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Armenia: Law & Practice

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ARMENIA

Law and Practice

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1. General

1.1 General Characteristics of the Legal System

The legal system of the Republic of Armenia (RA, or "Armenia") is based on civil law. Armenia has comprehensive, frequently updated legal codes. Codes and other normative acts are the primary sources of law. International treaties are an integral part of the legal system. Judicial decisions are formally deemed only to interpret the existing law and are not a binding source of law.

Yet decisions of the Court of Cassation have a precedential nature. As such, whenever a court reaches a different conclusion in the face of similar facts, it must justify such differing approach. Decisions of international human rights bodies (mostly the ECHR) have the same status and, according to the Judicial Code, individuals can refer to the reasoning of other courts (first instance and appeal) to ground their interpretation of the law.

Civil and criminal courts follow an adversarial model, whereas administrative courts adopt an inquisitorial one.

Legal process in the courts of first instance is conducted both through written submissions and oral arguments; however, in appeal courts and the court of cassation, legal process is conducted mostly through written submissions except where the court finds that oral proceedings are necessary.

1.2 Court System

The courts in Armenia form a hierarchical system, which means that certain courts are superior to other courts.

At the lowest level are the courts of first instance, comprising:

- courts of general jurisdiction, which deal with criminal and civil cases; and
- specialised courts.

There are three specialised courts in Armenia: the Administrative Court, the Bankruptcy Court and the Anti-Corruption Court. (The latter has both civil and criminal law jurisdiction.)

The next tier are the appellate courts. There are three courts of appeal in Armenia: the Civil Court of Appeal, the Criminal Court of Appeal and the Administrative Court of Appeal. These courts hear civil, criminal and administrative cases brought against the decisions of the courts of first instance of general jurisdiction and specialised courts.

The Court of Cassation is the court of final appeal and supreme instance for all civil, criminal, administrative, bankruptcy and anti-corruption matters in Armenia.

Additionally, the Constitutional Court is tasked with evaluating the compliance of legislation with the Armenian constitution (including via individual complaints mechanisms), as well as resolving several types of constitutional disputes – namely electoral disputes and disputes concerning the authority of different constitutional bodies.

1.3 Court Filings and Proceedings

Judicial proceedings are generally open to the public. The right to a public trial, however, is not absolute. The trial judge has the right to close the courtroom in order to protect the interests of minors and the private lives of the participants in

the proceedings, as well as state security, trade secrets and the public order.

1.4 Legal Representation in Court

A legal representative must be a licensed attorney in order to appear in court. However, this requirement does not apply to cases of representation before the Administrative Court and the Constitutional Court (where the process is inquisitorial). Exceptions are also made for in-house counsel and those persons representing their family members or entities affiliated therewith.

Foreign lawyers can appear before Armenian courts, which does sometimes happen during complex criminal law litigations relating to human rights, provided they have a licence issued by the relevant authority in their own countries and further accreditation from the RA Chamber of Advocates (the entity that issues licences in Armenia). In this case, the lawyer either should know the Armenian language or the language of litigation in Armenia – otherwise, they must be guided by an Armenian attorney who accompanies them to each hearing.

2. Litigation Funding

2.1 Third-Party Litigation Funding

No restrictions on third-party funding exist in Armenian legislation; therefore, it is not prohibited. However, it is practised very rarely – at least, information has only been made available to the public in a few benchmark cases concerning human rights issues – and a funder has never been held responsible for compensating judicial costs in Armenia. There is no legislative or practical basis for this either.

So far, no practical issues (including abuse of the right to litigate) have been recorded in Armenia. Hence third-party funding is not yet a practical issue in Armenia – not least because the courts are very conservative in granting judicial costs to the winning party.

Furthermore, although not traditionally classed as third-party funding, success-fee arrangements are not prohibited under Armenian law either and are widely used by legal practitioners (depending on the nature of the case).

2.2 Third-Party Funding: Lawsuits

As third-party funding is not prohibited, the scope of lawsuits is not limited either.

2.3 Third-Party Funding for Plaintiff and Defendant

There are no limitations on third-party funding for plaintiffs or defendants.

2.4 Minimum and Maximum Amounts of Third-Party Funding

There are no restrictions on the amount of funding that a third party can provide.

2.5 Types of Costs Considered Under Third-Party Funding

In the absence of any limitations under Armenian legislation, a third-party funder can provide funding for all the costs of conducting a claim and its enforcement. Depending on the public interest, a third party may also wish to fund publicity in support of the case and further dissemination of the results (eg, in strategic litigation cases).

The party against whom a case has been solved shall reimburse the (reasonable) costs incurred in relation to witnesses, experts, specialists and interpreters/translators – as well as the judicial costs incurred by the court and the persons par-

ticipating in the case – to the extent necessary for effective exercise of the right to a fair trial. The courts are always very conservative when determining the reasonableness of the amounts.

2.6 Contingency Fees

The Law on Advocacy, which regulates the activities of attorneys in Armenia, provides that attorneys' fees can be freely determined in the contract between the attorney and the client. Similar arrangements are defined under the code of ethics for attorneys. Therefore, the law does not prohibit contingency/success fees – nor other similar arrangements that are used for certain types of cases (eg, debt recovery) – either separately or as part of other types of arrangements.

2.7 Time Limit for Obtaining Third-Party Funding

There are no time limits for raising litigation funding.

3. Initiating a Lawsuit

3.1 Rules on Pre-action Conduct

Where a law or an agreement provides for an extrajudicial procedure to settle a dispute between the parties prior to applying to court, the dispute may be submitted for examination to the court 30 days after the date of taking action – unless another procedure or time limit is prescribed by the law or agreement. If these requirements are not met, the court shall return the claim.

No specific process for responding to the pre-action letters or otherwise engaging in settlement processes has been determined.

Also, pre-action activities are not obligatory. Thus, preliminary actions are not necessary for most claims, so – if there is no contractual requirement in this regard – the party may directly submit their claim to court.

3.2 Statutes of Limitations

The general statute of limitations for civil cases is three years, which is calculated from the moment the claimant becomes aware or should have become aware of the violation of their right.

Within certain types of claims and issues, special (ie, longer or shorter) limitation periods may be applicable. The limitation period for a claim for damages caused as a consequence of corrupt practice during the conclusion or execution of a contract, for example, is limited to ten years from the moment the infringement took place. Claims in relation to the right of ownership of real estate can be brought to court within a ten-year period.

However, shorter periods also are prescribed by law – for example, the legality of dismissal from work can be disputed within two months of the relevant order being presented to the employee.

3.3 Jurisdictional Requirements for a Defendant

The general rule is that the claims are filed at the defendant's location (for legal entities) or place of residence (for individuals). Furthermore, the law indicates mandatory jurisdictional matters, particularly, the courts of RA have exclusive jurisdiction in cases that relate to:

- disputes concerning the title over real estate that is located on Armenian territory;
- the adoption of Armenian citizens;
- disputes over transportation agreements, where the transporters are located in Armenia; and

- the divorce of Armenian citizens (or foreign citizens or persons with no citizenship, if both parties reside in Armenia).

Further, the Civil Procedure Code tackles the jurisdictional issues related to cases involving foreign persons. Besides the general rule regarding residency in Armenia (of the respondent), the courts of Armenia may also hear cases involving foreign persons and entities when:

- there is such agreement on jurisdiction between an Armenian citizen or an Armenian legal entity and a foreign person;
- the respondent within a proprietary dispute has property in Armenia;
- at least one of the spouses in a divorce-related case is an Armenian citizen;
- the damage in the case of harm to health, honour, dignity and business reputation (or death of the breadwinner) is caused on Armenian territory;
- the action or other circumstance that served as the basis for submitting a compensation claim for damage caused to property occurred on Armenian territory;
- a branch or representative office of a foreign person is located on Armenian territory;
- the claim arises from a contract of which the execution took place or should have taken place on Armenian territory;
- the claim results from unjustified enrichment that took place on Armenian territory; or
- one of the persons is an Armenian citizen and the foreign person participating in the case states their acceptance of the jurisdiction of the Armenian courts or submits relevant petitions aimed at exercising jurisdiction.

Outside of the mandatory regulations, the parties also may decide on the jurisdiction of a specific court in their agreement.

3.4 Initial Complaint

Both the Civil Procedure Code and the Administrative Procedure Code have requirements concerning what the claim or complaint shall contain. In addition to the requisites and contact details of parties and other technical information, the complaint shall contain all the factual and legal arguments of the claimant. Further, the claimants are allowed to amend the claim (both the arguments and the request submitted) until the court reaches a decision on the distribution of burden of proof, provided it doesn't change the nature of claim. In the latter case, the party would be required to file a new complaint/suit.

3.5 Rules of Service

As a rule, the claimant is obliged to send the claim and the attached documents to the defendant. It must be noted, however, that the claimant must send the documents to the address of residence or location of the defendant. In order to submit the claim, the claimant is not obliged to prove that the defendant has indeed received the claim. The court shall notify its decisions regarding the claim (including decisions on accepting into jurisdiction, decisions on appointing judicial hearings, etc) as the case subsequently develops.

Furthermore, the claimant is not obliged to send the claim to the defendant if:

- the claimant has filed a motion for an interim measure; or
- the claimant has filed a motion to preserve the evidence.

In such cases, once the decision on the claimant's motion has been adopted and implemented (or rejected and appealed), the court itself (and not the claimant) is obliged to send the claim and the attached documents to the defendant.

3.6 Failure to Respond

There is no special regulation for situations where the defendant does not respond, objects, or does not show up for oral arguments. Default judgments are not practised in Armenia – they were foreseen in the previous draft of the Civil Procedure Code, but not applied in practice. Since the new edition of Civil Procedure Code came into force in 2018, the legislation does not foresee such possibility either.

However, the court must ensure that:

- the defendant receives notice of the hearings; or
- the information is published in the official manner prescribed by law.

3.7 Representative or Collective Actions

Armenian legislation defines the criteria for so-called collective suits. Specifically, whenever the claim is submitted by at least 20 persons, the case is classed as a collective suit. Furthermore, the claim is submitted jointly by at least 20 co-plaintiffs and initiated against the same respondent (co-respondents) in a collective suit, and the subject matter and the grounds of the claim are the same.

However, this is not a class action, as the specific claimants are always identified and the case is not about the rights of other parties (ie, a class). Although the law does not indicate a specific opt-in or opt-out mechanism, the regulations suggest that such claims are submitted based on a Power of Attorney signed by all co-plaintiffs; therefore, the presumed mechanism is opt-in.

It is of further note that representatives in such collective suits can not only be one or more of the plaintiffs, but also NGOs concerned with the protection of rights in a specific field.

The co-plaintiffs also have rights relating to the termination of rights of representation (which is not opt-out, as their case shall still be heard). In any case, when one of the plaintiffs prefers to terminate the rights of the representative or replace them, the court shall separate the claim with respect to this claimant and hear it within a separate case (with prejudice).

3.8 Requirements for Cost Estimate

There are no requirements to provide clients with a cost estimate for the potential litigation at the outset. Many clients may still request such, but this is from more of a commercial than legislative perspective.

4. Pre-trial Proceedings

4.1 Interim Applications/Motions

It is possible for parties to make an interim application, either along with the claim or separately at a later stage. The court of first instance will grant such requests if it finds that:

- failure to grant the interim measure may render enforcement of final judgment difficult or impossible;
- the legal (factual) status of the property under dispute might be changed; or
- the applicant may suffer essential damage.

The remedies provided by the courts include:

- imposing attachment on the property of the respondent for the amount of the cost of the claim;
- prohibiting certain actions of the respondent;

- prohibiting certain actions of other people in relation to the object of the dispute;
- obliging the respondent or other persons to perform certain actions relating to the subject of the dispute;
- preventing the sale of the property, where a claim has been filed to release the property from attachment;
- imposing attachment on the property that belongs to the plaintiff and is at the disposal of the respondent; and
- other measures as prescribed by law.

4.2 Early Judgment Applications

Generally, the court does not make any final judgment before a trial or substantive hearing of the claim. Armenian legislation does not recognise the concept of "bifurcation" or the adoption of early judgment as a general rule. In practice, there is one exception – that is, the motion to apply the statute of limitations. If such motion is presented, the court will examine it separately and, if granted, the case is dismissed based on expiration of the statute of limitations.

If the parties agree to settle the case amicably, then they may apply to court at any stage to confirm the settlement and discontinue the proceedings, which occurs based on court judgment. Also, at any stage of the trial, the court can dismiss the case owing to various procedural shortcomings. The court must dismiss the case if the court lacks jurisdiction, for example, or if the standing that the party was initially understood to have turns out to be absent.

4.3 Dispositive Motions

There are two kinds of motions that can bring the case to an end without review of the merits:

- the motion to withdraw the claim or application (when the lawsuit has been filed by a person lacking legal capacity); and
- the motion to dismiss the case (when the court lacks jurisdiction over the subject matter).

4.4 Requirements for Interested Parties to Join a Lawsuit

Interested parties may join a lawsuit either by bringing claims of their own or by joining other parties' claims. Joinder is permitted if the party has a legitimate interest and proves their connection to the original claim. Also, if the party believes the claim is related to their rights, they may apply to the court and request to be named as a third party to the hearing; if confirmed by the court, they'll join the proceedings.

4.5 Applications for Security for Defendant's Costs

Application for security for the defendant's costs is not foreseen by Armenian legislation. There is a limited option to claim for security for possible damages should the court order security measures at the request of the claimant. In this case, the defendant may ask the court to grant a counter security measure to cover their possible damages if the claim is not satisfied. However, this covers damages caused by the security measures – such as the freezing of assets or not being allowed to sell the object of the dispute – rather than the legal costs. If the court grants counter security measures, the plaintiff must pay the money within three days of receiving the court's decision or else the initial security/interim measure will be terminated at the defendant's request.

4.6 Costs of Interim Applications/ Motions

There are no costs with regard to interim measures in Armenia.

4.7 Application/Motion Timeframe

The court examines the motion the day after receiving it. If the motion has been included in the claim, the court grants or rejects such request within seven days of receiving the claim (within the same timeframe as the decision on whether to accept the security measure). No shorter periods are provided by law.

5. Discovery

5.1 Discovery and Civil Cases

To begin preparing for the trial, the parties take steps to obtain evidence; however, they are under no obligation to disclose it to the other party, unlike when a lawsuit has already been filed and a case is pending. Such evidence includes expert opinions and legal requests to state bodies and persons.

Subsequently, within the case, the parties are entitled to file motions on provision of evidence from the other party or third parties or to call witnesses. The respective applicant shall justify such motion and show the exact material facts of the case that will be proven if the motion is satisfied. Once the court has decided on the motion, the person that holds such evidence shall provide it or the respective witness shall appear before the court to provide a witness statement. In case of failure to comply with the court's decision, the decision may be enforced by the authorities responsible for the enforcement of judicial acts.

There is also a general rule that the parties in possession of the evidence must keep the evidence and not destroy it. Otherwise, the court may shift burden of proof for the facts that would have been confirmed by those pieces of evidence.

There are two types of motions:

- a motion to preserve evidence, which is heard ex parte and is implemented without the other party being notified (in case there is risk that the latter may destroy the evidence); and
- a motion to obtain evidence, which is heard in the presence of the parties in a court hearing.

The decision of the court granting either of the motions described above shall be enforced via the Compulsory Enforcement Service of the Ministry of Justice of Armenia.

5.2 Discovery and Third Parties

Under Armenian legislation, evidence may be obtained from third parties (eg, state bodies, experts, specialists and notaries). The respective legislation on freedom of information obliges state authorities to disclose the requested information, unless such information is deemed as secrecy protected under the law.

Further, during the case the court may also hear motions to obtain evidence from third parties in the manner prescribed under **5.1 Discovery and Civil Cases**.

5.3 Discovery in This Jurisdiction

Generally, there are no specific regulations governing the mandatory enforced disclosure of specific documents. However, as previously mentioned, if the party in possession of the evidence does not disclose it, the other party has

the right to file a motion to obtain evidence and thereby disclose the evidence through the court.

Furthermore, the parties are prohibited from destroying or concealing any evidence or impeding in any other way the acquisition or examination of such evidence. Whenever there are sufficient grounds to believe that the respective party has breached their obligation on due maintenance of evidence, they shall bear the negative consequences of being unable to prove the respective fact owing to destruction of evidence.

There are also specific regulations in relation to the administrative courts. When appealing the decisions of administrative bodies, the case will be heard primarily based on the evidence collected by the administrative body during the proceedings. The Administrative Procedure Code foresees a special regulation that requires the court to request the materials for an administrative case, which the administrative body is then obliged to present, at the same time as accepting the case.

There are similar regulations for some special proceedings in the courts of general jurisdiction. When the court accepts the claim in cases appealing the legality of a dismissal, for example, the employer is requested to present the bases for dismissal within a two-week period. No further evidence can be presented at a later stage, unless a specific argument is made by the claimant outside of a general scope.

5.4 Alternatives to Discovery Mechanisms

Generally, the law does define certain mechanisms for obtaining evidence both outside the court and within the judicial proceedings. Furthermore, the law entitles the interested party to have the evidence preserved by a notary before the respective claim is submitted to the court. Specifically, whenever there is evidence that may be destroyed before the claim is submitted, the claimant may ask the notary to preserve such evidence – ie, confirm the content and nature thereof. (A widely used example would be the information published on social media.) This may also be used in discovery before the court.

5.5 Legal Privilege

Armenian legislation does recognise attorney–client privilege. The Law on Advocacy, in particular, defines and protects attorney–client privilege (using terminology that translates literally to "attorney confidentiality").

Contained within the scope of attorney-client privilege are the information and evidence that the client has provided to the attorney, the content and nature of the consultancy provided by the attorney, as well as the information and evidence (materials, carriers) that the attorney has acquired while providing services. The obligation not to disclose the confidential information applies not only to attorneys, but also to any other employees who work for an attorney.

An attorney is entitled to disclose such confidential information in extremely rare cases where:

- they have the consent of the client;
- it is necessary to disclose within a dispute between the client and the attorney to justify the arguments brought before the court or before the attorney's ethics committee;
- it is necessary in accordance with Armenian AML regulations; or
- there are sufficient grounds to believe that a crime defined as serious or particularly serious by the Criminal Code of Armenia is being prepared.

The obligations relating to attorney-client privilege are not constrained by time and, as such, also apply to persons whose attorney's licence has been suspended or terminated.

Furthermore, these regulations are not applicable to in-house counsel, unless they are also licensed attorneys. (For the sake of clarity, it is not mandatory to have a licence in order to act as an in-house counsel.) Therefore, the in-house counsel do not have the rights and obligations related to attorney–client privilege. However, the information may be protected under trade secret regulations and the non-disclosure obligations of the counsel within their agreements – as well as the right not to testify against yourself (in some specific cases).

It must further be noted that, according to the Civl Procedure Code, the following persons cannot be called as witnesses:

- the representative (with regard to those facts of the case that they have become aware of in the course of providing legal services to their client, unless agreed otherwise between the representative and their client); and
- attorneys (for the purpose of revealing information that they may have become aware of during legal consultation, unless agreed otherwise between the attorney and their client).

It is worth mentioning that the first point does not apply exclusively to licensed attorneys; therefore, the privilege of not being called as a witness also applies to in-house counsels.

5.6 Rules Disallowing Disclosure of a Document

The Civil Procedure Code defines certain persons who cannot be called as a witness. However, there is no such specific scope when it comes to the documents or hard evidence that cannot be disclosed. Yet, in case of documents containing particular information (eg, state, trade or banking secrets), the court may decide to consider the evidence or hear the case entirely in a closed trial. The interested party may also require a closed trial.

In that case, the persons participating in the case are warned about the confidentiality of the documents and their criminal liability for publishing them.

6. Injunctive Relief

6.1 Circumstances of Injunctive Relief

A claimant can request a decision on injunctive relief from the court at any stage of the proceedings or, in some limited cases, when there is no private action filed at all (as a preliminary security measure).

A preliminary security measure decision can be rendered where there is a concern that:

- a change in the current circumstances could make it significantly difficult (or completely impossible) to enforce a right; or
- a delay could cause significant damage to one of the parties.

If there is no private action filed, the party must prove the impossibility of filing a lawsuit at that time. (This is usually because a contract mandates ADR before applying to court). In this case, there is no need to notify the other parties of the application.

The means of relief provided by the Civil Procedure Code are listed above (see **4.1 Interim Applications/Motions**).

6.2 Arrangements for Obtaining Urgent Injunctive Relief

If the application for urgent injunctive relief is submitted together with a claim, the court will examine it within seven working days of receipt; otherwise, injunctive relief can be obtained the next working day.

There are no special rules concerning out-of-hours judges within civil proceedings. The process is not applied, and it sometimes causes practical issues.

6.3 Availability of Injunctive Relief on an Ex Parte Basis

Injunctive relief is generally issued by the court on an ex parte basis. However, depending on the application of the respondent, the court can remove injunctive relief within 15 days of application. In such case, both plaintiff and respondent participate in court hearings.

6.4 Liability for Damages for the Applicant

In cases where the party succeeds in obtaining an injunction but fails at the trial of the substantive case, the other party participating in the case or another person against whom an interim measure has been applied has the right to file a lawsuit against the claimant demanding compensation for any damages.

A defendant can apply for an order that the plaintiff must pay a sum of money as security for the defendant's possible damages. The plaintiff should pay the money within three days of receiving the court's decision or else the court can terminate the interim measure upon motion of the defendant.

6.5 Respondent's Worldwide Assets and Injunctive Relief

Interim relief granted by the Armenian courts is normally limited in its effects to Armenia. There is no option to freeze respondent's assets in foreign countries; only assets in Armenia can be frozen. However, depending on international treaties and specific legislation in specific countries, the interim decisions of the Armenian courts may also be recognised and applied in other countries (see **9. Damages and Judgment**).

6.6 Third Parties and Injunctive Relief

Under Armenian law, injunctive relief may also be obtained against third parties. The court can forbid an authorised body (State Committee of the Real Property Cadastre of the Republic of Armenia), for example, to register the new owner's rights to the property that is subject to dispute.

6.7 Consequences of a Respondent's Non-compliance

Under Armenian law, a respondent can hardly fail to comply with the terms of injunction, as the injunctive relief order is subject to immediate enforcement by the Compulsory Enforcement Service of the Ministry of Justice. In rare cases where the injunctive relief forbids specific action by the party, the Compulsory Enforcement Service will notify the party and – if breached – it may cause administrative and criminal liability (depending on the particularities of the situation).

7. Trials and Hearings

7.1 Trial Proceedings

Legal process in the courts of first instance is conducted both through written submissions and oral argument, including witness/expert examination at hearings. Specifically, the parties are granted the right to:

- present their claim and argument;
- provide oral and written motions;
- request evidence;
- offer their position on the manner in which burden of proof must be distributed;
- provide the suggested draft of the final judgment; and
- ask the other parties questions, etc.

Furthermore, the hearings before the appellate court and the Court of Cassation are mainly considered through written proceedings; however, the parties still may be given the chance to make their case via oral hearings if this is necessary for effective resolution of the case.

7.2 Case Management Hearings

Armenian legislation does not specifically regulate the hearings related to motions and applications. The motions brought by the parties are heard within the standard hearings, and all parties involved are invited to provide oral and/or written positions on the motions made (unless the law specifically limits the right of a party to learn about the motion).

Furthermore, Armenian courts do not conduct case management hearings. The cases are heard in the manner and order prescribed by the law and the dates of hearings are fixed by the judge, based on the calendar of their own cases. However, if possible, in practice the judge may discuss the date and time of the following hearing with the parties in order to ensure that they and/or their representatives will be able to attend.

7.3 Jury Trials in Civil Cases

Armenian law does not permit jury trials in civil cases.

7.4 Rules That Govern Admission of Evidence

The most important rules regarding the admission of evidence at a trial are as follows:

- the evidence must be provided to the other party in advance before it is provided to the court;
- facts that must be confirmed only by certain evidence according to law or regulatory legal acts may not be confirmed by other evidence (eg, facts to be established via application of special knowledge can be proven only via forensic examination report and not by other types of evidence); and
- the use of evidence that has been obtained in violation of fundamental rights or undermines the right to a fair trial is prohibited.

In addition, specific proceedings may have limitations as to the time and form of obtaining evidence. See **5.3 Discovery in This Jurisdiction** for examples.

7.5 Expert Testimony

The Civil Procedure Code provides both for cases in which an expert examination can be appointed by the court during the hearing and where the parties may also provide a written expert opinion. Such opinions are equal in their evidentiary power to the expert examination appointed by the court of first instance, provided that the expert who has provided the opinion appears before the court and confirms their opinion in writing (having been notified about the criminal liability arising from provision of evidently false opinion).

Further, the court may also appoint expert examination on particular matters that require scientific, technical or other specific knowledge of different fields. Such examination may be

appointed both by the court on their own initiative or by the motion of either party. The law outlines very detailed processes for:

- how such examination must be conducted;
- how the parties should engage with and assist the expert;
- how a secondary or supplementary examination may be requested; and
- further elements of the expert opinion.

7.6 Extent to Which Hearings Are Open to the Public

All court hearings are public, and any person may attend them. At the same time, in certain cases the matter may be heard in closed hearings (see **1.3 Court Filings and Proceedings**). Further, any third person may find details of the case and most of the decisions of the court published on the official website of the judicial department. Copies of files from cases that have been already resolved may be obtained by any person – unless the case has been heard in closed hearings, of course.

In the meantime, the final concluding part of the judgment – the decision – will always be public.

7.7 Level of Intervention by a Judge

The judge presides over the court session, leading it by rejecting everything irrelevant to the case and taking measures necessary to maintain proper order in the courtroom. Court instructions are imperative for persons participating in the case and other persons present at the session.

In civil cases, a court renders final and interim judicial acts. There are two types of interim judicial acts: separate acts and protocol decisions. The protocol decision is rendered orally during a court session and the separate act is rendered in writing within three to 15 days. Final judgments are rendered within 15 days of concluding the examination of the case.

In practice, judges in courts of general jurisdiction are not very active in civil and criminal cases. Administrative court judges are more active, however – their tasks include requesting additional evidence if they believe it is necessary to solve the case.

7.8 General Timeframes for Proceedings

Depending on the complexity of the case, court cases can be examined for anything from nine months (simple divorce cases or confiscation proceedings for up to AMD2 million) to 3-4 years (contract disputes). However, on average, cases are examined for between eighteen months and two years. These timeframes only cover the trial in the court of first instance; depending on appeals and reviews, the duration may increase substantially.

8. Settlement

8.1 Court Approval

Parties are free to settle a lawsuit at any stage of trial. Parties may choose to settle the dispute without court approval (ie, the claimant will eventually withdraw the claim); however, this may cause issues for future payments or actions if the settlement is extended in time. Alternatively, the settlement can be approved by a court and, in this case, the reasoning part of the judgment will be replaced with the terms of the settlement. However, the court will not approve the settlement if:

- its terms contradict the law or other legal acts;
- it infringes the rights and legitimate interests of others;

- its terms are vague (the obligations of the parties in settlement must be independent); and
- it contains concurrent conditions.

8.2 Settlement of Lawsuits and Confidentiality

The settlement agreement of a lawsuit can remain confidential if the case has been heard in a closed court. As an alternative solution, the settlement can be reached without a court decision if parties undertake certain actions and the claimant withdraws the claim, or if the respondent accepts the claim – in which case, additional agreements by the parties will stay confidential as such.

8.3 Enforcement of Settlement Agreements

If the parties do not follow the terms of the settlement agreement approved by the court, the settlement will be enforced by the Compulsory Enforcement Service of the Ministry of Justice following a warrant of execution issued by the court. Technically, the court-approved settlement agreement is a court judgment.

8.4 Setting Aside Settlement Agreements

A settlement that has been approved by a court cannot be set aside unless one of the parties successfully appeals against the judgment based on a procedural error. (This is extremely rare; in fact, the authors have never came across such a situation in practice.)

Out-of-court settlement is binding on the parties in the same way as any other agreement or contract. If its content is disputed, this will be heard under the general regulations of contract law. It can be "set aside" (ie, declared null and void) in the same way as any other contract – for example, if the agreement has been reached under duress or misrepresentation.

9. Damages and Judgment

9.1 Awards Available to the Successful Litigant

Armenian legislation recognises practically all commonly used remedies – specific performance, compensation, calculation of penalties, restitution, declaratory relief and others.

The most common form of award to a successful party in litigation proceedings is monetary compensation (ie, recovery of amount due and penalties calculated towards the defaulted amount).

There are no particular rules regarding when specific performance can be requested; however, the courts would grant specific performance if it is proven during the court hearing that performance is possible (eg, that the object is in possession of the defendant). Damages are typically available in cases of breach of contract and tort. Compensation is also available in the case of losses caused by tort-like actions.

9.2 Rules Regarding Damages

Punitive damages are not prohibited by law as such. However, there some limitations with regard to penalties. There are no rules limiting maximum damages – the damage is compensated to the extent that it was caused, and the amount of damage is proven through evidence during the trial of the case.

As regards penalties, the Civil Code of the Republic of Armenia (the "Civil Code") requires that the annual penalty towards defaulted amount is no more than four times the interest rate of Central Bank of Armenia (currently 12%) per annum – therefore, penalties of more than 48% annually shall be declared null and void by the court even without motion to do so by defendant.

9.3 Pre- and Post-judgment Interest

If the obligation in question involves payment of money, a default on such an obligation triggers accrual of interest. Interest accrues based on Article 411 of the Civil Code and its amount is defined by the key rate of the Central Bank of Armenia. As mentioned in **9.2 Rules Regarding Damages**, this rate is 12%.

Interest accrues both during litigation and after the judgment in the case is delivered. The legislation sets no limitations for the maximum amount of interest accrued. However, such limitations may be imposed in the contract, and the default interest rate may also be amended contractually. The calculation of interest, where requested by the claimant, is one of the issues that the court will address in their judgment. If interest is neither requested by the claimant nor granted by the court, then the interest will not be calculated automatically.

9.4 Enforcement Mechanisms of a Domestic Judgment

If the judicial act in force is not executed voluntarily by the losing party, the winning party has the right to apply to the court within a year of the domestic judgment entering into legal force and ask the court to send the warrant of execution for enforcement. Once the warrant of execution has been granted, an enforcement officer initiates enforcement proceedings before undertaking the following measures to fulfil the warrant's requirements:

- searches for the debtor's assets;
- attaches (seizes) and confiscates assets;
- applies a ban on the debtor travelling abroad; and
- compulsory set-off of the amounts claimed from the debtor.

The above-mentioned procedure is governed by the general rules of judgment enforcement prescribed by the Law on Judicial Acts Enforcement.

9.5 Enforcement of a Judgment From a Foreign Country

To have a foreign judgment recognised and enforced, the interested party must file a respective application with a court. This application must be filed within three years of the foreign judgment entering into full force and effect. Armenian courts can recognise and enforce decisions on interim measures, as well as final decisions such as:

- conciliation agreements approved by a foreign court;
- judicial orders and orders on payment; and
- criminal judgments with regard to criminal cases involving compensation for damage incurred as a consequence of crime.

Recognition is either based on international treaty or on the principle of reciprocity, in which reciprocity is assumed unless proven otherwise. Once the application is granted, the execution of a foreign judicial act involves exactly the same process as described in **9.4 Enforcement Mechanisms of a Domestic Judgment** for enforcement of a domestic judicial act.

10. Appeal

10.1 Levels of Appeal or Review to a Litigation

The trial court judgment can be appealed at the Armenian appellate court. This decision is then subject to a final appeal before the Court of Cassation.

10.2 Rules Concerning Appeals of Judgments

An appeal can be filed in one or more of the following circumstances:

- substantive or procedural law has been violated or improperly applied; and/or
- newly revealed or new circumstances are available.

The norms of substantive law are considered violated or incorrectly applied if the court:

- has not applied the law or the international treaty or other legal act of the RA that it should have applied;
- has applied the law or the international treaty or other legal act of the RA when it should not have been applied; or
- misinterprets the law or the international treaty or other legal act of the RA.

Violation or misuse of the norm of substantive law is a ground for reversal of the judgment if it has led to a wrong decision in the case.

Violation or misuse of the rules of procedural law is a ground for overturning a judicial act if it has led or could have led to a wrong decision in the case. In fact, the correct judicial act of a court cannot be overturned for formal reasons alone. Furthermore, if the court of appeal finds that – based on the evidence examined in the court of first instance – a different conclusion as to the existence or absence of fact should have been established, the decision at first instance can also be overturned. However, no trial and full examination of the evidence in the court of appeal is allowed.

A cassation appeal is accepted for consideration if the Court of Cassation considers that:

- the Court of Cassation's decision on the issue raised in the appeal may be essential for the uniform application of the law and other regulatory legal acts; or
- it is obvious that there is a fundamental violation of human rights and freedoms.

10.3 Procedure for Taking an Appeal

Final decisions of the courts of first instance can be appealed to the Civil Court of Appeal within a month of the decisions were announced. (For appeal of interim decisions and specific cases the timeframe may be shorter.) In turn, the final decisions of the appellate court can be appealed before the Court of Cassation within a month of the date decisions were announced. The same terms apply to the Administrative Court as well.

Those who were not participating in the proceedings but whose rights and interests are affected by the court's decision can appeal against it within a three-month period from the moment they knew or should have known about that decision - with the exception of those that were notified about the lawsuit but didn't want to participate in it.

If newly revealed or new circumstances are available an appeal they can be filed within the period of three months. The calculation of the three-month period for each case starts from a different point.

Failure to meet the deadline may be recognised as legitimate and appeals presented later may be still granted and heard if the term is missed for objective reasons, such as:

- the court was delayed in handing over the full text of the decision;
- the person was drafted for military service; or

- the person was hospitalised or otherwise incapacitated and therefore not able to deal with the appeal.

10.4 Issues Considered by the Appeal Court at an Appeal

An appeal is not a retrial or a new trial of the case. As stated in **1.2 Court System**, under Armenian law, the appellate court system consists of two tiers:

- the Court of Appeal of the Republic of Armenia (comprising the Civil/Criminal/Administrative Courts of Appeal); and
- the Court of Cassation of the Republic of Armenia.

The court of appeal determines whether the errors in the trial's procedure or errors in the judge's interpretation of the law were harmless. If so, the court of appeal does not reverse the judgment. Otherwise, the judgment will be reversed, and the appellate court will either send the case back to a lower court for new examination (in full or with limited scope) or change the grounds of the judgment.

As mentioned in **10.2 Rules Concerning Appeals of Judgments**, the Court of Cassation takes an appeal into consideration if the Court of Cassation's decision on the issue raised in the appeal may be essential for the uniform application of the law and other regulatory legal acts or it is obvious that there is a fundamental violation of human rights and freedoms.

The court of appeal does not usually consider new evidence except where the appellant substantiates that the new evidence has not been submitted to the court of first instance owing to circumstances beyond his or her control. In that case, the court of appeal reverses the final decision of the court of first instance and sends the case for a new trial if the evidence is of essential significance for the case. The rule is the same if an appeal contains points that were not explored at first instance – that is, parties may not bring new arguments to the court of appeal unless they derive from the decision of the court itself and they could not have been brought up at the court of first instance.

The appeal process is somewhat different in the Administrative Court. As the process is inquisitorial, new evidence is allowed at any stage of the proceedings (although if the party submits the evidence at a later stage, they will not be granted judicial costs). Therefore, if new evidence is presented at a court of appeal or the Court of Cassation, the latter shall examine the new evidence and – where necessary – amend the decision accordingly. Similar but milder regulations are available for criminal cases, based on the presumption of innocence and international standards of fair trial and right of appeal for criminal charges.

10.5 Court-Imposed Conditions on Granting an Appeal

Appeal courts do not grant an appeal if the requirements for the form and content of the appeal (or documents attached to the appeal) are not met – for example, if a document proving the payment of state duty has not been attached to the appeal. However, the requirements are set in law, and the court is not allowed to impose new conditions as such.

The grounds on which the Court of Cassation does not grant an appeal are first discussed in **10.2 Rules Concerning Appeals of Judgments**.

10.6 Powers of the Appellate Court After an Appeal Hearing

After hearing an appeal, an appellate court can affirm, reverse or modify the judgment. Appellate courts also have the power to remand cases for further proceedings. It is important to note that for most of the civil cases and interim decisions appeals the process is written (ie, no hearing takes place). However, for administrative and criminal cases, hearings are appointed in a similar form to cassation – that is, a judge reports the case and a panel asks the parties any questions.

11. Costs

11.1 Responsibility for Paying the Costs of Litigation

The costs and expenses must be compensated by the losing party in a reasonable amount determined by the court (prior to which each party covers their costs). This rule also applies to third parties with a claim on the subject of the dispute. Third parties that do not have a claim on the subject of the dispute recover the expenses of the judicial actions they made.

The costs of any judicial action recognised by the court as unnecessary for the examination of the claim are carried by the party that incurred them. These costs include state duty and other expenses related to case examination, such as:

- costs of expertise and translation;
- the sum of money paid to a witness, expert, specialist or interpreter; and
- reasonable attorney fees.

In practice, courts allow for partial recovery of the judicial costs (state duty and forensic expert costs are usually covered in full, whereas attorney fees are decreased). The courts usually find reasonable expenses to be rather low compared to the actual costs of the parties, especially in complicated and resource-requiring litigations.

11.2 Factors Considered When Awarding Costs

When determining the reasonableness of the attorney fees, the court should take into consideration:

- the complicity of the case;
- the need for additional research;
- the number of hearings;
- the actions of the party and the other party (eg, in delaying the processes);
- the quality of submissions;
- the presented contract for services;
- invoices and payments proofs (if already made); and
- such submissions from the other party (because, if both parties' requests are in parity, the chances are high that a more substantial portion of the costs will be recovered).

In practice, the court also takes into account common knowledge of market median prices and a shared understanding of fair and reasonable costs for any given case.

11.3 Interest Awarded on Costs

There is no interest awarded on costs.

12. Alternative Dispute Resolution (ADR)

12.1 Views of ADR Within the Country

Armenia recognises ADR mechanisms in line with the traditional dispute resolution mechanisms (courts). The Law on Commercial Arbitration, together with the Civil Procedure Code, regulate arbitration in Armenia. The law gener-

ally corresponds to the UNCITRAL Model Law, according to which several permanent arbitration institutions operate in Armenia.

Armenian legislation also allows the operation of ad hoc arbitration tribunals. Armenia has acceded to the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention") since 1997. Thus, Armenia recognises and enforces the decisions of arbitral tribunals from other states party to the New York Convention, and vice versa.

Mediation has been used as another formalised mechanism for dispute resolution in Armenia since 2014. Armenia signed the United Nations Convention on International Settlement Agreements resulting from Mediation ("Singapore Mediation Convention") in 2019.

Furthermore, the Civil Procedure Code contains provisions that exclude a dispute from being submitted to court if there is an agreement to resolve the dispute out of court (via negotiations, mediation, arbitration, etc) and such an opportunity has not yet expired – for example, the deadline for negotiations has not yet expired or the arbitration agreement is still in force. Courts will not accept into proceedings a lawsuit filed in violation of such a procedure, and the filed lawsuit will be dismissed. The legislation also provides regulations on:

- judicial support for arbitration proceedings initiated via the securing of claims (including initial securing); and
- the recognition and enforcement of the arbitral awards.

Overall, Armenian legislation favours the application and development of ADR mechanisms.

In addition, separate legislative mechanisms are also enacted in particular types of disputes. Consumer complaints against banks and insurance companies, for example, can be brought to the Office of the Financial System Mediator. (This is not a classical mediation, as they are entitled to have binding decision for disputes of up to a certain amount.)

12.2 ADR Within the Legal System

Arbitral awards and the Office of the Financial System Mediator's are enforceable by courts of first instance of general jurisdiction.

An application for enforcement of an arbitral award shall be examined and decided on within a month of accepting the application for proceedings, without trial.

The court of first instance of general jurisdiction examines the application on issuing a warrant of execution to enforce the decision of the Office of the Financial System Mediator within a month of accepting the application for proceedings, without trial.

There are no sanctions for refusing ADR. (Technically, if an ADR mechanism is foreseen by contract, the sanction will be dismissal of claim at the request of the other party should they wish to apply for ADR mechanism.) The government is now considering making mediation compulsory in some types of cases – for example, labour and family law disputes are now being considered.

12.3 ADR Institutions

There are several arbitration institutions, including one at the Chamber of Commerce and Industry, one at the Union of Banks of Armenia, and several independent ones. Unfortunately, several "pocket" arbitration institutions have developed recently – this issue will most likely be discussed

by courts or within legislation during the next few years.

In addition, the Arbitrators' Association of Armenia and several other NGOs have been organised by private parties to develop ADR through providing trainings, developing standard rules, etc.

For formalised mediation, the Ministry of Justice runs the list of licensed mediators, all of which are united within the Chamber of Mediators. As non-formal mediation continues to evolve, there is still room to improve the knowledge and institutional capacity of the Chamber (as with arbitration); however, there is constant development in this respect.

13. Arbitration

13.1 Laws Regarding the Conduct of Arbitration

The conduct of arbitration in Armenia is regulated by the Law on Commercial Arbitration and the Civil Procedure Code.

13.2 Subject Matters Not Referred to Arbitration

The legislator assigns to arbitration all disputes of a commercial nature that arise from substantive (civil) relations. At the same time, the settlement of disputes of a non-commercial nature by arbitration is not excluded in certain cases provided for by law - for example, labour cases and cases concerning consumer finance (albeit both with some limitations). All other cases will not be dealt with by arbitration - or, at least, any such decisions will not be enforced.

13.3 Circumstances to Challenge an Arbitral Award

In Armenia the only way to challenge an arbitration award in court is by applying for it to be set aside on grounds relating to:

- the incompetence of the party;
- the invalidity of the arbitration agreement;
- the proper notification of the party about the arbitration or appointment of an arbitrator;
- the party's lack of opportunity to present its case (for any other reason);
- the compliance of the dispute with the arbitration agreement;
- the terms or scope of the arbitration agreement; or
- the compliance of the composition or procedure of the arbitration tribunal with the arbitration agreement (or the applicable law in the absence of such an agreement).

Additionally, the award may be challenged in cases where the court finds that:

- the subject of the dispute is not subject to arbitration, according to Armenian legislation; or
- the decision contradicts the public order.

13.4 Procedure for Enforcing Domestic and Foreign Arbitration

The award of the arbitration tribunal rendered on Armenian territory (or the territory of any other member state of the New York Convention) must be recognised as binding. The court issues a writ of execution for the enforcement of an arbitration award based on the application of the person to whom the domestic arbitration award was made or at the request of the foreign arbitration party

It is important to note that the application for the issuance of a writ of execution for the enforce-

ment of a domestic arbitration award may be filed to the court:

- within a year of the date on which a domestic arbitration award was received; and
- within three years of the date on which a foreign arbitration award entered into force.

14. Outlook and COVID-19

14.1 Proposals for Dispute Resolution Reform

The government is debating whether to make mediation compulsory before applying to court in certain cases (eg, labour and family law cases). Several amendments to arbitration legislation are also planned, which aim to impose certain ethical standards on arbitration institutions.

In addition to the government's plans to establish (indirectly) a major arbitration institution, an important council has recently been established for advisory purposes. While the intention to make Armenia a preferred place for arbitration is clear, the specific actions and tasks necessary to establish this centre are less so – including steps aimed at guaranteeing its independence from the State.

14.2 Impact of COVID-19

During the COVID-19 pandemic, the Supreme Judicial Council has adopted several recommendations, allowing online hearings as well as permitting the sending of documents via email. The authors are not aware of any online hearings having taken place; however, at the time of writing (October 2022), the documents were being submitted online/via email/practically without any issue.

The government has not passed any orders suspending the operation of limitation periods. However, if a plaintiff fails to file a lawsuit within the statute of limitations as a result of COVID-19, the court may recognise that as force majeure and therefore grounds to restore the statute of limitations.

Contributed by: Aram Orbelyan, Shushanik Stepanyan, Sofya Kharatyan and Ani Mkrtumyan
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Concern Dialog Law Firm is a Yerevan-based full-service law firm established in 1998. The firm provides services in litigation, representation and legal advising. In addition to corporate and business law (the common specialisation for most of the ranked firms in Armenia), the firm also specialises in criminal and family law and has a robust dispute resolution practice. Sixteen of the firm's 70 employees are licensed attorneys. Concern Dialog has been a member of the TAGLaw Alliance of Independent Law Firms since 2010 and the Dentons' Nextlaw Referral Network since 2017, which allows the firm to provide services practically worldwide.

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Aram Orbelyan is the managing partner of Concern Dialog Law Firm, heading its litigation and arbitration practice. Aram initially joined the firm back in 2009 as a senior associate; however, he went on to act as Deputy Minister of Justice of the Republic of Armenia from 2011 until 2014. During this time Aram was responsible for several major reforms (including reforms in ADR and civil procedure), as well as several e-government projects. After resigning from public service, he joined Concern Dialog Law Firm as deputy director and senior partner. Aram is also the co-founder and chair of the Arbitrators' Association of the Republic of Armenia, and he lectures at the School of Advocates of the Republic of Armenia.

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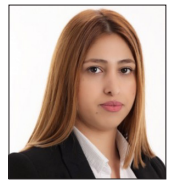

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