

SUMMARY ON THE DEVELOPMENT OF ANTI-CORRUPTION SYSTEMS IN ARMENIA

Prior to the revolution in Armenia in spring 2018, the political authorities did not have sufficient political will to undertake institutional reforms to eliminate systemic corruption in the country.

Today's political authorities, although taking steps to eradicate corruption in the country, nevertheless do not initiate a systematic struggle. In particular, the Government's program provides for the fight against corruption as one of the priorities of the Government's activities. At the same time, the Government avoids introducing sustainable institutional systems to move from a decentralized system to a centralized struggle. At the same time, if even the Government has adopted the idea of having a decentralized anti-corruption institutional system, the proposed solutions do not guarantee the independence and de-politicisation of anti-corruption systems.

The steps taken by the government to create institutional anti-corruption systems are presented below.

I. INSTITUTIONAL ANTI-CORRUPTION SYSTEM

1. On 19 December 2018, the RA Ministry of Justice of Armenia presented the draft on Anti-Corruption Strategy of the Republic of Armenia and Its 2019-2022 Implementation Action Plan for public discussion, and further the revised version of the Draft (hereinafter referred to as the Draft Strategy).¹ The draft strategy proposes **to introduce an institutional anti-corruption system in Armenia with a vision of a separate model, and with the prospect of transition to a multi-functional model if justified**. We inform that the CSO Anti-Corruption Coalition of Armenian (hereinafter referred to as the Coalition) and the Armenian Lawyers' Association which is ember of UNCAC Coalition advocate the introduction of a centralized institutional anti-corruption system in the country as a **specialized**

¹ Opinions and recommendations of the CSO Anti-Corruption Coalition of Armenia and the Armenian Lawyers' Association on the Draft Strategy are available at the following links: <https://armla.am/en/3653.html>, <https://armla.am/en/4756.html>:

independent multi-functional anti-corruption agency. In case of centralised system increases the efficiency, coordination and level of internal cooperation of the activities of an anti-corruption agency, the funds allocated by the state are saved, and the practice of the same function being fulfilled by different agencies is excluded, the risk of departmental interests is neutralised, and situations of conflicts of interest and unhealthy departmental competition are decreased.²

According to the option recommended in the Draft Strategy, 4 anti-corruption agencies will operate in Armenia in case of the separated institutional anti-corruption model:

- a) **Corruption Prevention Commission:** endowed with anti-corruption education and corruption prevention functions,
- b) **Anti-Corruption Committee:** endowed with the functions of investigating corruption offenses, including conducting operative-intelligence and preliminary investigation,
- c) **Anti-Corruption Policy Council:** as an Advisory Body to discuss the priorities and proposed solutions for the fight against corruption in Armenia, and to propose solutions, as well as provide position on draft policies, programs and legal acts promoting prevention of corruption.
- d) **Ministry of Justice of Armenia:** endowed with the functions related to the Development and Implementation of Anti-Corruption Policies.³

II. CORRUPTION PREVENTION COMMISSION

1. Parallel with the Draft Strategy, the National Assembly of the Republic of Armenia on 25 June, 2019, approved in the first reading the RA Draft Law on “Making Changes and Additions in the Law on the Corruption Prevention Commission” (hereafter: Draft Law) presented by the RA NA President Ararat Mirzoyan. However, the key actors – the civil society involved in anti-corruption process in Armenia have not unequivocally acknowledged it. In particular, the Governing Board of the Coalition issued a statement,⁴ expressed a reasoned position and argued that the **process of drafting the Law did not provide for fundamental and mandatory legal processes and was not submitted for public**

² In this regard, the CSO Anti-Corruption Coalition of Armenia and the Armenian Lawyers’ Association have developed the strengths and weaknesses of centralized and decentralized institutional systems, based on the Armenian context and previous experience of fight against corruption, which affirm the need to have a single independent multi-functional anti-corruption agency in Armenia. In addition, the document also provides the general criteria that anti-corruption agencies should have, irrespective of the selected model. The advantages, disadvantages, and common criteria are available here: <https://armla.am/en/4756.html>, pages: 5-12:

³ It should be noted that the following 4 bodies function: a) **the Ministry of Justice**, b) **the Anti-Corruption Policy Council** has been formed (regardless of the fact of formation, it is shown below that the selection of the 4 NGOs involved in the Council is not legitimate), c) The Corruption Prevention Commission has not been formed yet, d) The creation of the **Anti-Corruption Committee** is envisaged by the Draft Strategy.

⁴ The statement of the Governing Board of the Coalition is available here: <https://armla.am/en/4537.html>

discussion. Regarding the content, it should be noted that the main changes are related to the fact that the draft law **proposes to create the Corruption Prevention Commission (hereinafter referred to as the Commission) in a non-competitive order, whereas the creation of the Commission through competition ensures the de-politicization and independence of this process, as well as participation of the civil society in these processes.** In addition **3 out of 5 candidates are nominated by the ruling power, one of which is nominated by the Government; and the other 2 are appointed by the ruling faction of the National Assembly. In case the opposition factions of the National Assembly are unable to represent a candidate by consensus, this candidate is also nominated by the ruling power in the person of the NA ruling faction. It turns out that in this case 4 out of 5 members of the Commission will be appointed by the ruling power; this violates Jakarta principles on the formation of independent anti-corruption agencies as well.**

The second reading of this project is scheduled for September 2019.

2. On August 9, 2019, a new Draft Law on “**Making Additions and Amendments to the Law on the Corruption Prevention Commission**”, presented by the Ministry of Justice of the Republic of Armenia (hereinafter referred to as the **New Draft Law**) was circulated. Following the Coalition's call and recommendations, the new Draft Law, however, restores the provision for the formation of the Commission through competition and the arrangements for the formation of the Competition Board (hereinafter referred to as the Board) to conduct the election of Commission Members Commission. The new draft law provides that **the first composition of the Commission shall be formed by the National Assembly, from the candidates nominated by the Government, factions of the National Assembly, and the Supreme Judicial Council for 6, 4 and 3 years in office respectively. Respectively.**

In fact, it turns out that the Ministry of Justice is “**advocating**” the draft law approved by the **National Assembly in the first reading**, since although the new draft law has restored the arrangements for appointing the committee members through competition, however **the first composition of the Commission shall be formed by the National Assembly, from the candidates nominated by the Government, factions of the National Assembly, and the Supreme Judicial Council**: that is, by the same procedure, and on which the Coalition, in a statement⁵ dated 03.07.2019, presented its reasoned concerns and the negative consequences arising thereof.

We should reiterate that **these mechanisms for appointing the first composition of the Commission violate the Jakarta principles on the formation of independent anti-corruption agencies according to which the heads of such agencies shall be appointed through a process that ensures his or her apolitical stance, impartiality, neutrality, integrity and competence.**

⁵ See footnote 4:

According to the regulations proposed by the New Draft Law, the Competition Board will consist of one member nominated by the Chairman of the Supreme Judicial Council (SJC), one by the Human Rights Defender (Ombudsman), and one by the factions of the National Assembly. It is worth noting that the New Draft Law did not provide a justification on what basis the bodies appointing the members of the Competition Board were selected. Having a representative from the Ombudsman's Office and the SJC in the Competition Board is a positive step in itself, and in addition this issues from the recommendations of the Coalition (*The Coalition, in particular, based on the problems that currently exit in the Republic of Armenia related to the Constitutional Court, offered to replace the Representative of the Constitutional Court in the Board, with a representative from the Supreme Judicial Council*). However, it should be considered that according to Article 174 of the Constitution of the Republic of Armenia, **the SJC is composed of ten members**, that is, the SJC is a collegial body, and **therefore it is unclear why the SJC President is reserved with the right to nominate a member to the Board**. We believe that the SJC should be guided by the principle of consensus in selecting its representative to the Board and **act as a collegial rather than a single body** in accordance with the RA Constitution.

We also claim that there are a number of other problematic provisions in the New Draft Law.

3. According to the proposed amendments, **the Public Council and the Chamber of Advocates, which are the constitutional body**, have been excluded from the Competition Board for unclear reasons. This reaffirms our position that the civil society institutions are consistently excluded from the process of forming the anti-corruption system and as a result, the anti-corruption system will be completely controlled exclusively by the public authorities, and the non-governmental sector will not have the opportunity to directly participate, and systematically present and monitor the issues of the society.

The aforesaid indicates that despite the evidence-based arguments and voiced concerns of the main actors, including civil society organizations, of the fight against corruption, ***the current political authorities do not in any way renounce their original position; and by manipulative ways try to form a Commission without a competition and to have direct political influence in the process. This style of work initially casts doubt on the independence of the Commission's activities and implementation of a dignified, effective and independent anti-corruption institutional system in Armenia.***

III. ANTI-CORRUPTION POLICY COUNCIL

In parallel with the development of the New Anti-Corruption Strategy, developments are taking place around the Anti-Corruption Policy Council, which is part of the institutional system. These developments seem to have no logical relevance to the conceptual provisions in the new strategy.

Thus, on 24 Jun, 2019, the RA Prime Minister's N 808-Ն decision on creating an Anti-Corruption Policy Council, approving the Composition and Procedure of Operation of the Council, Competition and Rotation Order of Non-Governmental Organisations Included in the Composition of Council and on declaring invalid the RA Prime Minister's Decree No. 300 of April 18, 2015" (hereinafter referred to as "Decision") was adopted. There is an impression that this Anti-Corruption Policy Board is a newly created body, but in fact, it is not substantially different from the former Anti-Corruption Council: this new Council in its composition and regulations is a regress in the fight against corruption

The role of CSOs, local self-government bodies and the Public Council in developing and implementing anti-corruption policies has been decreased in the Anti-Corruption Policy Council, without any justification, because the Public Council, the Coalition, and the Union of Communities of Armenia have been left out of the Anti-Corruption Policy Council. Moreover the mentioned **Decision did not envisage organising a competition for the Coalitions to join the Council.** In this relation the he Governing Board of the CSO Anti-Corruption Coalition of Armenia, as a result of the extraordinary session of the Coalition on 3 July, 2019, made the statement,⁶ noting that *the approach to artificially leave the Coalition out of the Council's composition is not substantiated in any manner*, therefore, the below mentioned organisations of the Coalition's Governing Board do not find it expedient to participate in the **competition for the membership of CSOs** in the Anti-Corruption Policy Council, with the procedures defined. At the same time, regardless of the fact of joining the Council, members of the Governing Board of the Coalition, have expressed their readiness to continue to further support the Government in the development and improvement of anti-corruption policies, with the purpose of building a corruption-free, harmonious, and happy society in the Republic of Armenia.

It should also be emphasized that the call announced for the involvement of non-governmental organizations in the Anti-Corruption Policy Council was organized with a number of violations. The investigation⁷ conducted by the www.iravaban.net independent news website is the evidence for this. In particular, although the legal regulations of the decision do not allow extending the deadline of the already announced competition, the RA Ministry of Justice has postponed the competition deadline by

⁶ See footnote 4:

⁷ Investigation conducted by the independent news website www.iravaban.net is available here: <https://iravaban.net/en/232524.html>:

one day without any authorization. Interestingly, 4 out of the 6 candidate companies that were recognized as winners in the competition had submitted their applications exactly during that extended day. In such conditions, reasonably substantiated doubts arise regarding an agreement between the RA Ministry of Justice and non-governmental organizations being preliminary, illegitimate and unlawful, and the one-day extension of the planned competition was stipulate for the purpose to ensure the access of pre-agreed NGOs to the Anti-Corruption Policy Council.

Taking into account the above-mentioned, the Coalition has suggested to the RA Prime Minister to revise the unlawful and illegitimate results of the call announced for the involvement of non-governmental organizations in the Anti-Corruption Policy Council of the Republic of Armenia, in terms of the four winning NGOs, to announce a new call in order to include the four non-governmental organizations missing in the Anti-Corruption Policy Council. Otherwise, it turns out that the agency carrying out anti-corruption activity has already started its activities with gross violations of legal acts.

The Coalition has suggested to the Prime Minister to revise its Decision and to provide for a competition for the Coalitions to join the Anti-Corruption Policy Council as well.