TAIEX Peer Review on Reforms in Judiciary, Penitentiary and Prevention of Torture and Ill-Treatment in Armenia (JHA IND/EXP 64029) – 6th-10th March 2017 – Expert's report

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I. EXECUTIVE SUMMARY

1. The evaluation object of this report has incidence on the organisation of the Judiciary and aspects connected with the internal and external independence of the courts in Armenia, that is, with the possibility of administering justice. It also comprehends an insight on the fundamental domains of the quality and efficiency of the justice system attending to its reality and perspectives.

2. The analytical method chosen stands on the comparison between the relevant accessible written documents and the contents collected on several meetings held on Yerevan between 06 and 10 march 2017 with Armenian public and private institutions and organisations having local action – Delegation of the European Union to Armenia, Ministry of Justice, Council of Justice, Judicial Department, Prosecutors' Office, Courts, Academy of Justice, Chamber of Advocates of the Republic of Armenia, Yerevan Public Defender Office (Chamber of Advocates), Social Justice NGO, Armenian Helsinki Committee, Helsinki Citizens' Assembly Vanadzor Office, Armenian Lawyers' Association, Open Society Institute, Protection of Rights without Borders, Institute of Democracy Development, Civic Development and Partnership Foundation, UNICEF, Council of Europe, US Embassy and USAID. It also takes into account, as to the public evaluation of the system and citizens awareness, spontaneous transmission of views by Armenian citizens.

3. The legal system of Armenia is presented as being under a strong tension towards the change. Such tension emerges, as seen by the internal legislator, as coming from the amendment to the Constitution of the Republic of Armenia of 5 July 1995, adopted the 06.12.2015, that declared the intention to make the transition from a semi-presidential to a parliamentary model of governance, to implement the principle of the rule of law and to develop constitutional mechanisms aiming to better guarantee the protection of fundamental human rights and freedoms. The strategy for that change was consecrated on the 2012-2017 "*Strategic Programme for Legal and Judicial Reforms in the Republic of Armenia and the List of Measures Deriving from the Programme*"[1].

4. It is in face of the modifications of the Constitutional framework that several interlocutors draw the evolution of the internal justice ruling, finding three well characterised phases, two considered as already materialised and a third under preparation:

a. 1996-2005 – first constitutional phase that kept the criteria and *modus faciendi* of the ancient regime, marked by the maintenance of the possibility of political control of the judiciary (internally and externally) short substantive innovations, old structures, low level of modernisation and poor results;

b. 2005-2015 – transitional period;

c. after 2015 – modern phase (only foreseeable on the legislative projects).

1 Executive Orders of the President of the Republic of Armenia NK-96-A of 30 June 2012 and NK-242-A of 30 November 2016.

5. The transitional phase (the present one) is not clearly visible and past backlogs and structural difficulties keep its presence at different levels justifying the urge to change and to redraw the structures – persistent references to judicial corruption (even admitted by members of the judiciary), lack of transparency, maintenance of legal solutions that create time delays and can be considered as less adapted to the needs of a modern society, shortage of statistical data and diagnose means, weak focus on the citizens needs and difficulty to reach the addressees of the system and to build awareness.

6. No material evidence was collected on the existence of concrete cases of compression of the external independence of the Judiciary, in spite of the fact that some remaining legal solutions have the potentiality of conditioning such independence – rules on appointment of judges (relevantly dependent from the existence of political acceptance of the candidates, career mechanisms and design of the intervention of the Judicial Council).

7. At an internal level and reported to the so called transitional phase, the European Commission For Democracy Through Law (Venice Commission) of the Council of Europe, on its Opinion no. 751/2013[2] referred that "*the Venice Commission delegation, while in Armenia, heard persistent reports of improper and extraordinary interference by judges of higher-level courts with those of lower level ones. Notably, that lower-level court judges often seek instructions from higher-level court judges – in particular those of the Court of Cassation*". However, no secure concrete elements were gathered that could lead to the confirmation of this reference. By the contrary, the actors of the system denied such allegation, judges included. Only elements external to it seemed to consider these references as valid – NGO's and citizens.

8. As to the phase under preparation by reference to the 2015 amendment to the Constitution, it stands on what seems to be a respectable and credible effort in the direction of the modernisation and correction of structural shortages, led by a young, apparently well intended and prepared generation of technicians and politicians. Nonetheless, motives for apprehension and severe difficulties can appear at the moment of the confrontation with old practices, interests, power conceptions and underlying forms of control. This risk can justify a permanent accompaniment of the reforms and its results.

9. At a practical and operational level, some limitations remain, namely on the domain of the diagnostic support means (that can determine the creation of solutions to non existent problems and the maintenance of unsuspected unsolved difficulties), choice of poor solutions (v.g. excess of public hearings in the civil procedure, non effective cassation mechanisms that can generate repetitions and losses of time) and adoption of surpassed perspectives (e.*g.*, legal aid is still treated as a selective and narrow State benefit and not as a citizens right directly connected with the universal right to have full access to justice).

10. The citizen's opinion on the Judiciary do not reflect the enthusiasm of the actors of the change[3]. The addressees of the system don't notice any improvements, consider justice politically controlled,

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2 CDL-AD(2014)007, 98th Plenary Session (Venice, 21-22 March 2014), *Joint Opinion On The Draft Law Amending and Supplementing the Judicial Code (evaluation System For Judges) of Armenia*, paragraph 13.

3 This reserve is also expressed through some more visible and indelible channels. See, v.g.: *"There is an ambiguous attitude in Armenia towards the judiciary and the justice system in general. Late last year a report by Ombudsman (…) caused a real stir among justice system officials. The Office of the Ombudsman, in particular, argued that in passing verdicts the Court of Cassation and the Justice Council apply double standards, which sometimes is accompanied with violations of the requirements of the law. The authors of the report also argued that there is a 'kickback price list' in the Armenian judicial, which is usually 10 percent of the lawsuit value. The Ombudsman's report also referred to pressures put on judges and raised the issue of lack of independence of the judiciary. Armenian human rights activists believe that additional professional training will not be superfluous for judges and prosecutors. But, at the same time, they doubt it will help them get rid of pressures from the government in certain cases and become more independent. Human rights activist (…) says that opening academies for "deepening justice" is not enough. What is needed to change the situation, according to the chairman of the Armenian Helsinki Association, is demonstrating political will"; "The government*

corrupt and unreliable as ever, have no hope on changes but, paradoxically, express a surprisingly not low level of satisfaction which can reveal a strong need for education for the citizenship and for the exercise of rights, transparency, accountability and building of comprehension of the mechanisms involved in the administration of justice. Some of these goals can be approached through intensive, well informed and correctly conceived use of technology – namely through a complete and effective justice portal, online administration, electronic access to documents, e-statistics and paperless courts standing on direct access from the citizens to its own lawsuits (jointly with their legal judicial representatives – barristers or similar).

II. THE POSSIBILITY OF ADMINISTERING JUSTICE

II.1. The Council of Justice and the new Supreme Judicial Council

11. The "formation of the Council of Justice and its relations with other government bodies (including the National Assembly of the Republic of Armenia, the President of the Republic of Armenia and the Government of the Republic of Armenia), as well as issues relating to the composition and the scope of powers of this body)" were pointed by the Draft Concept Paper on the Constitutional Reforms of the Republic of Armenia[4] as issues that deserve attention. In spite of this reference, the interviews showed a Council of Justice that, if functioning as described, wouldn't justify apprehensions or changes. It was pointed as being a constitutional body free from any political control or interference. Composed by 13 members – being 9 appointed by the General Meeting of Judges, 2 by the President of the Republic and 2 by the Parliament – it is responsible for the selection and appointment of judges, inclusion and graduation of judges on promotion lists, decision on disciplinary proceedings and removal of the members of the Judiciary. It was referred that not even the members chosen by the President or the Parliament receive any instructions.

12. In spite of the alleged adequacy of the present architecture of the Council of Justice – event pointed as an exemplar structure of self-government – and of its ways of functioning, the system was referred as needed for a change, even with the sole justification of the approval of a new Constitution. No flaws with reflexes on the external or internal independence of the Judiciary were indicated by the actors of the system interviewed. According with the oral references collected, the so called "self-governance" bodies of the judiciary that still exist – General Meeting of Judges, Justice Council and Council of Court Chairmen – are under a transformation procedure: the Justice Council will be replaced by a new constitutional body – the Supreme Judicial Council – the General Meeting of Judges will change powers and the Council of Court Chairmen will loose intervention on the field of the self-governance of the Judiciary.

13. In the envisaged reform, the role of ensuring the Judicial independence will belong to the Supreme Judicial Council. This body will also assume functions of providing opinions on draft legal projects with relevance on the judicial activity. Its structure brings an originality that can be expected to function as a potential source of deliberation difficulties since such body will be composed of 10 members. 5 of these will be judges elected by the General Meeting of Judges and 5 will be non-judges indicated by the National Assembly. All of them will be appointed for a period of five years. The President will be chosen by the judges. This Council will decide under a rule of simple majority, except on expressly indicated situations. In cases of a tie voting in proceedings having incidence on disciplinary questions, the consequence will be the defeat of the punishment initiative.

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should reconsider its approach to justice. The courts must become independent, the government must not interfere with the course of justice at all. But our government, unfortunately, does, and judges become corrupt. Besides financial relations there is also so-called 'telephone relationship' that the authorities reserve for themselves. The prosecutor's office works in the same manner and can influence the courts, and at the same time it depends on the government,"; "The government should be able to change from within and not just open academies and train fair and impartial judges and prosecutors there" – in https://www.armenianow.com/news/ 52820/armenia justice academy opening minister hrair tovmasyan president sargsyan (consulted in 26-03-2017).

4 Adopted by the Venice Commission at its 100th Plenary Session (Rome, 10-11 October 2014).

14. To the Supreme Judicial Council will be given exclusive competence for the removal of a judge. But the respective proceeding can even be started by the Justice Minister. However, a different interpretation of the law cannot justify the imposition of any sanctions. The penalties susceptible to be imposed by the Council include admonition, loss of wage and removal. The appeal from the decisions of the Supreme Council are restricted, being only admitted on questions with incidence on human rights and constitutional precepts.

II.2. Other elements of the "architecture" of the Judiciary

15. An Ethics Committee and an Educational Commission were indicated as composing the General Meeting of Judges. To the first is given the competence to submit any disciplinary question to the Supreme Judicial Council. It is mandatory for the Ethics Committee to serve the content of its decisions on the envisaged judge who will be allowed to "appeal" to the Supreme Judicial Council and have the right to consultancy. The General Meeting of Judges approves its own ethics code.

16. The appointment of judges will be kept on the hands of the President Republic of Armenia but, as referred during the interviews, after a first global rejection of a list of judges, the President will not be allowed to make a second rejection if such list is confirmed by the Parliament. Anyhow, the system will remain far from a structure standing on the judicial appointment by the body of self-government of the Judiciary. The presidents of the courts (including the Court of Cassation) will be elected by the Council of Justice from among the judges of the respective court. However, this choice will have also to be submitted to the President of the Republic for appointment. The President is not obliged to accept it. In such a case, a new process of election must be started. Chairpersons of first instance courts and courts of appeal will be appointed for a four year term, but the President of the Court of Cassation will be nominated for an indefinite period of time. The judges of the Constitutional Court will be elected by the National Assembly and removed by their Court.

III. THE QUALITY AND EFFICIENCY OF THE JUSTICE SYSTEM – REALITY AND PERSPECTIVES

The appointment and training of Judges

17. In the domain of the appointment of judges, the age of 28 years is the bottom limit. This age level can determine the loss of the better prepared potential candidates, since it is possible to expect that the years between the end of the university training and the admittance can serve to divert those candidates to alternative carriers and to attract other, less talented, coming from frustrated professional experiences and activities marked by the partiality and the narrowing of perspectives and interventions.

18. On the positive side, it can be underlined the fact that many future candidates to the exercise of judicial functions use the referred time gap to work in courts, acquiring experience as assistants and judges' office clerks. That experience is demanded on the access. In terms of gender, it is defined that there cannot be less than 25% of women in the Judiciary. The Justice Minister refer the intention of increasing the number of judges in order to give an answer to the present workload, considered as excessive. In 2015, were working at the courts 225 judges, being 50% between 40 and 58 years, 30% between 28 and 40 years and 20% between 58 and 65. The present data point out the existence of 234 judges in activity. Nineteen work at the Cassation Court, 37 at the Appeal Courts and the rest on the first instance courts. For non indicated reasons, it was referred that first instance judges don't desire to ascend to the appeal courts. All courts have presidents and it was found, during a visit to the criminal appeal court, that a president even controls the respect for a rigid working time schedule (from 09:00 h to 18:00h). Nevertheless, it was pointed that the courts' presidents cannot interfere on the direction and content of the judges decisions. The loosing votes of the members of the appeal panels are also publicised.

19. The Judicial training is provided by the Justice Academy. To have access to it, the candidates must be submitted to an oral and a written examination. It is pre-requisite of the admittance that the candidates have previous experience in judicial activities. The training of judges and prosecutors occurs in separated groups

and lasts for 7 months and a half. The trainees have preparation on argumentation, rhetoric and skills for judges. There are special courses for candidates interested on some courts or matters. The trainees receive a wage correspondent to the payment due to a judge's assistant. After the training, some need to wait for a vacancy at the courts (about 20%). Other have immediate entrance (80%).

20. The Rector of the Justice Academy is appointed by the board of managers of the Justice Department and is nominated and exercises functions with autonomy from the Justice Ministry. The contact with an ex-rector of the Academy, very critical of the global justice system but that could not deny the autonomy of the Justice Academy, gave a strong notion of the fact that such self-direction exists.

21. The Republic of Armenia has a Constitutional Court which central task is to avoid the violation of the Constitution. There are also courts with general jurisdiction (16 of first instance) and an Administrative Court with nationwide jurisdiction. It has three courts of appeal, being one with jurisdiction on civil, the other on criminal and the last on administrative matters. The appeal courts have jurisdiction on facts and law. In several cases, they send the case back to the first instance with an order to give a new decision. Only in some situations the appeal courts replace the first instance decisions. The higher court is the Court of Cassation that hears appeals from decisions given by the courts of appeal. It has the function of ensuring the uniform application of law, being entitled to fix generally binding case-law. Its decisions have exclusive incidence on legal questions, never on fact. The Cassation court pronounces annulment judgements. It is intended to create an Administrative Court of Cassation.

Legal aid

22. According with the references collected, the Armenian State grants legal aid exclusively to people with disabilities, refugees, II World War combatants, unemployed and insolvents. If a person has some sort of income or property and is not insolvent, he/she is not entitled to be granted legal aid. It is not assumed a conception of legal aid as a citizens right connected with the obligation to assure universal access to justice. Instead, it is conceived just as a benefit or a social support given to a strict group of persons. Through the reform, it will be materialised a more rigorous definition of insolvent people, accompanied by the granting of access from the citizens to the database of the Public Defender's Office. This office assures, through a main physical space in Yerevan and 10 regional delegations (with one to three barristers each), the legal aid that imply the access to courts (all levels of courts and procedural phases are included). There are 55 lawyers independent from the political power, appointed by the Chairperson of the Bar Chamber, devoted to this activity. Their wages are about 800,00 USD per month which was pointed as correspondent to the salary of a Prosecutor.

23. The expenses generated by the system are paid by the State (even including the lease agreement celebrated with a view to allow the occupation of the Yerevan Office). The Ombudsman provides legal consultancy to citizens, free of charge, but only inside his object of intervention. On the new ruling, legal advisers of some institutions will be allowed to give pre-litigation advice. There is no exemption of the cost of the proceedings.

The new Code of Administrative offences

24. The present *Code of Administrative offences* comes from the year 1985. It will try to deal with all the administrative offences. The proceedings on administrative offences shall be ruled by common principles emerging from the administrative proceedings established by law. The changes envisaged will be submitted to the principle of proportionality between the act and the liability. This can imply exempting from administrative liability some acts now punished. Legal persons will start to have administrative liability. The concept of "administrative body" will include State, local self government bodies and entities which, while not constituting a state body, perform public functions given by the State. The citizens will be allowed to appeal from the decisions and acts of such entities. The relevant administrative act will be the one produced through the exercise of powers of authority. It will be possible the administrative detention of citizens for the period of three hours without defined guilt, statute of accused, possibilities of defence, legal representation and judicial intervention.

It is sought to introduce simplified procedures for the examination of specific cases.

The civil procedure code

25. In the area of the civil proceeding it was pointed the existence of normal and speedy proceedings (where the request is groundless or the final decision is obvious or simple). It was referred that, in a swift proceeding, a payment order can be issued in two weeks. As to the mentioned swift proceedings, the reform intends to better define the grounds for applying an expedited court examination. It will be relevant, for this purpose, the lack of real dispute between the parties.

26. Evoking technological issues, no statistic data was transmitted, during the interviews, about the duration, object, numbers by categories and global figures of the court cases. Some referred the absolute non existence of data on the pending time of the proceedings. It was mentioned, only, a generic criteria allegedly coming from the law, imposing that the proceedings last an ambiguous «reasonable time».

27. Through the reform, it is aimed to clarify the rules on evidence, defining clear criteria on its relevance, admissibility and non acceptance, specifying the allowable types of proof, defining the procedure for examination (namely expert examination) and creating clear rules on evaluation of evidence and substantiation of the decision on inadmissibility. It is also envisaged to produce, through the new provisions, the reduction of procedural expenses and to grant swift and effective judicial protection. It is considered necessary that the new set of rules can draw in detail the preliminary court sitting, clarifying the scope of the activities of the court and of the participants during that procedural phase.

28. In civil proceedings there is a preliminary hearing where it is analysed the possibility of being reached a parties' agreement and where it the defined the object of the collection of evidence. The judge has the powers to decide if it is dispensable such hearing. There is always a final hearing (even if there is no evidence to collect). The judges always read publicly the final decision. A copy of the judgement is given to the parties. The time limit for bringing an appeal start its counting from this moment on. It was referred that Judges never explain their decisions to the citizens, considering that this would violate ethical principles. In spite of this, the judgements on civil and commercial matters are read in a public and time consuming hearing. It was referred, generically, that a speedy proceeding can last only one month and the regular proceedings are expected to produce a judgement in a period comprehended between 6 and 30 months. No statistical data was presented on this matter and the interviews revealed the unavailability of such data.

29. The judicial decisions are enforced outside of the courts. This enforcement is materialised by the Compulsory Enforcement Service of Judicial Acts that functions out of the Judicial Power. The applications for enforcement are presented to the supervisor of this body or to the Justice Ministry. The procedure for enforcement stand on the existence of an enforcement order ("titre exécutoire"). After the inspection of its validity, seizure orders are addressed to several bodies – e.g., to real estate registers and traffic police. The seizure has incidence on money, movable or unmovable property. At the end of 2016, the notary documents were added to the legal concept of enforcement orders. Until the date of this mission, none of these documents had already been received. Also administrative and police fines are collected through the described service.

The civil code

30. The 1998 Civil Code will be object of an update of concepts and an adaptation to some new needs and technical demands. It will receive new precepts on e-commerce, non-pecuniary compensation of damages, violation of fundamental rights, unlawful judicial conviction, offences to the honour, personal servitudes, surface rights, neighbouring rights, trade secret, geographical indication, designs, trademarks, patents, copyrights and guaranteed region's traditional products. Family law and succession matters will be out. A separate law will rule condominiums.

The criminal and criminal procedure codes

31. The changes envisaged in the Criminal Code were pointed as imposed by international treaties and the new Constitution. It stand on a punitive policy that seeks for introducing some alternative sanctions to the imprisonment – e.g. restriction of movements and imposition of some obligations – thus aiming to grant the application of the principle of the proportionality of the criminal punishments in a Country with a high level of life imprisonment. It recognise and define the community service as a criminal sanction, widening the possibility of imposing such service when replacing a non served part of the conviction. The mediation is considered in the reform. Some crimes will receive a different treatment. The criminal liability for some of them will be eliminated and some crimes will be transferred to the new Administrative Offences Code – particularly on the field of the economic activities. Release from prison will be possible before completely serving the sentence. It is intended to simplify the system of bodies with competence to render a decision on early conditional release and to specify the functions of each body, defining objective criteria for the issuing of a decision granting to the convict an early conditional release.

32. Children still can be arrested after 14 years old but will be specially ruled the criminal sanctions from 18 to 21 years. Probation will be created and regulated and it will benefit from the existence of a mediation service. The rights of the victim will receive more recognition and will appear oriented to grant the liability of the convicted. It will be admitted civil claims on criminal proceedings. A service of support to the victim will be funded from half of the value of fines and seized property. The creation of victim's shelters is under preparation. The definition of guilt will change, starting to be punished not only the one that knows the illicit character of the conduct but also who should have known such character. Cyber crimes and hate speech will be included ins the list of punishable crimes.

33. According with the references collected, the investigative phase of the criminal proceedings is not centred on the figure of the Prosecutor but on an Investigative Committee composed by a staff that doesn't belong to the Prosecutor's Office and that, allegedly, don't receive any instructions – 29 investigators, lawyers, with more than three years of experience on investigations and with a head of service that reports and is appointed by the President. Its intervention has judicial supervision and authorisation (from the judges of the criminal courts) when it deals with matters connected with fundamental rights – e.g., personal searches, telephone tapping or detention. A different judge from the same court will judge the case if another had to intervene on the investigative phase.

34. The Prosecutors oversee the investigation and support the proposal of accusation written by the Committee or send it back to it with specific instructions. If he doesn't agree with the accusation, the proceeding reaches its end. Nobody can – according with the rules and intentions described – be arrested more than a year without an accusation (six prorogations of a two months arrest). But, the proceedings are not qualified and treated as urgent where there are arrested suspects. After the accusation and reception of the case at the court, the judge designates a preliminary hearing where the accused is not present. During that hearing, he marks on the court agenda the final hearing date and orders the notification of the parties. On the project of a new criminal proceeding code, the accused, the victim, the prosecutor and the lawyer will all also be present in the preliminary hearing. At the end of the final hearing, the judge announces the date for the reading of the sentence.

35. In the new code, it will be sought to build effective equality of arms between the accused and the other parties. After detention, there will be a 72 hours period to present the detained to a judge. The accused and other parties will be able to directly apply for an expertise. House imprisonment and electronic bracelet will start to be used. The investigation period will be legally defined according with the type of crimes and with a maximum limit of twelve months. The courts will start to be allowed to make judicial inspections during the judgement phase. It will rule the presumption of innocence of the accused and the acquittal in the criminal proceeding cannot be converted in conviction on the context of an appeal. The accused will have the right to remain in silence but false evidence shall be criminalised. There will be no judgements given on the absence of the accused.

36. It was referred the impossibility of presenting statistical data on the duration of the criminal proceedings. It was pointed as pathological a criminal case suspended for fifteen years and still pending.

Judicial costs

37. The reform under preparation has the declared objective of amending the procedural codes in order to guarantee an adequate, fair and transparent solution for the allocation of the judicial expenses among the participants to the judicial proceedings and to allow the involvement of the parties in the definition of the responsibility for the payment of such expenses.

The Prosecutors

38. The General Prosecutor is appointed by the President of the Republic. It was referred that, presently, it has reduced powers and autonomy. It is not any more, as said, "the eyes and the ears of the Tzar". According with the description of the reform envisaged, it will be the Parliament to appoint the General Prosecutor under recommendation of a Standing Committee. It won't receive instructions from political bodies and the executive power will not be entitled to define investigation priorities. Nevertheless, it was referred that the Justice Ministry will establish orientations intended to be seen as «defies» by the Prosecutor's Office. The prosecutors have no specific obligations on minors protection and it is the police that, through a special unit for minors' protection, assures such protection. It was also referred that a Board of Trustees and Guardians go to courts to assure the protection of the child.

39. The 341 prosecutors on duty don't work in the courts but in separate offices. They have a hierarchic structure. According with the oral references collected, nor the President of the Republic nor any other politician can intervene or has intervened on any criminal investigation. A Qualification Commission defines the progression on the prosecutors' career. Three members of that Commission are appointed by the General Prosecutor and four nominated by the President of the Republic. This organic architecture was not accepted as containing the potentiality of conditioning the criminal investigation. However, there is a new structure under preparation. It will have nine members being one the Rector of the Justice Academy, one deputy of the Prosecutor's Office, three Prosecutors and four law scientists. The responsible for the reform declare their commitment to the goal of giving complete independence and accountability of the Prosecutor's Office.

IV. RECOMMENDATIONS

Summary

40. There are no remaining doubts or reserves about the good intentions and adequate technical preparation of the young generation of professionals that received us in Yerevan and showed, with enthusiasm, the reforms envisaged. If some limitations can be found associated with the intervention of such young generation, it could only arise from the lack of deep knowledge of the reality to transform (namely of the 'world' of the courts, especially its limitations, methods, real meaning of the numeric workloads, habits and results), absence of access to reliable real time statistics and diagnostic means and lack of bilateral communication with the citizens and addressees of the reforms.

41. However, from the association of several disturbing references caught – some also included in this report – with the optimistic description of the institutions and its performance, got on site, it is not sure if the old powers and mechanisms for its exercise, external strengths, prejudices, dis-rupture with the civil society, low levels of education and poor readiness for the exercise of the citizens rights can assure that the good intentions have effective conditions to be converted in new synergies that may contribute to the real building of a society functioning under the Rule of Law, to a true Democracy marked by the existence of true checks and balances coming from the separation of the three powers and to a society where the access to independent, fair and effective Justice, free from corruption phenomenons and breaks in face of internal and external pressures will be a reality.

42. The clash between these two conflicting forces seem to impose a permanent follow-up of the reforms, the implementation of technological mechanisms oriented to assure transparency, awareness and internal and external accountability and the division of any financial support in slices and phases, being each new one preceded by the evaluation and attainment of the objectives of the previous.

Short-term recommendations

43. On the short term, there are punctual measures that seem to be justifiable and have conditions to produce positive effects on the Armenian Justice system. Some of them could also be included in the ongoing legislative reforms. Such recommendations are:

(a) **Suppression of all the ways of control** from the President of the Republic and the executive power over the careers of the judges, here including appointment, promotion, evaluation, disciplinary decisions and dismissal;

(b) Introduction of an **odd number** on the members structure of the new Supreme Judicial Council in order to annul predictable deliberation difficulties coming from its presently proposed composition;

(c) Recognition of **legal aid as a right** granted to all citizens who are partly or totally unable to meet the costs of proceedings or have no conditions to accede to legal advise. This would generate the need for added financial resources and the use of rigorous mathematics' formulae, evidence means and criteria[5];

(d) **Reduction of the cases of simple annulment** of the judgements under appeal and creation of a system standing on a general rule of replacement of the previous instance decisions by the decisions of the courts of appeal.

(e) **Suppression** of the time consuming and shortly useful **hearing for a public reading of civil and commercial judgements** that can, with advantage, be merely served to barristers and parties.

(f) Institutionalisation of a rule always allowing the **appeal from the decisions of the Supreme Council**.

(g) **Suppression** of the possibility of a **disciplinary proceeding against a judge** being started by the **Justice Ministry or any other body external to the judicial power**.

(h) Attribution to the **public prosecutors** of permanent, specialised and non casuist duties on the domain of the **protection of the minors** and of the presentation of its cases before courts.

(i) Since the granting of complete independence to the **Prosecutors** seems excessive for the objectives envisaged and susceptible of creating additional difficulties on the process of transforming good intentions into reality, it should be aimed and programmed the attribution to such magistrates of a strict and rigorously defended **autonomy**.

(j) It seems mandatory, for reasons connected with fundamental rights, namely the right to a defence and to a substantiated criminal imputation, the **suppression of the administrative detention of citizens** for the period of three hours without defined guilt, possibilities of defence, legal representation and judicial intervention.

(k) Where the proceedings refer to **suspects under detention**, it should be qualified and treated as **urgent and have priority** over the other investigative and judicial work.

Medium and long-term recommendations

44. It appears fundamental, on a medium and long term:

(a). To intensively invest in **technology** in the area of Justice and judicial activities, in order to produce effectiveness, transparency and accountability and to build a culture of independence and

5 As to the possible standing criteria, see the *Council Directive 2002/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes – Official Journal of the European Communities* L 26/41, 31.1.2003.

exemption;

(b). To promote the change to a full ***e-justice*** **system** with paperless courts and the associated real time statistics, online payment of judicial costs, digital offices, direct access from the citizens and their barristers to their cases and relevant documents, associated with an effective **online public administration** and the creation of a wide and comprehensive **justice portal** with permanent, universal and free access to public data bases, legal information, draft laws and legislative programs. It should be **avoided to close the digital information inside managing groups and bodies**. The information belongs to the addressees of the system – the citizens;

(b). To prepare **changes standing on strong diagnostic means**, without insufficient knowledge of the real needs, existing situations, structures that deserve to be kept and tensions for the change.

(c). To invest on the **education of the citizens for the exercise of rights and citizenship**, awareness, public control and comprehension of the importance of the separation of powers and the existence and independent non corrupt judiciary;

(d). To generate transparency and awareness through **bilateral communication with the citizens** (including the Armenian diaspora[6]) assuring permanent evaluation of the impacts and results of the reforms and contact with the changing needs;

(e). To create **swift, effective and dissuasive investigative methods** that can **fight against the judicial corruption** without touching the values of the independence and non responsibility that should preside the exercise of the judicial functions. **Adequate judicial wages**, adapted to the importance and special demands of such functions can also have a positive effect on the fight against corruption.

Oeiras, 27.03.2017

6 *That even has a Ministry – see http://www.mindiaspora.am/en/index.*