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# **'New Judicial-Legal System Has Higher Independence Guarantees' Assures Davit Harutyunyan**

Noyan Tapan - 21/2/2008

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YEREVAN, FEBRUARY 21, NOYAN TAPAN. On January 1, the judicial-legal system of Armenia entered a new stage of development. New specialized courts began to operate (in Yerevan, Dilijan and Jermuk), the functions of the former courts were thoroughly changed. Our interview with Davit Harutyunyan, the Chairman of the RA National Assembly Standing Committee on State and Legal Affairs, former Minister of Justice, is about that.

H. K.- Which are the novelties of principle of the new judicial system?

D. H.- First, the key goal of the Cassation Court is to insure similar exercise of laws, and not to correct the mistakes of other instances.

There is an opinion that the more judicial instances there are, the more is the possibility to reach objective truth. Thus, many countries, which are in a more good condition, have chosen mainly the principle of the two judicial instances, i.e. there is one instance which gives that judicial act and another instance which rechecks that act in order to avoid judicial mistake.

As for the higher instance, then its main problem really is the similar exercise of laws and the development of right.

We also changed the structure of the judicial system: the economic court was disappeared, the courts of common jurisdiction were created, which solve civil and criminal cases of certain category as well as cases of administrative liability.

Q. So, how is the so-called former court of first instance called now?

A. It is called the common jurisdiction court of first instance, besides that three other courts of first instance were created on specialized civil, criminal and administrative cases, which in cases stipulated by law solve more difficult cases. The thing is that the cases, which are not difficult, are many and they should be maximum drawn nearer to people. The specialized courts can not be located everywhere, they are only three: the Northern (in Dilijan), the Southern (in Jermuk) and the specialized courts of Yerevan.

Thus, there are three types of specialized courts - civil, criminal and administrative. The latter examines cases between the state and citizen, state and juridical person, sometimes even between two state bodies if those problems can not be solved by the order of superiority.

As for the Cassation Court, then though the chambers (criminal and political) were preserved there, an important step was taken, in my opinion very effective. It is that the Cassation Court with its all staff hears the case. That is, all the seven judges of the two chambers, irrespective of their specialization, take part in hearing of any case at the same time.

This is important because when we speak about similar exercise of a law.

Sometimes the outside look, not the professional one, permits to bring to light vicious approaches, which were formed traditionally in legal consciousness and it was time to change them.

Besides the structure of the judicial system, the function of the second instance, the Appellate Court, was changed. Before the Appellate Courts were re-examining or examining the case, disregarding the fact that there already existed the judicial act of the first instance. And in the present judicial system we suggest them to review, re-check the case and to find out its correspondence to law demands. That is, the Appellate Court, in the true sense of the word, does not conduct lawsuit but re-checks the verdict brought in by the first instance.

As a rule, the sides are deprived of the possibility to present new evidences in the Appellate Court. Before this, they considered that "whatever you do, all the same, we will go to the Appellate Court." Here the first important step is that now the sides are obliged to bring all the evidences just in the first instance. We also took the second important step, how the evidences should be presented. Henceforth, the evidences should not be presented as a surprise during the judicial process with the aim that the other side will not be able to orient itself and make decision what arguments he should bring. The judicial process should be maximum prepared and the sides should exchange their main arguments to the maximum extent until the judicial sitting. And their evaluation is done during the court session, the judge on the basis of the evidences comes to a conclusion that this or that fact existed or not.

Q. Have you had advisers from abroad and have you strived for coming closer to some existing system, American, British or European?

A. We didn't try to come closer to some distinct system because every country has its peculiarities. But this refers to structure, and in all other issues we of course admitted the experiences of many other countries, successful and unsuccessful. We have tried to plan what kind of problems are more primary for us in this stage because today we can not write an ideal judicial code. But we have written norms, which will promote the development of our system, and here we have a program for at least 8-10 years until the next stage of reforms. Of course during these 8-10 years they will get settled as well, new institutions will be created.

Q. It is a bit surprising that the economic court was liquidated, while it was spoken about as a successful one.

A. Before, when there were only courts of common jurisdiction, it was obvious that there should be also a specialized court in the first instance, which will examine the most difficult cases connected with the entrepreneurial activity. But we should consider the creation of economic court not only for the economy but as a specialized court for examining comparatively difficult cases in the sphere of civil right. The attempt of the economic court was a successful one as much as the specialized economic court was effective and based on it the specialized court on civil cases was created.

Q. And what news is there with regard to selection of judges and to the provision of their independence?

A. If before a considerable role was preserved for the Ministry of Justice, then the new Constitution refused from that institution. The judicial code came to strengthen the provision that the executive power

should not take part in the formation of judicial system. The executive process itself should be rather transparent. The law conditioned by that has envisaged very detailed processes on how the judicial system is created, in what form the filtration is done because a good lawyer not always becomes a good judge.

Such transparent mechanisms have been introduced also for the advancement of judges.

The second important change is that another concept was introduced. A person who passes through this election process cannot become a judge if he does not leave the corresponding school, which is called a judicial school. The judicial school not only prepares the future judges, but also serves for the permanent retraining of the judges. Every judge must always pass retraining.

Not passing retraining is a ground for the judge to be relieved of his/her responsibilities.

The issue of the judges' disciplinary responsibility is another question.

The code defined the role of the Justice Council as a judicial body, which examines a case within the framework of which, different people who sued disciplinary examination (it can be the Minister of Justice, the Chairman of the Appellate Court, etc.) bring charge to the judge and the process itself is rather a judicial process.

This statement of a question emerged much earlier, we had discussions with the Council of Europe around this issue immediately after the joining, and took that responsibility, so they were predictable changes and some part of them were done much earlier not waiting for the January 1. A considerable part of the judicial code came into force still at the beginning of 2007.

Including the disciplinary examination, the appointment of judges.

Q. Is the independence of this new judicial system of a higher degree?

A. Indeed, today the guarantees of independence are of a higher degree. Two things are missing. First it is the proper salary, which is very often spoken about: isn't it an attempt to bribe the judges for not taking bribes.

No, it is the evaluation of a judge's status. A judge should receive a salary proper to his work's responsibility. In Armenia the salary of a judge is the lowest one among the member countries of the Council of Europe, if I am not mistaken.

The second thing, which is missing, is of course the political will. There is still a lack of political will among us, there are not processes towards the state officials who have made an attempt to have influence on the court.

The day when the first state official will stand in front of the court for it, we can say from that moment that the main stone of judicial independence is provided. Today we have taken the following step: the judge can undergo responsibility if the attempt of influence on him is not find out. But I am not sure that the mechanism is already functioning. Today the mechanisms exist only on papers, not all of them operate, but when they exist on papers then they little by little will began operating. Be sure that soon we will have judges

who have undergone such disciplinary responsibility , because the opposite side, who will not be satisfied with the judicial act can present the corresponding evidences.

Q. And the last question. Will all this new judicial-legal system give us ground to say that this present electoral campaign will in some way differ from the previous one?

A. If the sides wish, they can make use of opportunity of judicial defense, which is wider in comparison with the time before and today exists in the new judicial-legal code. The electoral arguments are the brightest example, and as you know, the considerable part of the electoral arguments is settled in courts during presidential elections and only the result is subject to argumentation in the constitutional court. And now, a code of administrative lawsuit is adopted which has given a detailed regulation for electoral arguments.

When hearing the case, the administrative court is entitled to clarify the real results of the ballot the way the Central Electoral Commission could do when summing up the results. As regards the electoral violations, if the Constitutional Court sees that the violations are of repeated character it has a right to assume that there is "intention ". All these are serious steps towards democracy.

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