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Armenia

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Efficiency of process

The Republic of Armenia (RA) Court System 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 three-stage judicial system.

The system is as follows:

<table>
<tr><th colspan="4">Court of Cassation</th></tr>
<tr><td>Administrative Court of Appeal</td><td rowspan="2"></td><td>Civil Court of Appeal</td><td>Criminal Court of Appeal</td></tr>
<tr><td>Administrative Court</td><td colspan="2">Courts of General Jurisdiction
(over civil and criminal matters)</td></tr>
</table>

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

The Court of General Jurisdiction of RA hears all criminal and civil cases, including commercial and bankruptcy cases.

The Administrative Court of RA is a specialised court with jurisdiction to examine cases arising from public legal relationships, with the main role of overseeing the activities of administration.

The Civil Court of Appeal and the Criminal Court of Appeal of RA review appeals to acts of the Courts of General Jurisdiction, 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 the constitutional jurisdiction.

For the sake of this chapter we concentrate on commercial issues: all civil and contractual matters are subject to Courts of General Jurisdiction. The case can then be appealed to the Civil Court of Appeal, and later to the Court of Cassation.

The Court of General Jurisdiction is a court of fact and law. The Civil Court of Appeal and the Court of Cassation are courts of law and do not examine matters of fact. However, in some cases related to new circumstances (that were not known to the party), a limited review of errors in relation to the evaluation of proofs is possible at the appeals level.

The courts are normally accessible, i.e. a lawsuit fulfilling the formal requirements of the law is normally accepted for hearing. Appeals are normally accepted, too.

The Court of Cassation is normally not accessible due to the high level of discretion it preserves for itself in relation to acceptance of a cassation application. For the moment, the practice shows that the Court of Cassation shows complete discretion in accepting any appeals, regardless of how well the formal requirements applicable to the cassation appeals are fulfilled. The role of the Court of Cassation was designed in a way that sticks to matters of law development; however, the Court of Cassation has gone further to evaluate all matters at its sole discretion.

Civil hearings normally comprise four main stages:

1. Lawsuit application, submission and acceptance (review of formal grounds of lawsuit application).
2. Preliminary hearings, preparation (the stage where the parties normally submit all proofs, decide disputable and indisputable facts and circumstances of the case, the burden of proof is allocated, witnesses are called and experts are appointed).
3. Main hearing (at this stage the court listens to the witnesses and examines the proofs).
4. Publication of decision and entry into force of the latter.

It is possible to appeal all final decisions, as well as a limited number of intermediate judicial acts of the court, within a period (normally one month for final decisions, and usually three days for intermediate judicial acts, subject to appeal).

The appeals normally take three main stages, such as:

1. Appeals application, submission and acceptance (review of formal grounds of lawsuit application).
2. Appeals hearing (the arguments of the parties are published, questions to parties are asked if needed).
3. Publication of decision and entry into force.

The Cassational procedure is similar to the Appeals procedure, but is final and not subject to any possibility of review (a secondary cassation, for a limited number of cases related to new circumstances or constitutional matters of applied laws or ECHR, is possible).

Armenian Civil law has the institution of statute of limitation, which is a period after which the rights of the plaintiff will not be defended, resulting in the rejection of a lawsuit application. This institution works well; however, it is applicable only by the motion of the recalling party, and it does not end the case immediately: the court usually needs to pass all the stages of the procedure, study all the points of the case and apply the statute of limitation at the end of the case, which means that the case may be disputable for a long time, but resolved by a statute of limitation application which was initially and evidently clear.

Depending on a number of factors, such as court case-load, availability of parties, the complexity of the case, obstacles to the case, etc., the court hearing normally can take from three or four months up to one or two years.

Availability of ADR mechanisms

Armenian law recognises the institutions of 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, particularly by business, and there is quite a lot of practice in this area, and experienced arbitrators as well. 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 on particular arbitration and agreement of the parties. Normally it comprises stages similar to court stages, however it is less formal and more rapid. 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).

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

One thing that needs a note is the invalidity of judicial process if the parties have decided to resolve their dispute via arbitration or mediation. But if the mediation is not successful, the parties can continue their dispute resolution via arbitration or court.

E-Justice availability

For the moment, there is no online filing of lawsuit applications in courts. 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, and is in a testing process and may be available in the near future. 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 more easy and, in practice, accept online filing via email.

Data on all cases in the courts are published 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 published) online.

Other official and non-official resources publishing court decisions are also available. Arlis, the Armenian Legal Information System, is available at http://arlis.am/ and publishes the main decisions of the Court of Cassation.

Another resource, the official website of the Armenian judicial system, http://court.am, is also available. The latter contains some basic information about the court system and some Judicial Council and Presidents of the Courts Council Decisions (the internal court system bodies responsible for government and practices).

A private company runs the www.armlaw.am page (unlike the previous ones, this is a paid service), with all judicial decisions, search availability and short description of cases grouped under subject matter.

Provided that arbitrations are private, arbitral awards normally are not published − they are not anyhow binding for similar cases − while for the courts, it is *vice versa*.

Integrity of process

The Armenian legal system is a system of positive law. The courts normally apply what is written in the laws, and what is expected for them to do according to the law.

Laws are applied in their textual sense; sometimes with more narrow, sometimes with wider interpretation.

Nevertheless, courts have a small judicial policy discretion in deciding cases where the matters of interpretation are to be based on value judgments, social justice or public policy.

In contrast, in arbitrations, parties can agree to apply *inter se* rules of natural justice or resolve the case *ex aequo et bono.*

Whether applying the law strictly, or solving the case with small discretion, the courts and arbitrators are required to be independent and impartial, and this is stricter in relation to courts, than arbitrators.

The Armenian court system integrates a number of impartiality guarantee mechanisms and institutions. Among them are, *inter alia*:

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

Meanwhile, the independence and impartiality of the court (separate judges in relation to the party or the case) can be argued and grounded before the court, for which an institution of self-recusal by the motion of the party, is available. If the judge is 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 the appeal of the final decision.

Privilege and disclosure

Armenian law does not have special law about disclosure (or non-disclosure), however, particular matters are regulated in different laws.

Normally, secrecy is respected. Armenian law recognises commercial, bank, state, notary, attorney and private and family life confidentiality.

Any party thinking about confidentiality protection, can request the court to resolve the case behind closed doors (non-public). The final part of the decision is still published and the decision is still handed to the parties.

There are a number of administrative, civil and criminal measures (from damages to criminal prosecution) to protect the interests of the parties seeking the respective information to be confidential.

Banks, notaries and attorneys are prohibited from publishing client data. However, the clients can agree to disclose the data and information themselves or have them disclosed by banks, notaries and attorneys.

The information can be disclosed compulsorily by the decision of the court. This is mostly applicable to parties, third parties, notaries and state bodies; it is a normal process of proof acquisition or securing routine; however, it is not applicable to attorneys (attorney-client privilege within the court process is not subject to any limitation in Armenia). If one of the parties to the case rejects disclosing the relevant information, the burden of proof may be shifted on to him/her, alternatively the information can be obtained compulsorily via the State Compulsory Enforcement Service.

The law provides that no proof can be used in court if illegally obtained. While attorney-

client relations are strictly confidential, legal advice and documents prepared in respect of litigation and arbitration are considered confidential and cannot be used, unless the protected party discloses of its own free will.

Moreover, during mediation, even the acceptance of the fact by the party is not considered acceptance of the fact by the latter during further judicial contention, but solely serves for more efficient reconciliation. Also, mediators cannot be recalled to testify for a case in which they have mediated.

The Armenian law on Attorneys and Attorney Activities, as well as the Rules of Attorney Conduct (known as the Attorney Ethics Code), put down a number of guarantees for confidentiality and conflict of interests avoidance.

Among them are:

1. ban on disclosing any information, unless the client agrees;
2. ban on representation of clients with adverse interests, unless they agree explicitly; and
3. ban on using information from one client for the interests of the other, unless the former explicitly agrees to provide the information.

For the violation of ethical rules, attorneys can be subjected to attorney disciplinary measures, up to loss of attorney licence. Other ordinary measures of civil, administrative or commercial nature are also applicable.

Since 2014, caused by a legal reform, Notaries, Banks, Brokers and Attorneys have been obliged to keep a registry of suspicious transactions (does not include representation during litigation) in the context of anti-money laundering and terrorism financing, and report to the Central Bank. However, the law is very soft in relation to attorneys, and the major requirement is the keeping of the registry. The Central Bank, on its own, is not obliged to publish any such data received. In the meantime, if it examines the suspicious transaction and finds real grounds in accordance with the defined criteria, it can report a crime or take some other steps in relation to respective accounts.

There are no special regulations in relation to electronic disclosure; however, rules and limitations regarding wiretapping (only by the respective order of the court) and general confidentiality are applicable.

Costs and funding

In the Armenian legal system, costs are allocated between the parties based on presented demands and satisfied ones.

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 fees (e.g. lawsuit applications of employees in labour matters); the law also provides a possibility for postponing 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 to 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 funders. Some internationally funded projects have financed strategic litigation cases; however, recently most such projects have closed.

Interim relief

Under the Armenian Civil Code, article 14, a series of measures is available in civil matters other than compensation, in particular:

1. right recognition;
2. *restitutio ad integrum*;
3. prevention of damages or violation of rights;
4. application of consequences of void transactions;
5. annullation of contentious transactions and application of the consequences of nullity; and
6. changing or termination of legal relations.

The list is not exhaustive, and other grounds can be widely found in legislation (e.g. the publication of an apology in the media by the offending party).

There are no specific protective measures available in respect of a defendant's assets. All questions are resolved in the context of three main points:

- interim measures;
- enforcement limitations; and
- bankruptcy.

For securing the enforceability of the final judicial act, the court can order an interim measure, which can be either a security over monetary means and other property, or an order to perform some actions or abstain from some actions.

Economic securities are normally applied in the amount of the demand (or in its part) on the property or monetary means of the defendant, forbidding to dispose (or perform any other right over) the particular amount or thing.

To apply one, the plaintiff needs to ground the necessity of the security measure. In practice, motions for reasonable security measures are satisfied.

In the countermeasure, the defendant can demand the plaintiff pay an amount equal to its damages as security on the court deposit, as well as apply to the same court demanding the damages caused by the interim measure.

The defendant has also the right to ask the court to modify or remove the applied security.

In the context of enforcement limitations, there is property and amounts (small in comparison) that the State Service of Compulsory Enforcement has no right to confiscate (e.g. aliments, state subsidies, personal subsidies, etc.).

Judicial acts of foreign countries are recognised and applied in Armenia via a special procedure of recognition of the political reciprocity principle, i.e. Armenia will recognise and

apply foreign court orders if the foreign country applies a similar policy towards Armenia or has an agreement with it.

Unfortunately, there is not much practice on this topic. To try to apply one in Armenia, the party needs to apply to the Armenian court and present the foreign judicial act for recognition and application.

After successful recognition, the act can be submitted for compulsory enforcement.

For arbitration, Armenia is party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, also known as the "New York Arbitration Convention" or the "New York Convention", and the recognition of foreign arbitration awards is more easy.

In this context, worldwide freezing orders are not common to Armenia. Armenia is party to the Convention on legal assistance and legal relations in civil, family and criminal matters, as well as the Kishnev agreement of 1992, which simplifies the recognition and application of foreign judicial acts.

Enforcement of judgments/awards

Armenian law does not provide special rules for reciprocal arrangements in place for enforcement of court judgments. However, 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.

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

The enforcement case is opened and it needs to be over within two months, 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 is it done).

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

Once commenced, the enforcement cannot be avoided. If the obligation is already performed and a proof is provided, the enforcement service will only enforce the enforcement 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 the enforcement.

Armenian law does not provide any garnishee proceedings. The only availability to force the debtor to recover its debt from third parties and pay the creditor is the bankruptcy procedure.

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 are to 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, and it can take couple of months.

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

International arbitration

Under Armenian law, arbitrations are not founded by States, but rather are private, either existing as arbitration services or created by the parties to a particular dispute (*ad hoc* arbitration). Notwithstanding, their activity is regulated by law.

As already mentioned, Armenia is party to the New York Convention on 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.

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 parties.

To mediate, a specialist (not necessarily with 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

Regulatory investigations in Armenia are governed by general administrative law as well as special regulations available in given areas (financial sector regulations, antimonopoly regulation, etc.). As all these regulations are considered as part of administrative law, the final decisions of regulatory bodies are subject to review by administrative courts.

Regulatory bodies also include the Central Bank, State Commission for the Protection of Economic Competition, and the Public Services Regulatory Commission.

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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-gov 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 justice sector, human rights, good governance issues).

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He has participated in legal reforms of the Armenian Civil Code, the Law on Joint Stock Companies and some other projects for legal acts.

Before joining our team Mr. Hakobyan fulfilled a role of MP assistant for some five years, as well as performing civic activity in a number of NGOs.

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