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THE REFORM OF LEGAL AND JUDICIAL SYSTEMS AND THE OBJECTIVE OF THE PROTECTION OF HUMAN RIGHTS - THE EXAMPLE OF ARMENIA

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Reform of legal and judicial systems is essential in all former Soviet and Communist countries that have renounced totalitarian regimes and adopted the principles of human rights protection.

The former legal systems of the New Independent States are very little different from one another. Thus today the reform of these systems raises identical issues in the said states. That does not mean that each of those states has no specific features of its own. For our Republic, the following features are to be highlighted.

1. The current system is subject to complete change. The entire legislative domain must be completely changed, new structures need to be established and the existing ones fundamentally changed.

2. The transitional statements of the Constitution provide limited deadlines for adopting the reforms. Violation of the established deadlines will be regarded as violation of the Constitution.

3. A reform cannot be accomplished autonomously, with no international cooperation, no technical or advisory assistance.

Privatisation of land initialised the economic reforms in Armenia. The primacy of a single type of property, viz., public property, was revised, and the state guaranteed the free development of and an equal legal protection for all proprietary rights, thus creating a basis for developing the relationships of market economy.

Most significant for political reform was the adoption of the new Constitution. Complete constitutionally formulated state structures had already been set up: President of the Republic, National Assembly, the Supervisory Chamber of the National Assembly, the Government, state bodies of the regional governments and local management, a Constitutional Court, the Council of Justice. The latter two institutes are completely novel structures for the legal system, those however being only the first steps in structuring the judicial authority.

Judicial legal reform in Armenia is a constitutional requirement. The basics and principles of this reform are registered by the Constitution. However, there was no integral program of reform to be adopted immediately following the reform, so much time was wasted. There is much focus today on judicial legal reform. A presidential decree (Articles 49 and 55 item 6 of the Constitution) established a state committee comprising the representatives of the three branches of state authority.

A special state program was developed and approved. The program indicated the principal objective of the reform as a creation of a judicial system running independently, having its distinct place and purpose, providing reliable guarantees for the defence of human rights and the development of democratic relationships.

According to its Constitution, the State of the Republic of Armenia considers the protection of human rights and freedoms to be its most important task (Article 4).

It should be noted that the human and citizens' rights as well as the fundamental freedoms included in Chapter 2 of the Constitution are entirely in conformity with the requirements of the

Universal Declaration of Human Rights and the International Covenant on Civil an Political Rights, the International Covenant on Economic Social and Cultural Rights and other legal documents concerning human rights. Several articles in this chapter not only enumerate human rights and freedoms but also guarantee their means of implementation. For example, Article 18 not only states a person's right to freedom and inviolability but also contains the following guarantees of the implementation of this right: "No person may be subject to arrest or searching other than in accordance with the law. No person may be detained in custody other than by a judicial decision in accordance with he law." According to current legislation, the old procedures for arrest are still in force and thus a new law must be adopted.

Currently, the project for the new code of criminal procedure is at the development stage. References to the law in the articles of the constitution dealing with human rights necessarily imply the adoption of a new law as the laws currently in force do not meet the standards of human rights required. The need for national legislation concerning the implementation of human rights is highlighted by international legal documents. According to Article 2 of the International Covenant on Civil and Political Rights, signatory States agree, where there is insufficient national legislation, to take the necessary steps to adopt laws conforming with the terms of the Covenant, in accordance with the means provided in the Constitution.

Today’s Armenia is living through a period in which three types of law actually contradict one another: the Soviet laws, the laws adopted before the Constitution and those adopted after the Constitution. There is a need to establish new legislation securing the implementation of human rights and freedoms in complete observance of the relevant international standards. With regard to this there is another problem, that of legality. Regretfully, our capabilities in defending human rights are very limited when implementing constitutional control. It is not impossible that human rights guaranteed by the Constitution could be violated by a law itself or by another legal act. No one can indicate such a violation more efficiently than the very citizen who intends to implement his right. Next this question of violation will go to the general court which administers the law. Neither the former nor the latter however have the right to appeal to the constitutional court. It seems that the reform consists not only in reforming the old system. It is a dynamic process, so that new structures, too, can be reformed by enlarging the circle of subjects having the right to appeal to the constitutional court. There should be no need to wait for the adoption and application of a legal act which violates human rights nor to base the examination of constitutionality solely on the application of an irregular act. Everything possible should done so that those occurrences become very scarce.

We have no provision for the preliminary control of draft legislation; however, it would be possible to create the structures intended to prevent the adoption of legal acts violating human rights. It would be possible, for example, to establish a national centre for the defence of human rights, which would issue its findings prior to a specific act being signed by the President of the Republic, or to create the Institute of Ombudsman. Structures of this type are particularly important in times of reform.

It is indisputable that in every country the state of human rights defence is contingent upon the level of guarantee for the defence of human rights and freedoms using the current laws of the specific state. All laws adopted, however fine, would be of no value and would remain an illusion, if adopted in a non-legal state that would secure no rule of law. Article 1 of the Armenian Constitution declares an independent democratic social legal state, while Article 6

states that Republic of Armenia guarantees the rule of law.

This type of statements being registered in the Basic Law is certainly not tantamount to the creation of a legal state nor to securing the rule of law. To this end one should radically change the institutional structures implementing the defence of human rights, and first of all the judicial structure. Currently operating in Armenia are the old courts that had worked in the absence of private ownership, using the principles of the primacy of state-owned property. The entity that used to resolve economic disputes was the executive authority, the state-operated arbitration under the government that is still operational today. Most civil legal disputes used to be resolved in an extra-judicial procedure. Their setting was so limited that there is a current viewpoint today that the general judges will just not be able to resolve the disputes related to the market economy relationships. Often, court decisions had not been executed for years, since the warrant officers who had to put them into effect were not empowered to do so. It is currently being quite correctly suggested that special structures be established: properly empowered structures that would enforce the decisions of the court.

The courts dealing with criminal cases were mainly used to perform punitive functions. The question of criminal liability was essentially resolved in the preliminary investigation. All that had resulted in the people becoming convinced that the defence of their rights had to be sought in the bodies of executive authority rather than in courts. It is not accidental that research conducted by the Constitutional Court has shown that 60 percent of the citizens' applications are addressed to irrelevant institutions which are not competent to resolve them. Moreover, there have been applications to executive and legislative entities requesting them to assume supervision of a court hearing. It follows that it is necessary to strengthen judicial authority. Judicial authorities are strong when their decisions are put into effect without reserve. A court decision is to be regarded and carried out as a law. The political authority should not criticize a court decision, as ours regrettably still does today. This statement should not be perceived as manifestation of vested interests, since a weakened judicial authority will inevitably result in negative practices within the society.

Furthermore, the public attitude should be modified, so as to strengthen public awareness of the court's role in the defence of human rights. Article 38 of the Constitution states that everyone has the right to judicial defence of the rights and freedoms granted by the Law and the Constitution. This is essentially an expression of the international principle of the fully-fledged judicial defence of human and social rights.

<u>To implement an effective judicial defence, it is necessary</u>:

1. to secure judicial independence:

   The need for an independent and impartial court is registered in Article 39 of the Constitution stating the right of the person to a judicial examination of his case in this specific type of court.

What is necessary to provide judicial independence:

* to provide a distinct legislative definition of the status of judges, the requirements for their nomination, promotion, and disciplinary responsibilities and the reasons for their dismissal.

* to reduce to a minimum the role of executive authority, i.e. of the Ministry of Justice, in the appointment of judges. We are unable to eliminate that role completely, since our Constitution lacks this provision. It is recorded in the Constitution that a judge is nominated by the Minister of Justice. However, with regard to existing laws, the mechanisms of presenting the contenders to the council of justice can cause the judge to be dependent not only upon the minister, but also upon the chiefs of directorates.

* It is necessary to provide the judge with sufficiently high wages to secure a dignified living standard and to secure his personal safety. It is better that judges seek assistance and protection from another structure of authority rather than from the Mafia.

* The independence of the court could also be defended by public associations of judges. Such organisations thus need to be given a proper place.

2. Judicial defence has to be made publicly accessible. It is completely undesirable to establish specialised judicial structures. E.g., it is impossible to provide a precise delimitation between economic and civil disputes. With this type of separation of courts, it is not excluded that the same case be examined in different courts, thus delaying the resolution of cases.

3. It is difficult to imagine the defence of human rights where there exists no right to have a court decision reviewed. For this, it is insufficient to establish an appeals court; it is also necessary to create real capacities for appealing court decisions. These capacities could be provided by establishing the institute of licensed defence lawyers which is envisaged by the Constitution but nonexistent to date.

4. No less important for the implementation and protection of human rights is to make legal assistance accessible to everyone.

It is only after all those issues have been resolved that we will be able to say that human rights in this country benefit from reliable protection.