

SUMMARY

This study was conducted by the “Protection of Rights without Borders” NGO with the support of Open Society Foundations – Armenia Office. The study aimed to assess whether the safeguards of the judicial independence are ensured in the Republic of Armenia in law and practice through adequate funding.

Adequate funding of the judiciary is one of the key safeguards of the independence of the judiciary, and it is the duty of the state to ensure it. The courts can only be properly independent if they are provided with a separate budget, and the allocated financial resources are appropriate to enable the courts and judges to live up to the standards laid down in Article 6 of the European Convention on Human Rights.

Adequate resources shall include physical facilities appropriate for the maintenance of judicial independence, dignity and efficiency; judicial and administrative personnel; and operating budgets. The judiciary, as a rule through judicial councils, should be closely involved at all stages in the budgetary process and should be responsible for the financial management of the courts.

Overall, the legislation of the Republic of Armenia provides for the necessary financial safeguards to ensure the independence of the judiciary, including a separate budget and the role of the judiciary in preparing it, including the right to manage it.

According to the legislation of the Republic of Armenia, Armenian courts and the Supreme Judicial Council are vested with a key role during the entire process of preparing the budget proposal for the judicial system. The existing mechanism is in line with international standards in this field.

Moreover, the budget of the judiciary is not only prepared and submitted to the Armenian Government on the basis of the budget proposal approved by the Supreme Judicial Council, but the Council has the right to present its position and justification for the requested budget in the parliament in the framework of the state budget approval process. This ensures a possibility for a direct dialogue between the self-government body of the judiciary and the parliament.

However, the comparative analysis of the requested budget and the one approved by the parliament, in particular, budget cuts, demonstrate that the judiciary does not have a real impact on the final decision regarding the allocated budget. The parliament takes the position of the executive.

The deadlines for the preparation of the budget proposal are quite tight. The situation is more complicated in case of the judiciary given the peculiarities of the subjects involved, including the decision making mechanism by the Supreme Judicial Council.

The budget allocated to the judiciary is not adequate to meet the identified needs. The analysis demonstrates that the resources allocated to the judiciary allow covering only the minimum needs, and the means necessary to cover pressing needs are not allocated even when the judiciary gives a clear justification for that. Over 80% of the budget allocated to the judiciary goes to the remuneration of the judges and administrative personnel.

The comparative analysis of the 2019 and 2020 budget proposals demonstrates that in the 2020 budget proposal, the judiciary requested budget grow not only for the remuneration of the judges but also for almost all budget lines. This situation signals about the existence of the identified needs of the judiciary.

In light of the Government's objection, only 59.7% of the requested budget was allocated to the judiciary as the result of the discussions at the National Assembly. The cuts affected the budget lines for the increase of the remuneration of the judges, as well as for the improvement of the material conditions. Moreover, no capital expenditure was approved in the mid-term budget proposal, despite the fact that some court buildings lack minimum necessary conditions (court rooms, creation of public and closed areas).

The budget allocated to the judiciary in Armenia for 2021 was approximately 0.66% of the state budget expenditure. The analysis of the data for 2015-2020, demonstrates that even though in terms of the absolute numbers, the budget allocated to the judiciary increased to a certain extent, however the share allocated to the judiciary from the state budget records a stable decrease from 0.81% in 2015 to 0.66% in 2021. In 2021, for the first time in the recent years, the budget allocated to the judiciary has decreased despite the identified needs. Compared to 2020, the budget decreased by 497 023.1 AMD. The budget allocated to the judiciary per capita has also decreased in line with the trends in recent years. This trend raises more concerns in light of a significant increase of the courts' workload: the number of unresolved cases and the time required to resolve a case has also increased, conditioned by the increase in the number of cases received and the unchanged number of judges.

Despite the increase in the number of cases, there is no opportunity to increase the number of judges in the framework of the allocated budget, despite the fact that the judiciary has identified the need for that. The judiciary submits a proposal to increase the number of judges, but the Government does not give its consent. On the other hand, in some instances, the judiciary had to revise its budget proposal after approving it, include the costs required for the increased number of judges, because of the changes required in the framework of the justice sector reform implemented by the Government, but not for the specialization requested by the judiciary. Such approach demonstrated the lack of cooperation and coordination between the branches of power.

No proper consultations are conducted in the budget drafting stage between the judiciary and the executive. As a result, in some instances no legal ground is ensured on time by the Government to implement the budget proposal based on verbal agreements, even in cases when such actions are envisaged by the 2019-2023 Strategy for Judicial and Legal Reforms of the Republic of Armenia and its Action Plan for 2019-2020 respectively. Moreover, in practice in case of objections, the parliament approves the budget, in line with the Government's position, not the judiciary's one. The real influence of the Government on the actual funding allocated to the judiciary, in light of the stable majority of the ruling party in the parliament that allows to approve the budget in accordance with the position of the executive without due regard to the position of the judiciary, creates a real opportunity to undermine the financial independence of the judiciary.

No real and effective participation of the judiciary in the budget planning and approval process as well as separation of powers in this regard and real independence of the judiciary is ensured.

As for the remuneration of the judges as compared to the average wage, it should be mentioned, that despite the fact that the remuneration of the judges in Armenia is higher compared to the average wage in the country, rather than the median average salary results of the Council of Europe member states, a proper remuneration of judges is not ensured in Armenia. CEPEJ takes into account two indicators: first, the salary of a judge at the beginning of his/her career, and the second the average salary of a judge of the highest

judicial instance in comparison to the average wage of the country. Taking into account this approach, based on the absolute numbers, the remuneration of the judges in Armenia is the highest: at the beginning of the career, a judge receives four times more than the average wage and at the end of the career six times more than the average wage respectively. To compare, based on this approach, the remuneration of judges in Belgium, Germany, Iceland, Latvia, Netherlands, Sweden, and Slovenia is the lowest among the Council of Europe member states. In 2019, the average wage in the Republic of Armenia was 182,673 AMD, the average monthly salary of a judge of the first instance court, including the reimbursement for the years of professional experience, was overall 808,810 AMD, that is 4.4 higher than the average wage and the average salary of the judges of the Court of Cassation, which includes the reimbursement for the years of professional experience was 1 201 845.6 AMD, that is 6.6 higher than the average wage.

The safeguards and the mechanism of the remuneration of the judges are defined by the relevant law and in theory are in line with international criteria and approaches in terms of the remuneration of judges at the beginning and at the end of the professional career, compared to the average salary in the country. However, in practice, the actual amount received by of a judge is significantly different from the remuneration of a government official who is supposed to have the same ratio as prescribed by the Law on “Remuneration of Public Officials”. In recent years, there is well-established practice of paying fixed bonuses regularly to the Government officials, regardless of the performance of the given official, with the aim to ensure a certain level of the monthly remuneration of the mentioned officials. As a result, in 2019, the first deputy minister having the same ratio as the judge of the first instance court received a monthly salary and bonus respectively in the amount of 1 million AMD and the judge of the first instance court having the same number of years of work experience and same ratio received a monthly salary in the amount of 779 644 AMD in total.

Such approach, when the actual remuneration is conditioned not by the amount prescribed by the law, but rather by the amount and number of bonuses, leads to arbitrariness, discrimination, creation of unfavorable conditions for judges, and does not guarantee remuneration for judges commensurate with the position, functions and responsibility of a judge.

Armenia still faces challenges in ensuring adequate conditions for courts; some of the courts have to share premises with other public institutions and they fail to demarcate the boundaries between the institutions; buildings remain inaccessible for people with disabilities.

The Government attests that some court buildings are not ensured with minimum necessary conditions, including courtrooms, public and closed areas, etc., however, necessary resources are not allocated, and expenditures in the budget proposal to address these challenges are not approved. As a result, the services provided by the judiciary are not accessible, do not ensure quality, and the conditions for delivering justice are not decent.

In order to increase the trust into the justice system, ensure the delivery of justice in an efficient and proper manner, it is essential to provide the judiciary with the adequate funding necessary to ensure the independence of the judiciary in practice, on the basis of the priority needs identified by the judiciary itself.

RECOMMENDATIONS

To the Armenian Government

- To ensure allocation of an adequate budget to meet the priority needs identified by the judiciary, including by providing with adequate premises to enable the judges and courts to deliver justice.
- To ensure proper discussions prior to the drafting of the budget to guarantee the implementation of the measures required to support the allocation of means necessary to cover the needs of the judiciary, including drafting of legal ground, if required.
- To ensure proper remuneration in line with the position of the judges and their responsibilities. In this regard, to initiate efficient discussions with the representatives of the judiciary, including judges.
- To consider an opportunity to adopt a stand-alone law regulating the issue of the remuneration of the judges, to ensure the necessary flexibility for defining the remuneration and its periodic review.
- To define clear indicators to evaluate the efficiency of the budget performance allowing evaluating the needs of the system and the outcomes of the work that should be taken into consideration during the preparation of the budget proposal for the upcoming year.
- To ensure the harmonization of the schedule for the reform programs and budget planning.

To the Supreme Judicial Council

- When drafting the budget proposal, to take into consideration the need for the legal grounds and to receive guarantees during the discussions with the Government, including the timeframe in terms of drafting and adoption of the mentioned legal grounds.
- To carry out discussions on the development of the mechanism to ensure fair remuneration of judges.
- To ensure public discussions on the budget proposal for the judiciary.

To the National Assembly

- To ensure allocation of the adequate budget to meet the priority needs identified by the judiciary, by prioritizing the budget proposal approved by the judiciary.
- Prior to the approval and the consideration of the budget performance, to organize public hearing on the needs of the judiciary and the need to fund them.