



ԻՐԱՎՈՒՆՔՆԵՐԻ ՊԱՇՏՊԱՆՈՒԹՅՈՒՆ ԱՌԱՆՑ ՍԱՀՄԱՆՆԵՐԻ
ՀԱՍԱՐԱԿԱԿԱՆ ԿԱԶՄԱԿԵՐՊՈՒԹՅՈՒՆ
PROTECTION OF RIGHTS WITHOUT BORDERS NON-GOVERNMENTAL
ORGANIZATION

Information Note

The Activities of the Highest Judicial Council as an Index for the Courts' Functions' Real Independence

The current information note was elaborated by the “Protection of Rights without Borders” non-governmental organization in 2018 and while using the thoughts and opinions from the Information Note, we kindly ask to keep the copy rights.



General Information

1. On February 7 of 2018, the RA Judicial Code was adopted, within the scope of which the Highest Judicial Council has respectively been formed.
2. On February 27 of 2018, the five members of the Highest Judicial Council were elected in the RA National Assembly¹.
3. On March 1 of 2018, the subsequent general assembly of the RA Judicial Council was held, within the scope of which the members of the Highest Judicial Council were elected².
4. On March 5 of 2018, the first sitting of the Highest Judicial Council was held, within the scope of which, Gagik Harutyunyan was elected as the President of Highest Judicial Council in secret voting³.

The Illegalities and the Abuse of Power of the Highest Judicial Council

5. On January 9 of 2017, a directive by then RA President Serzh Sargsyan on Amending the Decree NH-136-A of July 23 of 2011 of the RA President on confirming the list of Judge Candidates was adopted.
6. By the decree, it was particularly confirmed to amend the list of the judge candidates presented by the Decision Akh-29-D-27, as well as to amend the list of the judge candidates from civil, criminal and administrative sections confirmed by RA President Decree NH-136-A dated 23 July of 2011⁴.
7. In a line with the Judicial Code, the list is a subject of confirmation by the RA President and other changes, before presenting to the President cannot be made.
8. The Highest Judicial Council formed on May 3 of 2018, instead of presenting the mentioned lists to the President had a meeting with the judge candidates of RA Civil Court of Appeal. After the discussions, the Council held a sitting and organized a new, secret voting over the candidates of the judges. In the outcomes of the vote, in accordance with Articles 94 and 130, as well as Paragraphs 29, 31 and 32 of Article

¹ Hetq, the members of the Highest Judicial Council were elected: “ELQ” assures, that results were forged, 28 February 2018 <http://hetq.am/arm/news/86164/>

² Azatutyun.am, the First Composition of Highest Judicial Council is already known, March 1, 2018 <https://www.azatutyun.am/a/29071327.html>

³ Court.am, the first sitting of the Highest Judicial Council took place March 5, 2018 <http://www.court.am/index.php?link=news/05-3-18/05-03-2018.htm>

⁴ The confirmed list of judge candidates according to Annex 1



166 of the constitutional law on “The RA Judicial Code” it was decided to present the RA President the candidacy of Arsen Samvel Mkrtychyan for the position of the President of the RA Civil Court of Appeal (judge of the same court).

9. Similarly, in the outcomes of a secret vote, in accordance with Articles 94, 127, 128, 129, as well as Paragraph 14 of Article 166 of the constitutional law on “The RA Judicial Code”, the Highest Judicial Council decided to present the RA President the candidacy of Naira Margaryan for the position of a judge of RA Civil Court of Appeal (judge of the Court of General Jurisdiction of Yerevan) and for positions of judges in the RA Criminal Appeal Court, the candidacies of Tigran Simonyan and Arsen Nikoghosyan respectively.
10. **A secret voting in the sitting of the Highest Judicial Council was organized also over the candidates of already selected judges for the administrative districts** and by the outcomes of the voting, the candidacies of **two judges nominated for the position of the Judge of the RA Administrative Court was rejected by the majority of votes**⁵.

THE LEGITIMACY OF HIGHEST JUDICIAL COUNCIL’S DECISION

11. In the sitting of May 3 of 2018, the Council rejected the candidacies of the judges of the RA Administrative Court, presenting the outcomes of the voting of the Council’s members, meanwhile the Highest Judicial Council did not have a jurisdiction to organized new voting.

Could Highest Judicial Council Apply the Provisions of the Newly Adopted Judicial Code towards the Candidates of the Judges?

12. The Highest Judicial Council applied Articles 94, 127, 128, 129 and Paragraph 14 of Article 166 of the RA newly adopted Judicial Council towards the list of judge candidates confirmed by the old RA Judicial Code, by vesting itself with the authority to amend the already confirmed list.
13. Thus, as presented, the list of the judge candidates were already confirmed by the RA President back in January 9 of 2017, which means, that according to the Judicial Code, the selection and appointment of the judges had already been finished. According to the legislation of that time, the judge candidates, after 9 months of training in the Justice Academy, should have received the recommendation from the Justice Council about vacancy of a judge.
14. Paragraph 9 of Article 123 of the RA Judicial Code of 2007 lost its force conditioned by the ground of entering into force of the new Judicial Code on April 9 of 2018. *in case of the candidate’s agreement, the president of the Court of Appeals*

⁵ Note: Arsen Nikoghosyan did not participate in the sitting of Highest Judicial Council due to business trip, but a voting was organized for him and he got positive votes from the members of the Council, <http://court.am/index.php?link=news/4-5-18/4-5-18.htm>,



*presents his/her candidacy to the Justice Council. By the open voting, the Justice Council gives a **positive conclusion** on the presented nomination, if the **procedures** under the given code are not violated. In case of the positive conclusion of the Justice Council, the conclusion is being submitted to the RA President.*

15. Similar provision is also prescribed by the Judicial Code of 2018. Thus, in a line with Paragraph 1 of Article 117 of the Code *in case of the Candidate's agreement, the Highest Judicial Council presents his/her candidacy to the President of the Republic, by presenting his/her personal case, as well as the documents submitted by the candidate acquired in the outcomes of examination of the fact of the candidates not being a judge.*
16. In accordance with Article 166, Part 13 of the Final and Transitional Provisions of Chapter 22 of the RA Judicial Code of 2018 **“Before the day of the assumption of its powers by the Highest Judicial Council, the list of judge candidates confirmed by the President of the Republic maintains its power...”**. This provision aims at ensuring the arbitrary approaches over the already confirmed list.
17. **Thus, by the force of the law, in case of vacant position, a written suggestion to the respective candidate is made and if the latter gives his/her written consents, the Highest Judicial Council submits the candidacy to the President of the Republic. Moreover, the Code does not envisage, that the Council should or can have a meeting with the candidate. The only precondition of submitting his/her candidacy to the President is the candidate's consent for the vacant position of a judge.**
18. Meanwhile, the Highest Judicial Council arbitrarily applied the provisions of the Judicial Code adopted in 2018 towards the already confirmed list of judges, after getting the written consent of judge's candidates invited them to a meeting, subjected the latter to examination and without reasons by secret voting, voted against submitting the candidacies of the judges from the administrative block to the RA President.

The Composition of the Highest Judicial Council Selected by the RA National Assembly and the Organization of the Voting over the New Candidates of the Judges

19. Gevorg Danielyan was in the working group elaborating the text of the draft Judicial Code, which assumes, that the composition deciding the powers of the Highest Judicial Council initially intended such enlarged scope of powers. This circumstance is anyway in contrast with the constitutional demand for the insurance of court independence.

Whose Candidacy was not approved by the Highest Judicial Council?



20. According to the official public information on the sitting of the Highest Judicial Council, adopted decision and on the list, it becomes clear that only the candidacy of two judges from the Administrative Court was voted against⁶.
21. Examining the data of candidates from the civil and criminal departments of the same list /according to the annex/, a few notable circumstances can be recorded: the candidates confirmed by the civil and criminal professional blocks were exclusively ***representatives of Prosecutor General's Office, Police and Judiciary***, which acted within the previous government and under its authority. Ruzanna Azroyan, the candidate for the administrative block, who did not get the approval of the Council, was the only candidate, **who was an advocate and did not represent any of the above mentioned agencies, that is was not a part of the previous government system.**
22. Moreover, judges by the same list of the Justice Council, have already been appointed as judges, but the appointment of the judge candidates from the administrative court has been delayed for some reasons since October 2017 (ground for the vacant position <http://www.president.am/hy/decrees/item/4138/>) and became a matter of discussion only on May 2018 after the enation of the new Judicial Code and the formation of the Highest Judicial Council⁷.
23. The candidacy of Rustam Makhmudyan, *Republican Party Deputy*, in the candidates' list for the administrative judges was kept, in case when in a line with Part 2 of Paragraph 2 of Article 159 of the RA Judicial Code, for conducting political activates, his candidacy should have been removed from the list. It is obvious, that since October 2017, in case of being a vacant position for a judge in the Administrative Court, no suggestion to any candidate was made for the mentioned position, since according to then legislative regulations, Rustam Makhmudyan would have been removed from the list of court judges.
24. Amendments to the RA Judicial Code enacted from April 9 of 2018, have been made and **the ground of being elected a Member of Parliament to remove the judge's candidacy from the list has been removed. That means, that by rejecting the candidates with administrative specialization in first place, the Highest Judicial Council offers the nomination of the next candidate, including the candidacy of the Republican Party Deputy Rustam Makhmudyan.**

⁶<http://court.am/index.php?link=news/4-5-18/4-5-18.htm>

⁷ From the mentioned list, Alfred Vardanyan /civil/, Arman Hovhannisyanyan, Gor Shahbazyan, Vahe Misakyan, Harutyun Manukyan /criminal specialization/ were appointed judges
<http://www.president.am/hy/decrees/item/4167/>, <http://www.president.am/hy/decrees/item/4415/>



ԻՐԱՎՈՒՆՔՆԵՐԻ ՊԱՇՏՊԱՆՈՒԹՅՈՒՆ ԱՌԱՆՑ ՍԱՀՄԱՆՆԵՐԻ

ՀԱՍԱՐԱԿԱԿԱՆ ԿԱԶՄԱԿԵՐՊՈՒԹՅՈՒՆ

PROTECTION OF RIGHTS WITHOUT BORDERS NON-GOVERNMENTAL
ORGANIZATION

WHY THE CANDIDATES WITH ADMINISTRATIVE SPECIALIZATION WERE NOT PARTICULARLY APPROVED?

25. One of the possible and reasonable explanations of rejecting the candidacy of the judges is **the oversight over the newly appointed judges** by the Highest Judicial Council. Taking into account the formation procedure of the Highest Judicial Council and composition, such explanation is completely justified. Thus, the Council members were elected in the National Assembly by the presentation of the Republican Party and the list of judge members was also formed with the involvement of the Republican Party, which facts about the oversight over the judiciary and particularly over the newly appointed judges.
26. It is notable, that **Sergey Chichoyan** and **Armen Khachatryan**, members of the current Highest Judicial Council were also members of Justice Council and the list of judge candidates were submitted to the RA President back in 2016. **Meanwhile, the same members in the Highest Judicial Council voted against the same candidates.**
27. In this regard is worrying that, the possible oversight over RA Administrative Court can be conditioned also by the future electoral procedures, since **the issues and arguments related to the electoral procedures are a matter of examination in administrative courts.**