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Transitional Justice, Societal Resilience, and the European Union's Role in Armenia (2018–2022)

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Abstract

This article explores the European Union's (EU) resilience approach by focusing on post-authoritarian transitional justice (TJ) and examining the situation in Armenia from 2018 to 2022. After elaborating on the relationship between TJ and societal resilience, it draws on four aspects. It examines first the Armenian government's implemented TJ measures and its modest increase of societal resilience; second, the EU's 'half-hearted' TJ role; and third, the EU's resilience agenda in Armenia since 2021, and its decreased discursive devotion to TJ. Finally, it gives recommendations to the Armenian government and the EU on how to revitalise TJ implementation in order to enhance societal resilience in Armenia.

Introduction: Examining the Nexus between Societal Resilience and Transitional Justice

Resilience and transitional justice (TJ) have recently been analysed as a nexus, and researchers have been split on whether the two concepts are complementary or in a tense relationship (Kastner 2020; Lambourne 2021; Wiebelhaus-Brahm 2017). The long-term societal visions of TJ, transformability and societal healing, and resilience, adaptability and maintenance, stand in stark contrast to one another.¹ Still, resilience and TJ share interrelated political elements, such as changeability and persistence. For the purpose of this essay, the European Union (EU) definitions will be applied. Following a liberal-conservative agenda, resilience is seen as 'the ability of states and societies to reform, thus withstanding and recovering from internal and external crises' (European Union External Service 2016: 23).

Though the EU has not operationalised societal resilience, sources that EU-implemented projects have considered for analysis include legitimacy of governance actors and the design of governance institutions, particularly those charged with rule-making and the provision of public goods (Stollenwerk et al. 2021: 1224–1225). Following the United Nations (2010), the EU has defined TJ as 'the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation' (European Union External Service 2015: 2). The EU's TJ agenda has highlighted a series of key measures, including investigations and prosecutions

of perpetrators, the legal rehabilitation of victims, vetting, special compensation for victims, public remembrance, apologies, and non-judicial investigations (see also Pettai/ Pettai 2015). TJ scholars have differentiated between narrow TJ approaches focusing on violations of civic and political rights (political violence) and broad approaches including violations of social and economic rights, that is, economic violence (for a further discussion, cf. e.g., Hecht/ Michalowski 2012; Muvngi 2009; Sharp 2014).

The socio-economic dimension related to corruption and socio-economic inequality, mostly marginalised in TJ processes, has remained under-reflected (European Union External Service 2015). However, this dimension would be particularly relevant for societies that have suffered from a high level of economic inequality such as Armenia (Pfeilschifter 2021). Wiebelhaus-Brahm (2017: 154–157), on whose conceptual framework this analysis is based, has examined which TJ scenarios can enhance or negatively impact societal resilience. The latter refers to retributive measures, such as selective prosecutions, which can undermine the legitimacy of governance structures. Furthermore, trials and vetting might lead to a removal of valuable technical expertise and governance capacity. Still, TJ has extraordinary potential to enhance societal resilience: through rebuilding connections between authorities and citizens, TJ can enhance social trust and improve the design of governance institutions. In addition, redistributive measures which examine a society's political economy can increase social cohesiveness (Wiebelhaus-Brahm 2017).

¹ For organisational reasons, a broader critical reflection of the concept of resilience cannot be unfolded here. The researcher remains sceptical of the concept and argues that the current mainstream application of resilience towards social science is still embedded in the logic of neoliberal capitalism, which prevents an alternative articulation of new forms of social relations. A replacement concept might be resourcefulness (MacKinnon/ Driscoll Derickson 2012). For further critical investigations, cf. e.g., Graefe 2020, Mahdiani/ Ungar 2021, Shwaikh 2021.

The Pending Promise of Post-Revolutionary TJ and its Impact on Societal Resilience in Armenia

One of the central assurances of Armenia's 2018 'Velvet Revolution' was the implementation of 'transitional justice bodies' (Prime Minister of the Republic of Armenia 2018). The government's larger 'Strategy on Judicial and Legal Reform 2019–2023' mentioned TJ as one crucial element of judicial reforms. At the core of the strategy was the creation of a fact-finding commission which was supposed to contribute to non-retributive truth-telling. Aspects deserving special attention were electoral rights violations since 1991, political prosecutions in post-election processes since 1991, property rights violations and 'other forms of expropriation', and servicemen deceased in non-combatant circumstances (Government of the Republic of Armenia 2019a). The commission was supposed to be the basis for restoring rights, ensuring compensations and creating a historic record to reconstruct the characteristics of past human rights violations. Initially, TJ was considered positively among Armenian society, which had a high level of benevolence towards the post-revolutionary government.² In a 2019 nationwide poll, 60% considered TJ implementation important and clearly stated that they demanded the investigation of schemes of corruption, illicit enrichment, and confiscation of property covering the period from 2008 to 2018, the period in which former head of state Serzh Sargsyan was in office (International Republican Institute 2019b: 37, 39). In the following, I argue that while certain TJ measures have improved the design of governance institutions, and it has thus been an important source of societal resilience, the slow pace and partial absence of certain TJ measures have kept governmental legitimacy rather low. Thus, the Armenian government's contribution to strengthening societal resilience through TJ has so far been modest.

In 2020, a Law on the Confiscation of Illegally Acquired Assets (Armenian Legal Information System 2020) came into force, which 'aims to confiscate and nationalise the illicit assets of former officials accused of corruption' (Nazaretyan 2020). Based on that, a special unit within the General Prosecutor's Office was tasked with investigating cases of illegally acquired assets. Furthermore, in 2021, Armenia's National Assembly

approved the establishment of a specific anti-corruption court. This court is a non-retributive infrastructure that seeks to settle conflicts that arise from non-plausible discrepancies between reported and actual income and wealth (Kopalyan 2022). Another positive TJ measure was Prime Minister Nikol Pashinyan's apology to the victims of 1 March 2008, when eight civilians and two policemen were killed after protests against electoral falsifications. These were acknowledged as victims of political prosecution and murder, and a public commemoration was held in Yerevan in 2019.³ In addition, the relatives of all 10 slain individuals and all those who were injured were materially compensated (Caucasian Knot 2019). While casual relations between the mentioned TJ instruments and societal resilience cannot be measured at this stage of research due to a lack of empirical data,⁴ a recent survey indicates that Pashinyan's legitimacy has remained stable. In 2021, 55% evaluated his work as 'favourable' (International Republican Institute 2021a: 17).

However, two major issues remain that have undermined societal resilience in Armenia: the vetting of judges and prosecutions related to the broader investigatory infrastructure. First, vetting has solely considered upcoming judges' declarations on income, property, and good conduct (including educational background and relations with organised crime) starting 1 July 2017. It excludes acting Constitutional Court justices, prosecutors, and investigators, and thus does not have any retrospective character. Consequently, judges who were, for instance, responsible for covering up the events that led to the violent protests in March 2008 or the 2016 hostage crisis⁵ have not been involved in the integrity check. Empirical data indicates that the legitimacy of the courts has remained low: in 2019, 50% of the Armenian population estimated that the Armenian judicial system was not yet 'independent', with 79% of those stating that it relied on the former authorities (International Republican Institute 2019a: 31, 32). In a 2021 poll, 57% held unfavourable views towards the courts, and 55% had a negative opinion about the Constitutional Court (International Republican Institute 2021a: 14, 22, 23).

Second, the prosecutor's office has remained widely unreformed, which has caused a continuation of significant limitations in investigatory competence. While

2 In a nationwide poll conducted by the International Republican Institute in spring 2019, 81% considered the work of the President's office and 72% the work of the Prime Minister's office as "highly favourable" (International Republican Institute 2019a: 26).

3 "Long Live Freedom"—Pashinyan apologizes to March First victims on behalf of Armenia', Armenpress, 1 March 2019, <https://armenpress.am/eng/news/966028/eng/> (accessed 15 March 2022).

4 In autumn 2019, 67% believed that the government's fight against corruption has progressed, and 66% said that the government was making an effort to fight corruption (International Republican Institute 2019b).

5 On 17 July 2016, a group of armed men calling themselves Sasna Tsrer ('Daredevils of Sassoun') stormed the Erebuni police station in Yerevan and demanded the release of the Founding Parliament leader and Karabakh war hero Jirayr Sefilyan and the resignation of then-president Sargsyan. They took nine people as hostages, killed one policeman and injured at least two; one of them died later in a hospital. The Sasna Tsrer members held the police station for two weeks and released all hostages on 23 July 2016.

reforms of the prosecutor's office are necessary to advance the TJ process, its complete overhaul could also lead to a serious decline in professionalism due to a limited staff (Kopalyan 2022). Though the government has filed criminal cases against former high-ranking officials, among them two former heads of state (Robert Kocharyan, 2000–2008 and Serzh Sargsyan, 2008–2018), related family members, former influential oligarchs, and representatives of law enforcement, prosecutions have been perceived as incomplete or remained in limbo,⁶ creating a sentiment of continued impunity. Thus, trust towards prosecutorial units has remained low: in a 2021 poll, 55% declared an unfavourable view of the prosecutor's office (International Republican Institute 2021a: 14).

The EU's Half-Hearted Intervention in Armenia's Post-2018 Transitional Justice Process and its Limited Impact on Societal Resilience

Very early in the TJ process in autumn 2018, the EU expressed its willingness to share best practices and advice on how to connect the TJ process in Armenia with wider judicial reforms; however, it stopped short of initiating a distinct TJ programme. The EU underlined that it would not impose on the Armenian government how to implement TJ, arguing that the process should be locally owned (Delegation of the European Union to Armenia 2018). This is a significantly different and less committed approach than exercised, for instance, towards Georgia (2004), where the EU sent a rule of law mission to advance judicial reforms. This specific mission's main aim was to address imminent challenges in the criminal justice system and assist the Georgian government in developing a coordinated approach to the reform process.

The assistance that the EU provided to the Armenian government was mostly limited to technicalities of judicial reforms. First, the development of a TJ toolkit, which was already part of the government's larger Strategy on Judicial and Legal Reform 2019–2023, was financially and organisationally supported by the EU (Delegation of the European Union to Armenia 2018). Second, the EU provided monetary assistance for the establishment of the mentioned specialised anti-corruption court, which is part of the government's anti-corruption strategy (Government of the Republic of Arme-

nia 2019b). Furthermore, it has formed partnerships with local NGOs such as the Armenian Lawyers' Association (ALA) and hosted civil society-governmental public debates on TJ implementation which have been attended by government officials. Finally, the EU–Armenia Comprehensive and Enhanced Partnership Agreement (CEPA), signed in November 2017 and in force since 1 March 2021, has streamlined its support for judicial reforms, more precisely 'independence of the judiciary, access to justice, the right to a fair trial [...], and procedural safeguards in criminal matters and victims' rights [...], the fight against corruption and the administration of justice' (European Commission 2017: Article 12, §1, 2).

While this essay cannot present empirical evidence on the EU's direct contribution to consolidating societal resilience in Armenia, it can be concluded that the EU's assistance was helpful in the development of the TJ infrastructure that has been gradually ameliorating the structural weaknesses of governmental institutions, but that the EU's de facto intervention has remained limited. The analysed documents demonstrate that the EU's understanding of TJ has been narrow, separating legal and economic questions and focusing on technical reforms. While technical assistance is certainly one important feature of how to support the TJ process in Armenia, more support could have been provided with regard to the compensation of victims and other non-retributive measures. Such interventions could contribute to increasing legitimacy and social trust in the government.

The EU's Resilience Agenda in Armenia and its Changed Devotion to Transitional Justice

While the mentioned EU support in the judicial sector is ongoing as of May 2022, the EU's outspokenness and commitment in terms of TJ support in Armenia has significantly decreased over the last two years. Instead, resilience, applied to all policy sectors, has taken the most prominent place in the EU's public discourse. It can be stated that resilience has already become an empty signifier, leaving open how exactly the EU understands resilience. In the Armenian case, the EU has interpreted resilience as an answer to Armenia's post-war national crisis⁷ and its threatened sovereignty. The EU's resilience agenda gained particular momentum in summer

6 'Criminal Cases in Limbo at Armenia's Investigative Bodies', CivilNet, 5 May 2020, <https://www.youtube.com/watch?v=Q2FWjkMIgaY> (accessed 12 September 2020).

7 The horrendous second Nagorno-Karabakh war, which lasted 44 days, ended with the deaths of around 7,000 people, including more than 4,000 on the Armenian side, and significant territorial gain for Azerbaijan. On the night of 9 November 2020, when a Russian brokered ceasefire came into force and formally ended the war, angry mobs stormed government buildings in Yerevan. Later, parts of Armenia's armed forces intervened in the political arena and called on Prime Minister Pashinyan to resign. The state remained widely paralysed, lacking a new diplomatic strategy.

2021, when the EU announced a 2.6-billion-euro investment package proposed in view of the ongoing political reforms as documented in the initiative ‘Eastern Partnership policy beyond 2020: Reinforcing resilience—an Eastern Partnership that delivers for all’ and the joint staff working document ‘Recovery, resilience and reform: Post-2020 Eastern Partnership priorities’. This package supports particular flagship projects: direct economic support for up to 30,000 small- and medium-sized enterprises, up to 600 million euro for a new north-south transport corridor, up to 300 million euro for Armenia’s tech sector, up to 80 million euro in economic and infrastructure investment in the southern province Syunik and up to 120 million euro in investments for a ‘green’ Yerevan, including the modernisation of local public transport (Avetisyan 2021).

However, the EU’s resilience agenda in Armenia no longer considers TJ a policy priority. Instead, the resilience approach underlines strengthening the rule of law and anti-corruption mechanisms as well as supporting the implementation of key judicial reforms. The EU’s commitment to judicial reforms includes, in particular, the further adjustment of Armenia’s constitutional and legislative frameworks to the EU *acquis*, monitoring of justice reforms, ensuring autonomous prosecutorial services, the digitalisation of the judicial system, and training for law enforcement staff (European Commission 2021: 5). This could be interpreted as the EU no longer considering TJ implementation in Armenia necessary given that Armenia has undergone two democratic elections since its 2018 transition and has thus shown a commitment to representative democracy. This is reflected in the EU’s budget policy. An example of a current project that the EU supports is ‘Consolidation of the Justice System in Armenia’, which is co-implemented by the Armenian Ministry of Justice and European legal organisations and has focused on simplifying administrative procedures and the analysis of integrity among prosecutors (IRZ 2021). Certainly, while the slogan under which the overhaul of historically violent structures can be achieved remains open to debate, it remains crucial, as some experts have underlined, that legal reforms are implemented first in order to prepare a solid fundament for further and more profound TJ implementation. However, Armenia has moved beyond a grand TJ agenda (e.g., Kopalyan 2022).

About the Author

Veronika Pfeilschifter is a doctoral candidate and research associate at the Institute for Caucasus Studies at Friedrich Schiller University Jena in Jena, Germany. Her Ph.D. project analyses new left youth communities in Georgia, Armenia, and Azerbaijan by examining aspects of political ideologies, transnational networks, and intergenerational transmission. Pfeilschifter holds MA degrees from the Universities of Tartu and Glasgow as well as Ilia State University in the framework of the IMCEERES (Central, Eastern European, Russian, and Eurasian Studies) programme.

Concluding Remarks: Recommendations to the Armenian Government and the European Union

As shown, the TJ process in Armenia is thus far incomplete. However, it would be incorrect to state that it was without any success. A few individuals received direct compensations, non-judicial measures such as commemorations have been undertaken, and legal frameworks have been developed to move anti-corruption reforms forward. These measures have strengthened sources of societal resilience. As underlined, the biggest remaining weaknesses can be found in the prosecutor’s office, the National Security Service, and the judiciary, which have remained widely unreformed. The rehabilitation of these institutions is crucial to moving the TJ process forward, which can then improve the design of governance institutions and other sources of societal resilience. Though a fact-finding commission was originally intended to become the central element of TJ in Armenia, the Armenian government can further enhance TJ by focusing on the mentioned institutional reforms and anti-corruption courts. Here, the EU can proactively support the Armenian government, for instance by helping redevelop Armenia’s legal education system, cooperating with the Armenian government on designing a professional development program for prosecutors, and helping to change the country’s bureaucratic culture (Kopalyan 2022). This can be carried out further in the framework of the Technical Assistance and Information Exchange Instrument of the European Commission.

Furthermore, the EU can discursively support civil society’s TJ efforts by releasing public statements or supporting organisations involved in the TJ process online. Available surveys underline that the EU enjoys a high level of favourability within Armenian society. In 2019, 76% of Armenians perceived the signing of the CEPA as positive (International Republican Institute 2019a: 54). In 2020, 80% considered the EU’s financial support effective, and 47% claimed that Armenia has profited from EU support through improved quality of the justice system (Ecorys 2020: 17, 46). Additionally, at the end of 2021, 69% evaluated the relations between the EU and Armenia as good (International Republican Institute 2021b). Thus, the EU should consolidate its political instruments to advance Armenia’s societal resilience through justice reforms.

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Timeline

Date	Event
17 August 2018	During a rally 100 days after the Velvet Revolution, Prime Minister Nikol Pashinyan announces the establishment of transitional justice bodies in Armenia.
28 November 2018	During a civil society-government forum, then-head of the EU delegation to Armenia Piotr Antoni Świtalski underlines the EU’s commitment to assist the Armenian government in the implementation of judicial reforms as part of its move towards transitional justice.
24 May 2019	A first parliamentary debate on the design and implementation of TJ measures is held in Armenia’s parliament, the National Assembly.
26 May 2019	Then-head of the EU delegation to Armenia Piotr Antoni Świtalski states that the EU is not directly involved in internal discussions on judicial reforms in Armenia.
3 October 2019	The Armenian government adopts its 2019–2022 Anti-Corruption Strategy.
12 October 2019	The Armenian government adopts the 2019–2023 Judicial and Legal Reform Strategy.
28 October 2019	The Partnership for Open Society Initiative representing Armenian non-governmental organisations and the International Center for Transitional Justice (ICTJ) co-organise a public discussion on ‘Transitional justice, corruption and state capture: Lessons from Armenia’ in Yerevan.
23 May 2020	The national Law on the Confiscation of Illegally Acquired Assets enters into force.
27 September – 10 November 2020	The second Nagorno-Karabakh war takes place after Azerbaijan launches an offensive against Armenia. The war ends with a ceasefire brokered by the Russian government.
19 January 2021	The Armenian National Assembly approves the creation of an anti-corruption court consisting of fifteen judges—ten focusing on the investigation of corruption crimes and five on anti-corruption civil cases.

Date	Event
1 March 2021	The European Union–Armenia Comprehensive and Enhanced Partnership Agreement (CEPA) agreement enters into force. It was signed on 24 November 2017.
20 June 2021	Early parliamentary elections take place in Armenia. The political party Civil Contract, led by Nikol Pashinyan, wins 54% of the votes.
2 July 2021	Thirty-three Armenian non-governmental organisations call on the Armenian government to establish a fact-finding commission and implement political assessments of state capture, vetting, and an effective legislative framework for the recovery of property and stolen assets.
2 July 2021	The European Commission adopts ‘Recovery, resilience, and reform: post-2020 Eastern Partnership priorities’ as a renewed agenda for the Eastern Partnership countries (Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine) that contains resilience at its core. It aims at increasing trade, economic growth, and jobs; investing in connectivity; strengthening democratic institutions and the rule of law; supporting the green and digital transitions; and promoting fair, gender-equal, and inclusive societies.
9 July 2021	The Commissioner for Neighbourhood and Enlargement Olivér Várhelyi announces a € 2.6 billion investment package for Armenia for the next five years. The package invests in five flagship projects: transport connectivity, resilience and recovery of the Southern provinces, energy efficiency and renewable energy, digital transformation, and support for small and medium-sized enterprises.
2 November 2021	A public discussion on ‘The course of judicial reforms in post-revolutionary and post-election Armenia’ is organised by the Armenian Ministry of Justice with the support of the Partnership for Open Society initiative.
15 December 2021	The Armenian government expresses its commitment to resilience as the main policy objective within the framework of the Eastern Partnership.
23 January 2022	European Union Special Representative for the South Caucasus and the crisis in Georgia Toivo Klaar states in an interview that EU–Armenia relations are developing in a positive direction given the limited opportunities for cooperation.

The Impact of Language on Resilience in Georgia’s Minority Communities

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Abstract

This paper is intended as a contribution to discussions of the concept of resilience in linguistics, with a focus on minority language speakers in Georgia. For our study, representatives of three of Georgia’s largest minority groups—Armenians, Azerbaijanis and Chechens—have been interviewed. The sociolinguistic situations of the respective speech communities in Georgia only partially overlap, but all three ethnolinguistic communities maintain a strong cultural identity and they rarely engage in ethnically mixed relationships. The goal of the study is to give insights into the current language situation seen from the native speakers’ viewpoint and to testify as to whether language attitude and knowledge can benefit the resilience of minorities in the majority community.

Introduction and Theoretical Background

In linguistics, the concept of resilience has so far mainly been applied to languages as a whole, i.e., languages as

complex adaptive systems, and their capacities to go through phases of (enforced) change caused by domination of other languages and critical demographic and