



PROTECTION OF RIGHTS WITHOUT BORDERS NON-GOVERNMENTAL ORGANIZATION

This submission is made by the Protection of Rights without Borders (PRWB) NGO. The PRWB is an Armenian NGO founded in 2009. Its mission is to enhance the effectiveness of human rights protection and to promote the principles of the rule of law and good governance in Armenia. The organization specializes in the fields of human rights, judiciary, public administration, anti-corruption, and security. The organization has been monitoring selection and appointment of judges since 2018. This submission is based on the Organization's monitoring and analysis.

PRINCIPLES, STANDARDS, AND PRACTICES GOVERNING THE SELECTION AND APPOINTMENT OF JUDGES IN ARMENIA

LEGAL AND NORMATIVE FRAMEWORK

All the questions related to the judicial system, status of judges, their selection, appointment and dismissal, as well as disciplinary issues are regulated by the Constitution and Constitutional Law "Judicial Code", Law on the Parliament, other laws and by-laws by the Supreme Judicial Council (SJC).

Art. 163 defines the structure of the judiciary in Armenia, provides for the establishment of specialised courts and prohibits establishment of extraordinary courts.¹ Art. 164 provides for the grounds for incompatibility or termination of office.

Art. 165 sets requirements for the candidates for judges while Art. 166 details the procedure for the appointment of judges. Details related to the selection and appointment of judges are prescribed by the Law on the Constitutional Court and the Judicial Code.

Integrity check procedures are regulated by the Law on the Corruption Prevention Commission. Certain technical aspects of the organization of the selection process are regulated by SCJ decisions.

INSTITUTIONS AND ROLES

The Supreme Judicial Council, an independent constitutional body tasked with ensuring independence of the judiciary, has the primary role in selection and nomination for appointment of the candidates. The SJC consists of 10 members, where five are judges, and the other five are lay members (legal professionals with relevant experience). Judge members are elected by the

¹ English translation available at <https://www.arlis.am/en/acts/108723/latest>



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Assembly of Judges, whereas non-judge members are elected by the parliament with 3/5 of the votes.

Judges of the first instance court or the court of appeal are appointed by the President upon the SJC proposal. The judges of the Court of Cassation and Constitutional Court are elected by the parliament based on the list approved and submitted by the SJC. The elected candidate shall be appointed by the President (see details in the section on appointments).

➤ **The role of executive and legislature**

The Constitutional Court is composed of nine judges who are elected by the National Assembly (parliament) by at least 3/5 of votes of the total number of members of parliament. Election takes place upon nomination: three judges are nominated by the President of the Republic, three judges by the Government, and three judges upon the nomination of the General Assembly of Judges. The General Assembly of Judges may nominate only judges. Once voted for by the parliament, a list of candidates is forwarded to the President who shall appoint or return with objections. In the latter case, the parliament may overrun it by voting. In such a case, the President has to appoint the candidate or apply to the Constitutional Court. If none is done within the deadline, the candidate is considered appointed by the force of law.

Similar procedure is applied for the candidates for the Court of Cassation.

Since Armenia became a parliamentary republic, the ruling party in the parliament has always secured a qualified majority. This gives an unlimited power to vote for the candidate that the ruling party endorses, without any consultation or consideration of the opposition's opinion. While election of apex court judges by the parliament in theory aims to build consensus around the candidate, in reality, it bears significant risks of politization where the power is concentrated in the hands of one party.

The Protection of Rights without Borders has documented instances when the parliament voted for candidates to apex courts who had negative integrity assessment, even though the opposition raised concerns over that. Moreover, former members of the ruling party who quit the party shortly before the voting or people affiliated with it were also elected to the apex courts as judges (see also Annex 1).² The legislation does not contain sufficient safeguards against that as well, for example, minimum required years of being non-partisan prior to appointment.

Similar concerns were expressed in relation to the non-judge members of the SJC elected by the parliament. The parliament elected former high-ranking officials from the executive as

² See, for example, the bio of one of the judges elected by the parliament <https://helpcourt.am/judge/%D5%A1%D6%80%D5%A9%D5%B8%D6%82%D6%80-%D5%BC%D5%A1%D5%A6%D5%B4%D5%AB%D5%AF%D5%AB-%D5%A4%D5%A1%D5%BE%D5%A9%D5%B5%D5%A1%D5%B6/>



non-judge members of the SJC. This raised concerns over impartiality and potential undue influence on the Council. These concerns escalated when in November 2024, the prime-minister of Armenia allowed himself to send a text message to the SJC Chair, ex-Minister of Justice in his previous capacity, who was also a member of the ruling party prior to the election to the SJC, requesting him to resign. The Chair resigned immediately.

MERIT, INTEGRITY, AND TRANSPARENCY

➤ Selection and appointment procedure

Judges hold office until reaching the retirement age which is sixty-five. No initial or probationary appointment system of judges exists in Armenia.

The SJC regularly announces a public call for applications to fill in a pool of candidates for judges. This is done for a limited number of posts based on specialization.

Applicants undergo qualification assessment which includes three main stages: submission of application, a written exam and an oral interview.

Eligible candidates shall be between 25 and 60 years old, hold at least a bachelor degree in law, be exclusively a citizen of Armenia, have at least 3 or 5 years of professional experience depending on the education level, have proven knowledge at least one of the foreign languages (English, Russian, or French), etc.

Written exams could be test questions and/or case-studies. The SJC forms a Board of five judges and two law specialists from academia to evaluate written exam results. Those applicants who pass the written exam are invited for an interview.

Exception: Those applicants who have 10 years of experience (at least 8 years of professional experience) as well as those holding a PhD degree in law who have been teaching law for at least five years, are exempt from a written exam.

All applicants fill out an **integrity assessment** questionnaire. After the written exam, successful applicants undergo integrity assessment by the Corruption Prevention Commission (CPC), an independent body in charge of integrity assessments.

At this stage, applicants' CVs are published on the webpage and public bodies are obliged to provide any relevant information about the applicant, while the public is encouraged to share anything of interest for the selection and integrity assessment.

The law allows the presence of a psychologist during the interview with the right to a consultative vote.

The interview questions are composed of three sections:



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1. issues related to integrity assessment, previous professional experience, soft skills, etc.
2. a hypothetical question (case-study) related to issues covered in the Code of Conduct for judges.
3. a legal question related to a law or position expressed in a judgment to assess the conduct and reaction of the applicant, including their ability to analyze a legal issue under time pressure.

Then the SJC members hold a final discussion in camera and vote in an open ballot. While the law mentions that the voting shall take into account the results of the written exam, the interview as well as integrity check assessment, however, it also emphasizes that the vote is based on the SJC member's inner conviction. **No reasoned decision is published on the voting results, or interview phase.** Hence the public remains unaware whether the voted for applicants scored the highest or not. Such a procedure allows for a broad discretion of the SJC in endorsing the applicants.

Following the voting, the SJC prepares a list of judge candidates who received the highest number of votes from the SJC members (but at least more than the half of the SJC members) and submits it to the Academy of Justice where they are supposed to undergo training. Those who pass the training, are placed in the pool of judge candidates per specialization.

When a vacancy appears, the SJC submits a list of recommended judge candidates to the President of Armenia for appointment. The priority is given to: a) reserve judges serving in court; b) judges of the courts of appeal or the Court of Cassation who filed a motion to be transferred to the court of first instance; c) the former judges who are on the list of candidates; d) those candidates selected based on a special procedure; e) those candidates who underwent training at the Justice Academy earlier, etc.³

The President either signs the appointment, or has the right to return the candidate's nomination with objection. The SJC has the power to overrule that objection by voting. In such a case, the President is obliged to sign a decree appointing the candidate as a judge, or apply to the Constitutional Court. The Constitutional Court shall decide whether the nomination is in line with the Constitution. If none is done, the candidate is appointed by the force of law.

In practice, the President has used the right to return the nomination with objections, including based on integrity concerns. In some cases, this was a result of advocacy campaign by civil society where the integrity of the candidate was questioned.

➤ **Appeal Court and Court of Cassation judges**

The SJC also forms a list of candidates for appeal courts and the Court of Cassation. Eligible candidates (both serving judges and legal professionals with required experience) are supposed to

³ Judicial Code of Armenia, <https://www.arlis.am/hy/acts/218722/latest> articles 96-110



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apply. Then, they undergo an integrity check assessment by the Corruption Prevention Commission. Once the integrity check assessment is received, the SJC reviews the documents, if necessary, invites candidates for a discussion, then votes for or against candidates. In case of serving judges, their performance evaluation is taken into account.

Top scored candidates who received over 50 per cent of votes of the SJC members, are included in the nomination list.

The approved candidates for the Court of Appeal shall undergo training in the Justice Academy.

When there is a vacant post of a judge in the court of appeal, candidates from the pool are nominated by the SJC to the President (in the order of priority established in Art. 127 of the Judicial Code).

As for the Court of Cassation, the SJC forms a list of three candidates. The list is submitted to the parliament that shall elect one candidate with 3/5 of the votes in secret ballot. If none of the three candidates gets 3/5, then a second round is held with those two candidates who received the most votes. The elected candidate is presented to the President for appointment. As in case with judge candidates of other instances, the President has the right to return the candidate's nomination with objections. The parliament has the right to overrun the objection by voting. In such a case, the President either appoints the candidate, or applies to the Constitutional Court. If none is done, then the candidate is considered appointment by the force of law.

➤ **Appointment through special procedure**

In the end of 2023, a new system of appointment of judges was introduced, a special procedure alongside the general one. In this instance, applicants who passed a written exam and interview, are immediately added to the list of judge candidates without undergoing training at the Justice Academy, thus they become judge without the necessary academic training and special preparation for judges, for example communication skills, courtroom management, etc.⁴

➤ **Integrity assessment**

Although integrity check has been introduced as an anticorruption measure, CPC's opinions on integrity are not public and are of advisory nature. The Commission has to compile an assessment, advisory in nature, where assets, conflict of interest, ties, previous disciplinary/criminal/administrative record, is assessed. They receive information from public bodies, banks, as well as open source information.

⁴ <https://prwb.am/en/2024/06/19/armatakan-ev-dzgdzgvogh-khayler%D5%9D-sharunakakan-barephoxumneri-huysov/>



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Observation of selection of judges to the Anticorruption Court, including by the SJC and the Parliament reveals that some persons with negative integrity check were elected as judges in courts of all instances. In some instances, the President of Armenia has submitted objections in relation to some candidates of judges, including to the Anticorruption Court and Courts of General Jurisdiction proposing ‘to take the advisory opinions by the CPC and experts into consideration’, and some candidates were removed from the list of candidates, however, during the same period some candidates were appointed by the President despite concerns raised regarding their integrity.⁵

TRANSPARENCY, PARTICIPATION AND OPENNESS

Representatives of civil society and academia have limited role in the selection process. Boards to check the results of the written exam involve two representatives of academia.

Written exam and the interviews are filmed, streamed in a specially allocated room, then posted online. Up to two members of the Bar, up to three representatives of civil society organizations who filed a request have the right to be present during the written exam and interview phase, except for the final discussion of the SJC members before the voting.

No reasoned decisions are published at all. The final scores of the candidates are not published.

OBSERVATION

Civil society organization interested in observing the process have an opportunity to file a request prior to the written exam and interview.

Domestic and international (or hybrid) observation of the selection process is key to prevent undue influence in the selection and appointment process. However, the access of observers shall be ensured for all cycles of the process, including the discussion before voting. Otherwise, the most important issues, such as integrity assessment results and concerns of the SJC members are left out of public scrutiny.

According to the SJC, because the exams are filmed and streamed, many key issues are not discussed in detail, including concerns expressed in the integrity assessments.

⁵ PRWB, Formation of the Anticorruption Court in the Republic of Armenia: Legislation and Practice: Executive Summary, available at: <https://prwb.am/en/2023/06/20/zekuyc-7/> ; PRWB, Report on Observation of elections of judges through general procedure during 2022-2023: <https://prwb.am/2025/09/25/zekuyc%e2%80%a42022-2023-thth%e2%80%a4ehndhanur-ehnthacakargov-datavorneri-ehnruthyan-mshtaditarkman-ardyunkhneri-veraberyal/>



CONTESTING APPOINTMENTS

Only applicants have legal standing to challenge the selection results. First, an applicant may challenge the dismissal of their application at the application lodging phase in the Administrative Court within three days. The appeal shall be examined and solved within 10 working days after its receipt.

Applicants also have the right to challenge the results of the written exam to the Appeals Board. Procedural aspects of the written exam may be challenged in court, if they have been first raised with the Appeals Board.

International jurisprudence

In its judgment in the case *Antonyan v Armenia* of 23 January 2025⁶, the European Court of Human Rights dealt with several aspects of functioning of the Supreme Judicial Council, its independence and impartiality, including concerns over possible bias of some SJC members who had strong links with the Minister of Justice.

Annex 1

In some cases, concerns were raised over integrity of candidates. Despite that, they were appointed.

- Davit Sargsyan, former Deputy Governor of Vayots Dzor region, was appointed as a judge in September 2023. He is the brother of Trdat Sargsyan, a member of Civil Contract, former Governor of Vayots Dzor, and currently an MP. Before that, Sargsyan was involved in a criminal case, which was dismissed. In a written request sent to the Prosecutor's Office, Factor.am news agency asked to inform what case Sargsyan was involved in and how it was dismissed, but they refused to provide information. “The provision of the requested information is subject to refusal, since it violates the privacy of a person, in this case, a judge,” they reported in the written response sent to us. The Prosecutor's Office has taken

⁶ Suren Antonyan v Armenia, 20140/23, Judgment, 23/01/2025



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a differentiated approach in this case, since there are reports on the official website of the department, in which data on a criminal case against a person, including another judge, are published.⁷

- Gurchen Malkhasyan was appointed as a judge in September 2023. His biography on the SJC website reveals that he was the deputy director of the Malkhasyants Advocacy Center LLC until 2023. An investigation by Info.com found that this firm's employees had donated 7.2 million drams to the Civil Contract election campaign in the summer of 2023. Minas Malkhasyan (shareholder and director), Nazik Malkhasyan (deputy director), and Grigor Malkhasyan, who are judge Gurchen Malkhasyan's children, were among these employees.
- In Judge Masis Melkonyan's case, Armenia's president refused to sign the decree appointing him as a judge, raising objections to his candidacy with the SJC. Although the SJC did not accept the objections, the president did not sign the decree. It was implemented by force of law. If the president does not sign the decree within three days and does not submit it to the Constitutional Court, the decree is considered to have taken effect. Furthermore, Masis Melkonyan ran in the 2021 extraordinary parliamentary elections on the electoral list of the Republic Party. He was a member of the party's political council and the Constitutional Reforms Council representing the same party.