



**ACN**

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**OECD Anti-Corruption Network for Eastern Europe and Central Asia**

**Istanbul Anti-Corruption Action Plan**

**Second Round of Monitoring**

**Armenia**

**Monitoring Report**

The report was adopted at the Istanbul Anti-Corruption Action Plan plenary meeting on 29 September 2011 at the OECD Headquarters in Paris.

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## Executive Summary

This report analyzes progress made in Armenia in developing anti-corruption reforms and implementing recommendations received under the Istanbul Anti-Corruption Action Plan since the first monitoring round in 2006. The report also analyses recent developments and provides new recommendations in three areas: anti-corruption policies; criminalisation of corruption; and prevention of corruption.

### Anti-Corruption Policy

In recent years the political leadership in Armenia has regularly expressed its readiness to fight corruption, including in public statements, various programmes, strategic documents and through carrying out some legal reforms. Despite some progress, the perception of corruption remains high in Armenia. Proper and effective implementation of policies and laws remain a major challenge.

While the 2003 – 2007 Anti-corruption Strategy and Action Plan resulted in some legal and institutional changes, it did not have enough focus on practical measures, and monitoring of their implementation. The new 2009 – 2012 Anti-Corruption Strategy and Action Plan adopted in 2009 is a more comprehensive policy document, including 240 actions in a range of areas, including prevention and law enforcement. The Strategy also provides for a new system of monitoring of its implementation and measures involving civil society. However, the report finds that the strategy remains on paper. A stronger leadership, a more holistic approach, permanent administrative and budgetary support would be needed to implement this and other anti-corruption strategies and action plans.

An effective monitoring and evolution mechanism to assess progress made in implementation of anti-corruption strategies and action plans is lacking. Coordination between the responsible bodies and a central Secretariat is not systematic. Despite training provided for more than 50 employees from 25 public agencies and ministries on monitoring, no permanent staff was appointed to monitor the implementation of the strategy.

The anti-corruption policy coordinating bodies created in 2004 remain weak. The Anti-corruption Council and the Anti-Corruption Strategy Implementation Monitoring Commission are still functioning, but their efforts lack a systematic approach and results are limited. There is an intention to support anti-corruption efforts on a daily basis. It is key for Armenia to ensure a permanent Secretariat function to provide support for development, implementation and monitoring of anti-corruption policies.

Civil society organizations are increasingly active in Armenia. The report reflects numerous anti-corruption activities conducted by civil society groups on their own or in co-operation with the Government. While the 2009 – 2012 Anti-Corruption Strategy stresses the importance of civil society's participation in the fight against corruption, proposing to involve civil society in monitoring of the strategy and conducting surveys and evaluations, so far cooperation with civil society with the Government was very limited. Further measures to support and involve civil society and take joint anti-corruption activities are necessary.

Overall public awareness of damages of corruption is increasing. Meanwhile, the perception of levels of corruption has not decreased since the first round of monitoring. Corruption is still considered a

major problem and citizens consider it is not addressed by the Government in a systematic manner. While the Government states in its programmes that building society's trust is a priority, little is done to raise awareness of the public on corruption by the Government. Numerous anti-corruption awareness raising and education activities were organised by NGOs with donor funding.

## **Criminalisation of Corruption**

Since 2006 a number of legal changes have been introduced in Armenia in the area of criminalisation of corruption, the latest being in 2008. Armenia has made progress in meeting international standards to criminalise corruption-related offences. In order to fully meet international standards, request and solicitation of an undue advantage and acceptance of an offer and of a promise of an undue advantage should be criminalised. In 2008 Armenia has criminalised trading in influence. However, the scope of this offence still fails to meet all the requirements of international standards, as it only covers passive side of the trading in influence, leaving out the active side in its entirety. Armenia has developed a draft law to further amend corruption-related offences aimed at addressing concerns expressed in GRECO evaluation report and in this report.

In 2008 Armenia has adopted a new Law on Combating money-laundering and financing of terrorism. It addressed most of the concerns raised in the first round monitoring report in 2006. In the future, more emphasis should be given to the enforcement of the anti-money laundering legislation.

Armenia has still not introduced liability of legal persons for corruption offences with appropriate sanctions. Armenia should introduce criminal, civil or administrative liability, as it deems appropriate.

The report also finds that the statutory limitation periods for bribery offences remain too short to ensure for effective investigation and prosecution. Possibilities for successful investigation and prosecution of corruption cases involving persons who enjoy immunity are also limited, as immunity does not constitute grounds for suspension of the statute of limitation.

In 2010 Armenia has abolished immunities of parliamentary candidates, members of the Central, Regional and Local Election Commissions, candidate mayors and candidates to the local councils. Meanwhile, no progress has been reported by Armenia in regards to improvement of rules on lifting immunities.

Some progress is made to consolidate law enforcement framework and enhance further specialisation in the fight against corruption: in 2008 a list of 31 corruption-related criminal offences was adopted; in 2007 prosecutors were stripped off of the investigative functions; a significant development was the establishment of the Special Investigative Service in 2008, entrusting it with powers to conduct preliminary investigations of crimes committed by managerial officials within all three branches of power.

Nevertheless, the results in investigations and prosecutions of corruption crimes are very limited. Numbers of investigations, prosecutions and convictions on corruption crimes committed by high-ranking officials are very modest. Mostly middle level officials are being investigated and prosecuted for corruption, including law enforcement officers, directors of the organizations, and heads of bodies of local self-governance.

Armenia should ensure that law enforcement agencies have necessary access to bank information and other financial data for successful detecting and investigating corruption-related offences and extend the time period of preliminary investigations of such criminal cases.

In the future it is necessary to further delineate competences among the criminal investigation and prosecution bodies, strengthen their collaboration and encourage them to address corruption in a more targeted and proactive manner, with the focus on high level officials, main risk areas in public administration, economy and the society.

## **Prevention of Corruption**

Since the first round of monitoring in 2006 Armenia has taken steps to establish rules and mechanisms to prevent corruption in the public service, in particular among high-ranking officials. The new Law on Public Service adopted on 26 May 2011 and entering into force on 1 January 2012, a “public sector ethics”, introduces rules on ethics and to prevent conflict of interest and corruption, including on accepting gifts, for all public service and a separate set of rules for high-ranking officials. Practical mechanisms should be put in place regarding conflicts of interest, incompatibilities and acceptance of gifts.

To enforce the new rules, the law on Public Service foresees setting up an Ethics Commission for High-Ranking Officials to oversee application of this law by high-ranking officials and continuing setting up ethics commission in individual public institutions. A number of codes of conduct and ethics committees are already in place; however, their actual impact is limited. It is therefore important to ensure that ethics commissions function properly and assess their effectiveness, in particular in public institutions with high risk of corruption. Besides, a central coordinative body for the whole public service could further promote the establishment and enforcement of common integrity standards and practices for the whole public service.

Proper enforcement of income and asset declarations remains a challenge. Since 2001 an obligation to declare income and assets for public officials exists in Armenia. In 2006 a new Law on Asset and Income Disclosure by Individuals was adopted. Little is known about its application and effectiveness. The 2006 asset and income declarations will be abolished and a new property and income declarations will be introduced as of 1 January 2012. The new declaration regime will only apply to high-ranking officials and their relatives. Instead of the tax administration, the Ethics Commission for High-Ranking Officials that needs to be set up will be administering this new system.

A positive development is the adoption of a new Law on Internal Audit in 2010. The standards for professional practice of internal auditing, the code of ethics and implementation time table were adopted in August 2011. It is of key importance to properly implement internal audit function, and to provide sufficient human resources needed for this implementation.

In 2011 a new public procurement law came into force. It introduced a new, decentralised system of public procurement with about 3000 procurement bodies. A new Procurement Complain Review Board has been set up. It is important to ensure its independence and disclosure of its decisions, as well as to provide for a clear procedure for making appeals. The e-procurement system has been developed. Making it fully operational will require time and resources, especially to ensure

capacities in each procuring entity. Ensuring integrity and transparency of this new decentralised system of public procurement is key and may become an important challenge.

In the area of access to information, citizens seem to be more active in requesting information and appealing against decisions in cases of failure to provide it. Armenia has recently partly decriminalised defamation. However, not much has been done since 2006 to develop mechanisms to support implementation of the Law on Freedom of Information in practice, such as mechanisms to keep records of information or classification of confidential and otherwise publicly not available information. It is important to continue ensuring draft legislation is discussed with civil society or those who will be subject to it, for example, business sector and disseminated sufficiently in advance.

Armenia is improving campaign finance and political parties financing rules to address some of the weaknesses in the system of funding of political parties and electoral campaigns, as well as in the system of monitoring and control of political parties' funding identified in the GRECO 3<sup>rd</sup> Round Evaluation Report on Armenia on Transparency of party funding. Monitoring funding of political parties and election campaigns and disclosure remain major challenges.

Armenia has made some progress in putting in place a fairly comprehensive framework of rules of conduct and an ethics commission for judges and personnel of the courts since the 1<sup>st</sup> round of monitoring, however, institutional independence remains a challenge due to role of executive in the appointment of judges.

Monopolies and corruption are considered by enterprises to be two main obstacles to business development in Armenia, and government – private sector dialogue seems to be a largely unexplored area. The business sector could be therefore more involved, including in development of new legislation and simplification of existing legislation relevant for business.

## Second Round of Monitoring

The Istanbul Anti-Corruption Action Plan is a sub-regional initiative of the OECD Anti-Corruption Network for Eastern Europe and Central Asia (ACN). It targets Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyz Republic, Tajikistan, Ukraine and Uzbekistan; other ACN countries participate in its implementation. Its implementation involves review and monitoring of legal and institutional framework to fight corruption.

The review of Armenia was carried out in June 2004; 24 recommendations were endorsed. The first round of monitoring assessed the implementation of recommendations and established compliance ratings of Armenia; the report was adopted in December 2006: 1 recommendation was fully implemented; 8 – largely implemented; 11 – partially implemented; and 4 - were not implemented. Armenia provided regular updates about steps taken to implement the recommendations at ACN plenary meetings.

The Government of Armenia provided answers to the questionnaire on 5 April 2011.

The country visit took place on 25-29 April 2011. The visit involved 10 thematic sessions with state institutions (session on Anti-Corruption Policy was merged with the session on Political Corruption), including: State Revenues Service, Office of the Prime Minister, Civil Service Council, Ministry of Education, the Police, General Prosecutor's Office, Ministry of Justice, including First Deputy Minister of Justice, Ministry of Finance, Control Chamber, National Assembly Staff, Yerevan State University, Central Electoral Commission, Judicial Department, the Criminal Chamber of Court of Cassation (Advisor to the Chairman).

The session with civil society and the session with the business sector were organized in cooperation with the USAID Mobilizing Action against Corruption (MAAC) Activity. The session with the international community was organized in cooperation with the OSCE Office in Yerevan.

Mr. Tigran Barseghyan, Deputy Head of the RA State Revenue Committee, National Coordinator of Armenia for the Istanbul Action Plan, and Mr. Yeghishe Kirakosyan, Assistant to the Prime-Minister, ensured the coordination on behalf of Armenia. Ms. Inese Gaika and Ms. Tanya Khavanska provided coordination on behalf of the OECD/ACN Secretariat. The monitoring team was led by Mr. Daniel Thelesklaf (Switzerland), and included Ms. Helena Papa (Albania), Mr. Horatiu Baias (Romania), Mr. Xavier Sisternas Surís (Spain) and Ms. Airi Alakivi (Estonia).

The report was adopted at the Istanbul Action Plan plenary meeting on 28-30 September 2011. It includes updated compliance ratings with previous recommendations: **3 recommendations are fully implemented, 9 are largely implemented, 11 are partly implemented and 1 is not implemented.** In total, out of 24 recommendations, **5 ratings were upgraded** since the first round of monitoring. The report also includes **20 new recommendations.** The report is published at <http://www.oecd.org/corruption/acn>.

A return mission to Armenia will be organised to present the report to public institutions, civil society, business and international community. Furthermore, the Government of Armenia will be invited to provide regular updates about steps taken to implement the recommendations at next plenary meetings.



## Country Background Information



### Economic and Social Situation

Armenia is a landlocked country in the Caucasus covering an area of 29, 743 square kilometres. The population is 3,3 millions. Armenia has a GDP of 9,389 billion US dollars and 2,845 US dollars per capita in current prices; GDP based on PPP is 16,858 and 5,109 per capita in international dollars (all 2010 data). In 2000 – 2008 the GDP grew yearly in average by around 10%. In 2009 it decreased by 14%, but in 2010 rose by 2,6%.<sup>1</sup>

In 2004 – 2008, the overall share of the population below the poverty line gradually decreased. The share of poor population reached 23,5 % in 2008, compared to 34,6 % in 2004. In 2009, for the first time since 1999, this share rose again reaching 28,7 %.<sup>2</sup>

Global economic crisis had an impact on the structure of economy in Armenia. The volume of foreign financing (foreign direct investment and private transfers) in 2009-2010 declined by 25%. In 2003 – 2008 the construction and service sectors used to be the main drivers of economic development. In 2010 the share of construction sector in GDP decreased to 16,9%, compared to 24,7% recorded in pre-crisis period.<sup>3</sup>

Armenia's main sector of economy remains industry. Armenia has some mineral deposits. Pig iron, unwrought copper, and other nonferrous metals are Armenia's highest valued exports; exports also include machinery, equipment and brandy. Armenia imports natural gas and oil products. Main trade partners are Belgium, Israel and Russia.<sup>4</sup>

### Political structure

Armenia is a presidential republic, where the President is elected by a popular vote for a 5-years period term. Last presidential elections took place on 18 February 2008, when Serzh Sargsyan was elected President of Armenia (53% of votes). The executive power is exercised by the Government. The Prime Minister is appointed by the President; members of the Government are appointed by the

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<sup>1</sup> International Monetary Fund, World Economic Outlook Database, April 2011; Global Finance, Country Economic Reports & GDP Data.

<sup>2</sup> International Monetary Fund, Republic of Armenia: Poverty Reduction Strategy Paper—Progress Report/IMF Country Report No. 11/191, July 2011

<sup>3</sup> Idem.

<sup>4</sup> CIA, the World Factbook, Armenia

President based on the nomination by the Prime Minister. Since 2008 country is government by a three parties' coalition headed by Prime Minister Tigran Sargsyan.

Armenia has a unicameral parliament, National Assembly, elected for a 4-years term, with 131 seats. Last parliamentary elections were held on 12 May 2007, with 33% votes and 64 seats gained by Republican Party of Armenia or HHK of the President Sargsyan.

## Trends in corruption

Many surveys show that corruption remains a very serious problem in Armenia and is widespread. Various international surveys on perception of corruption also show that the perception has remained at the same low level or worsened since 2005 (see below).<sup>5</sup>

Around 21% respondents admitted they are ready to accept a bribe and 58 % expressed willingness to give a bribe, according to 2010 Armenia Corruption Survey conducted by Caucasus Research Centre. In 2008 – 2010 the percentage of people who view corruption as a fact of life increased by 14%. Respondents in this 2010 survey assessed prosecution, courts, law enforcement and the Central Election Commission as the most corrupt in Armenia.<sup>6</sup>

High corruption risks, complicated business procedures with lots of unnecessary bureaucracy and ineffective and unfair customs administration are among major issues affecting companies in Armenia, according to the Business Climate Survey conducted by the American Chamber of Commerce in 2010.<sup>7</sup>

### Transparency International Corruption Perception Index – Armenia's score\*:

2005	2006	2007	2008	2009	2010
2,9	2,9	3,0	2,9	2,7	2,6

\*TI countries' scores are calculated on a scale of 0 to 10, with zero representing highly corrupt countries and 10 very clean countries

### Freedom House, "Nations in Transit 2011" – Armenia – Corruption\*:

2005	2006	2007	2008	2009	2010	2011
5,75	5,75	5,75	5,75	5,50	5,50	5,50

\* Freedom House ratings are based on a scale of 1 to 7, with one representing the highest progress and 7 the lowest

### World Bank Worldwide Governance Indicators – Armenia – Control of Corruption\*:

2005	2006	2007	2008	2009
35,9	36,4	29,5	34,3	33,8

\* WB indicators are based on 0 – 100 rank, where 0 represents the lowest and 100 the highest rank

<sup>5</sup> Freedom House, Nations in Transit 2011; Transparency International CPIs; World Bank Governance indicators.

<sup>6</sup> Corruption surveys conducted in Armenia in 2008, 2009 and 2010 by Caucasus Research Resource Centers – Armenia under USAID MAAC activity are available at: <http://www.crrc.am/index.php/en/159>

<sup>7</sup> AmCham Newsletter on Business Climate in Armenia, Fall – Winter 2010

# 1. Anti-Corruption policy

## 1.1. Political will to fight corruption

During the first round of monitoring of Armenia it was noted that the Government needed to demonstrate its willingness to fight corruption more actively. Officially, in recent years the President and the Government have regularly expressed their readiness to fight corruption in public statements. Importance to fight corruption is voiced in programmes of political parties too.

The President of Armenia Serzh Sargsyan has declared in his address to the people and the National Assembly in 2008 that more severe measures would be taken against corruption and that it was necessary to “inculcate a culture of absolute intolerance to corruption”. The President also promised that the levels of detection and prosecution of corruption would increase.<sup>8</sup> “People need to see that not only we speak, but that we also act”, the President said in another speech during a meeting with the National Security Service in 2008.

Following the parliamentary elections in Armenia on 12 May 2007, in 2008 from the five elected political parties three signed a political coalition agreement that has as priority “the all-inclusive and effective fight against corruption with the full participation of civil society”. Reforms of governance system and fight against corruption form an area of activities of the programme of the current Government of Armenia adopted by Government Decree Nr. 380–A on 28 April 2008. The programme sets out four directions: streamline fight against corruption in government’s policies; reinforce political competition; investigation of corruption cases by law-enforcement; and development of a new anti-corruption strategy. The programme acknowledges the importance of building trust in between citizens and the authorities and intolerance to corruption.

During the on-site visit Armenian authorities claimed that the political will to fight corruption had been attested by the adoption of different legal reforms and strategic documents. Indeed some of the steps foreseen in the 2008 Government program were taken, for example, the adoption of a new anti-corruption strategy a year later, in 2009, and it is an important component in the prevention and fight against corruption.

However, what lacks is a proper and effective implementation. Work of anti-corruption coordinating mechanism created in 2004 is weak. So far the Anti-Corruption Strategy is not properly implemented. No institutional support and resources were allocated to support anti-corruption work by the Government. The difficulty to find appropriate interlocutors involved in development and monitoring of anti-corruption policies to meet with the monitoring team during the on-site visit in Yerevan in April 2011 was an illustration of the situation.

Perception of corruption remains quite high and has not changed since first round of monitoring in 2006.<sup>9</sup> The Government’s measures have not been sufficient enough to change it.

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<sup>8</sup> Address by President Serzh Sargsyan to the People of Armenia and the National Assembly on 20 August 2008, to view in English [here](#).

<sup>9</sup> For example, see the TI CPI during the last years: CPI in 2007 =3.0, in 2008 =2.9, in 2009 =2.7 and in 2010= 2.6

Recently, the Monitoring Committee of the Parliamentary Assembly of the Council of Europe also stated that “legal changes alone are not sufficient and they should be accompanied by policies aimed at changing practice and mentalities”. These changes of practice and mentalities could be achieved, if there is political will.<sup>10</sup>

The monitoring team believes that the adoption of the Anti-Corruption Strategy should be followed by vigorous implementation and ensuring necessary resources and procedures that will allow and facilitate the implementation. The speed of putting into place and implementing such provisions could be a clear indicator in the future of the political will of the Armenian authorities in the fight against corruption.

## 1.2. Anti-Corruption Policy Documents

### Previous recommendation 2 (part 2)

*Upgrade statistical monitoring and reporting of corruption and corruption-related offences by introducing strict reporting mechanisms on the basis of a harmonised methodology. Ensure regular reporting to the Anti-corruption Coordination Monitoring Group, covering all spheres of the Civil Service, the Police, the Public Prosecutor’s Offices, and the Courts, which would enable comparisons among institutions.*

In December 2006 Armenia was considered **largely compliant** with this recommendation.

The 2003 – 2007 Anti-corruption Strategy and Action Plan was focusing primarily on legal and institutional changes. According to the assessment of its results provided in the new strategy for 2009-2012, the first anti-corruption strategy resulted in passing of more than 50 laws and creation of anti-corruption policy coordination bodies and bodies to detect and prosecute corruption. According to this assessment, the first strategy did not focus enough on two important areas: detection and prosecution of corruption crimes; and public trust. Besides, the government acknowledges that the first Strategy did not set clear objectives and measures and that the system for anti-corruption policy implementation and monitoring is still in the stage of development. Little is known on reporting by responsible bodies under this previous Anti-Corruption Strategy to the Anti-Corruption Strategy Monitoring Commission and the Anti-Corruption Council. It was noted in the new Strategy that the quality of reports previously was not sufficient to analyse progress made. It seems that there was limited reporting and that these reports were summarized at some point, but no copy in English was provided to the monitoring team to assess this work. Progress reports by prosecutor’s office, tax service, central bank, statistical data, and minutes of sessions of the Anti-Corruption Council for this period of time are available in Armenian at <http://gov.am/en/councils>.

The Anti-Corruption Strategy for 2009 – 2012 (2009 – 2012 Anti-Corruption Strategy) was adopted by the Decision of the Government Nr. 1272-N on 8 October 2009. This new strategy is a 58 pages long comprehensive document. It includes an assessment of results achieved under the first strategy, the objectives of the new strategy, main means in the areas of prevention of corruption, criminalisation and law enforcement and involvement of the civil society in the fight against

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<sup>10</sup> Information note by the co-rapporteurs of the Monitoring Committee of the Parliamentary Assembly of the Council of Europe (PACE) on their fact-finding visit to Yerevan, 16-17 March 2011

corruption and then specific measures in selected areas (these areas are included below in the list of areas covered by the Action Plan). The strategy also sets out a system of monitoring and evaluation.

Besides, the same Decision Nr. 1272-N dated 8 October 2009 the RA Government also approved the 2009-2012 Action Plan for the Implementation of the Strategy. The 57 pages long Action plan in form of a table replicates 124 provisions from the Strategy, divided into altogether 240 specific actions split among 2009, 2010, 2011 and 2012, responsible agency, monitoring indicator and source of funding<sup>11</sup>. The actions include 70% for prevention of corruption, 15% for criminalisation and 15% for civil society's participation. The action plan provides for measures in the following areas: fight against money laundering; public finance management; public procurement; tax and customs; education sector; healthcare sector; the judiciary and execution of court sentences; state registration of legal entities; enforcement of judicial acts; the police; political sector and political corruption; electoral system, local self-governance; private sector; integrity in public service; criminalisation of corruption and law enforcement; education and training of personnel managing corruption-related information; civil society's participation in the fight against corruption; monitoring and anti-corruption policy implementation bodies.

Besides, a new evaluation and monitoring system is foreseen in the 2009 – 2012 Anti-Corruption Strategy. The Government intends to move from simply registering actions taken and legislation drafted by responsible agencies to a “viable results-based performance monitoring and evaluation system in 2009 – 2012”<sup>12</sup>. To put this new system into practice, a methodology for monitoring, including involvement of civil society should have been developed in 2010. Additionally, public institutions in charge of implementing actions in the action plan had to nominate responsible officials and regularly submit progress reports. Training should be provided to them. Besides, statistics and different surveys should be used. Finally, evaluations of impact and sectoral analyses are recommended to be carried out by private sector and civil society. Also, there is a set of monitoring indicators in the strategy and it should be normally used in the monitoring process.

During the on-site visit, the monitoring team could attest that this evaluation and monitoring mechanism is not put in place yet. Apparently, guidelines for monitoring were developed under the USAID-funded Mobilizing Action against Corruption Activity (MAAC Activity) in 2010. The monitoring team was informed that the Chairman of the Monitoring Commission has sent these guidelines and templates to responsible authorities and they used them to send the progress reports that served to develop the two monitoring reports further described below. The MAAC Activity organised training for more than 50 employees from 25 public agencies and ministries on monitoring. However, it is not clear if these or other persons are permanently in charge of the monitoring and reporting. Neither the civil society nor the business sector could confirm that they would have carried out any sectoral analyses or evaluations foreseen in the strategy.

Under the 2009 – 2012 Anti-Corruption Strategy two monitoring reports were developed shortly after its adoption, one for the 1<sup>st</sup> Quarter 2010 and one for 2010. It was done with the help of consultants under the MAAC Activity project, based on progress reports submitted by responsible authorities. The monitoring reports were approved by the Anti-Corruption Council in October 2010,

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<sup>11</sup> This is limited to either the state budget or support from donor organisations.

<sup>12</sup> Anti-Corruption Strategy and its Implementation Action Plan for 2009 – 2012, Chapter V, p. 53, see at <http://www.gov.am/files/docs/437.pdf>

but have not been made public. The monitoring team was informed that in the future there will be annual monitoring reports prepared by the Monitoring Commission. Administrative capacities in charge of this monitoring process were not clear.

While 2009 – 2012 Anti-corruption Strategy and Action Plan are quite well developed and comprehensive in terms of formulating policy and clarifying problems and measures to be taken, it appeared during the on-site visit that this strategy as such is not implemented in practice.

As the monitoring team was explained by the government, the Anti-Corruption Strategy and Action Plan have to be viewed in connection with other government programmes. Reportedly, actions foreseen are recapitulated in the Government's annual plans and annual plans of ministries and then implemented based on these documents. The monitoring of implementation of Government's annual plans is done by Republic of Armenia Government Staff (the Chancellery of the Government). Reportedly, there are periodical reports to the head of RA Government Staff.

Although, the President Decree<sup>13</sup> foresees that the Anti-Corruption Strategy Monitoring Commission is responsible for the monitoring of implementation of anti-corruption strategy and anti-corruption programmes, little is known about actual assignments and bodies involved.

A significant problem is lack of a holistic approach on implementation, guided by strong leadership and assisted by a permanent Secretariat. In the current situation, it is not possible to assess the effectiveness of the new Strategy and Action Plan and how they help Armenia to fight against corruption. The speed of putting into place and implementing provisions of the Strategy will be a clear indicator in the future of the political will of the Armenian authorities in the fight against corruption.

Overall, it appears that the anti-corruption measures taken so far in Armenia are mainly legislative ones and are not consequent or resulting from systemic implementation of the Anti-Corruption Strategy. Different institutions are implementing measures foreseen in the 2009 – 2012 Anti-Corruption Strategy, but there is not coordination between the responsible bodies and no follow-up mechanism to see the bigger picture and assess how these measures contribute to making progress in implementing the Anti-Corruption Strategy.

Due to the lack of information at the level of individual responsible institutions and lack of a binding mechanism for reporting and implementing measures, this strategy would remain only on paper. The lack of budgetary support is another challenge. Moreover, following meetings with donors, civil society and the business community it appeared that there is not enough ownership by the Government of Armenia in the drafting of the anticorruption strategic documents or in the monitoring of its implementation. Technical capacities in responsible bodies remain weak too. Even if 50 employees have been trained on how to report about implementation, this approach can be effective only if in long term the trained officials are then clearly assigned to deal with reporting or implementing of components of the Strategy, which does not seem to be the case. A better coordination and prioritisation of the training objectives between the Government and the donors could channel the financial resources into the real beneficiaries within the implementing bodies.

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<sup>13</sup> Decree of the President of the Republic of Armenia NH-100-N dated 1 June 2004, point 11.

Armenia is **partially compliant** with the recommendation 2 (part 2).

**New recommendation 1.2.**

***Ensure vigorous implementation of current and future anti-corruption strategies and action plans. In particular, ensure that actions foreseen are implemented in practice.***

***Ensure effective monitoring of implementation of the current and future anti-corruption strategies and action plans to assess progress made and impact of these measures on corruption in Armenia, with better involvement of civil society.***

### **1.3. Corruption Surveys**

A number of surveys on corruption and anti-corruption measures were conducted in Armenia in 2008 – 2010. Most of them were commissioned or financed by donors and international organisations and most of them implemented by Armenian NGOs. Only few surveys were commissioned by the government. Numerous corruption surveys were used by the government in development of 2009 – 2012 Anti-Corruption Strategy.

Regular corruption surveys of households and enterprises were commissioned by the USAID MAAC Activity. The first corruption survey of households took place in 2008, in cooperation with IFES and Caucasus Research Resource Centers - Armenia (CRRC), a programme of the Eurasia Partnership Foundation. Two more corruption surveys of households were conducted by USAID MAAC Activity in 2009 and in 2010 with the assistance of the CRRC. A corruption survey of private enterprises was conducted in 2009 and published in 2010. The surveys of households tracked the perceptions of the Armenian population on corruption, individual experiences with corruption, social and individual behaviour related to corruption, awareness and evaluation of anti-corruption initiatives, level of trust in public institutions.<sup>14</sup> The 2009 corruption survey of enterprises included 400 private enterprises.

In the replies to the monitoring questionnaire, Armenia reported a survey commissioned by the Government of Armenia in 2009 on its strategic development priorities. It was conducted by the Institute for Political and Sociological Consulting and included a section on perception of corruption. Additionally, the Caucasus Research Resource Centres since 2004 conduct annual surveys on trust in the President, the executive, the judiciary, the Police and the Parliament.

Several surveys were carried out by NGOs analysing risks of corruption in different areas. For example, Transparency International Anti-Corruption Center (TI Armenia) released in 2010 an analytical survey on corruption in 2008-2009 Activities of RA Public Procurement System, which was funded by the Open Society Institute. TI Armenia has also conducted reports European Neighbourhood Policy: Monitoring Armenia's Anti-Corruption for 2009 and 2010.

A report "Results on Public Monitoring Conducted within the Framework of the Multi-Component Monitoring in the RA Notary Offices" was conducted by Armenian Young Lawyers Association in December 2009, identifying risks in transactions made using the notary offices. A reform of notaries' offices is prepared by the government. Amendments to the law on notary services were approved by

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<sup>14</sup> MAAC 2010 Armenia Corruption Survey of Households and Enterprises, Yerevan, 2010, p. 5.

the government in April 2011. In presenting these amendments, the Prime Minister referred to corruption risks identified by surveys in this area as one of impetus for this reform.<sup>15</sup>

Overall and only with few exceptions<sup>16</sup>, the surveys conducted in the anti-corruption field identified that the perception of corruption remains high in Armenia and corruption is seen as a serious problem in the Armenian society.<sup>17</sup> Citizens are not well informed about anti-corruption initiatives being implemented by the Government of Armenia to fight against corruption<sup>18</sup>. According to the surveys, corruption seems to be more widespread in healthcare, electoral system, education, traffic police, and tax and customs services.<sup>19</sup>

In replies to the monitoring questionnaire, Armenia indicated twenty-one surveys that were used in the drafting the 2009 – 2012 Anti-Corruption Strategy and Action. These include both some surveys developed in Armenia, such as above-mentioned Corruption Surveys, but mainly international reports, such as TI Corruption Perceptions Index, 2006 Gallup Corruption Index, BEEPS and other World Bank reports, GRECO and OECD ACN evaluation reports. Besides, during the on-site visit an instruction by the Prosecutor General was mentioned that requires the prosecutors to take into account results of surveys regarding number of citizen's complaints and how to address them. Also the State Police mentioned that they would take into account surveys on satisfaction of citizens with traffic police, issuing of passports and that it helped to trigger reforms in these areas.

While until now the Armenian Government relies mainly on surveys conducted by civil society, based on the presumption that the external independent bodies findings are more reliable, there is an intention to establish a corruption prevention unit under the Monitoring Commission (see more information below), which, among others, would have to organise research and surveys on corruption and corruption risks. However, at the time of drafting this report no steps were taken to create such unit.

It could be useful for Armenia to pursue using surveys in reforms and development of public policies and also to consider training public officials' on conducting internal surveys within individual institutions, results of which might be used in order to improve institutional performance toward the public and increase citizen's satisfaction. The conduct of internal surveys, in addition to ones conducted by civil society, could give a more realistic picture of the situation in each specific area or institution and also help to identify concrete solutions.

### **New recommendation 1.3.**

***Continue supporting and using research about corruption. Conduct, using a transparent methodology, and publish surveys that reveal corruption risk areas and trends of corruption in***

<sup>15</sup> A Government's press release "Corruption Risks to be Curbed Consistently", see at <http://www.gov.am/en/news/item/5647/>

<sup>16</sup> An example was mentioned during the on-site visit on findings of a survey conducted with MAAC assistance on obstetrical birth certificates reform, which has shown satisfaction of the citizen by this measure undertaken by the government.

<sup>17</sup> MAAC 2009 Armenia Corruption Survey of Household and Enterprises, page 1; MAAC 2010 Armenia Corruption Survey of Households, page 4.

<sup>18</sup> MAAC 2010 Armenia corruption survey of Households, page 38.

<sup>19</sup> MAAC 2010 Armenia corruption survey of Households, page 4.



*different sectors, surveys on perception and experience with corruption, and on trust in public institutions. Use results of studies and surveys in development, implementation and monitoring of anti-corruption policies.*

## **1.4. Public Participation**

According to the 2009 Freedom House report, civil society organizations are increasingly active in Armenia, playing an important role in forming public opinion, engaging more with public institutions and participating in international cooperation, including European integration.<sup>20</sup> There are a number of NGOs conducting anti-corruption activities, including TI Armenia, Caucasus Research Resource Centres-Armenia, NGO Support to Communities, Freedom of Information Centre, NGO the Future is Yours, Armenian Young Lawyers Association, NGO Union of Government Employees, etc. Eleven Advocacy and Assistance Centres were established by the USAID MAAC project in Yerevan and regions of Armenia that are run by three Armenian NGOs.

The 1<sup>st</sup> round monitoring report in 2006 noted that twenty-one representatives of NGOs were involved in the work of the Anti-Corruption Strategy Monitoring Commission, including TI Armenia, which had a permanent status in the Commission.<sup>21</sup> During the on-site visit of the 2<sup>nd</sup> round of monitoring, it appeared that TI Armenia was involved in the beginning, but then withdrew in 2006, considering their participation was not useful. In 2010 TI Armenia attended one meeting as an observer. Few other NGOs confirmed that they have attended some meetings of the Monitoring Commission or were involved in its working groups. It appeared to the monitoring team that in practice the contribution of NGOs to the work of the Monitoring Commission was very limited.

The 2009 – 2012 Anti-Corruption Strategy stresses the importance of civil society's participation in the fight against corruption. According to the replies to the monitoring questionnaire, the Government consulted and involved civil society organisations and donor organisations at different stages in the drafting process of the 2009 – 2012 Anti-Corruption Strategy (for example, TI Armenia submitted comments and recommendations to the draft Strategy; the NGO Union of Government Employees participated in drafting the monitoring indicators). This welcomed involvement was also confirmed by civil society groups met during the on-site visit.

Significant support to the anti-corruption activities by civil society was provided by the USAID-funded MAAC Activity. This, among others, allowed supporting involvement of civil society in drafting parts of the strategy and conducting discussions and round-tables about this Strategy. For example, the NGO Freedom of Information Centre drafted certain sections of the Strategy and in 2008 organised 6 round-tables in Yerevan and other cities to present and discuss the draft Strategy.

The 2009-2012 Anti-Corruption Action Plan includes a section "Civil society support in the fight against corruption". This section provides for a series of activities, where civil society organisations or the mass media are mentioned as responsible agency. For example, to carry out campaigns on corruption, ensure the coverage of implementation of Anti-Corruption Strategy, organise training courses for investigative journalists. It is also foreseen in the Action Plan to involve civil society

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<sup>20</sup> Freedom House, Nations in Transit 2010

<sup>21</sup> See Armenia Monitoring Report, 13 December 2006, p. 11, <http://www.oecd.org/dataoecd/18/19/37835966.pdf>

organisations in councils of different public institutions and award grants to NGOs to conduct anti-corruption monitoring and studies. However, during the on-site visit it did not appear that these parts of the Action Plan were implemented by the Government. Civil society groups met by the monitoring team in April 2011 were not aware of this part of the Action Plan or involved in the implementation process.<sup>22</sup>

Besides, the 2009-2012 Anti-Corruption Strategy states that the RA Government appreciates the importance of the civil society participation in the monitoring and evaluation process of the Strategy.<sup>23</sup> The Strategy recommends “conferring to the private sector or the civil society the powers to conduct sectoral analysis and evaluations”<sup>24</sup>. Intention is to include outcomes and assessments of monitoring studies and analyses conducted by the civil society in the report about the Strategy. The Strategy also envisages that the civil society can make recommendations on how to reduce corruption risks and that these recommendations should be discussed in the review process of the Strategy. Again, during the on-site visit it appeared that this work in practice was not done.

The Prosecutor General’s Office claimed during the on-site visit that they work with the Advocacy and Assistance Centres in Armenia, and that they have conducted joint seminars on quality of referrals to law enforcement. Order Nr. 5 to cooperate with the Advocacy and Assistance Centres was issued by the Prosecutor General on 20 February 2009.

The inclusion of civil society and local governments in the Anti-Corruption Strategy for 2009 – 2012 is a positive development. It shows a more inclusive and comprehensive approach to efforts to fight corruption. Indeed, these efforts should not be only taken by the Armenian Government, but the Government should encourage and facilitate involvement of different stakeholders. However, to actually ensure the inclusion of civil society or local governments in the anti-corruption policy framework it would be useful to provide a formal basis for that, for example, a specific regulatory provision (for example, mention in the President Decree) or a written agreement (for example, a Memorandum of Understanding).

Another concern is the potential lack of sustainability of NGOs work in anti-corruption area, which is so far largely donor driven. In the future, the lack of external funding could lead to a significant reduction of NGOs work in the field of anti-corruption.

During the on-site visit the monitoring team learned about numerous anti-corruption activities conducted by civil society groups on their own initiative or in co-operation with the government. A project to introduce a prenatal healthcare certificate system was developed and implemented by the Ministry of Health with participation of NGOs, which reportedly helped to reduce illegal payments in the health sector. The NGO The Future is Yours with the National Institute of Education developed a methodological handbook on anti-corruption education in secondary schools. Another

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<sup>22</sup> In the March 2010 Istanbul Action Plan Progress Update Armenia also reported that it is foreseen to involve NGOs in the implementation of the 2009 – 2012 Anti-Corruption Strategy in the areas of education, evaluation of the judicial system, interaction with the police and legislature, the electoral process, ensuring of the regions’ financial independence and raising awareness of corruption.

<sup>23</sup> The Republic of Armenia 2009 – 2012 Anti-Corruption Strategy and its Implementation Action Plan, p.53.

<sup>24</sup> Idem, para 261-262, p. 54.

positive example was the establishment of Advocacy and Assistance Centres (AACs) in Yerevan and in all *marzes* (regions), which allow citizens to report corruption and get free legal advice. Co-operation between the AACs and prosecution services was established. Reportedly, many cases were detected in this way. The NGOs Freedom of Information Center and the Union of Armenian Government Employees also had provided training to civil servants. The NGO Freedom of Information Center has created a black list of public officials who violated Law on Freedom of Information, and recently a portal of access to information requests. This NGO also has a project with regional governments helping them to create websites, which will contain a special section on access to information.

## 1.5. Raising Awareness and Public Education

### Previous recommendation 6

***Conduct awareness raising campaigns and organise training for the relevant public associations, state officials and the private sector about the sources and the impact of corruption, about the tools to fight against and prevent corruption, and on the rights of citizens in their interaction with public institutions.***

In December 2006 Armenia was considered **partially compliant** with this recommendation.

It was noted during the 1<sup>st</sup> round of monitoring that little was done by the government to raise anti-corruption awareness and conduct training, as opposed to many donor-funded initiatives conducted by NGOs and international organisations. In Progress Update in 2007 Armenia reported that Government has allocated a grant to raise awareness. However, no further information was provided.

While during the on-site visit in April 2011 it was recognised that there is some progress in fighting corruption and citizens are more aware of the damages that corruption can cause, it is still considered a major problem and does not seem to be addressed by the Government in a systematic manner and the Government still does little to raise awareness on corruption.

In the 2008 programme of the Government building society's trust is one of the first priorities how to fight corruption. During the on-site visit it was explained that the awareness is raised through daily work of the Government, especially denouncing these problems during public speeches, on TV and radio, sectoral reforms, for example, in food safety, passport, road police areas, and speeches of the Prime Minister.

It was pointed out during the on-site visit that the Prosecutor General of Armenia was very keen to raise public awareness. Following his letter to the Minister of Education in May 2008 suggesting to include in curriculums of educational institutions lessons on corruption and its prevention<sup>25</sup>, lectures were conducted by prosecutors in 8 schools in Yerevan and a text book was published. The Prosecutor General's Office has conducted a series of public hearings in a number of marzes (regions) that reportedly attracted significant attention.

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<sup>25</sup> <http://www.genproc.am/en/105/item/4341/>

In 2008 – 2010 seven anti-corruption forums to raise awareness about corruption, discuss corruption problems and measures to fight it were supported by the USAID MAAC Activity. These forums were organised in cooperation with relevant state bodies and NGOs.

Numerous anti-corruption awareness raising and education activities were organised by NGOs with donor funding, mainly grants awarded to NGOs by the MAAC Activity since 2007. As examples can be mentioned the Advocacy and Assistance Centres' public awareness raising and education activities; the company Banadzev Ltd developed a series of anti-corruption television programmes and a reality show; Vanadzor NGO Centre prepared and broadcasted talk-shows with the participation of young people; NGO Centre for Public Dialogue and Development organized an anti-corruption film festival and photographic exhibition; Armenian Public Relations Association carried out a media campaign supporting discussions and raising awareness of corruption among the public and the business community.

The MAAC awarded a grant to the NGO The Future is Yours, which, together with the National Institute of Education, developed and published a methodological handbook on anti-corruption education for teachers and trained a number of teachers in general education schools to deliver anti-corruption education.

Some activities take place in view of raising awareness of citizens on their rights. As examples can be mentioned the work of the NGO Freedom of Information Center in protection of rights to information and encouraging creation of case law in this area and creation of a network of Advocacy and Assistance Centres (AACs) in Armenia providing legal advice and encouraging to report corruption.

See Pillar 3 for further information on training for public officials and Pillar 2 for training to law enforcement officials.

Despite the fact that civil society is very active in Armenia and it is conducting a commendable work in the field of the anti-corruption, surveys indicate<sup>26</sup> that the general public is not always aware about NGO's work in the field as NGOs lack visibility and necessary trust of the public. It seems that citizen's expectations about education, raising awareness are directed to public institutions or the government, for that reason it might be desirable for the Government of Armenia to lead itself the awareness raising campaign as a measure of enhancing communication with the general public.

Armenia remains **partially compliant** with the recommendation 6.

#### **New recommendation 1.5.**

***Take concrete measures to support and involve civil society and take joint actions and projects with it in the development, implementation and monitoring of anti-corruption policies and in anti-corruption activities.***

***Develop and implement Government's measures to raise awareness of the citizens about corruption and how to prevent it. Undertake Government-led efforts to build public trust, by providing practical information on citizens' rights and public services.***

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<sup>26</sup> MAAC Activity, 2009 Corruption Survey of Households and Enterprises, p.25

## 1.6. Specialized anti-corruption policy and coordination bodies

### Previous recommendation 1

***Continue with the activities to make the Anti-corruption Council and the Monitoring Group operational and ensure their proper functioning. Special attention should be given to ensuring high moral and ethical standards of the members of both bodies, including representatives of relevant executive bodies (administrative, financial, law enforcement, prosecution), as well as from the Parliament and Civil Society (e.g. NGOs, academia, respected professionals etc.) in the Monitoring Group.***

In December 2006 Armenia was considered **largely compliant** with this recommendation.

The institutional framework of specialised anti-corruption policy and coordination bodies has not changed since 2006. It includes two non-permanent bodies – the Anti-Corruption Council and the Anti-Corruption Strategy Implementation Monitoring Commission.

As already mentioned in the 1<sup>st</sup> round of monitoring report, the Anti-corruption Council was created on 1 June 2004 on the basis of the President Decree N° PD-100-N “On establishment of the Council for combat with corruption” (2004 President Decree). The Anti-Corruption Council is chaired by the Prime Minister and is composed of the Vice President of the National Assembly, President of the Control Chamber, Chief of Government Staff, Minister of Justice, Adviser to the President, Head of the President’s Oversight Service, the Prosecutor General, President of the Central Bank and the Chair of the State Committee for Protection of Economic Competition. The main functions of the Council are to coordinate implementation of anti-corruption strategy, organize development of anti-corruption action plans in public agencies, take measures to implement the strategy and international obligations and commitments in Armenia, discuss recommendations submitted by the Anti-Corruption Strategy Implementation Monitoring Commission.

As in 2006, still little is known about the actual results of the work of the Council. It operates through regular meetings that formally should be held twice every four months. Since December 2009, when the new Anti-Corruption Strategy was adopted, the Council met twice on 18 December 2009 and on 12 December 2010. The reports from meetings of the Council are made public on the Internet, but were not made available to the monitoring team in English.<sup>27</sup>

The Anti-Corruption Strategy Implementation Monitoring Commission was established also by the 2004 President Decree. The Monitoring Commission is headed by a Presidential Assistant (at the time of the on-site visit this position was vacant). The functions of the Commission are to monitor the implementation of the Anti-Corruption Strategy and internal anti-corruption programmes, by involving the public, the mass media and civil society representatives; study practice of international organizations, the public bodies of the Republic of Armenia in the area of the fight against corruption and develop recommendations; monitor fulfilment of obligations and commitments stemming from international agreements and the recommendations made by international organizations; conduct expert analysis of normative acts and submit recommendations on their improvement.

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<sup>27</sup> See at <http://www.gov.am/en/councils/reports/2/>

The 2004 President Decree foresees establishment of permanent and temporary working (expert) groups under the Monitoring Commission. According to the 1<sup>st</sup> round of monitoring report, the Monitoring Commission had established twelve working groups of in different strategic areas, for example, education and public health. It could be noted during the 2<sup>nd</sup> round of monitoring on-site visit in April 2011 that some working groups were indeed put in place. There was, for example, a working group to draft the new Strategy. However, it was not a systematic effort. The activities of the working groups were not effective and suffered from lack of professional staff and material resources.

Involvement of the civil society in the work of coordinating anti-corruption bodies remained limited. As it was stated by Armenian authorities, the composition of the Commission and the mechanisms for the involvement of NGO representatives failed to create adequate grounds for a full-fledged participatory process. In addition, the mechanism for nomination of NGOs to the Monitoring Commission was politicised.

Overall, little is known about the results of the work of the Monitoring Commission. There is no information about its meetings. The authorities explained that the Presidential Assistant who headed the Monitoring Commission left this position in 2009 and since then meetings were not held for a while. In 2010 the Monitoring Commission held its meeting in July followed by meeting of the Anti-corruption Council in October 2010. Further, the Monitoring Commission met on 30 August 2011 to discuss the monitoring reports on the implementation of the Action Plan in 2010. Currently the responsible agencies are filing the reports for 2011 and should submit them to the Monitoring Commission.

The monitoring team experienced difficulties to find interlocutors to discuss the work of both the Council and the Monitoring Commission during the on-site visit. While there are reportedly persons providing administrative support at the Government Staff and President's Administration, the monitoring team could only meet with one member of the Monitoring Commission, the Head of Police of the Republic of Armenia. This member was uncertain if he still belonged to the Commission or not.

Hence, it appeared to the monitoring team that a major problem is the lack of a permanent Secretariat and sufficient resources to administer anti-corruption work, ensuring it is more vigorous and done in a more holistic manner. In replies to the monitoring questionnaire Armenia confirmed that so far there is no specialized, professional subdivision subordinated to the Council or the Commission.<sup>28</sup>

There is an intention to create a permanent Secretariat function/administrative capacities to support anti-corruption efforts on a daily basis. According to a draft Decree of the President approved by the RA Anti-Corruption Council on 12 October 2010, the intention is to create a working group under the Commission on a paid and permanent basis to support the Anti-Corruption Council and the Monitoring Commission. It is planned, according to this draft Decree, that the main functions of this Secretariat will be to organize and carry out activities regarding anti-corruption strategy, monitor and evaluate, as well as regularly review the action plan; summarize the relevant progress reports;

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<sup>28</sup> Replies of Armenia to the monitoring questionnaire, p.36.

organize research and surveys on corruption; receive information from public and local self-government bodies and analyze it; organize research into corruption risks in various areas; prepare conclusions on the risks of corruption with regard to the drafts developed by individual bodies of public administration; organize education and awareness activities; organize thematic courses for public administration and private sector on fighting corruption; ensure cooperation with international organizations, draft reports on the obligations and commitments stemming from international agreements; provide administrative assistance to the work of the Anti-Corruption Council and the Monitoring Commission.<sup>29</sup>

Furthermore, the 2009 – 2012 Anti-Corruption Strategy, in its point 64, foresees creation of a structural unit on corruption prevention under the Anti-Corruption Council with similar functions.

During the on-site visit the monitoring team was told that there are negotiations between the RA Government Staff (Chancellery of the Government) and the Presidential Administration about future Secretariat, which could involve 3 – 5 persons. However, it should be pointed out that Secretariat function was not ensured at the moment of writing this report. Government of Armenia informed that there is still disagreement on institutional arrangement to support anti-corruption efforts, therefore the Decree has not been adopted yet.

The draft President Decree proposing to amend the Charter of the Council approved by the Anti-Corruption Council on 12 October 2010 besides creation of a Secretariat also proposes that the Monitoring Commission organizes anti-corruption education for public officials and other anti-corruption awareness raising activities. It also proposes inclusion as observers in the Monitoring Commission of following civil society representatives: the Public Council of the Republic of Armenia, the Union of Industrialists and Employers of the Republic of Armenia, TI Armenia and Advocacy and Assistance Centers. This draft Decree has not been signed by the President yet and is not into force.

The measures proposed in the draft Decree or in the Strategy seem to be well designed and promising, but they will be efficient only as long as the Anti-Corruption Council, the Monitoring Commission and the administrative structure/technical secretariat are empowered with the appropriate competences, capacities in terms of both material and human resources, which is not the case now.

Armenia remains **largely compliant** with recommendation 1.

#### **Previous recommendation 4**

***Armenia should study examples of countries where specialized independent anticorruption bodies with a combination of repressive (investigative, prosecutorial), preventive and educational tasks and powers have been established (Hong Kong's Independent Commission Against Corruption might serve as the most well known example of such body).***

In December 2006 Armenia was considered **largely compliant** with this recommendation.

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<sup>29</sup> RA President's draft Decree on Making Amendments and Supplements to the Charter of the Council as set out in the President's Decree PD-100-N dated 1 June 2004 on Establishing an Anti-Corruption Council (this draft Decree was adopted by the RA Anti-Corruption Council on 12 October 2010)

No additional information was provided.

Armenia remains **largely compliant** with the recommendation 4.

**New recommendation 1.6.**

***In order to strengthen the institutional capacities for development, implementation and monitoring of anti-corruption policies, it is necessary to:***

***i. Ensure effective oversight of anti-corruption policies at the highest political level, with participation of civil society and other key stakeholders;***

***ii. Ensure a permanent Secretariat function for development, implementation and monitoring of anti-corruption policies; ensure it has clear responsibilities and sufficient human, material and financial resources;***

***iii. Ensure that public institutions clearly allocate responsibilities for development and implementation of anti-corruption measures in their respective sectors, for the monitoring and exchange of information, including the reporting to the above Secretariat.***

## **1.7. Participation in international anti-corruption conventions**

### **Previous recommendation 7**

***Ratify Council of Europe Criminal and Civil Law Conventions on Corruption; sign and ratify the UN Convention against Corruption.***

In December 2006 Armenia was considered **fully compliant** with this recommendation.

During the 1<sup>st</sup> round of monitoring the UN Convention on the Fight against Corruption (UNCAC) was in the process of ratification. Armenia ratified the UNCAC on 25 October 2006. Following to that, the UNDP Armenia carried out a gap analysis of the implementation of UN Convention against Corruption (UNCAC) in Armenia. This gap assessment was used in development of 2009 – 2011 Anti-Corruption Strategy (see above).

Armenia joined GRECO in 2004, ratified the Council of Europe Civil Law Convention on Corruption on 7 January 2005 and the Council of Europe Criminal Law Convention on Corruption and its additional protocol on 1 January 2006.

On 29 November – 3 December 2010 GRECO adopted its 3<sup>rd</sup> Round Evaluation Report on Armenia. During GRECO 3<sup>rd</sup> evaluation round GRECO has addressed to Armenia 19 recommendations, 8 on Theme I: Incriminations and 11 on Theme II: Transparency of Party Funding. Armenian authorities are invited to present a report on the implementation of the GRECO recommendations by 30 June 2012.

Overall, Armenian authorities seems to be taking seriously all the international commitments in the anticorruption field.



## 2. Criminalisation of Corruption

Several shortcomings have been identified in the 2006 1<sup>st</sup> round monitoring report in regards to criminalisation of corruption, which include the following:

- Offer and promise in bribery was not covered;
- Trading in influence was not covered in the legislation;
- Several shortcomings in the anti-money laundering framework;
- Small number of investigations, including absence of cases of fully concluded investigations, as well as absence of cases involving corruption predicate offences;
- Absence of liability of legal persons for corruption offences with plans to develop such legislation.

A draft law was adopted by the Government and submitted for public consultations on 18 August 2011. This draft law introduces amendments into the Criminal Code aimed at bringing Armenian criminal legislation in line with GRECO recommendations.

### 2.1. – 2.2. Offences and Elements of Offence

#### Previous recommendation 8

*Amend the incriminations of corruption offences to meet the requirements of international standards as enshrined in the United Nation’s Convention against Corruption, the Council of Europe’s Criminal Law Convention on Corruption and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. In order to make the provisions criminalising bribery offences more transparent and foreseeable consider replacing existing complex fragmented provisions by a lesser number of general provisions addressing passive and active bribery. The provision which legalises the receipt by a public official of a gift not exceeding five times minimum salary under certain circumstances should be repealed. Furthermore, criminalise trading in influence.*

In 2006 Armenia was considered **partially compliant** with this recommendation.

In 2006 the monitoring report stated that in addressing the Recommendation 8 Armenia still has not criminalised offer and promise in bribery and trading in influence. Since then a number of changes have been introduced into the legislation in the area of criminalisation of corruption, the latest being in 2008.

#### Active bribery (giving a bribe)

The issue of offering and promising of the bribe is currently covered under Articles 312 “Giving bribe” and 312-1 “Giving unlawful remuneration to a public servant not considered as an official” of the Armenian Criminal Code. Article 312 covers “officials” while Article 312-1 uses the same elements of crime for public servants that are not regarded as “officials”. The crime of active bribery, in both provisions, is considered as completed regardless of the awareness of the public official of the offer, promise or giving of the bribe. The Articles also cover intermediaries, material and non-material benefits. Non-material benefits are not mentioned explicitly, but the authorities confirmed

that the interpretation of “other advantages” also included non-material benefits. They identify exempted criminal liability in cases of extortion and reporting to the law enforcement (effective regret). The provisions also cover third party beneficiaries. Both provisions foresee aggravated sanctions if the offence was committed on a large scale or particularly large scale of the value of the bribe involved or by an organised group. Articles 312 and 312-1 are in line with Article 15, paragraph a) of the UNCAC and Article 2 of the Council of Europe’s Criminal Law Convention.

### **Passive bribery (receiving a bribe)**

Armenian current legislation covers passive bribery in Article 311 “Receiving a bribe” and Article 311-1 “Receiving unlawful remuneration by a public servant not considered as an official” of the Criminal Code. These articles cover a range of elements, such as receiving a bribe, also through intermediaries, material and non-material advantages and third party. As with regard to active bribery, there are two provisions, relating to the two different categories of public officials. Both provisions foresee aggravated sanctions for particular situations (same as for active bribery).

However, the provisions of Armenian relevant legislation on passive bribery (Articles 311 and 311-1 of the Armenian Criminal Code) do not cover requesting and solicitation, as well as acceptance of an offer or a promise of advantage. Armenia argues that the “request” and “acceptance of an offer or promise” of a bribe would be covered as acts to prepare to receive a bribe under Article 35 of the Criminal Code. However, according to Article 33 Paragraph 2 of the Criminal Code, only the preparation of a grave or particularly grave crime is subject to criminal liability. According to Article 19 of the Criminal Code, grave crimes are intentional crimes for which a maximum sanction is provided of more than five and less than ten years’ imprisonment; particularly grave crimes are intentional crimes for which the Criminal Code provides a sanction of more than 10 years’ imprisonment. Both provisions (Article 311 and Article 311-1) foresee a maximum sentence below this limit.<sup>30</sup>

The new draft Law amending Criminal Code proposes to amend Articles 311 and 311-1 of the Criminal Code to include the following: “either demanding or accepting a promise or an offer to receive such”. If such legislation is adopted with such language, this would criminalise demanding bribe and accepting the offer or promise of a bribe by an official or by a public servant who does not hold an official position.

### **Trading in influence**

As Armenian authorities reported at the March 2010 ACN meeting<sup>31</sup>, the RA Law on Introducing Amendments to the Criminal Code of the RA enacted on April 30, 2008 has introduced Article 311-2, criminalising the trading in influence.

While the introduction of this offence is commendable, especially in view of the fact that Armenia reserved its right not to establish criminal liability for trading in influence under Council of Europe Criminal Law Convention until January 5, 2012 and it is an optional requirement under UN

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<sup>30</sup> For more detailed analysis of this issue see the GRECO Third Evaluation Round Evaluation Report on Armenia on “Incriminations (ETS 173 and 191, GPC 2” (Theme 1), 29 November – 3 December 2010, paragraphs 16, 28, 29, 78 and 95 (recommendation v.) [here](#).

<sup>31</sup> See the report at <http://www.oecd.org/dataoecd/31/57/45049632.pdf>, p. 6.

Convention Against Corruption, the scope of Article 311-2 still fails to meet the requirements of the international standards (Article 18 UNCAC and Article 12 of Council of Europe’s Criminal Law Convention).

More specifically, Article 311-2 covers only the passive side of the trading in influence leaving out the active side in its entirety.<sup>32</sup>

Besides, on passive trading of influence, there are a number of shortcomings:

- Art 311-2 does not criminalise the request or the acceptance of an offer or promise of an undue advantage to exert improper influence;
- Article 311-2 restricts the offence to acts committed for “mercenary purposes”;
- Article 311-2 does not refer to third party beneficiaries.

According to the draft Law on Amendments to the Criminal Code, Armenia argues it will fully criminalise this offence in line with the Council of Europe Convention. If the draft law is adopted with its current language, the Article 7 of the mentioned draft will criminalise the active side of the trading in influence in accordance with international standards and Article 5 will address another concern raised in connection to the request or the acceptance of an offer or promise, still leaving other issues raised above unaddressed.

## **Embezzlement, misappropriation or other diversion of property by a public official**

Article 179 of the Criminal Code criminalises embezzlement, while Article 308 of the Criminal Code deals with abuse of power. The monitoring experts believe that these provisions sufficiently reflect the requirements of the Article 17 of the UN Convention against Corruption.

## **Bribery in private sector**

This issue is a mandatory requirement under Council of Europe’s Criminal Law Convention (Articles 7, 8) and is optional under UN Convention against Corruption (Article 21). Armenian legislation covers bribery in private sector in the Article 200 (passive and active bribery) of the Criminal Code.

Article 200 of the Criminal Code covers officers — implementing managerial functions — of a commercial or other organisation. Pursuant to Paragraph 5, an officer of a commercial or other organisation means a person who permanently, temporarily or with a special authorisation implements instructive or other managerial functions in commercial organisations — irrespective of the form of ownership — as well as in non-commercial organisations which are not deemed to be state and local self-government bodies, institutions of state and local self-government bodies.

On the one hand, the scope is broader than the provisions of the Council of Europe’s Criminal Law Convention, as it is not limited to business activities – it also includes non-profit activities. On the

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<sup>32</sup> For more detailed analysis of this issue see the GRECO Third Evaluation Round Evaluation Report on Armenia on “Incriminations (ETS 173 and 191, GPC 2” (Theme 1), 29 November – 3 December 2010, paragraphs 52 – 61, 87 and 95 (recommendation v.) [here](#).

other hand, it is narrower than the Council of Europe's Criminal Law Convention, as it does not cover employees who are not managers.

In addition, Article 200 of the Criminal Code only refers to the receipt of a bribe. The request for an undue advantage or the acceptance of an offer or promise of such an advantage is not explicitly covered. As explained above, only the preparation of grave or particularly grave crimes is subject to criminal liability. Due to the fact that the sanctions provided in Article 200 of the Criminal Code do not exceed five years, the request for a bribe or the acceptance of an offer or promise of a bribe cannot be regarded as preparation of a grave or particularly grave crime. Hence, they are not criminalised.

## **Abuse of functions**

The issue is optional under UN Convention Article 19. It seems to be sufficiently covered in Armenian legislation (Article 308 of the Criminal Code of Armenia) and is in correspondence with UN requirements.

## **Illicit enrichment**

Criminalisation of illicit enrichment is provided for in the UN Convention in the Article 20. This Article provides that countries should consider establishing as criminal offence intentional and significant increase in assets of public official that she or he cannot explain in relation to his or her lawful income. However, this provision is optional. The authorities of Armenia have informed the team of experts that they considered the introduction of such an offence, but have come to the conclusion that illicit enrichment should not be criminalised. The monitoring team is not aware of a written report or other form of conclusions that would explain the reasoning behind this decision or of existence of a working group that would have worked on this topic.

Armenia remains **partially compliant** with Recommendation 8.

## **Money-laundering**

### **Previous recommendation 22**

<p><b><i>Adopt the full set of anti-money-laundering legislation, which brings Armenia in compliance with the international standard, and ensure that a financial intelligence unit is set-up as soon as possible.</i></b></p>
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In 2006 Armenia was considered **partially compliant** with this recommendation.

In 2008 Armenia has adopted a new Law on Combating money-laundering and financing of terrorism (AML/CFT law). It has replaced a previous less comprehensive Act from 2005. The new law has addressed most of the concerns raised in the 1<sup>st</sup> round monitoring report in 2006.

According to the Council of Europe MONEYVAL mutual evaluation report "Anti-Money Laundering and Combating the Financing of Terrorism in Armenia" adopted in 2009, the amended AML/CFT law and other regulations cover all financial institutions and activities as set out under the FATF definition of financial institution, and impose detailed AML/CFT requirements on the financial sector for, inter alia, Customer Due Diligence, including for Politically Exposed Persons, record-keeping,

correspondent banking, unusual, large and suspicious transaction reporting, internal controls, compliance management arrangements, and training.<sup>33</sup>

However, there are a number of areas where the requirements do not comply with the FATF Recommendations, as it is also reflected in the MONEYVAL report. Moreover, the report stated in 2009 that “the new law needs to be implemented effectively. The authorities have not yet conducted a systemic assessment of ML and TF threats and risks in Armenia to support the development and implementation of a robust AML/CFT regime”<sup>34</sup>. The Armenian authorities informed that a strategic analysis of risks of money laundering and terrorism financing was conducted in 2010. According to the Council of Europe MONEYVAL Progress report in September 2010, pursuant to MONEYVAL recommendations, the Armenian authorities initiated an exercise of strategic assessment of ML/FT risks in the country.<sup>35</sup>

In the future, more emphasis should be given to the enforcement of the anti-money laundering legislation. In particular the 2009 MONEYVAL report noted the small number of investigations with the absence of cases in which investigation would be fully completed and the absence of cases where the predicate offence would be corruption. In August 2011 Armenian FIU reported that in 3 money-laundering cases in 2010 the predicate offences were corruption-related crimes, namely, misappropriation and embezzlement.

Also, particular attention should be paid to Politically Exposed Persons. No suspicious transactions reports relating to such persons have been identified so far.

Armenia is **largely compliant** with Recommendation 22.

## Liability of legal persons

### Previous Recommendation 11

***Recognising that the responsibility of legal persons for corruption offences is an international standard included in all international legal instruments on corruption Armenia should with the assistance of organisations that have experience in implementing the concept of liability of legal persons (such as the OECD and the Council of Europe) consider how to introduce into its legal system efficient and effective liability of legal persons for corruption.***

In 2006 Armenia was considered **partially compliant** with this recommendation.

Armenian legislation provides for the liability of legal persons in the situations in which the legal entity is involved in money laundering or terrorist financing, according to the Article 28 of the AML/FT Law.

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<sup>33</sup> MONEYVAL. Mutual Evaluation Report. Anti-Money Laundering and Combating the Financing of Terrorism. Armenia, 22 September 2009, see the full report [here](#).

<sup>34</sup> MONEYVAL. Mutual Evaluation Report. Anti-Money Laundering and Combating the Financing of Terrorism. Armenia, 22 September 2009, p. 9.

<sup>35</sup> MONEYVAL (2010) 15. Progress report and written analysis by the Secretariat of Core Recommendations. 28 September 2010.

In the 2006 report it was mentioned that there was a plan for establishment of the Working Group on elaboration of the draft legislation introducing responsibility of legal persons for corruption offences in 2007. Since then, the Armenian authorities have reported that they have studied international experience in this area and that they are preparing draft legislation to that effect. During the update provided by Armenian delegation at the 7<sup>th</sup> Monitoring Meeting in September 2007, it was stated that the Working Group continues its work. The same information was provided to the examiners in the framework of the GRECO evaluation on compliance in 2008.<sup>36</sup> No update under Recommendation 11 was provided at the 8<sup>th</sup> Monitoring Meeting, held in March 2010. Subsequently, this issue was omitted in the update report made at the 9<sup>th</sup> Monitoring Meeting in December 2010.

In the Addendum to the Compliance report on Armenia, adopted by GRECO in June 2010, Armenian authorities have mentioned development of the draft legislation on amending of the Code of Administrative offences which would introduce liability of legal persons for corruption offences among others. The GRECO has concluded that those related to economic activities and “none of these offences relate to acts of bribery and trading in influence”. In replies to the questionnaire Armenian authorities stated that Armenia has civil liability of legal persons for corruption offences under Article 60 of the Civil Code of Armenia. However, nothing in the text of this provision relates to corrupt conduct of employees or managers of the company.

Legal provisions establishing liability of legal persons for corruption should ensure that a legal person can be subjected to an investigation regarding taking and giving bribe, trading of influence when these offences are committed by the employees of the legal person in the name of it, or using its funds, the position or the activity of the legal person. Consider adopting legal provisions which permit a legal person to be subjected to an investigation regarding embezzlement, commercial bribe or abuse of official powers, when the offences were committed in the name of the legal person, using its funds, or taking advantage of its legal or commercial position.

As stated above, Armenia has introduced administrative liability for legal persons for money laundering offences, in the Article 28 of the AML Law. This should be considered for replication in the context of corruption.

Armenia remains **partially compliant** with Recommendation 11.

**New recommendation 2.1. – 2.2.**

***i. Armenia should explicitly criminalise the request and solicitation of an undue advantage and acceptance of an offer and of a promise of an undue advantage (Article 311 and Article 311-2 of the Criminal Code of Armenia), in line with Article 15 paragraph b) of the UN Convention and Article 3 of the Council of Europe’s Criminal Law Convention.***

***ii. Armenia should consider fully covering trading in influence in its criminal law in line with international standards, namely to include active side of trading in influence, request or the acceptance of an offer or promise of an undue advantage to exert improper influence, other acts apart from those committed for “mercenary purposes” and refer to third party beneficiaries.***

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<sup>36</sup> GRECO Joint First and Second Round Evaluation, Compliance report on Armenia, adopted in June 2008, p. 18

*iii. Armenia should fully criminalise bribery in the private sector by expanding the definition of persons subjected to these provisions to include all individuals who work for private sector entities.*

*iv. Armenia is encouraged to conduct further analysis of needs and possibilities to criminalise illicit enrichment.*

*v. Armenia should introduce liability (criminal, civil or administrative, as it deems appropriate) of legal persons for corruption offences with appropriate sanctions.*

## 2.3. Definition of public official

### Previous recommendation 13

*Ensure that the concept of an “official” encompasses all public officials or persons performing official duties in all bodies of the executive, legislative and judicial branch of the State, including local self-government and officials representing the state interests in commercial joint ventures or on board of companies.*

In 2006 Armenia was considered **largely compliant** with this recommendation.

For Recommendation 13 the main issue identified in the 2006 1<sup>st</sup> round monitoring report was the lack of clarity whether some categories of officials would be covered by the definition of the public official, namely, members of the national and local assemblies. There was no court interpretation of the definition which would clarify such issues.

Since then, the Armenian authorities reported in their Progress Update in March 2010 that in November 2006 the Law on Introducing Amendments to the Criminal Code introduced a broader definition of “public official” and that it now includes members of the assemblies. The Armenian authorities argue that since Members of the Parliament represent legislative branch of the power, they are covered by the notion of public official of “persons who ... exercise functions of a representative of state power”, which seems to be an acceptable interpretation.

The 2008 amendments of the corruption-related articles of the Criminal Code of Armenia further expanded this definition to cover the category of so-called “public servants” or “civil servants” – public service employees who do not have the status of public officials.

It seems that Recommendation 13 in its current form has been satisfactory dealt with by Armenia.

However, the current Armenian legislation does not cover officials and employees of political parties and candidates for political office. This is not expressly covered by international instruments, although considered as a good practice.

Armenia is **fully compliant** with Recommendation 13.

### Previous Recommendation 14

*Ensure the criminalisation of bribery of foreign and international public officials, either through expanding the definition of an “official” or by introducing separate criminal offences in the Criminal Code.*

In 2006 Armenia was considered **largely compliant** with this recommendation.

Armenia has expanded the definition of an “official” to include foreign and international public officials. Moreover, the definition of the foreign public official is broader than that of the national public official and is written out in a clearer manner, without breaking down public officials into two categories as it is done for domestic bribery. However, there seems to be no cases of foreign bribery investigated or prosecuted.

Armenia is **fully compliant** with Recommendation 14.

## 2.4. Sanctions

A whole range of sanctions are provided by the Criminal Code of Armenia for corruption-related offences, for example, fines, imprisonment, detention (up to 3 months), deprivation of the right to hold certain positions or engage in certain activities, with confiscation of property as additional sanction. The overall level of sanctions, although widely spread out among numerous Articles of the Criminal Code of Armenia, seems to be adequate on the books, with the exception of those for basic form of bribery, committed by non-state official public servants and those for basic form of bribery in private sector, with imprisonment of up to 2 years. Such sanctioning entails a statute of limitation of 2 years which can preclude successful investigation and prosecution of such cases, especially if the investigation depends on results of legal assistance from other countries.

## 2.5. Confiscation

### Previous recommendation 12

***Amend the legislation on confiscation of proceeds from crime to comply with international standards (such as the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime). Ensure that the confiscation of proceeds applies mandatory to all corruption and corruption-related offences. Ensure that the confiscation regime allowed for confiscation of proceeds of corruption, or property the value of which corresponds to that of such proceeds or monetary sanctions of comparable effect, and that confiscation from third persons is possible. Review the provisional measures to make the procedure for identification and seizure of proceeds from corruption in the criminal investigation and prosecution phases efficient and operational.***

In 2006 Armenia was considered **partially compliant** with this recommendation.

Armenia has two types of confiscation mechanisms: (i) confiscation as supplementary sanction (Articles 50 and 55 of the Criminal Code of Armenia), and (ii) confiscation as a mandatory measure to deprive the offender of the instrumentalities of crime (forfeiture) (Article 119 of the Criminal Procedure Code of Armenia).

At the time when 2006 report was drafted Armenia has just adopted an amendment to the Article 55 of the Criminal Code of Armenia. It introduced mandatory confiscation (supplementary sanction) for both directly and indirectly acquired property as a result of criminal activities. Similarly, value based confiscation was introduced, as well as confiscation from third parties. Nevertheless, for third party confiscation it would be required to prove that a person was aware of the criminal purpose/origin of the property, which raised concerns over difficulties for prosecutors to prove it. The main outstanding concern raised was practical application of confiscation which happened very



rarely. In response to this concern Armenian authorities have provided statistical data in their Progress Update in March 2010, indicating that there is a constant increase in application of confiscation in corruption cases from equivalent of 1 million USD recovered in 2007 to 3 million USD in 2009. Nevertheless, the figure does not seem as impressive if compared against the estimated damages from corruption offences which, according to the same report, went up from the equivalent of 1,4 million USD in 2007 to 13,8 million USD in 2009.<sup>37</sup>

Confiscation (as additional punishment) under improved Article 55 of the Criminal Code of Armenia is available for all corruption offences.

Provisional measures (procedure for identification, freezing and seizure of proceeds from corruption) have some deficiencies. Financial secrecy in Armenia is regulated by a number of different provisions, which have not been harmonised and in practice are interpreted in the most restrictive way. This limits the power of law enforcement agencies to identify and trace property that is or may become subject to confiscation, especially prior to the identification of a suspect or where the information sought relates to a person other than the suspect.

Armenia is **largely compliant** with Recommendation 12.

## 2.6. Immunities and statute of limitations

### Previous recommendation 9

***Review the existing levels of the statute of limitations for corruption offences to ensure that current relatively low time limits for basic bribery offences do not hinder effective detection, investigation and prosecution.***

In 2006 Armenia was considered **partially compliant** with this recommendation.

The statutory limitation period is related to the classification of the crime, for example, grave crime or particularly grave crime, which itself is determined by the maximum sanction of a specific offence. Sanctions for most of the corruption-related offences have been unchanged since 2006 report. The only sanctions that have been raised in June 2009 are those for money-laundering offences (Article 190 of the Criminal Code of Armenia), this offence now has a statute of limitations of 5 years for basic offence and 10 to 15 years for aggravated forms.

The GRECO 2010 Third Evaluation Round Evaluation Report on Armenia on Incriminations states that overall the level of sanctions for corruption offences in Armenia is satisfactorily, especially when various aggravating circumstances apply, and generally statute of limitation is five to ten years for most corruption offences.

Meanwhile, as explained above and also confirmed in the GRECO 2010 report, sanctions for the “basic” form of bribery, committed by non-state official public servants and those for “basic” form of bribery in private sector (imprisonment of up to 2 years) entail a statute of limitation of two years which can preclude successful investigation and prosecution of such cases. The statistics provided by the Armenian authorities indicates that the number of corruption cases discontinued due to the

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<sup>37</sup> March 2010 Progress Update by Armenia, see at <http://www.oecd.org/dataoecd/31/57/45049632.pdf>

statute of limitations has been steadily growing over the past years – from 3 cases in 2007 to 27 cases in 2009.

Immunity does not constitute grounds for suspension of the statute of limitation. This would limit possibilities for successful investigation and prosecution of corruption cases which involve persons who enjoy immunity.

Armenia remains **partially compliant** with Recommendation 9.

#### **New Recommendation 2.6.1.**

***Armenia should increase the statutory limitation periods for bribery to ensure for effective investigation and prosecution.***

#### **Previous recommendation 10**

***Adopt clear, simple and transparent rules for the lifting of immunity and review the categories of persons benefiting from immunity and the scope of such immunities to ensure that they comply with international standards and cannot be abused for shielding persons from criminal liability for corruption offences.***

In 2006 Armenia was considered **not compliant** with this recommendation.

The main concern raised in relation to Recommendation 10 in the 1<sup>st</sup> monitoring round report in 2006 was the fact that, while there was a clear assignment of institutions which can lift immunities for each category, there was no clarity as to the criteria these institutions should use in exercising their respective authorities.

No progress has been reported by Armenia in regards to the implementation of the part of the recommendation that requires improvement of rules on lifting immunities. No statistics on lifting of the immunity in corruption cases was provided by the Armenian authorities, which makes it difficult to assess whether immunity lifting is applied in practice and continues to present a challenge. The procedures of lifting of immunities were evaluated as complex, especially in regards to prosecutors and judges by other international organizations as well.<sup>38</sup> In May of 2010 Law on the Prosecution has been amended and the procedure was simplified in regards to the prosecutors.

Until 2010, there were ten categories of persons enjoying immunity. Among them, there were parliamentary candidates, members of the Central, Regional and Local Election Commissions, candidate mayors and candidates to the local councils. Such categories were incompatible with international standards. To address this issue Armenia has adopted in May 2010 the law amending the Electoral Code and immunities provided to all of the above-mentioned categories have been abolished. This marks a significant progress under Recommendation 10.

In the preliminary stage of the investigation, law enforcement bodies can gather evidence against any person regardless if the person enjoys immunity or not. So, even the President, a Member of Parliament or a judge can be subject to covert activities, wiretapping or gathering intelligence. In addition, witnesses can be questioned in relation to the activity of the person who is covered by

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<sup>38</sup> GRECO Joint First and Second Round Evaluation report on Armenia, March 2006, pp. 16-17.

immunity. According to the Armenian authorities, all investigative actions, for example, interrogation of witnesses, seizure, and search of premises with a court sanction are allowed in the framework of criminal cases even when these actions are connected to the person enjoying immunity.

In order to arrest a person enjoying immunities, or bring official charges the immunities have to be lifted for the President, Member of the Parliament or a judge. Article 13, paragraph 3 of the Judicial Code states: “A judge may not be remanded in custody, involved as an accused, subjected to administrative liability without the consent of the President of the Republic”. Article 66 paragraph 3 RA Constitution stipulates: “A deputy (Member of the Parliament) may not be involved as an accused, detained or subjected to administrative liability without the consent of the national Assembly. Article 57, paragraph 1 and 2, of the RA Constitution stipulates also that: “the President may be impeached for state treason or other heavy crimes. The immunities can be lifted by the National Assembly and based on a decision of the Constitutional Court”.

In order to bring official charges within an “arresting status procedure”, immunity does not have to be lifted when the judge or a MP is caught in the act (*in flagrante delicto*). The legal provisions in these situations are found in the Article 66, paragraph 4 of the RA Constitution as far as MPs are concerned, and Article 13, paragraph 1 of the Judicial Code for the judges. The Armenian Constitution does not provide any legal procedure which allows the President to be arrested in any situation during his mandate. Still, the President may be prosecuted in Armenia for the actions not connected with his status after the expiration of his term of office.

Armenia is **partially compliant** with Recommendation 10.

#### **New recommendation 2.6.2.**

***Adopt rules in order to restrict the status of immunities only to the situations when prevention measures need to be taken.***

***Consider modifying legal provisions according to which the immunities lead to situations of exceeding the legal terms of statute of limitations. Adopt rules according to which immunities constitutes ground for suspending the statute of limitation.***

***Consider repealing the legal provisions requiring the consent of the National Assembly and the consent of the President for accusing or for detaining a judge or a Member of Parliament. Consider modifying the specific legal provision allowing arresting a judge in any legal situation, not only when he is caught red-handed.***

## **2.7. International Cooperation and mutual legal assistance**

### **Previous recommendation 15**

***Contribute to ensuring effective international mutual legal assistance in investigation and prosecution of corruption cases.***

In 2006 Armenia was considered **largely compliant** with this recommendation.

Armenia has signed most of the main MLA international instruments and has a number of bi-lateral treaties on MLA. Corruption offences carry sentences necessary to meet the extradition level. The

procedure for rendering and providing MLA is regulated by the Criminal Procedure Code of Armenia (Chapter 54). Such measures as tracking, seizing, arresting and confiscating of the property on the request from a foreign authority are all provided for under Armenian legislation. Armenian authorities can carry out requests in regards to both physical and legal persons. The Central authorities of the Republic of Armenia are the General Prosecutors Office and Ministry of Foreign Affairs. It is unclear how their competences are divided.

The only problems in MLA application that have been identified were those of dealing with particular countries (such as China and United Arab Emirates) which simply did not respond to the request made. No statistical data in regard to application of MLA has been provided which makes it difficult to assess the effectiveness of its enforcement.

Armenia remains **largely compliant** with Recommendation 15.

## **2.8. Application, interpretation and procedure**

### ***Application and Interpretation***

Proof that the bribe influenced the public official in his decision making is required under Armenian legislation. Indirect (circumstantial) evidence to prove the intent is acceptable in corruption cases, according to replies to the monitoring questionnaire provided by Armenian authorities. This is an exceptional case in the Istanbul Anti-Corruption Action Plan countries and is a positive step in the right direction.

### ***Procedure***

Similarly to many other post-Soviet countries, a distinction is made in Armenia between “inquiry” (covert inquiry) and criminal investigation or preliminary investigation which starts with initiation of the criminal case. The “bodies of inquiry” are units and persons that gather criminal intelligence in a covert manner using operational-search activities provided for in the Law on Operative and Intelligence Activities of Armenia. Criminal investigators conduct criminal investigations after a criminal case is opened using investigative activities provided for in the Criminal Procedure Code of Armenia.

As stated in replies to the questionnaire by Armenian authorities all covert intelligence methods and techniques outlined in the Article 14 of the Law on Operative and Intelligence Activities, such as, telephone wiretaps, review of correspondence, interior observation, etc., can be used to investigate corruption offences. Among these measures and techniques there is also an “operative experiment”<sup>39</sup> and “imitation of passive and active bribery”. Both can be used in relation to corruption. Similarly, it seems that all investigatory activities, including interrogation, search and seizure, investigatory operation (similar to operative experiment and is applicable after a criminal case is opened), as well as monitoring of correspondence, telephone and other communication, including e-mail and fax, can be used to investigate corruption offences. An investigator can also monitor telephone conversations with a court order.

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<sup>39</sup> A term often used in post-Soviet countries for what is known as “sting operations”, an operation to catch a person committing a crime.

The question of access to bank and financial information remains complex and not always entirely clear. The ability and powers of law enforcement agencies, including prosecutors, national security, police and tax authorities, to obtain access to bank information of suspects and third parties, which are covered by bank secrecy, was, in particular, canvassed during the on-site mission. It is important to access such information during any investigation focused on high level corruption, as well as following the money trail.

It appeared that, in general, law enforcement agencies are able to obtain information from banks and other financial institutions in one of the following ways:

- directly from the Financial Monitoring Centre (FMC), Armenian FIU located within the Central Bank of Armenia, if it is related to a money laundering investigation; or
- directly from banks and other financial institutions through various procedures prescribed for in the 1996 Law on Banking Secrecy, the Criminal Procedure Code and the 2007 Law on Operational and Search Activities of Armenia.

Cooperation with the FMC does not seem to be a problem. The FMC is obliged under the Article 13(4) of the Republic of Armenia Law on Combating Money Laundering and Terrorism Financing (AML/CFT Law) to respond to a request from criminal investigation authorities on “available information, including the information constituting secrecy”, if the request contains “sufficient justification of a substantial suspicion” or relates to a case of “money laundering or terrorism financing”.

Although the stakeholders met during the on-site visit confirmed that co-operation between the FMC and law enforcement bodies was good, it was pointed out that the FMC only provides its analysis of the bank records and not the actual bank records which cannot always be sufficient. In cases when bank records are required as evidence in a trial, law enforcement bodies need to obtain those directly from the banks themselves.

As stated above, the law enforcement bodies also have other options which can be pursued when seeking information covered by banking secrecy. However, these procedures create hindrances to their effectiveness in investigations of criminal matters. It was pointed out that upon receipt of a court order, banks shall grant prosecuting authorities access to confidential information concerning a “suspect”<sup>40</sup> or an “accused”<sup>41</sup>. Therefore, access to information covered by bank secrecy, which may be required for evidentiary purposes, for example, the bank records of a third person whose account was used by the suspect, cannot be obtained.

Furthermore, some powers as identified, for example, under Article 10 of the Law on Banking Secrecy are not available before a criminal case has been formally initiated. Article 10(1) of the Law on Banking Secrecy stipulates that banks shall provide, in accordance with this Law, the criminal

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<sup>40</sup> According to the Article 62 of the CPC “suspect” is a person who is “detained upon the suspicion in committing a crime or with regard to whom a resolution on the selection of precautionary measures is adopted”.

<sup>41</sup> According to the Article 64 of the CPC “accused” is a person with respect to whom a resolution has been passed in regards to bringing him/her to trial as the accused.

prosecution authorities with confidential information concerning criminally charged persons only if a court decision on a sanctioned search is available pursuant to the Criminal Procedure Code.

In addition, the legislation requires law enforcement bodies to have, at least, an initiated criminal case and an identified suspect, thus, the existing Armenian legal framework does not permit the law enforcement bodies to access information concerning legal or corporate persons as they are not subject to criminal liability under Armenian law and can therefore not be considered a suspect or a criminally charged person under Article 10 of the Law on Banking Secrecy.

A further issue of some concern which was raised in connection with the investigation and prosecution of high level corruption are the time constraints imposed in the CPC. The inquiry starts before the criminal case is instigated, and it can last up to 10 days. The investigation then must be concluded no later than in two months.

However, as indicated during the on-site visit, this problem can be overcome in part if the formal initiation of the investigation is delayed as far as possible within legal limits, which is clearly dependent on the merits of each individual investigation. It was also pointed out that this was not an unreasonable period if no one was taken into custody.

#### **New recommendation 2.8.**

***Armenia should ensure that law enforcement agencies have necessary access to financial data for detecting and investigating corruption-related offences. In particular, allow access to financial data of a broader range of persons than suspects and accused persons in criminal investigations, including, for example, family members or other close persons, when there are enough suspicions that those persons participated, helped or are aware of the committed crime or when there are grounds to believe that the money are provided by the suspect without any legal justification, respecting international standards for data protection.***

***Armenia should extend the time period of preliminary investigations of criminal case on corruption-offences currently referred to in Article 197 of the Criminal Procedure Code.***

## **2.9. Specialized anti-corruption law-enforcement bodies**

#### **Previous recommendation 3**

***Consolidate law enforcement efforts in the fight against corruption and ensure better cooperation, in particular with the newly established specialized department within the Prosecution Service. Further specialize anticorruption units within the Police and ensure functional links between specialised law enforcement bodies and the specialised prosecution department. Undertake steps to minimize possible improper influence of or interference into the work of law enforcement officials investigating corruption offences. Exchange of knowledge and information should be direct and confidential, the number of administrative decision makers (heads of different departments, for example) should be minimized.***

In 2006 Armenia was considered **partially compliant** with this recommendation.

The concerns raised in 2006 report in regards to Recommendation 3 have been focused on limited resources of the Anti-Corruption Division of the Prosecution Service, which is responsible for coordination in addition to investigation and prosecution of corruption-related offences; overlapping

competencies between police and security service in investigation of corruption offences and, lastly on the low level of high-profile investigations and prosecutions. Some of these concerns seem to have been addressed and others still remain.

Armenian authorities in their Progress Update in March 2010 provided statistical data, which shows a high number of middle level officials being investigated and prosecuted for corruption offences, including law enforcement officers, directors of the organizations, heads of bodies of local self-governance. This indicates progress, yet examples of cases involving higher level of public officials have happened only recently, for example, investigation into the abuse of power and large scale embezzlement of public funds by the chief of the Armenian traffic police in August of 2011.

Since adoption of the amendments into the Law on Prosecution of Armenia in February of 2007, the prosecutors are stripped off of the investigative functions, which should have contributed to focusing of their resources. Furthermore, Armenia has formally adopted a list of corruption-related criminal offences in 2008.<sup>42</sup> This list includes all existing offences mentioned above in the section “Offences and Elements of Offence” and some additional ones (such as mediation in bribery, official fraud, obstruction of justice, etc.), in total 31 offences. This step was aimed, among others, at enhancing the specialisation of prosecutors. Nevertheless, it can be useful to narrow it for the benefit of further specialising of the law enforcement bodies and for the purposes of criminal statistics.

There seems to be no changes in the competencies of the police and security services in regards to investigation of corruption offences since 2006. Both of these institutions continue to be responsible for investigation of such crimes.

A significant development was the establishment of the Special Investigative Service (SIS) in 2008. This is a new, special institution responsible for preliminary investigations of crimes committed by managerial officials within all three branches of power.

The division of competencies in criminal investigations is regulated by the Article 190 of the Criminal Procedure Code. The Article 190 provides guidance as to what offences are to be investigated by what bodies. Article 190 of the Criminal Procedure Code states that the SIS is responsible for investigation of the crimes committed by the managerial officials in executive, judicial and legislative branches of power. The SIS also investigates cases initiated based on Articles 149, 150, 154<sup>1</sup>, 154<sup>2</sup> of the Criminal Code enshrining criminal offences related to the electoral process.

The General Prosecutors Office has procedural oversight of the SIS. Furthermore, a number of other law enforcement units and bodies are responsible for investigation of corruption. However, the competences are not clearly divided. Money laundering and corruption are often closely related. This necessitates a co-ordinated approach, which appears to be lacking. For example, if the money laundering charges are closely linked to the predicate offence such as corruption, the whole matter may be referred to the National Security Service. The notion of a joint inter-institutional investigation task force involving representatives of various law enforcement and control bodies is not entertained in practice although nothing prohibits this in the law. However, as the competences

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<sup>42</sup> Prosecutor General’s Order #82 on Corruption Criminal Offences, 19 November 2008

are not clearly delineated, it may lead to overlaps between the activities of the different law enforcement bodies, resulting in confusion and lack of co-ordination.

While some positive steps were identified, for example, the set up of the SIS, the results of the fight against corruption involving higher positions are disappointing in the opinion of the population, as expressed by members of civil society and business organisations. The numbers of such investigations, prosecutions and convictions are very modest in relation with institutional and organisational possibilities of the law enforcement agencies. Among higher ranks, only one high rank police officer (in a murder case where he was accused of abuse of power), one high level official within Ministry of Environment and recently Chief of Armenian Traffic Police were subjects of investigations in the last four years. Moreover, the monitoring team noticed that most investigations are focused on police officers, while there are few investigations concerning other groups potentially more exposed to corruption.

Armenia remains **partially compliant** with Recommendation 3.

#### **New recommendation 2.9.**

***Clearly delineate competences of different inquiry, investigating and prosecuting bodies in detecting, investigating and prosecuting corruption-related offences, especially among the police units. Ensure other bodies apart from the Special Investigation Service (SIS) are clearly assigned to detect, investigate and prosecute corruption offences, as long as this is not defined as exclusive competence of the SIS.***

***Foster cooperation between law enforcement bodies and control bodies in detecting, investigating and prosecuting corruption-related offences.***

***Encourage the criminal investigation and prosecution bodies to approach the corruption phenomenon in a more targeted and proactive manner, aiming at persons among high level officials, main risk areas in public administration, economy and the society.***

#### **Previous recommendation 5**

***Continue with efforts in the area of corruption-specific joint trainings for police, prosecutors, judges and other law enforcement officials; provide adequate resources for the enforcement of anti-corruption legislation.***

In 2006 Armenia was considered **partially compliant** with this recommendation.

The only concern raised in the 2006 report in regards to this Recommendation dealt with the absence of joint trainings, while other trainings seemed to be conducted on the regular basis and to cover anti-corruption/corruption issues.

In the responses to the questionnaire Armenian authorities provided an impressive list of trainings/and their types conducted for various criminal justice representatives in the area of anti-corruption. The Prosecutor General on 30 March 2009 issued the Order Nr. 20 On Approving the Curriculum for Regular Training of Prosecutors in Corruption. A handbook "A course on Corruption: Stage 1" was published. In March-December 2009, 269 prosecutors were trained in 13 groups. In 2010 a model thematic plan for public servants holding chief, senior, middle and junior posts within the Police of Armenia included Fighting Corruption as a mandatory subject.



It appears that the anti-corruption/corruption courses have been becoming more widespread, more institutionalized and mandatory for prosecutors and the police. It was also reported that joint training involving police, prosecutors and judges is also conducted. In April 2011, the Basel Institute on Governance and the IMF ran a joint training for financial investigations for prosecutors and investigators.

Armenia is **largely compliant** with Recommendation 5.

## 2.10. Statistical data on enforcement of criminal legislation on corruption

### Previous recommendation 2 (part 1)

*Upgrade statistical monitoring and reporting of corruption and corruption-related offences by introducing strict reporting mechanisms on the basis of a harmonised methodology. Ensure regular reporting to the Anti-corruption Coordination Monitoring Group, covering all spheres of the Civil Service, the Police, the Public Prosecutor's Offices, and the Courts, which would enable comparisons among institutions.*

In 2006 Armenia was considered **largely compliant** with this part of this recommendation.

The 2006 report has identified two main concerns in regards to the implementation of the Recommendation 2, namely, the lack of detail in the statistics collected and provided by the Armenian authorities, as well as the lack of analysis of the statistical data and subsequent drawing of conclusions.

No progress under this recommendation has been provided. The statistics provided as part of the answers to the questionnaire are incomplete as well as lacking of details. Some categories of information have not been made available at all. Based on all of the stated above, it is possible to draw a conclusion that the statistics collection still requires further improvement.

The Republic of Armenia Anti-Corruption Strategy and its Implementation Action Plan for 2009-2012 states that “there is no established system for comprehensive, complete and accessible statistics on corruption-related crimes: In particular, the current reporting system does not provide details about all types of corruption-related crimes, the extent to which officials are involved in them and the state bodies involved, which makes it difficult to do comparative analysis of different bodies, identify corruption risks, assess the trends and extent of corruption, etc. The statistics of corruption related offences does not include administrative offences committed by state servants. Studies and research on the level of corruption in Armenia, prevailing forms of corruption, and sectors and areas where it is spread, as well as the use of their results and analysis in official statistics are very limited.”<sup>43</sup> – repeating almost *verbatim* the text of the assessment of the 2006 report under this recommendation.

The structure of current statistics contains useless indicators, such as the source of complaints received by law enforcement bodies, but at the same time useful indicators are missing. Useful data should include information on the number of investigations and convictions on each type of

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<sup>43</sup> The Republic of Armenia Anti-Corruption Strategy and its Implementation Action Plan for 2009-2012, paragraph 75, p.15.

offences, specifying the amount of the bribe or the level of damages caused; and the value of properties frozen by investigators.

In order to reveal the real capacity of the law enforcement bodies, a key indicator is the position/rank/occupation of the investigated persons. The hierarchical level of the suspects shows the level of the investigator's powers and strategic approach of the investigatory body.

Armenia is **partially compliant** with part 1 of Recommendation 2.

**New recommendation 2.10.**

***To ensure comprehensive criminal statistics on corruption-related offences, the government should make available the data that allows to determine the following:***

- position/rank/occupation of the suspect/indicted/convicted person,***
- number of investigations, prosecutions and convictions for each type of offence,***
- sanctions applied,***
- the amount of the bribe and/or the damage caused by the offender, and***
- value of properties seized and confiscated.***

## 3. Prevention of Corruption

### 3.1. Corruption Prevention Institutions

Armenia has no specialised institution with a specific mandate to prevent corruption. The Anti-Corruption Council and the anti-Corruption Strategy Implementation Monitoring Commission, the two anti-corruption policy coordination bodies in Armenia, are covered by Section 1.6. of the report “Specialised anti-corruption policy and coordination bodies”.

### 3.2. Integrity of public service

#### Public service legal and institutional framework

The 2005 Constitution of the Republic of Armenia, in its Article 30.2., requires that primary legislation defines the principles and procedures of the public service. The Law on Civil Service adopted in 2001 met this requirement partially. The Law on Civil Service, in its Article 1, defines the state service as including the civil service, judicial service, the special services (executive bodies of defence, national security, police, tax, customs, emergencies, diplomatic and other state services envisaged in legislation). It defines three main categories of persons working in state bodies and communities - political, discretionary and civil positions. The Law on Civil Service clearly states that it applies only to civil servants. It does not apply to special services, political and discretionary positions.

Since first round of monitoring in 2006 Armenia has taken steps to further develop principles and rules of ethics for the broader public service and especially for high-ranking officials. With this aim, a draft Law on Public Service was developed in 2007. On 7 June 2010 the bill On public service was submitted to the National Assembly.<sup>44</sup> The new Law on Public Service was finally adopted by National Assembly on 26 May 2011 and signed by the President on 14 June 2011. The law will enter into force on 1 January 2012. A Decree of the Prime Minister Nr. 765 of 11 August 2011 specifies necessary legal acts to be adopted by December 2011 to ensure the implementation of the new Law. The Administration of the President, in cooperation with a USAID expert, develops these legal acts. The Prime Minister stated in April 2011 that the new Law on Public Service is a key legislative initiative stemming from government’s political reforms and that in particular it will introduce new rules for transparency for 500 high level officials.<sup>45</sup>

The new law appears to the monitoring team to be a “public sector ethics” law. Its main aim is to introduce rules on prevention of corruption for public officials, including special, stricter rules on ethics for high-ranking officials. Other aspects remain covered by previous laws. Civil Service Law will remain into force and continue to cover matters related to career of civil servants (categories, recruitment, promotion, etc.); remuneration of civil servants remains covered by the Law on Remuneration of Civil Servants.

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<sup>44</sup> This was reported in the Progress Update in December 2010, see [here](#).

<sup>45</sup> A Government’s press release “Corruption Risks to be Curbed Consistently”, see at <http://www.gov.am/en/news/item/5647/>

The new Law on Public Service in its Article 3 provides a definition of the public service stating it is as a combination of state service (civil service, judicial, diplomatic and special services within the executive bodies in the area of defence, national security, police, tax, customs, rescue, state service in National Assembly, National Security Council and other services envisaged by the laws), municipal services and state posts (all political<sup>46</sup>, discretionary<sup>47</sup>, civil<sup>48</sup> and state service posts).

The Law on Civil Service defines the civil service a professional activity independent from the changes in correlations of political forces (Article 3 (1), a)). The Law covers professional civil servants - staff in executive branch bodies, state level administration and staff in regional governors' offices. The Civil Service Law draws a clear line between these professional civil servants and political and discretionary position holders, which are defined by this law, but are not subject to it.

The new Law on Public Service has a much broader scope than the Civil Service law. The subject of this Law are not only civil servants, but also high level officials, staff in National Assembly, Constitutional Court, Central Bank, National Security Council, Judicial Department, Prosecutor's Office, Yerevan Mayor's Office and bodies of local self-governments. According to the replies to monitoring questionnaire, currently there are about 8 000 civil servants. As the monitoring team was told during the on-site visit, once the Law on Public Service enters into force in January 2012, the number of public servants in Armenia will reach about 20 000 officials. There are about 500 high-level officials.<sup>49</sup>

A significant novelty of the Law on Public Service is that it defines high-ranking officials, a special category of public servants.<sup>50</sup>

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<sup>46</sup> The Law on Public Service provides that political posts are those hold by: the President of the Republic, Deputies to the National Assembly, the National Security Secretary, the Prime Minister and Ministers and the leaders of communities or local self-governments.

<sup>47</sup> The Law on Public Service provides that discretionary posts are: chiefs of staff to the President and to the Government, heads of control service of the President and of the Prime Minister, heads and deputy heads of public administration bodies adjunct to the Government and within the ministries, heads and deputy heads of permanent acting bodies, *marzpets* (regional governors) and their deputies, ambassadors and diplomatic representatives, advisors, assistants, press secretaries and referees to the Prime Minister, advisors, assistants and press secretaries to community (local governments) leaders, assistants to the deputy community leaders, assistants to the deputy *marzpets* (regional governors).

<sup>48</sup> The Law on Public Service provides that "civil posts (non-political, elected by Parliament or appointed by President) are: are chairman and members of the constitutional court, heads, their deputies and members of permanent acting bodies, chairmen and judges of Court of Cassation, Court of Appeal, Court of First Instance, Administrative Court, positions of the General Prosecutor, his deputies and prosecutors, defender of human rights.

<sup>49</sup> 500 high level officials were mentioned in the Government's press release "Corruption Risks to be Curbed Consistently", see at <http://www.gov.am/en/news/item/5647/>. This figure was confirmed by Armenian authorities.

<sup>50</sup> High ranking officials are: the President, the Prime Minister, Members of Parliament, members of the Constitutional Court, judges, ministers and their deputies, Prosecutor General and his deputies, prosecutors, heads of bodies established by law and their deputies, as well as the members of the mentioned bodies; the

As said above, the main focus of the Law on Public Service is to provide rules on ethics, prevention of corruption and declaration of assets and mechanism to implement them. Part of these provisions applies to all public officials, part – only to high level officials.

Provisions for all public officials include various limitations and restrictions, for example, on post-public-employment, obligation to handle shares in enterprises to entrusted management, prohibition to hire close persons or to act in personal interest/interest of close persons, restrictions of outside activities and a general prohibition to receive gifts. There is a general requirement to set up ethics commissions in all public bodies.

Besides, there is a specific set of provisions only for high-ranking officials. These include a definition of conflict of interest of high level officials and ways to manage conflict of interest by high level officials, as well as an obligation to file in new declarations of property and income of high level officials and their relatives (see below section “Asset declarations”). An Ethics Commission for High Level Officials should be created (see below section “Ethics and Code of Conduct”). It should be noted that most of the new ethics rules do not apply to Members of Parliament, members of Constitutional Court, judges and prosecutors.

The establishment of new principles, rights and duties and rules of ethics for the entire public service – including different professional positions and groups in state and local government administration – raises the need of a central capacity of counselling, training and coordinating of the uniform implementation of the Law on Public Service and the public service personnel policy. In the meantime, the legislative, executive and judiciary branches of the Republic, as well as the local governments must all have their own capacity to manage their human resources within the broader framework. The Law on Public Service do not intend to establish a coordinative body for public service.

The new Law on Public Service is a positive and courageous step in the right direction. It is a strong message to set special rules for high-level officials, and the Law also foresees a mechanism for monitoring how these rules are applied, which is such a crucial point. However, it remains to be seen how it will be implemented in practice and correlate with other legislation regulating activities of various groups of public officials.

## **Ethics and code of conduct**

### **Previous recommendation 17**

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Chairman of the Central Bank and his deputies and members of the Council of the Central Bank; heads and deputy heads of the governmental structures under the central government; the chairman and members of the Chamber of Control; Head of the Administration of the President and his deputies; Head of the Administration of the Parliament and his deputies; head of the staff of the Constitutional Court, head of the staff of the Government and their deputies; heads of diplomatic missions abroad; Secretary of National Security Council; Members of the Ethics Commission of High ranking officials; mayor of Yerevan and his deputies; governors of regions and their deputies; advisers and assistants to the President; advisers and assistants to the speaker of the Parliament; advisers and assistants to the Prime Minister; heads of communities (over 50 000 inhabitants); heads of the oversight services of the President and the Prime Minister.

***Adopt a uniformed Code of Ethics / Code of Conduct for Public Officials modelled on international standards (e.g. such as Council of Europe Model Code of Conduct for Public Officials) as well as specific codes of conduct for professions particularly exposed to corruption, such as police officers, judges, tax officials, accountants, etc. In addition, prepare, and widely disseminate, comprehensive and practical guidelines for public officials on corruption, conflict of interests, ethical standards, sanctions and reporting of corruption. Consider introducing disciplinary liability for the breach of codes of conduct. Consider the introduction of an ethics supervision body/commissioner.***

In December 2006 Armenia was considered **partially compliant** with this recommendation.

During the 1<sup>st</sup> round of monitoring there were several codes of conduct in public institutions in Armenia. In 2002 the Civil Service Council adopted rules of ethics for civil servants. Further sector specific codes of ethics and ethics commissions were put in place since the 1<sup>st</sup> round of monitoring.

The Republic of Armenia Code of Judicial Conduct became effective on 5 December 2005. Rules on ethics of judges are also provided in the 21 February 2007 Judicial Code, Article 90 “Proper Conduct of Judge acting in Official Capacity”. A new Code of Judicial Conduct was adopted in 2010. The Ethics Committee of the Council of Court Chairmen was set up and seems to be well functioning. It has also developed Commentaries to the RA Code of Judicial Conduct, a good example of such guidelines in the Istanbul Action Plan Countries. It provides a comprehensive and useful set of explanations and examples how different rules apply in particular situations faced by judges.<sup>51</sup> In October 2007 Rules of Conduct for Judicial Servants were approved for administrative/technical personnel in the courts.

A Code of Conduct for the Prosecutor General’s Office was adopted on 30 May 2007 by the Order Nr. 17 of the Prosecutor General. According to the 22 February 2007 Law on the Prosecutor’s Office, Article 23, an Ethics commission was put in place attached to the Prosecutor General. The Ethics Commission at the Prosecutor’s General office can make an opinion to the Prosecutor General to impose disciplinary sanctions on prosecutors. During the on-site visit it was mentioned that 20 disciplinary proceedings against prosecutors were started in 2010.

Finally, it was reported that in three ministries - Education, Healthcare and Labour - also pilot ethics commissions were established in 2007–2008.

However, it appeared to the monitoring team that the actual impact of existing codes of conduct and ethics committees remained limited. It was said by counterparts met during the on-site visit that what lacked was a clear legal basis, including a set of ethical violations that would be set in the law and could trigger holding a person responsible.

The new law on Public Service adopted in May 2011 sets out some legal principles, rules on ethics and provide procedures to apply them. The Article 6 of the new law on Public Service (which does not apply to high level officials) lists public service principles, among others, integrity, impartiality and political neutrality. The Article 28 lists rules on ethics for all public servants, including high-level officials, such as respect of law, respect of moral norms in the society, contribution to development

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<sup>51</sup> Ethics Committee of the RA Council of Court Chairmen and Board of the RA Association of Judges. Commentaries to the RA Code of Judicial Conduct.

of trust in the public body, respectful attitude, use public resources for official purposes. Article 29 specifically prohibits taking of gifts and defines a gift. Further, Articles 23 and 24 introduces a series of limitations to all public officials, including high level officials, to have business/other outside activities, not to use position for purposes of political party, not to take gifts, etc. An obligation to handle shares owned in enterprises to an entrusted management is provided. Finally, chapter 7 provides a separate set of rules for high-ranking public officials relative to prevention of conflict of interest and declaration of property of income.

Further, the Law on Public Service states that ethics commissions should be established in public administration and may be established in the Prosecutor General's Office. The new law does not provide more details. It only states that specific rules and procedure for establishment, composition and functions of these commissions should be set in relevant laws. It should be noted that the 2001 Civil Service Law also required creation of ethics commissions in public bodies and some specialised laws too. These commissions were created in some public institutions, but their effectiveness remained limited.

The Law on Public Service foresees establishment of a new body – Ethics Commission for the High-Ranking Officials. The law defines that it will be in charge of receiving, publishing and analyzing asset declarations of high-ranking officials and their relatives. It will also be in charge of detecting violations of conflicts of interest by high level officials and violations of rules of ethics and preparing recommendations on their prevention. The Ethics Commission will have rights to initiate proceedings. It can collect documents and other materials, request expert analysis and visit state and municipal premises. As a result, the Ethics Commission can issue a conclusion (in form of a recommendation). It is forwarded to the President of Armenia and the superior of high ranking official. The relevant state body should publish on its website this conclusion and, if applicable, decision taken as a result of it. It remains difficult to assess efficiency of such ethics proceedings, since the law does not provide for sanctions for violations of ethics rules and it is not binding for superior of the high-level official to take action. The Law on Public Service only provides in its Article 48 (2) that persons breaching the legislation on public service are held liable in cases and in the manner prescribed by legislation in Armenia.

According to the Law, the Ethics Commission for the High-Ranking Officials will have five remunerated members. The Law foresees that it will have a Secretariat provided by the Staff of the President of the Republic. The rules and procedures of the Ethics Commission for the High-Ranking Officials are governed by the Law on Public Service and an Executive Order that needs to be adopted, once the law enters into force.

Armenia remains **partially compliant** with recommendation 17.

## **Recruitment and promotion**

### **Previous recommendation 16**

***Introduce a unified system for recruitment in the civil service, which would, to the extent practicable, limit discretionary decisions.***

In December 2006 Armenia was considered **largely compliant** with this recommendation.

During the 1<sup>st</sup> round of monitoring in 2006 Armenia has formally introduced a new system of recruitment of civil servants and it was managed by the Civil Service Council. Little was known to what extent it was implemented in practice. It was outlined that opportunities for discretionary decisions are still broad.

Generally criteria for entry into civil service are set out in Articles 11 and 12 of the Law on Civil Service. Article 14 of the Law on Civil Service “Competition for Holding a Vacant Civil Service Position” states that newly created and vacant positions in the civil service are filled in on the basis of competition. This procedure is also applicable to senior positions in civil service. The announcements are made public by the Civil Service Council or by relevant institution, depending on the position, including an announcement a month before in mass media for senior positions. Competition includes testing and interviewing. There are 3 winners of the competition, those with highest number of points. The Civil Service Council through a competition commission is deciding on the issue of declaring a particular participant as a winner. These results in form of conclusions are then sent to the official competent to make an appointment to the given position and this official then appoints one of the winners of the competition to the relevant position. For junior civil servants there are tests of knowledge every three months by the Civil Service Council and they need to pay a fee for that. There is a separate procedure for hiring junior civil servants established by Civil Service Council.

The representatives from the Civil Service Council claimed during the 2<sup>nd</sup> round of monitoring the on-site visit that the system for recruitment in civil service is well implemented and it is also acknowledged by the applicants. The new system of competitions introduced by the Civil Service Council has helped to ensure the objective evaluation of the merits and capacity of the candidates for civil service positions, thus reducing the chances of arbitrary appointments.

However, it appears that in practice the scope of open competition is rather narrow. For example, during the period from 1 January 2010 to 1 March 2011 13 competitions for highest civil service positions have been held by the Civil Service Council. It seems that the new system is mostly used for junior positions. A general competition for junior positions to enter the civil service should be held 4 times a year and then shortlists are provided to line ministries. Up until the on-site visit, the Civil Service Council has conducted twice such competitions and 30 – 40 persons applied for one position.

An “out-of-competition” procedure, provided in the Article 12<sup>2</sup> of the Law on Civil Service, is used to fill in vacancies. The positive outcome of such “out-of-competition” recruitment is that it can satisfy career development aspirations of the civil servants. In accordance with the Article 12<sup>2</sup> of the Law on Civil Service vacancies can be filled by a civil servant from the respective body when meeting the formal requirements of the position in question. The selection is decided by the person responsible for appointments; in case of chief, leading and junior positions this is the respective chief of staff (Article 15). Despite its positive aspects, such procedure questions the principle of merit-based recruitment that is one of the basic principles for public service.

Armenia remains **largely compliant** with the recommendation 16.

## **Remuneration**

The remuneration scheme for various categories of public servants is constituted by The RA Law on the Official Pay Rates of Heads of the Legislative, Executive and Judicial Authorities of the Republic of



Armenia and specific provisions in laws on judiciary, prosecution, tax, customs, in the RA Law on the Remuneration of Civil Servants and other laws.

Law on the State Budget in 2010 specified basic pay rates. For civil servants and public servants in the National Assembly Staff it was 40 000 AMD (74,27 EUR), for tax and customs servants 55 000 AMD (102 EUR).

Various types of additional remuneration are applied in state service, bonuses, lump-sum incentives, etc. This additional part of remuneration is regulated differently in different bodies.

According to the December 2010 Progress Report, in 2010 the National Assembly adopted in first reading a law "On compensations payable to civil servants" foreseeing that compensations to civil servants would be performance-based. This intention was also confirmed during the on-site visit.

The competitiveness of the salaries in civil service is relatively low compared to the salaries in the private sector, according to the replies to the monitoring questionnaire. The gap between salaries in general is 50% in favour to the private sector. Still, during the on-site visit the monitoring team was told that the public service is considered an attractive employer, as it is hard to find employment in the private sector.

#### **New recommendation 3.2.1.**

***Consider establishing a central coordinative body for the whole public service, taking into account the need to support the implementation of the new Public Service Law, promote the establishment and enforcement of common standards and practices for the whole public service, especially for high-level officials.***

***Taking into account the role of high-ranking officials in building trusts of citizens in public administration and in setting the ethical and professional example for the whole administration, ensure vigorous implementation of new ethical norms by high-level officials.***

***Elaborate in a participative way, adopt and ensure effective application of specific Codes of Conduct for professions and positions particularly exposed to corruption, as foreseen in the Law on Public Service.***

***Ensure ethics commissions are put in place and function properly in public institutions where they are required by the law. Assess effectiveness of ethics commissions, in particular in most at risk public institutions. Reinforce their independence and trust in their members.***

***Ensure the Ethics Commission for High-Ranking Officials functions properly and has adequate resources.***

***Ensure adequate disclosure of the activity developed and the results obtained by ethics commissions, including the Ethics Commission for the High-Ranking Officials.***

***Establish channels of coordination between the ethics commissions, the coordinating bodies for public service and the human resources management departments in each body.***

***Further strengthen the system of merit-based recruitment and promotion, including through the Civil Service Council/public service coordinative body, but also build up capacity of individual institutions in the application of merit-based rules.***

***Improve the “out-of-competition” procedure of recruitment of civil servants, e.g. introducing a system of internal competition or reducing the use of this procedure to fulfil temporary positions in emergency cases, while an open competition is started.***

***Include the integrity and ethics competencies to the core competencies’ list to be evaluated during the selection process.***

***Establish a unitary pay system for all branches of the public service. Strive to increase the attractiveness, trustworthiness, openness and professionalism in the civil service through more competitive salaries in relation to non-governmental sector within the fiscal capacity of Armenia.***

## **Conflict of interest and gifts**

### **Previous recommendation 18**

***Ensure that there is constant monitoring of the observance of rules on gift acceptance and the avoidance of conflicts of interest and that sufficient sanctions are in place in cases of non-compliance.***

In December 2006 Armenia was considered **non compliant** with this recommendation.

At the moment of the 1<sup>st</sup> round of monitoring, there were no rules and mechanism in place to prevent conflicts of interest of public officials. It was considered one of the weakest points in the monitoring of Armenia.

According to replies to the monitoring questionnaire, until now conflict of interest cases are theoretically solved by courts. No constant specific monitoring of conflicts of interest and gifts was introduced by the time of the on-site visit.

It appeared to the monitoring team that regarding conflicts of interest and also asset declarations of public officials (see next section “Asset Declarations”) there is a wide distrust among business community and civil society. There seem to be a number of ways for public officials, including at high-level, to avoid present and future regulations in view of combining business interests and public service or to defend certain business interests. There were examples mentioned of high level officials who had significant business interests in a certain sector previously and now in their position they regulate this sector.

Some change to prevent conflicts of interest of public officials is foreseen in the new Law on Public Service, which introduces new rules, restrictions and prohibitions to public officials in this regard, for example, to have outside employment, be engaged in business, work with closely related persons, work in previously supervised organisation, etc. It also introduces a prohibition to accept undue gifts. Besides, the Law defines conflict of interest of high level officials (except Members of Parliament, members of Constitutional Court, judges and prosecutors) and foresees steps to be taken to avoid it, including a written statement to superior, seeking written consent of superior, seeking clarifications of ethics commission.

While the norms foreseen in the new law seems adequate and necessary, more specific rules and procedures how to avoid the conflict of interest and avoid taking improper gifts should be provided in the secondary legislation. Also, practical application and actual enforcement of these new rules will be key. It will also depend on independence and capacities for the ethics commissions and transparency and accountability of their activity and results. Hence, while this is a positive development, it is early to assess if this system will work properly.

Besides, norms on prevention of conflict of interest are provided in special laws. Since the 1<sup>st</sup> round of monitoring the 21 February 2007 Judicial Code has set out such rules for judges. Article 92 “Non-Judicial Activities stipulate” what activities a judge can and cannot perform apart his work as judge. It also provides that a judge must report non-judicial activities to the Ethics Committee of the Council of Court Chairmen. Article 91 provides for basis for a judge to withdraw from a case when he may cannot be impartial.

Armenia is **partially compliant** with the recommendation 18.

## Asset declarations

### Previous recommendation 19

***Screen the system for the control of assets of public officials to detect any possible loopholes and develop proposals to eliminate such loopholes. Consider increasing responsibility for public officials for failure to comply with requirements to declare income, assets and liabilities.***

In December 2006 Armenia was considered **partially compliant** with this recommendation.

A significant problem identified during the 1<sup>st</sup> round of monitoring was that while formally since 2001 there was an obligation to public officials to declare assets, it remained a mere formality and no real monitoring of the submitted declarations was in place.

Then in 2006 Armenia adopted a new Law on Asset and Income Disclosure by Individuals, which entered into force in 2009. It will be abolished with entry into effect of the new Public Service Law as of 1 January 2012. According to the Law on Asset and Income Disclosure by Individuals, all Armenia residents with income or properties have to submit a yearly asset and property declaration to the tax authorities. Additionally, the law specifically obliges many categories of public officials (persons holding political and discretionary posts, judges, prosecutors, diplomats, civil servants, servants in municipal bodies, etc.) and their close relatives to present such declarations.

In conformity with that Law, the tax authority should carry out a check of declarations. It can impose fines for submitting false data (Chapter 7 of the Law on Asset and Income Disclosure by Individuals). However, enforcement remained problematic. While public officials, to some extent, are submitting their declarations to the State Revenues Committee and those declarations for which consent is given are published, no mechanism was put in place to monitor the submitted declarations and this is still perceived as a formality. No information was provided as whether the introduction of such monitoring mechanism, in line with the Recommendation 19, was considered.

It seems that no sanctions were imposed on unlawful behaviours by public officials in this regard. In the same time, Article 20 of the Law on Asset and Income Disclosure by Individuals prescribes a fine for submitting data that do not conform to the truth. Furthermore, the Law On state and municipal services prescribes dismissal from post in case of a failure to submit the declaration.

During the on-site visit in April 2011 the State Revenues Committee informed that in terms of their human resources dedicated in this area, in headquarters and regions there are units in charge of receiving the asset declarations. Both in headquarters and regions these units have this among their other tasks. There was no information on any unit in charge of verifying content of asset declarations.

Regarding disclosure, according to Article 16 (2) of the currently applicable 2006 Law on Asset and Income Disclosure, a list of data included in declarations that is subject to disclosure and the form how it can be disclosed are defined by the Government. As it was confirmed during the on-site visit, there is a procedure for disclosure of information in asset declarations. It provides that information can be disclosed upon consent of the public official on the website of the State Revenues Committee.

The NGO Freedom of Information Centre of Armenia conducted some analysis of asset declarations made available to them.<sup>52</sup> However, some NGOs have reported newly imposed restrictions on having access to asset declarations.

Significant changes are foreseen with the new Law on Public Service, adopted by the Parliament in June 2011, which introduces new declaration of property and declaration of income of high-ranking officials and persons related to them as of 1 January 2012.<sup>53</sup> The high-level officials who are subject of this new obligation include the President, the Prime Minister, Ministers and other altogether 500 top level public officials (see the full list of “high level officials” under chapter “Public service legal and institutional framework”).

The contents of both declarations are overall adequate, covering main information needed regarding assets and income. However, they do not provide a basis to inform on upcoming activities and interests that can influence the public official, for example, participating in a business trip, representing/lobbying social or professional interests. These declarations are to be submitted by high-level public officials and their relatives at the date of assuming and terminating the office and on a yearly basis.

A new Ethics Commission for High-Ranking Officials that should be established according to the new Law on Public Service will be the body in charge of the new property and income declarations. The property and income declarations should be submitted to the Ethics Commission for High-Ranking Officials, which should run a register of declaration. All declarations should be included in the registry within 3 days upon their receipt. The Ethics Commission is also in charge of publication of declarations. The Law leaves to a future Government regulation, which data from declarations specifically can be disclosed (names of persons and properties cannot be disclosed). The Law do not

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<sup>52</sup> See <http://www.foi.am/en/articles/item/255/>

<sup>53</sup> According to Article 32 of the Law on Public Service persons related to high-ranking public official are the spouse, as well as parent and adult single child living together with him/her.

clarify who and how could have access to this registry. The Law does not contain any provisions on how citizens could inform of eventual undeclared incomes or properties.

Furthermore, the Law provides in Article 43 (2) that the Ethics Commission for High-Ranking Officials has functions to analyse the declarations. It is not clear on which basis and how this analysis will be done. The Article 44 provides that the Ethics Commission can institute proceedings to detect violations of rules of ethics. It provides that the Ethics Commission can request materials and documents for analysis of allegations of such violations. It can also request other competencies bodies to do controls, surveys and expert analysis. As a result the Ethics Commission can issue a conclusion (in form of recommendation), but it cannot impose sanctions. The conclusion is then sent to the superior of high-level public official who can then eventually take action, but it does not seem mandatory. However, it is unclear if these proceedings also apply to analysis of property and income declarations. Specific provisions on verification of these declarations are not foreseen in the law.

It is not known when this new system will be in place and difficult to foresee how effective it could be.

Armenia remains **partially compliant** with recommendation 19.

## Reporting of corruption

### Previous recommendation 20

***Enhance the obligation to report suspicions of corruption. Adopt measures for the protection of employees in state institutions against disciplinary action and harassment when they report suspicious practices within the institutions to law enforcement authorities or prosecutors, and launch an internal campaign to raise awareness of those measures among civil servants.***

In December 2006 Armenia was considered **non compliant** with this recommendation.

The 1<sup>st</sup> round of monitoring identified as problem lack of specific provisions on reporting suspicions of corruption, apart general duty to report crime, according to the Article 334 of the Criminal Code, as well as lack of measures to protect whistleblowers.

The new Law on Public Service entering into force on 1 January 2012 will introduce in its Article 22 obligation to public officials to report on breaches of law, including corruption, in relation to public service. The law provides that public servants who have reported such breaches of law and did not receive a satisfactory response, may inform the chief of relevant body or competent bodies in writing. Furthermore, the law provides that competent authorities should provide protection to those who report corruption or other breach of law in good faith. To implement these norms, the law requires secondary regulation to be adopted by the government. The efforts of Armenia to introduce an obligation to report and to protect whistleblowers are commendable.

No campaigns to raise awareness of public officials on importance to report corruption are known.

Armenia remains **non compliant** with the recommendation 20.

## Training

According to the Article 20 (2) of the Law on Civil Service, every civil servant shall be subject to mandatory training at least once every three years. According to the Article 20 (4), the Civil Service Council shall approve the list of educational institutions conducting training of Civil Servants and the training syllabus to be used by those institutions. The Article 20 of the draft Law on Public Service states that public servants shall be trained on mandatory basis, but in addition to mandatory training, trainings may also be conducted on rights and responsibilities of a public servant prescribed by the given job description of the public service position and improving the professional knowledge and job skills.

The central responsible authority for civil service training in Armenia is the Civil Service Council. The Civil Service Council's Decision Nr. 937-A on 30 November 2009 adopted a training program for civil servants holding highest, chief, leading and junior civil service positions "Basics of Integrity in the Civil Service System" (1<sup>st</sup> phase). Its Decision Nr. 499-A on 23 June 2010 adopted a similar training syllabus (2<sup>nd</sup> phase). The training programmes shared with the monitoring team include lectures, for example, on definition of ethics, ethics in public service, correlation of ethics and legislation, anti-corruption legislation, corruption risks, gifts, ability to overcome conflict of interest situations, behaviour issues in public service, etc. Based to these programmes the NGO Union of Armenian Government Employees, with assistance of OSCE, provided training to a 15 civil servants pilot group in 2009 (1<sup>st</sup> phase) and the 2<sup>nd</sup> phase in planned for Mai 2011. It was intended to make this programme mandatory and provide it for a broader group of civil servants starting in 2010-2011. However, this was not confirmed during the on-site visit.

Besides, Armenian-European Policy and Legal Advice Centre, in co-operation with the Armenian Civil Service Council, developed Materials "Introductory Training of Trainers Course on Anti-Corruption". On this basis, training for trainers was provided in February 2010.

According to replies to the monitoring questionnaire, the Armenian Academy of Public Administration had prepared a training programme on anti-corruption issues and planned to deliver it starting in 2011. However, this was not confirmed during the on-site visit.

### **New recommendation 3.2.2.**

***Ensure adequate rules and practical mechanisms are in place regarding conflicts of interest, incompatibilities and acceptance of gifts in all public bodies and branches of power, including those that are not covered by the Law on Public Service.***

***Ensure proper enforcement of new declarations of property and income for high-ranking officials introduced by the Law on Public Service entering into force on 1 January 2012.***

***To ensure obligation for public officials to report suspicions of corruption and protection of public officials reporting corruption is implemented in practice, it is necessary to:***

***- adopt necessary secondary legislation;***

*- create specific channels to report corruption in each public institution, out of the hierarchical chain; and*

*- launch campaign to raise awareness of those measures among public servants.*

*Develop a practical training course on Public Service Ethics and include it in the public service training programs offered regularly and mandatory to all public servants.*

*Offer a special Public Service Ethics Training Program for high-ranking public officials (500 persons), in particular political officials, Ministers, Members of Parliament, mayors and local councillors. This program could be managed by the Ethics Commission for the High-Ranking Officials, in coordination with the Civil Service Council/public service coordinating body.*

### **3.3. Transparency and discretion in public administration**

No previous recommendations

#### **Anti-corruption screening of legal acts**

A general requirement to conduct anti-corruption screening of legal acts was introduced in 2009. The Decision No 1205-N of the Government of the Republic of Armenia on Assessing the Impact of Anti-Corruption Regulation of the Normative Legal Acts was adopted on 22 October 2009. It provides that all laws established in Article 27.1 of the Law On Legal Acts have to undergo anti-corruption screening. As the monitoring team was explained during the on-site visit, the screening applies to all laws and some government decrees.

The methodology of screening is built on 9 specific criteria to reduce the risks of corruption. The output of this anti-corruption screening is a report. The anti-corruption screening reports are not binding, and the issue of legal consequences for failing to respect them is not regulated by the Law on Legal Acts. This report seems to have the same role as comments by any other responsible authority in drafting a legal act in the inter-institutional consultations process. It is sent to the author of the draft who can then amend the draft taking into account the recommendations in the report.

The anti-corruption screening of legal acts was started in January 2011. The screening is done by the Ministry of Justice, through its Agency for Legal Expertise. The agency comprises of 15 officials, thereof 8 persons have the screening of draft laws as their main function. As confirmed during the on-site visit, 1500 – 1700 legal acts have been subjected to anti-corruption screening. In 10 – 15 cases corruption risks have been detected, such as excessively discretionary powers, abuse of rights, lack of clarity of administrative regulations, unclear procurement procedures, lack of accountability of public servants.

#### **Simplification of legislation**

It was recognised by many interlocutors during the on-site visit that simplification of regulation is often a more effective way to address corruption than specific anti-corruption strategies and measures. As Armenian authorities informed after the on-site visit, the reforms are being

implemented by the Government intended to reduce the corruption risks to a minimum by simplifying the legal regulation in different fields.

The Code of Administrative Offences adopted in 2008 is one such example (see below). A new regulation on one-stop-shop business registration was introduced shortly before the on-site visit. Examples of other ongoing reforms were mentioned during the on-site visit: a reform of traffic police, simplifying procedures related to issuing licenses and permits in different sectors, a reform of notaries' offices prepared by the government. However, these reforms are not finished yet.

The monitoring team heard during the on-site visit that an important problem is a significant number of inspection bodies in Armenia and their regular controls, often linked with extortion of bribes. Simplifying the system of inspections and making it more transparent could be an effective way to improve business regulation, gain more trust and reduce corruption.

Government reported that a new Decree of the President Nr. 246 was adopted on 17 September 2011 to establish a new unit, which will be leading the process of screening regulation and sub-legislation for legality, user-friendliness and necessity and making suggestions to simplify it ("regulatory guillotine").

## **Administrative procedures**

In 2008 Administrative Procedure Code and the Law on the Basics of Administration and Administrative Proceedings came into force. The Administrative Procedure Code provides for principles of impartiality, equality and full, objective and comprehensive examination of evidence. The Law on Basics of Administration and Administrative Proceedings also specifies the principles of the legality of administration, limitation of discretionary powers, the ban on arbitrariness, comprehensive nature, objectiveness, fullness of administrative proceedings. Article 46 sets the timeframe of 30 days.

According to Article 70 of the Law on the Basics of Administration and Administrative Proceedings, an administrative act or a decision may be appealed against by administrative or judicial procedure. The cases referred to the court with regard to administrative acts are examined by the RA administrative courts. In 2008 first instance and in 2011 the second instance administrative courts were created. As it was confirmed during the on-site visit, this system of administrative courts started to function recently. In addition, there is a possibility to appeal to a higher public institution. As it was pointed out during the on-site visit, according to the statistics of the Judicial Department, appeals have become very active, for example, challenging decisions on construction permits, traffic police decisions, etc.

This reform of adopting the Administrative Procedure Code and the Law on the Basics of Administration and Administrative Proceedings are positive examples of empowering citizens in front of the administration. As it was also confirmed during the on-site visit by Armenian authorities, this is an effective mean to prevent corruption, as citizens can challenge decisions of public bodies, public sector needs to be more transparent and public officials have the obligation to provide information.



### **New recommendation 3.3.**

***Continue reforms aimed at simplifying regulation necessary to prevent corruption and to increase transparency and effectiveness of various administrative procedures. Increase awareness of citizens and business sector about administrative procedures relevant to them and their rights.***

## **3.4. Financial Control and Audit**

### **Previous recommendation 24**

***Ensure fluent and permanent contacts and coordination among financial control/auditing institutions in order to facilitate revealing of corruption offences.***

In December 2006 Armenia was considered **non compliant** with this recommendation.

### **External audit**

During the 1<sup>st</sup> round of monitoring there was no independent supreme audit institution. The Law on the Audit Chamber was adopted by the National Assembly on 25 December 2006, as well as relevant changes to the Constitution of Armenia. The Control Chamber has been functioning as an independent body since 2008. The Control Chamber has 131 staff members, 87 of which engage in direct audit. Control Chamber has also recruited 31 specialists.

The Control Chamber exercises control over use of budgetary funds and state and community property. The Control Chamber is accountable to the National Assembly. The main corresponding committee at the National Assembly is the Financial and Budget Committee. At this Committee the single audit reports and the annual report by the Control Chamber could be discussed. The National Assembly approves the activity plan of the Control Chamber and theoretically can change it, which has not happened in practice to date. However, these approvals are not in line with INTOSAI standards and can compromise the independence of the Control Chamber

The Control Chamber carries out the following types of audit: financial compliance, effectiveness (performance) and environmental audit. In its audits the focus of the Control Chamber is on the detection of “fraud” and “incidents of corruption”.

The Control Chamber has a General Standard of Audit, distinct standards for audits in various sectors, handbooks for financial and performance audit, a code of conduct, and other documents that, according to answers to the questionnaire, contain provisions on fighting corruption and fraud.

In cases of alleged violations found, the Control Chamber can contact the Prosecutor General’s Office already during the audit. As it was explained during the on-site visit, at many occasions there are suspicions of corruption, misuse of public office or inefficient use of public resources. However, the authorities claimed that it often can’t be linked to committing a specific criminal offence. As example was mentioned, a mayor of a town authorises selling of a property beyond market price and later it is sold at a much higher price. Hence, in practice the Control Chamber sends reports to the General Prosecutor’s Office if they contain suspicions on breaches of criminal nature. In conformity with the RA Criminal Procedure Code, the reports of the Control Chamber may serve as

evidence in the court. As per replies to the monitoring questionnaire, in 2008 and 2009 the Control Chamber referred to the RA General Prosecutor's Office materials related to violations of a criminal nature on about 20 incidents, as a result 9 criminal cases were started, 1 case was attached to a previous criminal case, on 6 cases decisions there was refusal to start criminal.

### **Financial control, internal audit and inspection**

In August 2010 a Public Internal Financial Control (PIFC) centralized harmonization unit (CHU) within the Ministry of Finance with the status of a division, which is subordinated and accountable directly to the Minister of Finance, was established. The PIFC system has three principal elements: 1) financial management and control based on managerial accountability; 2) internal audit providing assurance to the management at all levels as appropriate; 3) central harmonization unit to regulate relationship pertaining to PIFC, to set and monitor the standards.

The Treasury of the Republic of Armenia is in charge of *ex ante* control. The *ex post* control is exercised by the Ministry of Finance's Financial Inspection.

A major development took place in the area of internal audit. A new Law on Internal Audit was adopted on 22 December 2010, improving the existing system and harmonizing with the EU standards. The adoption of the Law on Internal Audit was accompanied with the adoption of the Strategy of Public Internal Financial Control by the Government on 11 November 2010. The Strategy sets the preconditions and activities necessary for the introduction of an integrated and modern public internal financial control system in Armenia. So far only financial audit was carried out, but the new law also foresees expanding to performance compliance audit, though not specifically anti-corruption audits. The standards for professional practice of internal auditing, the code of ethics and implementation time table were adopted on 13 August 2011 by Government Decree Nr. 1233.

The internal audit function is coordinated and monitored by the Ministry of Finance and assessed by external audit. Internal auditors report to the relevant Minister or head of the relevant public institution and its internal audit committee, as well as once a year to the Ministry of Finance.

After the on-site visit it was specified that the new Law on Internal Audit foresees that audit of an organization can be carried out either by a special division within that organization or by an invited internal auditor. Hence, the exact number of internal auditors in the public sector cannot be established. The estimated number of internal auditors in public administration at national level was 100, according to answers in the monitoring questionnaire in April 2011. At the moment of the on-site visit the internal audit function was not implemented in practice yet. While Armenia report that an Internal Audit institute was established in 2002 by Order of the Minister of Finances, the monitoring experts were told that finding competent internal auditors to fill in these new positions is challenging.

In charge of the inspection service in Armenia is the Financial Control Inspection of the Ministry of Finance of Armenia.

The relationship between the internal and external auditors will be regulated by a special Governmental Decree. It is intended to present the draft Decree for Government's approval in the first half of 2012.

Armenia is **largely compliant** with the recommendation 24.

#### **New recommendation 3.4.**

*Ensure that in the course of its audits of the Control Chamber makes systematic efforts to detect "fraud" and "incidents of corruption"; improve the mechanism for the Control Chamber to alert law enforcement authorities on suspicions of corruption; ensure experience of the Control Chamber is used in developing training for public servants and cooperates with new internal audit units.*

*Continue to implement measures to put in place an effective financial control and internal audit system in public administration, according to the Strategy and the Action Plan 2011–2013 for Public Internal Financial Control System.*

*Continue to provide for sufficient human resources to conduct internal audit at the central and local level public administration bodies; ensure the certification of internal auditors; ensure performance compliance audits are conducted.*

*Continue to provide training to the heads of administrative bodies and financial management staff in administrative bodies of central and local governments on prevention of corruption.*

### **3.5. Corruption in public procurement<sup>54</sup>**

#### **Previous recommendation 21**

*In order to ensure the publicity and transparency of public procurement, introduce an electronic contracting and bidding system. In the electronic system, publish inter alia all the cases of complaints to the authorized agency and reactions to such appeals. All procurement information, which is not published, should be disclosed upon request save for commercial and state secrets.*

In December 2006 Armenia was considered **largely compliant** with this recommendation.

#### **Situation since 1<sup>st</sup> round of monitoring – 31 December 2010.**

Public procurement in Armenia was regulated during this time period by the Law on Procurement, which came into force on 1 January 1 2005, completed by a 2008 Government Decree. The purpose of this law was to ensure competitive, efficient, transparent, open and non-discriminatory procurement processes. The law was based on the UNCITRAL Model Law. The Law applied to all public procurement contracts above the value of 1 Million AMD (around 1860 EUROS). According to the OECD SIGMA assessment in 2008, this law and the decree constitute a "relatively good regulatory framework for public procurement, which is well-structured and it is based on the

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<sup>54</sup> The replies to the questionnaire provided by Armenian authorities in April 2011 did not refer to the new Law on Procurement into force since January 2011. Updated information regarding the new legal framework was provided during and after the on-site visit.

cornerstone public procurement principles of nondiscrimination, equal treatment and transparency”.<sup>55</sup>

The Ministry of Finance and Economy acted as “authorized agency” and was in charge of regulatory, advisory, monitoring and enforcement functions in the area of public procurement. The State Procurement Agency (SPA) was responsible for the organisation of the centralised procurement tenders. The SPA operated like a central purchasing agency, though public institutions were not obliged to conduct their procurements using it. The SPA also provided professional support to tender commissions in procuring entities and oversees observance of procurement rules by members of these commissions. In terms of the staff strength, there were 10 staff members in the Ministry of Finance and Economy and 52 in SPA.

Regarding publication of information during procurement process, the following procurement information had to be published: notices for prequalification procedures; notices for open tenders; notices on signed contracts and notices on cancellation. Since September 2008 all above mentioned notices are published by authorized body in its Official Procurement Bulletin posted on [www.procurement.am](http://www.procurement.am) and also announced on TV and radio. In the meantime, according to the SIGMA assessment, the content of the announcements and notices under the Law appears to be restricted, compared to EC Directives. Prior indicative notices or notices on planned procurement are not provided. The practice in Armenia is for contracting authorities to submit their annual procurement plans to the SPA and then they are published on [www.procurement.am](http://www.procurement.am).

An electronic procurement system recommended by recommendation 21 at the moment of the 1<sup>st</sup> round of monitoring was planned for 2008. In 2007 Progress Report, Armenia informed that introduction of this system is in progress and will be finished in 2 – 3 years.

According to Article 53 of the 2005 Law, appeals for procurement related decisions could be made to the “authorized body”. It could take several actions, including terminate the procurement contract. Also judicial review is possible. In this way the authorized body has both policy development and enforcement functions. As pointed out in the SIGMA 2008 report, this cannot be considered an independent review body.

Regarding training, the authorized body organizes training courses on an annual basis to train the personnel responsible for the coordination of procurement activity.

Statistical data from the period 2006-2008. Open tenders (targeted) have had a continual increase, from 448 in 2006 to 865 in 2008 and single source bids have been reduced, from 703 in 2006 to 496 in 2008. Number of complaints received has annually increased, from 12 complaints in 2006 to 53 in 2008. From the 79 complaints processed in three years, 40 have been resolved in favour of the bidder. From the 39 complaints rejected, none of them was challenged in court, which raises suspicions of lack of confidence and/or high transaction costs of the judiciary.

Overall assessing this system in place from 2006-2010, according to some sources, non-competitive or “single source” procurement used to increase before electoral processes in Armenia, which could indicate a connection between procurement and political party financing. In some cases technical

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<sup>55</sup> SIGMA, Public Procurement in Armenia. Overview. December 2008.

specifications were not justified, which raised concerns of possible tailor-made bids and other irregularities. For some products monopolies and non-competitive markets remained a problem. In spite of recognition of tender's improvements, procedures are considered cumbersome. There are allegations of false emergency procurement and on favouritism. Transparency International Armenia 2010 report "The 2008 – 2009 Activities of RA Public Procurement System" concludes on a lack of confidence in the system, due to problems such as unclear description of technical specifications and complexities in the required documents. The number of blacklisted companies has grown in the last years and there is a concern on the possibility that procuring units could "punish" unpleasant selected bidders. According to different sources, procurement prices are often higher than average market prices. There is a widespread concern on the lack of capacities of local communities to manage procurement in accordance with legal framework.

### **Situation since 1 January 2011.**

Starting 1 January 2011 public procurement in Armenia is regulated by the new Law on Procurement, which came into force on this date, and the Decree 168/2011.

This new law, drafted with assistance of OECD EU SIGMA Programme, tries to solve the unclear division of responsibilities between State Procurement Agency and contracting units which was a typical feature of the previous system.

The new law introduced also some other significant changes. First, it introduces a fully decentralised system of public procurement with about 3000 contracting units. Three central bodies to play a role are the Ministry of Finance and Economy, in charge of procurement regulations, policy and coordination, a new Centre for Procurement Support providing services to contracting units and to businesses and the Procurement Complain Review Board, an appeal body outside the Ministry, which solves the appeals related to bidding processes.

The Decree 168/2011 introduces a unified qualification system: 1<sup>st</sup> criteria, price; 2<sup>nd</sup> criteria, cost-quality.

Public procurement is now managed autonomously by each public body. The head of the public agency, the responsible unit and a commission are involved. Besides, a "procurement coordinator" is to be designated by each public body in charge of the organization of procurement. A unit, and individual official or even an "invited consultant" could be appointed for the task.

At the same time, with a view to producing procurement specifications (technical specifications, procurement and payment schedules) and assessing the compliance of the supplied goods, performed works and delivered services to the terms of the procurement contract, a responsible unit or a technical control committee should also be set up.

According to Article 23 of the Law, the commission approves the tender announcement and call, makes changes in the invitation, provides clarifications on the tender, opens and evaluates the bids and determines the winner.

The Centre for Procurement Support (CPS) substitutes the State Procurement Agency. Its main functions are to: offer training for procurement specialists; provide free advice to public bodies and bidders; evaluate eligibility of bidders and concludes framework agreements and pre-qualifications

with bidders; implementing e-procurement system; random assessments of technical specifications; a hotline support; and provide secretariat of the Procurement Complaint Review Board.

Additionally, the CPS can include a bidder in the “list of bidders ineligible to participate in procurement procedures”, for a period between 6 months and 3 years. Besides, Article 12 allows excluding from procurement suppliers who have committed illegal acts against economic interests and public service during the procurement process.

A new body – the Procurement Complaint Review Board (PCRB) – has been recently established. Any person has the right to complaint before it against procurement decisions of public bodies and can also appeal PCRB resolutions in court.

The PCRB will operate in commissions of three persons randomly selected, chaired by a lawyer; commission members should sign a statement on the absence of conflicts of interest in the case. The Board has the mission of making “unprejudiced and independent” reviews in the submitted cases. The law does not foresee any specific device to guarantee the real independence of the members, and does not clarify the authority who nominates them (implicitly it could be understood that it is the Ministry of Finance and Economy).

Regarding transparency and external audit, the results of public procurement tenders are publicized if the value of the procurement contract is above 1 million AMD. As in the previous period, the external audit of procurement processes is carried out by the Control Chamber in the manner prescribed by the RA Law on the Control Chamber.

Regarding e-procurement, it was being put in place at the moment of the on-site visit, in line with the 2010 law, by the CPC. The electronic address is <http://www.armeps.am>. At the moment of the on-site visit it was planned that by June 2011 all line ministries will be connected and procurement will be done electronically.

As Armenian authorities informed in August 2011, the e-procurement system is prepared, tested and ready for exploitation. For purchasing necessary software products for e-procurement system the Government of the Republic of Armenia has concluded a contract in 2010. The consultant has drafted the software support system. Besides, the consultant has carried out the testing of the system and training of the relevant personnel. Necessary equipment has been purchased in 2011. The e-procurement system has been installed on the server of the CPC. The system of e-procurement is intended to be operational in the Government bodies starting on 1 September 2011.

Overall, the introduction of the new system will require time and resources, especially to ensure capacities in each procuring entity. Given the new system is decentralised, ensuring integrity and transparency of public procurement is key and may become an important challenge. As it was pointed out during the on-site visit publicity and competition is key to ensure an effective public procurement system and only way to reduce risks.

Armenia remains **largely compliant** with the recommendation 21.

### New recommendation 3.5.

*Ensure that the Procurement Complaint Review Board acts as an independent review body to receive and treat appeals against any public procurement; ensure real independence of its members; disclosure of its decisions; provide for a clear procedure for making appeals.*

*Provide practical tools, such as ethics and anti-corruption training, best practices, technical advice, tailor-made support and monitoring and other to procuring authorities and Procurement Complaint Review Board, once it is established.*

*Fully implement and ensure effective use of e-procurement system to enhance transparency and competition in public procurement.*

*Implement mechanisms to ensure that results of procurement technical specifications random analysis, that could indicate suspicious of irregularities or corruption crime, are immediately sent to the prosecutor or to the relevant administrative authority.*

*Assign to the Chamber of Control the additional task of making recommendations (general and for specific bodies) on improving integrity in public procurement.*

*Take actions to improve confidence of enterprises in the impartiality of public procurement decisions and to reinforce competition in quasi-monopoly/oligopoly sectors.*

### 3.6. Access to Information

#### Previous recommendation 23

*Rigorously follow the Anti-corruption Strategy in improving the rules governing the relationship between public officials and citizens and the procedures associated with access to information. Describe the specific measures that will be undertaken if an applicant does not receive a timely and thorough response.*

In December 2006 Armenia was considered **partially compliant** with this recommendation.

The Law on Freedom of Information was adopted in Armenia in 2003 and entered into force in 2004. During the 1<sup>st</sup> round of monitoring, weak implementation was considered a major problem in this area.

According to Article 6 of the Law on Freedom of Information everyone has a right to access to the information sought, make an inquiry for this purpose to state institutions holding this information and receive it. The Article 9 sets out the general terms on making a request of information and providing it. For written requests deadline to provide answer is 5 days or, if additional research is required, 30 days.

There are units for information and public relations within the public administration bodies at central and local levels, which, according to the authorities, are responsible for the provision of information under the Law on Freedom of Information.

No information was provided how the Law on Freedom of Information is implemented through secondary legislation and if any specific new procedures associated with access to information were

adopted since 2006, as required in the recommendation 23. During the on-site visit Armenian authorities claimed that the Law is very clear and that all institutions must have necessary regulations in place. The monitoring team did not meet any authorities in charge of follow-up on the implementation of the Law on Freedom of Information.

Article 5 of Law on Freedom of Information provides that a government regulation should be adopted relating to recording, classification and maintenance of information. This is also one of the principles, as defined by this law, to secure access to information. Such regulation has not been adopted so far. During the on-site visit the authorities informed the monitoring team that it is planned to repeal the Article 5 and such sublegal act will no longer be required. According to international standards, each institution should have a register of information it holds that itself cannot be classified. It is not known if each institution in Armenia has such a register.

The Article 8 of the Law on Freedom of Information sets out some legal grounds when information can be refused, for example, if it is an official secret, trade secret, data on preliminary investigation. It also forbids disclosing data infringing privacy of a person and “data that requires accessibility limitation”. However the Law fails to establish the so-called “three-part test”, which any restriction on access to information should comply with. This means that in order to restrict access a public body has to prove that: (1) there is a legitimate interest to restrict access; (2) that disclosure would cause significant harm to such interest; and that (3) that harm outweighs public interest in receiving information. This public interest test is an established international standard and should govern all procedures concerning restriction of access to information, including those regarding state and service secrets.

Armenia also has a Law on State and Service Secrets. This law seems to regulate different forms of non-public information, including official secrets, but also service secrets that could be what is known as restricted or confidential information or information for internal use.

Little is known how about internal procedures and skills of public officials to determine if specific information requested is public or not. It remained unclear on what grounds public officials determine in each case what is “privacy of a person”, if this data is limited, what is a state and service secret, etc. For example, how official in a municipality asked for a draft city development plan or a document containing preliminary evaluation of bidders by a procurement commission determines if it is public or not. In practice, information requests are very different and particular and it cannot be always possible to determine its status solely based on law. A public official may simply refuse information lacking grounds to determine its status. The monitoring team was not informed if each institution has a register of all information that it holds.

A lot seem to be achieved in the area of access to information by civil society. Specialized NGO’s have been raising awareness on the importance of access to information and the rights of citizens to be informed by public information holders and receive this information according to the legislation into force. NGO Freedom of Information Center of Armenia had put in place a black list of public officials who have violated rights to access to information that contains information since 2001 till 2011.<sup>56</sup> The NGO also created a new Internet portal, where requests of information will be uploaded and monitored.

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<sup>56</sup> <http://www.foi.am/en/years/>



No special public body exists in the area of freedom of information. The citizens can claim the violation of their right to access to information directly to the court. Some interlocutors claimed that in practice there is no specific need for such a body. Refusal to provide information may be appealed to the authorized body of public administration or to the court. However, there is no a special mechanism for administrative appeals to a Commissioner on Freedom of Information or a similar institution. Such body, according to international standards, should have a certain level of independence from the executive authorities, have powers to consider complaints and make instructions to authorities in case of violations, as well as prepare annual reports on Freedom of Information. It is an important institution to monitor situation with access to information and proactively respond to violations. Public authorities claimed that court decision enforcement has improved and that the Law on Freedom of Information is being implemented properly. It was mentioned to the monitoring team that in two cases public officials were sanctioned by the court with a fine for refusal to provide information.

The monitoring team was also informed about special software introduced by the Government three years ago, which allows tracking requests for information to specific public offices. In each public institution, in the hallway, there are special machines with the software installed on them. All citizen requests are scanned and electronically filed using this software. Citizens can come and track their requests by such criteria as name and date and see the current status. Moreover, among central Government institutions all exchange of information is done electronically. This system is not yet in place in local governments.

According to the Armenian authorities all draft legislation is made public before its discussion in plenary sessions on the website of the National Assembly.<sup>57</sup> All the adopted legislation is published after adoption in the Armenian official gazette.

Overall citizens seem to be more active in requesting information and appealing against decisions in cases of failure to provide it. Also, public institutions increasingly proactively provide information about their services, functions and contact information. However, the monitoring team also heard that in practice access to information is not always ensured properly. In particular, it seems to be difficult to obtain legal acts and information about draft legislation. It was noted that information about concepts of new laws and draft laws are not always made available to those who in future will need to respect them and legislation is often made public on a short notice. It was recommended to adopt new legislation and make it public at least 3 months before entering into force. As stated above, also the monitoring team was not made aware of any new procedures related to access to information since 2006.

Recently Armenia partly de-criminalised defamation. Article 136, which was repealed on 18 May 2011, provided that an insult as an improper humiliation of other person's honor and dignity can be punished by a fine or correctional labour; when committed through public statements or mass media – can result in stricter sanctions. Article 318, repealed on 18 Mai 2011, provided criminal liability for publicly insulting a representative of authorities, in relation to the duties carried out by

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<sup>57</sup> Draft legislation is made public on the website <http://parliament.am/drafts.php?lang=arm>

him, and sanctions ranging from a fine to an imprisonment of up to 2 years when committed through public speeches or mass media. Special offence for slandering a judge, prosecutor, investigator or officer of the court is still established in Article 344. Criminal liability for defamation, even if not applied in practice, has a chilling effect on the freedom of the media and investigative journalism. Journalists and whistleblowers – important actors in exposing corruption - should not be intimidated by possible sanctions for defamation. It runs counter to international standards to keep defamation criminalised; all defamation claims should be settled in civil courts.

Armenia remains **partially compliant** with recommendation 23.

#### **New recommendation 3.6.**

*In order to ensure proper implementation of the Law on Freedom of Information, ensure that necessary mechanisms related to keeping records of information and to classification of confidential and otherwise publicly not available information are in place. Ensure that a register is in place for each public institution of all information it holds.*

*Consider ensuring a mechanism for complaints relating to requests under Freedom of Information Law.*

*Fully decriminalise defamation in any form by repealing Article 344 of the Criminal Code and by providing that damages to one's reputation can be redressed only through civil proceedings, which should not result in exorbitant monetary sanctions.*

*Ensure concepts of laws and draft legislation are disseminated to those who will be subject to them and that laws are made public and discussed sufficiently in advance of their entry into force.*

### **3.7. Political corruption**

Political corruption is identified in the 2009 – 2012 Anti-Corruption Strategy of Armenia as a major challenge. According to the household survey used by the government in developing the Anti-Corruption Strategy, the majority of respondents think that the level of corruption is the highest in electoral system, while 95% of respondents think that electoral system is corrupt in one way or another”.<sup>58</sup>

The 2009 – 2012 Anti-Corruption Strategy seeks to address political corruption through the chapter “Political sector and political corruption” providing following measures: establish rules of conduct for parliamentarians on what gifts can be accepted by them, prohibit parliamentarians to engage in business, improve immunities regime, improve the system of declaration of assets and income, ensure civil society is more involved in decision-making process in the National Assembly. Besides, a chapter “Electoral System” focuses on increasing transparency on pre-election campaign, improving party's financing system, involving civil society in elections' monitoring, etc. Unfortunately, as noted earlier in this report, the Anti-Corruption Strategy is not being implemented

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<sup>58</sup> 2009 – 2012 Anti-Corruption Strategy

in a systematic way. Therefore, the monitoring team was unable to assess progress made in implementing the measures intended to fight political corruption.

Besides, the monitoring team did not hear during the on-site visit from Armenian authorities any reference to measures foreseen to fight or prevent political corruption or that it would be particular concern. It seems that in the agenda for the next years are only technical improvements in the area of control of party financing.

It appears to the monitoring team that political corruption should be comprehensively analysed, in connection with conflicts of interest, post-public employment issues, party financing, public procurement and business-politics interactions. A long-term perspective should be developed, approaching this matter by a combination of measures taken by the Government and political consensus to promote a change in the political culture.

### **Financing of political parties and electoral campaigns**

The rules governing public funding of political parties are contained in the Law on Political Parties of 3 July 2002 and in the Electoral Code of 5 February 1999.

Public funding is made available to political parties for their election campaign expenses. Public funding is allocated to any party (party alliance), the electoral list of which received at least 3% of the votes in sum.

There are limitations and rules related to donations to political parties. No donations are allowed from charities and religious organisations, state and local institutions and public organisations, “from legal persons registered for up to 6 months prior to the making of the donation” and foreign and international donations. Anonymous donations are prohibited too.

There are no restrictions with regard to the amount of donations to political parties by physical and legal persons, but there are restrictions for payments to election funds: the maximum amount of personal payments to the election fund of a candidate for the President should not exceed the minimum salary multiplied by 10.000; for a political party nominating the candidate not exceeding the minimum salary multiplied by 30.000. There are also limitations for funding by natural and legal persons and candidates for election to the National Assembly.

### **Transparency and control of party financing and electoral campaigns**

According to the Law on Political Parties, Article 28, all political parties shall submit a financial statement to the state authorized body (Ministry of Justice) on the resources received and spent by the political party in the reporting year. This is further regulated by the Order No 39-N of the RA Minister of Justice dated 31 March 2005 on the financial statements by political parties. No later than 25 March of the year succeeding the reporting year, the political party publicizes its financial statement in the mass media.

The financial accounting of the spending on preparation and conduct of election campaigns of parties is done separately. The candidates and parties participating in legislative elections, on the 10th day following the start of election campaign and no later than 6 days after the end of the

election, submit to electoral commissions a declaration of payments made to their electoral funds and their use.

The Law on Political Parties does not regulate the issue of penalties for violating the procedure related to financing of political parties. At present, the only basis for liability for violating the rules of party financing is Article 196.12 “Failure to Submit Financial Statements to Public Bodies or to Publicize them” of the Code of Administrative Offences. During last elections in 2008 no violations were identified, except a candidate who exceeded maximum expenditure and was excluded.

At the time of the on-site visit Armenian authorities informed about future possible changes in campaign finance and political parties financing rules in Armenia. The restated Electoral Code has entered into force on 26 June 2011. In addition, there is a draft Law on making amendments to the RA Law on Political Parties. They both aim, among others, to address some of the weaknesses in the system of funding of political parties and electoral campaigns, as well as in the system of monitoring and control of political parties’ funding identified in the GRECO 3<sup>rd</sup> Round Evaluation Report on Armenia on Transparency of party funding<sup>59</sup>. At that moment the intention was to include in-kind services as a mean to finance political parties and increasing the limit for electoral spending from 60 to 100 million AMD. No information was provided on how this new limit has been calculated, therefore, it is now known if this new limit is well balanced to deter high expenses and irregularities.

Significant change is also planned in monitoring funding of political parties and election campaigns. The Armenian authorities intend to unify control of both within the Central Electoral Commission (CEC). For this, it is planned to reinforce the capacities of the CEC with a permanent Control and Verification Service. Until now this Service was used, but on temporary basis. It used to be set up for each election, with 4 members discretionarily selected, without a specific competency profile. Additional transparency will be ensured by placing political parties’ financial declarations on the CEC website of the CEC. No information about timeline and capacities to implement these changes was provided.

It may also be useful to promote initiatives of independent monitoring of political parties expenditure (for example, by NGOs, research centres, etc.) during next electoral campaign, based on real market prices of the different electoral activities developed.

## **Conflicts of interest of political officials**

This appears to be a major issue of concern that Armenia need to address. Significant progress in this area could be made with the proper implementation of the new Law on Public Service adopted in June 2011. This law provides a set of special rules for high-level officials including the President, Prime Minister, ministers, Members of the Parliament. There are general rules to prevent conflict of interest by political officials and it is planned to set up an Ethics Commission for the High-Ranking Officials to monitor their application.

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<sup>59</sup> See the full report at:

[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2010\)4\\_Armenia\\_Two\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2010)4_Armenia_Two_EN.pdf)

Also the Article 65 of the Constitution foresees that a Member of Parliament may not engage in entrepreneurial activities; engage in any other paid occupation, except for scientific, educational and creative work. Similarly, Article 88 stipulates that a member of the Government may not engage in entrepreneurial activities, or be involved in another paid work, save for academic, pedagogical and creative activities.

Persons holding political public posts were under a duty to submit a declaration of income and property according to the 2006 Law on Asset and Income Disclosure by Individuals. Now according to the 2011 Law on Public Service a new form of asset and income declaration will be introduced for those high-ranking officials.

Implementation of both previous and new regulation remains the key. The monitoring team heard a lot of criticism about conflicts of interest of political officials defending business interests and living a lifestyle that cannot be justified, while formally it was not allowed before. It remains to be seen if the new regulation will be implemented in a more effective manner.

## **Relationships business-politics and lobbying**

There is no regulation in the area of lobbying in Armenia that appeared during the on-site visit an area of concern in the society. It seems that more transparency is needed in relations between businesses and politics, addressing allegations of possible connections with irregular party financing, influence peddling and political corruption. The monitoring team did not hear of any measures foreseen by the Government to regulate lobbying.

### **New recommendation 3.7.**

***Ensure that political parties disclose their financial data, including in-kind donations, assets, goods and services bought or rented under market prices, bank loans and contracts with foundations, associations and other bodies related to them.***

***Ensure adequate number of permanent staff of the Central Electoral Commission and its Control and Verification Service, and guarantee that the nominations are based on merits, qualification, experience and political independence.***

***Ensure effective coordination between the Central Electoral Commission and the Chamber of Control to try to identify possible corruption risks of use of public procurement in financing political parties.***

***Ensure that new conflict of interest rules for political officials set by the Law on Public Service are enforced and all the relevant data is disclosed.***

***Consider improving transparency in the relationship between politicians and business by disclosing the agenda and the register of visits of Members of the Parliament and high-ranking officials.***

## **3.8. Corruption in the judiciary**

### **Independence**

Article 97 of the Constitution of Armenia stipulates that the judicial branch and judges are independent. The legislation of Armenia also provides that the President ensures the “regular functioning” of the judicial branch. Important institutional safeguards are provided in the Judicial Code, adopted since the 1<sup>st</sup> round of monitoring, in force since 21 February 2007. Article 11 stipulates that in administering justice the judge is independent and not accountable to anyone. Various more specific provisions on conditions of appointment, promotion and other aspects of carrier of judges support this general principle. To ensure financial independence of judges, the judiciary by a separate budgetary line. An official judicial pay is determined by the Law on the State Budget. Financial and administrative matters are administered by the Judicial Department, an administrative state body, acting on the basis of the Charter approved by the Chairman of the Court of Cassation.

### **Career of judges**

A key role in selection of judges is played by the Council of Justice and the President of the Republic of Armenia. The Council of Justice is an independent self-governance body of 9 judges elected by the General Assembly of Judges, 2 legal scholars appointed by the President and 2 by the National Assembly. Such composition of the Council of Justice seems quite balanced and professional and could allow taking proper and fair decisions.

The candidates for judicial positions are selected through a testing procedure administered by the Judicial school. The short list of the best candidates is then provided to the Council of Justice, which interviews the short-listed candidates and selects the best candidates. The list of selected candidates is then approved by the President.

The Council of Justice is also responsible for selection of the administrative heads of the courts. Again, the selected candidates are then sent for approval by the President.

The Council of Justice is responsible for promotion of judges, which is conducted according to a list of criteria. The criteria are stipulated in the Article 135 of the Judicial Code (reputation of judge, compliance with code of conduct, participation in education and training programmes, etc.).

A judge cannot be removed until the age of 65, but he can be removed from his office following disciplinary proceedings by the Council of Justice recommending the President to terminate powers of a judge (Article 95, point 5) of the Constitution).

Overall, the legal provisions seem to approach the career of judges in a coherent and efficient manner and seem to be predictable to avoid arbitrary decisions to be taken. However, the monitoring mission was not in a position to ensure that the system also works in practice.

## **Assignment of cases**

The decision to assign a case is taken by the Head of the court. Formally, it should be done taking into consideration specialization, place of residence and case-load of the judge. During the on-site visit the Armenian authorities mentioned that a random allocation of cases is being considered.

## **Ethical rules and disciplinary responsibility**

Armenia has made some progress in putting in place a fairly comprehensive framework of rules of conduct and ethics for judges and personnel of the courts since the 1<sup>st</sup> round of monitoring. In addition to Code of Judicial Conduct effective since 2005 (new edition adopted in 2010), the Judicial Code was adopted in 2007, the Ethics Commission of the Council of Court Chairpersons was created and in October 2007. Rules of Conduct for Judicial Servants were approved for technical personnel in the courts. The commentaries to the Code of Judicial Conduct were elaborated by the Ethics Commission (see also above the chapter “Integrity in Public Service”, sub-section on codes of ethics).

According to the Judicial Code, the power to subject a judge to disciplinary liability is vested in the Justice Council. An alleged disciplinary violation is first reviewed by the Ethics Commission of the Council of Court Chairpersons. If the violation is serious, the motion on instituting disciplinary proceedings is filed to the Disciplinary Commission of the Council of Justice. Justice Council can take decisions applying disciplinary sanctions against the judge. A dismissal can be suggested, but it needs to be approved by the President. A disciplinary liability in the Judicial Code is also foreseen for violations of the Code of Conduct.

As stated in the replies to the questionnaire, the Minister of Justice can institute disciplinary proceedings against a judge too. This raises serious concerns over the separation of the executive and judicial branches, as the Minister of Justice is part of the Government.

According to the statistics provided by the Armenian authorities, 6 judges have been held disciplinary liable in 2010, compared to 11 in 2007. During the on-site visit Armenian authorities told that no judge was held disciplinary liable for bribery. A case of a judge who called a defendant “guilty” during a court session and was held disciplinary liable was mentioned as example.

## **Transparency of judicial decisions**

Judicial decisions of the Cassation Court are published in the Official Bulletin of the Republic of Armenia, as well as the official Website of the Judiciary of the Republic of Armenia, which is foreseen by the Judicial Code. Court decisions can be found also at this judicial portal [www.datalex.am](http://www.datalex.am) and at the website [www.court.am](http://www.court.am).

## **Training of judges**

Judicial training is provided by the Judicial School. It was reported that a number of trainings took place covering issues of ethics, integrity and anti-corruption.

Overall, it seems that a proper legal and self-regulatory framework has been developed to ensure ethical conduct and integrity in the judiciary. How the judges follow the legal principles in their activity is of key importance. The monitoring team did not meet any judge and could not assess this matter.

### **3.9. Integrity in the private sector**

Overall, the business sector seems to be aware of seriousness of corruption problem. Monopolies and corruption are considered by enterprises to be two main obstacles to business development in Armenia, according to the USAID-funded Mobilizing Action against Corruption Activity (MAAC Activity) corruption survey of enterprises in Armenia in 2010. During the on-site visit the monitoring team heard opinion that monopolies, links between public officials and business interests, often burdensome and arbitrary procedures by public bodies towards businesses (inspections, taxes, etc.) and important ratio of “grey economy” are important challenges and slow down business development in Armenia.

#### **Awareness raising and surveys**

A number of activities to raise awareness of business sector on corruption have been carried out by civil society and business associations. The Foundation for Small and Medium Business conducted an assessment of legislation and policy on taxation of small and medium businesses. The USAID programme Mobilizing Action Against Corruption Activity with the Ministry of Finance and Economy and the USAID Competitive Armenian Private Sector organized an anti-corruption conference in March 2010 “Towards Stronger Corporate Integrity”. According to replies to the monitoring questionnaire, this conference was an attempt to encourage enterprises to fight corruption by means of stronger corporate integrity. Caucasus Research Resources Centres-Armenia conducted a survey of corruption perception by enterprises in 2009 (see above chapter “Surveys”).

#### **Accounting and auditing rules**

Regarding accounting rules, the establishment of off-the-books accounts is not explicitly prohibited in Armenia. Making of off-the-books or inadequately identified transactions is prohibited, as well as recording of non-existent expenditures, entry of liabilities with incorrect identification of their objects and use of false documents. All companies, except of state budget and public sector companies are subject to these provisions. Sanctions for accounting omissions, falsifications and fraud include administrative liability for accounting mistakes (fine) and administrative or criminal liability for accounting fraud.

On 22 December 2010 a new Law on Internal Audit was adopted in Armenia. It also applies to private companies. Banks, banking and credit organizations, insurance and investment companies, pawnshops, gambling houses and large companies are subject to external audit. All companies with a turnover bigger than 1 billion AMD have to publish an audited annual statement. The law 'On combating Money laundering and terrorism financing' establishes an obligation to report suspicions of crime, including corruption, to a number of private sector entities. The Law on Joint-Stock Companies and the Law on Companies with Limited Liability provide that a control commission is elected by the general assembly in the company.



## **Corporate ethics, government-private sector dialogue**

It did not seem that the government has taken efforts to promote corporate governance among businesses. In the replies to the monitoring questionnaire Armenian authorities stated that every company has its own policy and sets standards of conduct, including issues regarding corruption.

In the meantime, the Chamber of Commerce of Armenia has issued an anti-corruption handbook for businesses, based on experience of the OECD and International Chamber of Commerce. It was published and disseminated by the Chamber of Commerce.

During the on-site visit it appeared to the monitoring team that Government – private sector dialogue seems to be a largely unexplored area. There seems to be a general lack of trust among business sector and the government. The monitoring team heard that the Government is quite passive to involve businesses in the discussions. The role of private sector in preventing corruption, ethics, compliance and internal control measures in private companies, development of legislation relevant to businesses could be issues for such a dialogue and a step to build trust among businesses towards the Government.

### **New recommendation 3.9.**

***Develop a dialogue between government and private sector on prevention of corruption and further involve private sector in development and simplification of business legislation.***

***Raise awareness by government on integrity in business, corporate responsibility and public-private partnerships.***

## Summary Table

Pillar I. Anti-Corruption Policy							
	New Recommendations	Previous recommendations	Updated rating for previous recommendations				
			fully	largely	partially	not	
1.1-1.3. Expressed political and anti-corruption policy document	✓	2. (Part 1) Regular reporting to monitoring body			+		
1.3. Corruption surveys	✓						
1.4 -1.5 Public participation, raising awareness and public education	✓	6. Raising awareness campaigns and training			+		
1.6. Anti-Corruption policy and coordination bodies	✓	1.Anti-Corruption Council and Monitoring Group		+			
		4.Study examples of anti-corruption bodies		+			
1.7. international conventions		7. Ratify CoE Criminal Law Convention, sign, ratify UNCAC	+				
Pillar II. Criminalisation of corruption							
2.1-2.2 Offences and elements of offence	✓	8. Amend incriminations (passive, active bribery, repeal legal gifts, criminalise trading in influence)			+		
		22.Full AML legislation/FIU		+			
		11.Liability of legal persons			+		
2.3. Definition of public official	✓	13.Concept of public official	+				
		14. Foreign/international public officials	+				
2.4. Sanctions							
2.5. Confiscation	✓	12. Confiscation regime, provisional measures		+			
2.6. Immunities and statute of limitation	✓✓	9. Review statute of limitations			+		

		10. Procedure lifting immunities			+	
2.7. International cooperation, MLA		15. Effective MLA in corruption cases		+		
2.8. Application, interpretation and procedure	✓					
2.9. Specialised law-enforcement bodies	✓	3. Consolidate enforcement, exchange of knowledge			+	
		5. Training for law enforcement, adequate resources		+		
2.10. Statistics on enforcement	✓	2. (Part 2) Law enforcement statistics methodology and reporting			+	
<b>Pillar III. Prevention of corruption</b>						
3.1. Prevention body						
3.2. Integrity of public service	✓✓	17. Uniform code of ethics			+	
		16. Recruitment, promotion		+		
		18. Enforcement of rules on gifts			+	
		19. Loopholes, liability in asset declaration system			+	
		20. obligation to report corruption, protection				+
3.3. Transparency and discretion in public administration	✓					
3.4. Financial control	✓	24.Coordination control/audit institutions		+		
3.5. Public procurement	✓	21. E-procurement, disclosure		+		
3.6. Access to information	✓	23. improve rules/procedure access to information, failure to respond			+	
3.7. Political corruption	✓					
3.8. Judiciary						
3.9. Private sector	✓					

# Annex 1. Relevant Legislative Extracts.

## Criminal Code of the Republic of Armenia (extracts)

### Criminal Code of the Republic of Armenia

(Status as of April 2010)

#### Article 34. Attempted crime

An attempted crime shall be deemed to be an action (inaction) committed with direct intention which is directly aimed at committing a criminal offence where the crime has not been completed for circumstances beyond the person's control.

#### Article 75. Releasing from criminal liability due to the expiration of the statute of limitations

1. A person shall be released from criminal liability where the following terms have elapsed from the day when the criminal offense is regarded as completed:

- (1) two years from the day when a criminal offense of minor gravity is regarded as completed;
- (2) five years from the day when a criminal offense of medium gravity is regarded as completed;
- (3) ten years from the day when a grave criminal offense is regarded as completed;
- (4) fifteen years from the day when a particularly grave criminal offense is regarded as completed.

2. The statute of limitations shall be calculated from the day when a criminal offense is regarded as completed till the moment when the criminal judgment takes legal effect. In case of a continuous crime, the statute of limitations shall be calculated from the moment of termination of the act, whereas in case of a continuing crime – from the moment of committing the last act.

3. The running of the statute of limitations shall be interrupted where — before the expiration of the mentioned terms — the person commits a new criminal offence of medium gravity, a new grave or a particularly grave criminal offence. In this case, the statute of limitations shall be calculated from the moment when the new criminal offence is regarded as completed.

4. The running of the statute of limitations shall be suspended where a person evades investigation or trial. In this case, the running of the statute of limitations shall resume from the moment of arresting the person or his or her surrender by acknowledging guilt. Moreover, a person may not be subjected to criminal liability if ten years have elapsed from the day when a criminal offense of minor or medium gravity is regarded as completed, and twenty years from the day when a grave or particularly grave criminal offence is regarded as completed, and the running of the statute of limitations has not been interrupted by a new crime.

5. The issue of application of the statute of limitations with regard to a person who has committed a criminal offence punishable by life imprisonment, shall be settled by the court. Where the court finds it impossible to release a person from criminal liability due to the expiry of the statute of limitations, life imprisonment shall not be applied.

6. No statute of limitations shall be applied with regard to persons having committed crimes against peace and safety of humanity as provided for in Articles 384, 386 to 391, 393 to 397 of this Code. No statute of limitations shall be applied also with regard to persons having committed crimes provided for in international treaties of the Republic of Armenia, where a prohibition of application of a statute of limitations is laid down in those treaties.

**(Article 75 amended and supplemented by HO-103-N of 1 June 2006)**

#### Article 179. Embezzlement or Peculation

1. Embezzlement or peculation — illegal taking of another person's property on a significant-scale entrusted with the criminal —

shall be punished by a fine in the amount of three-hundred-fold to five-hundred-fold of the minimum salary, or by detention for a maximum term of two months, or by imprisonment for a maximum term of two years.

2. The same action committed —

- (1) by use of official position;
- (2) by a group of persons acting in conspiracy;
- (3) on a large-scale;
- (4) repeatedly;

**(5) (Point 5 repealed by HO-97-N of 9 June 2004) —**

shall be punished by a fine in the amount of four-hundred-fold to seven-hundred-fold of the minimum salary, or by imprisonment for a term of two to four years, with or without deprivation of the right to hold certain positions or to engage in certain activities for a maximum term of three years.

3. The act provided for in part 1 or 2 of this Article, that has been committed:

- (1) on a particularly large-scale;
- (2) by an organised group;
- (3) by a person having two or more convictions for the criminal offences provided for in Articles 175-182, 222, 234, 238, 269 of this Code —

shall be punished by imprisonment for a term of four to eight years, with or without confiscation of property.

**(Article 179 amended by HO-97-N of 9 June 2004, HO-67-N of 24 December 2004, HO-119-N of 1 June 2006)**

#### **Article 190.                    Legalisation of proceeds of crime (money laundering)**

1. Converting or transferring property derived from a crime (where it is known that the property has been derived from a criminal activity) which had the aim of concealing or disguising the criminal origin of the property or to assist any person to evade liability for a criminal offence committed by him or her or to conceal or disguise the true nature, origin, whereabouts, manner of disposition, movement, rights or ownership of property (where it is known that the property has been derived from a criminal activity), or acquiring or possessing or using or disposing of property (where it was known, at the time of receiving the property, that it has been derived from criminal activity) —

shall be punished by imprisonment for a term of two to five years, with confiscation of property provided for in Article 55(4) of this Code.

2 The same criminal offence committed:

- (1) on a large-scale;
- (2) by a group of persons acting in conspiracy;

shall be punished by imprisonment for a term of five to ten years, with confiscation of property provided for in Article 55(4) of this Code.

3. The act provided for in part 1 or 2 of this Article, which has been committed:

- (1) on a particularly large-scale;
- (2) by an organised group;
- (3) by use of official position —

shall be punished by imprisonment for a term of six to twelve years, with confiscation of property provided for in Article 55(4) of this Code.

4. In this Article, large-scale means the amount (value) exceeding the five-thousand-fold of the minimum salary as prescribed at the time of the crime, and particularly large-scale means the amount (value) exceeding the ten-thousand-fold of the minimum salary as prescribed at the time of the crime.

5. Within the meaning of this Article, property derived from a crime is any property, including money, securities and property rights, as well as, in cases provided for in international treaties of the Republic of Armenia, other objects of civil rights that have been directly or indirectly generated or derived as a result of the crimes provided for in Articles 104, 112-113, 117, 122, 131-134, 166, 168, 175-224, 233-235, 238, 261-262, 266-270, 281, 284, 286-289, 291-292, 295, 297-298, 308-313, 329, 352, 375, 383, 388 and 389 of this Code.

**(Article 190 amended, supplemented by HO-16-N of 14 December 2004, amended by HO-119-N of 1 June 2006, edited by HO-206-N of 28 November 2006, amended by HO-149-N of 10 June 2009)**

#### **Article 200.                    Commercial bribe**

1. Giving a bribe to an officer — implementing managerial functions — of a commercial or other organisation, to an arbiter, including an arbiter performing functions in accordance with the arbitration legislation of a foreign State, to an auditor or an advocate, *i.e.*, illegally promising or offering or giving money, property, right over a property, securities or any other advantage to those persons — in person or through an intermediary — for themselves or for any other person, in order to act or to refrain from acting in favour of the briber or the person he or she represents — shall be punished by a fine in the amount of two-hundred-fold to four-hundred-fold of the minimum salary, or by deprivation of the right to hold certain positions or to engage in certain activities for a term of maximum two years, or by imprisonment for a term of maximum two years.

2. The same act committed by a group of persons acting in conspiracy or by an organised group —

shall be punished by a fine in the amount of three-hundred-fold to five-hundred-fold of the minimum salary, or by imprisonment for a term of maximum four years.

3. Receiving a bribe by an officer — implementing managerial functions — of a commercial or other organisation, an arbiter, including an arbiter performing functions in accordance with the arbitration legislation of a foreign State, an auditor or an advocate, *i.e.*, illegally receiving money, property, right over a property, securities or any other advantage by those persons — in person or through an intermediary — for themselves or for any other person, in order to act or to refrain from acting in favour of the briber or the person he or she represents —

shall be punished by a fine in the amount of two-hundred-fold to four-hundred-fold of the minimum salary, or by deprivation of the right to hold certain positions or to engage in certain activities for a term of maximum three years, or by imprisonment for a term of maximum three years.

4. The act provided for in part 3 of this Article, which has been committed by extortion —

shall be punished by a fine in the amount of three-hundred-fold to five-hundred-fold of the minimum salary, or by deprivation of the right to hold certain positions or to engage in certain activities for a term of maximum five years, or by imprisonment for a term of maximum five years.

5. In articles of this Chapter, an officer of a commercial or other organisation means a person who permanently, temporarily or with a special authorisation implements instructive or other managerial functions in commercial organisations — irrespective of the form of ownership — as well as in non-commercial organisations which are not deemed to be state and local self-government bodies, institutions of state and local self-government bodies.

Persons guilty of the crimes provided for in this Article shall be released from punishment by the court, if they have voluntarily reported about the committed criminal offence to an authority entitled to institute a criminal case, whereas those who have received unlawful remuneration have at the same time returned what they had received or have compensated the value thereof.

**(Article 200 supplemented by HO-119-N of 20 May 2005, amended by HO-19-N of 1 June 2006, edited, supplemented by HO -256-N of 5 December 2006, amended by HO-59-N of 25 December 2006)**

**Article 201.                   Bribing of participants and organisers of professional sporting events and commercial competition shows**

1. Giving a bribe to sportspersons, referees, coaches, team captains or other participants and organisers of professional sporting events, as well as organisers of commercial competition shows and members of award commissions, *i.e.*, illegally promising or offering or giving money, property, right over a property, securities or any other advantage to those persons — in person or through an intermediary — for themselves or for any other person, for the purpose of affecting the results of such sporting events or competitions —

shall be punished by a fine in the amount of two-hundred-fold to five-hundred-fold of the minimum salary, or by detention for a term of maximum two months.

2. The same acts committed by a group of persons acting in conspiracy or by an organised group —

shall be punished by imprisonment for a term of maximum five years.

3. Receiving a bribe by sportspersons, referees, coaches, team captains or other participants and organisers of professional sporting events, as well as organisers of commercial competition shows and members of award commissions, *i.e.*, receiving money, property, right over a property, securities or any other advantage by those persons — in person or through an intermediary — for themselves or for another person —

shall be punished by a fine in the amount of three-hundred-fold to five-hundred-fold of the minimum salary, or by deprivation of the right to hold certain positions or to engage in certain activities for a term of maximum three years, or by detention for a term of two to three months, or by imprisonment for a term of maximum two years.

**(Article 201 amended by HO-97-N of 9 June 2004, HO-119-N of 1 June 2006, edited by HO-256-N of 5 December 2006)**

**Article 214. Abuse of powers by officers of commercial or other organisations**

1. Use of instructive or other powers by officers of commercial or other organisations against the interests of that organisation and to their or other persons' benefit or for obtaining advantages or for causing harm to other persons, where material damage has been caused to the rights and lawful interests of persons, organisations or the State —

shall be punished by a fine in the amount of two-hundred-fold to four-hundred-fold of the minimum salary, or by detention for a term of one to three months, or by imprisonment for a term of maximum two years.

2. The same act which has caused grave consequences —

shall be punished by a fine in the amount of three-hundred-fold to five-hundred-fold of the minimum salary, or by detention for a term of two to three months, or by imprisonment for a term of maximum four years.

**(Article 214 amended by HO-119-N of 1 June 2006)**

**Article 308. Abuse of official powers**

1. Use of official position against the interests of service or failure to fulfil official duties by an official for mercenary, other personal or collective interests, which has caused essential damage to the rights and lawful interests of persons, organizations, and to the lawful interests of the public or the State (in case of property damage — the amount or the value thereof exceeding the five-hundred-fold of the minimum salary defined at the time of crime) —

shall be punished by a fine in the amount of the two-hundred-fold to three-hundred-fold of the minimum salary or by deprivation of the right to hold certain positions or to engage in certain activities for a term of maximum five years or by detention for a term of two to three months or by imprisonment for a term of maximum four years.

2. The same act that has negligently caused grave consequences —

shall be punished by imprisonment for a term of two to six years, with deprivation of the right to hold certain positions or to engage in certain activities for a term of maximum three years.

3. Under this Chapter, the officials shall be deemed to be:

(1) persons performing the functions of a representative of the Power permanently, temporarily or upon an individual power;

(2) persons performing organisational-managerial, administrative and economic functions permanently, temporarily or upon an individual power in state authorities, local self-government authorities, organizations thereof, as well as in the Armed Forces of the Republic of Armenia, other troops and military units of the Republic of Armenia.

4. With regard to committal of acts provided for in Articles 311, 312 and 313 of this Code, the following persons shall be considered as officials as well:

(1) persons performing functions of a public official of a foreign State in accordance with the national law of the State concerned, as well as members of legislative body or those of any representative body of a foreign State who exercise administrative powers;

(2) public officials of international or supranational organizations or bodies or, in cases provided for in regulations such organizations or bodies — the contractual employees or other persons performing functions relevant to those performed by similar officials or employees;

- (3) members of international or supranational organizations, parliamentary assemblies or other bodies performing similar functions;
- (4) members or officials performing judicial functions of international courts, the jurisdiction of which has been recognised by the Republic of Armenia;
- (5) jurors of courts of foreign States.

**(Article 308 supplemented by HO-119-N of 20 May 2005, amended by HO-206-N of 28 November 2006)**

**Article 309. Excess of official powers**

1. Carrying out actions intentionally by an official which are obviously beyond the scope of his/her powers and have caused essential damage to the rights and lawful interests of persons, organizations, to the lawful interests of the public and the State (in case of property damage — the amount or the value thereof exceeding the five-hundred-fold of the minimum salary set at the time of crime) — shall be punished by a fine in the amount of the three-hundred-fold to five-hundred-fold of the minimum salary or by deprivation of the right to hold certain positions or to engage in certain activities for a term of maximum five years or by detention for a term of two to three months or by imprisonment for a term of maximum four years.
2. The same act accompanied with the use of violence, weapon or special means — shall be punished by imprisonment for a term of two to six years, with deprivation of the right to hold certain positions or to engage in certain activities for a term of maximum three years.
3. The same act that has negligently caused grave consequences — shall be punished by imprisonment for a term of six to ten years, with deprivation of the right to hold certain positions or to engage in certain activities for a term of maximum three years.

**Article 311. Receiving a Bribe**

1. Receiving a bribe by an official, i.e. receiving money, property, property right, securities or any other advantage by an official — personally or through an intermediary for himself/herself or for another person — for the purpose of carrying out or not carrying out an action by an official, within the scope of powers thereof, in favour of the bribe giver or the person introduced thereby, or for the purpose of contributing by that official to carrying out or not carrying out such action by using his/her official position or for the purpose of patronage or connivance in relation to service — shall be punished by a fine in the amount of the three-hundred-fold to five-hundred-fold of the minimum salary or by imprisonment for a maximum term of five years, with deprivation of the right to hold certain positions or to engage in certain activities for a term of maximum three years.
2. Receiving a bribe by an official for an obviously illegal action or inaction in favour of the bribe giver or the person introduced thereby — shall be punished by imprisonment for a term of three to seven years, with deprivation of the right to hold certain positions or to engage in certain activities for a term of maximum three years.
3. The same act committed —
  - (1) by extortion;
  - (2) by a group of persons acting in a conspiracy;
  - (3) on a large-scale;
  - (4) repeatedly —shall be punished by imprisonment for a term of four to ten years, with or without confiscation of property.
4. The acts provided for in part 1 or 2 or 3 of this Article committed
  - (1) by an organised group;
  - (2) on a particularly large-scale;
  - (3) by a judge,shall be punished by imprisonment for a term of seven to twelve years, with or without confiscation of property.

**5. (paragraph 1 repealed by HO-256-N of 5 December 2006)**

Under this Chapter, a large-scale shall be deemed to be the amount (value) not exceeding the two-hundred-fold to one-thousand-fold of the minimum salary defined at the time of crime.

Under this Chapter, particularly large-scale shall be deemed to be the amount (value) exceeding the one-thousand-fold of the minimum salary defined at the time of crime.

**(Article 311 amended by HO-256-N of 5 December 2006)**



**Article 311<sup>1</sup>.                    Receiving unlawful remuneration by a public servant not considered as an official**

1. Receiving unlawful remuneration by a public servant not considered as an official, i.e. receiving money, property, property right, securities or any other advantage by a public servant not considered as an official — personally or through an intermediary for himself/herself or for another person — for the purpose of carrying out or not carrying out an action by a public servant, within the scope of powers thereof, in favour of the remuneration giver or the person introduced thereby, or for the purpose of contributing to the carrying out or not carrying out such action by using his/her official position or for the purpose patronage or connivance in relation to service —

shall be punished by a fine in the amount of the two-hundred-fold to four-hundred-fold of the minimum salary or by imprisonment for a term of maximum three years, with deprivation of the right to hold certain positions or to engage in certain activities for a term of maximum three years.

2. Receiving unlawful remuneration by a public servant not considered as an official for obviously illegal action or inaction in favour of the remuneration giver or the person introduced thereby —

shall be punished by imprisonment for a term of three to five years, with deprivation of the right to hold certain positions or to engage in certain activities for a term of maximum three years.

3. The same act committed —

(1) by extortion;

(2) on a large-scale;

(3) by a group of persons acting in a conspiracy;

(4) repeatedly —

shall be punished by imprisonment for a term of four to seven years.

4. The acts provided for in part 1 or 2 or 3 of this Article committed —

(1) by an organised group;

(2) on a particularly large-scale —

shall be punished by imprisonment for a term of five to ten years, with or without confiscation of property.

5. Persons performing public service shall be considered as public servants under this Chapter, in accordance with Article 1 of the Law of the Republic of Armenia “On civil service”.

**(Article 311<sup>1</sup> supplemented by HO-49-N of 30 April 2008)**

**Article 311<sup>2</sup>                    Use of real or alleged influence for mercenary purposes**

1. Use of real or alleged influence for mercenary purposes, i.e. receiving money, property, property right, securities or any other advantage — personally or through an intermediary — for the purpose of contributing to the carrying out or not carrying out any action by any official or public servant not considered as an official, within the scope of powers thereof, in favour of legal entities or natural persons or for the purpose of patronage or connivance in relation to service

shall be punished by a fine in the amount of the two-hundred-fold to four-hundred-fold of the minimum salary or by imprisonment for a term of maximum three years.

2. The same act committed for obviously illegal action or inaction

shall be punished by imprisonment for a term of three to five years.

3. The same offence committed —

(1) by extortion;

(2) on a large-scale;

(3) by a group of persons acting in a conspiracy;

(4) repeatedly —

shall be punished by imprisonment for a term of four to seven years.

4. The acts provided for in part 1 or 2 or 3 of this Article committed —

(1) by an organised group;

(2) on a particularly large-scale —

shall be punished by imprisonment for a term of five to ten years, with or without confiscation of property.

**(Article 311<sup>2</sup> supplemented by HO-49-N of 30 April 2008)**

**Article 312.                    Giving bribe**

1. Giving a bribe to an official, i.e. promising or offering or providing the official money, property, property right, securities or any other advantage — personally or through an intermediary — for him/her or another person, for the purpose of carrying out or not carrying out any action by an official, within the scope of powers thereof, in favour of the bribe giver or persons introduced thereby, or for the purpose of contributing to the carrying out such action by using his/her official position or for the purpose of patronage or connivance in relation to service —

shall be punished by a fine in the amount of the one-hundred-fold to two-hundred-fold of the minimum salary or by detention for a term of one to three months or by imprisonment for a term of maximum three years.

2. Giving a bribe on a large-scale —

shall be punished by a fine in the amount of the two-hundred-fold to four-hundred-fold of the minimum salary or by imprisonment for a term of two to five years.

3. Giving a bribe, committed —

(1) on a particularly large-scale;

(2) by an organized group —

shall be punished by imprisonment for a term of three up to seven years.

4. The person giving a bribe shall be released from criminal liability in case the bribe has been extorted or in case the person has voluntarily informed the law enforcement authorities of giving a bribe.

**(Article 312 amended, edited by HO-119-N of 1 June 2006, amended by HO-256-N of 5 December 2006)**

**Article 312<sup>1</sup>. Giving unlawful remuneration to a public servant not considered as an official**

1. Giving unlawful remuneration to a public servant not considered as an official, i.e. promising or offering or providing the public servant not considered as an official money, property, property right, securities or any other advantage — personally or through an intermediary — for him/her or another person, for the purpose of carrying out or not carrying out any action by the one not considered as an official, within the scope of powers thereof, in favour of remuneration giver or persons introduced thereby, or for the purpose of contributing to the carrying out or not carrying out such action by the public servant not considered as an official by using his/her official position or for the purpose of patronage or connivance in relation to service —

be punished by a fine in the amount of the one-hundred-fold to two-hundred-fold of the minimum salary or by detention for a term of maximum two months or by imprisonment for a term of maximum two years.

2. Giving unlawful remuneration on a large-scale —

shall be punished by a fine in the amount of the two-hundred-fold to four-hundred-fold of the minimum salary or by imprisonment for a term of maximum four years.

3. Giving unlawful remuneration, committed —

(1) on a particularly large-scale;

(2) by an organised group —

shall be punished by imprisonment for a term of two to five years.

4. The person giving the unlawful remuneration shall be released from criminal liability in case the unlawful remuneration has been extorted or in case the person has voluntarily informed the law enforcement authorities of giving unlawful remuneration.

**(Article 312<sup>1</sup> supplemented by HO-49-N of 30 April 2008)**

**Article 313. Mediation in bribery**

1. Mediation in bribery, i.e. contributing to reaching an agreement between the bribe giver and the bribe taker or to carrying out the agreement already reached

shall be punished by a fine in the amount of the one-hundred-fold to two-hundred-fold of the minimum salary or by detention for a term of maximum two months or by imprisonment for a term of maximum three years.

2. The act provided for in part 1 of this Article committed —

(1) repeatedly;

(2) by using official position —

shall be punished by a fine in the amount of the two-hundred-fold to four-hundred-fold of the minimum salary or by detention for a term of one to three months or by imprisonment for a term of two to five years.

## Law on Public Service (extracts)

### Law on Public Service

(adopted on 26 May 2011; entry into force on 1 January 2012)

(..)

#### **Article 3. Public Service**

1. Public service is the exercise of powers conferred on the State by the Constitution and laws of the Republic of Armenia encompassing state service, municipal service and state posts.
2. State service is a professional activity directed at the implementation of the tasks and functions conferred on state bodies by the legislation of the Republic of Armenia.
3. State service includes civil service, judicial service, diplomatic service, special services within the executive bodies of the Republic in the area of defence, national security, police, tax, customs, rescue services, state service in the staff of the National Assembly of the Republic of Armenia, National Security Council, as well as other services foreseen by laws.
4. Municipal service is professional activity directed at the implementation of the tasks and functions conferred on the local self-government by the legislation of the Republic of Armenia.

#### **Article 4. State Posts**

1. State posts are the political, discretionary (save for the posts of the chiefs of communities of the Republic of Armenia, deputies, advisors, press secretaries, assistants of chiefs of communities of the Republic of Armenia, assistants of deputy chiefs of communities), civil, as well as state service posts.
2. The political post is a post elected or appointed in the manner prescribed by the Constitution, laws and other legal acts of the Republic of Armenia, the holder of which adopts political decisions, within the scope of powers conferred on him/her by the legislation of the Republic of Armenia and coordinates their implementation. The person holding a political post is changed with the change of the ratio of the political forces, save for cases prescribed by law.
3. Within the meaning of this Law, political are the posts of the President of the Republic of Armenia, the deputies of the National Assembly of the Republic of Armenia, the Prime Minister of the Republic of Armenia, the Secretary of the National Security Council, the Ministers of the Republic of Armenia and the chiefs of communities of the Republic of Armenia.
4. Political posts, save for elected political posts, may be held by citizens of the Republic of Armenia with higher education.
5. All relations in the area of the principles and organizational procedure of the activities of persons holding political posts are defined by the Constitution of the Republic of Armenia, the Electoral Code of the Republic of Armenia, other laws of the Republic of Armenia, decrees of the President of the Republic of Armenia and other legal acts.
6. The discretionary post is an appointed post, the public official holding which adopts decisions within the scope of powers conferred on him/her by the legislation of the Republic of Armenia and coordinates their implementation. The person holding a discretionary post may change with the change of the ratio of political forces.

7. Within the meaning of this Law, discretionary are the posts of the chief of staff of the President of the Republic; first deputy chief of staff of the President of the Republic of Armenia; a deputy chief of staff of the President of the Republic of Armenia; chief of staff of the National Assembly of the Republic of Armenia; his/her first deputy and one of the deputies; chief of staff of the Government of the Republic of Armenia; one of the deputies of the chief of staff of the Government of the Republic of Armenia; chief of the Control Service of the President of the Republic of Armenia; chief of the Control Service of the Prime Minister of the Republic of Armenia; deputies of the Ministers of the Republic of Armenia; chiefs and deputy chiefs of the public administration bodies under the Government of the Republic of Armenia; ambassadors extraordinary and plenipotentiary of the Republic of Armenia; diplomatic representatives of the Republic of Armenia under international organizations (within international organization); chiefs and deputy chiefs of state bodies in the area of governance of the Ministries of the Republic of Armenia, marzpets (regional governors) of the Republic of Armenia and their deputies; deputy chiefs of communities of the Republic of Armenia; advisors, press secretaries, assistants, chief and deputy chiefs of the administrative district of Yerevan; advisors, assistants, press secretaries and consultants of the President of the Republic of Armenia, Chairman of the National Assembly of the Republic of Armenia and his/her deputies, the Prime Minister of the Republic of Armenia; assistants and advisors of the chief of staff of the President of the Republic of Armenia, chief of staff of the Government of the Republic of Armenia and chief of staff of the National Assembly of the Republic of Armenia; advisors, press secretaries, assistants of the Ministers of the Republic of Armenia, chiefs of public administration bodies under the Government of the Republic of Armenia, permanent bodies (committees, services, councils, etc.) established by the laws of the Republic of Armenia, chiefs of state bodies functioning in the area of governance of the Ministries of the Republic of Armenia, marzpets of the Republic of Armenia, the Human Rights Defender of the Republic of Armenia; advisors and press secretaries of the Prosecutor General of the Republic of Armenia; assistants of the deputy Ministers of the Republic of Armenia, deputy chiefs of the public administration bodies of under the Government of the Republic of Armenia, deputy chiefs and members of the permanent bodies (committees, services, councils, etc.) established by the laws of the Republic of Armenia, deputy chiefs of state bodies functioning in the area of governance of the Ministries of the Republic of Armenia; assistants of deputy marzpets of the Republic of Armenia; assistants of deputy chiefs of communities of the Republic of Armenia.

8. In case of termination of the powers of public officials competent to make appointments to the posts of advisors, press secretaries, assistants and consultants of public officials foreseen by Paragraph 7 of this Article, they continue to perform their duties until a new appointment is made to these posts.

9. The civil post is a post appointed or elected for a definite period of time in the manner prescribed by the Constitution, laws and other legal acts of the Republic of Armenia, the person holding which adopts decisions within the scope of powers conferred on him/her by the legislation of the Republic of Armenia on a collegial basis, and, in cases foreseen by the law, on an individual basis and coordinates their implementation, is not changed during his/her tenure in cases of change of the ratio of political forces.

10. Within the meaning of this Law, civil are the posts of the chairperson and members of the Constitutional Court of the Republic of Armenia, chiefs and members of the permanent bodies (committees, services, councils) established by laws, chairpersons and judges of the Cassation Court of the Republic of Armenia and its chambers, chairpersons and judges of the appeal and first-instance courts, Prosecutor General of the Republic of Armenia, his/her deputies and prosecutors, as well as the Human Rights Defender of the Republic of Armenia.

11. The civil posts may be held by those citizens of the Republic of Armenia who have higher education provided the law does not prescribe otherwise.

12. In view of the peculiarities of civil posts other requirements may be set for holding them.

13. The state service post is one foreseen by the roster of the state service posts, the peculiarities for holding of which are specified by the laws of the Republic of Armenia regulating various categories of state service.

#### **Article 5. Main Concepts Used in this Law**

1. The main concepts used in this Law have the following meanings:

(..)

15) **a high-ranking public official:** the President of the Republic; the Prime Minister; deputies of the National Assembly; members of the Constitutional Court; judges, ministers and their deputies; general prosecutor and his/her deputies; prosecutors of marzes, the city of Yerevan and garrisons; chiefs, deputy chiefs and members of the state bodies established by law; the chairperson of the Central Bank, his/her deputy and members of the board of the Central Bank; chiefs and deputy chiefs of public administration bodies under the Government; the chairperson and members of the Control Chamber; chief of staff of the National Assembly and his/her deputies; chief of staff of the Constitutional Court; chief of staff of the Government and his/her deputies; members of the ethics commission for high-ranking public officials; the Mayor of Yerevan and his/her deputies; chiefs of diplomatic services operating in foreign states; the secretary of the National Security Council; advisors and assistants of the President of the Republic; advisors and assistants of the Chairperson of the National Assembly; advisors and assistants of the Prime Minister; chiefs of communities with a population number of 50 000 and more as of 1 January of the previous year; as well as the chief of the Control Service of the President of the Republic and the chief of the Control Service of the Prime Minister.

16) persons related to a high-ranking public official: persons having blood relationship of up to the 2<sup>nd</sup> degree of kinship. Persons having blood relationship with a high-ranking public official of up to the 2<sup>nd</sup> degree of kinship are the persons within the 1<sup>st</sup> degree of kinship, as well as persons within the 1<sup>st</sup> degree of kinship with the latter. Persons within the 1<sup>st</sup> degree of kinship are the children, parents, sisters and brothers.

17) conflict of interests: a situation in which when exercising his/her powers a high-ranking public official must perform an action or adopt a decision which may reasonably be interpreted as being guided by his/her personal interests or those of a related person;

18) a person supervising the high-ranking public official: the President of the Republic for the chief of staff of the President of the Republic, secretary of the National Security Council, chief of the Control Service of the President of the Republic, the advisors and assistants of the President of the Republic; the Chairperson of the National Assembly for the chief of staff of the National Assembly, advisors and assistants of the Chairperson of the National Assembly; the Chairperson of the Constitutional Court for the chief of staff of the Constitutional Court; the Prime Minister for Ministers, chief of staff of the Government, his/her deputies, chiefs of the public administration bodies under the Government, chief of the Control Service of the Prime Minister, advisors and assistants of the Prime Minister; the Minister for deputy Ministers; the Prosecutor General for his/her deputies, the prosecutors of marzes, the city of Yerevan and garrisons; the chief of body for the deputy chiefs of public administration bodies under the Government; the chief of the body for the members of collegial state bodies established by the law; the chairperson of the Central Bank for the deputies of the chairperson of the Central Bank and the members of the board of the Central Bank; the chairperson of the Control Chamber for the members of the Control Chamber; the chief of staff of the President of the Republic for deputy chiefs of staff of the President of the Republic; the chief of staff of the National Assembly for deputy chiefs of staff of the National Assembly; the chief of staff of the Government for deputy chiefs of staff of the Government; the Mayor of Yerevan and marzpets for the deputies of the Mayor of Yerevan and marzpets, respectively; the Minister of Foreign Affairs for the chiefs of diplomatic services functioning in foreign states. The high-ranking public officials not listed in this clause are deemed as not having supervisors.

(..)

## **Article 22. Reporting by the Public Servant**

1. When discharging the responsibilities of his/her service the public servant must report to the relevant public officials of breaches of law and any other unlawful, including corruption acts in relation to the public service perpetrated by other persons.

2. The public servant who has reported of unlawful acts specified in Paragraph 1 of this Article and believes that the relevant response issued to him/her is not satisfactory, may notify the chief of the relevant body or the competent state bodies of this in writing.

3. The competent bodies must guarantee the security of the public servant who has conscientiously reported the breaches specified in Paragraph 1 of this Article.

4. The procedure for reporting as prescribed by this Article and guaranteeing the security of the public servant is defined by the Government of the Republic.

**Article 23. Limitations Applied to the Public Servants and High-Ranking Public Official**

1. The public servant and high-ranking public official is prohibited to:

1) be the representative of third parties in relations in connection with the body where s/he serves or which is directly subordinated to him/her or controlled by him/her;

2) use his/her service position to secure actual advantages or privileges to political parties, and non-governmental, including religious associations;

3) receive honoraria for publications or presentations stemming from the discharge of his/her service responsibilities;

4) use for non-official purposes the logistical, financial and informational resources, state and (or) community property and official information;

6) receive gifts, money or services in relation to the discharge of his/her service responsibilities, save for cases prescribed by the legislation of the Republic of Armenia;

7) as a representative of the state, conclude property transactions with persons specified in clause 8 of this Paragraph, save for cases prescribed by the legislation of the Republic of Armenia;

8) work jointly with persons closely related to him/her or his/her in-laws (parent, spouse, child, brother, sister, spouse's parent, child, brother, and sister) if their service is related to immediate subordination or control of each other (excluding deputies);

9) within one year following the release from post, be admitted to work with the employer or become the employee of the organization over which s/he has exercised immediate supervision in the last year of his/her tenure.

2. The public servant must within one month following his/her appointment to office and in case s/he has 10 and more per cent of shares in the charter capital of commercial organizations hand them over to entrusted management. The public servant has a right to receive income from the property handed over to entrusted management.

3. Based on the peculiarities of various categories of public service the laws regulating these services may prescribe other limitations.

**Article 24. Limitations of Other Activities of Public Servants and High-Ranking Public Officials**

1. The public servant or high-ranking public official may not engage in entrepreneurship individually, perform other paid work, save for scientific, academic, creative work or work stemming from the status of the member of an electoral commission.

2. Within the meaning of this Law, entrepreneurship means:

- 1) private entrepreneur;
- 2) shareholder of a commercial organization, save for cases when the shares of the shareholder of a commercial organization has been completely handed over to entrusted management;
- 3) holding a post in a commercial organization, being a trust manager of the property of a commercial organization or in any other way being involved in the performance of representative, administrative or managerial functions of a commercial organization.

3. Within the meaning of this Law, entrepreneurship does not include:

- 1) being a limited partner in a limited partnership;
- 2) being a depositor in a credit or savings union;
- 3) receiving part or the value of the property in case of leaving a commercial organization or its dissolution;
- 4) having a deposit in a bank or insurance in an insurance company;
- 5) having securities issued by the Republic of Armenia, the community or the Central Bank of the Republic of Armenia;
- 6) selling the property owned by him/her or leasing it against a certain amount or compensation;
- 7) receiving loan interest or other compensation;
- 8) receiving royalties on the use or the right to use a work of literature, art or scientific work, on the use or the right to use any copyright, licence, trademark, design or model, plan, secret formula or process, a programme for electronic computers and databases or industrial, commercial or scientific equipment, or for the provision of information on an industrial, technological, organizational, commercial, and scientific experience;
- 9) receiving an award for the damages (loss) incurred.

4. Within the meaning of this Law, creative work is the creation and interpretation of culture and art, fiction, folk and craft, epic works, ethical and aesthetical ideals, rules and manners of conduct, languages, dialects and proverbs, national traditions and customs, historical and geographic names, results and methods of scientific research, objects of cultural heritage.

5. Within the meaning of this Law, scientific research is engaging in scientific research, experimental-construction, academic, experimental-technological, and intelligence activities in a scientific organization, institution, higher education establishment or otherwise.

6. Within the meaning of this Law, pedagogical work implies work as a teacher, lecturer (docent, professor) or doing other work that contributes and (or) ensures the process of meeting the requirements of learning of general education programmes (main, supplementary) and the thematic criteria, as well as obtaining the relevant knowledge, skills, and capacity by means of application of teaching methods.

***Article 25. Limitations with Regard to Giving Assignments to a Public Servant or a High-Ranking Public Official***

1. A public servant and a high-ranking public official may not be given oral or written assignments which are:

1) contrary to the Constitution and laws of the Republic of Armenia;

2) outside the competence of the person issuing or performing the assignment.

2. In case of giving assignments in breach of Paragraph 1 of this Article, the public servant must notify immediately and in writing the person issuing the assignment and his/her superior or the persons replacing them of his/her suspicions regarding the lawfulness of the assignment. If the superior (the person replacing him/her in his/her absence or the person having issued the assignment) approves the assignment in writing, the public servant must implement it, save for cases when its implementation may result in criminal or administrative liability as prescribed by the law of the Republic of Armenia. The responsibility for the implementation of the assignment by the public servant is borne by the public official having approved it in writing.

3. In view of the peculiarities of various categories of public service, the laws of the Republic of Armenia may set another procedure for issuing assignments.

(..)

## **CHAPTER 6. RULES OF ETHICS AND PROHIBITION ON RECEIVING GIFTS BY PUBLIC SERVANTS AND HIGH-RANKING PUBLIC OFFICIALS**

### ***Article 28. Rules of Ethics for Public Servants and High-Ranking Public Officials***

1. The rules of ethics for public servants and high-ranking public officials are a system of norms aiming to ensure decent conduct of public servants and high-ranking public officials, exclude conflicts of public and private interests, and strengthen public trust in public institutions.

2. The requirements of this Article apply to both the exercise by public servants and high-ranking public officials of their powers and their everyday conduct.

3. The rules of ethics for public servants and high-ranking public officials are to:

1) respect the law and abide by the law;

2) respect the moral norms of the community;

3) by his/her actions, contribute to trust in and respect for the post s/he holds and the body s/he represents;

4) everywhere and when engaging in any action, manifest conduct commensurate to his/her post;

5) manifest respectful attitude to all persons with who s/he is in contact when exercising his/her powers;

6) use the logistical, financial and technical resources, other public property provided to him/her and confidential information imparted on him/her in connection with his activities exclusively for the purposes of his/her service;

7) endeavour to manage his/her investments in a way that reduces to minimum the situations of conflict of interest.

4. The rules of conduct for public servants and high-ranking public officials listed in this Article are not exhaustive. Additional rules of ethics and other mechanisms of control over them may be prescribed by laws regulating the peculiarities of a given sphere.

### ***Article 29. Prohibition on Receiving Gifts***



1. The public servant and the high-ranking public official may not receive a gift or give his/her consent to receiving it in the future in connection with the discharge of his/her responsibilities, save for:

1) gifts, rewards and receptions given at the time of official events;

2) books, hardware/software and other such materials provided free of charge for the purpose of use in service;

3) scholarship, grant or allowance awarded as a result of a public competition on conditions and criteria applied to other applicants or as a result of another transparent process.

2. Within the meaning of this Article, the concept of 'gift' implies any proprietary advantage which would not have reasonably been provided to a person who is not a public official. Within the meaning of this Article, the concept of 'gift' does not apply to ordinary guest hosting, gifts received from a family member, relative or a friend if the gift corresponds by its nature and size to the nature of mutual relationship.

3. If the value of a proprietary and non-consumer gift specified in clauses 1-3 of Paragraph 1 of this Article does not exceed 100.000 AMD, then:

1) the public servant or the high-ranking public official who has a superior, with the latter's consent, while the one who does not have a superior, on his/her initiative, donates the gift to charity, or

2) the gift is deemed as the property of the relevant body and is included in the inventory as such.

4. If the value of the gift specified in clauses 1-3 of Paragraph 1 of this Article but not specified in Paragraph 3 of this Article exceeds 100.000 AMD, the public servant or high-ranking public official who has a superior notifies the latter of this.

5. The value of a gift deemed permissible under this Article is assessed on the basis of the reasonable market value which the receiver of the gift knew or could have known at the moment of receiving the gift or thereafter.

## **CHAPTER 7. CONFLICT OF INTERESTS, DECLARATION OF PROPERTY AND INCOME OF HIGH-RANKING PUBLIC OFFICIALS**

### ***Article 30. Conflict of Interests of High-Ranking Public Officials***

1. For a high-ranking public official, being guided by his/her interests or those of persons related to him/her means taking such action or adopting such a decision (including taking part in decision-making within a collegial body) within the scope of powers of a high-ranking public official, which, although lawful, results or contributes or may reasonably result or contribute, *inter alia*, to:

1) the increase of his/her financial resources or income or improvement of the property or other legal status of or those of the persons related to him/her or the non-commercial organization of which s/he is a member or the commercial organization of which s/he is a participant;

2) discharge or reduction of his/her obligations, or those of persons related to him/her or the non-commercial organization of which s/he is a member or the commercial organization of which s/he is a participant;

3) appointment of a person related to him/her to a position or assuming of the membership in an organization;

4) winning in a competition by a person related to him/her, or the non-commercial organization of which s/he is a member or the commercial organization of which s/he is a participant.

2. The provisions of this Article do not apply to deputies, members of the Constitutional Court, judges and prosecutors.

The norms on conflict of interests of these persons may be defined by the laws regulating the peculiarities of these spheres.

3. According to the provisions of Paragraph 1 of this Article, the high-ranking public official is not guided by his/her personal interests or those of persons related to him/her, provided the given action or decision has general application and impacts a wide circle of people in a way that may not reasonably be interpreted as being guided by his/her personal interests or those of persons related to him/her.

### ***Article 31. Actions of the High-Ranking Public Official in a Situation of Conflict of Interests***

1. In case of a conflict of interests, the high-ranking public official, save for deputies, members of the Constitutional Court, judges and prosecutors, as well as the high-ranking public official that has no superior, must submit a written statement on the conflict of interests to his/her superior by laying down the concrete circumstances of the conflict of interests. The high-ranking public official has no right to take any action or adopt a decision in relation to this question prior to receiving the written consent of his/her superior. The superior has a right to examine the questions and to assign the authority of resolving it to another public official provided this is not prohibited by law.

2. The high-ranking public official has a right to receive clarifications from the ethics commission on the necessity to issue a statement regarding the conflict of interests in a concrete situation. If the submitted data have been complete, then the conclusion of the ethics commission on the absence of a conflict of interests is a basis for discontinuing the proceedings if such has been instituted.

### ***Article 32. The Obligation of Declaration of Property, Income and Related Persons***

1. High-ranking public officials submit property and income declarations to the ethics commission for high-ranking public officials in the manner prescribed by this Law.

2. High-ranking public officials submit declarations on related persons to the ethics commission for high-ranking public officials in the manner prescribed by this Law.

3. If the appointment of a high-ranking public official to a post is done by means of nomination by another body, then the candidate submits property and income declarations, and in cases prescribed by this Law, also declarations on the related persons also at the time of nomination.

4. The spouse of a high-ranking public official, as well as the parent living together with him/her, as well as the adult single child living together with him/her in cases and in the manner prescribed by this Law with regard to high-ranking public officials, submit property and income declarations to the ethics commission for high-ranking public officials.

### ***Article 33. Declaration Timeframes***

1. The high-ranking public official submits declarations as of the date of assuming and terminating his/her official responsibilities to the Ethics Commission for high-ranking public officials within 15 days following the mentioned date. These persons also submit declarations as of 31 December of each year no later than 15 February of the year following the year in question.

### ***Article 34. Contents of Declaration of Property***

1. The declaration of property of a high-ranking official and his/her spouse must contain the following property owned by him/her:

1) the immovable property, such as land, part of the Earth's interior, an isolated water object, a forest, a perennial plant, a building, a construction, another property attached to the land (hereinafter: immovable property), which has been alienated or purchased in the fiscal year;

2) the movable property, such as a motor transport, a wheel, track-type, self-propelled machine or mechanism, air, or water means of transport (hereinafter: the movable property) that has been alienated or purchased in the fiscal year. The motor transport include those the capacity of which exceeds 50 cm<sup>3</sup> and the maximum velocity of which exceeds 50 km/h, as well as trailers and semi-trailers with varied capacity;

3) the security (bond, check, bill, and any other documents which is deemed security according to the laws of the Republic of Armenia, excluding a bank certificate) and (or) any other document certifying an investment (share, stock) (hereinafter: security and (or) other investment), which has been alienated or purchased in the fiscal year;

4) the loan that the declaring person has lent or that has been returned to him/her in the fiscal year. Within the meaning of this Law, the loan is the lending of money (the amount of loan) or another property characterized by generic features under the ownership of the subject on the condition of return of the same amount of money or the property of the equal quantity and quality (hereinafter: loan);

5) any property not mentioned in clauses 1-4 of this Paragraph that costs more than 8 million AMD or an equal amount of foreign currency (hereinafter: expensive property), which has been alienated or purchased in the fiscal year;

6) monetary assets (including those in the bank).

2. Attached to the property declaration of a high-ranking public official must be a list signed by him/her which includes the name, patronymic, family name, family relationship, and birthday of the spouse, the parents, as well as adult single children living together with him/her.

3. The declaration of the parents as well as the adult single children of a high-ranking public official must include information on the following property owned by them:

1) the immovable property if during the fiscal year the total price (value) of purchase or alienation transactions of the immovable property has exceeded 50 million AMD. Furthermore, in case of the total price (value) of purchase or alienation transactions of the immovable property exceeding 50 million AMD, all purchase and alienation transactions of the immovable property are to be declared;

2) the movable property if during the fiscal year the total price (value) of purchase or alienation transactions of the movable property has exceeded 8 million AMD. Furthermore, in case of the total price (value) of purchase or alienation transactions of the movable property exceeding 8 million AMD, all purchase and alienation transactions of the movable property are to be declared;

3) the security and (or) another investment if during the fiscal year the total price (value) of purchase or alienation transactions of securities has exceeded 8 million AMD. Furthermore, if the total price (value) of purchase and (or) investment or alienation transactions exceeds 8 million AMD, all purchase and (or) investment and alienation transactions of securities are to be declared;

4) loan, if in the fiscal year the total amount (size) of lending transactions or the total amount (size) of return transactions exceeds 8 million AMD. Furthermore, if the total amount (size) of lending transactions or the total amount (size) of return transactions exceeds 8 million AMD, all lending and return transactions must be declared;

5) any expensive property that has been alienated or acquired in the fiscal year.

4. When determining the price (value) of the property or foreign currency income subject to declaration as prescribed by this Law, the equivalent of the foreign currency is calculated on the basis of the average exchange rate of the currency market as publicized by the Central Bank of the Republic of Armenia on the date of the transaction, while the price (value) of transactions in kind, on the basis of the price (value) determined by the procedure for incorporating in kind (non-monetary) income or property in the declaration.

5. When declaring property, mention must be made:

1) in case of immovable property – of the type of the immovable property, its address, its existence at the beginning and at the end of the fiscal year, its acquisition and sale price (value) and currency;

2) in case of movable property – of the type of the movable property, brand and serial number, its existence at the beginning and at the end of the fiscal year, its acquisition and sale price (value) and currency;

3) in case of securities and (or) other investment, the currency of the security and (or) other investment, the price (value) at the beginning and at the end of the fiscal year, its acquisition and sale price (value);

4) in case of a loan, the name or family name, first name and patronymic of the debtor, the loan currency, the loan amount (size) at the beginning and at the end of the fiscal year; the loan amount (size) lent and returned in the fiscal year;

5) in case of expensive property, the name of the property, its existence at the beginning and at the end of the fiscal year, the acquisition or alienation price (value) of the property and currency;

6) in case of monetary assets, the currency, and size at the beginning of 1 January and at the end of 31 December of the fiscal year.

### ***Article 35. Contents of the Declaration of Income***

1. The declaration of income of a high-ranking public official, his/her spouse, the parent, as well as the adult single child living together with him/her includes the income and its sources received in the fiscal year as prescribed by this Article.

2. Any person who in the fiscal year has paid income to the declaring person as prescribed by this Law is considered as a source of income for the declaring person. In particular, the body of public administration or local self-government, commercial, non-commercial organization, institution, branch, representation, private entrepreneur (hereinafter: organization) or non-private entrepreneur natural persons may act as a source of income.

If the taxes and (or) other mandatory fees are kept with the source of the income in the manner prescribed by legislation, the income is declared without these amounts. This rule does not apply to persons submitting calculations on the annual income prescribed by the Law of the Republic of Armenia on Income Tax.

3. In conformity with this Law, the following income received by AMD, foreign currency or in kind (in a non-monetary form) must be declared:

1) remuneration for work or any other equivalent payment;

2) royalties on the use or the right to use a work of literature, art or scientific work, on the use or the right to use any copyright, licence, trademark, design or model, plan, secret formula or process, programme for electronic computers and databases or industrial, commercial or scientific equipment, or for the provision of information on an industrial, technological, organizational, commercial, and scientific experience;

- 3) interest and other compensation on received or given loans (credits);
- 4) profits;
- 5) income (gains) received in games in casinos or lotteries;
- 6) in kind or monetary gains (prizes) in competitions or contests, as well as in lotteries;
- 7) property and monetary assets (excluding in the form of labour or services) received as donation or aid;
- 8) inherited property (including the monetary means);
- 9) insurance compensation; .
- 10) income received from entrepreneurship;
- 11) income (including the one not indicated in Article 8 of this Law) received from alienation of property (save for monetary assets);
- 12) payment or other compensation for lease, income from civil law contracts;
- 13) lump-sum payments;
- 14) income received from proprietary rights.

4. Other income not specified by Paragraph 2 of this Article is also subject to declaration by mentioning its types and sources.

5. When declaring income, the following must be mentioned:

- 1) type of income;
- 2) the source of income: the name or surname and patronymic, as well as address of the person paying income;
- 3) the size (amount) of income;
- 4) the currency of income.

**Article 36. Contents of the Declaration on Related Persons**

1. The following is included in the declaration on persons related to a high-ranking public official:

- 1) for the member of the Constitutional Court – related persons holding the post of a member of the Constitutional Court;
- 2) for Ministers and their deputies – related persons holding posts within the system of the Ministry;
- 3) for the Prosecutor General, his/her deputies, the prosecutors of marzes, the city of Yerevan and garrisons – related persons holding the posts of a prosecutor, judge or investigator;

4) for chiefs of state bodies under the Government established by laws and their deputies – related persons holding offices within that body (including its structural and territorial subdivisions, the state bodies within the sphere of its administration, as well as the subordinated state non-commercial organizations);

5) for the chiefs and members of state collegial bodies established by law – related persons holding the post of the chief or member of that body, as well as related persons holding a managerial position in the commercial organizations operating in the sphere of regulation of these bodies;

6) for judges – related persons holding the position of a prosecutor, judge, investigator.

2. The declaration on related persons must mention:

1) the first name, patronymic, and the last name;

2) the post held.

3. If the person listed in Paragraph 1 of this Article has lost connection with any related person and due to absence of information is unable to declare them as related persons, s/he attaches a statement to the declaration mentioning the relationship and the name, patronymic and family name of the person.

***Article 37. The Declaration Register and Data Disclosure***

1. Within 3 working days following the receipt of the declaration, the ethics commission for high-ranking public officials places it in the declaration register.

2. The list of data subject to disclosure (dissemination), their content and form are stipulated by the Government of the Republic of Armenia. The list of data subject to disclosure may not contain data identifying the person or property.

3. The Ethics Commission for high-ranking public officials ensures the protection of the data that are not subject to disclosure.

**CHAPTER 8. FORMATION AND OPERATIONAL PROCEDURE OF THE ETHICS COMMISSION FOR PUBLIC SERVANTS AND HIGH-RANKING PUBLIC OFFICIALS**

***Article 38. The Ethics Commissions for Public Servants and High-Ranking Public Officials and their Formation***

1. Ethics commissions for public servants are established in the bodies foreseen by Article 2 of this Law.

2. Ethics commissions may be established in the General Prosecutor's Office to check observance of the rules of ethics.

All relations regarding the observance by judges of the rules of ethics are regulated by the RA Judicial Code.

The procedure for the formation and operation of the ethics commissions mentioned in this Paragraph, as well as for the conduct of the proceedings for any violation of the rules of ethics is defined by the relevant laws.

3. A separate ethics commission is established for high-ranking public officials. The operations procedure of the ethics commission for high-ranking public officials is prescribed by this Law. The rules of procedure for the ethics commission for high-ranking public officials are determined by a decision of the ethics commission for high-ranking public officials.

4. The ethics commission for high-ranking public officials is composed of 5 members. The members are appointed by the President of the Republic of Armenia upon the nomination of the Chairperson of the National Assembly, Prime Minister, Chairperson of the Constitutional Court, Chairperson of the Cassation Court, General Prosecutor – each nominating one candidate for a 6-year term. The ethics commission for high-ranking officials elects a chairperson and one deputy chairperson from among its members.

2. Any person having reached the age of 30 with higher education, high moral qualities, known by the public and having a work history of at least 10 years may be appointed as a member of the ethics commission for high-ranking public officials.

***Article 39. Prohibition on the Member of the Ethics Commission for High-Ranking Public Officials in Engaging in Other Activity***

1. The member of the ethics commission for high-ranking public officials may not be a member of any political party or representative body or hold a post in a state or local self-government body or engage in other paid work save for scientific, pedagogical and creative work.

***Article 40. Independence of a Member of the Ethics Commission for High-Ranking Public Officials***

1. When exercising his/her powers, the member of the ethics commission for high-ranking public officials is independent and abides only by the RA Constitution and laws.

2. The member of the ethics commission is not accountable to any state or local self-government body or public official and is independent of the public officials having nominated and appointed him/her.

***Article 41. Termination of the Powers of High-Ranking Public Officials***

1. The powers of a member of the ethics commission for high-ranking public officials are terminated on the same date of the sixth year following his/her appointment. The powers of the member of the ethics commission for high-ranking public officials are terminated prior to that date if:

- 1) his/her citizenship of the Republic of Armenia has terminated;
- 2) s/he has been convicted by a court sentence that has lawfully entered into force for an intentional crime or by a court prison sentence that has lawfully entered into force for a negligent or reckless crime;
- 3) s/he has been declared incapacitated, indefinitely absent or dead on the basis of a lawfully entered into force court judgment.

2. The President of the Republic may terminate the powers of a member of the ethics commission for high-ranking public officials ahead of time if the latter:

- 1) has shown neglect of his/her duty;
- 2) has been absent from the sittings of the commission for more than two times in a row;
- 3) has violated the requirements of Article 39 of this Law.

3. In case of early termination of the powers of a member of the ethics commission for high-ranking public officials, the President of the Republic appoints a new member of the commission for the remainder of the term of office. In this case, if the remaining term of office is less than one year, then the term of office of the new commission member is determined by adding six years to the remaining term.

4. The member of the ethics commission for high-ranking public officials may resign by applying to the President of the Republic. The President of the Republic admits the resignation of the commission member within a period of one month. Prior to the admission of the resignation by the President of the Republic, the commission member may withdraw his/her application for resignation.

5. In case of early termination of the powers of the member of the commission for high-ranking public officials the vacancy is filled in the manner prescribed by this Law.

**Article 42. Remuneration of the Member of the Ethics Commission for High-Ranking Public Officials**

1. The member of the ethics commission for high-ranking public officials receives remuneration for the performance of functions stemming from this Law.

2. The official pay rate of the member of the ethics commission for high-ranking public officials is determined in the amount of the basic official pay rate of civil servants foreseen by the annual Law of the Republic of Armenia on the State Budget multiplied by 15, of the deputy chairperson, multiplied by 16 and of the chairperson, multiplied by 17.

3. The logistical and organization support to the activities of the ethics commission for high-ranking public officials is provided by the staff of the President of the Republic.

**Article 43. Functions of the Ethics Commission for High-Ranking Public Officials**

1. The functions of the Commission are:

1) maintaining the register of declarations of high-ranking public officials and other persons foreseen by this Law;

2) analysis and publication of declarations;

3) detecting conflicts of interests of high-ranking public officials (except for conflicts of interests of deputies, members of the Constitutional Court, judges and prosecutors) and violations of the rules of ethics (except for the violations of the rules of ethics related to the exercise of the powers of the members of the Constitutional Court, judges and prosecutors, as well as violations of the rules of ethics by deputies) and submitting recommendations on their elimination and prevention to the President of the Republic, the National Assembly and the Government;

4) detecting violations of the rules of ethics not related to the exercise of the official powers by the members of the Constitutional Court, judges and prosecutors and submitting recommendations on their prevention to the President of the Republic, the National Assembly, the Constitutional Court and the Prosecutor General;

5) publishing information on violations of the rules of ethics detected within the scope of his/her competence, as well as the measures taken in their regard;

6) determining the requirements with regard to filling in the declaration and the procedure for its submission.

2. The ethics commission has a right to:

1) demand and receive from any state or local self-government body, state or municipal institution, state organization or their public officials the necessary materials and documents related to the question examined by the ethics commission;

2) demand from the competent state or local self-government body, state or municipal institution, state organization or their public officials, excluding the members of the Constitutional Court, judges and



prosecutors, to conduct inspections, studies, expert analysis regarding the circumstances to be detected in the course of deliberations over a question within the ethics commission for high-ranking public officials and submit their results.

3. Any materials, documents or information demanded by the ethics commission for high-ranking public officials must be sent to the latter as speedily as possible, no later than within 10 days following the receipt of the inquiry of the ethics commission if no other deadline is mentioned within the inquiry or the inquiring person does not propose another reasonable deadline for meeting the demand of the ethics commission.

4. The members of the ethics commission are competent to visit without an impediment of any kind any state or municipal institution or organization, as well as familiarize themselves with any materials and document related to a question deliberated by the ethics commission. The members of the ethics commission may familiarize themselves with information containing state, service, commercial or any other secret preserved by the law in the manner prescribed by the law.

5. Within one month following the passing of the year the ethics commission for high-ranking public officials publishes in the media the detected cases of conflict of interests and the measures taken against them.

#### ***Article 44. Proceedings within the Ethics Commission for High-Ranking Public Officials***

1. The ethics commission institutes proceedings on its own initiative.

2. The ethics commission may institute proceedings for violations of the rules of ethics:

1) on the basis of the application of any person;

2) on its own initiative.

3) with a view to checking the issue of violation of the rules of ethics on the basis of the application of a high-ranking public official.

3. The high-ranking public official is notified of the instituted proceedings within 5 days from the moment of institution and submits to the commission within a 10-day period his/her objections and explanations. The ethics commission for high-ranking public officials issues a conclusion on the results of the instituted proceedings within a 1-month period.

4. The conclusion on the violation by a high-ranking public official of the rules of ethics and the decision of the authorized person of the relevant state body based on this, provided there is such, is posted on the website of the state body in question within 5 working days from the date of adoption of this decision. If, as a result of the examination, elements of crime are detected, the commission refers all the materials to the General Prosecutor's Office of the Republic of Armenia.

5. The conclusion of the ethics commission for high-ranking public officials on the violation of the rules of ethics is sent to the President of the Republic of Armenia and the superior of the high-ranking public official.

6. The conclusion of the commission may within a month's period be complained to the court by the high-ranking public official regarding the conduct of who the conclusion has been made.

## **Law on Procurement (extracts)**

**Law on Procurement**  
(into force since on 1 January 2011)

(..)

#### **Article 16. The Center for Procurement Support**

1. The Center for Procurement Support:
  - 1) Conducts professional education and continuous training for procurement specialists;
  - 2) Provides free professional advice to clients and paid professional advice to bidders and other entities;
  - 3) Evaluates the eligibility and the qualification of bidders to participate in procurement process, concludes framework agreements, compiles and publishes it in the Bulletin:
    - a. The list of bidders, who signed framework agreements;
    - b. The list of pre-qualified potential bidders.
  - 4) Implements the e-procurement system service and coordination functions;
  - 5) Compiles and publishes electronic newsletters on goods, works and services, analyzes procurement statistics and publishes opinions;
  - 6) Conducts a random assessment of technical specifications of procurement subject and bidder qualification criteria approved by a Client in order to ensure the compliance to the requirements for ensuring competition and nondiscrimination stipulated under this law. The results of assessment are submitted to the clients and the Authorized Body.
  - 7) Ensures the existence of a procurement support service (hotline) in order to register procurement related signals and promptly respond to the questions;
  - 8) Acts as the secretariat of the Procurement Complaint Review Board:
    - a. Organizes the Board activities,
    - b. Evaluates the completeness of received complaints (appeals) and provides an opinion on all complaints to the Board,
    - c. Publishes the Board decisions,
  - 9) Implements other powers set out by this law, the Republic of Armenia government and the Authorized Body.
2. The powers of the Center for Procurement Support are set out in the contract concluded between the Center and the Authorized Body.

#### **Article 46. Procurement complaint review board**

The Authorized Body shall publish the list of members of the Procurement Complaint Review Board (hereinafter referred to as the Board). The members of the Board must be Armenian citizens. The members of the Board:

Shall not be convicted for a crime linked to economic activities or against the state service, except cases when such conviction has been lifted or nullified as stipulated by law;

Shall possess sufficient knowledge of the Republic of Armenia legislation on procurement.

The Board is a unit implementing unprejudiced and independent review, which does not have any interests in the outcomes of the given procurement process, and the members of the Board, when implementing their rights and responsibilities, are protected from external influence. The members of the Board shall review the appeals with due care, diligence and in an impartial way. The Board and the members of the Board, when implementing the competences stipulated in this law, are independent from the participants of the procurement process, including the Clients, as well as from the state bodies and local self-governments and officials. When reviewing a complaint, they are neither representatives of any participant in the proceedings nor of the nominating organization and they are only obliged to apply and follow the law.

The Board shall include one representative of:

- 1) The public administration bodies envisaged in the RA Constitution and laws;

- 2) The Republic of Armenia urban communities;
- 3) The Republic of Armenia Central Bank;
- 3) Non-Governmental Organizations (Unions) registered in the Republic of Armenia, which have submitted a written request to the Authorized Body.

The individuals are appointed as members of the Board for a period of 5 years. The mandate of the Board member can be renewed for a period of up to 5 years in the same way as for the appointment to the Board.

The competences of a Board member can be revoked in the following cases:

- 1) Upon request of the Board member;
- 2) Court sentence about legal incapacity or limited legal capacity of the Board member;
- 3) Upon renouncement of Armenian citizenship;
- 4) A legally binding court sentence upon the Board member;
- 5) Death of the Board member;
- 6) Undertaking practice as judge, prosecutor, associate judge or prosecutor;
- 7) Court sentence recognizing the Board member as dead or missing person;
- 8) An infringement by the Board member of his duties. The infringement shall mean:
  - a. The performance of the Board member's functions in an impartial manner, including one-sided protection of interests of participants in appeal proceedings; or
  - b. Failure to submit a request to be excluded from the proceedings due to the circumstances which render it impossible for the Board member to fulfill his duties.

#### **Article 47. Operation of the Board**

1. A commission of the Board composed of three people is formed to review an individual procurement complaint received. For each individual case, the members of the Commission are randomly selected by rotation.
2. The chairperson of the Commission must be a qualified lawyer with at least 5 years of professional work experience. The members of the Commission must have tertiary education and at least 3 years of professional work experience.
3. The Commission reviews the complaint and adopts a decision on behalf of the Board according to this law and other legal acts. The decisions of the Commission are adopted by a majority vote of its members; all its members, including the chairperson have one vote. Members of the Board who have a conflict of interest in a specific procedure have to exclude themselves from that procedure; otherwise the chairperson of the Commission has to exclude them. Should the chairperson of the Commission have a conflict of interest in a certain procedure, he or she has to withdraw from the specific procedure and another member of the Board has to take over for this specific procedure. Members of the Commission sign a statement on the absence of the conflict of interests.
4. Unless otherwise stipulated by the Republic of Armenia legislation, the members of the Commission receive allowances.

5. Based on this law and for the purposes of implementing its requirements, the Board approves a procedure for its operation by a majority vote of its members.

**Article 48. Procedure for lodging a complaint to the Board**

1. A complaint to the Board shall be lodged in writing, shall be signed and shall contain:

- 1) The name and the address of the applicant;
- 2) The name and the address of the Client;
- 3) The code and the subject matter of the appealed procurement procedure;
- 4) The subject-matter of the dispute and the request of the appellant;
- 5) The factual and legal grounds of the complaint, the evidence;
- 6) Document verifying the payment of appeal fee;
- 6) Other requisite information.

2. If the applicant appeals against the award decision, he or she can only lodge his or her complaint within the standstill period of the Article 9 of this law.

3. If the complaint does not meet the requirements under this paragraph, the Center for Procurement Support has to inform the applicant on behalf of the Board and give him or her a five-day period to correct his or her application.

4. The decision on a complaint is taken following a procedure in which the applicant, the Client and all parties involved have the right to be present at the Board meetings and express their opinions.

5. A written decision on the complaint, including justification for the decision, shall be taken and published no later than twenty calendar days after the receipt of the complaint. The Board decision is legally binding.

6. The Board has the right to adopt the following decisions:

1) Take by way of interlocutory procedure, interim measures with the aim of correcting the alleged infringement or preventing further damage to the interests concerned, including measures to suspend the procurement procedure or the implementation of any decision taken by the Client or the evaluation commission;

2) Set aside individual decisions, including the contract award decision within the standstill period of Art 9, taken by the Client or the evaluation commission in the course of a procurement procedure;

3) Declare an awarded contract ineffective:

A) If the Client has awarded a contract without prior publication of a contract notice according to this law;

b) In case of infringement of Article 9 or Article 49 (3) of this law, if this infringement has deprived the bidder concerned of the opportunity to institute a legal remedy before the conclusion of the contract and if this infringement is combined with the infringement of other provisions of the Republic of Armenia legislation on public procurement and if this latter infringement has affected the chances of the bidder concerned to get the contract.

4) Notwithstanding the provisions of paragraph 3 of this Article, if the Commission considers, after examining all relevant aspects, that overriding reasons of general interest impose the maintaining of the effects of the contract, it will order, instead, alternative sanctions, as follows:

- a) The limitation of the contract performance, through the reduction of its execution deadline; and/or
- b) The application of a fine to the Client, of a maximum of 10 % of the value of the contract.

5) In all the cases in which the sanction of ineffectiveness provided for in paragraph 6 (3) of this Article cannot have retroactive effect, because the elimination of executed contractual obligations is impossible, the Commission will apply, in addition, the sanction provided for in paragraph 6(4)(a) of this Article.

6) State about the lawfulness or unlawfulness of a procurement procedure of a Client after the conclusion of the contract. That decision shall be the basis for damage claims in court;

7) Decide, if a bidder has to be included in the list of ineligible bidders.

7. If the Board decides in favor of the applicant, the Client is liable for recompensing to the applicant the damage caused and justified in accordance with the established procedure.

8. The oral hearing of complaint is open to the public and an announcement on the complaint is published in the Bulletin within three calendar days after its receipt. In case of complaints lodged against the procurement processes containing state, official or bank secrecy, the announcement is sent to all potential bidders.

9. Any person, whose interests have suffered or can suffer due to actions served as the ground for lodging a complaint are entitled to participate in the review procedure by submitting, prior to the deadline for decision on the complaint, a similar complaint to the procurement complaint review board. The person, who did not participate in the review procedure in accordance with this Article, is deprived of the right to submit to the Board a similar complaint.

10. The decision of the Procurement Complaint Review Board has to be published within five calendar days after its adoption in the Bulletin and has to be sent to the Client, the Authorized Body and the parties involved in the review procedure.

#### **Article 49. Suspension of procurement procedure**

The Board shall grant an interim measure required by an applicant as long as it is appropriate and necessary to prevent the pending damage until a final decision on the complaint is made.

The Board has to take the probable consequences of the interim measure for all interests likely to be harmed, including the public interest, into account and may decide not to grant such measures where their negative consequences could exceed their benefits. A decision not to grant interim measures shall not prejudice any other claim of the person seeking such measures.

The application shall not automatically suspend the contract award procedure; however, until the Board adopts a decision stipulated under the paragraph 1 or 2 of this Article, the Client does not have the right to conclude the contract.