

**GOVERNMENT OF THE REPUBLIC OF ARMENIA**

**DECISION**

**No ----L of ----- 2019**

**ON APPROVING THE 2019-2023 STRATEGY FOR JUDICIAL AND LEGAL REFORMS OF THE REPUBLIC OF ARMENIA AND THE ACTION PLANS DERIVING THEREFROM**

Guided by Article 146 and part 3 of Article 153 of the Constitution of the Republic of Armenia, the Government of the Republic of Armenia **decides**:

1. To approve:
  - (1) The 2019-2023 Strategy for Judicial and Legal Reforms of the Republic of Armenia, pursuant to Annex No 1;
  - (2) The 2019-2020 Action Plan deriving from the 2019-2023 Strategy for Judicial and Legal Reforms of the Republic of Armenia, pursuant to Annex No 2;
  - (3) The 2021-2023 Action Plan deriving from the 2019-2023 Strategy for judicial and legal reforms of the Republic of Armenia, pursuant to Annex No 3;
  - 4) The Action Plan of Public Administration deriving from the 2019-2023 Strategy for Judicial and Legal Reforms of the Republic of Armenia, on updating the electronic platforms and electronic data bases in the field of justice and ensuring accessibility thereof, pursuant to Annex No 4.
2. This Decision shall enter into force on the day following its official promulgation.

**Annex No 1**  
**to Decision of the Government of the**  
**Republic of Armenia**  
**No –N ----- of -----**

**THE 2019-2023 STRATEGY**  
**FOR JUDICIAL AND LEGAL REFORMS OF THE**  
**REPUBLIC OF ARMENIA**

**YEREVAN-2019**

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## INTRODUCTION

Since the independence, judicial and legal reforms have been carried out in the Republic of Armenia, primarily conditioned by the adoption of the Constitution of the Republic of Armenia in 1995 and the further amendments thereto. Following adoption of the Constitution in 1995, the first judicial and legal reform has been carried out, aimed at substituting the existing Soviet judicial system with an autonomous judicial system of the newly independent Armenia, establishing domestic legislation of the independent republic, legal and judicial bodies.

Following the constitutional amendments of 2005, two strategies for judicial and legal reforms have been adopted: the first strategy covered 2009-2011, and the second one — 2012-2016 (the deadline for this plan has been extended for one year — until the end of 2017)<sup>1</sup>.

The above-mentioned two plans underlined the establishment of the efficient judiciary and the formation of an independent judicial system enjoying the public trust<sup>2</sup>. Within the scope of the previous strategy, some positive amendments were made, of which the fact of adoption of some fundamental codes related to the sector of the judicial procedure, in particular adoption of the Administrative Procedure Code (adopted on 5 December 2013), the Constitutional Law "Judicial Code" (adopted on 7 February 2018), the Civil Procedure Code (adopted on 9 February 2018), needs to mention.

The implemented programmes, though, neither led to systemic reforms, nor to increase of the public trust in the judiciary, or to rooting out corruption practices within the courts and the law-enforcement bodies. Some reforms were carried out partially, failing to achieve in the full extent the constitutional tasks assigned. Particularly, there are regulations in the Constitutional Law "Judicial Code" and the Constitutional Law "On the Constitutional Court", which cause essential problems in practice, especially for the

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<sup>1</sup> See <https://www.arlis.am/DocumentView.aspx?docid=50926>,  
<https://www.arlis.am/DocumentView.aspx?DocID=110851> :

<sup>2</sup> For more details of the plans analysis, see "The impact of judicial and legal reforms programs on the independence of judiciary in Armenia", which may be found at the following link:  
<http://prwb.am/new/hy/2019/01/25/%D5%B0%D5%A5%D5%BF%D5%A1%D5%A6%D5%B8%D5%BF%D5%B8%D6%82%D5%A9%D5%B5%D5%B8%D6%82%D5%B6-%D5%A4%D5%A1%D5%BF%D5%A1%D5%AF%D5%A1%D5%B6-%D6%87-%D5%AB%D6%80%D5%A1%D5%BE%D5%A1%D5%AF%D5%A1%D5%B6-%D5%A2/>

disciplinary liability of judges, the transparency of procedures for appointment of judges, provision of public accountability of the judiciary, etc. This was indicated in several reports concerning Armenia. In particular, according to paragraph 37 of the Report of the Commissioner for Human Rights of the Council of Europe CommDH(2015)2 of 10 March 2015<sup>3</sup>, the significant level of corruption in the judiciary which has been reported is a matter of serious concern, not least because of its detrimental effects upon public trust in the rule of law. In paragraph 72 of the report, the Commissioner noted that strong perceptions persist in parts of society that justice is meted out "in doses" and in a selective manner, and that there appears to be a sense of sharp contrast between, on the one side, the apparent leniency towards those thought to be connected to the authorities or representing them, even if they have allegedly been implicated in grave violations and, on the other, the harsh treatment and sentences imposed upon those opposing the authorities. The lack of results in the investigation into the ten deaths which occurred during the March 2008 events further strengthens this perception and contributes to the low public trust in the judiciary.

The 2017 Report on Human Rights Practices, published by the US Bureau of Democracy, Human Rights, and Labor on 20 April 2018, fixed that although the law provides for an independent judiciary, the judiciary did not generally exhibit independence and impartiality. A few attorneys reported they believed the Court of Cassation dictated the outcome of all significant cases to lower-court judges. Judges remained subject to political pressure from every level of the executive branch, from law enforcement agencies, and the judicial hierarchy. Judges were vulnerable to dismissal and had no effective legal remedies in case the executive, legislative or the superior judicial officials decided on imposing punishment on them. According to lawyers, cases of dismissals of certain judges for independent decisions still have a chilling effect on the judiciary<sup>4</sup>. Lack of the independent judiciary and as a result, the key problems of human rights in the Republic of Armenia was also documented in the report drawn up within the joint project between the European Union and the Council of Europe

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<sup>3</sup> The report by Nils Muižnieks, Commissioner for human rights of the Council of Europe, drawn up following his visit to Armenia from 5 to 9 October 2014, may be found at the following link:

[https://rm.coe.int/ref/CommDH\(2015\)2](https://rm.coe.int/ref/CommDH(2015)2)

<sup>4</sup> The report may be found at the following link: [https://am.usembassy.gov/wp-content/uploads/sites/92/hrr2017\\_arm.pdf](https://am.usembassy.gov/wp-content/uploads/sites/92/hrr2017_arm.pdf)

"Strengthening the Independence, Professionalism and Accountability of the Justice System in Armenia"<sup>5</sup>.

The political developments of 2018 in the Republic of Armenia put on the agenda the absolute priority of having a truly independent and effective judiciary free of corruption and patronage. This priority is highlighted in the Programme of the Government of the Republic of Armenia of 2019, according to point 4.1. of which, the key factor for settling the problem of equality of all people before the law is the political will of the Government, and the essential prerequisite for ensuring the sense of justice and the equality of all people before the law is the independent and effective judicial system armed with professionals. The imperative of having an independent and effective court was reaffirmed during the meeting of Prime Minister of the Republic of Armenia Nikol Pashinyan and Secretary-General of the Council of Europe Thorbjørn Jagland held in Strasbourg and during the meetings with representatives of the high-ranking delegation of the Council of Europe having arrived in Armenia after the meeting<sup>6</sup>. The willingness to implement all the processes of legislative reforms in co-operation with the Council of Europe, based on the best international practice and in line with the international commitments assumed by the Republic of Armenia, was highlighted.

With the view to respond to the above-mentioned and many other problems of the judicial system, it is necessary to thoroughly identify the problems and develop, based on them, a plan for judicial and legal reforms, that will comprise of short-term and urgent as well as long-term tasks and measures deriving from it, at which this Strategy is aimed.

The ultimate purpose of this Strategy and the Action Plan deriving therefrom will be the restructuring of courts and state institutions linked to the justice system based on the criteria of independence and accountability, which is necessary for the development of the democratic state. The judicial system should become completely independent in order to be able to become a power balancing other branches of power.

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<sup>5</sup> The report may be found at the following link: <https://www.coe.int/en/web/cdcj/-/analysis-of-the-results-of-court-users-satisfaction-survey-of-all-courts-of-all-instances-of-armenia>

<sup>6</sup> The material may be found at the following link: <https://www.primeminister.am/hy/press-release/item/2019/04/11/Nikol-Pashinyan-Press-Conference/>:

The 2019-2023 Strategy for Judicial and Legal Reforms of the Republic of Armenia (hereinafter referred to as the "Strategy") was developed taking account the imperative of drastic changes in the judicial and legal sector, the necessity of planning, monitoring, accountability and regular evaluation of the progress of strategic reforms.

The Strategy provides for drastic changes, especially in the matters of effectiveness, independence of the judicial system and in the field of fight against corruption in the judiciary.

The current problems in the judiciary and the legal system of the Republic of Armenia, the comments and recommendations by the international institutions and the civil society, the international advanced practice of judicial and legal reforms were considered when drawing up the Strategy, based on which the general objective of the Strategy, individual strategic goals deriving therefrom and relevant strategic directions thereof are specified. Based on the Strategy, three Action Plans were made: short-term Action Plan (from the 2nd half of 2019 to 2020), long-term Action Plan (from 2021 to 2023) and Individual Action Plan on setting up an e-justice platform and ensuring the accessibility of electronic data bases (from the 2nd half of 2019 to 2023).

The Action Plans establish particular actions stemming from the strategic goals and directions, with provision of the body responsible for implementation thereof, the initial state, the deadline for implementation, the method of verification, the expected outcomes and the expected source of financial means required for each action.

Based on the results of monitoring and evaluation, the Action Plans may, as prescribed by legislation, become subject to amendments — adjusted and reviewed annually.

The financial stability of the Strategy and the Action Plans is ensured by way of providing financial means necessary for implementation of actions deriving from strategic goals, within the framework of available proceeds of the State budget of the Republic of Armenia. In terms of efficient implementation of the actions, an importance is attached to financial and technical support provided by the partners, including the international and regional organisations permanently contributing to judicial and legal reforms in the Republic of Armenia.

The Strategy provides for implementation of the reforms in the field by way of creating or improving the legislation and the regulatory field, introducing or developing efficient mechanisms securing their practical enforcement.

The Strategy stipulates the following strategic goals: strengthening the rule of law by enforcement of the toolkit for the transitional justice, conducting constitutional reforms, reforming the electoral legislation, ensuring independence and impartiality of the judiciary, improving the mechanisms for public accountability of the judiciary, a judicial system free of corruption and patronage, increasing efficiency of functioning of courts, establishing a uniform platform of services provided by the state authorities and the local self-government bodies, setting up an e-justice platform and ensuring accessibility of electronic data bases and updating thereof, reforming the law-enforcement system, reforming the criminal and criminal procedure legislation, reforming the civil and civil procedure legislation, raising effectiveness of the administrative justice and administrative proceedings, reforms in the field of bankruptcy, developing alternative methods of dispute settlement, raising efficiency of the notary system, raising efficiency of the system of advocacy, reforms within the compulsory enforcement system.

When developing the Strategy the following were taken into account: the 2019-2023 Action Plan of Government, the Anti-Corruption Strategy of the Republic of Armenia and the 2013-2022 Action Plan for its implementation, the evaluation reports on the field of justice of the Republic of Armenia made by various international organisations (EU Justice monitoring project, Evaluation project of the field of justice through the TAIEX instrument, Court Users Satisfaction Survey by the Council of Europe, etc.), the statistics obtained from the Judicial Department of the Republic of Armenia, recommendations received from judges, advocates and other representatives of the civil society with regard to the problems of the field and settlement thereof, as well as other relevant reports, researches and other materials.

## **STRATEGIC GOALS AND DIRECTIONS**

### **STRATEGIC GOAL**

*Setting up an e-justice platform and ensuring accessibility of electronic data bases and updating thereof*

Recently, measures have actively been undertaken aimed at introduction of various electronic platforms for public administration. In particular,

For the purpose of ensuring the public participation in the law-making process of the draft regulatory legal acts, the transparency and accountability of the process, a unified website for publication of draft regulatory legal acts was set up in 2016 ([www.e-draft.am](http://www.e-draft.am)). Moreover, in order to ensure the transparency of the state administration system, simplify the administration, a number of individual tools of electronic democracy (e-democracy) (e.g. e-request.am, e-hotline.am, e-license.am etc.) were introduced or are in the process of introduction. However, still, much remains to be done for improvement of the electronic tools of public administration, introduction of new tools, simplification of administration and time saving by the use of such tools.

### **STRATEGIC DIRECTIONS**

#### **Introducing e-justice system**

The electronic systems available in the digital era create new challenges and opportunities for the field of justice. Currently, several bodies within the field of justice have electronic systems already introduced, though, such systems fail to interact with the electronic systems of other bodies of the field of justice. Presently it is necessary to introduce a centralised electronic management system for the comprehensive solution of the problems the field of justice encounters.

The introduction of the uniform system of electronic justice is aimed at:

- (a) unification of all the electronic systems and databases operating within the bodies of justice;
- (b) modernisation of the electronic management systems operating in the courts, introduction — based on them — and putting into operation of a uniform judicial electronic management system in the courts, that will ensure the transfer of cases from one court instance to another and between the seats of the same court instances, as well as putting into operation of party-to-party, party-to-court efficient notification system, possibly submission of evidence to the court, filing motions and carrying out other procedural actions;
- (c) establishment of an electronic document circulation system between the law enforcement authorities (the Police, the Inquest and Preliminary Investigation Bodies, Prosecutor's Office), judicial and law enforcement bodies (the Compulsory Enforcement Service, Penitentiary Service, Probation Service);
- (d) introduction of a system of online official correspondence by ensuring, through the system, the electronic documents circulation between all participants of the case, creation of an opportunity for natural and legal persons of contacting state bodies online, submitting applications, complaints and other documents thereto, in addition, creation of an opportunity of tracking the case status online;
- (e) ensuring collection of statistical data through the system during the entire course of proceedings;
- (f) ensuring establishment of digital archives.

As a result of the implementation of the above-mentioned processes, the uniform electronic system will ensure commissioning of documents circulation electronically, contribute to development of a uniform policy to commission the systems operating within the bodies in the field of justice, collection of the comprehensive statistical data, saving of time and material resources and simplification of administration.

## **Modernising the official website for public notifications of the Republic of Armenia**

The official website for public notifications of the Republic of Armenia ([www.azdarar.am](http://www.azdarar.am)) (hereinafter referred to as "the Website") was set up in 2007, and subsequently some alterations were made to the software in 2009. The website was launched in 2011.

During the period from 2011 to 2015, 150 statements in average were being entered in the Website per day, whereas the average of the statements being entered currently reaches 800 per day, the statements on certain days range up to 1200; as a result, the load of the Website has drastically increased, thus slowing down the operation of the Website.

Being a platform for public notifications, in case it is envisaged to make a public notification by way of publishing the information in the press as prescribed by law or other normative legal act, the public notification is posted on the Website.

Considering that the technical capacities of the Website fail to meet the current requirements, it is necessary to modernise it by furnishing new software solutions, and ensure the publication of statements and notifications through one effective, uniform mechanism.

## **Modernising the system of electronic registration of legal entities e-register**

The system of the State Register of the Legal Entities of the Ministry of Justice of the Republic of Armenia enables to make state registration/record-registration of legal entities, individual entrepreneurs, as well as the separated subdivisions and institutions of legal entities, state registration/record-registration of changes, state registration of liquidation and removal from record-registration.

The database of the State Register of the Legal Entities maintains information on all the legal entities, individual entrepreneurs, the separated subdivisions and institutions of legal entities registered in the Republic of Armenia.

The software support of the system was set up in 2011 and hasn't been updated ever since. The system is aimed at realisation of the "one-stop shop" principle, though, the

system fails now to enable implementation of a number of functions, which are efficient in terms of time saving, minimising the administration, improving the business environment and the services provided, in particular:

- documents related to functions fulfilled by the agency as prescribed by law, including the excerpts from the Register, decisions on rejection of state registration and state record-registration and other documents are drawn up in the form of electronic documents;
- the system doesn't enable to make the record-registration of the media, the "re-registration" of organisations registered/record-registered by another body;
- registration of closed joint stock companies;
- registration of non-governmental organisations;
- registration of shares of limited liability companies;
- registration of shareholders.

The programme of reforms in the field covers solution to the above-mentioned problems, as well as modernisation of the software support of the Register and ensuring the public access to the Register data.

### **Establishing digital archives**

As of 2018, 93200 open "paper copy archive files" of individual entrepreneurs and "paper copy archive files" of 91958 individual entrepreneurs having terminated the activities, "paper copy archive files" of 76870 legal entities and "paper copy archive files" of 16322 liquidated legal entities on the whole are stored in the Agency of State Register of Legal Entities under the Ministry of Justice of the Republic of Armenia, which comprise of approximately of 10 million pages. So far, the indicated documents haven't been fully digitalised (only the recent statutes of the valid legal entities are digitalised).

In order to carry out the state registration and the record-registration in a fully electronic format, it is necessary to carry out digitalisation of the above-mentioned documents, which will enable to ensure the accessibility and the long-term storage thereof.

It is envisaged that people with limited abilities, too, will be enrolled in the process of scanning the archive documents, record keeping of digitalised databases and collection of statistical data.

### **Ensuring the certification of any transaction by the notary public through the means of electronic communication and the conditions for exchange (transfer) of documents**

By making legislative amendments, the possibility of certification of transactions by the notary public through means of electronic communication should be ensured. In case there is only one party in a transaction, the transaction may be certified by the notary public by means of electronic video communication where such means enable direct visual contact between the party to the transaction and the notary public, and the party to the transaction is known to the notary public or the identification and the identity thereof may be verified under the established procedure. The identification, identity and the active legal capacity of the physical person in given situation are defined based on the identification documents and the valid electronic signature.

In case relevant regulations are made, it is possible to ensure the digitalization of certified documents and certification by the notary public. This tool will be efficiently enforced especially to ensure the application of documents at a distance.

It will be possible to carry out certification of transactions and exchange of documents in such a way throughout the Republic of Armenia, as well as between the notaries public of other foreign states and the Republic of Armenia.

## **Ensuring conditions for certification of contracts concluded electronically by the notary public, by the electronic digital signature**

Setting electronic communication by use of the electronic management system in the field of notary between the notaries public, banking and credit organisations. Introduction of such mechanisms will enable to electronically certify the contracts concluded by the electronic digital signature. The templates of electronic contracts subject to electronic certification and the procedure for the electronic certification thereof will be established.

Such regulations will enhance the institution of issuance of an endorsed writ of execution, which will contribute to correct and quick implementation of the notarial actions and improvement of the quality of services provided to citizens.

## **Introducing electronic system for bankruptcy**

An electronic system for bankruptcy needs to be introduced within the frames of e-justice, which is customary and is applied in a number of countries, expressed in different forms. It enables to carry out the bankruptcy proceedings — starting with institution of bankruptcy proceedings and ending with completion thereof — electronically, without excessive document circulation, ruling out, to the extent possible, the human intervention and enforcement of procedures without the direct participation of parties.

Introduction and putting into operation of electronic platform for bankruptcy should contribute to formation of a more transparent system of bankruptcy. It should create an opportunity to ensure filing of applications and other documents to the court, the bankruptcy administrator and the participants to the proceedings, the online access to the documents and the information concerning the bankruptcy proceedings, making electronic notifications, arranging the election of the bankruptcy administrators and the electronic sales of property, publishing reports, consolidating statistical data etc.

## STRATEGIC GOAL

*Strengthening the rule of law through enforcement of the toolkit for transitional justice*

## STRATEGIC DIRECTIONS

### Justifying necessity of enforcement of the toolkit for transitional justice

Transitional justice is the full range of processes and mechanisms associated with a society's attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation<sup>7</sup>.

Mass violations of human rights have periodically occurred in the Republic of Armenia during the period from September 1991 to May 2018, accompanied with persistent systemic and political corrupt practices. This was underlined in a number of international reports, including Universal Periodic Review - Armenia<sup>8</sup>, Trial Monitoring Project in Armenia (April 2008 – July 2009) – OSCE/ODHIR<sup>9</sup>, Resolution 1609 (2008) The functioning of democratic institutions in Armenia<sup>10</sup>, The Human Freedom Index<sup>11</sup>, Freedom in the World 2018<sup>12</sup>, The Worldwide Governance Indicators<sup>13</sup>, Transparency International Corruption Perception Index<sup>14</sup>, Control of Corruption Indicator – Millennium Challenge Corporation<sup>15</sup>, Doing Business<sup>16</sup>.

The political developments in the Republic of Armenia in 2018 were the repercussions of the sense of injustice such practices had stirred among the society, and a vast mass

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<sup>7</sup> See Guidance Note of the Secretary-General, United Nations Approach to Transitional Justice, March 2010, may be found at the following link:

[https://www.un.org/ruleoflaw/files/TJ\\_Guidance\\_Note\\_March\\_2010FINAL.pdf](https://www.un.org/ruleoflaw/files/TJ_Guidance_Note_March_2010FINAL.pdf)

<sup>8</sup> May be found at the following link: <https://www.ohchr.org/EN/HRBodies/UPR/Pages/AMindex.aspx>

<sup>9</sup> May be found at the following link: <https://www.osce.org/hy/odihr/75779>

<sup>10</sup> May be found at the following link: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17643&lang=en>

<sup>11</sup> May be found at the following link: <https://www.cato.org/human-freedom-index-new>

<sup>12</sup> May be found at the following link: <https://freedomhouse.org/report/freedom-world/freedom-world-2018>

<sup>13</sup> May be found at the following link: <https://info.worldbank.org/governance/wgi/#home>

<sup>14</sup> May be found at the following link: <https://www.transparency.org/cpi2018>

<sup>15</sup> May be found at the following link: <https://www.mcc.gov/who-we-fund/indicator/control-of-corruption-indicator>

<sup>16</sup> May be found at the following link: <https://www.doingbusiness.org/>

of people having encountered with no way out, voiced out discontentment, in order to see in the future the Armenia where the human rights and freedoms are fundamental values, people find themselves protected, strong and powerful. In such conditions there are two ways: forget the past and move on, or analyse the past, collect information on violation of rights, attempt to restore, as much as possible, the rights of victims, assess the past and carry out institutional reforms, in order to rule out the further reoccurrence of such practices in any situation.

Following the early elections of the National Assembly of the Republic of Armenia on 9 December 2018 having been assessed as truly free and fair<sup>17</sup>, the situation in Armenia showed that after the political changes of 2018 Armenia has again appeared in the transitional period, though after the collapse of the USSR the country was at the stage of transition from the totalitarian administrative system to the democratic one, while at this stage the country stands at the threshold of passing from the imitated or "false" democratic administrative system to the real democracy.

Republic of Armenia is persistent to enforce some tools of transitional justice, aimed at elimination of the aftermath of long-lasting distortion of the constitutional objectives of the law-enforcement and justice systems in the process of their functioning, and restoration of civil solidarity.

Within this context, it needs to mention that the guiding principle for enforcement of the transitional justice toolkit will be the compliance with the Constitution of the Republic of Armenia, the laws and the international obligations assumed by the Republic of Armenia.

### **Enforcing the toolkit for transitional justice**

In the Republic of Armenia the transitional justice toolkit will be enforced within the following framework:

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<sup>17</sup> See the summary report of the long-term and the short-term observation mission on the early elections of the National Assembly of the Republic of Armenia on 9 December 2018 at the following link: <https://transparency.am/files/publications/1554816519-0-788440.pdf>:

- collection of facts concerning the mass, periodical violations (hereinafter also referred to as "Violations") of human rights at least in the following fields: (a) all the electoral processes since September 1991; (b) political persecutions in the post-election processes since September 1991; (c) compulsory alienations of property for the needs of the state or the society in Armenia; (d) other forms of expropriations; (e) servicemen deceased at non-combat conditions;
- consideration of the possibility of restoration of violated rights;
- provision of new information on crimes to the law-enforcement bodies in case such information is available;
- introduction of institutional reforms including such monitoring systems the application whereof will enable to address the possible violations and rule out repetition of mistakes made before;
- enclosing the received information in the report, publishing such information and assessing the past.

## **STRATEGIC DIRECTIONS**

### **Establishing a Fact-Finding Commission**

For the study of the cases of Violations occurred in Armenia during 1991-2018 and collection of information concerning them it is necessary to form a Fact-Finding Commission. The Fact-Finding Commission is not vested in functions typical to the law-enforcement or judicial bodies.

The Fact-Finding Commission is an extra-judicial and independent body. The functions of the Fact-Finding Commission, inter alia, include documentation of the information received from the persons having suffered Violations, publicising, with their consent, the stories of persons having suffered Violations, requesting information from the state bodies, inviting persons to deliver explanations, granting immunity from the possible

criminal prosecution to the persons to have allegedly committed Violations in case they appear willingly and as assessed by the Commission — in case they deliver explanations containing valuable information, as well as elaborating methodology for the study of activities of the judicial and law-enforcement bodies and assessing such activities, also addressing the disclosure of corruption schemes based thereon (for instance, the lawful application of criteria for admitting the cassation appeals for proceedings, the unjustified success of certain advocates, the influence of personal liaisons of judges-prosecutors-advocates on the cases etc.).

The Commission will be formed during the first quarter of 2020. The Commission will comprise of 20 members maximum, it will function for two years, with an opportunity, where necessary, to extend the period for one more year. The Commission will be formed by law, which will prescribe the procedure for formation thereof, the objectives, the directions of activities, the powers, the specifics for drawing up the report and other issues. Persons enjoying high reputation in the society will be represented in the Commission, ensuring representation of various social groups of the society.

The proposed law must also regulate the principles of the activities of the Commission, which must comprise the principles of independence, impartiality and depoliticisation. The competence of the Commission to invite and hear the witnesses, have access to the materials of the criminal case and other information protected by law where necessary, request for and receive, where necessary, support from state bodies and local self-government bodies and the officials thereof, take measures to ensure the safety of witnesses, arrange public discussions and other competence thereof must also be addressed.

The ultimate outcome of the activities of the Commission is the publication of the report, where the information collected during the fact-finding process is reflected. Based on the information collected, the Commission submits in the report to the National Assembly and the Government of the Republic of Armenia an advisory opinion concerning the possibility, the forms, the extent and the need for restoration of the rights of persons having suffered from such offences, also the necessity for and directions of the institutional reforms.

## **Restoring the rights**

As a result of collecting information on violations, it will be possible to consider the matter of restoration of the rights of victims to the extent it is possible. Material compensations (in the form of lump-sum or periodical payments), the opportunity of access to the healthcare, education services, as well as making official public apology, publication of the story of the victim upon his or her consent etc. may apply as means of restoration of rights.

## **Ensuing of liability**

In case the Fact-Finding Commission receives, during the activities thereof, new information concerning the crimes, it should be granted with the opportunity to report to the law-enforcement bodies thereon with the view to re-open the criminal proceedings or to consider the possibility to institute a new criminal case where the grounds provided for by the legislation of the Republic of Armenia avail. The procedure for imposing liability falls beyond the competence of the Fact-Finding Commission and lies exclusively within the powers of the law-enforcement bodies and the courts. The Fact-Finding Commission may assist only by way of transferring information. Imposition of liability must be based exclusively on the Constitution and the laws of the Republic of Armenia, taking into account, inter alia, the statutes of limitation.

## **Summarisation of the information given in the report and institutional reforms**

The ultimate outcome of the activities of the Fact-Finding Commission is drawing up and publication of the report. The report must comprise at least the works done, including the brief description of victims' stories, the assessments given thereto, the advisory recommendation concerning restoration of rights. After the report is published, materialisation activities of facts obtained (archiving, discussing the options and forms for restoration of rights etc.) may be implemented by the competent authorities.

As an outcome for enforcement of the tools of transitional justice, summarisation of the information received, preparation and publication of the report, the opportunity of

applying the institutional reforms should be regarded in all the sectors where the information indicates of systemic problems. It should also be demonstrated by way of introducing such monitoring systems, the application whereof will reveal the potential violations and will alert on their existence. The goal of such reforms must be the conceptual provision that the violations should never reoccur again.

## **STRATEGIC GOAL**

### *Conducting constitutional reforms*

#### **Justifying the necessity to carry out constitutional reforms**

The preconditions for making constitutional changes have arisen from the fact the implementation of the constitutional changes in 2015 was guided, to certain extent, by the interests of the political power having initiated the changes concerned<sup>18</sup>. Particularly, according to the report Opinion on the non-compliance of the initiated constitutional referendum with the international standards of the Transparency International Anti-corruption Center, the planned constitutional changes are naturally believed to be designed for the incumbent president's desire to stay in power. The constitutional changes will allow him to continue his leadership role in the position of the speaker or prime-minister as well as secure the monopoly power of his political party — the Republican Party of Armenia. There are serious concerns that the members of the Specialized Commission for Constitutional Reforms adjunct to the President of the RA have been acting in the conflict of interests. The constitutional changes didn't depend on any objective necessity, such as a political crisis or public demand, which could justify such a hasty change of the governance system. In an absence of objective preconditions, such a controversial transformation should have been subject to broad

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<sup>18</sup> The following reports testify on this, which may be found at the following links:  
<https://transparency.am/hy/news/view/1086>  
[http://www.aprgroup.org/images/Library/Constitution/report\\_constitution\\_web\\_q.pdf](http://www.aprgroup.org/images/Library/Constitution/report_constitution_web_q.pdf)

and lengthy consultations with political and civil society actors and a promotion through a general consensus and strong rationalization, which did not take place. The Armenian public is actually given only two months after the publication of the full text of the amendments to react to the founding document of the state<sup>19</sup>. In addition to the above-mentioned contextual indicators, the planned referendum fails to meet the international standards for referendums, set forth in Venice Commission's Code of Good Practice on Referendums<sup>20</sup>.

For the authorities having initiated the constitutional amendments, the priority is to overcome the crisis of trust, while the constitutional amendments are untimely insofar as there is no mature public demand, and the reasons for and the real purposes of amending the Constitution are unclear. Also the fact that establishment of the Specialized Commission for Constitutional Reforms has been undertaken by the President, and the majority of members are state officials, is assessed negatively<sup>21</sup>.

While assuming that the Constitution adopted with the amendments of 2015 gains certain advantages against the previous constitution adopted with the amendments of 2005, in particular, the definition of basic rights and freedoms of human being has significantly improved, nevertheless, a number of problematic regulations are enshrined in the Constitution, which, due to subjective or objective factors, undermine the principle of the rule of law, the affirmation and consolidation whereof the initiation of amendments to the Constitution has been namely aimed at<sup>22</sup>.

As an example of a problematic norm, Article 213 of the Constitution of the Republic of Armenia may be referred to, which provides for that the Chairperson and members of the Constitutional Court appointed prior to the entry into force of Chapter 7 of the Constitution shall continue holding office until the expiry of the term of their powers specified in the Constitution with the amendments of 2005. This regulation entailed ambiguous interpretation of the constitutional and legal norm. Even abstaining from

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<sup>19</sup> The report may be found at the following link: <https://transparency.am/hy/news/view/1086>

<sup>20</sup> See the Venice Commission Code of Good Practice on Referendums, may be found at the following link: <http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD%282007%29008-e>

<sup>21</sup> The report may be found at the following link: [http://www.aprgroup.org/images/Library/Constitution/report\\_constitution\\_web\\_q.pdf](http://www.aprgroup.org/images/Library/Constitution/report_constitution_web_q.pdf)

<sup>22</sup> See the Concept Paper on the Constitutional Reforms of the Republic of Armenia, pp. 9-12.

making those comments as the subject for discussions in terms of content, one thing is clear — the model of formation of the Constitutional Court, as stipulated by the Constitution with the amendments of 2015, is currently not realised. Though election or appointment of the chairpersons of all other courts and the Court of Cassation in 2018 was carried out as prescribed by the amended Constitution, by virtue of Article 215 of the Constitution.

The above-mentioned provides ground to conclude that when making the constitutional amendments, the initiative group has intended to stipulate such articles which contradict the principles, a priori adopted thereby. It is noteworthy that within the concept of the constitutional reforms of the Republic of Armenia, as a problem of a currently functioning system of management, the following is indicated: *"The possibility of excessive personification of the state power with various manifestations of subjectivism is not eliminated. This, in its turn, hinders actual separation and balancing of powers; groundless social expectations arise"*. But it seems the above-quoted example proves that the constitutional amendments of 2015, either, were not aimed at eliminating the subjectivism and establishing a system where separation and balancing of powers are actual.

Or, for instance, the regulations in the Constitution fail to give an opportunity to establish an efficient procedure for appealing against the decisions of the Supreme Judicial Council, which is a violation of the right of a person to appeal against the judicial act rendered against him or her: a judge must have an efficient mechanism for appeal in the proceedings for subjecting him or her to disciplinary sanctioning<sup>23</sup>.

The main purpose of the constitutional amendments is to have a Constitution free of all kinds of subjective factors, adopted by the people without any guidance and as a result of free expression of their will.

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<sup>23</sup> See Recommendation CM/Rec (2010)12, paragraph 69, The Venice Commission, Opinion On The Draft Judicial Code of Armenia, 09.10.2017, Strasbourg, paragraphs 143-450.

## STRATEGIC DIRECTIONS

In the first quarter of 2020, it is planned to establish a Commission on Constitutional Reforms comprising of independent members elected based on the principle of specialisation, which will consider the question of implementation of constitutional reforms and will deliver draft constitutional amendments.

The Commission on Constitutional Reforms should, inter alia, consider a number of conceptual issues, among which are the following: the direct application of the Constitution, the role of the international treaties within the legal system of the Republic of Armenia, the specifics of applicability of the normative legal acts adopted by the supranational institution in case of membership to the given supranational institutions, the scope of powers vested in the bodies provided for by the Constitution, the procedure for election of the deputies of the National Assembly and formation of the parliamentary majority, as well as the number of deputies, issues concerning formation of other bodies subordinate to the Government, the Prime-Minister and the ministries and the powers thereof as provided for by the Constitution, separation and balancing of powers between the bodies provided for by the Constitution, the procedure for formation of the Supreme Judicial Council, the role, the powers thereof etc.

### STRATEGIC GOAL

#### *Reforming the electoral legislation*

#### **Justifying the necessity of reforming the electoral legislation**

The primary goal of reforming the electoral legislation is the institutional establishment of the system stipulated by the democratic electoral legislation in Armenia, which will be possible by way of introducing a coherent and predictable electoral system for electors, improving the electoral administration at all levels, increasing efficiency and transparency of supervision over financing of the election campaign, introducing

effective mechanisms to eliminate the electoral bribery and the pressures on electors, replenishing the guarantees ruling out the multiple voting and ensuring the accessibility of voting processes, securing the proper activities of the actors exercising supervision over the election process, clarifying the processes concerning the election disputes, raising the effectiveness thereof.

Following the early elections of the National Assembly of the Republic of Armenia on 9 December 2018 having been assessed as truly free and fair<sup>24</sup>, it is necessary to envisage mechanisms in the electoral legislation that will put the achievements reached through the above election — the trust in the elections among the public, the legitimacy of the authorities elected, and the trust in the perceptions of the society in the fairness of the election process, on the legislative fundamentals. Ultimately, such elections will become a general rule rather than an exception.

The systemic crisis of management and trust in Armenia until 2018 led to a low level of public trust in the elections (according to the surveys conducted in 2011 by Gallup Inc. Company dealing with the public opinion researches in 125 countries, including Armenia, only 13% of women and 12% of men believe the elections are fair<sup>25</sup>).

## *STRATEGIC DIRECTIONS*

**The electoral legislation reforms will comprise, among others, the following directions**

- eliminating the district electoral lists of candidates, adopting a simple proportional electoral system;
- lowering the minimum threshold for being elected in order to ensure the pluralism of political parties;

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<sup>24</sup> See the summary report of the long-term and the short-term observation mission on the early elections of the National Assembly of the Republic of Armenia on 9 December 2018 at the following link:

<https://transparency.am/files/publications/1554816519-0-788440.pdf>:

<sup>25</sup> <https://news.gallup.com/poll/157997/women-worldwide-less-confident-men-elections.aspx>

- reforming the procedure for formation of coalitions;
- enhancing the supervision methods for the election processes, including revision of the procedure for appealing against the decisions, actions and omissions of electoral commissions;
- revising the amount of the electoral deposit;
- ruling out any intervention in voting process of the military servants and the persons deprived of liberty;
- enhancing the effectiveness of drawing up and maintenance of the lists of electors;
- reforming the regulations on disputes and coverage;
- reforming supervision of the electoral processes through the observation activities.

## **STRATEGIC GOAL**

*Ensuring independence and impartiality of the judiciary*

### **Ensuring independence and impartiality of the judiciary**

The commitment to strengthen democratic institutions first of all implies the existence of independent and impartial judicial system. According to the Principles on the Independence of the Judiciary adopted by the United Nations in 1985,<sup>26</sup> the independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all state and non state institutions to ensure the independence of the judiciary. Moreover, the principles prescribed the prohibition on the interference with judicial processes and revision of the rendered judicial decisions. Recommendation No (2010)12 of the Committee of Ministers of the

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<sup>26</sup> Basic Principles on the Independence of the Judiciary, Adopted by the Seventh United Nations Congress in 1985, is available at: <https://www.ohchr.org/en/professionalinterest/pages/independencejudiciary.aspx>

Council of Europe<sup>27</sup> prescribes the purpose of the independence of courts, according to which the purpose thereof is to guarantee the right of everyone to fair trial, on legal grounds and without any improper influence. The independence of judges must be regarded as a guarantee of freedom, respect for human rights and impartial application of the law.

Existence of an effective system of self-government bodies of the judiciary is of importance for ensuring independence and autonomy of the judiciary. Taking into consideration the powers and role of those bodies in the organisation and activities of the judiciary, ensuring transparency of the activities of the Supreme Judicial Council and the General Assembly of Judges in practice, as well as building the professional potential and the institutional capacities are essential. Moreover, improvement of the regulations of the funding of the judiciary, appointment of judges and subjecting them to disciplinary liability, proportional remuneration of judges and their staff, enhancing the public confidence in judges are of core significance from the point of view of independence of the judiciary.

## **STRATEGIC DIRECTIONS**

### **Introducing new procedures for the appointment of judges in line with international standards**

Although the procedure for appointment of judges has undergone substantial reforms by the Constitutional Law “Judicial Code”, many practical issues have already been raised in its practical application at both legislative and practical levels. In particular, the issues refer to the reasoning for the written evaluation of the qualification examination of the candidates for judges, procedure for the interview and evaluation standards, procedure for appealing the results of the examination and transparency of adopting decisions. For providing effective solutions to the mentioned issues, it is necessary to improve the legislative regulations of the appointment of judges and ensure the transparency of the

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<sup>27</sup> Recommendation No (2010)12 of the Committee of Ministers, Council of Europe, point 3

processes described and public accessibility, which, *inter alia*, will lead to the enhancement of public confidence in the appointment of judges. The envisaged reforms mainly include the following:

- (a) change in the procedure for formation of the Evaluation Commission;
- (b) clarification of the evaluation standards and providing for a regulation aimed at ensuring transparency of evaluation;
- (c) conducting of the psychological test developed through application of the advanced international practice;
- (d) introducing the procedure for appealing the results of the examination and ensuring transparency of the adoption of decisions by the Supreme Judicial Council.

### **Introducing grounds and procedures for subjecting judges to disciplinary liability in line with international standards**

Clarity of the regulations of subjecting judges to disciplinary liability and their compliance with international standards are one of the essential tokens for ensuring their independence. Although the current Judicial Code has essentially improved the regulations of disciplinary liability of judges, there are still some significant shortcomings which do not allow to impose the disciplinary liability according to its designated purpose. In particular:

- (a) the grounds for subjecting judges to disciplinary liability are not sufficiently clear, so their interpretation is not predictable;
- (b) the system of disciplinary penalties provided for by the current Code is very limited and includes only the mildest penalties and the most severe one — termination of powers, which do not allow to ensure the proportionality of the disciplinary liability;
- (c) the procedure for appealing a decision on subjecting a judge to disciplinary liability is missing;

- (d) in the current Code, the Supreme Judicial Council has a rather restricted toolkit for ensuring effective and comprehensive examination during the examination of the issue on subjecting a judge to disciplinary liability.

One of the goals of this Strategy is to provide solutions to the indicated issues in compliance with international standards.

### **Enhancing perception of the role of the judiciary among the public and the confidence therein**

The measures provided for by this Strategy and the action plans deriving therefrom are aimed at ensuring an independent and impartial judicial system accountable to the public, which will also enhance the public confidence in the judicial system. At the same time, the positive public perceptions of the judiciary and high level of confidence are important preconditions for having a strong and independent judicial system. In addition, respect for the judiciary is a token for promoting the access of leading professionals of the field to that system. Thus, it is necessary to undertake measures aimed at ensuring co-operation and effective communication between the judiciary and public, as well as raising awareness on the role and high mission of the judiciary among the population.

### **Raising remuneration of judges and their staff**

The remuneration currently offered to judges and their staff is not equivalent to their workload<sup>28</sup>, as a result of which not only the impartiality of judges is endangered and corruption risks arise, but also the judicial system remains not attractive for leading lawyers. For example, in the city of Yerevan, the average annual workload per judge in civil cases constituted 632 cases in 2013, whereas in 2018 — 1290 cases, and in marzes, in 2013 — 469 cases, whereas in 2018 — 1447 cases<sup>29</sup>. In the city of Yerevan,

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<sup>28</sup>For more details on the workload of judges see the Annual Report of the Supreme Judicial Council of 2019 at:

[http://court.am/arm/left/annual\\_report/%D5%80%D5%A1%D5%B2%D5%B8%D6%80%D5%A4%D5%B8%D6%82%D5%B4.pdf](http://court.am/arm/left/annual_report/%D5%80%D5%A1%D5%B2%D5%B8%D6%80%D5%A4%D5%B8%D6%82%D5%B4.pdf)

<sup>29</sup> *Ibid*, page 62.

the average annual workload per judge in criminal cases constituted 66 cases in 2013, whereas in 2018 — 81 cases, in marzes, in 2013 — 74 cases, in 2018 — 84 cases<sup>30</sup>. While, the official pay rate of judges has not been changed since 2014.

Providing a competitive salary to judges and their staff are, undoubtedly, of primary significance from the point of view of promoting the access of highly qualified professionals to the judicial system and ensuring their independence. Thus, for achieving the goals stipulated by this Strategy, it is necessary to provide judges and their staff with an adequate remuneration.

## **STRATEGIC GOAL**

*Improving the mechanisms for the public accountability of the judiciary*

Independence and accountability of the judiciary are closely interrelated; accountability is a prerequisite for independence. The judiciary that is not publicly accountable cannot enjoy the public confidence, which will finally endanger the independence itself. This Strategy is aimed at establishing grounds for strengthening both the accountability and independence and ensuring the necessary balance between the two concepts.

## **STRATEGIC DIRECTIONS**

### **Publishing reports and statistics on the activities of the judicial system**

The information and statistics on the activities of the judicial system currently have limited access. The statistical data are available at [www.court.am](http://www.court.am), but the information base of the website is not updated in time, and the statistical information is not generated automatically and is not summarised in a user-friendly format. Whereas, publishing reports and statistics summarising the activities of courts in the publicly

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<sup>30</sup> *Ibid*, page 62-63.

accessible online mode is essential from the point of view of transparency and accountability of the activities of the judiciary.

### **Ensuring transparency and reasoning of the process of adopting decisions of the Supreme Judicial Council**

Currently, decisions of the Supreme Judicial Council are adopted by closed secret ballot, which causes public mistrust and casts doubt on the independence and accountability of the members of the Council in the adoption of decisions. In addition, in case of individual decisions, requirement for reasoning them is missing in the law. For changing the situation, it is necessary to envisage a change of the voting mechanism and a broader scope of cases of rendering reasoned decisions.

### **Improve the procedure for electronic inscription and distribution of judicial cases**

Under the conditions of the current procedure, the procedure for distribution of cases does not take into account the workload of a judge and complexity of a case, which leads to disproportionately greater burden on some judges. In addition, within the framework of judicial oversight over operational intelligence activities, certain judges having an exclusive authority for performing the mentioned function are appointed, as a result of which the logic and objective of the random distribution of cases are violated. Currently, distribution of cases by sectoral specialisations is an urgent issue, especially among judges with specialisation in civil law. The current model of general distribution does not ensure the effective examination of cases. Thus, there is a need for a fundamental reform in the procedure for electronic inscription and distribution of judicial cases.

### **Improving the procedure for formation of the Disciplinary Commission**

Election of members of the Disciplinary Commission authorised to initiate disciplinary proceedings against judges for a term of five years and only from the composition of

judges is a serious obstacle for the accountability of the judicial system, as it does not ensure the transparency of the process of initiating disciplinary proceedings against judges. The Venice Commission has also emphasised that such regulation creates a threat of a corporate approach in initiating disciplinary proceedings against judges<sup>31</sup>. The solution of the issue lies in the reduction of the term of office of the members of the Commission, as well as, apart from judges, also involvement of representatives of the civil society.

### **Complete declaration of property, incomes, interests and expenses of judges**

The current legislation does not include complete and comprehensive regulations on declaring the property, incomes, interests and expenses of officials, which causes public mistrust in particular judges, as well creates obstacles to ensuring the individual accountability of a judge. For the purpose of providing an effective solution to the issue, it is necessary to reform the declaration mechanism<sup>32</sup>.

## **STRATEGIC GOAL**

*Judicial system free from corruption and patronage*

Still in 2013, the issue of the existence of a large-scale corruption in the judicial system was put on the agenda of the public authority by the Ad-Hoc Report of the Human Rights Defender “On the right to fair trial”. In the further years, various local and international organisations continuously emphasised this issue and the necessity of combating it.<sup>33</sup> According to the data of the Global Corruption Barometer of 2017, 41% of the surveyed think that the majority of the judges in Armenia or all of them take

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<sup>31</sup> See the Venice Commission, Opinion On the draft Judicial Code of Armenia, 9 October 2017, Strasbourg, point 135.

<sup>32</sup> For more details on declaration, see *the Republic of Armenia Anti-Corruption Strategy and its Implementation Action Plan for 2019-2022*.

<sup>33</sup> <http://www.ombuds.am/resources/ombudsman/uploads/files/publications/8c6abc664ac32d0042d7476a67b4b899.pdf>, [https://am.usembassy.gov/wp-content/uploads/sites/92/hrr2017\\_arm.pdf](https://am.usembassy.gov/wp-content/uploads/sites/92/hrr2017_arm.pdf),

bribes, and 17% think that only some judges take bribes. Certainly, the considerable progress that the judicial system has made in recent years in both overcoming corruption and enhancing professionalism cannot be disregarded. However, corruption risks are one of the causes of the mistrust in the judicial system voiced by the general public, especially during the last year. Overcoming corruption in the judicial system is one of the absolute priorities of this Strategy<sup>34</sup>.

## **STRATEGIC DIRECTIONS**

### **Evaluation of the integrity of judges**

Introducing an effective system of the evaluation of the integrity of judges, including with regard to the property status of judges and verification of lawfulness of property, is one of the short-term priorities of this Strategy. Moreover, the principles of the mechanism for evaluation of the integrity of judges are the following:

- (a) integrity must not be evaluated through an ad hoc toolkit and must not be temporary. Instead, the process will be ongoing, and judges will permanently undergo such evaluation;
- (b) a new, ad hoc body will not be established to carry out evaluation of the integrity of judges; a body endowed with the constitutional mission to ensure independence of the judiciary — the Supreme Judicial Council — will be responsible for solving the issue.

### **Bringing the grounds for subjecting judges to disciplinary liability into compliance with the objective of overcoming corruption**

The grounds for disciplinary liability do not include institution of disciplinary proceedings based on the issues detected as a result of analysis of the declarations of property,

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<sup>34</sup> See also *the Republic of Armenia Anti-Corruption Strategy and its Implementation Action Plan for 2019-2022*.

incomes and interests of judges by the current legislation, which does not allow for comprehensive evaluation of the integrity of a judge, if necessary. However, in international practice, violations linked to declaration of property are often indicated as graver disciplinary violations that may even lead to termination of the powers of a judge. Thus, it is necessary to bring the grounds for subjecting judges to disciplinary liability into compliance with the objective of overcoming corruption.

### **Improving the procedure for subjecting judges to disciplinary liability**

Since none of the bodies authorised to institute disciplinary proceedings against a judge has the necessary specialisation or relevant legislative powers to detect shortcomings and corruption risks in the declarations of judges under the current Constitutional Law “Judicial Code”, it is necessary to provide such powers to the Commission for the Prevention of Corruption. At the same time, it is necessary to expand both the powers of the Commission and the Supreme Judicial Council in requiring and receiving the necessary evidence.

### **Building capacities and raising awareness**

Continuous capacity building of the members of the Supreme Judicial Council and the Commission for the Prevention of Corruption must be provided for and carried out in order to effectively accomplish the goals set before them and to develop skills aimed at overcoming corruption in the judicial system. In addition, it is necessary to carry out measures aimed at raising awareness among judges in relation to organising their conduct in line with the rules of conduct and ethics of judges, especially emphasising the anti-corruption education.

## STRATEGIC GOAL

### *Increasing the effectiveness of activities of courts*

The investigations of the effectiveness of activities of courts reveal the dissatisfaction of users of the judicial system, unjustified delays of the examination of cases due to the workload of judges, issues related to ensuring access to justice conditioned by the problems with the facility conditions of courts, lack of special capacities in the examination of cases with the participation of vulnerable persons and a number of other issues. In particular, the European Commission for the Efficiency of Justice (CEPEJ), in the analysis of the efficiency of the judicial system of Armenia, states that according to the evaluation made by users of the judicial system, the average score of the speed of the examination of cases in the Court of General Jurisdiction of Yerevan is 2.5 on the scale of 0-6, and the average score of independence and impartiality of judges is 2.4 on the same scale<sup>35</sup>.

## STRATEGIC DIRECTIONS

### **Reduction of the workload of judges and ensuring reasonable time limits for court examination**

In recent years, the number of judicial cases has been increasing in Armenia, while the number of judges remains almost unchanged, and mechanisms for the settlement of disputes through extrajudicial procedure are not yet fully developed for contributing to the reduction of the overloading of courts.

If during 2013 the Courts of First Instance received 48 540 civil cases, in 2017 that number of cases was 137 003, and in 2018 — 129 941 civil cases. Or in 2013,

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<sup>35</sup> The report may be found at the following link: <https://www.coe.int/en/web/cdcj/-/analysis-of-the-results-of-court-users-satisfaction-survey-of-all-courts-of-all-instances-of-armenia>

3376 bankruptcy cases were received, in 2017 — 9218, in 2018 — 9326 bankruptcy cases<sup>36</sup>.

The overloading of courts impedes fast and efficient examination of judicial cases, resulting in possible violations of the right of a person to fair trial. For the resolution of the issue, it is necessary to increase the number of judges and assistants to judges, introduce alternative effective measures for the settlement of disputes, including electronic tools, as well as introduce and actively use electronic management systems.

### **Establishment of the Anti-Corruption Court**

Examination of the cases on corruption crimes requires special skills, high public confidence in the judges examining the case and high professional qualities taking into consideration the priority of the fight against corruption in the judicial system declared by this Strategy, complexity of cases and introducing new institutions for the fight against corruption in the legal system of Armenia. The issues pointed out will be resolved by the establishment of the new Anti-Corruption Court provided for by the Republic of Armenia Anti-Corruption Strategy and its Implementation Action Plan for 2013-2022, which will ensure not only independent, impartial and professional examination of corruption-related cases, but will also reduce the workload of the courts of general jurisdiction in the field in question to some extent.

### **Continuous capacity building of judges**

From the point of view of the priorities of this Strategy, importance is attached to capacity building of judges in the following fields:

- (a) investigation of corruption, economic and official crimes,
- (b) importance is attached to the development of the skills of judges to work with evidence on electronic media parallel to the introduction of electronic justice tools,

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<sup>36</sup> For more details on the workload, see the Annual Report of the Supreme Judicial Council of 2019 at: [http://court.am/arm/left/annual\\_report/%D5%80%D5%A1%D5%B2%D5%B8%D6%80%D5%A4%D5%B8%D6%82%D5%B4.pdf](http://court.am/arm/left/annual_report/%D5%80%D5%A1%D5%B2%D5%B8%D6%80%D5%A4%D5%B8%D6%82%D5%B4.pdf)

- (c) professional rules of conduct and ethics,
- (d) case-law of the European Court of Human Rights on particular articles of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Following the adoption of the fundamental amendments to the Criminal Code, Criminal Procedure Code, Penitentiary Code and Code on Administrative Offences, as well as to other laws, it will be necessary to provide trainings on such amendments.

### **Improving facility conditions of courts and providing technical assistance**

Issues of insufficient space for courts or administrative buildings of the seats thereof or improper segregation from the seats of other state bodies, as well as ensuring access of persons with disabilities to courts still exist in the Republic of Armenia. There are some buildings of courts which lack necessary minimum conditions — courtrooms, opportunities to create open and closed zones, etc. Therefore, it is necessary to carry out respective repair/reconstruction works, including by ensuring the access of persons with disabilities to courts.

At the same time, conditioned by increasing in the number of judges, which is envisaged in the future, and establishment of the Anti-Corruption Court, it will be objectively necessary to provide the judiciary with a new premise (building) and infrastructures.

## **STRATEGIC GOAL**

*Establishing a unified platform of services provided by state and local self-government bodies*

One of the priorities of the Government is increasing the effectiveness of state administration, which implies identifying repeated functions — reducing slow, inefficient,

undue bureaucratic procedures, centralising and combining identical functions performed in different state institutions and subdivisions, assessing costs of functions and making ongoing reforms aimed at reduction of expenses, modernising, automating and digitising the services provided by the state. Till now there is a positive practice, within the framework of which about 67 services provided by the state (including services provided by the Agency for State Registration of Legal Entities, State Unified Cadastre of Real Estate, the Agency for Civil Status Acts Registration, the Ministry of Foreign Affairs of the Republic of Armenia, the Road Police of the Republic of Armenia and others) have been delegated to operators performing functions of 50 service offices, with a view to bringing the service closer to the citizen in the territorial sense.

## **STRATEGIC DIRECTIONS**

### **Establishing a unified office functioning under the "one-stop shop" principle**

Guided by the mentioned objectives, it is envisaged to establish a unified centre for providing some state services by applying the "one-stop shop" principle. The main objective of establishing a unified platform of services provided by state and local self-government bodies is to include service centres of relevant institutions providing state services in one territorial unit for the purpose of providing documents formed as a result of legal advice, receipt of applications and their consideration.

The objective of the programme is not only to make provision of the main services requested by the citizens as convenient as possible, but also to exclude the relations between the decision-maker and the applicant as a result of consideration of the application. As a result, placement of the provision of state services requested by citizens in one place will reduce the movement of citizens between administrative districts, reducing transportation costs, as well as it will reduce the corruption risks related to the services provided.

The programme of a unified platform of services provided by the state envisages for the first stage to place the service centres of the Civil Status Acts Registration Agency and

State Register of Legal Entities of the Ministry of Justice of the Republic of Armenia, “National Archives of Armenia” SNCO, as well as the Passport and Visa Department of the Police of the Republic of Armenia and the State Committee of Real Estate Cadastre adjunct to the Government of the Republic of Armenia, under the “one-stop shop” principle.

### **Unifying subdivisions involved in the state bodies providing expert services**

The delay of the time limits for and effectiveness of judicial cases are greatly influenced by the time limits for carrying out expert examinations and uncertainty and unreliability of the opinions delivered as a result thereof. Except for private organisations, the "Expertise Centre" SNCO of the Ministry of Justice of the Republic of Armenia, the "National Bureau of Expertises" SNCO of the National Academy of Sciences currently act in the field of forensic examination, as well as experts acting in the system of law-enforcement bodies also deliver expert opinions in the pre-trial proceedings. Such distribution of expert skills has given rise to a situation where such expert institutions do not have a unified technical support, developed methodology of the activities of experts, as well as there are many cases when the results of the expert examinations and the methodology applied therein substantially differ from each other.

For the purpose of resolution of the issues pointed out, it is envisaged to unify the institutions — established by the state and acting under the subordination of this or that state body — carrying out expert examination in one unified expert institution, which will be provided with the necessary expert potential. Works must be done for providing the institution with advanced expert equipment, developing a uniform methodology for specific types of expert examinations, and setting normative regulations of that sector. The unified expert institution must be the ground for expertise due to which the results of and time limits for carrying out an expert examination in the pre-trial proceedings and during the court examination will be significantly improved.

## **STRATEGIC GOAL**

### *Reforming the law-enforcement system*

The commitment to strengthen democratic institutions, enhance public confidence in the justice system is also equally relevant to the law-enforcement system. In this context, a necessity to bring the law enforcement system into compliance with the principles of public accountability and transparency of the activities of state bodies has arisen. In addition, the law-enforcement bodies must undergo capacity building programmes in a number of directions.

## **STRATEGIC DIRECTIONS**

### **Reforming the system of prosecutor's office**

Reforms of the system of prosecutor's office are first of all conditioned by the necessity of enhancing public confidence in that system, The Report drawn up within the framework of the European Union and Council of Europe Joint Project for "Strengthening the Independence, Professionalism and Accountability of the Justice System in Armenia"<sup>37</sup> established that the scores of satisfaction with personal and professional characteristics of prosecutors is low, especially compared with the other actors involved in the sector of justice administration. In addition, the users of courts are least satisfied with the professionalism of prosecutors.

For achieving the goals of reforming the system of prosecutors, it is necessary to:

- (a) evaluate the conduct of prosecutors by applying the principles adopted for evaluating the conduct of judges;

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<sup>37</sup> The report is available at: <https://www.coe.int/en/web/cdcj/-/analysis-of-the-results-of-court-users-satisfaction-survey-of-all-courts-of-all-instances-of-armenia.page.159>.

- (b) make structural changes in the Prosecutor's Office and carry out capacity building in the field of the protection of state interests by non-criminal procedural means;
- (c) change the rules of formation of the Qualification Commission so that a simple majority of its members is appointed through the process not involving the Prosecutor General;
- (d) expand the representation of prosecutors in non-senior positions in the representative bodies of prosecutors;
- (e) review the requirements for candidates for prosecutors and ensure the transparency of the competition for the election of prosecutors;
- (f) build the capacities of prosecutors in the fields of investigation of corruption, economic, official and other crimes, working with electronic evidence and other fields.

### **Reforming the system of investigative bodies**

For the purpose of recovering the justice system, it is important to ensure that the investigative bodies comply with the vision of a new concept of justice by their structure, principles of activities and professional potential. To reform the system of investigative bodies, it is necessary to:

- (a) make structural changes in the system of investigative bodies by establishing an anti-corruption committee which will investigate corruption-related crimes<sup>38</sup>;
- (b) evaluate the conduct of investigators by applying the principles adopted for evaluating the conduct of judges and prosecutors;
- (c) review the procedure for subjecting judges to disciplinary liability for the purpose of ensuring transparency thereof;

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<sup>38</sup> For more details, see the *Republic of Armenia Anti-Corruption Strategy and its Implementation Action Plan for 2019-2022*.

- (d) develop the capacities of investigators in the fields of investigation of corruption, economic, official and other crimes, working with electronic evidence and other fields.

## **STRATEGIC GOAL**

### *Reforming the criminal and criminal procedure legislation*

#### **Reforming the criminal legislation**

The current Criminal Code of the Republic of Armenia was adopted in 2003, after which the scientific analysis and the application practice of its norms revealed a numerous shortcomings existing in the Code. More than hundred amendments and supplements have already been made to the Criminal Code so far. However, the differences in the objectives of these amendments, the lack of a unified conceptual approach, and the neglect of criminological reasoning have in some cases led to a deepening of contradictions and shortcomings existing in the Code. Under such conditions, necessity has arisen to develop a new Criminal Code which must eliminate the above-mentioned shortcomings and serve for the following purposes:

- establish necessary legislative grounds for reducing criminality and eliminating the criminal subculture;
- stipulate clear criteria for differentiating criminal acts from that of non-criminal acts which will exclude territorial interpretation of the law;
- prescribe criminal liability for legal persons,
- improve the system of punishments;
- ensure compliance of the criminal legislation with the norms of international treaties ratified, principles of international law as well as the Constitution of the Republic of Armenia.

## **Reforming the Criminal Procedure Code**

The current Criminal Procedure Code of the Republic of Armenia was adopted in 1998 and a number of developments in the public and political life of the country over the twenty years of its application, the adopted legal policy, the legal positions expressed by the international courts acting with the membership of the Republic of Armenia and other international instances in the field of human rights, as well as High Courts of Armenia imply inevitable amendments to the main legal act regulating the relations with regard to the examination and disposition of criminal cases. In particular, the Committee of Ministers of the Council of Europe emphasised the necessity of adopting a new Criminal Procedure Code in its position on the execution of judgments on the case of *Virabyan v. Armenia* and related cases<sup>39</sup>.

## **STRATEGIC DIRECTIONS**

### **Elimination of criminal subculture**

The criminal subculture is a serious challenge for the society as it threatens to undermine or distort the values and perceptions formed in the society. Therefore, combating the criminal subculture must be one of the key directions of the criminal policy of each state. Moreover, a comprehensive approach against the spread of criminal environment, special rules of conduct established and recognised thereby must be taken, that is, steps must be taken at both the practical and legislative levels. Under these conditions, it is worth mentioning that currently the strategy of neutralisation and further overcoming of the criminal environment in our Republic is not developed yet by the Criminal Code of the Republic of Armenia. In this regard, the necessity of stipulating it at legislative level is conditioned by the tendency to prevent it among broader public, as it must be realised that combating it will contribute to interpersonal relations, improvement of people's value system, as well as change in the rules of conduct, as it is a token of healthy development of the society.

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<sup>39</sup> [https://hudoc.exec.coe.int/eng#{%22EXECIdentifier%22:\[%22004-355%22\]}](https://hudoc.exec.coe.int/eng#{%22EXECIdentifier%22:[%22004-355%22]})

### **Introducing a system of alternative punishments**

Under the conditions of the system of punishment prescribed by the current Criminal Code, the court does not often have an alternative to imprisonment. Thus, it results in the frequent unjustified application of punishment — imprisonment. Besides, the frequent application of imprisonment as a punishment may contribute to dissemination of criminal subculture in the civil society. The courts often seek a way out of the situation in not applying conditionally the punishment, but an uncertain legislation full of gaps and shortcomings may not ensure the regulation of this institution thus failing to contribute to the effectiveness of the punitive policy. For the resolution of the issue, it is necessary to expand the list of punishments which represent a real alternative to imprisonment and to introduce efficient and applicable mechanisms for the application thereof. It is envisaged to introduce new alternative punishments — expulsion of a foreign citizen from the territory of the Republic of Armenia, restriction of freedom, short-term imprisonment, as well as provide for public works as a self-imposed punishment.

### **Introducing criminal liability for legal persons**

Under the conditions of the current Criminal Code, when a legal person is not considered as a subject of criminal and legal influence, it is not possible to ensure the operation of the principle of inevitability of liability in a number of cases, when the public relations protected by the Criminal Code are damaged for the benefit of the legal person, including when it is not possible to identify the damage caused to a natural person or causing damage becomes possible due to lack of internal control within the given organisation and the mechanisms for preventing its employees from committing crimes. As a rule, the damage caused to legal persons is several times larger than the damage caused to natural persons, to which criminal and legal response must be adequately provided. Thus, it is necessary to introduce the institution of criminal liability for legal persons by the criminal legislation.

### **Introducing alternative measures of restraint**

For years, various local and international human rights organisations have emphasised the concern that the percentage of applying unjustified detention as a measure of restraint is high in Armenia. The issue is also conditioned by the insufficiency of effective alternative measures of restraint in the current Criminal Procedure Code. Thus, introducing new alternative measures of restraint, as well as providing for a pledge as a self-restraint measure will contribute to the reduction of the number of unreasonable or coercive detentions in law-enforcement practice. It is envisaged to introduce home arrest and administrative control as alternative measures of restraint.

### **Introducing simplified preliminary investigation**

For the purpose of justified saving of time, human and material resources, it is necessary to envisage a procedure for simplified preliminary investigation, which will allow to complete the preliminary investigation within a relatively short period with an object of limited evidence, transferring the main burden to the stage of court examination.

### **Plea bargaining and co-operation proceedings**

In cases when the parties to the procedure reach to an agreement on the guilt of the accused, spending resources on a thorough examination of evidence in respect of cases on certain categories of crimes is not justified. In such cases the court must simply approve the protocol on the agreement between the parties. This also derives from the logic of full implementation of the adversarial principle.

Likewise, in a number of countries, the institution of co-operation between the defence and the prosecuting party has also proved to be effective for achieving certain strategic goals by both parties; In particular, for the purposes of reducing the size of the punishment for the defence, and detecting crime — for the prosecuting party. Thus, in the cases described, plea bargaining and co-operation proceedings will be introduced for saving resources and achieving procedural objectives in the most optimal ways.

## **Changes related to receiving information constituting bank secret**

In the Third Round Monitoring Report on Armenia of the Istanbul Anti-Corruption Action Plan for Eastern Europe and Central Asia for Armenia, the Organisation for Economic Co-operation and Development has recommended that Armenia review and examine the regulations for eliminating bank, financial and commercial secrecy during investigation, and the methods of application of those regulations and become convinced that this process is simple and effective and does not impede disclosure of corruption cases<sup>40</sup>. It is necessary to abolish the subjective restriction of the access of information constituting bank and other secret by separate crimes, simultaneously providing for strong guarantees of judicial oversight within the framework of judicial oversight.

## **Improving proceedings with the participation of minors**

The Criminal Procedure Code of the Republic of Armenia has omissions and shortcomings from the point of view of the protection of rights of minor victims and witnesses, as the justice system of the country does not fully take into account the existence of specific issues and requirements of minor victims in criminal cases. In this regard, the current legislation of the Republic of Armenia does not comply with the international standards of the sector and advanced practice, the requirement of which is to prescribe a special procedure for confrontation and other investigative actions with the participation of a minor by the Criminal Procedure Code, in particular, for excluding double victimization. Thus, the new Code must fill the gaps related to the peculiarities of conducting investigative or other procedural actions with the participation of minor victims or witnesses, for the purpose of reducing or excluding double victimization thereof.

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<sup>40</sup> <https://www.oecd.org/daf/anti-bribery/Armenia-Round-3-Monitoring-Report-ENG.pdf>

## **Providing for an effective regulation of mutual legal assistance in criminal cases**

A separate law must regulate the procedure and terms for providing legal assistance in criminal cases and the relations having not been regulated by the Criminal Procedure Code of the Republic of Armenia with regard to legal assistance in criminal cases. These regulations must include the following:

- (1) requests for legal assistance;
- (2) extradition, including temporary extradition;
- (3) other types of co-operation (including transfer of the criminal proceedings, transfer of convicts, carrying out control over a person conditionally convicted or early conditionally released, recognising, changing and executing a judgment having been rendered in a foreign country),
- (4) etc.

## **STRATEGIC GOAL**

### *Reforming the civil and civil procedure legislation*

The current Civil Code of the Republic of Armenia was adopted on 5 May 1998, based on the Model Code of the Commonwealth of Independent States (CIS). However, as a result of the changes having taken place in the legal and social-economic systems of the Republic of Armenia and of the development of the civil law relations after adoption of the Code, various regulation gaps have emerged in the Code, separate legal institutions no longer correspond to the modern trends in the market development, various terminological inaccuracies exist.

By the adoption of the Civil Procedure Code of the Republic of Armenia of 9 February 2018, civil justice was reformed and a number of new institutions were introduced, aimed at reducing the high workload of the court and increasing the effectiveness of the case examination. However, there are also a number of issues related to the new regulations, which need to be revealed and changed.

## STRATEGIC DIRECTIONS

### Reforming the civil legislation

Taking into consideration the above-mentioned, it is necessary to bring the Civil Code of the Republic of Armenia into compliance with the modern approaches for regulation of the private legal relations. The analysis of the Civil Code of the Republic of Armenia shows that in particular:

1. the scope of the objects of civil law should be addressed making clarification therein on the status of non-paper securities, electronic money and crypto assets,
2. the regulations relating to the contract law, including contract forms are to be reviewed, taking into consideration the spread of modern electronic tools and effectiveness of the application thereof. In this regard, though the Civil Code of the Republic of Armenia contains regulations on conclusion of contracts by means of exchanging information or reports (documents) through other means of electronic communication or communication facilities, however, it does not include the cases when an electronic contract is concluded in the on-line domain (electronic platforms) through downloading relevant data and connecting to terms and conditions of the contract or through various applications.
3. The legal regulations relating to the corporate law also lag behind the modern developments, especially in the conditions of existence of the organisational and legal forms not in line with the market relations. This especially refers to economic partnerships, the regulations whereon are not applied in practice. Besides, the other legislative acts "On limited liability companies" and "On joint stock companies", regulating corporate legal relations, are also to be reviewed for the purpose of comprehensively addressing the modern solutions therein to corporate management.

4. It is necessary to review the issue of correlation of the legislation on procurement with the civil law. In this regard, the problem is that the legislation on procurement has not been formed on the basis of the relevant norms of the contract on supply for state needs of the Civil Code of the Republic of Armenia.
5. The legal norms regulating separate types of contracts should be reviewed. This refers especially to the norms regulating the banking and insurance sectors and, in line with the developing relations, there is a necessity to review the relevant institutes. At the same time, it is necessary to eliminate all the contradictions with the special norms provided for by other legal acts regulating the sectors of the Civil Code of the Republic of Armenia.
6. In 2014, the institution of the secured right was introduced in the Civil Code of the Republic of Armenia, but no solution with sufficient clarity was given to the issue of correlation of the institutions of the secured right and the pledge, which, in itself, affects the effectiveness of application of the secured right. Thus, it is necessary to address the issues of clearly distinguishing between the two institutions and establishing peculiarities of the application thereof.
7. The legal regulations related to obligations arisen due to causing damage, i.e. the norms on damage inflicted by activities most hazardous to minors and the environment, as well as damage caused to life and health are also to be reviewed.
8. In addition to the amendments to the Civil Code, reforms of the sectoral laws such as the legislation on the financial sector: the Law of the Republic of Armenia "On consumer credits", the Law of the Republic of Armenia "On attracting bank deposits", the Law of the Republic of Armenia "On banks and banking", the Law of the Republic of Armenia "On compulsory insurance against liability arising from the use of motor vehicles", the Law of the Republic of Armenia "On transfers of funds by payment order", the Law of the Republic of Armenia "On bank secrecy", etc. should also be addressed.

### **Reviewing the institution of returning a statement of claim in civil procedure**

The process of returning, unreservedly on all the grounds, the statement of claim by the judge should be reviewed and legal opportunity should be prescribed for returning by the court office the claims submitted in violation of certain merely legislative obvious requirements. It should be mentioned that, over the past three years, 20 244 decisions on returning the statement of claim (application) were rendered by the courts of first instance of general jurisdiction of the Republic of Armenia<sup>41</sup>. Thus, taking into consideration the fact that the performance of this function is mainly aimed at clarifying whether the requirements for the form and content of the statement of claim are observed, it is therefore recommended to reserve the performance of this function to the court office through making relevant legislative amendments.

### **Prescribing cases of compulsory mediation in civil procedure**

In the legal solutions to assigning free mediation prescribed by the Civil Procedure Code of the Republic of Armenia, consider the legal opportunity to make the assigning of free mediation by the court compulsory with regard to disputes on certain legal relations (family, labour, banking, etc.).

### **Solving the issues recorded upon the results of inventory of the issues having arisen in law enforcement practice of the civil procedure**

The regulations indicated in the Civil Procedure Code of the Republic of Armenia adopted on 9 February 2018, have given rise to different issues; for example, for certain proceedings such as proceedings on cases brought upon applications on annulment of a decision of the Financial System Mediator, proceedings on applications on issuing a writ of execution for enforcement of a decision of the Financial System Mediator, cases on the return of a child unlawfully transported to or illegally kept in the Republic of

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<sup>41</sup> See the 2019 Annual Report of the Supreme Judicial Council at [http://court.am/arm/left/annual\\_report/%D5%80%D5%A1%D5%B2%D5%B8%D6%80%D5%A4%D5%B8%D6%82%D5%B4.pdf](http://court.am/arm/left/annual_report/%D5%80%D5%A1%D5%B2%D5%B8%D6%80%D5%A4%D5%B8%D6%82%D5%B4.pdf)

Armenia and proceedings on protection orders, short time limits — from 10 days to one month duration — are provided for case examinations, the compliance wherewith in practice becomes impossible.

It is therefore necessary to take an inventory of the issues having arisen from the law enforcement practice of new institutions and new regulations and to seek a solution to them.

### **Introducing a toolkit necessary for making notifications electronically**

Making judicial notifications electronic is among the key prerequisites for ensuring the effectiveness of proceedings and examination of cases within short time limits. For that reason, the new Civil Procedure Code of the Republic of Armenia provides an electronic procedure for judicial notifications for state and local self-government bodies, legal persons, individual entrepreneurs, advocates and persons participating in the case, who have filed a motion for receiving notifications electronically.

Whereas, no such procedure is prescribed by the Administrative Procedure Code of the Republic of Armenia, in the conditions laid down wherein subpoenas continue to be sent by mail. In this regard, it is therefore necessary to also make amendments to the Administrative Procedure Code of the Republic of Armenia.

It is noteworthy that procedural codes do not provide electronic procedure for sending judicial acts to persons participating in the case and, in such a case, all the acts rendered in the course of proceedings are sent to them by mail.

Accordingly, regulations should be provided by the procedural codes for sending any act approved with electronic signature of the court, to the state and local self-government body, legal person, individual entrepreneur, advocate and in case of a person participating in the case, with the expression of his or her will, to the electronic mail address provided to the court by the participant of the proceedings.

## **Introducing mechanisms necessary for submitting procedural documents electronically**

The Civil Procedure Code of the Republic of Armenia and the Administrative Procedure Code of the Republic of Armenia provide the opportunity to submit procedural documents (statement of claim, application, appeal, response to statement of claim, motion, etc.) electronically. However, according to the mentioned regulations, the procedure for submitting procedural documents electronically shall be prescribed by the Supreme Judicial Council. Nevertheless, no such procedure has been prescribed by the Supreme Judicial Council yet, nor are there technical mechanisms for submitting those documents electronically.

Based on the above-mentioned, it is necessary to ensure the introduction of the toolkit relevant for submitting procedural documents to the court electronically.

### **STRATEGIC GOALS**

*Increasing the effectiveness of administrative justice and administrative proceedings*

Introduction of the institution of specialised justice, including administrative justice, is first aimed at, among other things, ensuring the effective and complete exercise of the right to judicial protection in the sector concerned, taking into consideration the peculiarities typical of that type of justice.

Administrative justice is, perhaps, among the "youngest" legal institutions in the Republic of Armenia. During about 11 years of existence of this branch of law, two Administrative Procedure Codes were adopted in the Republic of Armenia.

Laws on making amendments to the Code were adopted for solving the issues having arisen during the application of the Administrative Procedure Code of the Republic of Armenia adopted on 5 December 2013. However, in the conditions of implementation of the mentioned measures, the Administrative Court continues to have high workload and

mechanisms aimed at examining the administrative case effectively and within shorter time limits do not exist.

## **STRATEGIC DIRECTIONS**

### **Establishing an Administrative Chamber of the Court of Cassation**

The effectiveness of the right to judicial protection of the rights of a person in the sector of specialised administrative justice is conditioned not only by the accessibility and effectiveness of the only instance of appeal, i.e. the Court of Cassation, but the full manifestation of the factor of specialisation in the Court of Cassation is also an important fact conditioning the effectiveness of that right.

Besides, acts of the specialised administrative court may not be reviewed by a court not having a relevant specialised panel of judges, nor may the acts of the specialised administrative court be reviewed by a court not having a relevant specialised panel of judges. Enshrining in the legislation of the guarantee for the existence of chambers of the Court of Cassation will become substantial only in the case when the Court of Cassation has a relevant fully specialised chamber, i.e. one examining a case on the merits and disposing thereof. As a result of absence of the factor of specialisation in cassation proceedings, the right to protection of the rights of a person in the Court of Cassation, thus also the right to judicial protection of a person in the sector of administrative justice in its entirety, become undermined and deprived of effectiveness.

It is therefore necessary to establish an Administrative Chamber of the Court of Cassation through relevant legislative amendments.

### **Clarifying subordination of the proceedings on disputing decisions, actions and inaction of the administration of the penitentiary institution**

It follows from part 2 of Article 10 of the Administrative Procedure Code of the Republic of Armenia that the Administrative Court shall not have jurisdiction over the criminal

cases falling under the competence of a court of general jurisdiction, as well as cases on serving sentences. However, with regard to the issue of jurisdiction of disputing decisions, actions and inaction of the administration of the penitentiary institution, by Decision No SDO-1439 of 22 January 2019, the Constitutional Court of the Republic of Armenia stated that unless the legal uncertainty with regard to the existing system, expressed by that Decision is overcome by the National Assembly, cases related to appealing against actions (inaction) of officials of the penitentiary institution shall be subject to examination by the Administrative Court of the Republic of Armenia, according to part 2 of Article 21 of the Constitutional Law "Judicial Code", unless the right to examine the specific case, materials or issue related to serving the sentence is clearly reserved to the court of general jurisdiction examining criminal cases.

Therefore, it is necessary to clarify the subordination of the proceedings on disputing decisions, actions and inaction of the administration of the penitentiary institution.

### **Improving the procedures for notification in administrative procedure**

Due to the operating system of notifications in administrative procedure, the Court is obliged to notify the participant of proceedings about each procedural action in each case mainly by mail. Moreover, no distinction is made as to whether the participant of the procedure is a natural or legal person, an advocate, a state or local self-government body. In all cases, the Court spends actually large-scale financial and human resources for fulfilling the legislative requirement (only in Yerevan, it exceeds AMD 400 million).

It should be noted that the system of judicial notifications provided for by the new Civil Procedure Code of the Republic of Armenia significantly reduced the high workload of courts and amount of the funds being spent, in particular upon receipt of the first subpoena by the state and local self-government body, legal person, individual entrepreneur, as well as the person participating in the case, i.e. a representative having the status of an advocate, they are notified about the time and venue of the regular court session by way of placing the relevant information on the official website of the judiciary.

It is therefore necessary to envisage such regulations in administrative procedure as well.

### **Applying written and simplified procedures in administrative procedure**

Currently, the stage of judicial examination in administrative procedure may be conducted in writing only upon the consent of participants of procedure, whereas in specific cases, prescribing mandatory application of written procedures will result in reducing high workload of the court.

Besides, as a rule, provision of the written procedure by the Civil Procedure Code of the Republic of Armenia for the stages of appeal and cassation has not only reduced the high workload of those courts, but has also promoted maintenance of the case examination in those instances within a reasonable time limit; however, the Administrative Procedure Code of the Republic of Armenia does not provide for application of the written procedure in the stages of appeal and cassation.

It is therefore necessary to introduce the written procedures also in administrative procedure through relevant legislative amendments.

At the same time, in contrast to civil procedure, opportunity to examine the case through the procedure for simplified proceedings is not provided for administrative procedure. Simplified proceedings imply a simplified procedure for the case examination with combination of the general rules for examination of the administrative case and the special rules typical of the procedure for simplified proceedings, mainly without convening court sessions. This is aimed at implementing the principle of procedural saving by means of not loading the examination of separate cases with additional procedural stages.

The necessity of introducing simplified proceedings in administrative procedure is first conditioned by the fact that excessively large quantity of decisions on fines rendered by the Road Police is disputed in the Administrative Court, the amount of fine envisaged whereby does not exceed AMD 5.000. Administrative cases brought upon the request

on declaring invalid the acts of state bodies and the officials thereof are mainly instituted by natural persons (91.5%) against the Road Police of the Republic of Armenia.

It follows from the aforementioned that exceptionally simplified procedure should be prescribed for such cases, taking into consideration the amount of the administrative penalty.

### **Establishing restrictions on appeal in administrative procedure**

The measures aimed at proportionately restricting both the accessibility of the Administrative Court and the right to appealing against decisions of the Administrative Court may be considered as an effective measure aimed at reducing the high workload of the Administrative Court.

Referring to the accessibility of superior courts (the Court of Appeal and the Court of Cassation), the ECHR Grand Chamber noted that the manner of application of part 1 of Article 6 of the Convention in respect of the Court of Appeal and the Court of Cassation depends on the peculiarities of the given procedure and, at the domestic level, the examination of a case should be considered in its entirety. Taking into consideration the legal positions of both the Constitutional Court of the Republic of Armenia and the European Court, it is possible to restrict the opportunity of appealing against the decisions in those cases of the Administrative Court of the Republic of Armenia, the amount of penalty applied upon the administrative acts disputed whereby does not exceed the two-fold of the minimum salary.

### **Reviewing the regulations related to state duty**

Reviewing the regulations on exemption from state duty upon applications on appealing against actions of compulsory enforcement officers, as well as upon appeals against the decision on administrative offences adopted by relevant authorised bodies is considered as a means of reducing the high workload of the Administrative Court.

It is noteworthy that persons are currently exempt from the obligation to pay state duty upon applications on appealing against actions of compulsory enforcement officers, as

well as upon appeals against the decision on administrative offences adopted by relevant authorised bodies. And the judicial practice has developed in such a direction that even when dismissing proceedings in a case on the ground of the dispute being settled on the merits the obligation to compensate the judicial expenses is vested with the respondent administrative body, the latter is not obliged to pay the state the amount of the state duty prescribed for applying to the court upon request on disputing the administrative act on administrative offences, which the plaintiff is exempt from paying by virtue of law.

It appears that plaintiffs in almost all the cases resulting in the high workload of the Administrative Court are exempt from the obligation to pay state duty. Accordingly, it is necessary to prescribe an obligation to pay state duty and prescribe clear grounds for the cases of exempting from payment of the state duty, which will be applied only upon the court decision.

### **Increasing the effectiveness of special proceedings in the administrative procedure**

Proceedings of cases on subjecting to administrative liability through judicial procedure have been classified as special proceedings of the administrative procedure of the Republic of Armenia, which need to be deleted from the Code, being a function of the administrative body.

Currently, proceedings have been highlighted in the Administrative Procedure Code, the necessity for the examination whereof through special procedure is not substantiated. In particular, court actions provided for by the Administrative Procedure Code are submitted upon claims submitted by non-governmental organisations, in cases on disputing the lawfulness of decisions of the authorised body with regard to licences and on disputing notarial actions, and with regard to these cases, it is not necessary to apply any peculiarity of case examination. Moreover, these cases may not be considered as special proceedings, as there are parties therein with opposite interests and substantive claims.

It is therefore necessary to review the special proceedings in the administrative procedure.

### **Increasing the effectiveness of administrative proceedings**

#### **- Increasing the effectiveness of appeals against administrative acts through the administrative procedure**

Guaranteeing of the right to proper administration, enshrined by Article 50 of the Constitution as amended in 2015, requires improvement of the procedures for administrative proceedings and, in particular, for appealing against administrative acts.

Accordingly, for the purpose of improving the procedures for appealing against administrative acts and guaranteeing the right to proper administration, it is necessary to form a uniform body for administrative appeals, which will have the right to examine the administrative appeals filed in all cases. In the given administrative body, cases of certain category will be examined by persons specialised in these cases. However, these persons must regularly — for example, once in two years — be subjected to rotation.

Administrative acts may be appealed against before the Administrative Court only after having been appealed against in the administrative body. Through such amendments, the high work-load of the Administrative Court will be reduced and implementation of the specialised system of administrative appeals will be ensured.

#### **- Improving the legislation on administrative offences**

The Code on Administrative Offences is currently in force in the Republic of Armenia, which was adopted on 6 December 1985 by the Supreme Council of the ASSR and enacted on 6 June 1986. With its underlying conceptual logic and philosophy, the systematic structure and unsolvable contradictions with a dozen of other laws, with numerous successful and unsuccessful amendments having been made over decades, with lots of outdated or practically inapplicable provisions, incomplete and imperfect

measures of administrative liability, this Code is unable to settle the issues to be addressed thereby and does not correspond to the requirements of the legal state.

However, a new draft Code on Administrative Offences has recently been elaborated and steps have been taken, aimed at the adoption thereof.

Taking into consideration the fact that the issues in the sector of administrative offences are rather extensive and systematic, it is necessary to adopt a new Code on Administrative Offences complying with the present requirements of the legal state.

**- Reviewing the penalties provided for administrative offences**

Taking into consideration the fact that the current regulations fail to reflect the objectives of the administrative influence, reviewing of the legislative regulations providing liability for administrative offences is also among the strategic goals. An administrative penalty must be imposed for shaping good behaviour of a person and preventing the commission of new administrative offences. Whereas the reality is quite different; administrative penalties are applied massively, thus creating a climate of public mistrust towards the administrative action carried out by administrative bodies, contributing to the establishment of the practice of taking by the superior administrative bodies partial decisions in detriment to a citizen, which, in its turn, among other negative consequences, results in the great number of appeals through judicial procedure.

Taking into account the above-mentioned, it is necessary to adopt a new approach, according to which the amounts of penalty will be changed and, in addition to the fine, as administrative penalty, penalty points will also be established, as a result of the application whereof consequence other than property liability will arise for offenders; for example, drivers may even be deprived of the right to drive vehicles for a certain period.

## **STRATEGIC GOAL**

### *Reforms in the sector of bankruptcy*

Importance is attached to the implementation of ongoing reforms in the sector of bankruptcy, taking into consideration the necessity to improve not only the justice system, but also the business environment. Notwithstanding the reforms implemented in the sector of bankruptcy in different years, however, it requires implementation of ongoing improvements in line with the global tendencies and developing economic relations.

The reforms in the sector of bankruptcy must be implemented for ensuring the easy and predictable accessibility of bankruptcy proceedings, clear separation of the institutions of liquidation and rehabilitation, effective, proper and timely settlement of bankruptcy cases.

## **STRATEGIC DIRECTIONS**

### **Increasing the professional competence of bankruptcy administrators, capacity building thereof**

Bankruptcy administrators are not currently obliged to have higher education, an academic degree or experience related to the occupation thereof; it is sufficient to have higher education in any profession and pass the qualification examination. The ongoing development of the profession is not subject to monitoring and does not correspond to the specific issues existing in Armenia.

In this regard, it is necessary to envisage the requirement for having higher education in relevant profession (for example, academic degree in the fields of law, accounting, administration or economics), review the procedure for qualification of bankruptcy administrators, develop and introduce education programmes for professional

instruction of administrators and organise, on the basis thereof, instruction of candidates for administrators before receiving qualification. This will be a necessary condition for the qualification test of administrators to be attended only by candidates having high professional competence.

Besides, the existence of sources of professional literature has essential significance for acquiring the profession of an administrator. In this regard, it is necessary to elaborate comprehensive documents of the bankruptcy sector, i.e. scientific and practical interpretations of the Law "On bankruptcy" according to the articles, manuals and guidelines which will include the whole analysis of the legislation on bankruptcy and of bankruptcy proceedings, as well as will present accessible interpretations of the Law, taking into account the judicial practice and procedural approaches, peculiarities of proceedings and practical issues. As a result, interested persons will have reliable sources for acquiring knowledge on bankruptcy proceedings and providing solutions to the practical issues having arisen.

On the other hand, the self-regulatory organisations of bankruptcy administrators must, in co-operation with the Ministry of Justice, improve the training programmes for bankruptcy administrators, ensuring the up-to-dated content of the instructional materials, the diversity and quality thereof.

### **Reviewing the procedure for appointment and substitution of bankruptcy administrators**

The current system of the election of bankruptcy administrators is not effective. The problem is that practice has developed on the basis of the existing regulations, according to which, at the expense of the quantity and nature of cases being handed over, incomparably high remuneration is observed among separate administrators, in contrast to other administrators. In this regard, it is necessary to review the system of appointment of bankruptcy administrators, introduce new software for the election of administrators, which must consider a number of factors (complexity of cases, professional skills of the administrator, area of activities) in the election of an

administrator, ensuring the fair distribution of bankruptcy cases between bankruptcy administrators, increasing the role and influence of creditors in the election of bankruptcy administrators.

At the same time, for the purpose of excluding the potential influence in respect of bankruptcy administrators, the independence of bankruptcy administrators should be ensured through establishing clear grounds for termination of the responsibility and powers thereof, reducing the broad judicial discretion existing in the current regulations.

### **Reviewing the institution of disciplinary liability for bankruptcy administrators**

Currently, the Law has reserved the overall supervision over the activities of a bankruptcy administrator to the "Self-Regulatory Organisation of Bankruptcy Administrators", which shall have the right to apply disciplinary liability within the scope of overall supervision. Whereas, the study of the law enforcement practice allows us to claim that the overall supervision cannot be deemed to be sufficient. In particular, as of 2018, throughout the whole activities of the self-regulatory organisation, 23 disciplinary proceedings have been instituted against administrators, 6 of which have been rejected by the disciplinary commission, 10 have been dismissed, disciplinary proceedings have been instituted and a warning has been applied in 7 cases. Moreover, four of the applied warnings were given for the failure of bankruptcy administrators to fulfil the liabilities to the Organisation with regard to membership fees. At the same time, many applications/appeals are periodically entered at the Ministry of Justice with the request to reveal the lawfulness of the activities of bankruptcy administrators. For the purpose of examining the relevant applications, the Ministry of Justice does not have sufficient means for legal examination of the issues raised in the applications and to provide a final solution in the case when the Ministry is the one that qualifies bankruptcy administrators. The current situation is also leading to reduction of accountability of administrators, and this decreases the effectiveness of the sector regulation. Besides, the relations pertaining to the proceedings on subjecting bankruptcy administrators to disciplinary liability are regulated neither by the Law nor the statute of the Organisation. However, the grounds for disciplinary liability and further course of the proceedings

must be clearly envisaged by legislation and provide the person with the opportunity to predict the consequences that might be unfavourable for him or her.

It is therefore necessary to review the institute of disciplinary liability for bankruptcy administrators, vesting the Ministry of Justice with the powers to regulate the sector.

### **Clarifying the process of taking an inventory of, evaluating and placing on auction property of the debtor**

Currently, the processes of taking an inventory of and evaluating property of the debtor by the bankruptcy administrator are not comprehensively regulated, which gives the bankruptcy administrator an opportunity to display broad discretion. In this regard, it is necessary to develop clear standards, simple and clear procedures for taking an inventory and evaluating, elaborate templates of the declaration of property, introduce mechanisms for supervision over the process of taking an inventory and evaluating, i.e. in the way of conducting audit (random verifications) by the external body (for example, the Ministry of Justice). Besides, it is necessary also to introduce a special procedure for election of the person evaluating the property, by way of involving the court.

It is necessary to introduce — through relevant legal regulations — a mechanism for the electronic sales of property in bankruptcy proceedings for carrying out the sales of property within the scope of the electronic bankruptcy system. The information on the property subject to sales must be accessible for all the participants and the process of submitting price proposals must be transparent.

### **Establishing sustainable mechanisms contributing to the financial rehabilitation**

The practice analysis attests that the institute of financial rehabilitation is less effective; in practice, most of the companies in the process of bankruptcy immediately pass to the liquidation process. The examinations carried out in the sector of bankruptcy show that, during bankruptcy proceedings, 10% of debtors wished to submit a financial rehabilitation plan and they submitted, the 18% of them wished but did not submit and

the 72% of them did not wish to submit a financial rehabilitation plan. It is noteworthy that, with regard to this issue, the picture essentially differs, depending on the status of the person being inquired; a higher percent of natural persons did not wish to submit a financial rehabilitation plan — 77.2%, compared to 63.6% of legal persons. At the same time, the essentially higher percent of legal persons submitted a financial rehabilitation plan — 16.8%, in compared to 5.7% of natural persons<sup>42</sup>.

In this regard, it is necessary to take steps for increasing attractiveness of the toolkit for financial rehabilitation through increasing public awareness, introducing a toolkit promoting the implementation of financial rehabilitation plans (for example, flexible mechanisms for the remuneration and bonuses of bankruptcy administrators in case of approval of financial rehabilitation plans), providing state support for financial rehabilitation of companies in accordance with the peculiarities of economic relations of the country, elaborating templates of the rehabilitation plans and organising relevant courses for bankruptcy administrators, judges and interested persons.

### **Increasing the role of creditors in bankruptcy proceedings**

Creditors are among the important actors of any sustainable financial system and the role thereof must be visible also in the bankruptcy system and they must have proper rights in the main stages of the bankruptcy process.

In this regard, it is necessary to extend the rights of a creditor in taking decisions on approving the remuneration and expenses of the bankruptcy administrator, appointing a bankruptcy administrator and terminating the powers thereof, approving the plan for liquidation or financial rehabilitation.

### **Increasing the roles of the court and judges in bankruptcy proceedings and capacity building thereof**

Despite the fact that the specialised bankruptcy court has been operating since 2019, according to the examinations carried out, judges enjoyed the least confidence among

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<sup>42</sup> <http://moj.am/storage/uploads/0AM02.pdf>, page 80

all the important actors in the bankruptcy system; only 32.5% of the persons being inquired thought that judges have relevant professional skills, and less than 50% thought that judges have administered cases in the reasonable, impartial manner and under the procedure prescribed<sup>43</sup>.

In this regard, it should be first mentioned that the creation of the new bankruptcy court has not been accompanied by reviewing the number of judges examining bankruptcy cases, and the high workload of the court affects the time limits for the case examination and effectiveness of proceedings. Besides, it is necessary to ensure the examination of bankruptcy cases by separate judges specialised in the field of bankruptcy in the Court of Appeal as well, and later the issue of creating a Bankruptcy Court of Appeal should be considered, as continuing at the level of superior instances the chain of examination of cases by a specialised court is very important in view of the effectiveness of case examinations and reduction of time limits.

The introduction of the electronic bankruptcy system and implementation of document circulation through electronic means will also have their positive influence in increasing the effectiveness of the Bankruptcy Court.

In addition, it is necessary to clearly prescribe by legislation definite time limits for specific actions of the court, to exclude, as far as possible, the elements of judicial discretion in procedural actions.

It is necessary also to review the training programmes for judges and, apart from training on legal issues, carry out trainings for bankruptcy judges also on non-legal topics such as on economics, business, finances and management of finances.

Steps should be taken also for developing the technical capabilities of the bankruptcy court, supplementing the technical means of the court and increasing the level of technical readiness of the staff. It is especially important in the conditions of the perspective of introducing the electronic bankruptcy system.

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<sup>43</sup> <http://moj.am/storage/uploads/0AM02.pdf>, pp. 70-73

## **Raising public awareness on the bankruptcy system**

The results of the examination carried out in the sector of bankruptcy show that organisations and natural persons are informed about the bankruptcy process when they personally become involved in bankruptcy proceedings; in particular, about 70 per cent of the debtors inquired within the scope of the examination had not been informed about the bankruptcy processes before being personally involved in the bankruptcy proceedings. They are also inclined to obtain information orally and from non-official sources, which may give rise to confusion (very few debtors make use of the electronic resources) and only 11.3% of them consult the legislation on their own initiative. The lack of knowledge and awareness reduces the transparency and accountability of the system, as participants of the system fail to assess the compliance of their actions with the legislation or to assess the effectiveness thereof.

In this regard, it is necessary to implement public awareness measures (through billboards, television advertisements, television programmes, press), make references from websites of financial organisations to the sources of information on bankruptcy proceedings (for example, to the new platform of electronic bankruptcy), especially for financial organisations — establish requirements about assuming obligations by their clients and the consequences arising from the failure to fulfil the payment obligations and being declared bankrupt as a result thereof.

At the same time, it is worth mentioning that by the draft Law "On making amendments and supplements to the Law of the Republic of Armenia "On bankruptcy"" and the drafts of related laws, developed by the Ministry of Justice and coordinated in the format of public discussions, based on point 68 of the Action Plan of Activities of the Government of the Republic of Armenia for 2018-2022, many legal regulations have been prescribed, which are already important steps from the viewpoint of reforming the sector of bankruptcy. Thus, by the above-mentioned drafts, among other things, legal grounds were established for ensuring the professional instruction and professionalism of bankruptcy administrators, legal regulations were prescribed for increasing the accountability of bankruptcy administrators, the institute of liability of bankruptcy administrators was reviewed, grounds were established for increasing the involvement

of specialised organisations in bankruptcy proceedings, regulations relating to the electronic bankruptcy system were envisaged (electronic inquiries, on-line meetings, electronic sales of property), a flexible system of the remuneration (bonuses) of bankruptcy administrators was envisaged for cases of completion of proceedings within short time limits and financial rehabilitation, regulations were envisaged from the viewpoint of protection of the rights and lawful interests of third persons participating in bankruptcy proceedings.

### **Elaborating universal legislation on bankruptcy**

In the long-term perspective, steps should be taken for elaborating systematic, comprehensive and universal legislation (in the form of a code) for the purpose of regulating by one uniform document all the procedural and material aspects related to bankruptcy proceedings.

Within the scope of the Bankruptcy Code, among other things, it is necessary to:

1. essentially change the bankruptcy model of the Republic of Armenia, separating the liquidation and rehabilitation processes, envisage a programme for rehabilitation or liquidation from the very beginning;
2. clarify the status of all the possible parties and participants of bankruptcy proceedings;
3. improve the legal regulations of bankruptcy of natural persons;
4. reduce the time limits for bankruptcy proceedings;
5. review all the existing regulations containing corruption risks;
6. review the issues of management by the bankruptcy administrator of the property and business owned by the debtor in bankruptcy proceedings;
7. envisage a system of permissible expenses in bankruptcy proceedings.

## STRATEGIC GOAL

### *Developing alternative methods of dispute settlement*

Importance is attached to developing alternative methods of dispute settlement from the viewpoint of ensuring the effectiveness and accessibility of justice. Developing alternative methods of dispute settlement is important also for the purpose of promoting internal and external investments. The investment attractiveness of Armenia is also conditioned by the predictability of settlement of commercial disputes, wherein the alternative mechanisms for dispute settlement have a major role.

Currently, in the conditions of high workload of the courts, promoting and enhancing the application of alternative methods of dispute settlement is strictly necessary. Moreover, the examination of the statistical data proves that the majority of cases constitute a certain type of cases, wherein the application of alternative mechanisms for dispute settlement will be strictly effective. Thus, in 2018, the 75 692 (70.1%) of the 106 618 civil cases on a claim for levying money in execution were instituted on the basis of statements of claim filed by banks and credit organisations, and the 12 902 (12.1%) of them – on the basis of those filed by telecommunication operators<sup>44</sup>.

In line with the best international practice, global development tendencies and the judicial and social-economic peculiarities of the Republic of Armenia, all the known institutes of dispute settlement should be comprehensively addressed and sustainable mechanisms for the implementation thereof should be developed and introduced within the scope of the reforms to be implemented in the mentioned sector.

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<sup>44</sup> See the 2019 Annual Report of the Supreme Judicial Council (p. 73) at [http://court.am/arm/left/annual\\_report/%D5%80%D5%A1%D5%B2%D5%B8%D6%80%D5%A4%D5%B8%D6%82%D5%B4.pdf](http://court.am/arm/left/annual_report/%D5%80%D5%A1%D5%B2%D5%B8%D6%80%D5%A4%D5%B8%D6%82%D5%B4.pdf)

## **STRATEGIC DIRECTIONS**

### **Improving the arbitration legislation**

Despite the fact that the Law "On commercial arbitration", especially after the amendments made in 2015, is in line with the regulations of the UNCITRAL Model Law "On international commercial arbitration", however, there are certain legal issues which should be addressed from the perspective of ensuring the effectiveness of arbitration. In this regard, it is necessary to improve, through legislative regulation, the regulations aimed at providing support to the arbitration, improve the provisions regulating the independence and flexibility of the arbitration process, including from the prospective of choosing the procedure and the law to be applied, to consider the issue of ensuring the confidentiality of the process of examining by the court applications on revocation, recognition or compulsory enforcement of arbitration awards.

### **Ensuring opportunities for establishing arbitration centres**

It should be noted that several arbitration institutions operate in Armenia, the majority of the cases examined whereby are instituted on the basis of claims filed by financial organisations. Moreover, the arbitration institutions in the Republic of Armenia mostly operate at the local level and may, only in exceptional cases, examine cases of international nature. In this regard, taking into account a number of favourable factors, in particular the membership to the EAEU, role of the Armenian Diaspora, an opportunity should be created for establishing arbitration institutions. The arbitration courts organised by the mentioned union may examine both the disputes arising between the companies operating in Armenia and international commercial disputes, with the participation of international arbitrators.

Both the practice of establishment and activities of the relatively newly-created arbitration centres (Arbitration Centre of Russia, Arbitration Centres of Astana and Dubai) and the practice of the traditional centres enjoying high international reputation

(Centres of London, Stockholm and Zürich) should be considered in establishing the centre.

As a result, such an initiative will not only serve as a great motivation for developing the alternative methods of dispute settlement in Armenia, but will also contribute to improving the investment environment in Armenia, raise the reputation of Armenia at least at the regional level.

### **Developing other alternative measures of dispute settlement**

For ensuring the development of alternative measures of dispute settlement, one should not be restricted with only the directions for developing the arbitration but the opportunities of developing other methods, including the mediation should be considered. In this respect:

- (1) it is necessary to take measures for introducing modern tools for implementation of the mediation (on-line mediation, mediation by telephone), through the use whereof carrying out the settlement of disputes between consumers and organisations providing public services. Through such a platform, the dispute settlement may be carried out within rather short time limits, with obviously low cost-consumption for the consumer or even for free of charge, at the expense of the person providing public services;
- (2) taking into account the effectiveness of examination of disputes by the Financial System Mediator with the participation of financial organisations, it is necessary to expand the directions of activities of the Financial System Mediator, vesting the latter also with the powers of examining and settling the issues between legal persons and financial organisations;
- (3) it is necessary to take all further steps for signing the United Nations Convention on International Settlement Agreements Resulting from Mediation<sup>45</sup> and for establishing by the legislation of the Republic of Armenia relevant mechanisms

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<sup>45</sup> By Decision No 678-N of 30 May 2019, the Government approved the proposal to sign the United Nations Convention on International Settlement Agreements Resulting from Mediation.

for the application thereof for the purpose of supplementing the regulatory legal framework regulating the relations pertaining to international mediation and promoting the harmonious development of international economic relations.

At the same time, it is necessary to consider also the issue of introducing other non-traditional measures for dispute settlement (adjudication, case evaluation, early neutral evaluation, ombuds scheme).

### **Raising the level of relevant legal education and public awareness**

From the perspective of developing the alternative methods of dispute settlement, importance is attached also to raising the level of the legal education of that field, introducing academic programmes on those alternative methods in educational institutions or modernising the existing programmes for the purpose of providing the market with professional cadres. At the same time, it is necessary to raise public awareness on the effectiveness of the alternative methods of dispute settlement, implement public awareness measures (through billboards, television advertisements, television programmes, press). An effective measure can be creating a publicly accessible website containing comprehensive information on the alternative methods of dispute settlement, with relevant references, and, in particular, make references to that platform from websites of organisations providing public services, as well as of financial organisations.

## **STRATEGIC GOAL**

*Increasing the effectiveness of the notary system*

### **STRATEGIC DIRECTIONS**

#### **Introducing procedures necessary for the application of the institution of the endorsed writ of execution**

Application of the institution of the endorsed writ of execution may serve as an effective measure for reducing the high workload of civil courts, taking into account the fact that the current high workload in civil cases in the courts of first instance of general jurisdiction is first conditioned by cases on a claim for levying money in execution. However, the wide application of the institution of the endorsed writ of execution is practically impossible, conditioned by the fact that the toolkit necessary for the application thereof is not yet developed and adopted.

#### **Reviewing the procedures for subjecting a notary to disciplinary liability and terminating the powers thereof**

For increasing the effectiveness of the notary system, it is necessary to review the procedures for subjecting a notary to disciplinary liability and terminating the powers thereof, as the grounds and procedures prescribed by law are not clear.

#### **Increasing the effectiveness of notarial actions**

For increasing the effectiveness of notarial actions, it is necessary to envisage the opportunity of video-recording, through mutual agreement between the parties, the notarial actions personally attended by the parties. As a result, it is expected to ensure the effective protection of interests of both notaries and the parties, reduce the probability of judicial disputes and ensure the opportunity of using additional evidence in case of judicial disputes.

## **STRATEGIC GOAL**

### *Increasing the effectiveness of the system of advocacy*

With a view of ensuring legal aid, advocacy based on independence, self-governance and legal equality of advocates shall be guaranteed by the Constitution with the amendments of 2015.

Though the necessity of improving the system of advocacy and the steps to be taken in that direction were constantly addressed in the previous stages of legal and judicial reforms, however, taking into account the importance of this sector from the perspective of properly ensuring and protecting human rights, the mechanisms aimed at ensuring the right to high-quality legal aid need to be elaborated, continuously improved and developed.

Attaching importance to the necessity of ensuring the quality, accessibility and effectiveness of justice, within the scope of the field "Equality of all persons before the law, justice and protection of human rights" in its programme, the Government of the Republic of Armenia laid down the necessity and commitment to introduce measures of incentives for provision of free legal aid, as well as, to take measures for contributing, among other sectors, to the development of advocacy.

Within the scope of this strategic goal, it is necessary to take measures which will be aimed at the institutional development of both the mechanisms for the right to free legal aid and of the Chamber of Advocates.

## **STRATEGIC DIRECTIONS**

Expanding the scope of beneficiaries of free legal aid

Since the adoption of the Law "On the profession of advocate", the latter has been subjected to reforms on multiple occasions, including by gradually expanding the scope

of persons having the right to receive free legal aid by public defenders. Despite the progress recorded as a result of the steps implemented in this direction, the need for expansion of the scope of persons having the right to receive free legal aid still exists. Hence, it is necessary to discuss the matter of including the below-indicated persons in that scope, in particular:

- foreigners, for appealing the decision on expulsion;
- persons with regard whereto proceedings in cases on declaring as having no active legal capacity or having limited active legal capacity, declaring the citizen having been declared as having no active legal capacity as having active legal capacity or abolishing the limitations of active legal capacity of the citizen;
- victims and witnesses, where the latter are fixed-term compulsory military servants or a child.

Besides, the legislation in effect restricts provision of free legal aid in cases when the case on property (monetary) claim of the person having the right to receive free legal aid exceeds the one-thousand-fold of the minimum salary. Whereas, in the context of expansion of the scope of beneficiaries of free legal aid, it is also necessary to review the threshold of the monetary limitation envisaged for receiving free legal aid in cases on property claims.

Parallel to expanding the scope of beneficiaries of free legal aid, steps need to be undertaken for increasing the quality of the legal, including free aid provided. Moreover, this aim must bear a continuous nature and include the consistent development of the professional skills and capacities of public defenders and advocates in general, continuous development of training procedures, modernisation of training programmes, making the criteria for selection of specialists conducting training stricter, etc.

### **Developing alternative mechanisms for provision of free legal aid**

With a view to ensuring accessibility of justice, it is necessary to develop the alternative mechanisms for provision of free legal aid, in particular, through introducing effective

mechanisms of pro-bono legal services, which, in its turn, will contribute to the reduction of the workload of public defenders.

In particular, it is necessary to create a new platform which will include advocates who are not public defenders, attendees of the School of Advocates, as well as lawyers of law firms, who will carry out provision of free legal aid in various formats.

### **Increasing the effectiveness of activities of public defenders**

At present, public defence is carried out through the Office of the Public Defender, which is a structural sub-division operating within the composition of the Chamber of Advocates. Funding of the Office of the Public Defender is implemented at the expense of the State Budget, and the statistical data of applications of citizens having applied to receive free legal aid and the cases of actual provision of free legal aid are taken into account in order to determine the amount of funding. Moreover, although the number of advocates working at the Office of the Public Defender is defined by the Board of the Chamber of Advocates, it is restrained by the funding provided at the expense of the State Budget.

The main issue in the course of activity of the institute of the public defender is the overload of public defenders, which is conditioned by the incomparably low number of public defenders as compared to the constantly growing number of cases, which, objectively, could not but have impact also on the quality of services provided by public defenders. In this respect, the primary step aimed at increasing the effectiveness of activities of public defenders is reduction of the overload of public defenders.

Besides, it is necessary to undertake steps for the reform and development of the infrastructures of the Office of the Public Defender.

### **Developing the activities of the School of Advocates**

In compliance with the legislation in effect, the main mission of the School of Advocates is the organisation and holding of the professional instruction of attendees, qualification examination and professional training of advocates.

With a view to developing the activities of the School of Advocates, it is necessary to re-assess the activities of the School of Advocates in the sense that the latter ensures the entry of advocates armed with practical skills and capacities necessary for the activity of the advocate to the community of advocates.

The continuous improvement of the process of professional instruction at the School of Advocates, as well as ensuring of simplicity, objectiveness and transparency of the mechanisms for holding qualification examinations are primary in this respect. Professional instruction of attendees of the School of Advocates must not evolve into a mere formal process aimed at obtaining an advocate's license, but must ensure the teaching of the skills and abilities of practical significance and importance for the advocate. And, for that, it is necessary to carry out, on consistent and continuous bases, modernisation of educational programmes and bringing them into compliance with modern requirements and internationally accepted criteria, make the criteria for the selection of lecturers for instruction at the School of Advocates stricter.

### **Improving the rules of conduct and integrity of the advocate**

The Code of Conduct for Advocates prescribes the uniform rules of conduct for and principles of ethics of the profession of advocate, which are binding for all advocates. Currently, the "Code of Conduct for Advocates", approved by the General Assembly of the Chamber of Advocates back in 2012, is in effect. Whereas, the main principles of the rules of conduct of advocates and their regulations need to be prescribed by law, which will be a guide when prescribing the code of conduct for advocates.

### **Developing the internal mechanisms of the Chamber of Advocates**

Form the point of view of the effectiveness of the advocacy system, as well as ensuring the real self-management of the Chamber of Advocates, it is necessary to discuss the matter of necessity to elaborate and introduce mechanisms for the Board of the Chamber of Advocates to be independent — in institutional terms — from the Chairperson of the Chamber of Advocates.

Besides, the Qualification Commission of the Chamber of Advocates is formed with a view to organising the qualification examination and summarising their results. Moreover, the Chairperson of the Qualification Commission is ex officio the Chairperson of the Chamber of Advocates. In conditions of such regulations, the probability of conflict of interests is great, and the matter of necessity to review the legal regulations in effect also needs to be discussed with a view to avoiding it.

## **STRATEGIC GOAL**

### *Reforms of the compulsory enforcement system*

Existence of a sustainable compulsory enforcement system is one of the most important components for the effectiveness of justice. It is noteworthy that since the adoption of the Law "On Compulsory Enforcement of Judicial Acts", the legal system of the Republic of Armenia has undergone several institutional changes. Despite the fact that multiple essential changes were made by the Law No HO-126-N of 23 July 2019 "On making amendments and supplements to the Law 'On Compulsory Enforcement of Judicial Acts'", the legislation of the field of compulsory enforcement needs a systemic revision.

## **STRATEGIC DIRECTIONS**

### **Prescribing comprehensive legal regulations on enforcement proceedings**

The Law in effect provides for a number of acts subject to compulsory enforcement, but all the specifics related to the compulsory enforcement of those acts are not clarified within the scope of the Law, relations in connection with the compulsory enforcement of each of them are not subjected to institutional regulation, and it is not always that the

provisions of the enforcement of judicial acts may comprehensively regulate also the relations in connection with other acts subject to enforcement. Besides, there are cases in practice, when the Compulsory Enforcement Service receives writs of execution which have been issued in claims of recognition, based on judicial acts not assuming enforcement or such acts the enforcement whereof is problematic in practice, for instance, to prescribe compulsory servitude, recognise a person's ownership over property, conclude a conciliation agreement, the enforcement whereof is conditioned by the fulfilment of liability of the claimant party, etc., and their enforcement becomes impossible in practice.

Hence, based on the type and nature of acts subject to enforcement, it is necessary to prescribe comprehensive legal regulations on enforcement proceedings and enforcement actions, taking into account all the specifics of the acts subject to compulsory enforcement.

### **Specifying differentiated manifestations of enforcement costs**

Currently, the costs for performing enforcement actions are levied based on the size of the amount being levied in execution or of the value of the property. Whereas, in conditions of such mechanisms, situations arise when the enforcement cost subject to levy in execution obviously exceeds the volume and complexity of actions performed by the compulsory enforcement officer and vice-versa, an obviously small enforcement cost is paid for the large volume of the work performed, based on the amount being levied in execution.

Hence, it is necessary to prescribe mechanisms so that the determination of the amount of enforcement costs is not restricted to the size of the value of the property or of the amount being levied in execution, based on the volume and specifics of performance of enforcement actions as well.

## **Reviewing the grounds and procedure for suspension of enforcement proceedings**

The legal regulations on the grounds and procedure for suspension of enforcement proceedings need to be reviewed, ensuring the uniformity of those grounds and excluding the opportunity to suspend proceedings upon the discretion of the compulsory enforcement officer, by prescribing them as general powers exercised by the compulsory enforcement officer.

## **Expanding the means of application of the electronic toolkit in enforcement proceedings**

From the point of view of reduction of time limits for performance of enforcement actions and increasing the effectiveness of enforcement proceedings in general, importance is attached to the application of modern technical solutions. In particular, it is necessary to improve the mechanisms for electronic notifications, expanding the means of notification and handing over decisions through mobile notifications and messages, which are currently applied in limited cases. Besides, in order to ensure the effectiveness of administration, the system of electronic document circulation between the Compulsory Enforcement Service and all state bodies and interested persons must be developed, the opportunity for participants of enforcement proceedings to carry out communication with the compulsory enforcement officer electronically — appealing decisions, submitting applications, receiving responses electronically, must be expanded. Besides, in order to ensure the accuracy of calculation of amounts subject to levy in execution within the scope of enforcement of writs of execution in monetary claims, it is necessary to introduce electronic tools for automatic calculation of all interests calculated against monetary liability and other fees, thereby excluding on the basis of calculations submitted by the holder of the claim (in particular, the bank and other financial organisation).

It is also necessary to re-arm the system of electronic auctions, improve the technical equipment (software) for holding auctions.

## **Reducing time limits for enforcement proceedings**

From the point of view of protection of the rights of persons, importance is also attached to ensuring the conduct of enforcement proceedings within short time limits. In this respect, it is necessary to review the time limits for all enforcement actions, especially stressing the introduction of a toolkit for transferring the amounts levied in execution within enforcement proceedings to the holder of the claim.