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THE CONSTITUTIONAL FOUNDATIONS OF THE INDEPENDENCE OF THE JUDICIAL POWER IN THE REPUBLIC OF ARMENIA

Gagik Ghazinyan[1]

The fundamental requirement of the independence of judiciary, and particularly the requirement exclusively governed on the law in the exercise of justice, is strictly enshrined in numerous international legal instruments, in the Constitution of the Republic of Armenia (all editions), the RA Judicial Code, and sectoral procedural laws.

Article 162 of the Constitution (hereafter the Constitution), as amended by 6 December 2015, specifically states that justice in the Republic of Armenia is exercised only by the courts in accordance with the Constitution and laws and that any interference in the administration of justice is prohibited.

The mere legal enshrinement of the independence of the judiciary is still insufficient and its effective application implies prerequisites for operational, institutional, material and social independence that are necessary and sufficient to guarantee the independence of the courts and the entire judicial power. In the form of guarantees for the independence of the judiciary, these prerequisites have been adjusted as a result of the recent constitutional amendments, considering the practical issues, the advanced international experience, and the key objective of effective judicial remedies.

Thus, in the Constitution of the country enshrines the most important guarantees for the independence of the judiciary, such as

1. The exercise of justice is not only in compliance with the the law, but also by courts defined by law. It refers to the provision of the

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Constitution according to which the Constitutional Court, the Court of Cassation, the Appellate Courts, the Courts of First Instance and the Administrative Court are functioning in the Republic of Armenia and that the establishment of extraordinary courts is prohibited. Under the same provision, specialized courts may be established in cases prescribed by law (Article 163 of the Constitution). And according to the RA Judicial Code, the bankruptcy court is considered as a specialized court (Article 24 of the Judicial Code).

2. requirement of judge's immunity, according to which,

(a), criminal prosecution in respect of the exercise of the his powers may be instituted against a judge only with the approval of the High Judicial Council;

(b) the judge in the exercise of his powers without the consent of the Supreme Court may not be deprived of his or her liberty except when he has been caught while committing an offense or immediately afterwards. In this case deprivation of liberty can not last more than seventy-two hours. The President of the High Judicial Council shall immediately be informed about the deprivation of liberty of the judge (Article 164 (4) of the Constitution).

3. requirements for the incompatibility of a judge's position, i.e. when a judge cannot hold office, not connected with his/her status, in state or local self-governing bodies, hold a position in commercial organizations, engage in entrepreneurial activity, perform other paid work except for scientific, educational and creative work (Article 164 Part 6 of the Constitution). In conformity with the option of prescribing additional requirement of incompatibility stipulated by the Constitution, the Judicial Code of the Republic of Armenia also stipulates that a judge may not act as a trustee or property accredited manager, except in cases when he/she acts free of charge as a close relative or a person under his or her guardianship or guardianship on property. Or a judge should strive to manage his investment in a way that minimizes the number of cases

he / she has to withdraw from, and so on.

4. a clear definition of the grounds for termination or termination of the judge's powers; different from the regulation before the 2015 constitutional amendments, the amendments to 6 December 2015 clearly laid down the grounds for termination and ceasing the powers of a judge (Article 164, parts 8-9 of the Constitution). By that the possibility, of changing the scope of those grounds, in case if they are prescribed by the law, through making changes and additions in the law, based on some objective or subjective circumstances, is ruled out that which undoubtedly contained the danger of limiting the independence of the judiciary.

5. The Procedure for the selection and appointment of judges, according to which the President of the RA appoints the President of the chambers of the Court of Cassation and judges and presidents of the Court of First Instance and the Appellate Courts upon the recommendation of the Supreme Judicial Council. The Supreme Judicial Council also has the authority to approve the lists of candidates, including candidates for promotion. These regulations have also been reflected in the RA New Judicial Code

The above-mentioned constitutional bases and the regulations of the new Armenian Judicial Code aimed at their implementation are in line with the international standards of the creation of judicial branch, taking into consideration the role of the President of the Republic is essentially different in the system of separation of powers in the framework the parliamentary form of government. In general, there are certain legal criteria set out in international instruments relating to the procedure for the selection (appointment) of judges. Thus, for example, as a general requirement, the idea that judges' appointment (election) and service promotion process should be based on objective criteria, considering personal qualities and professional

abilities of a person,[1] excluding political considerations.[2] According to the principle 1.2C of Recommendation R (94) 12 of the Council of Europe Committee of Ministers, the body responsible for the selection and promotion of judges must be independent of the government and the executive. Moreover, to ensure the independence of the body, for example, the relevant rules should be defined by the definition that the members of that body are elected by the judiciary, and that body adopts appropriate decisions in accordance with the rules of procedure. Similar regulations also are contained in the Kyiv Recommendations (paragraphs 3 and 23). The mechanism of appointing judges by the president is not problematic also by the assessment of the Venice Commission, provided that the proposal of the independent judicial board is compulsory for the president of the republic.[3] Whereas the former legislative regulation, according to which the two Legal Scholars were appointed by the President of the Republic of Armenia, and the latter confirmed the list approved by the Council (important to mention, that the legislative powers to approve this list or to return it to the council were not clarified), under the conditions of semi-presidential form of governent, when the status of the President of the Republic of Armenia was mainly

[1] See Basic Principles on the Independence of the Judiciary. Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985)/ http://www.ohchr.org/EN/ProfessionalInterest/Pages/IndependenceJudiciary.aspx
Principle 1.2. c of the Recommendation 94 of the Committee of Ministers of the Council of Europe. ON THE INDEPENDENCE, EFFICIENCY AND ROLE OF JUDGES https://advokat-prnjavorac.com/legislation/Recommendation.pdf:

[2]See the Report 403/2006 (CDL-AD(2007)028) of the EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (Venice Commission), 22 june 2007 http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2007)028-e
Report no. 1 of the Consultative Council of European Judges, para 17, 23 November 2001, Strasbourg https://wcd.coe.int/ViewDoc.jsp?p=&id=1047753&direct=true:

[3] See the Report of the Venice Commission cited above 403/2006 (CDL-AD(2007)028), para. 14.

associated with the executive power, we think that it was incompatible in terms of guaranteeing the fundamental international requirement for the formation of the judiciary without the interference of the executive branch.

The procedure for the appointment of a judge by the President of the Republic of Armenia with the existing legal regulations is set out in the Judicial Code, where balanced regulations are envisaged by the Supreme Court Council and the powers of the President, and the international requirement that procedural rules should be clear is respected. Thus, in the case of a Candidate's consent, the Supreme Judicial Council shall nominate his/her candidacy to the President of the Republic, submitting the personal file, the documents submitted by the candidate and obtained in the result of background check, if the cnadidate is not a judge. Within a three-day period from the receipt of the proposal, the President of the Republic shall accept a decree on the appointment of the candidate nominated by the High Judicial Council or returns the file to the High Judicial Council with suggestions and recommendations. If the Supreme Judicial Council does not accept the objections of the President of the Republic, the President of the Republic shall within 3 days adopt a decree on appointing a candidate or apply to the Constitutional Court. If the Constitutional Court decides that the proposal is in conformity with the Constitution, the President of the Republic of Armenia shall issue a decree on the appointment of the candidate nominated within three days. If the President of the Republic fails to carry out all the actions within a three-day period, the decree of the President of the Republic of Armenia on the appointment of the candidate shall come into force by virtue of the law, which the President of the Supreme Judicial Council shall announce on the official website of the judicial authority within three days.

In the context of fulfilment of the above-mentioned fundamental requirement, however, it is a little worrying the regulation prescribed by the Constitution, which defines that the Court of Cassation Judges are elected by the National Assembly from three candidates nominated by the Supreme Judicial Council for each spot or that the President of the Court of Cassation again is elected by the National Assembly based on the recommendation of the Supreme Judicial Council.

We are also inclined to believe that the providing such authority to the National Assembly, especially in parliamentary form of government, can lead to the politicization of the process and extensive involvement of the legislative power in the question of the formation of the judicial branch. The problem becomes more urgent in the context of new constitutional regulations, when the National Assembly will elect non-judge members of the Supreme Judicial Council, namely, half of the Council members. In fact, it turns out that the candidacy of the corresponding judges will be proposed to the National Assembly by a body the formation of which is largely whitin the powers of the National Assembly already.

We believe that in the conditions under which such a form of governance the president of the country loses the status of the head of the executive power, providing the authority to the president to elect judges could have been justified. Regarding the Model of Judges' election by the National Assembly, the Venice Commission has expressed the view that although it seems to be the more democratic mechanism, it may also involve judges in political activities and lead to the politicization of the process.

The choice of judges by the parliament is a discretionary act, and, consequently, even if candidates are proposed by the Judicial Council, it is not ruled out that the parliament will refrain from

rejecting the proposal[1]. The Venice Commission is of the opinion that the parliament is undoubtedly more involved in political games and the choice of judges may lead to a political transaction in parliament where every member of the parliament may wish to have his own judge.[2]

6. The requirement for a judge to be irrevocable, according to which the judges serve up to the age of sixty-five (Article 166, part 8 of the Constitution).

7. The judge's due remuneration, according to which a judge's remuneration is determined by his high status and responsibility, which is a material safeguard of the independence of the judge.

8. Among the new constitutional arrangements relating to the guarantees of the independence of the judiciary, one should enphasise **the constitutional regulations on the composition and formation of the Supreme Judicial Council, the procedure for the appointment of judges and the new role of the chairmen of the courts, as the most fundamental**, which have been thoroughly regulated by the RA Judicial Code entered into force on March 1, 2018. In the context of new constitutional provisions, from the point of view of securing the independence of the judiciary, there is also a need to address the regulations on the formation of the judicial corpus and the role of the judges.

Thus, referring to the constitutional status of the Supreme Judicial Council as the guarantor of the independence of the judiciary, it should be noted that, *inter alia*, institutional guarantees for the internal and external independence of the judiciary, in many countries, there are so-called judicial boards, which with its peculiarities, unifies the main task of guaranteeing the independence

[1] Venice Commission, Opinion on the Draft Law on Judicial Power and Corresponding Constitutional Amendments of Latvia, CDL-AD (2002), paras. 9-10.
[2] Venice Commission, Opinion on the Draft Law on Judicial Power and Corresponding Constitutional Amendments of Latvia, CDL-AD (2002) 26, para. 22.

of judicial power. In our legal system, this important role, formerly assigned to the Justice Council, currently belongs to the Supreme Judicial Council.

It should be noted that numerous issues emerging during the activities of the Justice Council manifest that these legal and regulatory bases are not necessary and sufficient for the independence of that body and especially for internal independence. And if the mechanisms of independence of the body responsible for guaranteeing the independence of the judiciary are not sufficient, then the realization of the mission of that body is objectively impossible. Hence, in the context of the solution of the mentioned problem, within the framework of the new regulations of the RA Judicial Code, aimed at reforming the electoral legislation and their institutionalization, new attempts have been made to regulate the legal relationships regarding the composition, and organization of the successor of the Security Council the Supreme Judicial Council.

A) Status and powers of the Supreme Court Council

By amending the December 6, 2015 Constitution, it stipulates that the Supreme Judicial Council is an independent state body that guarantees the independence of the courts and judges. In conformity with this constitutional norm, Article 79 of the RA Judicial Code states that the Supreme Judicial Council is an independent state body, which guarantees the independence of the courts and judges by exercising their powers under the Constitution and the same Code.

Article 175 of the Constitution also defines the non-exhaustive list of the powers of the Supreme Judicial Council, from which we conclude that this body has been entrusted with the essential powers of guaranteeing the independence of the judiciary. According to the above-mentioned provision, the Supreme Judicial Council:

(1) compile and approve the lists of candidates for judges,

including candidates for promotion;

(2) propose to the President of the Republic the candidates to be appointed, including the candidates nominated for promulgation;

(3) propose to the President of the Republic the candidates for presidents of the courts subject to appointment and the Chairmen of the Chambers of the Court of Cassation;

4) Propose to the National Assembly candidates for judges and president of the Court of Cassation;

5) solves the issue of sending judges to another court;

(6) shall settle the question of bringing a criminal prosecution to the judge in connection with his exercise of his powers or the granting of his deprivation of liberty;

7) solves the issue of subjecting the judge to disciplinary liability;

8) Resolves the termination of the powers of the judges;

9) approve its and the costs of the courts and submit them to the Government for inclusion in the draft state budget as prescribed by law;

10) shall form its staff in accordance with the law.

It should be noted that this framework of powers, as compared to the amendments made on 27 November 2005, has expanded, and the role of the Supreme Judicial Council in respect of individual powers is more important. In particular, the powers to settle the **issue of sending judges to another court**, as well approval of own costs, and the costs of the courts for submitting to the Government of the Republic of Armenia, are the new powers reserved to the Supreme Court Council.

In accordance with Article 175, Part 4 of the Constitution, the Supreme Judicial Council's other powers are defined by the Judicial Code. It should be noted that the inclusion of the above mentioned provision in the new draft RA Judicial Code gave rise to widespread debate on whether the powers of the Supreme Judicial Council

should be clarified depending on the status of the latter as an independent state body guaranteeing the independence of the judiciary, or whether it could also be entrusted to the court characteristic powers for the government self-governing body. Moreover, the issue of the Supreme Judicial Council's competence with regard to the logistics, personnel policy and other spheres was discussed. In our deepest conviction, the **Supreme Judicial Council should be vested exclusively with the powers deriving from the constitutional status of the latter as the guarantor of the independence of the judiciary**.

With regard to the functions of the organizational and logistical support, it can, of course, be eventually linked to the independence of the judiciary, but we believe it is the result of a widespread and unacceptable interpretation of the independence of the judiciary. **In addition to the powers deriving from the Supreme Justice Council's authority to guarantee the independence of the judiciary, overloading with powers not directly related to that purpose will not only disassociate this body from its main purpose, depriving of the opportunity of effective functioning, but also can lead to another extreme, that is, a body that has a extremely broad authority and does not have a counterbalance to control the proper exercise of its powers or in case of exceeding those powers there will not be sufficient response mechanisms.**

In the light of the above-mentioned, in our opinion, the regulations contained in the Armenian Judicial Code create ample of concern. The mentioned regulations of the Judicial code implement the above-mentioned requirement referred to in Article 175 of the Constitution, reproduce not only the constitutional powers of the Supreme Judicial Council, but also to enshrine the latter more than thirty extra powers , some of which are not directly dependent on the function of guaranteeing the independence of the judiciary, or are a result of unnecessary broader interpretations (for example, confirms

rules of relationship between mass media outlets with the Council and the courts, defines the procedures of submitting documents to the court, clustering of cases and other workflow rules of the courts, defines the procedure for evaluating the court officer's performance, including the criteria and the form of the description, defines the description and model design of the courtrooms and offices of judges, establishes the procedure for allocating and wearing uniforms to court bailiffs, etc). The combination of the provisions of the Judicial Code indicates that, on the example of the powers of the Supreme Judicial Council the functions of securing the independence of the judiciary, the self-government of the judiciary and the material and technical support have been converged.

Content wise, the concentration of these different powers in the hands of one body, which is concreted responsible only for the independence of the judiciary, at least creates suspicion about the effectiveness of the body's activities and the possibility of proper implementation of its constitutional mission. Therefore, in view of the above-mentioned, we believe that **empowering the Supreme Judicial Council with competencies unrelated to its status of a guarantor of independence may question the effective organization of this body and hinder its implementation of its mission.**

b) The composition of the Supreme Judicial Council

Referring to the composition of the Supreme Judicial Council, it should be noted that, pursuant to Article 94.1 of the Constitution amended as of November 27, 2005, the Justice Council, the predecessor of the Supreme Justice Council, was composed of nine members elected by General Assembly of the Judges for a five-year term, two legal scholars appointed by the President of the Republic and the National Assembly.

In practice, under the prevailing numerical dominance of judges in

the Justice Council, the participation of legal scholars in the activities of the council was somewhat of a formal nature. And in the apparent digital dominance of the judges, the Council, for the least was turning into an internal service body of the judiciary, whose task was to solve the inner problems of the judicial power. Meanwhile, the main purpose of the Council's activities was to ensure the independence of the judiciary, which is not the problem of the judicial power, but the whole state as a whole. Under these conditions, it was more than clear that the council was unlawfully dependent on judicial power. The issue of absence of internal independence became more and more obvious when the council sessions were convened and chaired by the RA Cassation Court Chairman. It is not accidental that at the outset of the constitutional reform, the problem was to increase the number of non-judicial members, in particular the members of the council, and to ensure that their actual participation in the activities, which could have contributed to increase of public trust towards this structure, its activities, and the whole judicial system and strengthening. Perhaps the solution to this problem is to address the already mentioned regulations of Article 174 of the Constitution, according to which the Supreme Judicial Council consists of ten members. The five members of the Supreme Judicial Council shall be elected by the General Assembly of Judges from among judges having at least ten years of experience. The other five members of the Supreme Judicial Council shall be elected by the National Assembly from at least three-fifths of the total number of Deputies, only those who are citizens of the Republic of Armenia, having the right to vote and at least fifteen years of professional work from the number of law scholars and other prominent lawyers. The member elected by the National Assembly can not be a judge.

As regards the order of formation of the Supreme Judicial Council, it follows from the already mentioned regulations of Article 174 §§ 1, 3 of the Constitution that the General Assembly of the

Judges and the National Assembly have a serious role in the formation of the Supreme Judicial Council.

From this point of view, paralleling the formation of the former Justice Council, it should be noted that it was also somewhat problematic. The point, in particular, refers to the fact that under the semi-presidential form of government when the president's status is mostly associated with the head of the executive power, from the point of view of guaranteeing the international fundamental requirement to secure the judicial system from the interference from the executive, the regulation that both legal scholars were appointed by the President, at least was controversial.

In addition, this regulation was also unlawful for the President of the Republic of Armenia to participate in the formation of the Justice Council, and in the context of securing the powers of the Justice Council or their successor powers (to terminate the powers of the judge with the mediation of the Council of Justice or appoint a judge). However, under the conditions of the parliamentary form of government, the role of the president in the system of separation of powers changes essentially.

Taking into account the above-mentioned, **foreseeing a serious role in the formation of the Council for the president of the country would be bulletproof regulation from the point of view of securing the external independence of the body, unlike the proposed new solution when the non-judges of the council are elected by the National Assembly.**

The Judicial Code also provides some controversial regulations regarding the procedure for the selection of judge Members of the Supreme Judicial Council. Thus, pursuant to Article 76 (4) of the Judicial Code, the head of the Judicial Department shall include in the bulletin all the names of judges that meet the requirements set forth in the Constitution and the Code for the candidate of the Supreme Justice Council. However, at the same time, part 6 of the

same Article provides that the appropriate judge may apply to the Judicial Department Head, **requesting** his/her name to be excluded in the ballot paper before 18:00 on the fifth day preceding the voting day. This regulation, we think, is not lawful for the simple reason that the functioning of the Supreme Judicial Council is directly related to the status of a judge and derives from that status. Therefore, the issue of service in this body can not and should not be left to the judge's discretion. In addition, the regulation to request the deletion of the name from the ballot devalues and deprives of purpose the aforementioned regulation, according to which the names of all judges meeting the relevant requirements prescribed by law should be included in the ballot.

Along with the regulation on the composition and the procedure of the formation of the Supreme Judicial Council, the issue of suspension of the powers of the Council members in the context of a broad mandate reserved for this body needs to be addressed separately. Article 174 of the Constitution provides for the possibility of imposing a suspension requirement by the Judicial Code. However, according to the RA Judicial Code, the additional burden of a Judge as a member of the Supreme Judicial Council was set at 75 per cent of the number of distributed cases.

We suppose that the requirement for a mandatory suspension of the powers of a member of the Council by the Constitution is conditioned by the constitutional idea laid down in the status of the Supreme Judicial Council, which is the guarantor of the independence of the judiciary, and must be vested with authority directly related to guaranteeing the independence of the judiciary. Indeed, if the Judicial Code adheres to the idea the Supreme Judicial Council being the guarantor of the judiciary, it would only have a narrow circle of powers deriving from that status only, and the burden of this body would be much lighter.

And under these conditions, there would not be a problem to

suspend the powers of the members of the judiciary, and they would be able to effectively implement that volume of powers of the council, continuing to serve as a judge. This would also be an ideal setting in the sense that in the event non-suspension the judge would not be dismissed from his primary professional activity, and the issue of returning a person to the position of a judge after his term of office expire would not arise.

However, in the current settlement, as we have already noted, the Supreme Judicial Council has been entrusted with a very wide range of at least non-direct powers of securing the independence of the judiciary, hence the question whether this body will be able to solve these problems if half of the members are judges, who still have to carry out other jobs with a certain load. In our opinion, the answer in this case is negative because the effective realization of this capacity requires that the members of the Supreme Judicial Council be fully involved in the activities of the body without any overburden. And in this case, regardless of the problems that may arise as a result of the suspension of judicial powers, we believe that the supreme interest should be considered as the effective functioning of the Supreme Judicial Council, and the necessary legal basis should be created for the full involvement of the members of the Supreme Judicial Council. Otherwise, there is also a challenge to the solution of the problems, which are generally aimed at the new legislative regulation on the composition of the body.

Perhaps, in the light of this concern, the legislature has provided only 25 percent of the case load for the members of the Supreme Justice Council in the Judicial Code. However, this regulation can not be considered as the best solution, as the full suspension of the powers of the judges would be solved not only by the issue raised by our body, but also by the real equality between the judges and non-judges of the board. In particular, it refers to the fact that the board members of the council actually hold two public offices - a judge and

a member of the Supreme Judicial Council.

Meanwhile, neither the members of the judiciary can hold another position apart from the status of a Member of the Supreme Judicial Council by virtue of the established incompatibility rules. Being convinced that strict requirements for inconsistency for members of the Supreme Judicial Council are justified in preventing possible conflicts of interest, the problem raised by us is that these requirements should be uniformly strict for both judge and non-judge members, especially if we take into consideration that the likelihood of possible conflicts of interest for a member of the Supreme Judicial Council and the position of a judge at the same time is quite high.

Another important issue would be solved if the regulation of the suspension of the powers of judges was envisaged. Thus, according to Article 166 (8) of the Judicial Code, which sets forth the Final and Transitional Provisions, the first President of the Supreme Judicial Council shall be elected from among non-judge members. This regulation does not refer to the requirement of Article 174 § 7 of the RA Constitution that the Supreme Judicial Council shall elect from among its members the term of and the order prescribed by the Judicial Code subsequently from the members of the General Assembly of Judges and members elected by the National Assembly.

This constitutional arrangement stems from the fact that the Judicial Code should provide for the possibility for a both judge and non-judge members to be nominated for the president of the Council, as a result of which the candidate with the highest number of votes would occupy the position of the President of the Supreme Judicial Council. And so, the next candidate for the president would be elected from among the members of the Supreme Judicial Council elected by the other body.

It is another question that this regulation is provided in the Judicial Code for the simple reason that the same legal act does not stipulate the procedure for suspending the powers of judges. And for

overcoming objectively possible difficulties associated with the formation and operation of the Supreme Judicial Council and the most effective functioning of the Council, it is crucial for the first elected head to have only one single load – the functioning of the Cuncil.

While, in the case of suspension of the powers of the judges, based on already mentioned considerations, there would be no need to envisage the rule of the election of the first president of the Supreme Judicial Council from among non-judge members, under which circumstances the president's election would be held among all members, which would give a wider choice, and would be more consistent the purpose of organizing the elections and the implementation of the ideology adopted by the Constitution.

From the point of view of guaranteeing the internal independence of the Justice Council, the predecessor of the Supreme Justice Council, as mentioned above, it was problematic to invite the Chairman of the Court of Cassation to convene and conduct the sessions of the Justice Council. Even though the right to vote without the right of the supreme judicial chief of the country, participation in the Justice Council sessions had a certain risk of unlawful influence on the judges in the board sense. This conclusion was also evidenced by the established practice.

It was also a separate issue that the competence to subject the judges to disciplinary liability was reserved to the Justice Council, and, according to the former regulations, the President of the Cassation Court had the power to initiate disciplinary proceedings, he was presiding the session of the Justice Council session on disciplinary action imitated by him.

According to the above-mentioned, the legal basis for guaranteeing the internal independence of the Supreme Judicial Council is the constitutional regulation, in which the Council elects the Chairperson of the Council for a term and in the manner

prescribed by the Judicial Code consistently from the members elected by the General Assembly of Judges and by the National Assembly (Article 174 Part 7). The same regulation is contained in Article 84 § 1 of the RA Judicial Code, and in Article 166, which is already mentioned in Part 7, which is enshrined in the concluding and transitional provisions, it is established that within five days after the election of the members of the Supreme Judicial Council at the first meeting of the Council the Chairperson of the Council is elected from the members elected by the National Assembly.

Among the guarantees of the independence of the judiciary, the formation of a judicial corpus is of particular importance, and in this respect, the Constitution also provides for new legal solutions. Regarding the procedure for the selection (appointment) of judges, it should be noted that the study of international experience shows that there are four basic models of appointment of judges (election): appointment of judges by political bodies, appointing judges by the judiciary, appointment of judges by the judicial council and appointment of judges through elections. [1]

The former regulation, according to which the two legal scholars of the Justice Council were appointed by the President of the Republic of Armenia, and the latter confirmed the list of candidates compiled by the Council (in addition, the legislative powers of confirming the list or returning it to the Council were not clarified) in the conditions when the status of the President of the Republic of Armenia was mostly associated with the head of the executive power, we think that it was incompatible with the the fundamental international requirement to guarantee non-interference by the executive branch in the process of formation of the judicial power.

In accordance with the provisions of Article 166 of the Constitution, the President of Armenia appoints the judges and the Chairmen of the First instance Courts and the Court of Appeals, and

[1] Available at: https://www.usip.org/sites/default/files/Judicial-Appointments-EN.pdf

the Chairmen of the Chambers of the Court of Cassation upon the recommendation of the Supreme Justice Council. The Supreme Judicial Council also has the authority to approve the lists of candidates, including candidates for promotion. These regulations have also been reflected in the RA Judicial Code.

The above-mentioned constitutional foundations and the provisions of the Armenian Judicial Code aimed at their implementation are in line with the international standards of the formation of the judicial corpus, taking into account the fact that, as already mentioned, under the conditions of the parliamentary form of government, the role of the president in the system of separation of powers is substantially changed.

According to Article 166 (3) of the RA Constitution, the President of the Republic appoints the Judges of the Court of Cassation at the suggestion of the National Assembly and the latter elects the proposed candidate by at least three-fifths of the total number of Deputies from three candidates nominated by the Supreme Judicial Council for each spot. In accordance with Part 5 of the same Article, the Chairperson of the Court of Cassation is elected by the National Assembly by a majority vote of the total number of Deputies upon the recommendation of the Supreme Justice Council for a term of six years from among the judges of the Court of Cassation. These regulations, though at first sight, suggest a more democratic procedure, there is also a danger that it can lead to politicization of the process. We think that the provision of such authority to the National Assembly under the conditions of the parliamentary form of government is problematic in the view of the problem of keeping the judicial power from the interference of the other wings of the government

9. In the sense of guaranteeing the independence of the courts, the constitutional regulation is determined by the fact that the chairmen of the courts are elected on a rotational basis, and the

chairmen of the chambers of the Court of Cassation and the Court of Cassation for 6 years term, and the Chairmen of other courts – for 3 years term (Article 166, parts 4-6).

According to the previous legislative regulation, the presidents of the courts were appointed for the entire term of the judicial office. And such regulation, as demonstrated by practical problems, has led to excessive concentration and ignorance of a clear truth that the court president is also a judge, who also has some extra organizational-legal powers with regard to ensuring the normal functioning of the court.

And the very last idea was laid down in the Judicial Code as the basis for the legislative regulation of the powers of the chairmen of courts, as the powers of the judges were reserved exclusively for the competent authorities to ensure the normal functioning of the judiciary (Judicial Code 32-34).

And the very last idea was laid down in the Judicial Code as the basis for the legislative regulation of the powers of the chairmen of courts, as the powers of the judges were reserved exclusively for the competent authorities to ensure the normal functioning of the judiciary (Judicial Code 32-34).

Conclusions

Summarizing the above, we can state that the new constitutional solutions discussed, and the new Code of Judicial Code aimed at their implementation have created a solid foundation for the real independence of the judiciary.

In particular, it refers to the fact that the basic law of the country clearly defines the main guarantees of the judicial power, namely, the implementation of justice in accordance with the law and by the courts created by the law, the immunity of the judge, the inviolability of the judge, the judges' incompatibility requirements. Setting of the relevant provisions at the constitutional level ensures the sustainability of these guarantees and excludes the opportunity to

constantly change such changes through legislative amendments and additions.

From the point of view of guaranteeing the fundamental requirement of the independence of the judiciary, the regulation on the election of the institutional guarantor of that independence is crucial, the balanced composition of the Supreme Judicial Council, and the election of the president of the Council from amount both non-judge and judge members interchangeably, have created legal basis for the proper exercise of its mandate.

As regards the powers of the Supreme Judicial Council, the scope of the country's fundamental law is generally consistent with the status of the guarantor of the independence of the judiciary. And in this sense, we believe that it is lawful to vest the new powers associated with the financial independence of the judiciary, including the approval of its own and costs of courts and referral to the Government of Armenia. However, the provisions of the Judicial Code regulating the same competencies as the Supreme Judicial Council are problematic, since in many cases they have no direct connection with the constitutional function of guaranteeing the independence of the judiciary, and most often aim to provide logistical and organizational issues related to the normal functioning of the courts. And with a wide range of these powers, the legitimacy of the legislative regulation of non-suspension of the powers of the judge members of the Council, who have the additional burden derived from the functions of judge, may hamper the full participation in the Supreme Judicial Council’s works in the end, and hence to the solution of many tasks faced by this body may be endangered.

It is somewhat problematic that the power to appoint the half of members of the Supreme Judicial Council, as well as the judges of the Court of Cassation is entrusted to the National Assembly. The mentioned creates serious peril of possible unlawful interference by

the legislature. The procedure of election of the members of Supreme Judicial Council by the General Assembly of Judges is not less problematic, in the sense that the question of becoming a member of the High Judicial Council is left to the judge's discretion.

Nevertheless, this is still a prediction, and a clear conclusion on these regulations can only be made on the results of their practical application.