May 16, 2019

CIVIL SOCIETY'S VISION AND PRIORITIES FOR THE JUDICIAL AND LEGAL REFORMS STRATEGY AND ACTION PLAN

For years, unlawful control over the courts and justice institutions was among the main instruments and characteristics of the state capture and the pursuit of inner-circle political interests. These problems were exacerbated considerably by the rigging of local and national election results in different years, the prosecution of opposition political and public figures, endemic corruption and impunity, and the 2015 Constitutional Amendments imposed on the nation through a falsified referendum, all of which had led to the capture of the state by the former authorities.

The lack of independence of the justice institutions and the systemic failure of criminal justice were repeatedly flagged in reports of local and international organizations: the 2013 Ad Hoc Report of the Human Rights Defender (Ombudsman)[1] and various assessments of the Council of Europe and the European Union did not serve to initiate genuine reforms in the system in order to safeguard the independence of state institutions and to eliminate impunity. According to the Global Corruption Barometer for 2016, citizens believed that 41 percent of Armenia's judges were involved in corruption.[2]

Reproduction of the power through the partisan system breached the checks and balances between the different branches of power—serving the protection of a specific group and individuals at the expense of state interests and respect for the rule of law.

Post-revolutionary society inherited from the former authorities state institutions that not only were dependent upon the executive branch of power, but also were founded and functioning upon a mechanism that protected the inner-circle interests. In this scheme, liberalizing the functioning of the justice institutions, in particular, requires fundamental solutions that would safeguard the independent and transparent functioning of institutions and individual- and systemic-level accountability. The country now has ample opportunities for developing a judicial and justice system that is fair and impartial and safeguards the right to a fair trial. The effectiveness of the judicial and legal reforms will depend, to a great extent, on not only safeguarding the independence of the courts, but also reforming all of the criminal justice institutions, the activities of which directly touch upon human rights. Therefore, the concept paper for judicial and legal reforms should set out also the vision, priorities, and actions for rehabilitating the other institutions of justice, such as the prosecution office, the investigative and security agencies, the police, and the penitentiary.

To this end, it is necessary, through Constitutional Amendments, to put in place safeguards for the independence of the courts, the judicial self-governing body, and the prosecution, as well as safeguards for the impartiality of the judges, and to enhance the institutional independence and accountability of the investigative and security agencies.[3] The Constitution should clearly prescribe the formation procedure and authorities of the judiciary (including all the courts), the prosecution office, and the investigative and security agencies, while the supplementary regulations and mechanisms thereof should be prescribed only by law.

Taking into consideration that the justice sector is captured by the former authorities, judicial and legal reforms can be successfully implemented and the independence of the institutions can be restored at the current transitional stage by means of combining classical judicial tools with a transitional justice toolkit.

In light of this imperative, therefore, the judicial and legal reforms strategy and action plan should be built upon the following priorities.

Goal. Strengthening public trust in the judiciary and in the criminal justice system by means of restoring the independence, integrity, and efficiency of the courts and empowering the criminal justice institutions.

Objectives. To achieve the abovementioned goal, the state should carry out the following over a five-year period:
- revise and renew the composition of the courts through vetting of judges and appointment of new judges;
- improve the independence and accountability on the judicial self-governing body by revising its composition and strengthening the legal safeguards for its operation;
- ensure the independence and accountability of justice institutions by strengthening the legal safeguards for their operations and training and improving the integrity of their staff;

[1] http://www.ombuds.am/resources/ombudsman/uploads/files/publications/8c6abc664ac32d0042d7476a67b4b899.pdf
[2] https://transparency.am/storage/GCB2016_Tables_am.pdf
[3] Article 202 of the Constitution of the Republic of Armenia provides that amendments to Chapter 7 of the Constitution (the chapter concerning the judiciary) require a referendum, while Chapter 8 (dealing with the prosecution office and investigative bodies) may be amended by a vote of the members of the National Assembly.

- strengthen the effectiveness of the human rights protection and violation investigation mechanisms in the operations of justice institutions by mapping the existing problems, proposing systemic solutions based thereon, and enhancing accountability in their operations; and
- expand effective parliamentary and civil oversight of the criminal justice institutions.

Monitoring. Effective implementation of the Strategy and Action Plan will largely depend on the effective oversight. It is proposed to create a Steering Board to monitor the plan, comprised of the state and CSO representatives, to receive regular reports on the execution of activities under the plan and issue recommendations on the implementation.

Communication. Effective implementation of the Strategy is linked directly with public participation in and public support to the objectives in the Strategy. Therefore, the Judicial and Legal Reform Plan should contain a plan for public communication aimed at building public support for the reform.

THE JUDICIARY

The constitutional amendments of 2015, passed through widespread and gross violations, were aimed to legitimize the reproduction of the authorities and consolidate one political party's control over the judiciary. The Constitutional Court was made one of the critical pillars for State capture due to a number of regulations. To strengthen the independent safeguards of the Court, the 2015 Constitution envisaged that the Chairperson of the Constitutional Court be elected for a six-year term, while the previous Constitution provided for life-long service. Meanwhile, 20 days prior to the entry into force of this constitutional chapter the Chairperson of the Constitutional Court was elected under the old regulations to secure the control of the Court by the same individual for another two decades and de facto disabling implementation of the Constitutional provisions vis-a-vis the Constitutional Court. A number of post-revolutionary developments demonstrated that the Constitutional Court is still under the curb of the former authorities. It creates serious jeopardy for holding accountable the former regime representatives, marred by grand corruption and gross human rights violations, as well as for blockading critical anti-corruption and justice reforms. This has proved beyond doubt that the capture of the justice institutions is systemic and needs transformation rather than to be dealt through quick fixes and fragmentary amendments.

The ruling party that gained a stable majority in the Parliament as a result of the 2015 Constitutional Amendments acquired the monopoly of forming the judiciary: by a three-fifths vote, they nominated the presidents of a number of courts, members of the Supreme Judicial Council, and judges, whose candidacies were subsequently approved by the President of Armenia. This appointment procedure largely predetermined the future conduct of those judges: many of them were constantly granting unsubstantiated motions to order detention, convicting political prisoners based on trumped-up charges, and failing to find the flagrant violations of human rights. Much has been said about the pressure of the incumbent on judges, including the tools of internal control. The judicial self-governing body—previously the Justice Council, and currently the Supreme Judicial Council, which is called to safeguard the independence of judges, has for a long time been a mechanism for internal steering of the judges. The Council has arbitrarily exercised its constitutional authorities of appointing, promoting, dismissing, and disciplining judges in order to reward certain judges or punish the "disobedient" ones. Many of Armenia's currently-serving judges took part in legitimizing the rigged elections, covering up mass violations of human rights by the authorities. In effect, the judicial power not only failed to act as a check on and balance to the other branches of power, but also increased through its conduct the determination of the authorities to capture the power and to commit other crimes against the constitutional order.

In this context, a number of judicial and non-judicial actions, as described below, must be taken in order to rehabilitate the judicial power.

1) Strengthen the institutional safeguards to ensure independence and impartiality of the judiciary and criminal justice institutions and implement structural changes through constitutional and legislative amendments: within 1 to 3 years.

Various studies have shown that the capture of the judiciary was facilitated by a number of legislative provisions implemented by the previous authorities, including provisions in the Constitution, various Constitutional Laws and other legal acts. In order to preclude dependency of the judiciary on the executive or the legislature, it is necessary to diagnose

precisely which legal provisions have enabled internal and external pressure on the judges, the lack of accountability, and the compliance with instructions from above. The authorities are urged to refrain from short-sighted approach and undertake comprehensive and fundamental constitutional and judicial reforms. While the larger reforms are taking a slow path, fragmentary fixes may further deepen the crisis over the Constitutional Court.
To this end, it is proposed to set up a professional team that will engage in broad consultations to produce **a map of the existing Constitutional and legislative problems**, and analyze the recommendations given to the Republic of Armenia by international organizations with respect to the domestic legislation. Based on all of this, **a legislative package should be produced, containing a new draft to the Republic of Armenia Constitution, amendments and additions to the Judicial Code, and other related legal acts**. These legislative amendments will aim at ensuring safeguards for the independence of the courts and the impartiality of the judges, as well as enhancing institutional accountability.[4]

The legislative amendments should focus, in particular, on harmonizing the legal foundation and practice of **the judicial self-governing body**—the Supreme Judicial Council—with the international standards applicable to such bodies. It is necessary to revisit the legislation on the judicial self-governing body and to amend it with a view to securing the effective performance of its functions.[5] The adoption of the Constitutional Amendments will lead to the formation of the new composition of the judicial self-governing body—the Supreme Judicial Council, whilst respecting the legislative requirements on the selection and appointment of its members.

The Constitutional and legislative amendments should also introduce **structural changes** in the judiciary, as described in greater detail below:

- ❖ Create a Court for Corruption Crimes (CCC), which will carry out judicial oversight and administer justice in cases related to corruption crimes. This court will jurisdiction over corruption crime cases only, a list of which will be exhaustively defined by the Criminal Code. Candidates aspiring to become judges in the CCC will be selected under a procedure prescribed by a standalone law.
- ❖ Create specialized first instance criminal courts—local courts, which will carry out judicial oversight of pre-trial proceedings in all cases, except for those over which jurisdiction will be vested with the Court for Corruption Crimes, and administer justice in cases that concern crimes punishable with imprisonment for a term of up to five years. Judicial oversight will include also the conduct of preliminary court hearings, during which admissibility of evidence will be established, and evidence found inadmissible will not be presented to the trial judge. The decisions and judgments of this court will be subject to appeal in the Appellate Court. For these purposes, a separate chamber will be created within the Appellate Court, which will review appeals against any decision rendered by any criminal court in the pre-trial oversight stage for any criminal case, including the first instance courts, the local courts, and the Court for Corruption Crimes;

2) Vetting of judges and revision of the composition of courts: 1-5 years, through the following steps:

A. Vetting

- ➢ Based on wide public discussions, draft a new Constitution within a reasonably short period;
- ➢ Adopt a Law on Vetting and create the bodies to carry out vetting;
- ➢ Plan the stages of vetting, by the instances of courts: the process should begin with the judges of the Constitutional and Cassation Courts and the Supreme Judicial Council.

In parallel, the following actions must be pursued:

B. Training new candidates of judges and compile a list;

C. Appointing new judges (it will help also to counterbalance the sitting judges).

A) Vetting of judges

The universal vetting criteria, stages, and composition and powers of the body implementing it will need to be prescribed by the Constitutional Amendments: the transitional provisions, in particular, can prescribe that, within six months of the

[4] Article 202 of the Constitution of the Republic of Armenia provides that amendments to Chapter 7 of the Constitution (the chapter concerning the judiciary) require a referendum, while Chapter 8 (dealing with the prosecution office and investigative bodies) may be amended by a vote of the members of the National Assembly.

[5] These amendments should address the following issues: formation of the Judicial Council, selection and appointment of judges, promotion of judges, court appeals against decisions of the Supreme Judicial Council (on discipline, appointment, and promotion/transfer), requirement to adopt reasoned decisions, publishing the special opinions of members of the Supreme Judicial Council, an objective system for assessing judges, discipline and ethics, transparency and accountability, preparation, execution, and oversight of the judiciary's budget, administration and management of the courts, and public accountability and oversight.

entry into force of the Constitutional Amendments, a Vetting Law must be adopted in conformity with the transitional provisions.

The Law should prescribe the chosen model of vetting and the implementation procedure, criteria, stages, composition of the body implementing it, the selection procedure of its members, the term in office, social safeguards, protection of activities from potential interference, procedure of appealing its decisions, the appeals mechanisms and grounds, and so on. To prevent corporate conflicts of interests, it will be most effective to have judges, independent lawyers, and non-lawyers within this body, who shall be selected by the National Assembly after a preliminary integrity check. A smaller independent appeals body should be formed in conformity with the same principles. The vetting authority should be staffed and have data collection and analysis units. It is crucial to divide the universal vetting into clear stages, each one of which will check the judges of the Constitutional Court first, followed by judges of the Cassation Court, the members of the Supreme Judicial Council, the appellate courts, and finally the first instance courts.

The vetting criteria should be clearly prescribed in the law. In this case, as the option discussed is one of *ad hoc* vetting, the criteria should include not only property status and professional skills, but also reasoned allegations of engagement in corrupt transactions, irrespective of whether or not such allegations are dealt with in a forma criminal case, as well as the impact of the judge's decisions on fundamental human rights and freedoms, final judgments and decisions rendered by or with the participation of the judge, in respect of which the European Court of Human Rights has found violations of human rights, and so on. Clear criteria should also be prescribed for appealing the decisions of the vetting body, including the grounds, time periods, and procedures of such appeals. Regardless of what criteria are chosen for the vetting, they must reflect the public's expectations of creating independent courts, and inform the public in very simple and impartial terms and engage the public. The goal is to build up public support of the process and to make it legitimate for the public. In Argentina, for instance, where the vetting of judges was carried out behind closed doors, and the public had no knowledge of the process, it created deep mistrust in the public and was perceived as an attempt by the new government to build up a judiciary that would be obedient to it. Hence, the vetting process of judges, which was inherently aimed at increasing public trust in the judiciary, failed in its purpose.

The law should also prescribe the working mechanisms of the vetting body, i.e. whether the checks will be performed on the basis of declarations filled in by the judges, oral interviews, information received from other bodies, and complaints from citizens. Different states have used different tools, depending on what criteria were selected and what level of public participation had to be secured.

Before proceeding with large-scale vetting in the system, experts always suggest **piloting** the tool, for instance using it in relation to judge members of the Supreme Judicial Council at first. The process should provide the safeguards of fair trial, and all decisions of the commission should be reasoned, substantiated, and subject to appeal. Based on the piloting, certain problems will be identified, which will need to be fixed before the tool is used universally.

B) Training new judge candidates and preparation of a list

Parallel to developing the vetting tool, urgent steps must be taken to train judge candidates and to prepare a list. The candidates in the list should be appointed to the positions that will become vacant as a result of vetting or voluntary resignation (in Albania, hundreds of judges left the system before the vetting began) or increasing the number of judge positions in the courts. The training of judge candidates must be carried out under a qualitatively new curriculum that will reflect the priority issues that judges will deal with, such as trial of corruption offences, asset recovery, mass violations of human rights, and so on. These areas should be consistent with the need to address the systemic problems mapped. It will involve revision of the Justice Academy's curriculum, emphasizing certain priorities, and training of trainers for the Justice Academy. It will also be necessary to change the method of determining the number of future attendees of the Justice Academy, so that it is not based on the anticipated number of vacancies, but rather, produces a sufficient backup that will allow gradually replenishing the list of candidates. In parallel, the social safeguards provided to judges must be increased. As part of reviewing the Constitutional Law on the Judicial Code, it will be necessary to define clear and measurable criteria for the evaluation and qualification check of aspiring judge candidates, and to improve the composition and selection mechanism of the members of the Qualification Commission in order to prevent any arbitrariness. When preparing the lists of candidates, it will be necessary to ensure that the judge candidates are selected with the highest possible level of transparency and accountability, with the possibility of engaging the public in the process.

C) Counterbalancing the sitting judges by means of appointing new judges

In combination with the vetting tool, as well as in a separate-track process, it is possible to renew the composition of the courts by filling the existing vacancies with new judges as well as creating new judicial positions. These actions are aimed at ensuring that independent candidates, which have a strong sense of integrity and never worked in the judiciary before,

introduce a new quality into the judiciary and counterbalance the judges that were in one way or another engaged in systemic corruption and other criminal schemes.

To this end, an in-depth study is required to identify what critical mass of judges needs to be achieved in the existing judiciary (all the judicial instances plus the Supreme Judicial Council) and in the new courts to be created, in order to change the quality of the functioning of courts and the substantive quality of justice. As it will be impossible to fully change the conduct and performance quality of the sitting judges, new judges need to bring systemic change in the judiciary.

Thus, the study should answer a number of questions such as:

- How many judges need to be replaced immediately (in all the court instances) in order to achieve quick and visible improvement in the judiciary. It is necessary, in this context, to target the currently sitting judges with the lowest level of integrity, which were involved in political persecution, the delivery of unlawful judgments, and corrupt transactions, as well as judges who rendered judgments or decisions that subsequently caused the European Court of Human Rights to find violations by Armenia of human rights under the ECHR, especially its Articles 2, 3, 5, 6, 10, 11, 13, 14, and 18, as well as Articles 1, 3, and 4 of Protocol to the ECHR.
- How many vacancies there are and in which court instances? According to letter number E-1392 dated 26 February 2019, in which the Supreme Judicial Council provided information to the Justice Minister of the Republic of Armenia, there were a total of nine vacant positions of judges in seven first instance general jurisdiction courts of the Republic of Armenia at the time.
- How many judges are close to the retirement age? For example, the judges that have five to seven years before retirement. The state can propose to them the option of early retirement.
- How many judge positions need to be increased in the judiciary in order to ensure access to justice and the trial of cases within a reasonable period, as well as to alleviate the current workload of the judges. In 2018, the Supreme Judicial Council published a Concept Note on Comprehensive Improvements of the Effectiveness of Justice in the Republic of Armenia, in which it stated that the number of judges per 100,000 residents is on average 21 in the Member States of the Council of Europe, and 8.3 in the Republic of Armenia, which is about three-fold less. This figure significantly affects the effectiveness of the judiciary. According to the conclusions of the Concept Note, at least seven judge positions must be added to each first instance general jurisdiction court of Armenia.[6] Thus, Armenia needs a significant increase in the number of judges.
- What steps need to be taken to make the judiciary and the judge position more attractive for qualified professionals?

In order to have effective vetting of the judiciary in Armenia, it is necessary, but not sufficient, to reform also the law-enforcement system, including the police and the investigative and prosecutorial systems and to carry out vetting of their senior officials, which should run parallel to the vetting of judges.

CRIMINAL JUSTICE

Civil society and international organizations have frequently reported the lack of protection of and respect for human rights in Armenia and the inadequate response of the responsible institutions, which has led to systemic injustice and impunity. In all of its reports, the Council of Europe's Committee for the Prevention of Torture (CPT) stated facts of ill-treatment in the penitentiary institutions, police stations, psychiatric clinics, and other closed and semi-closed institutions. The investigation of facts of torture and ill-treatment is formalistic and ineffective and does not lead to the punishment of the perpetrators. Victims of violence and torture have for years been deprived of proper psychological assistance and moral and material compensation.

The failure of law-enforcement agencies to conduct impartial and effective investigation not only concerns cases of ill-treatment, but is of an extensive and systemic nature, and has legislative as well as institutional and practical foundations. This is further confirmed by judgments of the European Court of Human Rights.[7] Investigations as well as the deprivation of liberty of persons have often been conducted with grave procedural violations such as searching persons without a court order, pressure or ill-treatment on apprehended persons and witnesses in order to extract confessions or accusations of another person, exclusive use of police testimony in disregard of the defendant's or victim's testimonies,

[6] http://www.court.am/news/21-08-2018/%D5%80%D5%A1%D5%B5%D5%A5%D6%81%D5%A1%D5%AF%D5%A1%D6%80%D5%A3.pdf

[7] See, for example, *Ashot Ghulyan v. Armenia* (ECtHR, 20 September, 2018), *Mushegh Saghatelyan v. Armenia* (ECtHR, 20 September, 2018), and others.

neglect of material facts and the failure to incorporate them in the case file, the failure to preserve evidence, the improper use of results of forensic examinations, and the like. It is no coincidence that the majority of cases pending before the ECtHR against Armenia concern alleged violations of the right to a fair trial, followed by the lack of effective investigation, torture and other ill-treatment, and the unlawful detention of persons.

Arbitrary conduct of law-enforcement agencies against participants of mass events was a frequent occurrence. Participants of assemblies and journalists have suffered from violence, groundlessly apprehended (often—by plainclothes police officers), or faced the unlawful and disproportionate use of force or special means that inflicted harm upon persons' life and health. None of these cases were properly investigated in such a way as to hold senior officials responsible.

Persons subjected to discrimination were deprived of effective legal remedies, and the instances of discrimination still remain unpunished. In this context of impunity for discrimination, certain minorities (religious minorities, LGBT persons, persons with disabilities, persons living with HIV, and others) face systemic discrimination. Law-enforcement agencies have failed to respond properly to hate speech and have failed to conduct comprehensive and effective investigation of hate crimes. All of this has been exacerbated by the lack of transparency and accountability of law-enforcement and security agencies, and integrity and corruption problems, fortifying and deepening systemic injustice and impunity.

Hence, the following questions should be asked at the starting point for criminal justice reform: what values should the criminal justice system be based upon, what tools are needed for achieving these values, and how should one measure progress towards achieving a better system?

Moreover, criminal justice system reforms should go hand in hand with a proper response to the past systemic violations of human rights, including innovative solutions wherever it cannot be done through the conventional tools of justice. The combined implementation of such a response and systemic reforms ought to safeguard the prevention of such mass violations in the future.

REFORMS OF THE SECURITY AGENCIES

It is necessary to safeguard that the activities of the security agencies truly serve the security of the individual, society, and the state. The existing institutional setup of the security agencies is not conducive of human rights protection in the framework of criminal justice and in terms of ensuring security beyond criminal justice framework. Moreover, it does not abide by the rule of law principle.

National Security and Authorized Agencies

One of the institutional problems is that the National Security Service, as the agency responsible for national security, has been vested with extensive powers both in criminal justice and beyond it—in the provision of security. Such powers include intelligence, counter-intelligence, military intelligence, protection of the state border, criminal intelligence activities, inquest, and pre-trial investigation.[8] NSS has the power to investigate crimes related to or committed against customs, finance, public security, the public order, and morals.[9]

Although all of these powers are important safeguards for the provision of national security, their concentration in the hands of one agency, combined with the lack of transparency in its activities and the fact that it reports to no one but the Prime Minister,[10] as well as the absence of accountability and appropriate civil and parliamentary oversight have in past periods led to many instances of arbitrariness and human rights abuse. *Therefore, it is necessary to:*

- Have several different agencies in charge of national security and public security, the powers of which will be clearly defined and distributed, ensuring that intelligence and criminal procedure powers are not concentrated in the hands of the same agency;
- Make sure that the agency that will carry out intelligence activities does not have police powers (such as criminal intelligence powers or arrest and search powers) and is not allowed to instruct the Police to perform such functions; and
- Delegate the border control activities to the Border Police.

Public Security and Police

[8] Republic of Armenia Law on the National Security Bodies, 28 December 2001, Articles 9 and 13.
[9] Criminal Procedure Code of the Republic of Armenia, Articles 190 (2), 190 (3), 190 (4), 190 (6. 1), and 190 (9).
[10] Republic of Armenia Law on the National Security Bodies, 28 December 2001, Article 3.

It is necessary to vest the public order protection and criminal intelligence functions with separate agencies:
a. For public order protection, an agency should be created as part of a ministry, which will not have criminal intelligence powers. The agency will have regional offices.
b. A dedicated state agency should be created for criminal intelligence, the leadership of which will be appointed by the National Assembly on the basis of objective criteria and nominations by an independent body in order to preclude the institutional dependency of this agency on the political power and its exploitation for political purposes.

Transparency and Accountability

For all of the aforementioned security agencies, it is necessary to ensure proper mechanisms of transparency and accountability and ensure their implementation in practice. It is also necessary to develop the capacity of law-enforcement agencies to perform their functions without unlawfully and disproportionately interfering with human rights. *It is necessary to:*

- Ensure that all of the security agencies report to the National Assembly—either as part of the Government, or as a standalone state agency;
- Provide for parliamentary oversight of the security agencies, not limiting it to the provision of information to parliamentarians. To require these agencies to present annual reports to the National Assembly and to prescribe a procedure for the deliberation of such reports;
- Ensure that the Parliament, including its relevant standing committee, conducts democratic oversight of the security agencies through powers such as: a) receiving information and having access to information and sites that comprise state or official secrets; b) having the power to collect facts, including by means of visiting and checking secret sites, obtaining testimony, and assessing documents, including when necessary operational information; c) having the power to demand, initiate, or conduct official inquiries, investigations, and independent checks in cases of abuse of official position; and d) having the power to publish findings and recommendations without undermining national security;
- Ensure effective civilian oversight of places where arrested persons are kept, and to expand the mandate of the Group of Public Observers of places where arrested persons are kept in the system of the Armenian Police, allowing the Group of Public Observers to make unannounced visits to police stations, as well;
- Amend the legislation to prescribe clearly the criteria, grounds, and procedures of keeping and granting or restricting access to information, including personal data, state and official secrets, and security-related information in line with the Tshwane Principles,[11] and to ensure their implementation in practice; and
- Amend the Law on the Freedom of Information as an important tool for accountability and transparency of the security agencies, and to prescribe clearly in law the information that is a state or official secret, including the restrictions of the freedom of information on that basis.

For Legal Certainty and Capacity Building *it is recommended to:*

- Streamline the legislation on the use of force and on responsibility for the use of force, and to ensure that it is properly taught to the staff of the relevant law-enforcement agencies;
- Ensure proper judicial oversight of criminal intelligence operations;
- Carry out legislative reforms so that all restrictions of human rights are prescribed only by law, ensuring legal certainty, especially when defining the scope of officials and when issuing orders; and
- Conduct regular capacity building activities for the staff of the security agencies with a focus on respect for human rights in the performance of their powers.

GENERAL PROSECUTOR OFFICE AND INVESTIGATIVE BODIES

One of the problems in Armenia's criminal justice was the inadequacy of investigations and impunity, where the prosecution office and the investigative agencies played an important role, because they were the ones that decided not to investigate cases or failed to investigate them thoroughly. The independence of these agencies and the appointment and dismissal of their leaders are institutional, as well as public interest matters. Regardless of what model Armenia will adopt, the independence of the prosecution office must be guaranteed, because independence lies at the heart of effective and

[11] Tshwane Principles, 2013.

impartial investigations and punishing the guilty ones It should include both institutional independence and personal and decision-making independence in the performance of official duties. Moreover, the activities of these agencies should be based on the three values mentioned above—fairness, efficiency, and effectiveness. *It is necessary to:*

- Put in place a comprehensive integrity checking mechanism for prosecutors and investigators, similar to the tools used for the judiciary;
- Plan and conduct a comprehensive vetting of the prosecutors and investigators for securing the independence and political impartiality of the law enforcement (i.e. constitutional amendments and later translated into specific laws (including a standalone law on vetting), which will foresee formation of an independent commission and development of specific and non-political criteria for vetting);
- Train new prosecutors and investigators candidates and compile a list;
- Develop a new mechanism for nominating candidates for the prosecutor's position, precluding political and partisan influence, and streamlining the process and criteria for the appointment and dismissal of the Prosecutor General;
- Similar to the Prosecution Office, to ensure objective criteria and mechanisms for the selection and appointment of the Head of the Special Investigative Service and the Investigative Committee of the Republic of Armenia;
- Loosen the current highly-concentrated pyramidal structure within the Prosecution Office, ensuring greater effectiveness and fairness;
- Adopt a law prescribing the mandatory elements of the annual statement presented to the National Assembly by the Prosecution Office, including information on the number of cases investigated, information on the reasons for not investigating, and other information, so that the presentation of the annual statement is not a mere formality;
- Require the investigative bodies to present annual statements on their activities to the National Assembly and to prescribe the procedure for deliberating such annual statements in the National Assembly;
- Provide for the Office of the Anti-Corruption Prosecutor, who will *ex officio* be a Deputy Prosecutor General, but in operational terms will have final decision-making powers with respect to the prosecutorial oversight of the investigation of corruption crimes, effectively acting as the "Prosecutor General" for corruption cases;
- Empower the Special Investigative Service to carry out criminal intelligence activities and to prescribe that the Special Investigative Service shall investigate only corruption crimes and official crimes;
- Ensure the creation of regional subdivisions of the Special Investigative Service; and
- Discuss the relationship between the Prosecution Office and the Special Investigative Service and Investigative Committee of Armenia and to assess their activities from the perspective of the three principles of criminal justice (fairness, efficiency, and effectiveness).

REFORMS IN THE PENITENTIARY

Ever since Armenia regained its independence, a number of problems remain unsolved in the penitentiary institutions with respect to inhuman conditions of detention, poor quality of medical services, the prevailing criminal subculture, and the prevalence of hierarchical relations. After Armenia joined the CoE, the country faced clear criteria according to which criminal justice had to be organized, including criteria related to the protection of the rights of prisoners. However, due to Armenia's extreme underperformance of international commitments for years, the EC(t)HR decided in a number of cases that Armenia has violated prisoners' rights to life, health, security, the right to be free from discrimination and ill-treatment, the right to privacy, and other rights. These problems are more significant for LGBTI persons and other vulnerable groups, who are isolated and humiliated in penitentiary institutions. The mortality rate in Armenia's penitentiary institutions (number of deaths relative to the total prison population) has in different years been among the highest among the CoE members. The mechanisms for protection of the rights of detained persons and their early conditional release have not worked effectively. The Prison Monitoring Group has regularly met certain obstacles while visiting the inmates. Penitentiary programs should be developed and implemented as part of a comprehensive criminal justice reform, since the penitentiary problems are often the consequences of judicial errors, excessive use of pre-trial detention, systemic corruption, poor work of the probation service, and the absence of effective programs for crime prevention and resocialization of prisoners.

Therefore, it is necessary to hold broad public consultations in order to **elaborate a new strategy for the penitentiary**, which will, in line with the criminal justice reform, develop the system of alternative sentences, implement

effective activities for the resocialization of inmates, and safeguard respect for all human rights in the penitentiary institutions. This strategy should contain, among other things, the following actions:

- Discontinue the operation of the Noubarashen and Goris penitentiary institutions, because the conditions in their buildings are inhuman, and can no longer be improved through renovations;
- Improve the effectiveness of the Probation Service, designating it as the only authority that will, using the tool for assessing the risks and needs of convicted persons, submit advisory opinions to the courts as to whether a convict should be released early. Meanwhile, the opinion (or written statement) of the penitentiary institution in which the inmate is held should be no more than one of the sources used by the Probation Service for its assessment;
- Improve the quality and accessibility of medical services in penitentiary institutions, transferring the medical services of the penitentiary institutions under the jurisdiction of the Ministry of Health of the Republic of Armenia, and ensure that the quality of treatment in penitentiary institutions is equivalent to the standards for medical services provided in civilian hospitals;
- Strengthen the early conditional release mechanism, so that it is used effectively in respect of life prisoners and other convicts. To this end, a system of social services and individualized personal assessment should be implemented in the penitentiary institutions;
- Eradicate the criminal subculture and prisoners' hierarchical relationship prevailing in penitentiary institutions, and restore the rule of law and the control of the administration in prisons;
- Carry out comprehensive and objective investigation into each case of murder, suicide, self-harm, or death in penitentiary institutions, study the underlying reasons, and put in place effective mechanisms for early prevention; and
- Transfer to the courts the function of overseeing the execution of punishments in order to prevent institutional conflicts of interest and to ensure the accessibility of justice for persons deprived of liberty.[12]

NECESSARY ACTIONS

Develop amendments and additions to the following legislative acts:

The Constitution of the Republic of Armenia (adopted in 2015): drafting Constitutional Amendments within a six-month period;
The Constitutional Law of the Republic of Armenia on the Judicial Code (2018)
The Constitutional Law of the Republic of Armenia on the Bylaws of the National Assembly (2016): within a 1-2-year period;
The Republic of Armenia Law on the Prosecution Office (adopted in 2017)
The Republic of Armenia Law on the Special Investigative Service (adopted in 2007)
The Republic of Armenia Law on the Investigative Committee of the Republic of Armenia (adopted in 2014)
The Republic of Armenia Law on the Police of the Republic of Armenia (adopted in 2001)
The Republic of Armenia Law on the National Security Bodies (adopted in 2001)
The Republic of Armenia Criminal Code (adopted in 2003)
The Republic of Armenia Criminal Procedure Code (adopted in 1998)

[12] For purposes of this recommendation, Poland's penitentiary legislation should be studied.