



## The Impact of Judicial and Legal Reform Programs on Establishing Independent Judiciary in Armenia

The current study summarises and presents the outcomes of the judicial and legislative reforms in the Republic of Armenia, and the activities conducted within the scope of the reforms in the context of the independence of judiciary. **The research addressed the issues regarding the disciplinary sanctioning, promotion and appointment of the judges.** Conditioned by those issues the study was implemented in comparison with the commitments and recommendation undertaken by the international organizations, as well as by the legislative amendments applied on domestic level. The timeframe for projects considered in this research: the projects implemented within the period of 1995 and 2018. The implemented reforms are conditionally divided into the following main stages:

- **The first stage** of reforms: started by the adoption of the RA Constitution in 1995
- **The second stage** conditioned by the Constitutional reforms in 2005, within the scope of which two projects were implemented: **the judicial and legislative projects for 2009-2011 and 2012-2016** respectively.
- **The third stage**: started by the Constitutional reforms in 2015, the key objective of which was to ensure the consistent exercise of the rule of law.

The research identifies the achievements and the gaps recorded in the outcomes of the mentioned projects and their possible reasons. Particularly, the research outcomes show:

- how well the activities of the judicial self-government bodies express the current real problems,
- how well those problems corresponded to the international commitments and recommendations and reflected the latter.

### KEY FINDINGS

- ✓ The research shows that the implementation of the continuous judicial and legislative reform projects addressed one main problem: to increase the independence of judiciary.
- ✓ Despite the actions of the long-term four projects (the fifth project is ongoing) implemented in three stages, the problem with the independence of the judiciary remain as a key obstacle for the exercise of justice in Armenia.
- ✓ In scope of this research, comparison of the measures directed towards raising the efficiency of the judicial self-government bodies and their activities separated three groups of reasons, which had impact on the lack of independence of the judiciary.

#### **The incompatibility of legislation and practice**

The legislative changes implemented within the reform projects mainly did not lead to systematic changes. On one hand, the latter did not get full application in practice, on the other hand, the changes made in the law related to specific problems, through which it was not possible to ensure the expected results foreseen by the reform projects.

Particularly, started from the third stage of the reform project, the legislative changes concerning the independence of the judges were initially directed towards the elimination of the possible limitations of independence. Nevertheless, the crucial role of the RA President related to the appointment or the termination of judge duties continued to have an enormous impact on the individual independence of the judges. Though the role of the President was decreased by the Constitutional changes of 2015, the latter did not lead to the overall changes in the system. As research shows, the majority of concerning issues regarding the independence of judges remain, because of problems, such as the disciplinary liability system, the uncertainty regarding its legislative regulations, and practices of their application.

The efficiency of the judicial and legal projects essentially depend on the practical application of the legislative changes implemented within the scope of the mentioned projects.

The research also shows that neither the legislative changes have fully reflected the current actual problems nor these have included the international recommendations or consultative opinions.

### **The repetitions of project activities**

The research of the judicial and legal reform projects show that the actions and measures directed towards solutions of problems have been replicated for years. For example, the problems related to the appointment of the judges, disciplinary sanctioning institute and the activities of the Supreme Judicial Council, their action plans. Though the volume and the seriousness of the problems assume continuous actions and consistency, the efficiency of outcomes is not ensured.

As a rule, the projects following the previous projects presented the non-sufficient or the inefficient realisation of the already implemented project as a reasoning for the repeated target sectors and activities. However, the reasons for the inefficiency have not been raised and the impact of such reasons for the coming projects have not been eliminated. Moreover, for more than 20 years, different international agencies have given *similar recommendations* regarding the mentioned sectors and solutions to the recorded problems supporting the reform efficiency and the undertaking of more targeted activities. However, as shown by the program measures, the latter have not been fully included in the reform project either in legislative or in practice directed policy levels.

### **Lack of accountability and public engagement**

As presented in this research, the project implementation and impact assessment accountability was missing from the judicial and legislative reform programs. The project implementation process did not ensure public professional engagement, which was considered as a reason for the replication of the measures of different year projects. For example, despite the efficiency raising of the self-government agencies, different measures were presented directed towards the effective application of the judge appointment and subjecting of the judges to disciplinary sanctioning institutes, but their implementation and impact assessment were not presented. Such accountability would be essential for the inefficiency of projects and excluding replications.

Although the implemented reform projects and their activities are welcomed and somewhat positive changes are recorded in this regard, their efficiency has not been sufficient to ensure the individual and systematic independence of the judges in republic. Even in the case, when, within the scope of the project, the actual problems were targeted, the measures directed towards their solutions were either individual or situational.

## RECOMMENDATIONS

**Procedural recommendations directed towards the overall elaboration and implementation of the projects.**

- ✓ **Establish** a scheme of the implementation of judicial and legislative reform projects, impact assessment and accountability, *including the accountability periodical index*.
- ✓ **Elaborate** and present the respective budget for the intended measures.
- ✓ **Present** financial reports at the end of each project, showing the necessary expenses for each activity, and actual expenses.
- ✓ Within the scope of a new project, **reflect** on the commitments, consultative opinions of the international organisations directed towards the Republic of Armenia according to the judiciary sectors.
- ✓ **Conduct** a situation analysis, while defining the problems of the new project, raising concrete problems and accordingly proposing realistic solutions for the latter.
- ✓ **Establish** a feasible volume for the implementation of activities within the scope of the new project addressing realistic results.

**Recommendations directed towards the activities of the judicial self-government bodies**

- ✓ **Ensure** the transparency and the objectivity of the appointment procedure of the judges, particularly, in accordance with the opinion N 893/2017 of 2017 issued by the Venice Commission on the Republic of Armenia Judicial Code, **ensure** the discretionary liability scope of the Supreme Judicial Council during the elaboration process of the list of the judge candidates.
- ✓ **Eliminate** the possibility of differing interpretations on the legislative provisions regarding the appointment procedure of judges as prescribed by the Supreme Judicial Council, ensuring the complete independence and the objectivity of the mentioned procedure.
- ✓ **Establish** a reasonable and grounded decision making obligation for the appointment procedure of judges.
- ✓ **Clarify** and **specify** the codes of the conduct that are considered grounds for the disciplinary sanctioning of the judges, excluding the possibilities of their different interpretation in practice and through that subjecting judges to pressures.
- ✓ On legislative level, **establish** efficient mechanism to appeal the decision regarding subjection of judges to disciplinary sanctioning.