Annex 1

to the Executive Order of the President of

the Republic of Armenia ______ NK__-N

of __ June 2012

2012-2016 STRATEGIC PROGRAMME FOR LEGAL AND JUDICIAL REFORMS IN THE REPUBLIC OF ARMENIA

1. INTRODUCTION

The Republic of Armenia has undertaken the implementation of legal and judicial reforms right in the earliest years following the independence, striving for the establishment of statehood based on rule of law and guarantees for human rights and freedoms the most important guarantee and precondition whereof are the independent and viable legal and judicial systems.

Despite numerous challenges faced and difficulties arisen on the way to the achievement of that goal, tangible reforms were carried out in the legal system and in the fields of judicial power and prosecution of the Republic of Armenia in the course of past two decades which resulted in certain progress on the way of bringing the field of justice of the Republic of Armenia in line with the requirements set for a contemporary rule-of-law State.

Amendments made to the Constitution of the Republic of Armenia on 27 November 2005 served as a starting point for the implementation of the second phase of judicial and legal reforms in Republic of Armenia. The Constitutional amendments were targeted to the improvement of already established system by upholding the concept of the judicial power provided for by the 1995 Constitution.

After the Constitutional reforms there was a need to upgrade, in compliance with the fundamental principles of separation of powers and independence of the judicial power, the activities of courts and the legislation regulating the fundamental issues on the status of judges,

to ensure the independence of the Council of Justice from the executive power to the effect that the latter is able to guarantee the independence of the judicial power.

The establishment of a fair and effective judicial power was the priority matter of legal and judicial reforms. The new Law of the Republic of Armenia "On the Constitutional Court" was adopted on 1 June 2006 which created legal guarantees for exercising the right of persons to constitutional justice, introducing the institute of individual constitutional complaints, for improving significantly the procedures of constitutional court proceedings.

The Judicial Code of the Republic of Armenia was adopted on 21 February 2007. Many key issues were solved by the adoption of this codified legal act. In particular, for the first time integrated regulation was provided for the relations pertaining to the organisation and activities of the judicial power that were previously regulated by separate laws (the Laws of the Republic of Armenia "On the Council of Justice", "On the formation of courts", "On the status of judges"); additional guarantees were stipulated for the independence of judges; the role and significance of the Court of Cassation was significantly altered as of which one of the main functions of the Court of Cassation appeared to be the ensuring of uniform application of law; a specialised court, *i.e.* the Administrative Court of the Republic of Armenia, was established which is called to exercise effective oversight over the executive power; the Administrative Court of Appeals was established; self-government bodies of the judicial power, i.e. the General Assembly of Judges of the Republic of Armenia and the Council of Court Chairpersons, were established; a school for the preparation of judge candidates (the Judicial School) was created with the aim of filling up the framework of judges with qualified specialists.

Serious measures were undertaken for strengthening the material and social independence of judges. Despite the all-encompassing economic crisis, the salary of judges of the Republic of Armenia was notably increased.

The Executive Order of the President of the Republic of Armenia "On approving the 2009-2011 strategic action programme for judicial and legal reforms and the list of measures deriving from the programme, as well as on establishing a working group" aimed at ensuring the continuity of judicial and legal reforms was signed on 21 April 2009, where ensuring independent, publicly accountable, transparent and accessible justice system, reducing corruption risks, improving the legislation and strategy of the judicial system were laid down as priority objectives thereof.

However, with due regard to the progress and results achieved in consequence of the conducted reforms, those may not be considered as sufficient and inclusive for the reason that numerous problems still remain unsolved.

Thus, though a number of new legislative acts were adopted after the constitutional amendments, yet the judicial and legal reforms in general, and the Judicial Code of the Republic of Armenia in particular, did not completely solve the most important issue among those pending, *i.e.* ensuring the fair and effective judicial power. There are still certain manifestations of this issue both on the legislative and practical levels. Moreover, the restrictions on independence are a result of both external and internal influences, whereas the reasons thereof have both functional and institutional nature.

Besides, some measures anticipated by the 2009-2011 Strategic Action Programme for the Judicial and Legal Reforms have not been implemented mainly due to the lack of financial resources. In particular, they are the modernising of maintenance of judicial and prosecution archives, improving the quality of the statistics and expertises maintained in the prosecutor's office, ensuring housing conditions for the Public Defender's Office. The implementation of activities aimed at improving the conditions for the execution of punishment, capital renovation of buildings of penitentiary establishments and construction of new penitentiary establishments also highly depend on financial allocations. The Concept for the Infrastructure Reforms in the Penitentiary Service of the Republic of Armenia was approved on 10 December 2009 at the sitting of the Government of the Republic of Armenia. The design and estimate works for "Goris" penitentiary establishment and measures aimed at acquisition of a respective land area were completed during 2010. Besides, the reconstruction works of "Armavir" penitentiary establishment of the Ministry of Justice of the Republic of Armenia started in 2008 but were terminated in 2009 due to the lack of financial resources. A new project for "Construction of "Armavir" penitentiary establishment of the Ministry of Justice of the Republic of Armenia, and gasification and heating of a number of penitentiary establishments" was developed upon the assignment of the Government of the Republic of Armenia.

The availability of a judicial system and legislation ensuring the efficient protection of human rights and freedoms stipulated by the Constitution and international treaties of the Republic of Armenia, as well as legal and judicial reforms conditioned thereby, still remain one of the main priorities of the Republic of Armenia.

A fair and effective judicial power is one of the main preconditions for the rule of law, fair trial and effective administration of justice, which are aspired by every State having declared human rights and freedoms as the highest value.

The Final Report delivered by the Organisation for Security and Cooperation in Europe (OSCE) and the Office for Democratic Institutions and Human Rights (ODIHR) in respect of post-election events of 1-2 March 2008 in Yerevan and related to trials considered for the period between April 2008 to July 2009, as well as the study of documents on judicial independence of a number of international organisations enabled to reveal numerous key problems in the field of judicial power and criminal justice of the Republic of Armenia that require integrated, rapid and efficient solutions in compliance with the best practices of democratic and rule-of-law States. Consequently, it is necessary to expand and enhance the reforms of legal and judicial systems taking into account the relevant documents of international organisations, including those of OSCE.

However, reforms implemented only in one direction may be pointless or less effective if reforms conditioned thereby are not implemented in other interrelated directions. Thus, the planned reforms are necessary to be implemented by an integrated approach in all directions parallelly:

1) adoption or improvement of a number of substantive and procedural laws based on the amended Constitution of the Republic of Armenia and best international practice;

2) operational reforms of the judicial power, self-government bodies of judges, the prosecutor's office in compliance with the Constitution of the Republic of Armenia;

3) introducing a qualitatively new and comprehensive system for the preparation and training of the staff of judicial power and the prosecutor's office, and enrooting a kind of thinking and practice complying with the contemporary requirements of a rule-of-law State;

4) ensuring accessibility of the judicial power and providing conditions necessary for the right to fair trial within reasonable time limits;

5) promoting alternative dispute resolution mechanisms and increasing the efficiency of maintenance of public registries;

6) implementing reforms on legal education, aimed at preparation of specialists with high professional qualification.

For the purpose of ensuring the consequentiality and contemporary nature of the reforms of legal system and judicial reforms, this 2012-2016 Strategic Programme for legal and judicial reforms and the list of measures deriving from the Programme referred to in Annex 2, may be supplemented with additional measures for the 2014-2016 period.

2. PROGRAMME OBJECTIVE

The main objective of the Programme is to ensure a legal system and judicial power in the Republic of Armenia complying with the criteria of a contemporary rule-of-law State, which particularly implies the following:

1) ensuring a fair, effective and publicly accountable judicial power;
2) increasing the effectiveness of criminal justice and the system of criminal punishments;
3) increasing the effectiveness of administrative justice and administrative proceedings;
4) increasing the effectiveness of civil justice and improving the civil legislation;
5) increasing the effectiveness of performance of procedural functions;
6) ensuring reforms in the system of advocacy;
7) increasing the effectiveness of prosecutorial activities;
8) increasing the effectiveness of the systems for maintaining arbitrary, notary and public registries;
9) restructuring the legal co-instruction and legal education system.

3. ENSURING A FAIR, EFFECTIVE AND PUBLICLY ACCOUNTABLE JUDICIAL POWER

For the purpose of ensuring a fair, effective and publicly accountable judicial power there is need of:

3.1 Improving the procedure for qualification test for inclusion in the list of candidacies for judges

3.1.1. Developing mechanisms, based on international standards, principles of transparency and impartiality, enabling to assess not only the professional knowledge of a judge candidate, but also the ability and efficiency, logical skills for acting as a judge

3.1.2. Improving the procedure for disputing the results of testing the knowledge and skills of judge candidates

3.1.3. Developing transparent and objective procedures for nominating candidates to be included in the list of candidacies for judges, as well as reviewing the procedure for interview in the Council of Justice by clarifying the tasks and topic for that stage

The issue of filling up the judicial power with appropriate staff is of special importance in the context of independence of the judicial power. A number of documents adopted by different bodies of the Council of Europe emphasise that the decisions on the selection and promotion of judges must be based on objective standards which are priorly defined by law or by competent authorities and are publicly available.

The specific nature of the position of a judge is conditioned by the fact that within the context of selection of a future judge not only the high level of legal professionalism in a narrow specialisation, but also the importance of non-professional characteristics — so called "merits, moral-psychological and personal qualities" are of special significance. The latter, apart from professional legal knowledge, also include the character, judgement, communication skills, abilities for reasonable use of self-control, authority (influence), the efficiency of rendering judicial acts, etc.

It is necessary to modify the procedure for testing the knowledge of judge candidates, as provided for in the Judicial Code of the Republic of Armenia, so as to enable to assess not only the level of professional and legal knowledge of a candidate but also the ability thereof to act as a judge and the expected efficiency of the position held thereby.

Objective standards and definite procedures for the selection of judges are necessary also for avoiding the risks of "*favouritism, conservatism or cronyism (or "cloning")*" (Consultative Council

of European Judges (CCJE), Opinion No 1) which may arise as a result of reserving absolute, unregulated powers and those giving rise to subjectivity to the judicial power in respect of the selection of judges.

Therefore, the clarification of the tasks, topic and procedures for the interview with judge candidates in the Council of Justice derives directly from the objectivity requirements to the selection process thereof.

Moreover, taking into account the requirements of international documents on ensuring the transparency of selection procedures for judges, it is necessary to improve, by the Judicial Code of the Republic of Armenia, the procedures for ensuring the justification of the results of qualification test for judge candidates and the procedures for disputing the results of written qualification tests.

3.2 Introducing objective criteria and procedures for the performance evaluation and promotion of judges

3.2.1 Developing objective criteria for the performance evaluation of judges

3.2.2 Providing software and hardware support for the performance evaluation system for judges

3.2.3 Testing the performance evaluation system for judges in individual courts and eliminating software deficiencies

3.2.4 Providing for mechanisms for the summarisation of results of the performance evaluation of judges, for the discussion thereof in the judicial self-government bodies and for the development of measures aimed at increasing the performance efficiency of both certain judges and courts

3.2.5 Applying the performance evaluation system for judges in all courts

3.2.6 Clarifying under law the criteria for the promotion of judges by taking as a basis also the results of performance evaluation

3.2.7 Strengthening the capacities of the technical and service staff of the Judicial Department

The need for the introduction of the performance evaluation system for judges is stipulated in numerous international documents by emphasising the importance thereof in terms of contributing to the efficiency of administration of justice and continuous improvement of the quality thereof. The performance evaluation of judges is important for promoting the self-analysis of judges, indicating the ways of improving the performance efficiency of judges and contributing to the selection of the best candidates for promotion. Moreover, it is an important promotion for raising the confidence towards the judicial power in democratic societies.

The performance evaluation of judges must be carried out on the basis of objective criteria with full respect to their external and internal independence.

The criteria for the performance evaluation of judges should be mainly related to the efficiency of their work (quantity and quality of cases examined), as well as to the performance of administrative activities, observation of professional rules of conduct and to other circumstances.

Based on the study of international practice regarding the criteria for the performance evaluation of judges it is necessary to develop a performance evaluation system for judges which is given importance not only from the point of the processes of drawing up promotion lists of judges by the Council of Justice and nominating judges for promotion, appointing them as chairpersons of courts, but also from the point of ensuring the performance efficiency of judges and examination of cases within reasonable time limits.

At the same time the performance evaluation of judges should not be based on the indicators of remitting acts rendered by a judge, whereas the remittances themselves should not lead to a certain conclusion in respect of the professional qualities of the judge, with the exception of cases when the evaluation shows that the judge has reached to incorrect application of law in the most of the cases examined thereby.

With a view to ensure the efficient operation of the performance evaluation system for judges it is necessary to undertake measures aimed at improving the capacities of relevant technical and service staff of the Judicial Department.

The criteria for the promotion of judges also need to be clarified under law from the point of objectiveness of the process of promotion of judges by taking as a basis the results of performance evaluation of judges.

3.3 Introducing a more effective model of self-governance for judges

3.3.1 Reviewing the structure, interrelations, composition and functions of judicial self – government bodies by ensuring the internal independence of judges and contributing to the enhancement of guarantees for self-government of the judicial power

3.3.2 Ensuring maximum participation of judges in their own self-government and providing for reasonable limitations for the simultaneous involvement of judges in several other self-government bodies, other than the General Assembly

3.3.3 Examining the appropriateness of introducing a limitation on the term of office of chairpersons of the courts of first instance and courts of appeals within the context of restrictions on the powers of court chairpersons

At present, self-government bodies of the judicial power are the General Assembly of Judges of the Republic of Armenia — composed of all the judges of the Republic of Armenia, the Council of Court Chairpersons the members whereof are the chairpersons of the courts of first instance and courts of appeals, chairpersons of the Court of Cassation and those of the Chambers thereof.

From the point of ensuring self-governance of the judicial power and the internal independence of a judge, it is necessary to guarantee a system of self-government bodies as well as a separation of their functions within the context of checks and balances, that will enable all the judges to take part in the resolution of essential issues concerning the judicial power. The key element of the principle of independence of judges constitutes not only his or her independence from external interference but also the internal independence especially from the court chairperson and from judges of superior court.

The permanently functioning self-government body of the judicial power, as provided for in the Judicial Code, is considered to be the Council of Court Chairpersons exclusively comprised of court chairpersons, which is reserved a significant part of the key functions in the field of judicial self-governance. The ethics and training commissions are also formed from among the members of this body. As a result the functions of judicial self-governance are centralised in one body; moreover these functions are performed indirectly by the court chairpersons. Such centralisation of self-governance is not in line with the principle of independence of judges and self-governance of the judicial power. It is necessary to review the system of self-government bodies of the judicial power so as to enable to ensure the internal independence of judges from the court chairpersons.

For the purpose of ensuring the maximum participation of judges in the resolution of essential issues concerning the judicial power it is necessary to restrict to a possible extent the possibility of simultaneous involvement of the same judge in other several self-government bodies other than the General Assembly.

At present in the Republic of Armenia the chairpersons of the courts of first instance and the courts of appeals are appointed on a permanent basis until reaching the relevant age for holding office. Such an approach may lead to an undue amplification of the position of the court chairperson and of his or her influence in the court and may disrupt, in practice, the essence of the constitutional requirement for the independence and equality of judges. It is necessary to consider the need of introducing a limited term of office for the court chairpersons in the Republic of Armenia in the context of international developments and approaches.

3.4 Reforming the procedures and grounds for subjecting a judge to disciplinary liability through guaranteeing objectiveness, fairness, efficiency and publicity of the disciplinary proceedings

3.4.1 Distinguishing the entities instigating proceedings against a judge and those entitled to take a decision on the disciplinary penalty through designating the Minister of Justice and the Ethics and Disciplinary Commission for Judges as entities instigating disciplinary proceedings, whereas — against a judge of a chamber or the chairperson of a chamber of the Court of Cassation — the Chairperson of the Court of Cassation, and in case of grounds of violation of the rules of ethics — also the Ethics and Disciplinary Commission for Judges

3.4.2 Studying the issue of strengthening the legislative guarantees for the independence and protection of judges within the framework of instigated disciplinary proceedings

3.4.3 Studying the issue of open-door nature of sittings of the Council of Justice, and providing for legislative amendments as of necessity

3.4.4 Clarifying the grounds for subjecting a judge to disciplinary liability by revealing, to a possible extent, the content of obvious and gross violations of substantive and procedural laws

3.4.5 Studying the international practice in respect of considering as a newly emerged circumstance the decision of the Council of Justice on subjecting a judge to disciplinary liability for obvious and gross violation of substantive or procedural law and setting appropriate regulatory arrangements

In order to ensure the guarantees of fairness in the disciplinary proceedings it is necessary that the Council of Justice is not vested simultaneously with the following two powers: instigation of disciplinary proceedings and adoption of a decision on the disciplinary penalty. The centralisation of powers of instigating disciplinary proceedings and subjecting a judge to disciplinary liability in result thereof within one authority significantly reduces the objectivity and fairness of that proceedings. Consequently for the efficient exercise of those powers different bodies should be vested therewith, which will ensure a fairer disciplinary proceedings as compared to the present regulation.

The Minister of Justice and the Ethics and Disciplinary Commission for Judges should be designed as entities instigating disciplinary proceedings, whereas the Council of Justice should, as a result of instigated proceedings, take a decision on subjecting the judge to disciplinary liability or rejecting the application for subjecting the judge to disciplinary liability based on the instigated disciplinary proceedings. The right to instigate disciplinary proceedings against a judge of a chamber or the chairperson of a chamber of the Court of Cassation should continue to be retained only by the Chairperson of the Court of Cassation, whereas in case of grounds of violation of the rules of ethics— also by the Ethics and Disciplinary Commission for Judges. However, the possibility of instigating disciplinary proceedings against a judge of the Court of Cassation on the ground of violation of substantive law should be excluded.

Meanwhile, it is necessary to rule out the predominant role of the Court of Cassation in the process of subjecting a judge to disciplinary liability. The decision of a superior court should not be considered as a predetermining circumstance for the disciplinary proceedings against a judge. The fact of obvious and gross violation of law must be revealed only during the disciplinary proceedings rather than confirmed by the decision of a superior court, which predetermines the course of disciplinary proceedings and — as a result — the decision of the Council of Justice by entailing disruption of the constitutional powers of the latter. The Court of Cassation should not be vested with any power of influencing on the disciplinary proceedings as it is incompatible with the constitutional status of the Court of Cassation.

It is necessary to study the international practice as regards holding open-door sittings of the Council of Justice when subjecting a judge to disciplinary liability, by making necessary legislative amendments as of the results thereof.

According to the Judicial Code of the Republic of Armenia, an obvious and gross violation of substantive or procedural law, including of a norm of the Constitution, when administering justice, is considered as a ground for instigating disciplinary proceedings against a judge. Nevertheless, the Judicial Code does not identify the content of an “obvious and gross” violation, which leads to various interpretations when deciding on the issue of subjecting a judge to disciplinary liability. For the purpose of ensuring the unity of the practice of subjecting judges to disciplinary liability on the ground of obvious and gross violation of laws it is necessary to clarify in the Judicial Code to a possible extent the criteria for assessing an obvious and gross violation in the Republic of Armenia.

Interpretation of law, the assessment of facts and evidence may not entail disciplinary liability, with the exception of cases when the judge has acted intentionally or demonstrated gross negligence. Judges must be subjected to disciplinary liability if they fail to fulfil their obligations properly and endanger the reputation of the judicial power. The sanction imposed on a judge should be proportional to the violation committed.

Meanwhile, based on the results of the study of international practice, it is necessary to regulate the issues of disciplinary liability of judges on the grounds of violation of substantive law, in these cases where the judicial act has not been appealed against or has not been remitted by a superior court on that ground.

It is necessary to study international practice as regards reviewing a judicial act based on the decision of the Council of Justice on subjecting a judge to disciplinary liability for an obvious and gross violation of a norm of substantive or procedural law, and stipulate relevant regulatory arrangements.

3.5 Ensuring the effectiveness and transparency of the activities of the Ethics and Disciplinary Commission

3.5.1 Developing procedural rules for the activities of the Ethics and Disciplinary Commission

3.5.2 Ensuring the availability of the decisions of the Ethics and Disciplinary Commission for judges

3.5.3 Providing for powers preventing violation of rules of conduct for judges through consultation activities, within the competence of the Ethics and Disciplinary Commission

3.5.4 Training the members of the Ethics and Disciplinary Commission aimed at ensuring the observance of rules of conduct for judges and building capacities for assessing violations

The Ethics and Disciplinary Commission should have a key role in the dissemination of the culture of observance of rules of conduct for judges and in ensuring the compliance therewith. From the point of ensuring the transparency and predictability of activities of the Commission it is necessary to elaborate procedural rules for the activities of the Ethics and Disciplinary Commission, take measures aimed at ensuring availability of the decisions of the Ethics and Disciplinary Commission for other judges, provide for mechanisms that will enable the Ethics and Disciplinary Commission to provide consultation to judges with regard to rules of conduct for judges.

3.6 Balancing the number of judges in proportion to the number of population and workload of judges

3.6.1 Conducting a study — based on the comparative statistics and scientific justification of the workload of judges — for the submission of proposals on increasing or balancing the number of judges taking into account the number of habitants as well as the number of judges and the workload of judges as of the total number of court cases

3.6.2 Making legislative amendments necessary for balancing or increasing the number of judges (as of the necessity established by the results of the study)

The number of judges as of courts, as provided for by the Judicial Code of the Republic of Armenia, is practically problematic for the reason of the overload of individual courts whereas in others — for the reason of comparatively low number of cases. It is necessary to conduct a study on the practice of countries having comparable formation of courts as regards the number of judges and the workload of judges taking into account the number of court cases per one judge

in proportion to the number of population. As a result it is necessary to review and balance or increase, if necessary, the number of judges.

3.7 Improving the procedures for the vocational training of persons included in the list of candidacies for judges and prosecutors, the procedures for training of judges, prosecutors, judicial servants, state servants in the staff of prosecutor's offices

3.7.1 Establishing a Justice Academy for the preparation and training of staff for the judicial power and the prosecutor's office regulating the activities thereof by relevant law

3.7.2 Expanding the probation period within the framework of vocational training of persons included in the list of candidacies for judges and prosecutors and regulating the requirements set for the content of probation

3.7.3 Including courses, within the framework of training programmes for judges and prosecutors, on topics relating to the development of professional skills to act as a judge and prosecutor, as well as to legislative and procedural developments and judicial practice

3.7.4 Intensifying the cooperation between prosecutors, judges and advocates through organising and conducting joint training courses and other joint events

The reputation of the judicial power and prosecutor's office, the efficiency of activities thereof are considerably conditioned by special professionalism and continuous training of persons involved therein. Availability of professional staff requires from the State to ensure certain conditions for making realistic the education and training of staff of the judicial power and the prosecutor's office. The concept of operation of a single integrated institution for the preparation and training of staff for the judicial power and the prosecutor's office is in line with the modern international developments and the efficiency thereof is emphasised in a number of international documents. Organisation of joint instruction has several advantages in terms of optimal management and economy of resources, as well as in terms of professional harmonisation between practicing judges and prosecutors, development of a uniform ideology and improvement of educational methodology in the field of preparation of staff.

The professional training of staff for the judicial power and the prosecutor's office and organisation of the whole process of training of practicing judges and prosecutors require the

establishment of a Justice Academy and complex, coordinated regulation by relevant law of social relations pertaining to the activities thereof.

The Justice Academy will also carry out the training of judicial servants, state servants in the staff of prosecutor's offices and court bailiffs.

Probation in the courts and prosecutor's offices should constitute the key part in the process of vocational training of candidates for judges and prosecutors. In this regard it is necessary to define by law the minimum duration of probation forming a part of vocational training of candidates for judges and prosecutors and the minimum requirements to the content of the probation. The institution implementing the vocational training of persons included in the list of candidacies for judges and prosecutors should clearly define the procedure for undergoing probation, the landmarks of the content of probation, standards for the evaluation of probation.

Both the vocational training of persons included in the list of candidacies for judges and prosecutors and the training of judges and prosecutors should be aimed not only at the transfer of narrow professional-legal knowledge, but also at the instruction of other knowledge and skills necessary for acting efficiently as a judge or prosecutor, acting in the court, for case management, communication with people. Implementation of effective annual programmes on continuous training of judges, prosecutors, judicial servants, state servants in the staff of prosecutor's offices is especially important from the point of providing the judicial power and the prosecutor's office with staff with high professionalism. In particular, topics concerning the legislative and procedural developments and judicial practice should be included in the framework of training programmes for judges and prosecutors.

Meanwhile, within the framework of training programmes, it is necessary to intensify the cooperation and contacts between judges, prosecutors and advocates through organisation and conduct of joint training programmes, conferences and other events. It is necessary to develop joint training courses for prosecutors, judges and advocates, undertake round-table discussions, seminars with the participation of prosecutors, judges and advocates, other events promoting the cooperation and contacts between them.

3.8 Improving the system of objective (random) distribution of cases among judges

3.8.1 Defining by law the general objective criteria for distributing cases among judges

3.8.2 Developing software and hardware support for the objective (random) distribution of cases, eliminating software deficiencies

3.8.3 Fully applying the programme for objective (random) distribution of cases in all courts

The introduction of the system of random distribution of cases among judges is an important component for ensuring the independence of judges. The availability of such a system enables to carry out distribution of cases on the basis of priorly defined objective criteria by avoiding subjective approaches in this regard. This gives an opportunity to avoid the possibility of distribution of cases among judges by the court chairpersons at their own discretion. This is conditioned by the constitutional principle of a lawful judge which derives from Articles 1 and 19 of the Constitution of the Republic of Armenia.

Therefore, distribution of cases among judges should be carried out on the basis of objective criteria predetermined by law. At present, according to point 19 of part 3 of Article 72 of the Judicial Code of the Republic of Armenia, “the procedures for the distribution of cases in the courts of first instance, appointment of court panels and presiding judges therein in the courts of appeals, self-recusal of judges, secondment of judges, substitution of a court chairperson and judges in cases of leave or illness” are developed and approved by the Council of Court Chairpersons. Based on the mentioned provision of the Judicial Code of the Republic of Armenia the Council of Court Chairpersons has approved a procedure for random distribution of cases in courts. However, from the point of ensuring the constitutional principle of a lawful judge it is necessary to define by law the key, general rules of distribution of cases, on the basis whereof further details relating thereto may be provided for in other acts. In addition to legislative amendments it is necessary to provide software and hardware support and carry out the distribution of cases through a special computer program.

3.9 Introducing a system of publication of reports by the judicial power with regard to the activities thereof, upon the results of study of international practice

In order to ensure the efficiency of the system of justice, accountability before the public it is necessary to introduce a system of publication of regular reports by the judicial power. Such reports are an important mechanism of public monitoring over the judicial power. For the purpose of introducing the results of activities and the quality of work of courts to the public, different countries apply different systems of monitoring. The mentioned differences are

connected with the frequency of submission of reports (for instance, every quarter, half-year, year, etc), responsible bodies, as well as type of information subject to monitoring. The indicators used more often in international practice include the number of judicial cases received, duration of proceedings (in courts of first instance, courts of appeals and (or) courts of all instances), the number of delayed judicial cases, the number of pending judicial cases, the number of decisions considering the case on the merits, the level of workload of judges and courts, budgetary means and expenditures of the court.

Introduction of the principle of mandatory submission of reports by courts and judges will promote the enhancement of transparency, accountability and efficiency of the judicial power before the public, more objective assessment of the activities of the judge and encouragement of efficient activities.

3.10 Improving the norms against abuse of procedural rights and disrespect towards the court

3.10.1 Studying the international practice as regards the abuses of procedural rights and disrespect towards the court

3.10.2 Providing for relevant regulatory arrangements against the abuses of procedural rights and disrespect towards the court (where necessary)

From the point of ensuring efficient justice and the reputation of the judicial power, provision of an effective system of judicial sanctions remains an important issue. Despite the relevant norms existing in the Judicial Code and procedural codes of the Republic of Armenia, the system of sanctions laid down with regard to disrespect demonstrated through intentionally avoiding from appearing to court, availing of procedural rights in bad faith or failure to perform or improper performance of procedural duties without good reason, carrying out an action in violation of the procedure for sitting, does not allow in practice to give adequate solutions to the situations created. The results of filing a request, with regard to subjecting to liability, accordingly with the Prosecutor General of the Republic of Armenia or the Chamber of Advocates by the court still remain problematic.

Independence of a judge rules out any external interference with the decisions thereof. In this regard the regulatory arrangements for impermissible influence over the court through a tough public opinion expressed by officials in respect of a case examined in the court or a decision of

the court, so as not to endanger, on the one hand, the freedom of speech and, on the other — the judges are protected from possible pressures, still remain problematic.

3.11 Improving the use of information and communication technologies in courts by ensuring rapid case flow from a court of one instance to a court of another instance

3.11.1 Developing the principles and mechanisms for digitalising documents existing in cases examined by courts

3.11.2 Providing software and hardware support necessary for the digitalisation of documents

3.11.3 Testing the system of digitalisation of documents in individual courts and eliminating software deficiencies

3.11.4 Fully applying the system of digitalisation of documents in all courts

3.11.5 Conducting a training of judges and judicial servants on the topic of using the system of digitalisation of documents

The technological progress and the development of institute of electronic signature enable online submission of cases to a court and document flow by using electronic means. This will help to save time and resources both in submitting claims and transferring cases from one court to another. It is necessary to set the principles and mechanisms for digitalisation of documents existing in the cases examined by courts, as well as to conduct training of judges and judicial servants on the topic of using the system of digitalisation of documents.

3.12 Developing and introducing a more effective model of financing the judicial power of the Republic of Armenia in conformity with the European standards and best practice

3.12.1 Conducting a study on the European standards and best practice as regards the models of financing the judicial power

3.12.2 Introducing a more effective model of financing the judicial power.

For the purpose of strengthening the financial independence of the judicial power it is necessary to develop and introduce a more effective mechanism of financing the judicial power, which will enable to comprehensively assess the needs of the judicial power, predict the potentials for the

financing thereof, expand the sources of financing the judicial power by promoting the efficiency of activities of the judicial power.

4. ENHANCING THE EFFECTIVENESS OF THE CRIMINAL JUSTICE AND CRIMINAL PUNISHMENTS SYSTEM

For the purpose of enhancing the effectiveness of the criminal justice and criminal punishments system, there is a need of:

4.1 Elaborating a new Criminal Code of the Republic of Armenia

4.1.1 Adopting a Decision of the Government of the Republic of Armenia "On approving the concept paper for the new Criminal Code of the Republic of Armenia"

4.1.2 Drafting a new Criminal Code of the Republic of Armenia

The Criminal Code, effective of 1 August 2003, is one of the important legal acts adopted as a result of the judicial reforms implemented in the Republic of Armenia.

After the adoption of the Criminal Code of the Republic of Armenia, about 100 legislative amendments and supplements were made to it, the considerable part of which was not complete and was of episodic nature, not taking into account the common reasoning and structure of the Code. As a result, the Criminal Code in force has various legislative gaps and incomplete regulatory arrangements. In particular, accurate regulatory arrangements are not planned as regards the identification of legal and factual errors, contradiction between the criminal law norms and a number of other institutes in the field of criminal law.

As a feature of *corpus delicti*, concepts (grave circumstances, substantial damage, etc.) subject to assessment are envisaged, the content of which is not clarified by legislation and no criterion is provided for to predetermine them. Mistakes in definitions and descriptions of the mode of culpability or of the objective side of the *corpora delicti* are present in various *corpora delicti*.

With regard to conditional non-execution of the sentence (Article 70 of the Criminal Code of the Republic of Armenia) the criteria prescribed are much milder than those prescribed for imposing a mitigated punishment, than the one provided for by law (Article 64 of the Criminal Code of the Republic of Armenia). In fact, it results in wider application of the conditional non-execution of the sentence as compared to imposing a mitigated punishment than the one provided for by law.

A significant deficiency of the Criminal Code in force is also the punishment system and the disproportionality of the sanctions defined in the articles of the Special Part.

In certain cases, the available regulatory arrangements are not effective and practically they lead to such a situation that the court, when imposing the punishment, does not have a real alternative to imprisonment, which impairs the effective realisation of the purposes of the punishment, results in a more frequent application of imprisonment and, due to this, in overcrowdness of penitentiary establishments.

Drafting of the new Criminal Code in the Republic of Armenia is conditioned upon the works aimed at elaboration and adoption of the new Criminal Procedure Code and the new Administrative Offences Code. The mentioned two legislative acts are in an integrated manner interconnected with the Criminal Code and in case they are adopted, the current Criminal Code of the Republic of Armenia will no longer be suitable for the solution of the issues covered thereby.

The incomplete list of the specified issues and deficiencies objectively results in taking of necessary steps aimed at the adoption of the new Criminal Code of the Republic of Armenia.

In the future Criminal Code of the Republic of Armenia, the punishment system must be fundamentally revised to ensure the coherent adherence to the principle of proportionality of criminal punishment, to define applicable punishments as an alternative sanction to imprisonment and the possibility of imposing the main punishments in combination, as well as to provide for other solutions that will allow to avoid the criminal law enforcement measures.

In the forthcoming Criminal Code of the Republic of Armenia it is also necessary to extend the possibility of imposing community service as a punishment. To this end, it is necessary to provide for the community service as a punishment in the sanctions defined by the articles of the Special Part of the Criminal Code, as well as to widen the possibility to impose the community service when substituting the unserved part of the sentence with a mitigated punishment, making it possible to apply this institute to persons sentenced to graver punishments.

When elaborating the forthcoming Criminal Code, it is necessary to study the possibility of providing for alternative measures to the criminal liability, in particular, the mediation.

The criminal law enforcement measures must be avoided also through elimination of imprisonment, as far as possible, from the sanctions defined by the articles of the Special Part of

the forthcoming Code or through providing for shorter terms therefore (derealisation). The forthcoming Criminal Code must introduce decriminalisation of several crimes, thus completely eliminating criminal liability for some of them and transferring the other part to the new Administrative Offences Code (for instance, in case of individual crimes against ownership and economic activity).

4.2 Submitting to the National Assembly of the Republic of Armenia the new Draft Criminal Procedure Code of the Republic of Armenia

Through the referendum held on 27 November 2005 fundamental amendments were made to the Constitution of the Republic of Armenia that predetermined the main trends for the development of criminal justice sector. A series of changes taking place in the social and political life inevitably resulted in such developments and the imperative of establishing procedures for examination and resolution of criminal cases in compliance with the international commitments of the Republic of Armenia, as well as ensuring balanced protection of public and private interests. These circumstances have already been taken into account in the concept paper on the new Criminal Procedure Code of the Republic of Armenia which has been approved by the Decision of the Government of the Republic of Armenia, and in the draft of the new Criminal Procedure Code of the Republic of Armenia elaborated on the basis thereof.

4.3 Establishing a probation service independent and separate from the penitentiary service under the Ministry of Justice of the Republic of Armenia

4.3.1 Drafting a legal act regulating the activities of the probation service

4.3.2 Developing an ongoing vocational training system for the officers of the probation service

The probation service has been created in the international practice to support the social rehabilitation of the persons having committed a crime through providing them social, psychological and legal aid. It was first introduced in England and was initially spread only in the countries of Anglo-Saxon law. However, in the course of time probation services were created in other countries, including the countries of Romano-Germanic law. For the last decade, state probation service has also been established in the member states of the former USSR – Latvia,

Estonia, Moldova, Georgia. Russia, Ukraine and Kazakhstan also take actions to create a probation service.

Concurrently, with the establishment and development of the probation service in various countries, probation services extended their powers and included new powers starting from the execution of community sanctions and mediation till ensuring the application of measures of restraint (transfer to the supervision (house arrest)) as an alternative to detention in the pre-trial proceedings on criminal cases.

Currently, no separate probation service exists in the Republic of Armenia. A number of powers typical to the latter are exercised in the Republic of Armenia by the Division of Execution of Alternative Sanctions of the Penitentiary Service and the subdivisions carrying out social, psychological and legal activities.

Taking into account the fact that probation, as a mechanism of correction and reintegration of a criminal, will be provided for in the forthcoming Criminal Code of the Republic of Armenia, as well as the necessity to apply effective measures for fight against the high rates of recidivism, the creation of a body that will effectively perform these functions, is currently actual in the Republic of Armenia.

The necessity for the creation of a probation service is also significant at the stage of imposition of punishments by courts and in matters concerning the submission of a conclusion on the social and psychological characteristics of the person at the time of resolving the issue of early conditional release of a person or of substitution of the unserved part of the sentence with a mitigated punishment by independent commissions, which will promote to rendering a more precise decision on delivering a more fair sentence or imposing early conditional release or substituting the unserved part of the sentence with a mitigated punishment.

For the purpose of performing the stated functions, a body must be created under the Ministry of Justice that will fully ensure the implementation of the mentioned issues and will act independently and separately from the penitentiary service of the Republic of Armenia.

Non-governmental organisations and volunteers, granted with powers of the probation service, must be involved in the activities of the probation service. The possibility of such a regulatory arrangement is provided for by points 16 and 19 of the United Nations Standard minimum rules for non custodial measures adopted in 1990.

The creation of the probation service will result in drafting and adopting of legal acts, in an integrated manner regulating the fundamental principles of the arrangement and functioning of the service that will define the concept of the probation, its types, the probation procedure, rights and duties of a probation officer.

Concurrent to the creation of the probation service, it is necessary to ensure the initial and ongoing professional training of probation officers.

4.4 Reforming the procedure for early conditional release and for substituting the unserved part of the sentence with a mitigated punishment

4.4.1 Studying the possibilities of simplifying the system of the bodies rendering a decision on early conditional release and clarifying the functions of each body

4.4.2 Defining the objective criteria based on which the relevant bodies must determine the issue of granting an early conditional release to the convict

4.4.3 Establishing an effective procedure for examining cases on early conditional release and on substituting the unserved part of the sentence with a mitigated punishment

The international practice shows that three forms of mechanisms are differentiated as regards the issue of early conditional release and the substitution of the unserved part of the sentence with a mitigated punishment:

1. Judicial – the issue of early conditional release and substitution of the unserved part of the sentence with a mitigated punishment shall be resolved by the court. Prior to the amendments made to the 2006 Penitentiary Code of the Republic of Armenia such a regulatory arrangement was also established in the Republic of Armenia.

2. Miscellaneous – there is an interim unit between the administration of the penitentiary establishment and the court that gives an opinion on the fact that the convict has been corrected;

3. Extrajudicial – the issue of early conditional release and substitution of the unserved part of the sentence with a mitigated punishment is resolved by relevant

independent commissions that are independent bodies provided for by law and do not function within the structure of any state body.

As a result of the 2006 legislative amendments, Armenia passed from the judicial mechanism of early conditional release and substitution of the unserved part of the sentence with a mitigated punishment to miscellaneous form. The latter may be viewed as an action aimed at raising the public awareness about the issues relating to the correction of the convicts and their early conditional release or substitution of the unserved part of the sentence with a mitigated punishment. However, the activities of these commissions and the efficiency of the mechanisms of the early conditional release and substitution of the unserved part of the sentence with a mitigated punishment in the Republic of Armenia are still problematic in practice. It is necessary to improve the operation principles of the commissions, the standards of decision-making, as well as to define by law complete rules for examination of cases on the early conditional release and substitution of the unserved part of the sentence with a mitigated punishment.

The implementation of such amendments will, on the one hand, enhance the effectiveness of the activity of the independent commissions and eliminate the deficiencies available in the mechanisms of the early conditional release and substitution of the unserved part of the sentence with a mitigated punishment in the Republic of Armenia, and on the other hand, will ensure the participation of the society and the representatives thereof in the solution of such issues.

4.5 Reforming the procedure for releasing, on the ground of a serious disease, a convict serving his or her punishment in the form of imprisonment

4.5.1 Reviewing the powers of the body currently conducting medical expertise, and defining the legal procedures of the latter's activities

4.5.2 Defining an effective procedure for court examination of cases on releasing, on the ground of a serious disease, a convict serving his or her punishment in the form of imprisonment

The analysis of the legislation and the law enforcement practice shows that the relations between the penitentiary establishment and the medical working committee, created by the Decision of the Government of the Republic of Armenia No 825-N of 26 May 2006 "On approving the procedure for providing medical sanitary and medical preventive assistance to detainees and convicts, for benefiting from the services of medical establishments of healthcare bodies and for engaging the medical staff thereof for that purpose", need to be regulated more explicitly. It is not clear how,

by whom and within what time limits the relevant penitentiary establishment submits the diseased convict's case to the republican medical committee. Which are the procedures and the standards based on which the doctor or the head of the penitentiary establishment delivers a decision with regard to presenting the convict before the republican medical committee or refusing to do so? Such an uncertainty of procedure may result in undue delay of the discussion of the issues by the penitentiary establishment and may contain corruption risks. Second, the Decision of the Government of the Republic of Armenia No 825-N of 26 May 2006 establishing the procedure for formation and operation of the penitentiary establishment fixes the function of the republican medical committee to present the diseased convict before the interagency commission created by the Decision of the Government of the Republic of Armenia No 1636-N of 4 December 2003 "On approving the procedure for establishing interagency medical commissions", but the procedure for the performance of this function is not regulated. In particular, no time limits are determined within which the republican medical commission shall deliver a decision. The issues with regard to which the medical working committee may deliver decisions are not regulated. It is defined only that the republican medical committee shall deliver decisions in regard with the issues falling within his or her competence. It is supposed that the positive decision rendered by the republican medical committee means that the diagnosis of the diseased convict corresponds to the list of diseases defined by the decision No 825-N, while the negative decision implies that it does not. Third, it is not clear to whom and to what the decisions of the republican medical committee may refer. Thus, the subject of decision rendered by the republican medical committee and the framework of addressees are to be clarified. Pursuant to the decision No 825-N, the decisions of the republican medical committee shall be binding. It is not clear for whom the decisions are binding and who is to execute them. If such decisions are binding upon the interagency commission, the interagency commission may not adopt a decision contradicting thereto. In this case, it is not clear what the function of the interagency commission is in respect of the mandatory decision of the republican medical committee. So, the activities of the interagency commission become meaningless. Fourth, there is no legal requirement for substantiating negative decisions of the republican medical committee. Fifth, except for release from sentence due to a serious disease (Article 432), the Criminal Procedure Code of the Republic of Armenia (Article 431) provides for postponement of the execution of the decision adopted with respect to the convict on the grounds of a serious disease. According to point 17 of Annex 1 to the Decision No 825, the republican medical committee shall implement the procedure of introducing the diseased convicts – to be presented for postponement of execution of the court decision – to the

republican medical committee created through the procedure approved by the Decision No 1636-N. Thus, pursuant to the above mentioned point 17, presenting a diseased convict to be released from sentence to the interagency commission shall not fall within the functions of the republican medical committee; this is not the case with persons in respect of whom the execution of the judicial acts has been postponed. In fact, diseased convicts, who may be released due to their disease, are also represented to the republican medical committee and to this end, the cases of such persons, upon the decision of the republican medical committee, are submitted to the interagency medical expertise committee Thus, the republican medical committee is not vested with a power to represent, upon a medical conclusion, the diseased convict to the interagency committee for the purpose of release from sentence, but it carries out such an activity.

A relevant interagency commission was established upon the Decision of the Government of the Republic of Armenia No 1636-N of 4 December 2003, but the regulatory arrangement of their activities is not specified in the stated decision or in any other legal act. In particular, the procedure for, standards and time limits of decision making, the absence of requirements for substantiation of decisions, for drafting decisions necessarily in writing and informing thereabout to the convict are issues that are still challenging. It is not clear what kind of knowledge is used when conducting expert examinations which result in a negative decision of the interagency commission, where there is a positive decision of the republican medical commission.

For the purposes of reforming the procedure of release from sentence due to a serious disease, it is necessary to clarify the scope and the powers of the competent authorities, the outline of the tasks set for them, which will result in ensuring rapid and effective diagnosis and examination of a convict's disease and in bringing the case before the court within tight time limits.

It is necessary to revise the compositions of the commissions and the principle of their formation, as well as their powers and legal regulation of their operation procedures.

It is necessary to improve the relevant provisions of the Criminal Code and the Criminal Procedure Code of the Republic of Armenia, so as when releasing from sentence due to a serious disease, the scope of the court’s discretion will be clarified, the latter will be guided with explicit standards, in particular, it will take into consideration the nature of the convict’s disease, the nature of the medical aid and service rendered under the custody, as well as the likelihood for the convict to commit a new crime. At the same time, it is necessary to explicitly determine tight

time limits for court examination, conditions of participation of a convict and his or her representative in court examination, conditions of holding a court sitting and the conditions of proclaiming a judicial act. The court decision must contain all the legal and factual grounds for rendering a decision, and it must be subject to appeal.

5. ENHANCING THE EFFECTIVENESS OF ADMINISTRATIVE JUSTICE AND ADMINISTRATIVE PROCEEDINGS

Measures aimed at enhancing the effectiveness of administrative justice and administrative proceedings are as follows:

5.1 Reducing the workload of administrative courts

5.1.1 Studying the reasons of additional workload of the Administrative Court and suggesting solutions

5.1.2 Studying the issue of increasing the number of judges in the Administrative Court and proposing solutions

Currently, the number of the cases examined by the administrative court is rather large and, by the reason whereof, the judges of the Administrative Court are overloaded. For the purpose of reducing the additional workload of the court, appropriate solutions should be found in respect of the increase of the number of judges.

5.2 Including in the concept of "administrative body" within administrative proceedings the private entities in whom the State vests public functions ensuring also the judicial protection of private individuals from the decisions, actions and omissions of such entities

5.2.1 Making amendments to the Law of the Republic of Armenia "On fundamentals of administrative action and administrative proceedings" and (where necessary) to the Administrative Procedure Code of the Republic of Armenia

The concept of "administrative body" may not include only state and local self-government bodies, as there are such entities which, while not constituting a state body, perform public functions vested upon them by the state. It is necessary to include such entities into the functional concept of the administrative body. This will also enable people to appeal the decisions and actions of such entities.

5.3 Ensuring the possibility of challenging the intervening provisions of a combined administrative act by its addressee

5.3.1 Making amendments to the Law of the Republic of Armenia "On fundamentals of administrative action and administrative proceedings" and to the Administrative Procedure Code of the Republic of Armenia

Pursuant to Article 65 of the Criminal Procedure Code, the plaintiff may require complete or partial abolishment or amendment of the intervening administrative act. And under the Article 52 of the Law "On fundamentals of administrative action and administrative proceedings" administrative acts shall be favourable, intervening or combined. The latter contains both favourable and intervening provisions for a person. Thus, it is necessary to clarify that the plaintiff may challenge not only the intervening administrative act but the intervening provisions of the combined administrative act.

5.4 Ensuring, in practice, the exercise of the rights granted by the administrative acts adopted by virtue of Article 48 of the Law of the Republic of Armenia "On fundamentals of administrative action and administrative proceedings"

5.4.1 Conducting studies in order to regulate the mentioned institute so as, on the one hand, not to damage the essence of this important institute set by Article 48, and on the other hand, to protect the public interest

Pursuant to Article 48 of the Law of the Republic of Armenia "On fundamentals of administrative action and administrative proceedings", where the administrative body vested with a power to adopt an administrative act fails to adopt such an act within a time limit established by law, as a result of the administrative proceedings instituted upon a claim, the administrative act shall be deemed as adopted and the plaintiff may undertake the exercise of the relevant right.

The stated norm mainly aims at enhancing the responsibilities of the administrative bodies within the administrative proceedings. The application of this provision may prevent or reduce the cases when natural persons apply to the competent administrative body to receive a favourable administrative act, and the administrative body does not in any way address the claim within prescribed time limits.

There is, however, a problem regarding the exercise of the right granted to a private individual by the administrative acts deemed as adopted. Practically, a private individual does not always enjoy this right. The examination of a series of judicial acts attests that sometimes in the judicial practice requirements, not defined by law, are set for similar administrative acts, for example before enjoying the right received by the administrative act, the lawfulness of such an act shall be

conferred. The law does not define a procedure by which it is necessary to confirm the lawfulness of the administrative act received by Article 48.

Thus, relevant studies must be carried out in order to regulate this institute so as, on the one hand, not to damage the essence of this important institute set by Article 48, on the other hand, to protect the public interest.

5.5 Providing for a possibility to terminate the status of an improper third party by the court in administrative proceedings

Third parties are natural or legal persons the rights whereof shall or may affect the judicial act to be adopted as a result of case examination.

The Administrative Procedure Code provides the possibility of involving third parties in the procedure based on their application. At the same time, an obligation is provided for the court to involve the person as a third party where the judicial act inevitably and directly affects him or her. The Administrative Procedure Code also provides for the types of cases in respect of which it is mandatory to involve a person as a third party. However, problems are actually experienced under the situation where the court automatically involves in the legal proceedings the person indicated as a third party in the statement of claim, whereas the person concerned obviously has no connection to the case. It leads to undue judicial expenses and, in case the fact of notification of the third party is not attested, it results in delays of the examination of the case. In this respect, it is necessary to vest the court with the power of determining the proper participants to the legal proceedings within administrative proceedings, providing the court with the possibility of removing the improper third party specified in the statement of claim from the proceedings.

5.6 Elaborating a new Administrative Offences Code of the Republic of Armenia

5.6.1 Adopting a Decision of the Government of the Republic of Armenia "On approving the concept paper for the new Administrative Offences Code of the Republic of Armenia"

5.6.2 Elaborating a new draft Administrative Offences Code of the Republic of Armenia

The Administrative Offences Code currently in force in the Republic of Armenia was adopted on 6 December 1985 by the Supreme Council of the ASSR, which was enacted on 6 June 1986. This Code, with its conceptual logic and philosophy forming the basis thereof, the systematic structure and unsolvable contradictions with a dozen of other laws, with numerous successful and

unsuccessful amendments made in the course of decades, with lots of outdated or practically inapplicable provisions, incomplete and imperfect administrative liability measures, is unable to settle the issues to be addressed thereby and does not correspond to the requirements of the "rule-of-law" state.

Taking into account the circumstance that the stated issues are rather extensive and methodical, it is necessary to adopt a new Administrative Offences Code complying with the present requirements of the "rule-of-law" state.

The new Administrative Offences Code shall settle at least the following essential issues:

1. The future Code shall, in a comprehensive manner, contain all the administrative offences, and cases of administrative offences shall no longer be provided for in other laws. Thus, there shall be no administrative liability unless it is provided for by the Administrative Offences Code.

2. When regulating matters connected with the administrative proceedings on the cases relating to administrative offences, the new Code shall, generally, rely on the common principles of the administrative proceedings established by the Law of the Republic of Armenia "On fundamentals of administrative action and administrative proceedings", at the same time taking into account the peculiarities of the special proceedings.

3. The new Code shall significantly improve the scope of the administrative liability measures. It is necessary to further develop the administrative penalties already set by the present Code, and to provide for new types of administrative penalty and to consider the possibility for envisaging public works.

4. When elaborating the new Administrative Offences Code it is necessary to carry out decriminalisation of some acts and to envisage them in the new Administrative Offences Code as a misdemeanour, when taking into account the principle of proportionality between the act and the liability provided therefore. At the same time, it is also necessary to study the issue of exempting from administrative liability currently provided for by some acts.

6. ENHANCING THE EFFECTIVENESS OF CIVIL JUSTICE AND IMPROVING THE CIVIL LEGISLATION

For the purpose of enhancing the effectiveness of the civil justice and improving the civil legislation, there is a need of:

6.1 Adjusting the Civil Code of the Republic of Armenia to the modern approaches for regulating private law relations

The present Civil Code of the Republic of Armenia was adopted on 5 May 1998 based on the model Code of the Cooperation of Independent States (CIS). It was an important step in the process of transition to a free economic zone, development of market economic relations, protection of all types of property. Serving as a ground for regulation of market relations, the Civil Code also ensures the development of the current legislation in the field of civil law relations.

However, after the adoption of the Code, important changes occurred in the economic, social and legal life of the Republic of Armenia. The banking system was established, the securities market was created, the institute of mandatory insurance was introduced, separate laws regarding the regulation of various institutes of the Civil Code of the Republic of Armenia were introduced, changes were made in the spheres of notary service, state registration of legal persons and the state registration of real estate. . Development of civil relations and gaps in the regulation having emerged as a result thereof, as well as imperfect legal institutes, terminological inaccuracies propose modernisation requirements to the Civil Code.

The analysis of the Civil Code of the Republic of Armenia and its comparison with the codes of other countries show that norms defining the scope of the civil law entities, norms of participation of the state and the communities in the civil circulation, the norms of the right in rem, of the law of obligation and the inheritance law and the norms of the insurance law remain challenging, no standards for correct calculation of the damage caused are available, regulatory arrangements of corporate law, contract law, in particular, contractual relations pertaining to the field of business activity, intellectual property right and international private law lag behind the modern developments. It is necessary to resolve the challenging problems related to entering into transactions and registration of real estate and entry into force thereof, issues arising in connection with the ownership right to the property to be built in future, problems connected with the right of construction.

The Code contains discrepancies that arise due to application of incorrect terminology or mistakes. Moreover, similar mistakes also occur in other legal acts, as a result of which such norms give rise to application intricacies and distortion of the meaning of the norm.

The above-stated issues result in the objective necessity for making complex amendments to the Civil Code of the Republic of Armenia.

6.2 Clarifying the rules regulating the process of proof in the civil proceedings setting a requirement for justifying, in the judicial act deciding the case on the merits, the settlement of the matters concerning the relevance or admissibility of evidence, as well as the removal of evidence from the content of evidence

Clear regulation of the process of proof is the essential element for the protection of the right of the participants to the adversary proceedings. It is necessary to improve the norms of the Civil Procedure Code regulating the process of evidence, to specify and simplify the types of evidence, the procedure for examination of evidence in the court and the rules of evaluation of evidence, the procedural principles of and the procedure for recognising the evidence as non relevant and inadmissible, to provide for a requirement, in particular, in the judicial act deciding the case on the merits, to substantiate the decision on recognising the evidence as inadmissible, on removing the evidence from the composition of evidence.

6.3 Defining in the civil proceedings the peculiarities of the procedure for a case examination in lower courts in the event of remitting the judicial act and remanding the case by a higher court for a new examination

The current Civil Procedure Code of the Republic of Armenia does not cover the peculiarities of the examination of the case in the first instance court when the judicial act is remitted and the case is remanded by a higher court for a new examination, and general rules are applied to the examination of the case.

For reducing the procedural expenses and ensuring rapid and effective judicial protection, it is necessary to make regulatory arrangements with regard to the rules on submitting evidence during a new examination of the case, changing the grounds and the subject matter of the claim, accepting the case into the proceedings and a number of other rules.

6.4 Developing more comprehensive rules for preliminary court sittings

For the purpose of reducing to the possible extent the overload of the court examination, it is necessary to regulate in detail the process of holding preliminary court sitting in the civil

proceedings clarifying the scope of activities of the court and the participants to the proceedings during the preliminary court sitting.

6.5 Studying the matter of admissibility of evidence obtained during criminal cases in civil proceedings

Article 52 of the Civil Procedure Code of the Republic of Armenia envisages that the judgments entered into legal force on the criminal case shall be binding upon the court only based on the facts that are confirmed by certain actions and by the persons having performed them. It is necessary to study the international practice in the procedure of use and admissibility of the evidence obtained with regard to the criminal case within the scope of civil proceedings and, as appropriate, to develop relevant regulatory arrangements to the Civil Procedure Code of the Republic of Armenia.

7. ENHANCING THE EFFECTIVENESS OF THE PERFORMANCE OF PROCEDURAL FUNCTIONS

For the purpose of enhancing the effectiveness of the performance of procedural functions, there is a need of:

7.1 Implementing measures aimed at enhancing the efficiency of the function of ensuring uniform the application of law by the Court of Cassation

7.1.1 Studying international practice concerning legislative standards for admissibility of the cassation appeal, requirements for the content of the decision on refusal to admit the appeal by the Court of Cassation and, where necessary, draw up legislative amendments aimed at improving the procedures for exercising the right to cassation appeal in line with the constitutional status of the Court of Cassation

7.1.2 Differentiating and clarifying the formal and content requirements to the cassation appeal, as well as the consequences of non-compliance therewith

7.1.3. Elaborating requirements to the structure of the judicial acts, which will enable the comparability of factual circumstances of different cases when making reference to other judicial acts

In order to ensure constitutional functions of the Court of Cassation with regard to ensuring uniform application and interpretation of the law and to enhance the efficiency of the activities of the Court of Cassation, it is necessary to study best international practice, where necessary making legislative amendments aimed at improving the institute of cassation appeal.

The existing procedure codes must clarify the requirements to the cassation appeal finding out whether they are of formal nature, or content requirements thereto must be set forth as well, and regulate the consequences of non-compliance therewith.

7.2 Clarifying the requirements to the structure and content of the judicial acts of courts of first instance and courts of appeals, particularly when adopting other judicial acts on identical factual circumstances, as well as publication on returning the cassation appeal, may also contribute to the resolution of the abovementioned issues. Developing procedures for preventing unsubstantiated postponements of court sittings

7.2.1.Studying the international practice in the field of defining priorities for appointing court sittings

7.2.2. Defining by the procedure codes as comprehensively as possible the grounds for postponing court sittings, excluding postponements of a sitting on any grounds that are not envisaged thereof

7.2.3. Envisaging effective legal protection measures for cases of violating reasonable time limits of case examination

7.2.4. Envisaging effective mechanisms for monitoring the duration of case examinations

Unsubstantiated postponements of court sittings may result in the violation of the right to fair trial within a reasonable time limit. The grounds for postponement of court sittings should be defined by law and the practice of unsubstantiated postponements should be excluded.

At the same, it is necessary to ensure that court sittings are set in a uniform and foreseeable manner. With the aim of avoiding the unsubstantiated postponements of court sittings, it is necessary to study the existing international practice in establishing certain standards for priorities of appointing court sittings and to consider the appropriateness of introducing such priorities. In particular, in criminal proceedings, the criminal cases by which detention has been applied to the accused as a measure of restraint, may take priority in contrast to the cases by

which detention has not been applied as a measure of restraint. With regard to civil cases, priority may be given, in particular, to such civil cases for which security of the claim has been applied. Types of specific cases (for example, cases on levy of alimony or causing the death of the breadwinner or such criminal cases in which the accused or the victim is a minor) may also be chosen as a standard for defining priorities of appointing court sittings.

It is necessary to develop effective mechanisms for preventing undue postponements of court sittings and monitoring the duration of case examination, as well as to provide for effective means of legal protection in case the reasonable time limits of case examination have been violated.

7.3 Studying the international practice in improving the procedures for reviewing judicial acts based on the decisions of the Constitutional Court, as well as in issuing judicial assignments by constitutional courts

At present, when a new circumstance arises, the court shall review the judicial act only based on the appeals submitted by relevant persons. Within the scope of the positive obligation of the state to ensure the protection of human rights, in the light of the Decision of the Constitutional Court of the Republic of Armenia SDO-984 of 15 July 2011, it is necessary to study the international practice with the aim of improving the procedures for review of judicial acts, identifying the approaches for instituting a proceeding on review of a judicial act and as appropriate for stipulating them by law.

The institute of judicial assignment is envisaged by Articles 56 and 73 of the Law of the Republic of Armenia “On constitutional court”, which is necessary for ensuring the procedures provided for by Articles 19, 73 and 74 of the same law and for guaranteeing the exercise of powers envisaged by points 3 and 3.1 of Article 100 of the Constitution of the Republic of Armenia. But in practice the institute does not function, particularly by the reason of lack of relevant procedures in procedure codes. To that end it is necessary to study international practice with regard to issuing judicial assignments by constitutional courts.

7.4 Improving the process of assigning and conducting forensic expert examinations

7.4.1. Disseminating information about the right of private experts to participate in forensic expert examinations

7.4.2. Clarifying in the procedure codes the procedural rules of interrogating the expert and for attesting the professional qualifications and the reliability of the expert opinion

As an adversary measure for a civil proceedings, it is necessary to, as far as possible, extend the rights of the parties to the proceedings in the process of assigning and conducting expert examination. In the context of promoting the successful establishment of expert examination services in the Republic of Armenia, it is important to extend the practice of appointing any person possessing professional knowledge and skills in the corresponding field as an expert, irrespective of the fact he or she works in a state establishment conducting expert examination or not.

At the same time, the mechanisms of challenging expert opinions shall be clarified which will allow the parties to exercise control over the quality of expert examinations. In this respect, it is necessary to specify the procedural rules for interrogating the expert about the expert examination conducted and the expert's professional qualities and the reliability of the expert examination.

7.5 Establishing limited and explicit grounds for holding circuit court sittings and mechanisms guaranteeing the right to fair trial in the event of holding such court sittings

7.5.1 Prescribing by law the exceptional cases for holding circuit court sittings and regulating their procedure

7.5.2 Limiting the possibility of holding circuit court sittings in closed and semi-closed type of penitentiary establishments providing for additional guarantees aimed at ensuring the right to fair trial

Article 41 of the Criminal Procedure Code of the Republic of Armenia allows the court to hold a circuit court sitting in the interest of justice. In practice, holding a court sitting gives rise to a number of issues, such as ensuring the publicity of the circuit court sitting and its openness to the public, public awareness related to the place and time of the next court sitting to be held and the following court sitting appointed, ensuring the audio recording of the court sitting and the availability of the symbols defined by law and so on. Therefore, it is necessary to comprehensively

define by law the cases (for example, the serious disease of the accused), when holding a circuit court sitting may be justified. In each case, the court shall render a grounded decision specifying the reason for holding a circuit court sitting. Holding a circuit court sitting shall not diminish the right to fair trial. In this context, it is very important to envisage additional guarantees aimed at ensuring the principles of fair trial in case of holding circuit court sittings in closed and semi-closed type of penitentiary establishments. It is necessary to clearly arrange in such a way that the representatives of the society are aware of the court sittings to be held in closed and semi-closed type of penitentiary establishments, the representatives of the society are ensured with access to the court sitting open to public, the procedural rights of the parties are ensured, recording of court sittings is surely carried out and the state symbols are used.

7.6 Introducing a fair, transparent and clear-cut system for allocating judicial expenses

The current Judicial Code and the Criminal, Civil and Administrative Procedure Codes of the Republic of Armenia do not establish guarantees sufficient for fair and transparent solution of the issue of allocating judicial expenses among the participants to the proceedings when judgements are delivered by the court. Moreover, the relevant codes do not provide the participants to the proceedings with the possibility of being involved in the solution of the issue of allocating judicial expenses. Thus, amendments need to be made to procedure codes of the Republic of Armenia.

7.7 Introducing more effective methods for notifying about court proceedings

7.7.1 Conducting studies to identify the most effective methods of notifications by courts

7.7.2 Making necessary legislative amendments for the purpose of introducing more effective methods of judicial notifications, based on the results of the studies

The notification institute is one of the essential procedural institutes and the most important means for the protection of the rights and lawful interests of the participants to the proceedings. The current system of judicial notifications often results in violation of reasonable time limits of judicial cases, as well as in delivery of a judgment on the rights and obligations of the participants to the proceedings in the event where the latter have not received a due notification. In order to improve this institute, it is necessary to conduct studies to identify more effective methods of

judicial notifications and, based on the results thereof, to take appropriate legislative and other measures.

7.8 Improving the simplified procedures of court examination

Taking into account the fact that carrying out court examination within reasonable time limit will promote the increase of trust towards the courts, and will result in reduction of judicial costs and to save resources, it is necessary to improve the institute of expedited court examination under civil proceedings. Relevant amendments have to be made to the Civil Procedure Code of the Republic of Armenia to define the grounds for applying an expedited court examination, particularly, the lack of dispute between the participants of the legal proceedings concerning factual circumstances of the case.

Providing for a simplified procedure for the examination of specific cases in the sphere of administrative justice may also significantly facilitate the improvement of justice administration efficiency.

7.9 Reviewing the grounds for non-consideration of the claim and suspension of case proceedings

Amendments made to the Civil Procedure Code of the Republic of Armenia ruled out the possibility for non-consideration of the claim in cases where the plaintiff duly notified of the time and place of the sitting has not appeared at the court sitting and has failed to file a request for examining the case in his or her absence, since it could actually help to keep the defendant constantly engaged in the judicial proceedings. Meanwhile, it is prescribed that the defendant's or the plaintiff's failure to appear before the court, where he or she had been duly notified of the time and venue of the court sitting, shall not be considered as an obstacle for the examination of the case. Such arrangements practically lead to situations where the plaintiff and defendant do not appear at the court sitting, for instance as a result of conciliation, but the court is obliged to examine the case and adopt a judicial act resolving the case on the merits. Relevant amendments should be made to the procedural codes for the purpose of regulating such situations.

Procedural codes should also provide for solutions of situations where the dispute is actually settled, for instance where the claim in rem has been satisfied.

7.10 Specifying rules of jurisdiction over related demands

Civil Procedure Code of the Republic of Armenia does not provide for solutions concerning the jurisdiction over several related demands, where, for instance, one case involves demands falling within the jurisdiction of administrative and general jurisdiction courts. Currently the issue is regulated by the decision of the Council of Court Chairpersons, but it is necessary to provide for clear solutions through procedural codes.

7.11 Examining the issue concerning jurisdiction over appeals filed with the court against the decisions of the head of the penitentiary establishment

Based on the results of studying the international practice, it is necessary to define more exactly the institute of appealing the decisions of the head of the penitentiary establishment by settling the issue of whether the complaints should fall within the jurisdiction of administrative or general jurisdiction court

7.12 Improving the judicial acts search system

7.12.1 Replenishing the judicial acts search system with keywords and indexes with options of search of judicial decisions

7.12.2 Undertaking measures with the purpose of protecting the personal data of participants of the legal proceedings in the search system of judicial acts

It is necessary to develop the judicial acts search system, ensure its continuous updating and replenishment with new data, support the judicial acts with key words and indexes with search option. Improved system should make it possible to find both separate decisions and other statistical data concerning searched key words and indexes (for instance, the frequency of recurrence of the keyword). Decisions of the Constitutional Court of the Republic of Armenia should also be included in the search system of judicial acts.

At the same time it is necessary to undertake measures with regard to protection of personal data of the participants to the legal proceedings in terms of non-availability of personal data to public.

7.13 Providing for a separate room for prosecutors and advocates in the open-access areas of the administrative buildings of courts

Both prosecutors and advocates must be, where possible, provided with normal work conditions for the purpose of efficient performance of their procedural functions, preparing for court

sittings. In this regard, it is important to provide for a separate room for prosecutors and advocates in the open-access areas of the administrative buildings of the courts.

8. ENSURING REFORMS IN THE SYSTEM OF ADVOCACY

For the purpose of reforming the system of advocacy, there is a need of:

8.1 Clarifying the scope of free legal assistance and improving its quality

8.1.1 Developing criteria for providing free legal assistance by virtue of which it will be possible to determine person's property status

8.1.2 Carrying out needs assessment with the purpose of determining the scope of free legal assistance and the required number of public defenders

8.1.3 Studying the issues of ensuring the physical accessibility of the Public Defender's Office, in particular the possibility of allocation in Yerevan and marzes of relevant state buildings aimed at serving the Public Defender's Offices

8.1.4 Ensuring institutional reform of the Public Defender's Office, optimization of the number of public defenders, transparency and competition in the procedure of assuming the position of public defender, specialisation of public defenders

8.1.5 Elaborating alternative mechanisms for providing free legal assistance

Currently free legal assistance is provided in consideration of person's property status, whereas standards for determining person's property status are not defined. This results in impossibility to apply a single approach with regard to this issue. It is necessary to develop and approve relevant standards and provide legal assistance on the basis of those standards. Besides, it is necessary to regulate the scope and powers of authorities competent to adopt a decision on providing free legal assistance, procedure for applying and receiving assistance, appealing against decisions on refusal, issues concerning supervision over and liability for the selection and appointment of advocates providing assistance, and the quality of services.

To reform the system of providing free legal assistance, it is necessary to carry out studies for the purpose of establishing the scale of free legal assistance and the required number of public defenders.

Currently in many cases the public defender's offices are lack of relevant infrastructures (premises), therefore it is necessary to study the issues with regard to allocation of premises necessary for public defender's offices and the reconstruction thereof aimed at ensuring the normal functioning of the offices.

To enhance the efficiency of activities of public defenders, it is necessary to analyse the appropriateness of gradually introducing some specialisation (for instance, with regard to cases on minors, military crimes) in the public defender's office.

At the same time it is necessary to study international practice related to alternative forms of provision of free legal assistance, for instance, the issue of setting forth an obligation of providing by the advocate, within one year, free legal assistance under certain number of cases, or of providing legal assistance under certain number of cases on the basis of the approved price list, on the condition of compensation rendered by the State.

8.2 Ensuring full training and retraining of advocates

8.2.1 Developing a syllabus for initial training of advocates by paying particular attention to practical skills applied in the courtroom

8.2.2 Developing syllabi for ongoing vocational training of advocates on codes of conduct of advocates, advocacy skills, judicial practice and preparation of cases

A professional advocacy system requires both the training of future advocates through a clearly worked out syllabus, and the ongoing training of advocates. Within the scope of professional training and retraining programs aimed at enhancing the professional knowledge and skills of advocates, emphasis should be given to topics concerning improvement of practical skills applied in the court hall, codes of conduct of advocates, advocacy skills, judicial practice and preparation of cases.

9. ENHANCING THE EFFECTIVENESS OF THE ACTIVTIES OF PROSECUTOR'S OFFICE

For the purpose of enhancing the efficiency of activities of the prosecutor's office, there is a need of:

9.1 Ensuring the complete independence and accountability of the Prosecutor's Office, the application of the principle of non-interference with the activities of the Prosecutor's Office

9.1.1 Reviewing the procedure for appointing prosecutors through envisaging precise criteria for removing the candidates from the list of candidates of prosecutors, as well as reviewing the procedure for and conditions of promoting prosecutors through envisaging precise criteria of promotion

9.1.2 Clarifying the norms regulating the hierarchical relations of prosecutors by making relevant amendment to the Law of the Republic of Armenia "On Prosecutor's Office"

9.1.3 Defining clear and predictable grounds for transferring the case from discretion of one prosecutor in the same prosecutor's office or structural subdivision to discretion of another prosecutor in the same prosecutor's office or structural subdivision

Within the framework of measures aimed at reforming the prosecutorial system it is necessary to enhance both internal and external independence of prosecutor's office. Activities of prosecutor's office must be free from any external interference or pressure, and internal independence within the prosecutorial system should be ensured. In order to ensure independence, it is necessary to review the procedure for appointing prosecutors by providing for clear standards for removing candidates from the list of candidates, as well as to review the procedure for and conditions of promoting prosecutors by providing for clear standards, impartial and transparent procedures for promotion.

Within the framework of measures aimed at reforming the prosecutorial system it is necessary to clarify the hierarchical relations of prosecutors, particularly by regulating the norms governing them in the Law of the Republic of Armenia "On Prosecutor's Office" and, as a result, enhancing the efficiency of regulation of relations between superior and inferior prosecutors and excluding the difficulties arising in practice of law application.

It is necessary to exclude the transfer of the case from discretion of one prosecutor in the same prosecutor's office or structural subdivision to discretion of another prosecutor in the same prosecutor's office or structural subdivision

9.2 Studying the functions of the Prosecutor's Office in the sphere of protection of state interests beyond the scope of criminal law

9.2.1 Making amendments to the Law of the Republic of Armenia "On Prosecutor's Office" based on the results of study (where necessary)

Pursuant to Article 103 of the Constitution of the Republic of Armenia, prosecutor's office shall bring an action to court with regard to protection of state interests.

The role and scope of powers of prosecutor's office, including entitlement to non penal functions, depends greatly on the nation's cultural heritage, legal tradition and constitutional history. However, the European Court of Human Rights has recently revealed a breach of the European Convention with regard to exercise of non-penal functions of prosecutors and has emphasised the binding nature of proper and clearly regulated procedures. In this regard interference of prosecutor's office outside criminal law field must be justified by the fact of performing the general obligation to act for the public interest on behalf of the society and such interference must not violate the principle of division of powers.

To help the prosecutor's office perform this constitutional function more efficiently and to bring it into compliance with standards of a modern law-governed state it is necessary to review the role of the prosecutor's office outside the criminal law field, specify the scope of "protection of state interests" and clarify the powers of prosecutor's office in that sphere.

9.3 Reforming the system of subjecting prosecutors to disciplinary liability clarifying the grounds for subjecting to disciplinary liability

Current system of subjecting prosecutors to liability does not guarantee non-discrimination approach with regard to the issue of subjecting prosecutors to disciplinary liability. In this regard it is necessary to clarify the procedures for subjecting to disciplinary liability by ensuring the impartiality thereof and accessibility of adopted decisions. It is necessary to provide for mechanisms for applying to ethics committee for receiving advice related to codes of conduct of prosecutors.

9.4 Determining the necessity of introducing the institute of assistant to prosecutor

9.4.1 Carrying out studies to determine the necessity of introducing the institute of assistant to prosecutor and the possible functions of assistant to prosecutor

9.4.2. Making legislative amendments on the basis of the results of the studies (where necessary)

Currently the Prosecutor General of the Republic of Armenia and the assistants thereof perform organisational and technical support function and is not vested with powers envisaged by the Constitution of the Republic of Armenia to prosecutors. Furthermore, assistants of the Prosecutor General of the Republic of Armenia perform not only organisational and technical support function, but also other assignments aimed at enhancing the efficiency of activities of the prosecutor's office. It is necessary to carry out relevant studies to determine the necessity of establishing the institute of assistant prosecutor and, where necessary, make amendments to the Law of the Republic of Armenia “On Prosecutor’s Office”.

9.5 Enhancing competencies of preliminary investigation bodies and prosecutor's office in the sphere of information and communication technologies

9.5.1 Introducing an electronic management computer system “On the activities of prosecutor” aimed at maintaining statistics, that ensures accessible registration and analysis of the results of prosecutorial activities

9.5.2 Introducing an electronic management computer system for keeping archives, that ensures accessibility of archives of the prosecutor’s office

9.5.3 Organising ongoing trainings aimed at enhancing competencies of prosecutors in the field of information and communication technologies

Along with reforming the information technologies in courts it is necessary to take similar steps in the prosecution system to digitise, as far as possible, archives of prosecutor's office; to introduce a an electronic management computer system for maintaining statistics “On activities of prosecutor”, that ensures accessible registration and analysis of the results of prosecutorial activities, as well as electronic management computer system for keeping archives, that ensures accessibility of archives of the prosecutor’s office. At the same time it is necessary to undertake measures aimed at enhancing competencies of prosecutors in the sphere of information and communication technologies.

9.6 Studying international practice in the sphere of prosecutorial function with regard to supervision over lawfulness of application of punishments or other means of criminal enforcement, where necessary providing for measures aimed at increasing the efficiency thereof

Supervision over lawfulness of application of punishments or other means of criminal enforcement is an important safeguard for protection of rights and legitimate interests of persons whereto they are applied. Based on it, it is necessary to study international practice to establish the ways of increasing efficiency in the sphere of prosecutorial supervision, which, on the one hand, will ensure more enhanced cooperation between the prosecutor's office and bodies ensuring application of the punishment and, on the other hand, will fully ensure the protection of rights and legitimate interests of person whereto the punishment or criminal enforcement measures are applied. In the context of this issue, it is necessary to study the scope of prosecutorial supervision.

9.7 Applying separate legal regulation to state service within the staff of prosecutor's office

9.7.1. Drawing up a draft law of the Republic of Armenia "On prosecutorial service"

Pursuant to the Law of the Republic of Armenia "On Prosecutor's Office", relations pertaining to state service within the staff of prosecutor's office are regulated by provisions of the Law of the Republic of Armenia "On judicial service" in as far as they are applicable to state service within the staff of prosecutor's office and are not in conflict with that law. Such legal regulation of the issue in practice gives rise to the need of broad and various interpretations. From the perspective of legal certainty and predictability it is necessary to regulate the issues concerning state service within the staff of prosecutor's office through a separate law which will fully take into account the peculiarities of this types of state service and will comprehensively regulate it.

9.8 Ensuring mandatory compliance with the lawful demands made by the prosecutor within the scope of the powers thereof

9.8.1 Making amendments to the Law of the Republic of Armenia "On Prosecutor's Office"

Current law "On Prosecutor's Office" does not clearly provide for any provision concerning mandatory compliance with the lawful demands of the prosecutor. Absence of such a provision in practice gives rise to difficulties related to proper performance of powers vested in the prosecutor's office by law, in particularly with regard to requesting from different bodies, where necessary, documents, materials, explanations. From the perspective of enhancing the efficiency of activities of the prosecutor's office it is necessary clearly stipulate by the legislation the requirement of mandatory compliance with the lawful requests of the prosecutor.

9.9 Studying organizational and legal mechanisms for coordinating the activities of law enforcement bodies in fights against crimes, where necessary making relevant amendments to the Law of the Republic of Armenia “On Prosecutor’s Office”

With the purpose of enhancing the efficiency of fight against crimes it is necessary to apply legal mechanisms and programs which will facilitate the increase of efficiency of activities of law enforcement bodies and of cooperation between them, faster prevention and disclosure of crimes in preparation and committed. In this regard it is necessary to study international practice and, on the basis thereof, develop cooperation between the prosecutor’s office and other law enforcement bodies, clarify the role of prosecutor’s office in this process.

10. ENHANCEING THE EFFICIENCY OF ARBITRATION, NOTARY AND PUBLIC REGISTRIES

For the purpose of enhancing the efficiency of system of arbitration, notary and public registries, there is a need of:

10.1 Improving and promoting alternative mechanisms for resolving disputes through arbitration

10.1.1. Carrying out measures aimed at training arbitrators and enhancing their professional capacities

10.1.2. Including in the judges’ retraining courses subject classes with regard to arbitration relations

10.1.3. Studying the possibilities of introducing mechanisms aimed at enhancing supervision over voluntary certification of arbitrators' qualifications and compliance with codes of conduct by arbitrators based on international practice

10.1.4. Elaborating codes of conduct of arbitrators and model rules of arbitration proceedings

Adoption of the Law of the Republic of Armenia of 25 December 2006 "On Commercial Arbitration" on the basis of provisions and principles of the UNCITRAL Model Law was a significant step towards promoting resolution of disputes through extrajudicial procedure. The law established a legislative basis complying with international standards for carrying out the

arbitration process. However, continuous and system-related steps are required to promote arbitration in countries with little arbitration practice and culture. Lack of both qualified professionals and experience in the spheres of compulsory enforcement and reversal of arbitral awards, appointment of arbitrators and cooperation between courts and arbitration make it difficult to fully develop the arbitration institute in the Republic of Armenia. A number of measures have to be undertaken to resolve these issues, in particular, training of arbitrators, inclusion in the retraining courses of judges of subject classes with regard to arbitration relations, as well as to promote cooperation with international arbitrators aimed at carrying out joint arbitrations with the purpose of strengthening the local competencies of arbitrators in Armenia. Certification of arbitrators, maintenance of a single list of qualified arbitrators, as well as implementation of relevant mechanisms aimed at enhancing supervision over compliance with the codes of conduct by the arbitrators may promote the improvement of reputation of and trust towards the arbitrators.

To enhance the reputation of arbitration and improve case examination procedures it is necessary to elaborate codes of conduct of arbitrators and model rules of proceedings.

Furthermore, the Law of the Republic of Armenia "On Commercial Arbitration" covers relations in commercial arbitration. Whereas arbitration culture requires clarification of legislative arrangements for submitting disputes arising also from other legal relations to resolution through arbitration proceedings. This, particularly, refers to disputes arising from civil relations entered into for family, labour or consumer needs. Parallel with extending the scope of disputes subject to resolution through arbitration, it is necessary to define through law certain mechanisms for protection of consumer interests aimed at preventing the deprivation of the right to submit the dispute to state court and the forcing to resolve the dispute through arbitration. Legislative safeguards must be aimed at preventing situations where the agreement to resolve the dispute through arbitration has been obtained, particularly, through making use of unequal state of parties, or where the consumer/employee does not perceive the nature of arbitration or fails to notice the agreement on arbitration in the contract.

10.2 Studying international practice and perspectives of introducing the institute of referral of civil cases by the courts of first instance to conciliators

10.2.1 Carrying out studies to determine the expediency and mechanisms of referral of civil cases by the courts of first instance to conciliators

10.2.2 Developing legislative grounds for enforcing conciliation (where necessary)

10.2.3 Promoting the elaboration of codes of conduct of arbitrators and procedural model rules for enforcing conciliation

10.2.4 Promoting introduction of syllabi for professional training of conciliators

The institute of referral of civil cases by the courts of first instance to conciliators is gradually used more widely in international practice to reduce the number of civil cases examined in courts. The latter makes it possible to resolve the dispute through conciliation of parties helping to save resources and time. Study of international practice and testing of the institute are necessary to evaluate the appropriateness and efficiency of introducing this institute in the Republic of Armenia. In order to develop the institute it is necessary to elaborate legislative grounds for enforcing conciliation, promote the elaboration of codes of conduct for arbitrators and procedural rules (at least model rules) for enforcing conciliation, and promote the introduction of courses for professional training of arbitrators.

10.3 Introducing electronic notary system and "one-stop-shop" principle in the notary service

10.3.1 Supporting the electronic management computer system with software and hardware

10.3.2 Testing the electronic management system in certain notary offices and eliminate software shortcomings

10.3.3 Introducing the electronic management system in all notary offices

The launch of electronic management systems in all public administration systems and registers makes it possible to perform all the notary functions on “one-stop-shop” principle. Provision of notary services in the referred manner will help to both improve the quality of services provided to citizens and allow to avoid violations related to document forging, since following the input of the referred system, the notary will be able and obliged to receive all the information and documents directly from relevant state bodies or registers.

10.4 Developing the electronic system of civil status acts registration

10.4.1 Ensuring digitisation of electronic databases of civil status acts registration

10.4.2 Ensuring confidentiality of personal data registered with the civil status acts registration bodies

10.4.3 Launching the electronic system of civil status acts registration

In 2010, an effort was made towards introducing a centralised database within the system of civil status acts registration. The referred system is successfully operating today enabling to significantly improve the quality of provided services. At the same time, the referred system does not contain comprehensive information on civil status acts entries, and the entries made before 2010 have not been digitised. This significantly reduces the efficiency of the base (information system). Protection of confidentiality of personal data registered with the civil status acts registration bodies is also crucial. Relevant legislative amendments and introduction of an information system will reduce the administrative burden of citizens, improve the safety of database and information system and protect the interests of citizens.

10.5 Providing centralised services to natural and legal persons on "one-stop-shop" principle through establishing an integrated service centres for keeping (registering) public registries

10.5.1 Adopting a Decision of the Government of the Republic of Armenia "On the concept paper concerning the introduction of integrated service centres for keeping (registering) public registries"

10.5.2 Implementing relevant software support which will enable to connect through integrated interface and exchange information between current databases

10.5.3 Gradually exploiting reconstructed integrated service centres in marzes

A number of services are now provided to public online or through improved service centres with the help of new technologies which has significantly improved the quality of service provision, reduced the terms for providing services and curtailed corruption risks. The referred changes were applied to the process of state registration of legal persons, registration of immovable and

movable property, including transportation means, issuance of passports and other documents. Digitisation is still to be carried out in the sphere of civil status acts registration, and certain improvements should be made in the launched systems with the purpose of developing them, enhancing their efficiency, as well as increasing the share of automatically provided services.

Logical continuation of the referred reforms is the keeping of public registries in the justice sphere through integrated service centres which will help to optimise the geography of service centres through employing relevant professionals also in medium sized and certain small offices. The referred integrated service centres should jointly perform functions related to state registration of legal persons, making of entries in the population register, registration of immovable and movable property, as well as services with regard to national archive functions. Furthermore, division of service and registration functions makes it possible to attain at the initial stage significant results without additional investments, while the only necessary thing is to unite the service sector, whereas the actual registration function may, save for registration implemented through automatic systems, be performed through separate organisational units (without contacting the citizen) based on documents incorporated into the system by the employee of the service centre.

11. RESTRUCTURING THE GENERAL LEGAL TRAINING AND LEGAL EDUCATION SYSTEM

For the purpose of restructuring the general legal training and legal education system there is a need of:

11.1 Ensuring the availability of targeted general legal training and legal education system adopted at a state level;

11.1.1 Establishing an interagency commission to review all the educational criteria, general education and main professional education programmes at primary, middle, higher and postgraduate education levels.

Legal and judicial reforms cannot be complete without measures aimed at increasing the level of legal awareness of the society. The main method of overcoming the low level of legal awareness and legal nihilism is the introduction of a targeted system adopted at the state level. This implies the establishment of an interagency commission composed of representatives from the Ministry of Justice, Ministry of Education and Science and educational organisations, which will review all the educational criteria, general education and basic professional programs at primary, middle, higher and postgraduate educational levels.

11.2 Improving the quality of middle level and higher professional legal education and legal education requirements

11.2.1 Providing for a list of professions for middle level professional education in the sphere of justice and elaborating education programmes and criteria on the basis thereof

11.2.2 Elaborating a governmental programme for legal education reforms

11.2.3 Elaborating relevant normative legal acts related to general legal education and education issues

Planning and developing middle-level professional legal education in the sphere of justice may help to raise the legal awareness of the society, improve increase the efficiency of activities of some institutions in the justice system, since there are jobs for which middle-level professional education, rather than higher legal education, may be deemed sufficient (for instance, court sitting secretary, workers of penitentiary establishments, bailiffs, etc). In this regard it is

necessary to make a list of professions for middle-level professional education in the sphere of justice and elaborate educational programs and criteria based on them, and implement educational programs of those professions.

The level of development of legal system depends greatly on the level of legal awareness of the specialists establishing the system. In modern civilised society the key source for developing professional legal awareness is the higher legal education. Quality of higher legal education directly predetermines the efficiency and development of public administration. Scientific and technical advancement, development of new technologies and innovative systems, expansion of freedom of movement of professionals make the elaboration of new principles of policy in the sphere of higher education, development and application of new standards for lawyer training, modernisation of form and content of higher legal education urgent and inevitable.

Improvement of quality of higher legal education is urgent due to the fact that the legal profession has been popular for many years and is still popular nowadays. The state and the society need lawyers, who are initiative and responsible, have legal thinking and logic, are aware of the legal system and legal values, have written and oral communication skills, conflict resolution and team management skills, and abilities to quickly tackle issues through application of new technologies and benefits of innovative systems.

It is impossible to resolve all the issues related to legal education only through the efforts of the universities, since they are in many cases beyond the scope of the system of higher education institutions or the powers of these institutions. Reforms in the sphere of higher legal education should be accompanied by reforms in the state education system including all the elements of legal education. Reforms of state concept on development of general legal training and legal education, local changes at higher education institutions and faculties will not yield the desired results.

The efficient interaction of legal education-science-practical experience triangle should be ensured through enhanced cooperation with state bodies and through their support.

It is necessary to elaborate a governmental programme of legal education reforms reflecting the issues and measures aimed at resolving the problems related to goals, issues, organisational forms, content and governing of general legal training and education, levels and forms of the harmonisation thereof, improvement of educational strategy and methods of training professional lawyers.

Legal regulation of legal education should be taken out of the general legislative scope and separated. Legal education should be regulated through special legal acts.

12. COORDINATING THE MEASURES AIMED AT ENSURING THE PROGRAMME IMPLEMENTATION

For the purpose of ensuring complete and efficient implementation of the 2012-2016 Strategic Programme of the Republic of Armenia of Judicial Reforms and measures under the Programme, a working group shall be established.

For the purpose of consistent implementation of this programme it is necessary to provide it with bodies responsible for specific measures, and with a working group accountable to the President of the Republic of Armenia and ensuring the cooperation between those bodies, which will be presided by the Minister of Justice of the Republic of Armenia.

The entity responsible for each measure included in the list of measures arising from this programme shall be deemed to be the body (bodies) indicated in the list as "responsible body". In cases where the measures presuppose drawing up of a draft legal act, the draft must be initially submitted to the members of the working group by the body responsible for the given measure, aimed at receiving a conclusion.

12.1 Ensuring the transparency of the process of implementation of 2012-2016 Strategic Programme of Judicial Reforms

12.1.1. Disseminating information among the population on the 2012-2016 Strategic Programme of Judicial Reforms

12.1.2. Publishing a semi-annual report concerning the progress of the Programme implementation

12.1.3. Where necessary, establishing of working groups by the responsible body

Transparency of the process of implementation of the 2012-2016 Strategic Programme of Judicial Reforms must be ensured. Accessible information concerning the referred programme should be spread among wider strata of the society, and every half year a report concerning the implementation of the programme should be published. This will help to increase the trust of public towards the reforms and the bodies responsible for those reforms, which will facilitate the process of reform implementation.

The responsible body may establish working groups for the purpose of drawing up draft legal acts.

HEAD OF STAFF TO THE PRESIDENT OF THE REPUBLIC OF ARMENIA V. SARGSYAN