Litigation & Dispute Resolution

2017

Sixth Edition

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glg global legal group

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Armenia

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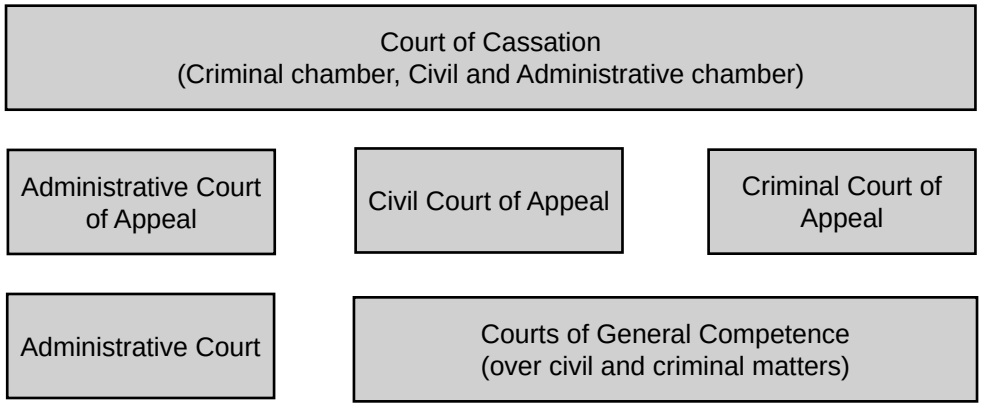
Efficiency of process

The Court System of the Republic of Armenia (Armenia) is a three-stage judicial system, and all cases except matters of constitutional justice, which are subject to the separate Constitutional Court, are handled by the said judicial system.

The system is as follows:



The system is described in detail in the Constitution and the Judicial Code. Separate codes for procedures (criminal, civil, administrative) and the law on bankruptcy regulate the particularities of different processes in the courts.

The Court of General Competence of Armenia hears all criminal and civil cases, including commercial and bankruptcy cases.

The Administrative Court of Armenia is a specialised court with jurisdiction to examine cases arising from public legal relationships, with the key role of overseeing the activities of administration (executive power).

The Civil Court of Appeal and the Criminal Court of Appeal of Armenia review appeals to acts of the Courts of General Competence, and the Administrative Court of Appeal reviews appeals to acts of the Administrative Court.

The Court of Cassation is the highest juridical instance that is eligible to examine all claims except those concerning constitutional jurisdiction.

As a general rule, if the claim meets the formal requirement of proper procedural code (includes required data, the listed documents are enclosed, the action is signed, etc.) it

is accepted to the hearings. Appeal complaints are accepted to hearings under the same grounds.

Acceptance of a cassation complaint is a sophisticated issue as this court's purposes are enshrined in the Constitution (to ensure uniform application of legislation and eliminate fundamental violation of human rights and freedoms). In general, the Court of Cassation accepts complaints which comply with formal requirements as well as the court's purposes. Regulations related to acceptance of cassation complaints were recently subject to review of the Constitutional Court (e.g. ՍԴՈ-1334 and ՍԴՈ-1363) and it is anticipated that the practice will be changed accordingly, i.e. the number of acceptances to hearings will increase if the formal requirements are provided.

In the first instance courts (except for the criminal procedure and bankruptcy peculiarity, which are enshrined in the Criminal procedural code and Law on bankruptcy respectively), the case passes the following main stages after acceptance of the claim: (a) preliminary hearing; (b) trial; (c) judgment and publication of the decision.

The Appeal Court examines the case within the scope of the complaint and evidences, not accepting any evidences or positions which were not presented in the first instance court. As far as court hearings shall be public, the Appeal Court assigns hearing (one or two) of the case, has a stage of judgment and publishes its decision as well.

The decision of the Appeal Court may be subject to cassation complaint and, if accepted for review, one court hearing, and publication of the final and non-appealable decision, take place.

The prescription period is recognised by Armenian legislation. Nonetheless, the motion to apply the prescription period shall be reviewed by the court simultaneously with the review of the case in total, i.e. the declaration of application of the prescription period does not cease the procedure in court immediately.

Alternative dispute resolution is recognised by Armenian legislation. Details on Mediation and ADR in the proper charters are presented below.

Availability of ADR mechanisms

Armenian law recognises mediation and arbitration. While arbitration has been present in legislation for many years, formal mediation is quite new (and was introduced in 2015).

Arbitration is widely accepted in specific areas (mostly used by banks and credit organisations as faster ways to deal with non-performing loans), however in general there is still a lack of practice in arbitration. On the other hand, there are several arbitration institutions with their lists of rather experienced arbitrators. The legislation does not stipulate requirements for arbitrators to have special permission or background.

The arbitration process is regulated by a separate Law on arbitration as well as internal regulations of arbitration centres (and regulations for *ad hoc* arbitration) and agreement of the parties. Normally it comprises stages similar to court stages; however, it is less formal and faster. If not agreed otherwise by the parties, the arbitral award will not be appealable, and will be final and binding: it can be reviewed on very limited grounds by a court (e.g. absence of arbitration agreement or other grave breach of procedure).

For mediation, if the parties want to have their conciliation approved by court, the mediator must be the one with an acting mediator licence. Many legal and non-legal specialists have recently applied and become licensed as mediators; however, since mediation is new, there is not sufficient data to elaborate the effectiveness of the latter.

Parties may also use out-of-court mediation, and in some limited cases this decision will also be verified by court.

In any case, if the mediation is not successful, the parties shall continue their dispute resolution via arbitration or court.

E-justice availability as a tool to increase the efficiency of justice and access to justice

Currently, there is no online filing of lawsuit applications in courts available. The system was developed by the Judicial Department and the Ministry of Justice with the financial and technical assistance of Concern Dialog law firm as well as the EU Delegation, and has been tested. Some legislative and regulatory concerns are still hindering the application of the system. Provided that legal requirements are based on paper lawsuit applications, the online application process will probably require a minor legal reform. In contrast, arbitrations are easier and, in practice, accept online filing via email or specially developed platforms.

Meantime, data on all cases in the courts are published (except for data on cases subject to close hearings) in the Online Armenian Judicial System known as Datalex and available at http://datalex.am. It is available only in Armenian, and a party can nearly always follow its application and procedure (e.g. acceptance, hearing dates, some intermediate judicial acts, final decision text, information on appeal and cassation claims, etc.) online, as well as trace and examine relevant cases.

Other resources publishing court decisions and containing sophisticated search and indexing mechanisms are also available, i.e. there are: (a) non-paid official resources http://arlis.am and http://www.court.am; and (b) private and paid resources http://www.armlaw.am and Irtek http://www.irtek.am, both of which contain decisions of the Court of Cassation and of the Constitutional Court.

Integrity of process

The principles of natural justice are implemented in Armenia's legal system. The Constitution of Armenia safeguards everyone's right to a public hearing of his case in order to have his violated rights restored and to have charges against him determined by an independent and impartial court, within a reasonable period, under equal conditions, with due respect for all the requirements of fairness.

In accordance with the internationally recognised right of judicial protection (access to justice), which is the fundamental rule of natural justice, the Judicial Code of Armenia states that everyone has the right to judicial protection of his rights and freedoms and no-one may be deprived of the right to have his case publicly examined by a competent, independent, and impartial court within a reasonable time, under equal conditions, with due respect for all requirements of fairness.

The legislation of Armenia contains some mechanisms to protect the principle of *nemo judex in causa sua*. If a party to arbitration believes that the judge is partial, they can bring a self-recusal motion, which must be decided by the judge, with the consideration of arguments brought in the motion. If the judge is biased, or the situation can be perceived as biased, he/she is expected to abandon the case and pass it to another judge on their own initiative or by the motion of the party. If the party is not satisfied with the decision of the court rejecting the self-recusal, he/she can recall it as grounds for appeal of the final decision.

As for opportunity to be heard, the court resolves the applications and motions on all issues relevant to the consideration of the case filed by the participants of the case after having heard the opinions of other participants of the case.

In Armenia, everyone has the right to exercise his right to judicial protection either through a representative or advocate, or personally (right to legal representation).

The judiciary of Armenia is autonomous and self-governed. The independence of the court is declared by the Constitution, Judicial Code and procedural codes. The Judicial Code states that the judge is independent and not accountable to anyone and, among other things, is not required to give any explanation, save for cases provided by law. Additionally, a judge may not be a member of any party or otherwise engage in political activities. In all circumstances, a judge must demonstrate political restraint and neutrality.

A judge must not tolerate any interference with the administration of justice, regardless of whether it is performed by representatives of the legislative or executive powers, other public officials, or ordinary citizens.

The guarantee of judges' independence is the rule that a judge must immediately inform the Ethics Committee about any interference with his activities related to the administration of justice and the performance of other powers stipulated by law, if such interference is not provided by law. If the Ethics Committee finds that the judge's activities have been interfered with in a way that is not provided by law, it must petition the competent authorities to hold the guilty ones liable. Any such act is subject to criminal prosecution. For public servants, it gives rise also to disciplinary liability, up to and including dismissal from office or service.

In addition, during his term of office and after the termination thereof, a judge may not be interrogated as a witness about a case tried by him.

The basis of the principle of the impartiality of the court is stated in the Constitution, which declares that everyone shall have the right to a fair and public hearing [...] by an independent and impartial court, and that a judge shall be independent, impartial and act only in accordance with the Constitution and laws. According to the Judicial Code, when exercising his powers, a judge must refrain from displaying discrimination with speech or conduct, as well as making such an impression.

The requirement for judges to be impartial in specific cases is reflected in the criminal and civil procedure codes.

Armenia's legal system integrates a number of impartiality guarantee mechanisms and institutions, foreseen by the Judicial Code. Among them are, *inter alia*:

1. non-dismissibility of judges;
2. salary;
3. pension / social security prerogatives;
4. special procedures of judicial control in criminal prosecution against a judge;
5. political impartiality;
6. impossibility of parallel jobs (judges still can engage in volunteer activities or undertake paid educational or scientific work); and
7. complex appointment procedures.

Privilege and disclosure

Disclosure

Armenian legislation protects confidential information as well as personal data. Thus, confidential information (commercial, bank, state, official, notary, family and private life, etc.), including personal data (data allowing a natural person to be identified directly or indirectly) may be disclosed in the scope of pre-court or court procedures either by the consent of its owner or by the court decision thereon.

The Administrative Court, unlike the others, is entitled by its own *ex officio* authority to initiate a request to provide evidences containing confidential information. The other courts may not initiate this kind of procedure, but they are entitled to review the petitions of participants on providing confidential data to the court, and may decide accordingly. A participant of this procedure who is allowed to bring such a petition must prove/show that he/she is not able to receive data without the court's approval, as well as the relevance of the evidence or data to the case.

The confidential data may be requested and received under the court's decision by its owner regardless of whether the latter has status or not in the scope of case.

In general, cases are considered in open hearings, but closed-door hearings are allowed if the court accepts the relevant petition of a party, which latter can present for protection of confidentiality of adoption, privacy of citizens of their families, as well as protection of commercial or other secrets.

Closed-door hearing allows public access to information about the case to be banned as well, i.e. one can find merely information about the number of case and parties at www.datalex.am.

Privilege

No-one is obliged to give testimony against himself/herself, his/her spouse and immediate relatives.

The Attorneys at law (advocates), the Defender of human rights, judges, arbitrators, mediators and confessors cannot testify in the scope of civil (including bankruptcy), administrative and criminal procedures. In addition, representatives of mass media are entitled not to answer if it may disclose the source of their information.

The Armenian law on Advocates and Advocates' Activities enshrines a number of guarantees of confidentiality as well, e.g. it is banned: (a) to disclose any information unless the client agrees; (b) to confiscate (take) from the advocate materials concerning legal support provided and to use them as evidence; or (c) to investigate advocates' apartments, vehicles, offices and offices of law firms, as well as to examine the advocate while he/she performs his/her professional duties.

Costs

Applications require state fees (symbolic amounts for cases related to non-monetary, or not subject to monetary evaluation, and percentages of 2–3% for cases of a monetary nature, depending on the instance of the court it is presented to). Some cases are exempt from state fee (e.g. lawsuit applications of employees in labour matters); the law also provides a possibility to postpone the state fee if the party is unable to pay at that moment; however, he/she needs to submit a motion and ground his/her inability to pay the state fee. Moreover, the recent practice indicates that the courts are stricter in approving such motions.

Normally, the losing party is obliged to recover the fees paid. In the structure of costs, attorney fees are also included; however, while amounts of other costs are based on the factual amounts paid by the parties, attorney fees are considered to be satisfied in "reasonable amounts" and only if proved. Parties need to present proofs about the mechanism of attorney cost calculations or the factually paid sums (e.g. payment receipts are provided). Considering different factors, at its discretion, the court will, however, decide a reasonable sum, which the losing party will have to compensate to the winning party.

There are no securities for costs available; however, the institution of interim measures, though very limited, may serve such purpose.

Similarly, there are no other mechanisms available for capping costs or limiting recoverability of costs (the only one applicable is the attorney fee).

There are no other options available to litigants in funding the litigation; however, they are free to find third party founders. Some internationally funded projects have financed strategic litigation cases; however, recently most such projects have closed.

Litigation funding

Any costs related to the procedure may be subject to recovery under Armenian legislation. Nonetheless, the claim may be approved if the costs, except for the state fee (the state fee is approved in compliance with the amount of satisfied demand), are reasonable. There are not any criteria to define whether costs are reasonable or not under the law, but a judge decides at his/her discretion. In practice, recovery amount of costs (attorney's fee, translator's fee, expertise, etc.) are derived from average market prices, the time consumed for fulfilment of tasks and the character of the case, etc.

The attorney's fee may be recovered if payment thereof has already been made or shall be made in future. Thus, contingency fee arrangements are subject to approval by the court but, again, in the scope of reasonable amount thereof. Practically, this model is mostly applied for debt collection services and usually the courts approve refund of the whole sum enshrined in the agreement.

Recovery of litigation costs may be either subject to the hearing in the scope of the main hearing, or be the subject of a separate claim. The latter has a few legal issues such as the legal character of the demand, legal grounds in material law, etc.; the positions are not yet similar. In the scope of main hearings, legal costs may be sought in the court for representation in relation to which they have arisen, e.g. costs for an appeal complaint may be presented directly to the appeal court.

Postponement of payment of the state fee may be applicable as well if the claimant is able to prove inability to pay it.

Legal services can be paid either by the Client or by the third party. The number of organisations that provide financing for strategic cases is decreasing, and now it is almost zero.

Meanwhile, *pro bono* legal services are discussed by different structures with the aim of development of this sector as well. Today, *pro bono* legal services are mostly provided by the Office of the Public Defender and include support in criminal, civil, administrative and constitutional procedures of socially vulnerable classes.

Interim relief

In the civil procedure of Armenia, the range of injunctive relief is provided by Article 98 of the Civil Procedure Code. The following are the means of relief:

1. imposing an arrest on the defendant's property or financial assets in the amount of lawsuit;
2. prohibiting the committal of certain actions by the defendant;
3. prohibiting the committal of certain actions by other persons in relation to the object of the dispute;
4. preventing the sale of property, in case of bringing a case concerning the lifting of the arrest on the property; and
5. imposing an arrest on the plaintiff's property which is in the defendant's possession.

In administrative procedure there is means of relief, which is not similar to the means provided by the Civil Procedure Code. According to the Administrative Procedure Code of Armenia, the court can temporarily satisfy the action.

To apply one, the plaintiff needs to ground the necessity of the security measure. In practice, motions for reasonable security measures are satisfied. When necessary, the court is entitled to apply several means of securing the action.

In the countermeasure, by motion of a person participating in the case, the court is entitled to replace one provisional remedy with another, and by motion of a participating party, can terminate the provisional remedy. The issue of termination of a security is resolved at court session. As a protective measure, the defendant can demand the plaintiff pay an amount equal to its damages as a security to the court deposit, as well as apply to the same court demanding the damages caused by the interim measure.

The Republic of Armenia is a party to the CIS Convention on legal assistance and legal relations in civil, family and criminal cases and has reciprocal agreements with a number of countries. The mentioned treaties regulate the enforcement of worldwide freezing orders. Also, normally, when Armenian courts give freezing orders, it relates not only to a defendant's funds in Armenia, but also worldwide funds. Nevertheless, the decision of the Armenian court must be recognised by the courts of the countries in which these funds are kept in order to have the corresponding funds frozen.

Enforcement of judgments

The Republic of Armenia is a party to the CIS Convention on legal assistance and legal relations in civil, family and criminal cases and has reciprocal agreements with a number of countries, for instance with Greece, Iran, Bulgaria, Romania, Georgia, UAE and Lithuania. With the countries with which Armenia doesn't have any agreements, the enforcement of judgments/awards is performed on a reciprocal basis.

According to the Law on Compulsory Enforcement, in cases provided for by international treaties of the Republic of Armenia, the writ of execution on enforcement of judgments and decisions of courts of foreign states shall be issued by the court of the Republic of Armenia which has taken a decision on the recognition in the Republic of Armenia of the judgment, and decision of the court of the foreign State concerned.

Normally, parties are expected to fulfil their obligations without waiting for compulsory enforcement. However, after the entry into force of the final judicial act, or the decision on an interim measure, the party may apply to the court for a judicial enforcement order (enforcement writ), which he/she can present to the State Service of Compulsory Enforcement.

The time limit for enforcement is two months after the opening of the enforcement case, and is established for carrying out enforcement actions, except for cases provided by law, which can be prolonged in limited cases.

Normally, enforcement procedures do not take long, especially when they concern the application of interim measures: once the property of the plaintiff is identified, it is attached, or if it concerns injunction, the State Service of Compulsory Enforcement simply orders the injunction and follows up its performance.

If enforced, the fees (some 5%) are collected additionally and held from the collected amount before transferring the adjudged amount to the winning party. If the creditor takes back the enforcement writ, he bears the enforcement fee (from 1−5%, depending at which stage it is done).

The grounds for avoiding enforcement are stated in Article 42 of Law of The Republic of Armenia on compulsory enforcement of judicial acts. For instance, among them are cases where:

1. the claimant has renounced the levy of execution;
2. the claimant and the debtor have entered into a settlement agreement, and it has been approved by the court;
3. the claimant or debtor-citizen has died, and claims or obligations established by the judicial act may not pass to his or her successor;
4. the judicial act, based on which the writ of execution has been issued, has been reversed;
5. the debtor-legal person has been declared bankrupt by a court judgment; or
6. the debtor-legal entity has been dissolved.

The parties are free to come to a peaceful settlement of their dispute and conclude a conciliation agreement, which is later confirmed by the court and published as a judicial act. There, the parties can also regulate reciprocal arrangements for enforcement of the agreement. Another option is (and it only concerns the order of fulfilment of the judicial act), the possibility of the parties to agree on the order of realisation of the judicial orders. This concerns cases where the final judicial act is present, and parties, of their own will and agreement, want to regulate the order of fulfilment of the obligations under the respective judicial act. If the agreement is violated, the State Service of Compulsory Enforcement will be called to apply the decision of the court.

If the plaintiff is insolvent, and the State Service of Compulsory Enforcement finds out, it will stop the enforcement and invite the creditor to initiate a bankruptcy case.

If the obligation is already performed and proof is provided, the enforcement service will only enforce the service fee confiscation. For the non-performance of a judicial act, the Armenian Criminal Code provides criminal charges both for Compulsory Enforcers and persons intentionally avoiding enforcement.

As for enforcement of awards, the Law on Compulsory Enforcement states that writs of execution for compulsory enforcement of awards of arbitral tribunals shall be issued by the competent court of the Republic of Armenia. The court shall have the right to refuse issuance of the writ of execution based on the grounds provided for by the Law of the Republic of Armenia on commercial arbitration.

Armenia's legislation does not provide special garnishee proceedings but it has mechanisms which are similar to garnishee proceedings. When a Compulsory Enforcer imposes attachment on a debtor's monetary funds, he or she send messages to the banks and employer of the debtor and asks for freezing of funds and future payments to the debtor until the final judgment comes into force.

Cross-border litigation

An Armenian court can send judicial orders outside its territorial jurisdiction, in order to accomplish several actions. This is limited to the territory of the Republic of Armenia. For foreign matters, Armenian courts may seek the help of a foreign country on assistance matters, such as finding the contents of the foreign law. Other kinds of cooperation are based solely on international treaties, as explained in the previous section, or on diplomatic cooperation, provided that civil procedure is based on competition and parties provide the court with proofs (the obtaining of the proofs by the court is only possible in limited cases,

where the party so requests by written motion, and grounds why he/she cannot acquire them himself/herself).

Enforcement of judicial orders abroad is possible, again based on international treaty or diplomatic means. There is little practice in relation to the application of Armenian judicial orders abroad; it can take a couple of months.

Generally, it is up to the parties to pursue the acquired judicial acts in foreign jurisdictions for their application.

International arbitration

Armenia is party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which makes it possible to recognise and enforce foreign arbitral awards in Armenia, as well as local arbitral awards in other NY Convention member-countries. Relevant procedures are incorporated in procedural codes and in the law on regulating arbitration. Based on the international instruments, as well as local procedural legislation, recognition and enforcement of foreign arbitral awards is done without major difficulties, although there is not much practice on this side either.

Mediation and ADR

Mediation is a very new institution in Armenia. Parties can apply for mediation at any moment. If the agreement provides for mediation, the court cannot decide the case until mediation is over. The mediation length completely depends on the will of the parties.

To mediate, a specialist (not necessarily with a legal background) needs to acquire a mediator certificate from the Ministry of Justice.

Mediation is a paid service, but to strengthen the new institution, the Armenian legislator has provided free mediation hours by law. These are the first four hours.

After the amendments, many specialists have applied and received mediator certificates; however, there is still no widespread practice of mediation.

Regulatory investigations

Governmental authority regulates the economic activities of proper areas, including protection of consumers' rights; the regulatory investigations thereof are implemented as administrative procedure under administrative law.

Decision is made by governmental or municipal authority and may be reviewed by the Administrative Court.

Normative legal acts of governmental and municipal authorities (including the Central Bank, State Commission for the Protection of Economic Competition and the Public Services Regulatory Commission) may be reviewed by the Administrative Court subject to their compliance with legal acts which hold higher position in the hierarchy thereof (except for the Constitution).

The Administrative Court is entitled to review notaries' activities, as well as activity of the body responsible for overview and providing protection of personal data.

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Aram Orbelyan has led the litigation and arbitration practice at Concern Dialog law firm since 2014. Aram Orbelyan holds a Law degree and Ph.D. in Law from MGIMO University, and has served as deputy minister of justice of Armenia from 2011–2014, where he was responsible for reform of civil and civil procedure legislation, as well as the implementation of e-government systems in Armenia.

In addition to his attorney practice he lectures at the French University of Armenia (UFAR), School of Advocates and Justice Academy, and is a consulting number of international organisations and state agencies on reform issues (mostly the justice sector, human rights, good governance issues).

Aram Orbelyan is in the arbitrators list of ICSID, arbitrator at ADR partners and Optimus Lex arbitration centres; he was also elected President of the Arbitrators Association of the Republic of Armenia (in 2017).

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Narine Beglaryan is a Partner with Concern Dialog law firm. She joined the firm in September 2013. She specialises in Banking law, Contract law, Corporate law, as well as in court representation of administrative and civil cases. At present, she specialises in the spheres of Combat against Money Laundering and Financing of Terrorism.

Prior to joining Concern Dialog law firm, she worked with Armentel CJSC as the legal representative of the department of legal support to the business, and with BTA Bank CJSC as the chief lawyer of the legal office of the bank.

Narine Beglaryan graduated from the Moscow New Juridical Institute with a degree as a Certified Specialist in Civil Law. Narine is qualified to practise law in the Republic of Armenia since 2007 and has been the Attorney of the Chamber of Advocates of RA since 2012.

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Vahagn Grigoryan joined Concern Dialog law firm in June 2017. He holds the position of Senior Associate. He is specialised in Civil Law and Court Representation in Civil Cases. Vahagn Grigoryan holds a Law degree and Ph.D. in Law from Yerevan State University.

Prior to joining Concern Dialog law firm he worked at Brave law firm as a lawyer (2010–2017), and the "Center of legislation development and legal researches" fund of the Ministry of Justice of RA. In addition to his attorney practice, he lectures at the Yerevan State University (YSU) Faculty of Law and Justice Academy. He took part in drafting new editions of several legal acts such as the Civil Procedure Code of RA and the Judicial Code of RA.

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