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Report

Justice on the focus of attention

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The content of this report is the responsibility of the NGO "International Society for Human Rights" Armenia and may not reflect the views of the German Section of the ISHR and the German Ministry of Economic Cooperation and Development.

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Introduction

In 1990, at the OSCE Conference on the Human Dimension in Copenhagen, the participating States recognized that the rule of law is essential to ensure respect for all human rights and fundamental freedoms, the development of contacts between people and the resolution of related other issues of a public nature., Wishing to ensure greater openness in the implementation of the commitments undertaken in the OSCE section on the human dimension of the final Vienna Document, they decide to accept the presence of observers and representatives of non-governmental organizations and other interested persons sent by participating States in judicial processes as confidence-building measures to the judicial system.

Since 1990, the OSCE has included judicial monitoring as an integral element of its activities, which serves to implement legislative (including justice-oriented) reforms by participating States., OSCE procedural monitoring is carried out in order to verify the work of new laws, in particular procedural codes, as well as newly created courts.

Experience shows that the monitoring of judicial proceedings is an effective tool for stimulating judicial reforms, as well as supporting national and international guarantees of the right to a fair trial, human rights and the rule of law in accordance with principle.¹

OSCE/ODIHR conducted judicial monitoring in the Republic of Armenia on March 1-2, 2008 in Yerevan in connection with violent clashes between the Police and protesters. Observations were carried out from April 15, 2008 to July 31, 2009 with the consent of the Armenian authorities in connection with the criminal cases initiated in connection with those events. As a result of the monitoring, a final report was drawn up, which summarized the omissions made in the trials and the proposals aimed at improving the justice system.²

Aimed at the establishment and development of the judicial monitoring institution, the OSCE regularly publishes guidelines containing a toolkit for conducting judicial monitoring, which consolidates the knowledge and positive experiences of the OSCE judicial monitoring programs accumulated over the years and paves an absolutely effective way for participating states and human rights organizations to arm themselves. with the necessary knowledge from the point of view of the proper implementation of measures aimed at the recovery of the justice system.

The Armenian department of the international non-governmental organization "International Society of Human Rights" (hereinafter referred to as the "Organization") has been implementing the program "Strengthening the Rule of Law in Armenia and Ukraine" since September 2021. The project is being implemented with the support of the German Section of the ISHR, co-financed by the German Ministry of Economic Cooperation and Development. From the second half of 2022, the Organization's monitoring team has been supplemented with new observers, which has given tangible dynamics to the process of observing court sessions.

¹"Monitoring of trials", guide, OSCE/ODIHR, 2012

²<https://www.osce.org/files/f/documents/3/d/41695.pdf>

The program aims to serve for the benefit of justice, and the monitoring of trials was chosen as a means. The court sessions in the courts of general jurisdiction of the city of Yerevan, as well as the Shirak, Lori, Armavir, Ararat and Vayots Dzor regions were considered. Among those mentioned, cases considered in the newly created Anti-Corruption Court were also considered. During the program, more than 150 court sessions were considered. It should be noted that, taking into account the program goals of the organization and the priority of the cases selected by the latter for monitoring, aimed at these goals, trials in a number of strategic cases were considered not episodically, but for a longer time, which allowed us to form the most accurate picture of the issues of the sphere. Court monitors have systematically reported on the compliance of observed trials with national and international fair trial standards, and have highlighted issues that make justice vulnerable. The problems identified as a result of the observations and their solutions aimed at overcoming the challenges are summarized in this report, which pursues a timely response.

The methodology of the report

The main goal of the project is to promote justice in the Republic of Armenia. Towards that goal, a roadmap of actions has been designed, which includes the monitoring of court sessions, the introduction and implementation of a unique model of current reports, highlighting the problems and gaps faced by justice and, in general, the judicial system through current reports, as well as interim and final reports.

This report summarizes all these objectives.

The report is structured in five parts.

The first part defines the nature of justice, touches on the work of the state aimed at justice, and then considers it within the limits of international and Organization visibility.

The second part refers to the idea of monitoring as an effective mechanism aimed at justice, points out the principles that necessarily guide the monitoring process, presents the monitoring methods used by the Organization for the targeted implementation of program goals. In addition, to address accountability, the Roadmap for Action toolkits, including questionnaire templates for criminal and civil cases, are attached.

The third part is devoted to the core of judicial monitoring: observers, the selection of observers, the formation of the observation team, professional training, the rules of inter-observer, as well as observer-observation team coordinator and observer-coordinator-organization leader accountability and feedback rules honed in the monitoring team are emphasized.

The fourth part is the target section of this report. It summarizes the issues raised by the Organization as a result of judicial monitoring, which are related to the legal regulations and not only to the law-enforcement practice, to the customary behavior formed by the judicial system, as well as to the gaps, the presence of which causes tangible obstacles to the rule of law and the realization of justice. Aimed at overcoming the recorded problems, objective solutions that realistically respond to the existing international obligations and domestic legal regulations are presented.

The last, fifth part can be considered as an appendix to the Report. In this section, the cases considered according to priority are presented in a diagrammatic form, and the links to familiarization with the monitoring reports of these cases are also attached.

List of terms and abbreviations

Organization	"International Society of Human Rights" non-governmental organization /ISHR/
RA	Republic of Armenia
USA	United States of America
UN	United Nations Organization
OSCE	Organization for Security and Cooperation in Europe
ODIHR	Office for Democratic Institutions and Human Rights
ECHR	European Convention "On the Protection of Human Rights and Fundamental Freedoms" /or Convention/
ICCPR	International Covenant on Civil and Political Rights (or Covenant)
ECHR	European Court of Human Rights
SJC	Supreme Judicial Council
CPI	Corruption Perceptions Index

Part 1. Justice. Influencing factors

The participating states of the Copenhagen conference expressed their belief that full respect for human rights and fundamental freedoms and the development of societies based on pluralistic democracy and the rule of law are a necessary condition for creating a stable situation of stable peace, security, justice and cooperation.³

The Human Rights Committee has called the right to equality before the courts, including equal access to justice, a "key element" of human rights protection and a procedural means of ensuring the rule of law.

The rights of access to justice and equality are at the heart of the principle of the rule of law. Those rights require that everyone has equal access to the courts, that the administration of justice be fair to all, regardless of the personality of the litigants or the nature of the proceedings. By the way, the right to appeal to the court should not be considered as an end in itself possibility, it should be more "practical and effective" than "theoretical and apparent".⁴

Both the International Covenant on Civil and Political Rights (hereinafter: ICCPR) and the European Convention on Human Rights and Fundamental Freedoms (hereinafter: ECHR) imply this right within the framework of the comprehensive right to a fair and public trial. Among other regional human rights treaties, only the African Charter on Human and Peoples' Rights directly enshrines the right of "everyone to have his case heard by a court".

The European Court of Human Rights (hereafter ECHR) expressed the position that the right to go to court is an integral element of Article 6, Part 1 of the ECHR, "taking into account the special place that the right to a fair trial occupies in a democratic society."⁵

The right to go to court and to equality before the court extends equally to criminal and non-criminal cases, and must be respected in all cases where national legislation assigns a judicial function to a judicial authority, such as in the case of disciplinary proceedings against a civil servant.⁶ At the same time, the ECHR in the light of the rulings, this right is not absolute and may be subject to legal restrictions, such as, for example, the statute of limitations.⁷

The right to have access to justice and to participate effectively in it often depends on access to legal aid itself. Article 13 of the Convention, also aimed at ensuring applicability, the position repeatedly expressed by the ECHR considers legal aid in the degree of objectivity, which means

³ Copenhagen Consultation Document of the OSCE Human Measurement Conference, 1990.

⁴ *Artico v. Italy*, no. 6694/74, 13 May 1980, item 33

⁵ *Golder v the United Kingdom* [1975] ECHR 1, paras 35–36; *Ait-Mouhoub v France* [1998] ECHR 97, para 52; *Z and Others v the United Kingdom* [2001] ECHR 333, para 91; *Steel and Morris v the United Kingdom* [2005] ECHR 103, para 59; see also *Philis v Greece* [1991] ECHR 38, para 65

⁶ UN Human Rights Committee, General Comment No. 32 (2007); *Perterer v Austria*, HRC Communication 1015/2001, UN Doc CCPR/C/81/D/1015/2001 (2004), para 9.2.

⁷ *Stubbings and Others v the United Kingdom* [1996] ECHR 44, para 62; *Z and Others v the United Kingdom* [2001] ECHR 333, para 93; see also: *Nuala Mole and Catharina Harby, The right to a fair trial (Council of Europe Human Rights Handbook No 3, 2006)*, p.36; *Tolstoy Miloslavsky v the United Kingdom* [1995] ECHR 25, para 61; *Al-Adsani v the United Kingdom* [2001] ECHR 761, para 56; *McElhinney v Ireland* [2001] ECHR 763, para 35; *Cordova v Italy* [2003] ECHR 47, para 60; *Beer and Regan v Germany* [1999] ECHR 6, para 53.

that the efforts of the state to provide legal assistance to a person must be visible, in which case it will be possible to talk about access to justice at a minimum level, or, as quoted in ECHR precedents, "it is necessary that justice not only be done but also be seen to be done".

The right of access to justice, as mentioned, is linked to the principle of the rule of law, therefore, its implementation in that context is impossible without a strong lawyers (including independent judges and attorneys), fair and accessible procedures and a high degree of transparency. The existence of these three factors, according to the position of the ODIHR, is of vital importance to guarantee that all individuals have the opportunity to seek effective means of legal protection in case of arbitrariness and violation of their rights.⁸ By the way, the ECHR also expressed a position on ensuring effective access to justice through the simplification of procedures in the judgment made in the case of *Airey v. Ireland*.⁹

OSCE participating states have undertaken obligations to observe a number of norms and principles of justice implementation. The most important of these is the obligation to ensure the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal.¹⁰

In a democratic society, public trust in the courts is of fundamental importance. In this respect, both the ICCPR and the ECHR require courts to maintain impartiality under Article 14 of the Covenant and Article 6 of the Convention. Court impartiality has two sides. The first is subjective impartiality, when a judge does not allow his decisions to be influenced by personal bias or prejudice, nor does he allow prejudice to the case under consideration. Applying the subjective standard, the ECHR has consistently affirmed that the court must be presumptuous of the judges' personal impartiality, as evidence to the contrary has not been established.¹¹ The second is objective impartiality, according to which the court must give the impression of impartiality to a reasonable observer. In the judgments of the European Court, this idea is expressed as follows. "It is necessary to determine whether, in addition to the conduct of the judge, there are verifiable facts that may raise doubts about his impartiality."¹²

During the trial and at the sentencing stage, the procedural conditions for the parties must be the same. It requires that a "fair balance" be struck between the parties so that each party is given a reasonable opportunity to present its case under conditions that do not place it at a disadvantage compared to the opposing party.¹³

⁸ OSCE/ODIHR. "OSCE and the Rule of Law" <https://www.osce.org/files/f/documents/2/4/147591.pdf>

⁹ *Airey v. Ireland* (Application no. 6289/73), 1979 <https://www.icj.org/wp-content/uploads/2014/03/ECHR-Airey-v.-Ireland-jurisprudence-1979-eng.pdf>

¹⁰ Final document of the Vienna meeting, Vienna, 1989, para. 13.9

¹¹ *Le Compte, Van Leuven and De Meyere v Belgium* [1981] ECHR 3, para 58 in fine; *Campbell and Fell v the United Kingdom* [1984] ECHR 8, para 84; *Hauschildt v Denmark* [1989] ECHR 7, para 47; *Padovani v Italy* [1993] ECHR 12, para 26; *Kyprianou v Cyprus* [2005] ECHR 873, para 119.

¹² *Ferrantelli and Santangelo v Italy* [1996] ECHR 29, para 58; *Hauschildt v Denmark* [1989] ECHR 7, para 48; *Wettstein v Switzerland* [2000] ECHR 695, para 44; *Daktaras v Lithuania* [2000] ECHR 460, para 32; *Kyprianou v Cyprus* [2005] ECHR 873, para 118.

¹³ *Werner v Austria* [1997] ECHR 92, para 63; *Coëme and Others v Belgium* [2000] ECHR 250, para 102; *G. B. v France* [2001] ECHR 564, para 58.

The visibility of justice is also guaranteed by the openness of the trial, which is aimed at ensuring transparency. Although, in this regard, the Convention allows in certain cases to conduct the trial or a part of it in camera, which must absolutely be aimed at protecting the interests of morality, public order or state security, the interests of minors or the private life of the parties in a democratic society.

Efforts towards justice

The proper functioning of the justice sector is the best indicator of the vital activity of the state. It defines, on the one hand, the level of respect for human rights in the country, and on the other hand, the ability of the state to prevent human rights violations.¹⁴

Since independence, judicial and legal reforms have been carried out in the Republic of Armenia, mainly due to the 1995 with the adoption of the Constitution and subsequent amendments to the Constitution. After the adoption of the 1995 Constitution, the first judicial reform was carried out, the purpose of which was to replace the existing Soviet judicial system with the independent judicial system of newly independent Armenia, to create the independent republic's own legislation, judicial and law enforcement bodies. However, the Constitution adopted in 1995 lacked a clear attitude towards the constitutional recognition and fixation of human rights as the highest value, human dignity was fixed not as a constitutional right, but as an object of protection within the framework of criminal law relations, and was not overcome typical of the former Soviet legal system. approach in this matter. Therefore, the strengthening of the constitutional guarantees of ensuring and protecting basic human rights, clarifying the scope of the possible limitation of these rights were considered an important direction of the constitutional reforms.

After the constitutional amendments of 2005, two strategies of judicial and legal reforms were adopted. the first covered the years 2009-2011, the second covered the years 2012-2016 (the term of this program was extended by one year, until the end of 2017). In the above two programs, the establishment of effective judicial power, the formation of an independent and public-trusted judicial system was emphasized.

The political changes that took place in the Republic of Armenia in 2018 brought to the agenda the absolute priority of having a truly independent, efficient, corruption- and patronage-free judiciary. This priority was emphasized in the 2019 program of the Government of the Republic of Armenia, based on the priorities of which the 2019-2023 strategy of judicial and legal reforms of the Republic of Armenia was developed and adopted on October 10, 2019, which indicated 18 strategic goals of the reforms in the corresponding directions. The strategic objectives included the following: creation of an e-justice platform and ensuring the accessibility and modernization of electronic databases, strengthening the rule of law through the use of transitional justice tools, carrying out constitutional reforms, reforming electoral legislation, ensuring the independence and impartiality of the judiciary, improving public accountability structures of the judiciary, judicial system free from corruption and patronage, increasing the efficiency of court activities, creating a unified platform for services provided by state and local self-government bodies, reforming the law enforcement system, reforming criminal and criminal procedure legislation, reforming civil and civil procedure legislation, increasing the efficiency of administrative justice and administrative proceedings, reforms of the bankruptcy sector,

¹⁴ "Public needs and expectations regarding the justice sector in Armenia", Monitoring results report-2017

development of alternative methods of dispute resolution, increasing the efficiency of the notary system, increasing the efficiency of the advocate system, reforms of the enforcement system. Based on the strategy, short-term (from the 2nd half of 2019 to 2020), long-term (from 2021 to 2023) and separate action plans for the creation of an e-justice platform and ensuring the availability of electronic databases were drawn up (from the 2nd half of 2019 to 2023).

In this context, as of February 2022, a total of 70 actions have been partially or fully implemented out of 94 actions approved by the 2019-2023 Strategy Annex of the Republic of Armenia Judicial and Legal Reforms. As a result of the 5 actions taken, the new Criminal and Criminal Procedure Codes were adopted, the standards necessary for the evaluation of the conduct of judges and members of the Supreme Judicial Council were defined, the grounds for subjecting judges to disciplinary responsibility were adapted to the goals of the fight against corruption, new administrative and anti-corruption chambers were created in the Court of Cassation. an institute for examining cases of pre-trial criminal proceedings by separate specialized judges was introduced, the electoral legislation was revised, large-scale works were initiated in the direction of reforms in the fields of bankruptcy, enforcement, etc.

As is known, the year 2022 was concluded with a number of legal reforms. In that sense, it is important to record that on July 21, 2022, the RA Government approved the 2022-2026 strategy of judicial and legal reforms of the Republic of Armenia,¹⁵ the key direction of which is the facilitation of justice through resource enrichment, as well as the introduction of new mechanisms. The strategy envisages a number of 12 strategic goals and 41 strategic directions: e-justice, application of transitional justice tools, democratic institutions (in particular, constitutional, electoral) and judicial system reforms, criminal, civil and civil procedure, administrative and administrative procedure, bankruptcy, dispute resolution. in alternative ways, advocacy, enforcement, notary and other areas of general development of the justice system. The strategy consists of a plan of actions that is part of it, which separates the actions necessary to implement each strategic goal, as well as the final, intermediate and direct results of each strategic goal. The introduction of the institution of specialized anti-corruption, administrative and bankruptcy courts was also important.¹⁶ The replenishment of the list of judges, as well as the addition of new judges to the specialized courts, was certainly a landmark response to the challenges facing justice. By the way, part of the planned reforms is in the current stage.

¹⁵<https://www.arlis.am/DocumentView.aspx?docid=166582>

¹⁶<https://www.arlis.am/documentview.aspx?docid=157259>

The external visibility of justice

This section presents justice at the level of external evaluation without parallel analysis.

The value of the CPI of Armenia in 2022 has significantly decreased compared to the previous year and is equal to 46, 3 points less than the value of the previous two years (49 points), on a scale from 0 (absolutely corrupt) to 100 (absolutely clean). The standard error of measurement of CPI of Armenia in 2022 is equal to 2.47 (in 2021 it was equal to 3.76). After several years of progress, in 2022 the CPI of Armenia decreased by three points, which is disturbing. Although this decline is not statistically significant, it reflects a decline in the maintenance of checks and balances, the benevolence of law enforcement agencies, ensuring the independence of the judiciary, and the protection of civil space. As in the previous three years, Armenia's CPI value in 2022 is even higher than the world average CPI value, which, like last year, is equal to 43. At the same time, being below the CPI value (50), corruption is a serious issue in countries with a CPI value below which, according to anti-corruption experts. (...) Armenia still has a lot to do in order to reach the countries with high CPI values. A serious study and localized application (not copying) of the experience of those countries can make Armenia's progress in the fight against corruption very realistic.¹⁷

"Transparency International" anti-corruption center. "Corruption perceptions index 2022"¹⁸

¹⁷<https://transparency.am/hy/cpi>

¹⁸<https://www.transparency.am/assets/documents/1675252271-73037-710.pdf>

*The CPI coefficient for a given country is the arithmetic average of the coefficients calculated for all sources used to calculate the coefficient for that country. In particular, the CPI of Armenia in 2022 the coefficient (46) is equal to the arithmetic mean of the coefficients of the sources mentioned above

In November 2022, the new Anti-Corruption Court and the Anti-Corruption Chamber of the Court of Cassation entered into force after legislation in April 2021 created the two bodies. In August 2022, prosecutors filed lawsuits to recover property stolen from allegedly corrupt former officials from the pre-revolutionary regime. In November, the election of Mnatsakan Martirosyan as a judge of the Anti-Corruption Court caused controversy, as several of his rulings in political cases were overturned by the European Court of Human Rights (ECHR).

Courts face systemic political influence and judicial institutions are undermined by corruption. Judges are reportedly forced to cooperate with prosecutors to secure convictions, and acquittal rates are extremely low.

The government published the five-year strategy of judicial reforms in 2019. Reforms continued to take effect in 2022, although progress has been slow. In August 2022, the acting head of the Supreme Judicial Council (hereinafter SJC) resigned after a recording was released in which he threatened to file criminal charges against the former head of the SJC if he refused to resign. In October, new members of the Central Committee were elected by the ruling faction, including a former minister of justice, who was also a member of the ruling party. Elections were considered as political motives.

Authorities apply the law selectively, and due process in civil or criminal cases is not guaranteed. Prolonged incarceration remains a problem, and Armenia's judicial system is largely distrusted by the public.

A series of corruption investigations against RPA elites and allies have raised concerns about the ability of the country's judicial and investigative mechanisms to ensure fair application of the law.

"Freedom House" international human rights organization. "Freedom in the world 2023"¹⁹

¹⁹https://freedomhouse.org/sites/default/files/2023-03/FTW_2023_50Years_DigitalPDF.pdf

The authorities continued to implement ambitious judicial, police and constitutional reforms.

Even when prosecutions of torture allegations have been made, they have generally been dismissed for lack of criminality or suspended for failure to identify the suspect. In March, seven years after torture was made a special criminal offense in Armenia, the court handed down its first verdict on such charges, sentencing a former prison official to seven years and six months in prison. In the past, officials prosecuted for physical violence were charged with the general offense of "abuse of official position".

In March, the criminal court made the first verdict, according to which the violence against the person was committed with a homophobic motive.

" Human Rights Watch " international non-governmental organization. "World Report 2023"²⁰

²⁰<https://www.hrw.org/world-report/2023/country-chapters/armenia>

The US State Department has released its 2022 Human Rights Report ²¹

The screenshot shows the U.S. Department of State website. At the top, there is a navigation bar with links for Newsroom, Business, Employees, Job Seekers, Students, Travelers, and Visas, along with social media icons for Facebook, Twitter, Instagram, YouTube, and Email. Below this is the U.S. Department of State logo and a search bar. The main content area features a breadcrumb trail: Home > Reports > Bureau of Democracy, Human Rights, and Labor > 2022 Country Reports on Human Rights Practices > Armenia. The title of the report is "2022 Country Reports on Human Rights Practices: Armenia" with a three-star rating. Below the title, it says "BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR" and provides a "DOWNLOAD [1 MB] / TRANSLATIONS" link. On the left, there is a menu for "IN THIS SECTION / EXECUTIVE SUMMARY". On the right, there is a "LOCATION" dropdown menu set to "Armenia". The URL "https://www.state.gov" is visible in the bottom left corner.

Although the law provides for an independent judiciary, the judiciary has not been seen as independent or impartial due to corruption and political influence, resistance to reform, and recent high-profile scandals. There were unconfirmed reports of government attempts to influence judges. Heavy caseloads, a lack of public trust and allegations of government pressure have encouraged professionals to turn to judges.

During the year, NGOs continued to report on judges who acquired property and assets disproportionate to their salaries, and continued to note that the lack of vetting of all permanent judges, especially judges of the Supreme Judicial Council and Constitutional Court, based on objective criteria undermines the judiciary completeness.

They also noted that the annual inspections of the asset declarations of the acting judges are limited in nature and do not contribute to the dismissal of corrupt judges.

On November 21, the Supreme Judicial Council voted in favor of Mnatsakan Martirosyan's candidacy for the position of judge of the newly established specialized anti-corruption court, despite the negative results of his conduct by the Corruption Prevention Commission.

²¹<https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/armenia>

Many independent experts have publicly criticized the SJC's decision, citing dozens of cases in which the judge appeared to have made decisions based on a political agenda. On December 30, the BCHC removed Martirosyan from the list of candidates of the Anti-Corruption Court, allegedly on the basis of Martirosyan's withdrawal of his application. The decision of the BSC was made a month after BSC member Grigor Bekmezyan resigned from his membership citing lack of institutional independence.

Human rights activists noted that some judges were subjected to internal pressure from their superiors, including the Supreme Court, regarding some court decisions. Such pressure reportedly included speculation that it would affect their reputation or career. Human rights activists say court rulings on cases involving similar circumstances have become unpredictable, and rulings in some high-profile corruption cases have been politically motivated. They argued that judicial reforms mostly offered temporary fixes rather than systemic reforms.

* Although Mnatsakan Martirosyan was removed from the anti-corruption specialization department of the anti-corruption specialization department of the candidate list for judges, nevertheless, by the decree of the President of the Republic of Armenia No. NH-44-A dated January 30, 2023, he was appointed the president of the criminal court of the first instance of general jurisdiction of the city of Yerevan for a term of three years.

The inner visibility of justice

With the adoption of the 1995 Constitution, the Republic of Armenia initiated and with the 2005 reform continued the implementation of steps aimed at the formation and development of an effective justice system and, as an agent of justice, an independent judiciary.

However, the constitutional reforms implemented as a result of the November 27, 2005 referendum in the Republic of Armenia did not create the necessary constitutional prerequisites for the more consistent realization of the principle of the rule of law and guaranteeing the effective fulfillment of the international obligations assumed by the Republic of Armenia in this matter.²²

The constitutional referendum held in 2015 was supposed to be the cornerstone on which the five-year program of non-violent judicial reforms that had already been launched would be based.

The constitutional reforms were based on the fundamental principles according to which a person, his dignity, basic rights and freedoms, being recognized by the state as the highest value, should condition the steady realization of the principle of the supremacy of law and guarantee the limitation of power by law. At the constitutional level, the necessary and sufficient prerequisites for the functional, structural, material and social independence of the judiciary should be fixed and guaranteed.

In the 2017-2022 program, the RA Government reaffirmed that one of the important guarantors of justice in the country is the judicial system, and complex measures are needed to guarantee the independence and impartiality of the judicial system in order to ensure effective and predictable justice.

The reforms of the RA Government in the field of justice should be aimed at the modernization of the legislation resulting from the amendments to the RA Constitution, the more effective protection of human rights and freedoms, ensuring the accessibility and efficiency of the judicial system, the realization of the goals of the justice system through innovative solutions, which made it necessary to improve the mechanisms for ensuring the internal independence of courts and judges.²³

The Government's documentary commitments to judicial reforms reflected the essence of the fundamental principles of the independence of the Judiciary adopted by the United Nations in 1985²⁴ and made the challenges of those principles relevant at the simplest levels.

2018 marked the beginning of the wave of the state's "revolutionary" ideology in relation to justice-oriented processes. The new government formed in the post-revolutionary state considered the main obstacle to the independence of the judicial system in Armenia illegal directives handed down from the courts by the echelons of power, which enabled judges not to bear responsibility for court decisions, because those decisions were, in fact, made in the highest echelons of power, and judges, in fact, only had signed them.

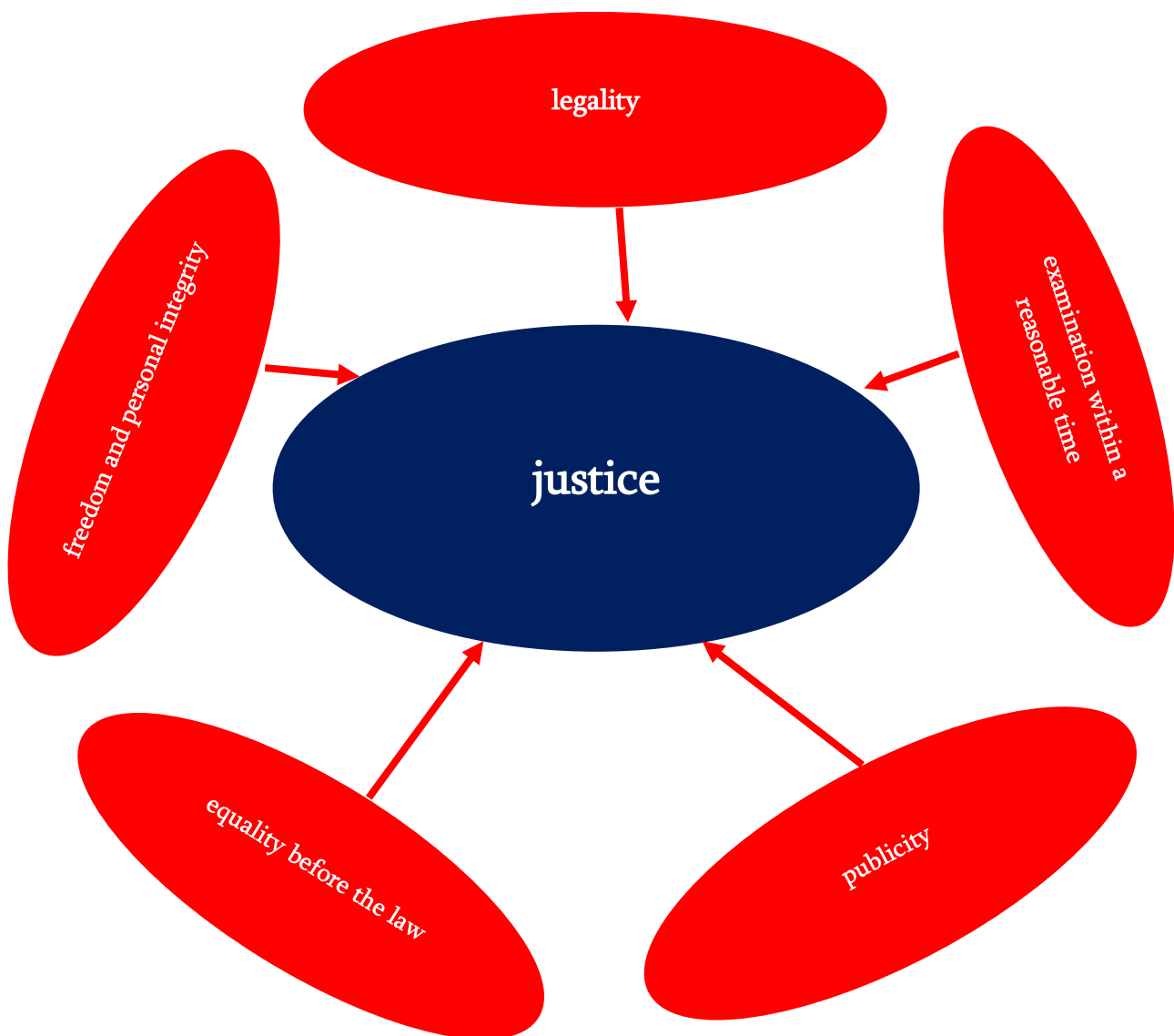
²² Concept of constitutional reforms of the Republic of Armenia, Yerevan, 2014

²³ Resolution No. 646-A of the RA Government of June 19, 2017

²⁴ Fundamental Principles of the Independence of the Judiciary of the United Nations, 1985, <https://www.ohchr.org/en/professionalinterest/pages/independencejudiciary.aspx>

The government excluded the practice of illegal interference in the activities of judges from the government or any other circles and was convinced that ensuring this, as well as other conditions conducive to the independence of the courts, would naturally lead to the existence of an independent judicial system and the real separation of the branches of government.²⁵

The year 2022 was also concluded with a number of reforms in the judicial and legal sphere. The essence of the implemented reforms, indeed, indicates the efforts of the state, which are aimed at increasing the qualitative and quantitative levels of justice, at the same time, these reforms were not able to overcome some issues in the legal field, the presence of which damages justice in a tangible way. Courts broadly follow due process, however, in many cases, the expected diligence is lacking in overcoming such challenges as insufficient knowledge, stunted professional growth, mismanagement of time, lack of initiative and consistency. As a result, as a countermeasure, the underlying principles of effective justice have been undermined:

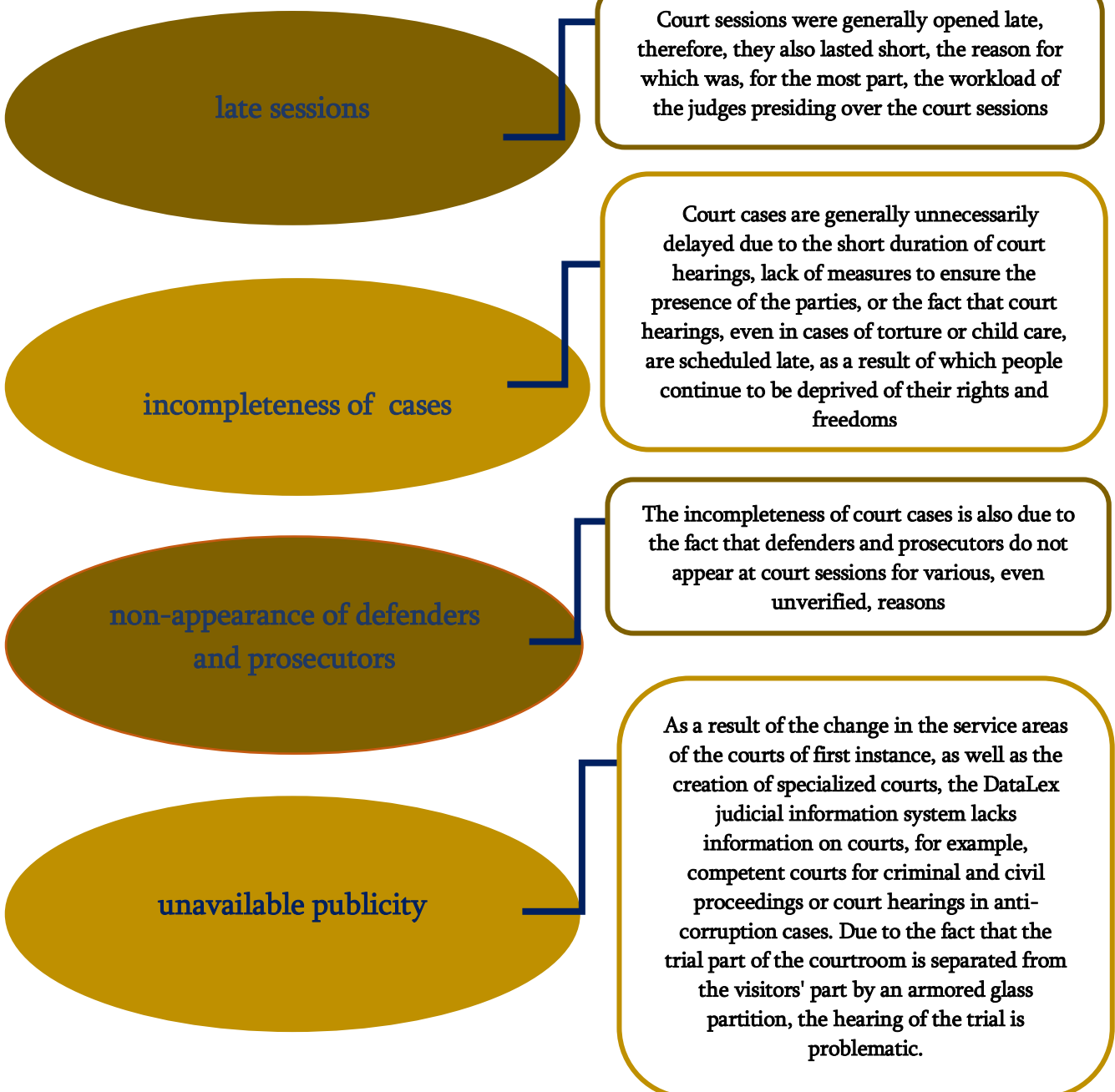


²⁵ RA Government Decision No. 581-A of 2018

The Convention and the Constitution establish the imperative norm that everyone has the right to a fair, public and reasonable trial of their case by an independent and impartial court. According to the decision of the RA Constitutional Court No. CCD-673, this right is not subject to restriction, and the right to a fair trial is one of the main features of any democratic society.

It means that the right to a fair trial implies both the possibility to apply to the court and the right to investigate the case in a fair, public and reasonable time. Therefore, these three conditions are the minimum elements that shape and nurture justice. However, this circumstance should be considered exclusively on the level of basic expectations, which should not neutralize the importance of other principles of justice, individually and as a whole, at the level of applicability of the law. Disregarding even one principle means defeating justice in general.

Justice has been obstructed most often



Part 2: Monitoring as a mechanism to support justice

The OSCE participating states have agreed to take such a confidence-building measure as the participation of observers from other OSCE participating states and non-governmental organizations in court proceedings.²⁶

Monitoring of trials can be considered in both a narrow and a broader sense.

In a narrow sense, trial monitoring is limited to observing the open process in court, in particular, the actions of judges, prosecutors, lawyers, and possibly other trial participants who are physically present at court sessions. Typically, this activity culminates in a public or non-public report. In some situations, this form of monitoring may be the only available means of assessing the fairness of the process and, despite its limited capabilities, many serious problems can be identified in this way. However, additional sources of information may be required to understand the underlying issues of violations identified during court hearings.

To collect such information, it is necessary to observe and monitor trials in a broader sense. Such monitoring should include not only the observation of trials, but also other aspects of judicial proceedings and other legal institutions. These may include places of detention, law enforcement, appointment processes for judges and prosecutors, or disciplinary proceedings against them, the Chamber of Advocates, as well as the procedure for training and disciplinary measures against lawyers, the process of drafting laws, the effectiveness of civil society in supporting the administration of justice, etc. .

Trial monitoring can address a wide range of issues, however, it also has limitations. Trial monitoring is not always an optimal program to support justice reform. In this regard, the level of political will or interest of the authorities in carrying out reforms is one of the most important issues of assessment. If the state lacks the political will to reform, trial monitoring may reveal flaws but may not make progress in promoting immediate or systemic justice reforms. Additionally, in a situation where the state is actively involved in violations of fair trial standards, organizations should consider whether they are willing to make the political reporting and advocacy steps necessary to publicize the facts raised.

Thus, organizations should carefully weigh trial monitoring's strengths and limitations before deciding whether (and if so, how) the program can support reforms of the justice system to ultimately contribute to the overall improvement of human rights and the rule of law.²⁷

²⁷ "Monitoring of trials", guide, OSCE/ODIHR, 2012

Monitoring principles

In the process of trial monitoring, the organization is exclusively guided by the methodological principles established by the OSCE.

The principle of non-interference.

The principle of non-interference is based on the need to respect the independence of the judiciary. Independence means that "the judiciary as an institution and individual judges who administer justice in specific cases must be able to carry out their professional duties without being influenced by the executive and legislative branches of government or any other improper sources".²⁸ The principle of non-interference should be considered in the light of specific monitoring problems. The mere presence of an observer at a court hearing or the publication of a report may be seen as some form of "interference". However, such a presence can have positive consequences for the pursuit of human rights, as it can improve judicial practice and limit arbitrariness.²⁹

The organization has chosen this very model of non-intervention for trial monitoring, sharing the "presence is already intervention" approach. Observers maintained maximum neutrality, with the exception of the rare cases when observers had corrective conversations with lawyers regarding cases of particular complexity.

The principle of objectivity.

Consistent with the principle of objectivity, trial monitoring programs must provide accurate trial reporting, impartially following clearly defined and accepted criteria. This principle is due to the fact that trial monitoring is used as a diagnostic tool and is obliged to provide reliable information about the functioning of this justice system.

Reports need to be based on national legislation and clearly articulated international standards, ensuring that the basis for conclusions is clear and objective. In addition, while monitoring may sometimes focus on certain norms or standards while ignoring others, care must be taken not to give the impression that monitors are supporting any side of the case.³⁰

As a guarantee of the principle of objectivity, the Organization is guided by the absence of identification and abstraction of the observer with the trial participants and the related circumstances. Ensuring the principle of objectivity can often be threatened by the factual circumstances of public hearing cases and the public's attitude towards the trial participants in those cases, which certainly have a radiating effect even for an outside observer. The mentioned circumstances, of course, for the sake of justice, are difficult to overcome, however, in the process

²⁸ "Human rights in the implementation of justice. a human rights guide for judges, prosecutors and lawyers". Office of the High Commissioner for Human Rights, Vocational Training Paper Series No. 9, 2003, p. 115

²⁹ "Monitoring of trials", guide, OSCE/ODIHR, 2012

³⁰ "Monitoring of trials", guide, OSCE/ODIHR, 2012

of monitoring the trials, as well as in the preparation of the reports, the observers of the Organization showed maximum objectivity, which fact is clearly visible in the current published reports.

The principle of consent.

Aimed at a fair trial, in order to ensure the right to a fair and public trial by independent and impartial courts within a reasonable time and to implement other obligations, the OSCE participating states have agreed to allow monitoring of trials.³¹

In general, all international legal obligations provide both legal and political support for trial monitoring programs as a tool to help develop judicial systems in line with international standards and principles of justice.

At the operational level, mutual understanding with the authorities on the purpose of judicial monitoring ensures the access of observers to the courts and increases the effectiveness of monitoring. This mutual understanding can be achieved by signing agreements, establishing working relationships, exchanging information, clarifying project goals and methods, making constructive suggestions, and assisting officials in the process of implementing such suggestions.

The main task of trial monitoring is to achieve a level of access to materials and data adequate to the objectives of the project. Providing regular access enables project staff to identify cases and adjust observation techniques, thereby improving the quality and consistency of monitoring results. Simply put, the higher the level of availability, the higher the granularity and effectiveness of monitoring.

In general, the Organization was not hindered by the courts while carrying out the monitoring within the framework of the project. However, the idea of permission to monitor proceedings cannot be spatial in any way, it implies clear, visible and legitimate actions. In this regard, it should be noted that many times the observers were not presented to the court and the participants of the trial, and therefore they did not have the opportunity to take photos, which makes the obligation assumed by the state less tangible. Regarding the tangibility of the state's obligation, the issue of the audibility of the trial and the fact that the judge presiding over the case disregarded the Organization's request to allocate seats to the observers in the audible part of the courtroom also form a negative experience.

However, the Organization, based on the program objectives, has shown maximum diligence to highlight through ongoing reports, interim reports and thus support the competent authorities of the State to overcome the challenges facing justice. The issues raised by this report are also necessary messages to that end.

³¹ Copenhagen Consultation Document of the OSCE Conference on Human Measurement, 1990

The methods selected for monitoring

For the monitoring of trials, the OSCE/ODIHR considers three methods as benchmarks: systemic, thematic and specific, according to their scope and objectives.

The term "systemic trial monitoring" refers to programs that are implemented as part of a large-scale, well-resourced, long-term project based on an overall mandate to support justice system reform.

Systematic monitoring of proceedings can be applied to all types of cases, although usually certain types of proceedings are selected as priority. Over time, the focus of monitoring may change either in response to new events or as a result of program changes. For example, a systemic monitoring program may initially focus on criminal litigation and then expand its focus to include civil cases.

The term "thematic trial monitoring" refers to programs that focus on a particular type of court case, phase of the trial, or a particular topic.

Concerns about serious problems facing the justice system or specific challenges can serve as an occasion for conducting thematic monitoring. Such monitoring may be performed as part of a systemic monitoring program or as a stand-alone program. Thematic monitoring allows for a more in-depth study of certain issues and requires observers to specialize in relevant areas of legislation that touch on a particular case.

The term "prosecution-specific monitoring" generally refers to programs that are implemented in direct response to, and specifically intended to monitor, criminal proceedings initiated as a result of certain events. Such events may include outbreaks of post-election violence, political instability, or persecution of human rights activists. The duration of such programs is measured by the length of the relevant trials, and their outcome is usually a report of observations and conclusions. It is desirable that special monitoring programs do not stop monitoring until the court judgment / sentence / has entered into legal force. This allows for a complete picture of how cases are handled by the judicial system.

At the beginning of the implementation of the project, the Organization chose the method of thematic monitoring of the trial. labor law cases were targeted. In the current process, the Organization considered mixed monitoring as the most appropriate direction. Of course, it implies an impure and incomplete applicability of the above methods. In line with the programmatic objective, the Organization switched to a systematic litigation monitoring method, continuing to monitor labor law cases.

As is known, after the revolution in 2018, the courts are examining criminal cases involving famous former officials. There are also quite a few cases with the participation of former officials, which are examined in the newly established Anti-Corruption Court.* These cases, by their nature,

* The anti-corruption court is subject to the proceedings assigned to the jurisdiction of the anti-corruption courts by the Criminal Procedure Code of the Republic of Armenia, as well as the civil cases initiated by the prosecutor with claims for the protection of property and non-property interests of the state in civil proceedings and with claims for confiscation of property based on the Law "On Confiscation of Illegal Originated Property"

are of strategic importance, therefore, the Organization has carried out special monitoring with some of them. In this regard, it is necessary to record that the importance of monitoring the trials of the cases examined in the Anti-Corruption Courts is unquestionable, taking into account the lack of data on the cases examined in the court, the still weak, undetermined influence of the civil society, which, for sure, can create a belief of omnipotence and permissiveness for the judges examining the cases.

The monitoring toolkit

At the start of the project, the Organization developed tools for effective monitoring: report and observer questionnaire templates (questionnaire templates are different for observing criminal and civil court hearings).

As it is known, in 2022, the RA Criminal Procedure Code adopted in 2021 entered into force, therefore, the Organization has updated the template of the questionnaire of the observer in criminal cases to the terms and provisions of the current Code.

We would like to share sample questionnaires for criminal and civil trial observation questionnaires in the hope that they will serve in the future for organizations implementing trial monitoring programs. The reader has the opportunity to get acquainted with the principle of making reports in the "Monitoring of judicial processes" section of the Organization's website.

Example template for a criminal observer questionnaire.

Observer questionnaire (in a criminal case)

1) Observer's name, surname	
2) Date and time of observation + total time spent in court (in minutes)	
3) Duration of the court session, excluding breaks (in minutes)	
4) The date of the next court session	
5) Have there been any changes to the key case data since the previous monitoring? yes (what kind) / no	
6) Were other observers (from other organizations) present at the trial? yes (which) / no	

General information

7) Name, surname (name) of the accused (suspect)	
8) Articles provided by the Criminal Code (if there are several defendants, then specify the article(s) related to each of them)	

9) Description of the intended articles (if there are several defendants, then specify the description of the article(s) related to each of them)	
10) Case number	
11) Name of the court where the case is being heard	
12) Name, patronymic, surname of the judge(s) examining the case	
13) Name and surname of the public prosecutor (prosecutor)	
14) Name, surname and contact information of the defender(s) (if present)	
15) 15) Has the information about the court session been previously published in the RA judicial information system? yes/no specify the date of the system check	
16) The preventive measure selected at the time of the court session. 1) detention 2) house arrest 3) administrative control 4) collateral 5) suspension of office 6) prohibition of absence 7) guarantee 8) educational control 9) military control	
17) The date of application of the restraining order (in case of detention, specify the period of detention)	
18) Additional information about the accused that may be interesting (minor, disabled person, pregnant woman, etc.)	

The course of the court session

<p>19) Has the question of a preventive measure been considered?</p> <p style="text-align: center;">yes/no exam results</p>	
<p>20) Have other issues (essentially related to the case) been examined?</p> <p style="text-align: center;">yes(what)/no exam results</p>	
<p>21) Whether a solicitation to adduce new evidence(s) has been filed by the defense</p> <p style="text-align: center;">yes/no Was the petition granted or denied?</p>	
<p>22) Whether a solicitation to adduce new evidence(s) has been filed by public or private prosecutors</p> <p style="text-align: center;">yes/no Was the petition granted or denied?</p>	
<p>23) Whether the case materials were examined by the court?</p> <p style="text-align: center;">yes/no</p>	
<p>24) Whether witnesses or victims have been questioned?</p> <p style="text-align: center;">yes/no Defense or prosecution witnesses (if witnesses from both sides, then indicate that)</p>	
<p>25) Court session. preliminary trials, main trials, additional trials, etc.</p>	
<p>26) Whether a solicitation has been filed by the defense?</p> <p style="text-align: center;">The essence of solicitation The results (passed/rejected/submitted but not examined)</p>	
<p>27) Whether a solicitation has been filed by the prosecution?</p> <p style="text-align: center;">The essence of solicitation The results (passed/rejected/submitted but not examined)</p>	

<p>28) Whether a solicitation has been filed by the suspect/accused or other participants in the court proceedings?</p> <p style="text-align: center;">The essence of solicitation The results (passed/rejected/submitted but not examined)</p>	
<p>29) What kind of violations were recorded?</p> <p style="text-align: center;">Choose from the list below or add</p> <ol style="list-style-type: none"> 1. Violation of the principle of a reasonable period of judicial proceedings 2. Violation of the right to defense 3. Torture and degrading treatment 4. Contempt of court decision(s) 5. Pressure on lawyers 6. Pressure on the court 7. To attach "suspicious" evidence to the proceedings 8. Put the burden of proof on lawyers 9. Prohibition of participation of the accused or witness in the trial 10. Misuse and/or disregard of ECHR practice 11. Automatic Extension of Injunction 12. Other, formulate 	
<p>30) Cite the judgments of the ECHR (indicating the specific paragraphs) used in the report (which described such actions as violations of human rights)</p>	
<p>31) Additional information on court hearing</p> <p style="text-align: center;">IMPORTANT TO CLARIFY FROM THE PARTIES</p> <ol style="list-style-type: none"> 1. Has the preventive measure been appealed throughout the trial? yes/no appeal results <p>During the investigation of the complaint, the term of the restraining order expired yes/no</p> <ol style="list-style-type: none"> 2. Was the preventive measure replaced during the trial? yes/no by what failure was it replaced? 	

Example template for civil affairs observer questionnaire.

Observer questionnaire (in a civil case)

1) Observer's name, surname	
2) Date and time of observation + total time spent in court (in minutes)	
3) Duration of the court session, excluding breaks (in minutes)	
4) The date of the next court session	
5) Have there been any changes to the key case data since the previous monitoring? yes (what kind) / no	
6) Were other observers (from other organizations) present at the trial? yes (which) / no	

General information

7) Respondent's name, patronymic, surname (name)	
8) Related article	
9) Description of the article	
10) Case number	
11) Name of the court where the case is being heard	
12) Name, patronymic, surname of the judge(s) examining the case	

13) Plaintiff's name, patronymic, surname (name)	
14) Name, surname and contact information of the representative of the respondent (if present)	
15) Has the information about the court session been published in advance in the RA judicial information system? yes/no specify the date of the system check	

The course of the court session

16) Have the issues relating to the submission of new evidence by the Plaintiff been resolved? yes/no The solicitation was granted or rejected	
17) Have questions about the Respondent's submission of new evidence been examined? yes/no The solicitation was granted or rejected	
18) Have the materials been examined by the Court? yes/no	
19) Trial. preliminary court hearing, case trial, etc.	
20) Has a solicitation been filed by the Plaintiff? The essence of solicitation The results (passed/rejected/submitted but not examined)	
21) Whether a solicitation has been filed by the Respondent The essence of solicitation The results (passed/rejected/submitted but not examined)	

<p>22) Whether a solicitation was filed by other litigants</p> <p style="text-align: center;">The essence of solicitation</p> <p style="text-align: center;">The results</p> <p>(passed/rejected/submitted but not examined)</p>	
<p>23) What kind of violations were recorded?</p> <p style="text-align: center;">Choose from the list below or add</p> <ol style="list-style-type: none"> 1. Violation of the principle of a reasonable period of judicial proceedings 2. Violation of equality of law and trial 3. Management 4. Competition 5. Abuse of Litigation Rights 6. Pressure on the court 7. To attach "suspicious" evidence to the proceedings 8. Put the burden of proof on lawyers 9. Prohibition of participation of the respondent or witness in the trial 10. Misuse and/or disregard of ECHR practice 11. Other, formulate 	
<p>24) Cite the judgments of the ECHR (indicating the specific paragraphs) used in the report (which described such actions as violations of human rights)</p>	

Part 3: The observers

A key function in trial monitoring programs is performed by observers, and their work is literally conditioned by the advocacy of program objectives. A monitoring program cannot succeed without properly selected and guided observers, even if large material resources are allocated to the implementation of program functions, or even if mechanisms of interest are chosen to work best (high honorarium, health insurance, reimbursement of psychological counseling costs, etc.).

Formation of the monitoring group

When selecting monitoring personnel, the head should assess not only the candidate's qualifications and education in the field of law and human rights, but also his communication skills and ability to master the mandatory principles of non-interference, impartiality, confidentiality and professionalism for the monitor. Program managers must ensure that candidates do not have a conflict of interest that could jeopardize their work as an observer, such as working in a court where they are required. It is also necessary to make sure that they have not had any previous relationship with the lawyers involved in the trial or the court staff. Although some familiarity with court staff or participating lawyers may be helpful, the observer should not have any special relationship with them that might call into question his impartiality. If there is an unacceptable close relationship, the observer may be assigned to another court or be involved in other duties.³²

The position of the OSCE is that it is more appropriate to recruit persons with legal education as observers. Such observers are familiar with judicial processes and problems that the subjects of the justice system face in their work. Legal education provides observers with the necessary knowledge to report on legal issues and can also increase the confidence of courts in the quality of observations.

This approach is definitely acceptable for the organization, at the same time, the fact of having a legal education cannot be an absolute guarantee for the effectiveness of monitoring, because in many cases it is only a fact, at least in the Armenian educational culture. In this regard, the experience of the Organization forms a reverse image.

The organization has proposed certain criteria for the selection of the observer candidate, some of which reflect the OSCE expectations.

Those criteria are:

- ❖ the potential,
- ❖ advocacy,
- ❖ impartiality,
- ❖ confidentiality,
- ❖ honesty.

None of the mentioned criteria is more or less important than the other, these should be considered on the same surface and summed up by the alignment of priorities.

For monitoring, the Organization has selected both professionals working in the field of human rights for many years, as well as students who have demonstrated no less effectiveness. The only rigid requirement from which the Organization is unwavering is that the observer, at least, studies in the field of law in the second and higher years, which provides certain guarantees for a delimited and, at the same time, combined perception of the theoretical and practical components of law.

³² "Monitoring of trials", guide, OSCE/ODIHR, 2012

After the preliminary selection of observers, the Organization carried out training of the latter, which was the process outlined by the Organization for the final selection of observers. After the training, the pre-selected observers conducted so-called "cloud observations" and compiled reports, as a result of which only approved observers were selected from among them.

Accountability

Because court case reports are the primary source of information for trial monitoring programs, they must contain accurate factual information and clear legal analysis.

All programs, large or small, face the challenge of compiling and collating reports prepared by people with different legal skills, knowledge, and perspectives. This creates tangible risks in the exercise of internal accountability with a balanced and weighted record of issues regarding the cases under review.

Internal accountability is a means for observers to present information and analysis results to coordinators, primarily in the form of case reports. An effective litigation accountability system should regulate the content and structure of litigation reports so that the reports consistently provide information and analysis results relevant to the program's focus.

Only in the conditions of reliable internal accountability, it is possible to present the acquired data with the necessary analysis to uncertain and targeted recipients, conditioning public accountability.

Public accountability is one of the key tools that a trial monitoring program can use to ensure that the rule of law is respected under a state's national law as well as its international legal obligations and responsibilities. Reports are the end point for the development of all monitoring activities and the main means of presenting data, conclusions and recommendations from monitoring.

Observers of the Organization summarized the data collected as a result of the monitoring through reports. The reports contain background, trial presentation, and legal analysis parallels.

By the way, as a real guarantee of internal accountability, the observers submitted their reports to the coordinator of the monitoring team in the shortest possible time.

The reports submitted by the observers were published only after they had been discussed with the coordinator and approved by the latter, which is an important mechanism for ensuring the quality feature of public accountability.

Concluding interim and final reports are also characteristic elements of public accountability. As is known, in February 2023, the Organization published the interim report on the results of monitoring within the framework of the Project³³, in which it raised the legal issues recorded during the reporting period. This report is the end point of the circle of public accountability, at the same time, it is expected that it will become an effective tool for interaction in different formats aimed at judicial reforms.

³³<https://ishrarmenia.am/639/>

Part 4: Problems awaiting resolution and responsive revisions

As a result of monitoring, the raising of the existing problems in the judicial and legal sphere, perhaps, derives from the main goal of the Project and determines its feasibility. At the same time, as discussed in Part 3, it is a necessary element of public accountability. However, while addressing issues is a cornerstone of both the Program and this report, it must also pursue an overarching goal and visible advocacy towards that goal. The organization, highlighting the issues that require change, offers the interested parties as solution options, which will be summarized next.

Thus.

The following problems were recorded by the organization:

The realization of the demand for the investigation of the case within a reasonable period of time...

Clause 1 of Article 6 of the Convention defines: "Everyone has the right to a fair and public trial within a reasonable time by an independent and impartial tribunal established by law, when his civil rights and responsibilities are being determined or in respect of any criminal charge brought against him."

The conventional right to a fair, public and reasonable examination of the case by an independent and impartial court is also stipulated in Part 1 of Article 63 of the RA Constitution.

The Convention regards a trial within a reasonable time as an element of a person's right to a fair trial. The European Court of Human Rights notes that the purpose of this guarantee is to protect all participants in the judicial investigation from unnecessary delays in the trial, which can disrupt the efficiency of justice and confidence in the latter. The essence of "reasonable time" implies the issuance of a judicial act within a reasonable time, thereby putting an end to the uncertainty in which this or that person is in relation to his civil legal status or the criminal charges brought against him. As a result of the examination of a number of cases related to the challenge of a reasonable period, the court has formed certain criteria, which are applied to all cases when assessing the reasonableness of the trial. In particular, the Court takes into account the complexity of the given court case, the behavior of both the applicant and the relevant authorities that affected the duration of the trial, the importance of the value to the applicant to which the trial is related. When determining the complexity of the case, the European Court considers a number of criteria as a starting point, noting that the complexity can be related to both factual and legal points of view. The court attaches great importance to the following factors:

- the nature of the facts to be confirmed,
- the number of accused and witnesses,
- international factors,
- the involvement of new persons in the trial,
- calculations,

- the need for experts, etc.

When determining the complexity of the case, the European Court also takes into account "the distance in time and space that exists between the cases or facts under investigation and the judicial process."

The Council of Presidents of the Courts of the Republic of Armenia, by its decision No. 98 of June 13, 2006, expressed a sharp attitude towards the violation of the requirement of a reasonable period of investigation of the case, clarifying that it cannot be justified even if the relevant procedural decisions were taken in favor of the person (dismissal of the criminal case proceedings, mitigation of punishment, satisfaction of the claim (application), etc.).

In its turn, the Constitutional Court, in its decision No. CCD-1585, recorded that the requirement to examine the case within a reasonable period of time is one of the cornerstones of the right to a fair trial, and its violation can undermine the very essence of justice, directly endanger the effectiveness of the entire process of justice implementation, and call into question the credibility of that process. The approach according to which "delayed justice equals justice denied" is internationally accepted (for example, ECHR, Cases of Vazagashvili and Shanava v. Georgia, application no. 50375/07, 18/07/2019, and Lopatin and Medvedskiy v. Ukraine, applications nos. 2278/03 and 6222/03, 20/05/2010), because unnecessary delays in the examination of the case, even regardless of the outcome of the case, make the protection of human rights ineffective.

In this sense, the ECHR has expressed a position that the interested person is only required to show diligence in the execution of the procedural steps related to him, to refrain from using delaying tricks and to use the framework provided by domestic legislation to shorten the duration of the proceedings (Case of Uniçn Alimentaria Sanders S.A. v Spain, application no. 11681/85, 07/07/1989).

From the point of view of non-appearance of defenders and prosecutors.

From this point of view, we often face the opposite reality. the imperative requirement of investigating the case within a reasonable period of time is neglected in many criminal cases by the defense attorneys and the prosecutors themselves.

The defender, while exercising his rights, and the prosecutor, while exercising his powers, must be guided by the legal regulations formed by virtue of legislative subordination.

The above-mentioned legal acts and ECHR precedent rulings regarding the examination of cases within a reasonable time, on the listed grounds, summarize the same provision, which is bipolar, that is, it defines, on the one hand, the right of a person to examine a case within a reasonable time, and on the other hand, aimed at the proper realization of that right of a person the obligations of the public and private participants in the proceedings, in this case, the prosecutor's and defense attorney's obligations. In this sense, the following provisions laid down in Articles 38 and 49 of the Criminal Procedure Code of the Republic of Armenia are relevant:

- The prosecutor is obliged to participate in the trial in the court of first instance,
- The defender is obliged to appear at the invitation of the body conducting the proceedings to provide legal assistance to the accused.

As mentioned, the defender is a private participant in the proceedings. It is necessary to record that the Criminal Procedure Code of the Republic of Armenia prohibits the abuse of rights by private participants in the proceedings, including the defense counsel. In particular, by virtue of Article 29 of the Code, private participants in the proceedings must exercise their rights and fulfill their duties in good faith. In the cases provided for by this Code, a procedural sanction commensurate with his behavior may be applied to a person who has committed abuse of rights or has not performed his duties maliciously, if not applying it may endanger the normal course of the proceedings.

According to Article 141 of the Code, in cases where a participant in the proceedings or another person abuses his rights or maliciously fails to fulfill his duties, obstructs the normal course of the proceedings, as well as shows disrespect towards the court, the body conducting the proceedings has the right to apply a procedural sanction to those persons.

The legislator has provided for the following procedural sanctions:

- 1) the remark,
- 2) restriction of exercise of the right,
- 3) removal from the courtroom,
- 4) compulsory submission to the body implementing the proceedings,
- 5) court fine,
- 6) removal from proceedings.

According to Article 273 of the Code, in the event that the public prosecutor or defender does not appear at the court session and it is impossible to replace them with another prosecutor or defender at the given session, the court hearings are postponed.

It is an undeniable fact that many court sessions are delayed precisely because prosecutors and defense attorneys do not appear. As is known, the most common reasons or excuses for non-appearance of the mentioned participants in the proceedings are ill health, being out of town, employment, involvement in another case. And the judges presiding over the court sessions do not take any steps to determine the truth of the circumstances that serve as the basis for the postponement of the court sessions. From this point of view, it is important that the participants in the proceedings justify the necessity of their absence. This would create a culture of suppression of irresponsibility towards the right to a trial within a reasonable time, and therefore also towards justice.

It is certain that the judges presiding over the court sessions in the administration of justice, without hesitation, "based on the requirements of the Code", postpone the court sessions based on the non-appearance of the defenders and prosecutors, and in one case, especially due to the absence of the defender and the prosecutor, even several consecutive court hearings may be postponed. This is especially beneficial for judges who have a large caseload.

The defendant makes a valid assumption that the courts, in general, have "condemned" the requirements of the RA Criminal Procedure Code aimed at the realization of the right to investigate the case within a reasonable period of imperfection, otherwise, they would have formed a positive

practice when public and private participants in the proceedings, the defense attorney and the prosecutor:

- would properly appear at the court hearings, and in most cases, if they did not appear for "good reasons", they would be aware of the obligation to present appropriate grounds in the future,
- in case of regular non-participation in the court sessions, they would be removed from the proceedings, and this would also be the basis for initiation of disciplinary proceedings against them.

From the point of view of the short duration of the court sessions or the appointment of a late turn.

Violation of the requirement of a reasonable period of investigation of the case cannot be justified even if the relevant procedural decisions were made in favor of the person (dismissal of the criminal case proceedings, mitigation of punishment, satisfaction of the claim (application), etc.).

In assessing the reasonableness of the trial period, the degree of risk to the party is taken into account, and it is expected that criminal cases should, as a rule, be tried more expeditiously than civil cases, especially if the accused is in pre-trial detention. However, even in civil cases, urgency of action may be required, especially when the dispute is special in nature, or the resolution of which is of essential importance to the applicant. An example of this is civil cases involving disputes over the custody of minors. In the "Hokkanen v. Finland" case, the European Court expressed the position that cases related to guardianship should be examined in an expedited manner. In the "Obermayer v. Austria" labor dispute case, the Court noted: "The employee, who believes that he was relieved of his duties in an illegal manner, is personally interested in the decision regarding the illegality of the measure applied to him being made immediately."

The precedents cited by the European Court confirm that only objective reasons are taken into account when assessing the fact of violation of the requirement of a reasonable period of investigation. And the rest - the workload of the courts, the inexperience of the judges, the imperfection of the judicial or legal system in general, the behavior of the accused and his lawyer, as well as the other participants in the case cannot be seen as an objective reason for delaying the examination of the case.

According to Article 6 of the Convention, unreasonable and unjustified delays in the examination of cases are gross violations of human rights.

In addition to the above-mentioned legal regulation, the constitutional law "Judicial Code of RA" emphasizes the internal challenge for courts to organize their activities in such a way as to ensure the effective judicial protection of the rights and freedoms of everyone, for the fair, public and reasonable examination of the case by an independent and impartial court established on the basis of the law. When determining the reasonableness of the duration of the case investigation in the court, the legislator emphasizes a number of conditions, including the actions taken by the

court in order to carry out the investigation and resolution of the case in the shortest possible time and their effectiveness and the total duration of the case investigation.

Often we can record that the court sessions last very short, the reason for which is the late opening of the court sessions and the short time between the consecutive sessions in different cases before the same judge. These certainly speak of judges' inefficient planning of their work, which leads to delays in justice. One of the causes of delayed justice is also the practice of delaying subsequent court hearings, especially when it concerns cases to be examined in a guaranteed expedited manner.

This problem is also visible in the working style of those judges who have cases of particular complexity in their proceedings, when the legislator has given the opportunity to the judge in the presence of a case of particular complexity in his proceedings, to apply to the Supreme Judicial Council, proposing to temporarily remove his name from the distribution list or assign him to be distributed a separate percentage of cases.

Judges are not the only recipients of the above-mentioned reasons for the failure of a reasonable time of trial, and systematic work is needed to neutralize them, such as, for example, the appointment of new judges, the exclusion of appointed judges from being transferred frequently and shortly after being appointed to a seat.

From the point of view of resuming the examination of cases.

The resumption of the examination of cases in the event of a change of judges investigating both criminal and civil cases also raises doubts about the realization of the conventional requirement to examine the case within a reasonable period of time. This also applies to cases of a special nature, which, according to the position of the ECtHR, create a need for accelerated examination.

It is comforting that the RA Criminal Procedure Code adopted in 2021 provides for the mechanism of a "reserve judge" in cases where, based on its nature and volume, the examination of the charge in the court requires an exceptionally long time, then based on the court's decision, the president of the given court, until the beginning of the preliminary proceedings, a reserve judge is appointed from among the judges of that court, who is obliged to be present in the courtroom during the proceedings. In case of challenge, self-recusal of the judge investigating the charge, termination of the judge's powers or other grounds excluding his participation in the proceedings, the reserve judge replaces him, continuing the proceedings.

However, the still valid RA Criminal Procedure Code, adopted in 1998, the relevant provision of which applies to even complex, voluminous cases examined before the entry into force of the new Criminal Procedure Code, and considers the impossibility of a judge's participation in the judicial examination, to replace the latter with another judge, and the case grounds for restarting the examination. This literally paralyzes the idea of a reasonable time to investigate the case, and therefore also the idea of justice, even in the case of torture, domestic violence and similar sensitive cases. By the way, there are still many cases under investigation in the area of the legal regulation in question.

The requirement to restart the examination of the case caused by the impossibility of the judge's participation is also present in the RA Civil Procedure Code, which does not provide an

exception, even in the case of examination of cases involving child care or labor law and other cases involving urgency.

The problem has become more intense as a result of recent changes in the judiciary, where judges are frequently and irregularly transferred.

The lack of activity in the field of revision of legislative norms causes concern regarding the parallel disproportionality and inconsistency of the existing legal regulations. It is necessary to acquire means, on the one hand, to change the existing norms, and on the other hand, to self-restrain the irregular practice of judicial reforms.

From the point of view of non-existence of court sessions.

In many cases, court hearings are simply not held, and the reasons either do not become known or are uncontrollable. Among the "substantial reasons" for the non-occurrence of court sessions were, for example, the judge examining the case leaving the court building at the scheduled time for opening the court session, or holding a session on another case due to a chaotic schedule. In various cases, the staff of the judges called the Organization's observers and warned that the court sessions would not be held and would be postponed, which creates a modern procedural paradox.

For other reasons...

Among the reasons for the violation of the examination requirement within a reasonable time are:

- ❖ not transporting the defendants from the places of detention of detained persons to the court by the escorting policemen,
- ❖ failure to properly notify litigants,
- ❖ failure of defendants to appear at court hearings for seemingly good reasons, etc.

Double victimizer justice...

The Convention requirement to investigate the case within a reasonable period of time should be considered as a requirement to do justice, which should not only be done, but also its implementation should be visible. ³⁴ The European Court has repeatedly stated that the right to a fair trial requires that the parties take advantage of effective judicial means that will allow them to assert their civil rights. ³⁵

The imperative to deeply understand the idea of a reasonable period and make it visible in reality should in no way be seen as a formal response to the Convention's demand. It is aimed, first of all, at becoming a guarantee for ensuring the rights of people to life, health, dignity, freedom, and immunity.

³⁴ Stojmenović and Milošević v. North Macedonia, Judgment, 2021, § 40

³⁵ Nait-Lima v. Switzerland (dec., 2018, § 112) and Beles and Others v. the Czech Republic (dec., 2002, § 49)

It is undeniable the fact that there are many cases of torture, domestic violence, violence in general, and sexual violence in particular, in which the investigation lasts so long that during that time the judges examining the case are transferred and the investigation of the case is restarted, which implies double the victims of the case. interrogation i.e. re-experiencing i.e. re-victimising.

This problem is not an inconspicuous procedural error that cannot tangibly harm the meaning of justice, it violates the inalienable rights of a person. In order to exclude the numerous cases of re-incarceration of persons, it is necessary to make practically applicable the imperative requirement of examining cases within a reasonable time, which will ensure the available legal protection.

Other problems...

- ❖ By interrogating the witness first, the judge violated the criminal procedure of interrogation.
- ❖ The judge did not ensure the rights of the litigant to state a position and submit a solicitation,
- ❖ Some judges did not exercise due diligence in ensuring the presence of defendants, in bringing defendants to court by penitentiary institutions, in properly ensuring the defendant's right to legal defense, and in properly notifying litigants.
- ❖ In the absence of the prosecutor in the case, the judge allowed defense of the charge by another prosecutor without a power of attorney.
- ❖ As a result of judicial changes, in 2018, the service areas of the seats of the courts of first instance of RA were defined by the decision of the Supreme Court of Ukraine³⁶. The process of implementing the decision was not organized in the necessary way, which would ensure full access to information for the public. As a result of the change in the service areas of the courts of first instance, as well as the creation of specialized courts, the DataLex judicial information system lacks information on the courts, for example, competent seats in criminal and civil cases or court sessions in anti-corruption cases. The system also lacks notes about closed court hearings regarding certain cases.
- ❖ Due to the fact that the trial part of the courtroom is separated from the visitors' part by an armored glass partition, the hearing of the trial remains problematic.
- ❖ ISHR observers were almost always either not presented to the courts, or the judges presiding over the sessions were informed and, in violation of procedural order, did not address the issue of properly presenting the observers during the court sessions, and in some cases, the judges presiding over the sessions did not consider it necessary to present the observers, citing that the court sessions are open, which is why the observers did not have the opportunity to take pictures. In this way, it was impossible to use the tool serving to ensure publicity.

³⁶<https://www.arlis.am/DocumentView.aspx?docid=124159>

Part 5: Considered cases

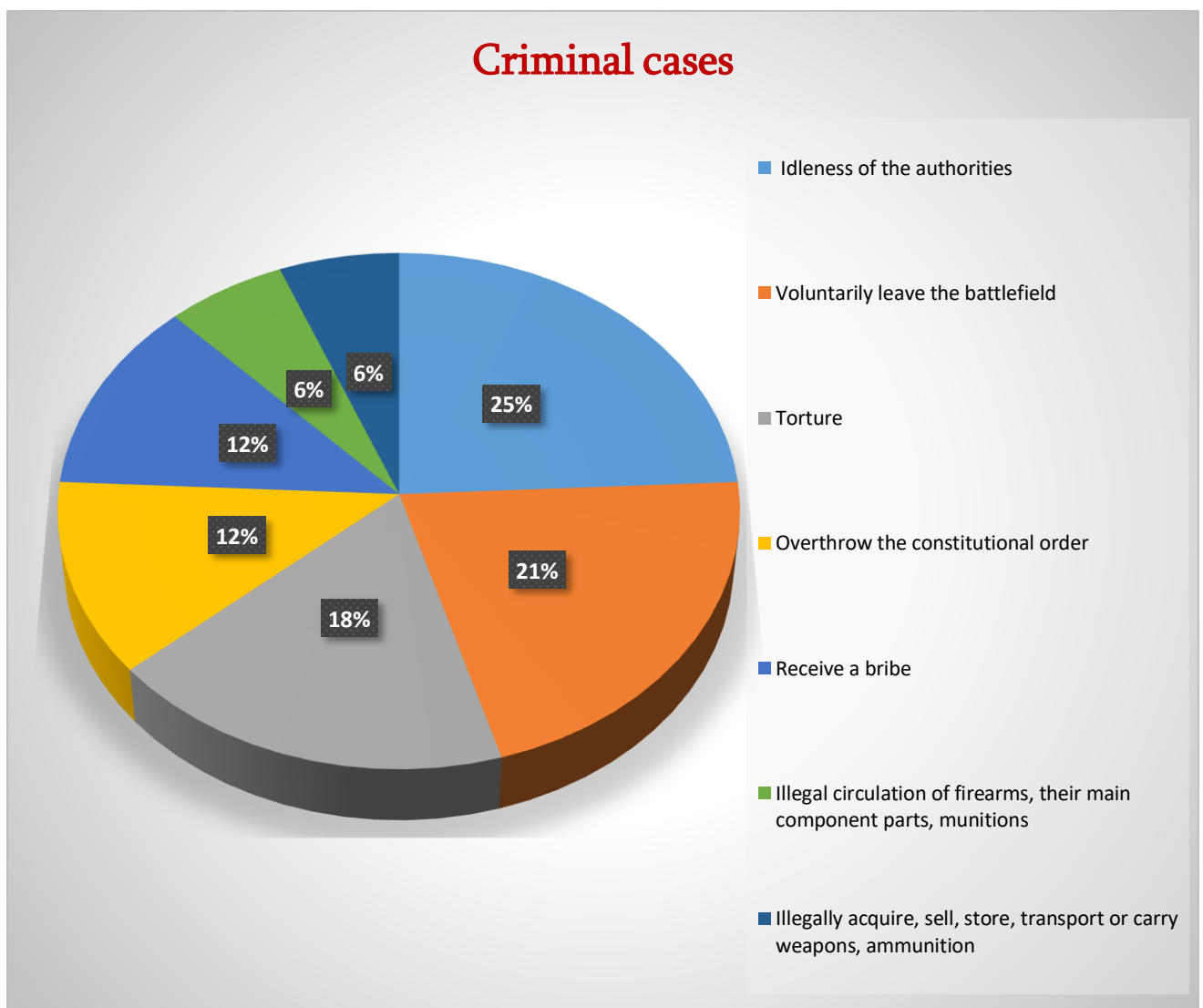
In the "The methods selected for monitoring" section of Part 2, reference was made to the logic of the selection of monitored cases. The methods chosen for monitoring are precisely determined by the nature of the observed cases.

The organization considered it a priority to consider criminal, civil, including anti-corruption cases of public importance and strategic importance. Particular attention was paid to the monitoring of cases with claims for the restoration of labor rights.

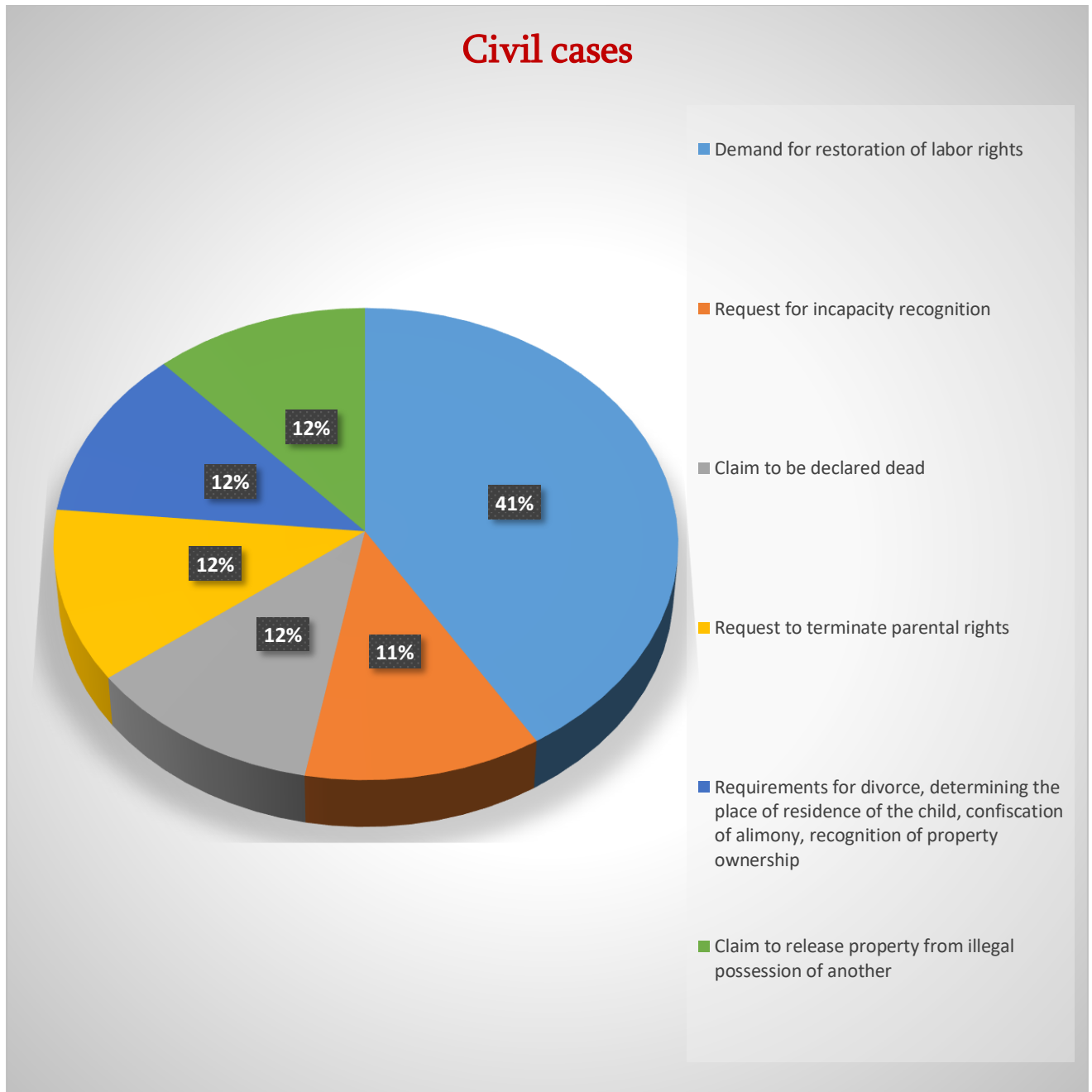
The actors were observed over a long period of time in order to form an objective picture of the judicial processes.

In addition to the mentioned cases, those that helped to understand the strengths and weaknesses of the litigation actions were also considered.

Next, the observed cases are summarized according to purpose and field:



Among the mentioned cases, cases of murder, fraud, beating, illegal circulation of narcotics, psychotropic (psychoactive) substances without the purpose of sale, psychic influence, legalizing the proceeds of crime, robbery, making, keeping or sale of counterfeit money or securities, of a sexual nature were also considered. violent actions, committing actions aimed at publicly humiliating national dignity, deliberately not fulfilling the requirements of the urgent intervention decision, soliciting bribes, giving bribes, abusing the official position and committing official forgery, committing a crime, violating the rules of road traffic and vehicle operation, a person deprived of the right to drive vehicles by driving a vehicle while intoxicated and other charges.



Among the mentioned cases, the cases of invalidating the certificate of inheritance, applying the consequences of invalidity of a void transaction, providing for parents' livelihood, validating the transaction, invalidating the auction, canceling the decision of the arbitration court, terminating the operation of the right of management of the granted educational institution and the vacant position of the school director were also considered. to invalidate the results of the competition held to occupy the place, to cancel the decision "On recognizing the winners of the republican competition for licensing the use of slots in the public multiplex and to issue a license", to voluntarily demolish the building, to confiscate money and to oblige to deny the published defamatory factual information, jointly owned real estate cases involving the separation of a share from the property, confiscation of that share and sale through public auctions, care and upbringing of children, determination of the place of residence, confiscation of property of illegal origin and other claims.

Reports of observed cases can be accessed by visiting



<https://ishrarmenia.am/>

<https://humanrights-online.org>



<https://www.facebook.com/profile.php?id=100064151396962>