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50 days of the Defender: Reflection on the right to a fair trial

The courts are called to protect human rights from state authorities, private companies and other people; however it often happens that people need to be protected from courts. In 2010 request for the protection of the right to a fair trial formed 40% of the total number of the complaints received by the Human Rights Defender. By the law I am authorized to protect people from all the state authorities except courts.

Injustice of certain judges, obvious shortcomings of highest court authorities and imperfect conditions in judicial system result in people losing feeling of justice which, in its turn, make them greatly disappointed by all state institutions.

Owing to active efforts of international organizations and different experts an approach was fixed in the Constitution of the Republic of Armenia according to which judicial system should be absolutely independent from everybody and everything. Whereas judicial independence means freedom of a righteous and conscientious judge from all kinds of pressure and never an irresponsible isolation of judicial system and crystallization in its own flaws.

Today, according to the law control over a judge is carried out either by the superior court or the Council of Justice mostly consisting of judges. At present, I strongly believe that a judge is not independent as an individual, as he/she could be subjected to pressure by the highest judicial authorities. In our day that authority is not accountable and responsible before the society, as there are no legal mechanisms for legitimate control over the judicial system.

The only real and legal mechanism of restraining injustice in domestic judicial system is the European Court of Human Rights. A fact that is proved by the growing amount of applications brought before this instance.

The expansion of the Council of Justice with participation of civil society representatives can be a guarantee of a legitimate oversight towards the court system, for judges not to form the majority in the Council. This solution, even if accepted by the society and political forces requires amendments in the RA Constitution which is a long and hard procedure.

My liabilities in the judicial system are very restricted. I cannot interfere into a single issue which is subject to judicial inquiry. I cannot even give an assessment to a case when it is under the procedure of the court. From 2011 I was given by the law one authority for the protection of the right to a fair trial: when the case is completed in the court and there is no possibility to somehow influence the protection of the given right of the person, the Defender can transmit to the Justice Council information about the illegitimacy committed by the judge in the result of which the judge can be called to responsibility up to dismissal from the post.

Appeal to the Defender with regard to a follow up of an already completed case can be expected only from people with active civil position and legal consciousness, including advocates. When advocates lose individual cases because of judicial mistake or injustice, they are interested to continue the struggle for achieving justice in similar cases in the future. Taking into consideration this fact on May 27, 2011 I have initiated a Forum with the RA Chamber of Advocates on the protection of the right to a fair trial during which I am going to present my concrete suggestions and actions towards future amendments and development of the judicial system.

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