“How to Promote in Practical Way the Independence of Judges as Protectors of International Human Rights Law”

April 2013- Questionnaire 1st Study Commission

At last year’s meeting in Washington, D.C., we voted to undertake an examination of the topic identified above. It is the view of the officers of the First Study Commission that in order to examine the independence of judges as “Protectors of International Human Rights” it is necessary to examine a variety of factors that may affect the overall independence of judges. After all, if judges are not independent in the exercise of their regular day to day duties, how will they be able to be independent in acting as protectors of international human rights law.

Therefore, we are posing a number of questions that address factors we believe affect judicial independence in general, and we are also asking a number of questions that address more specifically when and how matters that specifically involving international human rights law are brought before us as judges.

We look forward to receiving your answers, which we will compile and share with each other at our meeting in Ukraine. Please respond by 15 July 2013, if at all possible. Thank you.

POLITICAL INDEPENDENCE

1- In your country and legal system, with respect to reducing the influence of politics on the decisions that are made by judges, what guarantees or provisions of law exist to ensure the independence of judges in their decision-making? NOTE: We list several examples and invite you to add any others that may also apply in your own judicial system:

a- Is there security of a judge’s tenure in office? If so, please describe how
this is provided – for example, by constitution, by statute, by judicial rules, etc.

It is provided by Judicial Code.

b- Is there legislation that prohibits others in the government from interfering in the judicial decision-making process? If so, please describe.

By the Judicial Code.

Article 94 of the RA Constitution
Independence of courts shall be guaranteed by the Constitution and laws.

The powers, procedure for formation and operation of courts shall be defined by the Constitution and laws.
The powers and procedure for formation of the Constitutional Court shall be defined by the Constitution, and the procedure for operation thereof shall be defined by the Constitution and the law on the Constitutional Court.

c- Is there legislation that prohibits others outside the government from attempting to influence improperly a judge’s decision? If so, please describe.

See point A.

d- Is there a system to provide for the physical security of a judge and the judge’s family that may be invoked by the judge? If so, how is this security provided and who provides it?

No.

e- Are there any special provisions to ensure a judge’s independence from improper political influence when the judge is deciding a matter involving alleged human rights violations? If so, please describe.

RA Judicial Code Article 11. Independence of the Judge and Autonomy of the Court
1. In the administration of justice and the performance of other powers stipulated by law, the judge is independent.

2. In the exercise of other powers stipulated by law, the judge is not accountable to anyone and, among other things, is not required to give any explanation, save for cases provided by law.

3. It shall be prohibited to interfere with the activities of a judge in any way that is not foreseen by law. Any such act is subject to criminal prosecution. For public servants, it gives rise also to disciplinary liability, up to and including dismissal from office or service in accordance with the procedure stipulated by the relevant laws regulating public service.

4. A judge must immediately inform the Ethics Committee of the Republic of Armenia Council of Court Chairmen (hereinafter, “the Council of Court Chairmen”) about any interference with his activities related to the administration of justice and the performance of other powers stipulated by law, if such interference is not provided by law. If the Ethics Committee finds that the judge's activities have been interfered with in a way that is not provided by law, it must petition the competent authorities to hold the guilty ones liable.

5. During his term of office and after the termination thereof, a judge may not be interrogated as a witness about a case tried by him.

f- Please describe any other guarantees or provisions of law that are intended to reduce the influence of politics on a judge’s decisionmaking?

Judicial Code of Conduct also prohibits it.

APPOINTMENT SYSTEM FOR THE JUDGES/JUSTICES

2- Are the procedures and criteria for judicial selection clearly defined by law in order to ensure transparency in the selection process? Please describe the procedures and criteria that exist.

CHAPTER 15. COMPILATION AND APPROVAL OF THE LIST OF JUDICIAL CANDIDATES. PROCEDURE OF APPOINTING JUDGES AND CHAIRMEN OF FIRST INSTANCE COURTS.

Article 115. Qualification Testing

1. If, as of September 1 of the current year, the total number of persons that graduated or are currently studying in the Judicial School does not exceed 12, then the Cassation Court
Chairman shall, no later than September 10, publish an announcement on performing qualification testing with a view to supplementing the list of judge candidates.

2. A qualification test shall be carried out in a competitive procedure based on the results of written exams.

3. The Judicial School Governing Board shall, not later than September 30, define and publish the type of written exams, the procedure of conducting them, the procedures of checking, grading, and appealing against the grading of exam papers, and the procedure of calculating the total sum of an aspirant on the basis of the exam paper grades. Organizational work related to the implementation of the qualification test shall be carried out by the Judicial School Director.

4. Participation in the qualification exam is open to citizens of the Republic of Armenia, who are 22-60 years old and have obtained in the Republic of Armenia a Bachelor’s degree or a “specialist with diploma” degree in higher legal education, or have obtained a similar degree in a foreign state, which has been recognized and confirmed in terms of adequacy in the Republic of Armenia in accordance with the procedure stipulated by law, provided that they have a command of the Armenian language, have not been deprived of the right to apply to the Judicial School based on Article 185 hereof, and comply with the requirements of Article 119(1) hereof.

5. Applications shall be submitted to the Judicial School Director by October 25.

6. Together with applications, the applying individuals shall present their consent to obtaining necessary information about them from state bodies and officials, including information comprising medical secrecy.

7. An aspirant must also present:

1) A personal identification document;

2) A document confirming that the aspirant has higher legal education;

3) A card containing the aspirant’s biographical data, with a description of the professional legal work carried out by the aspirant after obtaining a lawyer’s degree, including the relevant evidence (such as a job description or other documents confirming the duties in the job that is to be considered as professional legal experience);

4) A document confirming that the aspirant has performed mandatory military service or has been relieved of such service or has had such service deferred in accordance with the procedure stipulated by law (this requirement only applies to male aspirants); and

5) A document issued in accordance with the procedure stipulated by the Government, confirming the absence of physical handicap and illnesses that hinder one’s appointment to a judicial position.
8. An applicant has the right to present also recommendation letters in the form approved by the Judicial School Governing Board.

9. The Judicial School Director may check the credibility of the presented documents.

10. Applications submitted in breach of the established deadline for submission and applications that do not meet the requirements stipulated by law shall be rejected and returned by the Judicial School Director within three working days. The Judicial School Director’s decision to reject an application may be appealed to the administrative court by the applicant within three working days of receiving the rejection. The administrative court shall examine and resolve the case within three working days of receiving it.

11. A judicial appeal against the Judicial School Director’s decision to reject an application shall not suspend the procedure stipulated by this Code for accepting applications and testing qualification.

12. If the Judicial School Director’s decision to reject an application is found unlawful by court, the applicant shall have the right to take a qualification test and, if the qualification testing has already begun, then the applicant shall have the right to take part in the next qualification test without having to submit a new application.

13. The qualification test and the summarization of results, including appeals against the qualification results shall be carried out during the period from November 1 to 15.

3- Is there a separate expert commission or other authority either outside or inside the judiciary which has jurisdiction and competence to participate in judicial selection, including to conduct examinations of prospective judges if such examination are used in the process of judicial selection? If so, please describe.

**Article 97. The Justice Council and Its Powers**

The Justice Council is an independent body, which shall exercise its powers enshrined in the Constitution in accordance with the procedure stipulated by this Code.

**Article 98. Requirements Presented to Justice Council Members**

1. A judge who has at least five years of judge experience and, during the last five years, has not been subjected to a disciplinary sanction may be elected as a judge member of the Justice Council. A court chairman and a chamber chairman of the Cassation Court may not be Justice Council members.
2. The position of the Justice Council member that is a law academic is a state position.

Article 99. Procedure of Electing the Judge Members of the Justice Council

1. The judge members of the Justice Council shall be elected in the General Assembly of Judges, by the following groups:

1) One member from the universal courts of Yerevan;

2) One member from the universal courts of the Marzes;

3) One member from the criminal courts;

4) One member from the civil courts;

5) One member from the civil appellate court;

6) One member from the criminal appellate court;

7) One member from the administrative court; and

8) Two members from the Cassation Court.

2. When there is a vacant position of a judge member of the Justice Council, a new member shall be elected in accordance with the procedure stipulated by this Code during a three-month period; however, if the number of judge members of the Justice Council is fewer than seven, then such election shall be performed within a one-week period.

3. When a judge member of the Justice Council is transferred to another court or stops exercising his judge powers due to the elimination of his court, he shall continue serving in his position of a Justice Council member, but later, when there is a vacancy in the Justice Council, the General Meeting of Judges shall, if possible, fill the vacancy in such a way as to restore the proportion of judge members in the Justice Council as stipulated by Paragraph 1 of this Article.

ADMINISTRATION OF THE JUDICIARY

4- a- How are the salaries of judges set?

By Law.

b- Are those salaries and any other allowances paid to the judges adequate to satisfy the reasonable living expenses of judges?

No

c- Do the judges’ compensation adequately reflect the dignity and
importance of the judges’ position?

It depends on which instance court and the working period.

5- Is the administrative authority of the chief judges/justices used in a way to influence the adjudication of cases and to affect the content of judicial decision-making? If so, how?

No.

6- To address disciplinary matters involving judges who are accused of violating judicial conduct rules, is there a judicial council or some other body that has the power to:

a- Receive complaints and conduct disciplinary investigations? If so, please describe.

Commission of Ethics.

The Chairman of the Council of Courts Chairmen:

1) chairs the Council of Courts Chairmen;
2) appoints one judge from amongst the judges of the Court of Cassation to be involved in the Qualification Committee of the Chamber of Advocates;
3) presents to the Council of Courts Chairmen the candidacy of the Head of the Judicial Department and the suggestion on his/her dismissal from the office;
4) carries out the general management of the activity of the Judicial Department;
5) appoints a temporary acting officer in case of the position vacancy of the Chairman of Courts of First Instance or Appeal;
6) upon detecting a violation of the requirements of Behavior Rule Book by a Judge respectively submits a notification on it to the Ethics Committee of the Council of Courts Chairmen or to the Disciplinary Committee of RA Council of Justice;
7) represents the Judicial Power in the relationships with other bodies;
8) exercises other powers vested to him/her by law.

The Council of Courts Chairmen acts according to its approved Regulations.

The Council of Courts Chairmen, from its composition, has formed the following committees of:

1. Ethics;
2. Study;
3. Budgetary and Judicial Department issues.
Each committee is chaired by a member elected by the committee from its composition. The number of the members of committees is defined by the Council of Courts Chairmen.

INTERNATIONAL HUMAN RIGHTS ISSUES

7- What is the source of the law, if any, that a judge takes into consideration when deciding whether and how to enforce international human rights law? For example: the constitution, treaties, laws of the country?

RA Cassation of Court is taking into consideration all international triestes, ECHR decisions and ECHR case law judgments.

8- Do there exist procedures by which your courts may hear cases involving alleged violations of international human rights law when those alleged violations are separate from and independent of the laws of your country? If yes, please describe these procedures.

No.

9- If the answer to Question 8 is “No,” are there any types of cases in which a judge may consider and apply principles of international human rights law when making a decision, or is the judge limited to applying fundamental principles of international human rights law in making a decision only if such principles are embodied in the laws of the country?

Article 6 of Constitution. Its up to judge to implement it.

Article 6.

The Constitution of the Republic shall have supreme legal force and the norms thereof shall possess direct effect. The laws shall conform to the Constitution. Other legal acts shall conform to the Constitution and the laws. The laws shall come into force following their official publication in the Official Bulletin of the Republic of Armenia. Other normative legal acts shall come into force following their official publication in the manner prescribed by the law. International treaties shall come into force only after being ratified or approved. International treaties are a constituent part of the legal system of the Republic of Armenia. If a ratified international treaty stipulates norms other than those stipulated in the laws, the norms of the treaty shall prevail. International treaties contradicting to the Constitution can not be ratified. Normative legal acts shall be adopted on the basis of the Constitution and the laws and for the purpose of the ensuring their implementation.
10- Are there any persons or groups of people who work for the government in your country who have judicial immunity for their illegal actions?

*Just Parliament members and Judges and diplomatic persons has immunity.*