



Strasbourg, 5 May 2014

**Opinion No. 768 / 2014**

**CDL-REF(2014)016**

Engl. only

**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**

**(VENICE COMMISSION)**

**DRAFT LAW  
AND EXPLANATORY REPORT  
"ON MAKING AMENDMENTS AND SUPPLEMENTS TO THE  
JUDICIAL CODE  
OF THE REPUBLIC OF ARMENIA"**

**LAW OF THE REPUBLIC OF ARMENIA**  
**"ON MAKING AMENDMENTS AND SUPPLEMENTS TO THE JUDICIAL CODE OF THE**  
**REPUBLIC OF ARMENIA"**

**Article 1.** Article 14 of the Judicial Code of the Republic of Armenia of 21 February 2007 (hereinafter referred to as "the Code") shall be supplemented with part 2.1, which reads as follows:

"2.1 A judge appointed as a chairperson of a first instance court and a court of appeal shall hold office of a chairperson until the expiry of the term of office prescribed by this Code".

**Article 2.** The Code shall be supplemented with Article 124.1, which reads as follows:

"Article 124.1. Grounds for a position of a chairperson of a first instance court to become vacant

1. The position of a chairperson of a first instance court may become vacant where:

(1) a new first instance court is established;

(2) the powers of a court chairperson expire:

a. the term of office of a court chairperson expires;

b. The President of the Republic terminates the powers of a court chairperson as a result of an applied disciplinary sanction envisaged by point 5 of part 3 of Article 165 of this Code;

c. an application is submitted in the case envisaged by Article 152 of this Code;

d. the powers of a judge holding the position of a chairperson are terminated or expire.

2. In cases envisaged by subpoints (a) and (c) of point 2 of part 1 of this Article the court chairperson shall continue to hold office until a new court chairperson is appointed."

**Article 3.** Article 125 of this Code shall be amended as follows:

"Article 125. Procedure for the appointment of a first instance court chairperson

1. Where the powers of a first instance court chairperson expire or are terminated based on grounds envisaged by subpoints (a), (b) and (c) of point 2 of part 1 of Article 124.1 of this Code, the Council of Justice shall hold an election of a new court chairperson.

2. With the purpose of filling the vacant position of a court chairperson all judges that comply with the requirement defined by part 14 of this Article, have service record of a judge of at least three years or service record of at least two years in political or discretionary positions or service record of at least five years in highest or chief positions of the public service and have not been subjected to a disciplinary sanction shall be included by the Council of Justice in a list of candidates for a chairperson of that court. Upon including the judges complying with the requirements defined by this part in the list of candidates for a court chairperson, the Council of Justice shall, within a three working day period, notify the judges in writing about that, and the judges may, within a three working day period, submit a written application on the removal of the candidacies thereof.

3. The court chairperson shall be elected by the Council of Justice from among the judges included in the list envisaged by part 2 of this Article. The election of the court chairperson shall be held in accordance with the procedure prescribed by parts 6-10 of this Article by a secret ballot through ballot papers taking into account the characteristics defined by Article 135 of this Code, as well as education and work experience in the field of management.

4. The election of candidates for a court chairperson shall be held:

(1) on the 10<sup>th</sup> day upon the establishment of a new court in the case envisaged by point 1 of part 1 of Article 124.1 of this Code;

(2) two months prior to the expiry of the term of office in the case envisaged by subpoint (a) of point 2 of part 1 of Article 124.1 of this Code;

(3) on the 10<sup>th</sup> day upon the expiry or termination of their powers — in the cases envisaged by subpoints (b) and (d) of point 2 of part 1 of Article 124.1 of this Code;

(4) on the 10<sup>th</sup> day upon the submission of a respective application in the case envisaged by subpoints (c) of point 2 of part 1 of Article 124.1 of this Code.

5. Seven days prior to the election of candidates for a court chairperson the chairperson of the Court of Cassation shall announce an election of candidates for a court chairperson through the official website of the judiciary of Republic of Armenia indicating the date and the time of the election.

6. In its session the Council of Justice shall examine personal records of candidates for a court chairperson and, if necessary, invite them for an interview.

7. The ballot paper shall contain the name and surname of each candidate which is followed by the word "for" and a blank box intended for ticking.

8. Each member of the Council of Justice shall have the right to one vote. When voting for the preferred candidate the box noted "for" shall be ticked.

9. Based on voting results the candidate having received the greatest number of affirmative votes shall be proposed to the President of the Republic. In case of tie of votes, an additional voting shall be held by including in the ballot paper only the candidates having received the greatest tie votes. In case of tie votes received during the additional voting, the preference shall be given to the elder candidate.

10. If one candidate has been included in the list of the candidates for the court chairperson, the name and surname of the candidate on the ballot paper shall be followed by the words "for" and "against" and a blank box for ticking. The candidate shall be elected where the number of affirmative votes exceeds the number of votes cast against the candidate. In case of failure to receive the prescribed number of votes the process of filling the vacant position of the court chairperson shall again start in the manner prescribed by this Article and the election of candidates for the court chairperson shall be held on the 10<sup>th</sup> day following the voting day envisaged by this Article.

11. If no candidate is included in the list of candidates for the court chairperson, an acting court chairperson shall be appointed in the manner prescribed by the Council of Courts' Chairmen, the term of office of whom may not exceed two months. Ten days prior to the expiry of the mentioned period of time a new election of a candidate for the court chairperson shall be held in the manner prescribed by parts 6-10 of this Article.

12. Where the President of the Republic of Armenia does not appoint the given person as the court chairperson within a two-week period upon receiving the proposal, the process of filling the vacant position of the court chairperson shall again start in the manner prescribed by this Article and the election of candidates for the court chairperson shall be held on the 10<sup>th</sup> day following the expiry of that period.

13. The chairperson of the court shall be appointed for a term of four years.

14. The same person may not be appointed to the position of the chairperson of the court for more than two consecutive terms.

15. Where the position of the chairperson of a first instance court remains vacant on grounds envisaged by point 1 and subpoint (d) of point 2 of part 1 of Article 124.1 of this Code the chairperson of the Court of Cassation shall immediately announce a vacancy through the official website of the judiciary of the Republic of Armenia. The announcement shall specify the deadlines and place of submission of applications and documents by persons seeking the vacant position.

16. Within a one-week period upon the announcement all judges, court chairpersons and chairpersons of the Chamber of the Court of Cassation seeking the respective position that have service record of a judge of at least three years or service record of at least two years in political or discretionary positions or service record of at least five years in highest or chief positions of the public service and have not been subjected to a disciplinary sanction, may submit an application to the Council of Justice. The Council of Justice shall elect the court chairperson in the manner prescribed by parts 6-11 of this Article.

17. In cases envisaged by subpoints (a) and (c) of point 2 of part 1 of Article 124.1 the court chairperson shall continue to hold office of the judge of the given court upon the appointment of a new court chairperson and in the case envisaged by subpoint (b) of point 2 of part 1 of Article 124.1 — upon the termination of the powers of the court chairperson."

**Article 4.** The Code shall be supplemented with Article 144.1, which reads as follows:

"Article 144.1. Grounds for a position of a chairperson of a court of appeal to become vacant

1. The position of a chairperson of a court of appeal may become vacant where:

(1) a new court of appeal is established;

(2) the powers of a court chairperson expire:

a. the term of office of a court chairperson expires;

b. The President of the Republic terminates the powers of a court chairperson as a result of an applied disciplinary sanction envisaged by point 5 of part 3 of Article 165 of this Code;

c. an application is submitted in the case envisaged by Article 152 of this Code;

d. the powers of a judge holding the position of a chairperson are terminated or expire.

2. In cases envisaged by subpoints (a) and (c) of point 2 of part 1 of this Article the court chairperson shall continue to hold office until a new court chairperson is appointed."

**Article 5.** Article 145 of the Code shall be amended as follows:

"Article 145. Procedure for the appointment of a chairperson of a court of appeal

1. Chairpersons of a court of appeal shall be appointed in the manner prescribed by Article 125 of this Code taking into account the requirements of part 2 of this Article.

2. In the case of expiry or termination of the powers of the chairperson of the court of appeal on grounds envisaged by subpoints (a), (b) and (c) of point 2 of part 1 of Article 124.1 of this Code, judges that comply with the requirement defined by part 14 of Article 125 of this Code, have service record of a judge of at least five years or service record in the position of the judge of the given court for at least three years or service record of at least three years in political or discretionary positions or service record of at least seven years in highest or chief positions of the public service and have not been subjected to a disciplinary sanction shall be included in the list of candidates for the chairperson of the court of appeal.

3. Where the position of a chairperson of a court of appeal becomes vacant on grounds envisaged by point 1 and subpoint (d) of point 2 of part 1 of Article 124.1 of this Code a person included in the official promotion list to be appointed as a judge to courts of appeal, a judge of a court of appeal, a chairperson of another court of appeal, a judge of the Chamber of the Court of Cassation or the chairperson of the Chamber who have service record of a judge of at least five years or service record in the position of the judge of the given court for at least three years or service record of at least three years in political or discretionary positions or service record of at least seven years in highest or chief positions of the public service and have not been subjected to a disciplinary sanction may seek the vacant position of a chairperson of the court of appeal.

**Article 6.** In Article 150 of the Code:

(1) parts 3 and 4 shall be repealed.

(2) parts 5-8 shall be inserted, which read as follows:

"5. In its session the Council of Justice shall examine personal records of candidates seeking the position and, if necessary, invite them for an interview.

6. Taking into account the characteristics defined by Article 135 of this Code, education and work experience in the field of management the Council of Justice shall hold a secret ballot through ballot papers. The ballot paper shall contain the name and surname of each candidate seeking that position, which is followed by the word "for" and a blank box intended for ticking.

7. Each member of the Council of Justice shall have the right to one vote. When voting for the preferred candidate the box noted "for" shall be ticked. Based on voting results the candidate having received the greatest number of affirmative votes shall be proposed to the President of the Republic. In case of tie of votes, an additional voting shall be held by including in the ballot paper only the candidates having received the tie votes. In case of tie votes received during the additional voting, the preference shall be given to the elder candidate.

8. Where the President of the Republic of Armenia does not appoint the given person as a chairperson of the Court of Cassation within a two-week period upon receiving the proposal a new voting shall be held in the manner prescribed by this Article."

**Article 7.** The words "by this Code for the appointment of a chairperson of general jurisdiction court" indicated in part 3 of Article 151 of this Code shall be replaced by the words "by parts 5-8 of Article 150 of this Code".

**Article 8.** In Article 165 of this Code:

(1) in point 4 of part 3 the words "with regard to the chairperson of the Cassation Court or the Chamber of the Cassation Court" shall be inserted after the words "powers of the judge";

(2) in part 3 point 5 shall be inserted, which reads as follows:

"(5) Filing a motion with the President of the Republic to terminate the court chairperson's powers with regard to chairpersons of a first instance court and a court of appeal."

(3) part 5 shall be inserted, which reads as follows:

"5. Where within a two-year period after the termination of the powers of chairpersons of a first instance court and a court of appeal the judge has not been subjected to a new disciplinary sanction, he shall be deemed to have no disciplinary sanction."

**Article 9.** In Article 166 of the Code the words "(of a court chairperson)" shall be inserted after the words "of a judge", and the words "(the court chairperson)" shall be inserted after the words "the judge".

**Article 10.** Transitional and final provisions

1. This Law shall enter into force on the tenth day following the day of its official publication.

2. The chairpersons of the courts of first instance and the courts of appeal appointed prior to the entry into force of this Law shall hold office until 1 January 2015.

3. After the entry into force of this Law the limitation envisaged by part 14 of Article 125 of the Judicial Code of the Republic of Armenia shall not apply to the first elections of chairpersons of the courts of first instance and courts of appeal.

**RATIONALE**  
**FOR THE ADOPTION OF THE LAW OF THE REPUBLIC OF ARMENIA “ON MAKING**  
**AMENDMENTS AND SUPPLEMENTS TO THE JUDICIAL CODE OF THE REPUBLIC OF**  
**ARMENIA”**

**Current situation and existing problems**

The necessity for the adoption of the Law of the Republic of Armenia “On making amendments and supplements to the Judicial Code of the Republic of Armenia” is preconditioned by the fact that the Judicial Code of the Republic of Armenia does not envisage any limitations on the term of office for court chairpersons. In particular, part 2 of Article 14 of the mentioned Code defines that *“A judge shall hold office until the age of 65”*, which also applies to court chairpersons. Currently, court chairpersons hold office on a permanent basis until the termination of powers and expiry of the term of office thereof in the manner prescribed by the Judicial Code of the Republic of Armenia.

When adopting legislative regulations on the status of court chairpersons, the approach that court chairpersons are, first of all, judges as other judges with only one difference that they, in addition to the core functions of a judge, are reserved some other organisational functions, should serve as a principle starting point. The opposite approach may lead to overestimation of the role of court chairpersons and may involuntarily create a situation when court chairpersons may exercise some influence on other judges of the court.

The mentioned approaches are also reflected in the authoritative sector-specific international documents. In particular, according to point 11 of Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia of the OSCE/ODIHR<sup>1</sup>, *“The role of court chairpersons should be strictly limited in the following sense: they may only assume judicial functions which are equivalent to those exercised by other members of the court. Court chairpersons must not interfere with the adjudication by other judges and shall not be involved in judicial selection. Neither shall they have a say on remuneration (see para 13 for bonuses and privileges). They may have representative and administrative functions, including the control over non-judicial staff. Administrative functions require training in management capacities. Court chairpersons must not misuse their competence to distribute court facilities to exercise influence on the judges”*.

Thus, the role of court chairpersons should not be exaggerated in an undue manner by restricting it to performance of some representative and organisational functions. And the imposition of limitations on the terms of office for court chairpersons is aimed at achieving this goal.

In particular, according to point 15 of the mentioned document of OSCE/ODIHR,

*“Court chairpersons should be appointed for a limited number of years with the option of only one renewal. In case of executive appointment, the term should be short without possibility of renewal”*:

According to point 16 of the same document (Transparent and Independent Selection of Court Chairpersons),

*“The selection of court chairpersons should be transparent. Vacancies for the post of court chairpersons shall be published. All judges with the necessary seniority/experience may apply.*

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<sup>1</sup> <http://www.osce.org/hy/odihr/75436?download=true>

*The body competent to select may interview the candidates. A good option is to have the judges of the particular court elect the court chairperson. In case of executive appointment, an advisory body - such as a Judicial Council or Qualification Commission (see para 4) - taking also into consideration views from the local bench, should be entitled to make a recommendation which the executive may only reject by reasoned decision. In this case the advisory body may recommend a different candidate. Additionally, in order to protect against excessive executive influence, the advisory body should be able to override the executive veto by qualified majority vote.*

The necessity for limitation on the term of office of the court chairpersons was also highlighted in the joint opinion of OSCE/ODIHR and Venice Commission on Kazakhstan's Constitutional Law on the Judicial System and Status of Judges<sup>2</sup>(point 42, June 7-18, 2011), which specifically states:

*"If executive authorities are to have a decisive influence on the appointment procedure for Chairpersons, appointments should be for a fixed term and there should be a limit to possible renewals. This is important in order to reduce the influence on judges through Chairpersons, which will grow ever stronger over a longer period of time. Further, renewable terms of office may also substantially jeopardise the independence of a Chairperson, who may at some point be influenced in his/her work by the desire to be reappointed by the executive".*

Moreover, the introduction of limitations on the term of office of the court chairpersons is also necessary to ensure healthy competition among judges. Where no limitation on the term of office of the court chairpersons is envisaged, judges are essentially deprived of that possibility, since the appointed court chairpersons, in practice, hold their offices for rather a long term, thus excluding the possibility of a vacancy to arise for that position. Whereas, the possibility of an official promotion for judges is important for efficient judiciary the necessity of which is also enshrined by relevant international documents ("European Charter on the Statute for Judges, point 4, UN Basic Principles on the Independence of the Judiciary", point 13, etc.).

Imposition of limitations on the term of office of the court chairpersons is quite a widespread phenomenon in the international practice. Moreover, as the study of the international practice shows, it is widespread both in CIS countries (Ukraine, Russian Federation, Kazakhstan, Kyrgyzstan, Georgia) and in Western and Eastern European countries (the Netherlands, Iceland, Serbia, Macedonia, Croatia, Bosnia).

In particular, the analysis of legislations of the mentioned countries allows to identify the following principle arrangements:

**a. The term of office for court chairpersons shall be principally four to six years.**

In particular:

- 4 years in *Serbia*<sup>3</sup>, *Macedonia*<sup>4</sup>, *Croatia*<sup>5</sup>
- Five years in *Ukraine*<sup>6</sup>, *Kazakhstan*<sup>7</sup>, *Georgia*<sup>8</sup>, *Iceland*<sup>9</sup>
- 6 years in *the Russian Federation*<sup>10</sup>, *the Netherlands*<sup>11</sup>

<sup>2</sup> <http://www.osce.org/odihr/78869>

<sup>3</sup> Serbian Law on Judges (2008), art. 72,

<http://www.unhcr.org/refworld/country,,NATLEGBOD,,SRB,,4b5712672,0.html>

<sup>4</sup> Law on Courts [The former Yugoslav Republic of Macedonia (2006)], art. 47, available at: <http://www.unhcr.org/refworld/docid/44b276d04.html>

<sup>5</sup> [http://www.vsrh.hr/CustomPages/Static/HRV/Files/Legislation\\_Judiciary-Act\\_Law-on-Courts\\_1994.pdf](http://www.vsrh.hr/CustomPages/Static/HRV/Files/Legislation_Judiciary-Act_Law-on-Courts_1994.pdf)

<sup>6</sup> The Law of Ukraine on the Organization of the Judicial Power and Judges, art. 20

<sup>7</sup> <http://unpan1.un.org/intradoc/groups/public/documents/APCITY/UNPAN019170.pdf>

<sup>8</sup> Organic Law of Georgia on Courts of General Jurisdiction (2009), art.32

<http://www.supremecourt.ge/files/upload-file/pdf/saertosasamart.pdf> (in Georgian)

<sup>9</sup> <http://eng.innanrikisraduneyti.is/laws-and-regulations/nr/109>

<sup>10</sup> <http://www.legislationline.org/documents/action/popup/id/4255>

<sup>11</sup> Roel de Lange, *Judicial Independence in the Netherlands* in *Judicial Independence in Transition* (2012),

- 4 and 6 years (depending on a judicial instance) in *Bosnia*<sup>12</sup>
- 3-10 years in *Kyrgyzstan*<sup>13</sup>

According to part 5 of Article 20 of the Law of Ukraine "On the judicial system"<sup>14</sup>, "*Court chairperson and deputy chairperson shall be appointed by the President of Ukraine for a term of five year...*"

According to Article 73a of the Judiciary Act of Croatia<sup>15</sup>, "*The President of a court shall be appointed for four years...*"

#### **b. Certain countries impose limitations preventing the same person from being appointed as a court chairperson.**

In particular:

- The same person may not be appointed to the office for more than once — in *Kyrgyzstan, Estonia*
- The same person may not be appointed to the office for more than two consecutive terms.

According to part 6 of Article 13 of the Law "On the judicial system of the Russian Federation"<sup>16</sup>, "*Court chairmen and deputy chairmen indicated in Part 2 of this Article shall be appointed for a term of six years. The same person may be appointed the chairman (deputy chairman) of the same court more than once but no more than two times in a row*".

#### **c. In certain countries court chairpersons are elected by judges of the same court.**

According to Section 5 of the Act of Iceland "On the judiciary"<sup>17</sup>, "*The judges of the Supreme Court shall elect a President of the Court for a term of five years, and an alternate President for the same term*."

Thus, taking into account the international criteria, as well as studying the sector-specific practice of different countries, it is necessary to make relevant amendments and supplements to the Judicial Code of the Republic of Armenia by defining reasonable limitations on the term of office for court chairpersons.

### **Proposed solutions**

It is recommended to adopt a draft Law of the Republic of Armenia "On making amendments and supplements to the Judicial Code of the Republic of Armenia", according to which:

- the term of office of the chairpersons of First Instance Court and Court of Cassation is limited for a term of four years. Moreover, the same person should not be appointed to the position of a chairperson of the same court for more than two consecutive terms;
- clear grounds for a position of a court chairperson to become vacant have been established;
- in cases when the powers of the court chairperson expire (except for grounds on expiry of powers of a judge or termination of powers of a court chairperson) and the President of the Republic of Armenia appoints a new court chairperson in the manner prescribed by law, the court chairperson continues to hold office in the position of a judge of the same court.

<sup>12</sup> <http://www.hjpc.ba/intro/pdf/LawonHJPCConsolidatedtext.pdf>

<sup>13</sup> The Constitution of Kyrgyzstan (2010), art. 94.8; The Constitutional Law on the Status of Judges (2011), art. 24

<sup>14</sup> <http://www.legislationline.org/documents/action/popup/id/7115>

<sup>15</sup> [http://www.vsrh.hr/CustomPages/Static/HRV/Files/Legislation\\_Judiciary-Act\\_Law-on-Courts\\_1994.pdf](http://www.vsrh.hr/CustomPages/Static/HRV/Files/Legislation_Judiciary-Act_Law-on-Courts_1994.pdf)

<sup>16</sup> <http://www.legislationline.org/documents/action/popup/id/4255>

<sup>17</sup> <http://eng.innanrikisraduneyti.is/laws-and-regulations/nr/109>



**Expected Outcome**

It is expected to appoint court chairpersons for a limited number of years based on clear criteria enshrined by the Law.