



Statement
on
current issues affecting judicial independence
in the
Republic of Armenia

1. At its meeting in Athens on 2 June 2023 the European Association of Judges – “EAJ”- noted with considerable concern recent developments in the Republic of Armenia which adversely affect the independence of the Supreme Judicial Council and have led to the misuse of disciplinary proceedings as a means of deterring judges from publicly expressing their views on the operation of the judicial system.
2. The members of the Supreme Judicial Council include five non-judicial members who are elected by a vote of at least three-fifths of the total number of deputies in the National Assembly and must be from among academic lawyers or other prominent lawyers¹. The candidacy of such a non-judicial member must be proposed by a faction of the National Assembly². The current non-judicial members of the Council were all nominated and appointed by the ruling faction, which commands an absolute majority among the deputies in the National Assembly.
3. Neither the qualifications and merits of the candidates selected and appointed by the party of government, nor the manner or process of their selection, were disclosed. Two of those put forward for appointment held, until immediately before their appointment, office as the Minister of Justice and Deputy Minister of Justice respectively. The first of these thereafter assumed the chairmanship of the Supreme Judicial Council. The clear inference to be drawn from these appointments and the absence of any attempt on the part of the ruling faction to justify the appointments on the basis of merit is that they were politically motivated.
4. The appointments of the non-judicial members are incompatible with the standards set by the European Network of Judicial Councils which stipulate that the process of selection and appointment of non-judicial members of judicial councils should be merit based and transparent³. They also ignore the recommendation made in 2018 by the OECD that Armenia should “establish open, transparent and competitive procedure of election of non-judicial members of the Supreme Judicial Council and specify criteria for elections as its member by the National Assembly”.
5. The EAJ also notes with concern that the Minister of Justice has the power to institute disciplinary proceedings against judges which are then determined by the Supreme Judicial Council. The placing of that function in the hands of the Minister of Justice – a part of the executive branch of the State- presents a danger for the independence of judicial office holders.

¹ Article 174 of the Constitution

² Article 144 para 2 of the Rules of the National Assembly

³ ENJC Compendium on Councils for the Judiciary, adopted 29 October 2021, p.7

This was made clear by GRECO in its fourth evaluation round⁴. It also reinforces the need for the Supreme Judicial Council, as the adjudicating body in disciplinary matters, to be wholly free of political influence.

6. Further, the EAJ finds wholly objectionable the steps recently taken to prevent members of the judiciary from expressing in public any views or concerns regarding the system of justice in Armenia.

7. Thus on 25 and 26 November and on 2 and 3 December 2022 the Chairman of the Supreme Judicial Council, along with his immediate successor as Minister of Justice, convened meetings of the judges in all the areas of Armenia to announce the creation of a “network of speakers” whereby only certain individuals approved by him were permitted to speak publicly on matters relating the judicial system. Since then, the Minister of Justice has instituted disciplinary proceedings against judges who, not being approved as speakers, have spoken publicly about aspects of the judicial system. In particular, in disciplinary proceedings brought against her on the grounds of criticism voiced in a social medium and in a press interview to the effect that judges’ workloads were excessive Judge Zaruhi Nakhshkaryan was removed from office on 27 February 2023. Proceedings have also been commenced against Judge Davit Harutyunyan on the grounds that he gave an interview to the press in which he criticised the establishment of the network of speakers; decisions to suspend the powers of 20 judges on the basis that the training which they had undergone before appointment was inadequate; and attempts by the Chairman of the Supreme Judicial Council to influence the election of a judicial member of the Council.

8. The EAJ deplores such blatant misuse of disciplinary proceedings to prevent members of the judiciary from exercising freedom of speech to discuss critically the operation of the judicial system.

The EAJ accordingly calls upon the authorities of the Republic of Armenia –

- Fully to observe and uphold the principle of the independence of the judiciary in all respects;
- To ensure that the non-judicial members of the Supreme Judicial Council are selected openly and on merit and are free from political influence by the executive;
- To respect the right of judges to freedom of speech;
- To refrain from misusing disciplinary proceedings as a means of preventing a judicial office holder from speaking publicly about the judicial system and its institutions; and
- To review the cases in which the power of the Minister of Justice to bring disciplinary proceedings has been thus misused.

⁴ Greco RC4(2019)21, paras 43-48