2015, powers of the President and the Executive have significantly decreased, at the expense of the self governing mechanisms of the judiciary.

Regardless of this fact, the ruling party exerts pressure and intervenes with the judiciary intensively. Thus,

- In September 2018, wiretapped conversations from July 26 (day before the detention order by the first instance court) between the Head of National Security Service and Special Investigative Service on the prosecution of Ex-President Robert Kocharyan, as well as conversation between Nikol Pashinyan and Head of NSS were leaked (<https://youtu.be/CNGm-UP6XEo> <https://youtu.be/GY4OYxlOffw>). They disclosed the practice of “telephone justice” in Armenia and the influence from the executive on the judiciary in relation to charges against former political figures.

- On 20 May, 2019 the Prime Minister Nikol Pashinyan instructed people to block the entrances and exits of all courthouses (<https://www.tert.am/en/news/2019/05/20/arabkir/3003073>)¹.

This action was “provoked” by the First Instance Court order from 19th of May to release the second President of Armenia Robert Kocharyan from custody (the measure of restraint in the form of detention has been applied for about six months), which was an undesirable outcome for the Prime Minister, given the longstanding political context in the country. The Prime Minister also made an address “threatening” the judiciary with transitional justice, vetting of all judges and compelled resignations (<https://www.azatutyun.am/a/29953004.html>)².

¹ On 20th of May about 1100 citizens, including incumbent members of parliament, public officials, civil servants, blocked the entrances of the courts. The police were instructed to show inaction, despite the state’s positive obligations. Physical access to court building was denied to citizens seeking justice, lawyers representing their clients and most importantly judges. Though judges and lawyers demanded positive actions from the police and reported on crime to law enforcement authorities, no actions were taken at all. Judges attempting to enter the court building were subjected to verbal and physical violence. Court buildings were also damaged.

² The Council of Europe PACE monitors expressed concern at the Prime Minister’s call to block courts: “Political stakeholders must refrain from actions and statements that could be perceived as exerting pressure on the judiciary. Without prejudice to the merits of this decision, we wish to emphasize that the independence of the judiciary is a pre-requisite for the rule of law, and that the rule of law is therefore best served by the absence of any interference from political actors. There are clear legal procedures, such as appeals to a higher court, to challenge a court decision that seems questionable. Respecting the rule of law requires respecting the procedures that exist to protect all citizens, irrespective of who they are.” (<http://www.assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=7488&lang=2&cat=3>)

The head of the EU-Armenia Parliamentary Cooperation Committee, Sajjad Karim issued a statement: “We would like to express our concern regarding the Prime Minister Nikol Pashinyan’s call on his supporters to block the entrances to all courts nationwide on 20 May, and for a mandatory, popular ‘vetting’ to be applied on all judges. We fully acknowledge that the politicization of judges is a matter of utmost importance in Armenia, and we count on the competent authorities, with the assistance on their international partners, to adopt and implement the structural reforms that are needed to ensure that a transparent and efficient judiciary, free from undue influences, will regain citizens’ trust, as it is a prerequisite for the rule of law. Meanwhile, we urge all public office holders to show wisdom and restraint, as was the case throughout last year’s ‘velvet revolution’, act solely within the limits of the mandates vested upon them by the Constitution, and uphold the clear, indispensable division between the legislative, executive and judicial branches of power”.

Shortly after, five incumbent members, the Supreme Judicial Council, including Chairman Gagik Harutyunyan, resigned under these threats (the Supreme Judicial Council has 10 members). The post of one of the judicial members has been vacant since October 2018).

- Through compelled resignations, the “My step” ruling political party “opened” vacant posts to be filled by the Parliament, where it had over 67 percent of seats.

In the draft law³ submitted to the Venice Commission, it was stipulated that the five non-judicial members are elected by Parliament from the prominent lawyers of the country, by a 3/5 majority of votes upon the proposal by the Bar, by higher education institutions and NGOs. However, the law adopted by the Parliament left the right of nomination to the political faction. Despite NGOs’ claims⁴ to the ruling political party to avoid excessive politicization of the election of non-judicial members (by vesting the nomination power with the professional entities, capable of assessing the merits and integrity of a candidate), it refused to make any reforms. Currently, it makes nominations and appointments solely on the basis of political preferences, converting the Supreme Judicial Council to an effective tool in its hands to punish the “deviant” judges.

-In its endeavors to have “well-controlled” courts, “My Step” political party also targeted the Constitutional Court.

For that end, it consistently denied all candidates that were nominated by the President on the basis of a competitive procedure (including an extremely knowledgeable candidate Dr. Gor Hovhannisyan, who is an associate professor of the University of Hagen (Germany) and Doctor of Laws from Humboldt University of Berlin⁵). The sole reason of rejections was the strong support of the ruling political party towards Vahe Grigoryan, as the only acceptable candidate (He is a political supporter and informal consultant of the Prime Minister⁶). Moreover, the ruling party initiated a legislative change to obviate the formal barriers for the benefit of Vahe Grigoryan.

Following the Presidents constant rejections of all candidates for the post of a Constitutional Court Judge, undisguised political stand that the ruling party will vote only in favor of “its candidate” Vahe Grigoryan, the President submitted his candidacy, without issuing a public and open call for a candidate, as well as ignoring constitutional law barriers to his nomination.

The newly elected judge of the Constitutional Court Vahe Grigoryan, while addressing the Parliament in the oath ceremony, proclaimed himself as the President of the Constitutional Court. He stated “According to the Constitutional Law amendments (in full effect since April 2018) the Constitutional Court consists of ‘judges’ rather than ‘members’. The term “member” and “judge” are

The Supreme Judicial Council (<https://www.azatutyun.am/a/29951161.html>), the Human Rights Defender (<https://news.am/eng/news/513563.html>), the Chamber of Advocates (<http://www.advocates.am/news/view/2394.html>), civil society organizations (<http://politik.am/hrazharveg-paron-varchapet-ayd-qaylic-artur-sagunc> <https://news.am/arm/news/513546.html> <https://news.am/arm/news/513559.html>), the parliamentary opposition, other political parties (<https://analitik.am/news/view/480459> <http://www.slaq.am/arm/news/1316807/?fbclid=IwAR3GiCrNk20rIR9f6vbdsjLZRqD5I70MVxHS02cGHJKZA0pZIY3jFnJEmqc> <https://news.am/arm/news/513568.html> <http://politik.am/komkusyanhangstacats-e-haytarutyun-e-taratsel>) qualified this action as an interference with the administration of justice, condemned it, urging the PM to revoke his call.

³ [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2017\)019-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)019-e)

⁴ <https://www.aravot.am/2019/06/12/1049655/>

⁵ <https://www.aysor.am/en/news/2019/03/29/Gor-Hovhannisyan/1544722>

⁶ Leaked information disclosed that Vahe Grigoryan was getting instructions from the head of National Security Service to express public opinions on certain legal issues in his capacity of “human rights activist” (<https://youtu.be/CNGm-UP6XEo> <https://youtu.be/GY4OYxlOffw>).

different. Only Arman Dilanyan, and myself are elected after 2018 and are eligible to serve as judges. Therefore, Constitutional Court members are not judges and cannot be part of the Constitutional Court. Since at the moment Arman Dilanyan is absent from Armenia, I am solely taking over the ‘powers and duties of the Constitutional Court President’⁷.

It should be noted that Article 213 of the Amended Constitution explicitly defined that “The Chairperson and members of the Constitutional Court appointed prior to the entry into force of Chapter 7 of the Constitution (on Judiciary) shall continue holding office until the expiry of the term of their powers specified in the Constitution with the amendments of 2005. After entry into force of Chapter 7 of the Constitution, nominations for vacant positions of judges of the Constitutional Court shall be made successively by the President of the Republic, the General Assembly of Judges, and the Government”.

Alarmingly, prominent figures of the ruling political party commented (particularly, Ararat Mirzoyan, also Speaker of National Assembly, Lilit Makunts, also Head of “My Step” Political Faction, Nikolay Baghdasaryan, also MP from the same faction) that they were aware of this statement and they consider it legitimate⁸. They urged the acting president and the remaining 6 members of the Constitutional Court not to go to work. Some of their supporters urged the public to block the entry of the Court, not allowing the 7 sitting members to enter the building.

Constitutional law experts responded to this statement, by mentioning that smattering in legal field reached a dangerous level⁹. They qualified the actions of Vahe Grigoryan as violation of the constitutional order¹⁰, as well as a criminal act (arbitrary (self-willed) execution of actual or perceived authorities by breach of legally established procedure, exceeding public powers).

The Report of the 119th Plenary Session of the Venice Commission mentions that i) as a result of negotiations with the Armenian authorities, agreement was reached that it would be neither necessary nor useful to carry out a general vetting of all sitting judges ii) instead, disciplinary procedures should be strengthened and a link with the asset declaration system should be established iii) the comparison of terms “member” and “judge” is not reasonable iv) Article 213 of the Constitution, the provision with respect to the further functioning of the judicial staff of the Constitutional Court, is “clear” and “unambiguous” v) the fact that the statement of Mr Vahe Grigoryan has been applauded in parliament is alarming vi) there is a risk of interference with the mandates of sitting judges.

- Despite of the obvious stance of the Venice Commission with respect to the issue regarding the Constitutional Court, on 17 July, 2019, the RA Prime Minister gave an interview¹¹. The PM announced that the President of the Court has “privatized” this post and this is “his political stand”, promising to achieve his substitution through any means, including constitutional changes. He also declared that the ruling political party shall have the Constitutional Court they desire.

-On 17 July, 2019, the Special Investigation Service searched the office of the judge Mr Davit Grigoryan, who examined the case of the second President of Armenia, Mr Robert Kocharyan. It turned out that the office was searched on the basis of a criminal case that was initiated in fall of 2018, on the account of an alleged forgery of a summon. Yet, the General Prosecutor’s Office rejected the criminal

⁷ <https://www.lragir.am/en/2019/06/20/72469>

⁸ <https://news.am/eng/news/519806.html>

⁹ <https://past.am/?p=225333&l=en&fbclid=IwAR3aj9ZSWErJLCtfxQ5JkUuFIXVuoOtUr5EKl6Vzv2y0Mhkn5NcRpk4yK8>

¹⁰ <https://www.panorama.am/en/news/2019/06/21/Constitutional-Court-judge-statement/2130985>
<https://www.tert.am/am/news/2019/06/21/Nora-sargsyan/3031825>

¹¹ <https://news.am/eng/news/524509.html>

case in February. However, the criminal case was artificially re-initiated only after Mr Kocharyan was released from custody by Mr Davit Grigoryan, and as a result, his office was searched¹².

In addition to the foregoing, it should be noted that in disregard of recommendation 120.46 from Germany, according to which the Special Rapporteur on the independence of judges and lawyers should be invited to perform an official country visit, no visit has been organized.

¹² <https://www.pastinfo.am/hy/news/2019/07/18/%D4%B4%D5%A1%D5%BE%D5%AB%D5%A9-%D4%B3%D6%80%D5%AB%D5%A3%D5%B8%D6%80%D5%B5%D5%A1%D5%B6%D5%AB-%D5%A1%D5%B7%D5%AD%D5%A1%D5%BF%D5%A1%D5%BD%D5%A5%D5%B6%D5%B5%D5%A1%D5%AF%D5%B6-%D6%85%D6%80%D5%A5%D5%B6%D6%84%D5%AB-%D5%AD%D5%A1%D5%AD%D5%BF%D5%B8%D6%82%D5%B4%D5%B8%D5%BE-%D5%A5%D5%B6-%D5%AD%D5%B8%D6%82%D5%A6%D5%A1%D6%80%D5%AF%D5%A5%D5%AC/863154>