

**Mandate of the Special Rapporteur on the independence of judges and lawyers**

REFERENCE:  
AL ARM 3/2019

28 June 2019

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the independence of judges and lawyers, pursuant to Human Rights Council resolution 35/11.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning the **alleged interference with the independence of the judiciary** emanating from the actions of the Armenian Prime Minister.

According to the information received:

On Saturday 18 May 2019, the Yerevan Court of General Jurisdiction ruled, in a public hearing, to release the former President of Armenia, H.E. Mr. Robert Kocharyan, from pre-trial detention.

Mr. Kocharyan, who held the post of Armenia's president from 1998 until 2008, is charged with overthrowing the country's constitutional order during the post-electoral unrest in 2008, when ten people, including eight civilians and two police officers, died in the violent clashes disputing the outcome of the presidential election.

On Sunday 19 May 2019, the Prime Minister of Armenia, H.E. Mr. Nikol Pashinyan, made a public call on social media to block the entrances and exits of all courthouses, so as to prevent anyone from going inside. The protest against the judiciary appeared to be linked to the decision adopted by the Yerevan Court of General Jurisdiction.

On 20 May 2019, about 1,100 citizens took part in the staged protest by blocking the court entrances. Individuals seeking access to justice, lawyers, judges and justice operators were allegedly prevented from accessing the buildings, and subjected to verbal and physical abuse. Court buildings were also said to be damaged.

Reportedly, the police were instructed to refrain from removing the blockade, and did not intervene despite the requests made by several judges and lawyers.

In a public address aired live on Facebook around 12:00 on the same day, the Prime Minister allegedly threatened the adoption of a number of measures against the judiciary, including the establishment of a transitional justice system, the vetting of all judges and the adoption of various measures to force the judges who

belong to the “old political system” or adopt measures inconsistent with the European Convention on Human Rights to resign.

On 21 May 2019, the co-rapporteurs of the Parliamentary Assembly of the Council of Europe (PACE) for the monitoring of Armenia criticised the statement by the Prime Minister calling on citizens to block the entrances and exits of courts, affirming that politicians “must refrain from actions and statements that could be perceived as exerting pressure on the judiciary. Other stakeholders, including the supreme judicial council, the bar association, the office of the Ombudsman, political parties and civil society organisations expressed concerns at this action, regarded as an interference with the independence of the judiciary.

The Prime Minister’s call to block access to courts and tribunals was preceded by other forms of threats, pressure and interference with the independence of the judiciary, especially in relation to criminal proceedings against former political figures, a practice often referred to as “telephone justice”.

In August 2018, a number of judges dealing with the Kocharyan’s case recused themselves following Mr. Pashinyan’s alleged threats against the judiciary. In a press interview, the Prime Minister allegedly warned judges to “not juggle [their] heads and joke with the people.”

Without prejudging the accuracy of the information made available to me, concern is expressed at the above allegations. The call made by the Prime Minister to block access to courts and tribunal following the decision of the Yerevan Court of General Jurisdiction to release former President Kocharyan from pre-trial detention appear to constitute a serious breach of the principles of judicial independence. This call also seems to have been put in place in an environment where judges and magistrates are exposed to various forms of pressures, threats or interferences that may adversely affect their capacity to decide matters before them impartially, on the basis of facts and in accordance with the law.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and comments which you may have on the above mentioned allegations.
2. Please provide detailed information on the public call allegedly made by the Prime Minister of Armenia on social media to block access to all courts and tribunals on 20 May 2019, and explain how this call can be

regarded as being consistent with the obligation incumbent on all State authorities to protect and promote the independence of the judiciary.

3. Please provide detailed information on the measures – if any – adopted by the police to remove the obstacles that prevented access to national courts and tribunals. If the police took no action, please explain why.
4. Please provide information on the practice of the so-called “telephone justice,” and indicate the measures adopted by Armenia to ensure that all State authorities respect, protect and promote the independence of judges and the judiciary as a whole.

I would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency’s Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, I urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please accept, Excellency, the assurances of my highest consideration.

Diego García-Sayán  
Special Rapporteur on the independence of judges and lawyers

## **Annex**

### **Reference to international human rights law**

The independence of the judiciary is enshrined in a number of international and regional human rights treaties to which Armenia is a party, including the International Covenant on Civil and Political Rights (ICCPR), acceded on 23 June 1993, and the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights). Both instruments provide that everyone is entitled to a fair and public hearing by an independent and impartial tribunal established by law. Your country's adherence to these treaties means that it must, *inter alia*, adopt all appropriate measures to guarantee the independence of the judiciary and protect judges from any form of political influence in their decision-making.

In its General Comment No. 32 (2007), the Human Rights Committee noted that the requirement of independence refers, in particular, to the procedure for the appointment of judges; the guarantees relating to their security of tenure; the conditions governing promotion, transfer, suspension and cessation of their functions; and the actual independence of the judiciary from political interference by the executive branch and the legislature. A situation where the functions and competencies of the judiciary and the executive are not clearly distinguishable, or where the latter is able to control or direct the former, is incompatible with the notion of an independent tribunal (para. 19).

The principle of the independence of the judiciary has also been enshrined in a large number of United Nations legal instruments, including the Basic Principles on the Independence of the Judiciary. The Principles provide, *inter alia*, that it is the duty of all governmental and other institutions to respect and observe the independence of the judiciary (principle 1); that judges shall decide matters before them impartially (...) without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason (principle 2); and that there shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision (principle 4).

The Special Rapporteur wishes to underscore that the interpretation of the law, the assessment of facts and the weighing of evidence constitutes an exclusive competence of judges. Outside cases of malice and gross negligence, the only remedy for “wrong decisions” adopted by judges is the recourse to appropriate legal procedures established by law, such as the appeal appeals to a higher court, to challenge a court decision that seems questionable.