



**ARMENIA**

**Based on a Joint Submission by a Group of Civil Society Organisations to the UN Human Rights Council  
35th Session of the Universal Periodic Review (20 – 31 January 2020)**

**RIGHT TO FAIR TRIAL**

*The state has not undertaken significant efforts towards the implementation of recommendations received during the second cycle of the UPR. Particularly, no progress was registered to ensure the independence of judiciary.*

Public trust in the justice system and particularly in the judiciary is still extremely low even a year after the Revolution and parliamentary elections. The reason is the fact that the justice system, unlike the executive and legislative branches, has remained the same both in the structure and regulations, which have reportedly lacked accountability and independence both externally and internally. While human rights and anti-corruption activists have expressed their mistrust, the public and the authorities came on board to demand systemic change only when due process violations by the presiding judge were illustrated during former President Kocharyan’s trial. The trial judge and the higher courts failed on a number of issues during the very first week of trial. The same judges and prosecutors who marred themselves in grave corruption and politically motivated investigations and trials remain in control. The problems that accumulated in the course of almost two decades of state capture remain vis-a-vis the justice system.

Previous judicial reforms did not contribute to the eradication of corruption. The law does not ensure the independence of judges, transparency of their appointment and promotion, case assignment mechanism,

effective data collection to enable monitoring of court decisions' consistency. There is no disclosure of interests by the judges. Many judges have acquired huge volumes of property and assets, disproportionate to their salary. Objective vetting of judges, particularly those in the Supreme Judicial Council and the Constitutional Court, is believed to be the most important measure for ensuring the integrity of the judiciary.

The self-governing judicial body, formerly the Justice Council, now Supreme Judicial Council (SJC), has long served as an internal control mechanism.<sup>1</sup> According to the law, five SJC members are nominated and elected only by the leading political party in the parliament, without an option of getting proposals from academia or civil society. This scheme does not guarantee the independence of the judiciary. The disciplinary, appointment and dismissal decisions of SJC, cannot be appealed, which limits access to justice for judges. Disciplinary decisions are unsubstantiated and, as a rule, made in closed-door sessions of the council. The law allows the Minister of Justice to launch disciplinary proceedings against judges and request explanation from judges concerning the ongoing cases.

The law enforcement and security agencies have long been exploited by the executive to suppress citizens and conceal government abuses. The 2015 Constitutional Amendments and subsequent legislative revision stipulated the subordination of law enforcement, investigation and security bodies to the prime minister, depriving the parliament of the mechanisms to exercise oversight of these institutions. The effectiveness of investigation is significantly compromised by ambiguous functional distribution between different investigative bodies. There are no sufficient guarantees for impartiality and accountability of the prosecutor's office. There are no objective criteria for the nomination and selection of candidates for General Prosecutor.

## Recommendations

- Carry out vetting of judges, prosecutors, investigators and police officers based on law and objective, non-discriminatory criteria;
- Provide mechanisms for appealing the Supreme Judicial Council's disciplinary, appointment and dismissal decisions, restrict the Council's discretionary powers and increase its accountability;
- Establish anti-corruption courts with a corpus of specialised and high-integrity judges elected through transparent procedures;
- Secure constitutional mechanisms of parliamentary and civil oversight of security bodies and police, including their reporting to the parliament, election of the institutions' heads by the majority vote in the parliament;
- Secure institutional independence of the security, investigative bodies and police from the executive through the election of the heads of these bodies by parliament;
- Unify all investigative agencies of different state institutions under the framework of the Investigative Committee.

## Politically motivated persecutions

The right to a fair trial has been consistently violated in Armenia. Former authorities invariably persecuted political opponents, using fabricated evidence, restricting their due process rights, applying excessive pre-trial detention<sup>2</sup> and disproportionate prison terms.<sup>3</sup> Many persons were arbitrarily deprived of liberty for exercising their right to freedom of expression and assembly and were recognised as political prisoners.<sup>4</sup> They were released shortly after the 2018 Revolution, nevertheless, many of the criminal cases are still underway.

## Excessive use of detention

Excessive use of pre-trial detention persists as a major problem. The motions of investigative bodies and decisions of courts are not substantiated with solid facts. The systemic nature of the problem is reflected in a number of judgements of the European Court of Human Rights (ECtHR) against Armenia. The use of stereotyped formulae of imposing and extending detention is a persistent problem, which violates the right to liberty and security.<sup>5</sup> The number of motions for pre-trial detention has decreased since 2018, however, the ratio of court decisions concerning application of detention has not been changed. The courts are mainly inclined to grant the motions for detention.

## Access to justice

The law does not allow non-governmental organisations (NGO) to apply to court for the protection of public interest. In 2010, this regulation was proclaimed unconstitutional.<sup>6</sup> As of now, NGOs can apply to court only for the protection of environmental rights. Meanwhile, *actio popularis* mechanism is important for questioning government actions and by-laws that may result in social injustice, discrimination, exploitation of natural resources, misuse of public funds, etc.

Response by justice system to domestic violence cases and cases with participation of persons with intellectual and psychosocial disabilities lacks sensitivity and is not accommodated to needs of the parties involved. This as a rule leads to the violation of equality before the court and the right to be heard.

## Recommendations

- Swiftly adopt new Criminal and Criminal Procedure Codes, providing effective alternatives to pre-trial detention and extend the mandate of the Probation service to cover the pre-trial stage;
- Revise the law on NGOs to allow them apply to court for the protection of public interest;
- Establish specialised pool of judges to hear domestic violence cases; develop separate guidelines for judges on accommodation of hearings on domestic violence cases and cases with the participation of persons with intellectual and psychosocial disabilities in administrative, criminal and civil courts.

## Endnotes

<sup>1</sup> Ad Hoc report of the Human Rights Defender on the Right to a Fair Trial, 2013, <http://www.ombuds.am/resources/ombudsman/uploads/files/publications/8c6abc664ac32d0042d7476a67b4b899.pdf>.

<sup>2</sup> "Armenian Activist Stuck in Detention," Human Rights Watch news release, January 30, 2017, <https://www.hrw.org/news/2017/01/30/armenian-activist-stuck-detention> (accessed May 10, 2019).

<sup>3</sup> "Armenian NGOs' statement on trial verdicts of Jirayr Sefilyan and others' case" March 22, 2018, <https://transparency.am/en/statements/view/293>; "Letter to the Prosecutor General of Armenia on the Pretrial Detention of Gevorg Safaryan" Human Rights Watch statements, January 8, 2016, <https://www.hrw.org/news/2016/01/08/letter-prosecutor-general-armenia>; "Opposition Activist Imprisoned in Armenia After Protest," Human Rights Watch news release, January 18, 2017, <https://www.hrw.org/news/2017/01/18/opposition-activist-imprisoned-armenia-after-protest>; US Department of State, Country Reports on Human Rights Practices for 2016, <https://www.state.gov/documents/organization/265604.pdf>.

<sup>4</sup> "The definition of political prisoner," PACE Resolution no. 1900 (2012) Final version, <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=19150&lang=en>.

<sup>5</sup> *Ara Harutyunyan vs. Armenia* (ECtHR, Application no. 629/11), 20 October 2016.

<sup>6</sup> Republic of Armenia Constitutional Court, decision SDV-906, 07.11.2010.