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TRANSPARENCY INTERNATIONAL
anti-corruption center



National Integrity System Assessment



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NATIONAL INTEGRITY SYSTEM ASSESSMENT

ARMENIA 2013

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I. CORRUPTION PROFILE

Corruption in Armenia is not a new problem. The collapse of Communist system and gaining independence, unfortunately, did not entail to the reduction of corruption. Moreover, Armenian public witnessed even more previously unknown forms of corruption, which were characteristic to market economies and multi-party political systems. Among the latter are political corruption, corruption in public procurement and privatization processes, “state capture”, etc. Corruption continues to be a major obstacle in the political, economic and social development of the country. Convergence of political and business elites, monopolization of political and economic power, as well as lack of proper mechanisms of checks and balances among the branches of the government are the major reasons of existing systemic corruption. Effective fight against corruption is hindered also by the high level of tolerance within the society towards that evil. The combination of the mentioned factors brings to a situation, when the adoption of a number of legal reforms and strategic documents remained largely on paper. As mentioned in the last monitoring report of OECD Anti-corruption Network (ACN) Istanbul Action Plan (IAP), “However, what lacks [in the fight against corruption] is a proper implementation.”¹

Surveys and studies regularly conducted by a number of international organizations, such as Transparency International, Freedom House or The World Bank, confirms the above mentioned arguments about the seriousness of the problem of corruption in Armenia. Some quantitative data (see below) calculated by these organizations show that during the last 5 years (2007-2011) corruption in the country is persistently perceived as of high level and, which is more alarming, there are no positive trends in this perception, remaining at the same or almost the same low levels or even becoming worse. In particular, the trends in the TI Corruption Perception Index (CPI) Armenia’s score and ranking reveal monotonous and slow deterioration of the perception with CPI score decreasing from 3.0 in 2007 to 2.6 in 2011. In fact, such low levels of CPI score point to rather high probability of existence of systemic corruption in Armenia. Another alarming sign is the gradual backslide of Armenia’s CPI ranking, as it can be seen from Table ... The retreat from 99th-104th in 2007 to 129th-133th in 2011 (with only 4 more countries added in CPI ranking in 2011 compared to 2007) means that more and more countries, which were in worse, than Armenia situation in 2007, in 2011 made progress, becoming more attractive for foreign investments, than Armenia.

Similarly, the low score of 5.50 of Corruption indicator of the *Freedom House’s Nations in Transit* survey is justified by the fact that “Corruption remains as a major impediment in Armenia’s democratic

¹ OECD/ACN, *Second Round of Monitoring. Monitoring Report on Armenia*, 2011: 11

development.” and in 2011 it remained unchanged because of “... lack of strong and systematic effort to eradicate corruption at all levels”.² Finally, the World Bank’s “Control of Corruption” indicator also points to low rankings of Armenia regarding the situation with corruption and gradual deterioration of that ranking since 2008.

Table 1 Some Quantitative Data on Corruption in Armenia

	2007	2008	2009	2010	2011
CPI, index score on the scale 0 to 10 (0 – perceived to be highly corrupt and 10 – perceived to be highly clean)/ rank among surveyed countries	3.0/99 th to 104 th among 179	2.9/109 th to 114 th among 180	2.7/120 th to 125 th among 180	2.6/123 th to 126 th among 178	2.6/129 th to 133 th among 183
Freedom House, Nations in Transit, Corruption indicator on the scale 1 to 7 (1 – lowest level, 7 – highest level)	5.75	5.75	5.50	5.50	5.50
World Bank “Control of Corruption” indicator, 0 to 100 percentile rank (0 – the lowest rank, 100 – highest rank)	29.5	34.3	33.8	30.6	29.9

² Freedom House, *Nations in Transit: Armenia Country Report 2011*, 2011 (see <http://www.freedomhouse.org/report/nations-transit/2011/armenia>) At the same time, the same organization recorded some little progress in its *2012 Nations in Transit* report (released on June 2012), “owing to more consolidated government effort to eradicate corruption” (see <http://www.freedomhouse.org/report/nations-transit/2012/armenia>).

Sources: TI, *CPI 2007-2011*, Freedom House, *Nations in Transit Armenia reports 2007-2011*, WB, *Worldwide Governance Indicators for Armenia 2007-2011*

Perception of corruption in Armenia, attitudes of citizens towards it, its incidence in different sectors and other aspects have been assessed in a number of surveys, analytical studies and assessments conducted during the last five years. The most comprehensive was the set of surveys conducted in three consecutive years from 2008 to 2010. The first one, which was a household survey and took place in 2008, was conducted in cooperation with IFES and Caucasus Research Resource Centers – Armenia (CRRC) and was supported by Eurasia Partnership Foundation. Two more corruption surveys with first include households and enterprises and second only households, were conducted by USAID Mobilizing Action against Corruption (MAAC) Activity in 2009 and 2010 with the assistance of CRRC. These surveys were surveys tracking perceptions of the Armenian population on corruption, individual experiences with corruption, social and individual behavior related to corruption, awareness and evaluation of anti-corruption initiatives, level of trust in public institutions.³ According to the most recent MAAC survey in 2010, corruption ranked 6th on the list of problems facing the country.⁴ Among other notable findings of the survey were:

- 82% of surveyed respondents mentioned that corruption is serious or very serious problem in Armenia⁵,
- 65% of respondents agreed to great or some extent that they considered corruption as fact of life (an increase from 51% in 2008 survey)⁶,
- 37% of respondents argued that the levels of corruption became higher, than a year ago (in 2008 only 17% agreed with this statement). At the same time, only 14% (in 2008 – 30%) were of opposite opinion, arguing that the levels of corruption decreased compared to the previous year⁷,

Finally, more respondents in 2010 compared to 2008 were thinking that corruption in Armenia could not be reduced at all. In 2010 32% of respondents agreed with this argument, whereas in 2008 only 22% of them agreed with it⁸.

The picture revealed by last GCB is bleak, as well⁹. In particular, 50% of the respondents argued that in the last three years corruption in Armenia increased (with only 15% arguing that it decreased.) Only 27% of the respondents were thinking that the Armenian Government's actions in the fight against corruption

³ OECD/ACN, *Second Round of Monitoring. Monitoring Report on Armenia*, 2011: 15

⁴ Mobilizing Action against Corruption, *2010 Corruption Survey for Households*, 2011: 4 (see at http://www.crcc.am/store/files/corruption/2010_Corruption_Household_Survey_Report_English.pdf)

⁵ *Ibid*, 14

⁶ *Ibid*, 16

⁷ *Ibid*, 17

⁸ *Ibid*, 20

⁹ Global Corruption Barometer 2010/11, <http://gcb.transparency.org/gcb201011/results/>

were effective, whereas 54% considered them as ineffective. The most corrupt institutions were perceived education, with score 4.2 on a scale from 1 to 5, where 1 is very clean and 5 – very corrupt, followed by police and judiciary with scores 4.1 each.

The mentioned above assessments and surveys reveal the most serious impediments in the yet unsuccessful fight against corruption in Armenia. Those are lack of true political will on the side of authorities to go beyond adopting laws and arresting mainly low-ranking officials in its fight against corruption, high tolerance towards corruption within society, weak enforcement of laws, lack of effective control over monopolies, widespread impunity, etc.

II. ANTI-CORRUPTION ACTIVITIES

During the last years public authorities, civil society organizations and international donors carried out certain activities to address problem of corruption in Armenia. However, as it can be seen from the indicators brought in the previous section on corruption profile in Armenia, these activities had very limited or no impact on the situation.

According to the Government Program for 2008-2012, the second major priority of the Government activities is the “formation of efficient governance systems in the state, local self-governance and private sectors and inculcation of the culture of corporate governance”, which “assumes active and persistent fight against corruption”.¹⁰ The overwhelming majority of the measures undertaken by Armenian authorities since 2008 were adoption of laws, sub-legislative acts and policy documents, as well as delivery of trainings to those officials (police officers, prosecutors, judges and others), who, by their position were representing bodies responsible for fight against corruption. However, as it can be seen from the description of some important pillars [see: Judiciary, Executive, Law Enforcement Agencies], the performance of these bodies in practice proves that the implementation of the adopted legal acts remains very poor and the trainings do not yield to necessary changes in the behaviors of trainees.

The first comprehensive anti-corruption policy document – the Anti-corruption Strategy and Its Action Plan was adopted in December 2003.¹¹ The document did not explicitly mention the duration of its Action Plan implementation, however, from the mentioned in it timelines it was clear that it should be implemented by the end of 2006. On the September 7, 2007 meeting of the Council on the Fight against Corruption it was officially announced that the Strategy and Its Action Plan have been implemented.¹² At the same meeting it was stated about the necessity to start the development of the new Strategy with its Action Plan and the principles of its development were formulated. Among those principles special importance was attached to securing the involvement of civil society in its development. Starting from March-April 2008 a specially-established task group started the development of the new Strategy and its Action Plan and by May-June 2009 the work was completed. Throughout the whole period of its work, the task force was in permanent contact with those civil society organizations, primarily TIAC, whose activities were related to anti-corruption and was sending for review Strategy’s chapters and Action Plan for comments and suggestions. Some of those comments and suggestions, including those made by TIAC, have been taken into account.

¹⁰ Program of the Government of the Republic of Armenia for 2008-2012, pp.3-4 (see <http://www.gov.am/files/docs/82.pdf>) It should be mentioned that eradication of the causes of corruption is one of the main directions of activities aimed to fulfill the third priority declared in the 2012-2017 Program of the new Government formed on June 2012 (see <http://www.gov.am/files/docs/970.pdf>, p. 7)

¹¹ Government Decree N 1522-N, 6 December 2003

¹² September 8, 2007 issue of *Hayastani Hanrapetutyun* daily, http://www.hhpress.am/index.php?sub=hodv&hodv=20070908_22&flag=am

The new Anti-corruption Strategy and Its 2009-2012 Action Plan was adopted on October 2009.¹³ Compared to the previous Strategy document, this new document was much better structured and, in general, it complied to the best standards for strategy documents with clear and rather accurate analysis of the existing situation with corruption, definition of goals and objectives, directions, expected results, needed institutional arrangements, training of specialists and relevant officials and major tools of the fight against corruption. It also formulates main goals and objectives of the anti-corruption policy in a number of areas, as well as the system of its monitoring and evaluation. As a result of implementation of the Action Plan measures, as well as implementation of GRECO and OECD recommendations, a number of legal acts have been already adopted. Among them most important were the new Law on Procurement (2011), Law on Public Service (2011), new Electoral Code (2011) and others. Changes and amendments in some other legal acts were introduced in the Law on the Special Investigative Service (2010), Law on Prosecution (2010), Law on State Registration of Legal Persons (2010), Law on NA Regulations (2012), Law on Political Parties (2012), etc.

Though by the time of the completion of this study, the Strategy and Its Action Plan implementation was not yet completed (it should be completed, according to the mentioned Decree, on December 31, 2012) both local and international experts mentioned a number of deficiencies containing in the Strategy, as well as rather insufficient level of implementation of the Action Plan measures. Already during the drafting of the Strategy in 2008, TIAC mentioned to a number of deficiencies, most of which remained in the final text.¹⁴ Among them it could be mentioned insufficient level of addressing political corruption, lack of mechanisms for involvement of civil society structures in the implementation of the Strategy, absence of measures in certain important areas, such as environment protection, army, urban development and others.

As it was mentioned in the OECD/ACN Second Round Monitoring Report on Armenia, “A significant problem is lack of holistic approach on implementation, guided by strong leadership and assisted by a permanent Secretariat. ... 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”.¹⁵

¹³ Government Decree N1272-N, 10 October 2009 (entered into effect on December 3, 2009)

¹⁴ For TIAC comments and suggestions see <http://transparency.am/comments.php>

¹⁵ OECD/ACN, *Second Round of Monitoring. Monitoring Report on Armenia*, 2011: 14

III. Foundations

Political-Institutional Foundations

To what extent are the political institutions in the country supportive to an effective national integrity system?

Score - 50

As Bertelsmann Transformation Index (BTI) 2011 reports Armenia has closed political system. Political competition in Armenia is weak.¹⁶ The coalition government, consisting from 2 political parties (Republican Party of Armenia and Rule of Law Party), occupies all ministerial posts. Regardless of having multiparty coalition government, the results of competition for the government offices is based on the final will of the President. As one of the experts writes: "*Despite the restrictions on presidential authority that resulted from the 2005 constitutional reforms, the head of state still retains the right to have a final say on almost all important matters of the country.*"¹⁷ In the same publication the same expert mentions that the system of forming the government is corrupted.¹⁸

Regarding Civil Rights, Freedom House for 2011 found that Armenia deserves 4 points for civil liberties.¹⁹ The same point is allocated for 2011-2012 period.²⁰ During 2011, non-combat deaths in army reached serious levels. Helsinki Citizen's Assembly Vanadzor Office reports that during 2010 42 deaths in army were registered and only 9 of them were the result of violation of truce.²¹ Human Rights Watch in its World Report 2012 mentions: "Local human rights groups report ill-treatment, hazing, and an alarming number of non-combat deaths in the army."²²

Bertelsmann Transformation Index 2012 mentions that except of strengthening of ombudsman's office no other positive steps were made. Particularly it mentions: "The protection of civil rights in Armenia remains incomplete, with deficiencies mainly due to the weak and arbitrary application of the rule of law. Over the past two years, successive incidents of the state's blatant violation of civil rights, largely in

¹⁶ Bertelsmann Transformation Index 2010, Country Report Armenia, pge 4. Available at: http://www.bti-project.org/uploads/tx_jdownloads/BTI_2010_Armenia.pdf, (last access was made on 25.03.2012)

¹⁷ South Caucasus-20 Years of Independence, Friedrich-Ebert-Stiftung, 2011: "Politics and Governance in Armenia: The Prospects for Democracy" (written by Boris Navasardyan), page 96

¹⁸ *Ibid*, page 99

¹⁹ See at <http://www.freedomhouse.org/report/freedom-world/2011/armenia> (last access was made on 23.03.2012)

²⁰ Freedom in the World 2011-2012, Freedom House, page 14. Available at

http://www.freedomhouse.org/sites/default/files/inline_images/FIW%202012%20Booklet--Final.pdf

²¹ See at

http://www.hcav.am/attachments_/d3a35_%D5%8E%D5%AB%D5%B3%D5%A1%D5%AF%D5%A1%D5%A3%D6%80%D5%B8%D6%82%D5%A9%D5%B5%D5%B8%D6%82%D5%B6..pdf

²² <http://www.hrw.org/world-report-2012/world-report-2012-armenia>

terms of political incidents, have reaffirmed the need for proper oversight by an independent judiciary. The sole positive step has been the institution of the human rights ombudsman, which has actively challenged the state's inability to protect and even active violation of civil liberties."²³

After the decriminalization of libel, numerous print media were sued and required to pay enormous amount of money as compensations for moral damages. In this regard, Human Rights Watch mentions: "In May 2010 Armenia decriminalized libel. However, amendments to the civil code introduced high monetary fines for libel and defamation and led to an increase in lawsuits against newspapers, particularly by public officials. In some cases courts' disproportionately large damage awards threaten the survival of newspapers. Journalists and editors report the chilling effect of large fines."²⁴

Rule of Law remains weak in the country. Armenia lacks any effective "checks and balances"²⁵ and this is partially because of consolidation of power into the hands of the president, without whom any important issue is being settled.²⁶ Heritage Foundation reports that Armenia lacks dependable rule of law.²⁷

Regarding ability of the government to control or influence the matters that are important to the lives of the people, it must be mentioned that given the current political situation of Armenia, which can be described as state capture, the government keeps tight control over any matter which presents "danger" to the ruling political power. BTI in this regards notes that the Armenian authorities have normally held virtually unchallenged authority.²⁸ Virtually, there is no single field in social life of Armenia where the government lacks effective control.

The most trusted democratic institution of Armenia is Ombudsman's office, which is followed by President, Government, Judiciary and Parliament, respectively.²⁹ Armenia's institutions are generally underperforming, which reflects their both lack of true democracy and their inherent weakness in institutional terms. Each of these factors is compounded by a lack of legitimacy and of popular electoral mandate.³⁰

Socio-political Foundations

²³<http://www.bti-project.org/country-reports/pse/arm>

²⁴<http://www.hrw.org/world-report-2012/world-report-2012-armenia>

²⁵<http://www.bti-project.org/country-reports/pse/arm>

²⁶ See for example South Caucasus-20 Years of Independence, Friedrich-Ebert-Stiftung, 2011: "Politics and Governance in Armenia: The Prospects for Democracy" (written by Boris Navasardyan), page 96

²⁷<http://www.heritage.org/index/country/armenia>

²⁸<http://www.bti-project.org/country-reports/pse/arm>

²⁹ Caucasus Analytical Digest, (Dis) trusting people and political institutions in Armenia by Yevgenya Paturyan, No. 31, 21.11. 2011, page 7

³⁰<http://www.bti-project.org/country-reports/pse/arm>

To what extent are the relationships among social groups and between social groups and the political system in the country supportive to an effective national integrity system?

Score - 25

Armenia is mostly mono ethnic country. The largest national minority are Yezid community (40620)³¹, followed by Russians (14660), Assyrians (3409), Ukrainians (1633), Kurds (1519) and Greeks (1176). Generally rights of national minorities are not infringed. According to Committee of Ministers of Council of Europe " A general climate of tolerance and understanding between national minorities and the majority population prevails in Armenia...Representatives of national minorities did not report intolerance towards members of their communities."³² According to European Commission on Racism and Intolerance (ECRI), in Armenia there is no hostility vis-a-vis ethnic minorities and non-nationals.³³

If in the field of ethnic minorities there are no substantial divisions in society, the same is not true in case of religious minority groups. Absolute majority of Armenians belong to Armenian Apostolic Church and national identity is also based on the affiliation with the Armenian Apostolic Church. According to ECRI, Armenian society is wary of most attempts to found new "churches" in Armenia and especially Jehovah's Witnesses attract much negative publicity in the media.³⁴ However, at the same time, ECRI recognizes that "Armenia is not confronted with a particular racist-violence problem."³⁵ Nevertheless, it must be admitted that the members of the latter sometimes have exercised aggressive behavior: In May 15, 2011 two members of the latter organization attacked the priest of Armenian Apostolic Church. Later one of them was sentenced for 6 months of imprisonment.³⁶

According to Human Development Index, Armenia is ranked 86th in the world, and its inequality score is 0.639.³⁷ Conflicts between minorities and society in the last 2-3 years were not registered. The most vulnerable group in the society are members of LGBT groups. According to the research conducted by Public Information and Need of Knowledge NGO, 66.9 % of the respondents think that LGBT people must be judged by the society and 55.3 % of those respondents who are of the opinion that LGBT people must be judged by the society, say that if they knew that their friend or relative is LGBT representative they would suspend relations with that friend or relative.³⁸

Regarding protection of rights of minorities, the most disadvantaged are LGBT people and religious minorities. According to Helsinki Association of Armenia "From the side of Governmental bodies there

³¹http://www.armstat.am/file/article/armenia_11_3.pdf

³²<https://wcd.coe.int/ViewDoc.jsp?id=1903365&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>

³³ ECRI report, page 7

³⁴ *Ibid*, page 14, point 46

³⁵ *Ibid*, page 16, poin 59

³⁶ See at <http://hetq.am/arm/news/7306/jehovahs-witness-gets-6-months-for-attacking-priest.html>

³⁷ See at <http://hdrstats.undp.org/en/countries/profiles/ARM.html>

³⁸ For more see at <http://pinkarmenia.org/wp-content/uploads/2010/05/WAORSocio.pdf>

is no political will to protect LGBT rights, and quite often the same bodies are acting as delinquents”³⁹. According to the latter, LGBT people quite often are not approaching police either because of fear or mistrust.⁴⁰ The main problem of the religious minority groups is conscious objection to serve military service. Thomas Hammarberg, Commissioner for Human Rights of the CoE, in his 09.05.2011 report, urged Armenian authorities to release all conscientious objectors who are in prison because of non-performance of military service.⁴¹ At the moment of the March 2012 over 70 persons were currently imprisoned for their refusal to serve in the army or to perform alternative military service. The performance of alternative service is 42 months, while regular military service is 24 months, which according to the Commissioner is the potentially punitive length.⁴² The performance of alternative service remains under the supervision of the military, which constitutes a major obstacle for members of the Jehovah’s Witnesses community on the basis of their religious beliefs.⁴³

Regarding representing interests of social groups by political parties, a leading expert in the field Mr. Alexander Iskandaryan mentions: *“Thus, in Armenia still does not exist parties which would represent interests of such kind of social groups as peasants or small businessmen, pensioners or middle class. The society still has not formed such political culture when the need of organized representation of interests in the legislature assembly would be realized.”*⁴⁴

According to BTI, Armenia's civil society is vibrant, but the influence of it, is generally constrained by the state’s failure to engage it in constructive dialogue or to grant it a role in public debate or the formulation of policy.⁴⁵ The same organization also mentions that both economic and political system of the country is closed. Nepotism is common among governmental officials⁴⁶ and political system is seriously impeded by political patronage.⁴⁷

Socio-economic foundations

To what extent is the socio-economic situation of the country supportive to an effective national integrity system?

Score - 25

³⁹ See at http://www.hahr.am/files/report2012_1.pdf , page 86

⁴⁰ *Ibid*, page 91

⁴¹ See at

<https://wcd.coe.int/ViewDoc.jsp?id=1784273&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679> , point 157

⁴² *Ibid*, point 154

⁴³ *Ibid*

⁴⁴ “Armenia between autocracy and poliarchy” by Alexander Iskandaryan, project Pro et Contra, May-August 2011, page 26. Russian version is available at http://carnegieendowment.org/files/ProetContra_52_19-28.pdf. Last access was made on 24.03.2012)

⁴⁵ See at <http://www.bti-project.org/laendergutachten/pse/arm/2012/#chap3>

⁴⁶ <http://www.freedomhouse.org/report/freedom-world/2011/armenia>

⁴⁷ <http://www.bti-project.org/laendergutachten/pse/arm/2012/#chap3>

GDP of Armenia for 2010 was 9,37 billion of USD⁴⁸ and the population of the country was 3,092,072 people⁴⁹ and growth was 2.1 percent⁵⁰. GDP per capita for 2010 was 3,200 USD.⁵¹ The poverty has achieved very high levels. People living on less than 2 \$ a day reached to 12.4 percent.⁵² Between 1998/99 to 2008 the level of poverty decreased from 56% to 28%, extreme poverty in 2008 was 1.6 % while in 2009 the number increased to 3.6 %.⁵³ According to the World Bank, level of poverty in 2010 became 35.8 %.⁵⁴ Poverty rates are slightly higher in rural (35%), than in urban areas (34%). However, the highest rates were recorded in urban areas outside the capital (42%) and the lowest poverty rate (27%) has been reported for Yerevan, reflecting the asymmetries in the economic development in the country.⁵⁵

In 2009 there was a registered increase in inequality compared to 2008: the income inequality increased by 4.7% and the consumption inequality by 6.2%.⁵⁶ According to Human Development Report, Income Gini coefficient in Armenia for 2011 was 30.9, inequality adjusted income index for 2011 was 0.504 (value) and 10.8 % (loss).⁵⁷ As the Caucasus Research Resources Centers (CRRC) Armenia reports, studies on poverty and inequality in Armenia revealed that rapidly spreading mass poverty and high level of inequality recorded throughout the 1990-s resulted in significant social losses such as deepening stratification and polarization of society, destruction of traditional social capital, and formerly built social networking, which is considered by experts as main preconditions of the existing:

- a. lack of trust in public administration by the people, especially its poorer groups;
- b. alienation of the majority of the public, including the poor, from political decisions, not least due to lack of awareness and social exclusion.

This is reflected, first of all, in the high level of shadow economy accompanied by corruption and emigration of working-age population.⁵⁸

⁴⁸See at <http://www.worldbank.org.am/WBSITE/EXTERNAL/COUNTRIES/ECAEXT/ARMENIAEXTN/0,,menuPK:301584~pagePK:141159~piPK:141110~theSitePK:301579,00.html>

⁴⁹See at <http://www.worldbank.org.am/WBSITE/EXTERNAL/COUNTRIES/ECAEXT/ARMENIAEXTN/0,,contentMDK:20169001~menuPK:301604~pagePK:1497618~piPK:217854~theSitePK:301579,00.html>

⁵⁰<http://www.worldbank.org.am/WBSITE/EXTERNAL/COUNTRIES/ECAEXT/ARMENIAEXTN/0,,contentMDK:20169001~menuPK:301604~pagePK:1497618~piPK:217854~theSitePK:301579,00.html>

⁵¹<http://www.worldbank.org.am/WBSITE/EXTERNAL/COUNTRIES/ECAEXT/ARMENIAEXTN/0,,contentMDK:20169001~menuPK:301604~pagePK:1497618~piPK:217854~theSitePK:301579,00.html>

⁵²<http://www.bti-project.org/countryreports/pse/arm/>

⁵³Social Protection and Social Inclusion in Armenia, Azerbaijan and Georgia. Synthesis Report. European Commission. 2011. Page 43

⁵⁴<http://data.worldbank.org/country/armenia>

⁵⁵Social Protection and Social Inclusion in Armenia, Azerbaijan and Georgia. Synthesis Report. European Commission. 2011. Page 44

⁵⁶Armenia: Social Protection and Social Inclusion. Country Report. CRRC, 2011. Page 96

⁵⁷See at http://hdr.undp.org/en/media/HDR_2011_EN_Complete.pdf

⁵⁸*Ibid*

According to Human Development Report for 2011, life expectancy at birth in Armenia is 74.2 years⁵⁹. State Statistical Service of Armenia reports that during 2009 in case of illness for consultancy or treatment applied 30.5%. Inhabitants of the capital applied more frequently (36.2 %) while villagers sought consultancy or treatment less frequently (22.2%).⁶⁰ But the picture is different when the financial status of applicants is being compared. According to the same source, in case of illness, only 21.4% of poor applied for consultancy or treatment, and only 1.2% of extremely poor members of the society, while the number of not poor applicants is 35.3 %. Almost half of the population sought advice from state medical organizations (47.1 %), while another half from pharmacies (47.5%). From the state medical organizations, the majority of applicants applied to polyclinics (58%) because services there are free. The extremely poor applied to polyclinics more frequently (75%) followed by poor (61%) and the number of not poor applicants is 57%. As of hospitals, not poor applied more often (27%) while the poor and extremely poor applied less often (20% and 22%, respectively). Only 13% of applicants to private medical institutions were poor, while 87% of applicants were not poor. As it can be seen, extremely poor did not apply to those institutions. The reason for not applying for consultancy or treatment for 37% of respondents was because the disease was not serious, for 33% it was self-treatment, and for 28% - lack of finances. The same source mentions that receiving medical assistance especially for sick members of poor households is very expensive.

Regarding adequate shelter, 90.7% of households are owners of the dwellings where they stay. In countryside most people live in detached houses (90.5%), while in cities 70.4% of the people live in condominiums.⁶¹ In the places of temporary residency mostly inhabit poor (5.6% of all poor and 4.2% of extremely poor). In 2009 only 59.0% was secured with housing (per one household) and 15.7% (per a member of household). Housing conditions are worst among poor and extremely poor. For inadequacy of floor space, complained 34.6% of poor and 42.4% of extremely poor. 19.1% of poor complained for bad lighting, 53.7% for heating, 40.2 % - for dampness, 25.3% - for roof leakage, 35.1% - for broken walls and floor, 2.1% - for building deterioration, 31.3% - for provision of water, and 31.4% - for garbage collection.

According to one report "Armenia has unevenly distributed water resources. Due to the contamination of drinking and surface water mainly infectious intestinal diseases occur. There is general lack of wastewater collection systems. The population coverage of piped water supply and sewage connection is substantially higher in urban than in rural areas."⁶² The same source mentions that access to safe drinking water in Armenia is high and over 85 percent of the population in Armenia has piped water supply on

⁵⁹ See at http://hdr.undp.org/en/media/HDR_2011_EN_Complete.pdf

⁶⁰ Here and after please see Social picture of Armenia and poverty. State Statistics Service of RA. Yerevan 2010. Pages 142-144

⁶¹ *Ibid*, page 179- 183

⁶² Willems, S. and Anakhasyan, E., 2011. Analysis for European Neighbourhood Policy (ENP) Countries and the Russian Federation of social and economic benefits of enhanced environmental protection – Armenia Country Report. Page 65

premises and nearly 10 percent used other improved drinking-water sources. Less than 5 percent relies on unimproved drinking-water sources. According to World Health Organization's World Health Statistics, percentage of population in Armenia which uses improved-drinking water sources is 96 % while in Georgia is 98% and in Azerbaijan is 80%.⁶³

According to the same source, percentage of children above 5 years old who are underweight is 4.2 while in Georgia it is 2.3 % and in Azerbaijan - 8.4%.⁶⁴ According to the Bread for the World Institute 2011 Hunger Report, in Armenia proportion of population below minimum level of dietary energy consumption is 22%.⁶⁵ According to Global Hunger Index 2010, score of Armenia for 2010 was 9.8 while Georgia's it was 5.5 and Azerbaijan's - 7.7.⁶⁶ In 2011 the score of Armenia decreased to 9.5, while Georgia's and Azerbaijan's scores have become less than 5.⁶⁷

In general, the social protection system in Armenia is divided into social insurance and social assistance. The functions of the state system of social protection are clearly defined, based on which, corresponding programs are provided for vulnerable groups.⁶⁸ These programs include:

- state social assistance programs;
- social security programs;
- social protection programs;
- state social insurance programs;
- employment programs;
- system of allowances.

According to BTI 2012, the general overdependence on external remittances and serious appreciation in the national currency's value (which by extension lowered the exchange value of the US Dollar, Euro and Russian Ruble, the most common currencies used for remittances) have reduced the value and adequacy of the social safety net for most families.⁶⁹ According to RA Ministry of Labor and Social Issues, in 2011 363.000 people, composing 96.000 households, received family poverty and one-time benefits. Out of this number, 87% (84.000 households with 333.000 people) received only family poverty benefit.⁷⁰ According to EU, the labor code and the legislation on employment and social protection related to unemployment, social assistance and state pensions are not fully implemented.⁷¹

The state pension insurance system includes:

⁶³http://www.who.int/whosis/whostat/EN_WHS2011_Full.pdf , page 40

⁶⁴ *Ibid*, page 23

⁶⁵<http://files.hungerreport.org/reports/2011/hunger-2011.pdf> , page 162

⁶⁶<http://www.ifpri.org/sites/default/files/publications/ghi10.pdf> , page 17

⁶⁷<http://www.ifpri.org/sites/default/files/publications/ghi11.pdf> , page 17

⁶⁸ Armenia: Social Protection and Social Inclusion. Country Report. CRRC. 2011. Page 12

⁶⁹<http://www.bti-project.org/countryreports/pse/arm/>

⁷⁰<http://www.b24.am/economy/35431.html>

⁷¹http://ec.europa.eu/world/enp/pdf/progress2011/sec_11_639_en.pdf

- 1) Old-age pensions
- 2) Protracted service pensions
- 3) Disability pensions
- 4) Insurance pensions to families who have lost the head of household

These pensions are based on mandatory social insurance contributions and constitute the labor (insurance) pension system. Average monthly pension for 2010 for old-age was 30,646 AMD (about 60 Euros), for disability – 21,750 AMD (about 42 Euros), for loss of bread-winner – 22,537 AMD (about 44 Euros), and for long service – 32,403 AMD (about 63 Euros).⁷²

According to Global Competitiveness Index 2011-2012 score of Armenia for infrastructure is 3.8 and the rank is 77 among 142 countries. Armenia is a landlocked country, which has open borders only with Georgia and Iran, while with Azerbaijan and Turkey its borders are closed. Armenia's primary roads total 10,818 kilometers (km), and are divided into interstate (1,686 km), republican (1,747 km), local (4,271 km), and urban (3,114 km).⁷³ Out of about 1,962 km of local roads, about 61% need immediate upgrading.⁷⁴ The government has improved almost 13% (about 988 km) of total road length (7,704 km), has kept 49% (3,811 km) in fair condition, and is planning to improve the remaining 38% (2,905 km). The government has rehabilitated 15% (253 km) of the 1,686 km highway network; roughly 75% of the highway network is in fair condition and 10% (about 169 km) requires rehabilitation. About 62% (about 1,083 km) of the 1,747 km secondary road system has been improved or is in fair condition, leaving about 1,540 km in need of rehabilitation.

For the quality of roads, Armenia's rank according to Global Competitiveness Index 2011-2012 is 92, which suggests that the situation demands high attention and effective policies by the government.

Regarding railway infrastructure, it must be noted that about 370 km of the 732 km network are fully operational: the Yerevan–Georgian line, the Yerevan–Yeraskh passenger line, and sections of the Yerevan–Azerbaijan/Vardenis lines.⁷⁵ Much of the main Yerevan–Gyumri–Airum (Georgian border) line is in poor condition. The World Bank has rehabilitated 72 km of the track, but the remaining 107 km still need work. In addition, 41 bridges (8 of them large) are in need of rehabilitation. Since June 2008, the South Caucasus Railways, a subsidiary of Russian Railways, has been operating. The rank of Armenia in Global Competitiveness Index 2011-2012 for the Quality of Railroad infrastructure is 69.

⁷²http://www.bamf.de/SharedDocs/MiLo-DB/DE/Rueckkehrfoerderung/Laenderinformationen/Informationsblaetter/cfs-armenien-download-englisch.pdf?__blob=publicationFile

⁷³<http://developmentasia.org/documents/reports/armenia-transport-outlook/armenia-transport-outlook.pdf> , page 4

⁷⁴ *Ibid*

⁷⁵ Here and after see <http://developmentasia.org/documents/reports/armenia-transport-outlook/armenia-transport-outlook.pdf> , page 7

Armenia has three main airports: Zvartnots, Shirak, and Erebuni. Zvartnots International Airport is the main one. Air services operate under an investment agreement with Armavia, a private Armenian carrier that has exclusive rights for 10 years to all domestic and international routes.⁷⁶ Currently Zvartnots International Airport can handle up to 1.8 million passengers, which can grow to 3.2 million when the second terminal will become operational. Rank of Armenia for the Quality of air transport infrastructure is 74 (Global Competitiveness Index 2011-2012).

The number of internet users in Armenia reached 1,396,550 and percentage of penetration to 47.1 %.⁷⁷ According to Global Competitiveness Index 2011-2012 ranks of Armenia for fixed telephone lines and mobile telephone subscriptions are 69 and 33 respectively.

According to Global Competitiveness Index 2011-2012, Armenia's rank is 92. The huge impact on the economy has played global crisis, which caused around 14.2 % of decrease of GDP in 2009.⁷⁸ Armenia's foreign debt for 2010 rose to between 46 and 50% of GDP.⁷⁹ The government started to pressure businesses to declare their incomes, which caused decrease of shadow economy from 51.7 of GDP in 2007 to 35-40% in 2010. By the end of 2011, Armenia's economy had grown by 2.1 percent.

The import market for goods such as basic foodstuffs (flour, for example), in particular, is dominated by so-called 'oligopolistic' players, making it difficult for new businesses to enter the market.⁸⁰ This conclusion is being proven by the Global Competitiveness Index 2011-2012, which gave to Armenia 138th rank for the Effectiveness of the anti-monopoly policy.⁸¹ At the same time, according to Heritage Foundation, on economic freedom Armenia ranked 39th.⁸²

Socio-cultural foundations

To what extent are the prevailing ethics, norms and values in society supportive to an effective national integrity system?

Score - 25

Interpersonal trust is not very high. According to CRRC's survey only 50% of Armenians do trust friends, neighbors and relatives as source of information.⁸³ The Public Television which has country-wide coverage is the most trusted and at the same time the most distrusted source of information.⁸⁴

⁷⁶ *Ibid*, page 11

⁷⁷ <http://www.internetworldstats.com/stats3.htm>

⁷⁸ http://www.freedomhouse.org/sites/default/files/inline_images/NIT-2011-Armenia.pdf , page 71

⁷⁹ <http://www.bti-project.org/laendertgutachten/pse/arm/2012/#chap11>

⁸⁰ <http://fpc.org.uk/fsblob/1331.pdf> , page 27

⁸¹ http://www3.weforum.org/docs/WEF_GCR_Report_2011-12.pdf

⁸² <http://www.heritage.org/index/country/armenia>

⁸³ Armenian Media Landscape, CRRC, 2011. Page 7

⁸⁴ *Ibid*, page 5

Majority of population trust online news (83%).⁸⁵ Society is apathetic simply because of low trust toward elections. In this regard, one of experts mentions: *"It makes sense to assume that trust or mistrust influences one's predisposition to vote; it seems less logical to assume that a decision to vote if an election is held tomorrow influences how much the person trusts the government. This line of argumentation is not a proof of causality, but the survey data and common logic combined suggest that trust influences the predisposition to vote. Those who trust the government are particularly easy to mobilize, while those trusting international institutions are also likely to vote, but this connection is weaker. Most importantly, those who do not trust other people, or institutions, are less likely to vote. Lack of trust results into political apathy."*⁸⁶

The same statement is shared by Foreign Policy Center. Particularly: " The prevailing political mood is one of disillusionment, both with the establishment and current alternatives on offer. At present this translates to a degree of apathy, however as events in the Middle East have shown, such moods do not necessarily hold, particularly if promised reform programs fail again and the economy tightens."⁸⁷

⁸⁵ *Ibid*, page 36

⁸⁶ Caucasus Analytical Digest, No. 31, November 2011, page 7. Available at <http://www.css.ethz.ch/publications/pdfs/CAD-31.pdf>

⁸⁷ <http://fpc.org.uk/fsblob/1331.pdf> , page 8

IV. National Integrity System Pillars

Legislature

Table of Indicator Scores

Legislature			
Overall Pillar Score: 54.17			
	Indicator	Law	Practice
Capacity 50	Resources	75	25
	Independence	75	25
Governance 62.5	Transparency	100	75
	Accountability	75	25
	Integrity mechanisms	75	25
Role 50	Executive Oversight	50	
	Legal Reforms	50	

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In

its current form, Armenian Parliament, the National Assembly, was established in 1995, after the adoption of the first Armenian Constitution, passed by referendum on July 5, 1995. On the same day of July 5 the first elections of the National Assembly (NA) were held. NA is a unicameral legislature with 131 members, among whom 90 are elected on the proportional list and 41 – simple plurality (“first past the post”) basis. Until now the parliamentary elections were held once in 4 years, and, hence, there were 4 elections – in 1995, 1999, 2003 and 2007. However, after the adoption of changes and amendments to the Constitution, passed through popular referendum on November 27, 2005, the elections will be held once in 5 years. Thus, the coming parliamentary elections will be held on 2012. Elections are held by the decree of the President.⁸⁸

The Constitution sets eligibility criteria for the members of NA. According to them, only those individuals could be elected as members of NA, who are above the age of 25, have been citizens of the Republic of Armenia and permanently residing there during the last 5 years, preceding the elections and have voting rights.⁸⁹ NA is a professional body, meaning that its members should perform their duties on a permanent basis.⁹⁰

⁸⁸ Article 68 of the Constitution

⁸⁹ *Ibid.*, Article 64

⁹⁰ *Ibid.*, Article 65

NA convenes its regular sessions two times a year. The spring session starts on the first Monday of February and ends on the second Thursday of June, and the autumn sessions start on the second Monday of September and ends on the second Thursday of December.⁹¹ NA can also convene extraordinary sessions. The full meetings during the sessions take place from Monday to Thursday once in 3 weeks.⁹²

NA is headed by its Speaker and two Deputy Speakers, who are elected during the first opening session of the newly elected NA.⁹³ In order to conduct preliminary discussion on the draft laws and other issues and submit conclusions on them, the Constitution stipulates that there should be established standing committees, whose number should not exceed 12.⁹⁴ According to Law on NA Regulations, the number, names and fields of operations of standing committees shall be established by NA decision: the number of committees during the first session of NA.⁹⁵ As of June 2012, there are 12 standing committees in NA.

During the opening session also the factions⁹⁶ and deputy groups⁹⁷ are established. Each faction, which has the same name as the party or bloc of parties⁹⁸ it represents in NA, consists of those NA members, who have been elected through proportional list system from that party or bloc, as well as those MPs, who have been nominated by the above-mentioned party or bloc and elected through simple plurality vote. The member of the faction has the right to leave the faction. Based on the results of May 2012 parliamentary elections there are 6 factions in NA, 2 of which form the ruling coalition. Those are the Republican Party of Armenia (HHK) and Rule of Law Party (OEK).

At least 10 NA members can form a deputy group. Similar to factions, the member of the deputy group can leave the group. Group can be formed by those NA members, who, at the moment of the establishment of the group, are not members of any faction. Those are either NA members, which have been self-nominated and elected by simple plurality vote (independent MPs), as well as those, who left their factions. If the size of the group becomes less than 10 members, the group should be dissolved. Currently there are no groups in NA. The NA member can join only one faction or one group at a time.

⁹¹ Article 35 of the Law on NA Regulations

⁹² On April 12, 2011 NA passed new changes and amendments to the Law on NA Regulations (entered into effect on April 14), and according to one of them, NA can decide to move the start of the 4-day regular session to another Monday, provided that the moved 4-day session does not coincide with other, regular 4-day session or extraordinary session. This change already was applied once, when May 2-5, 2011 4-day regular session moved to the next week – May 10-12 (Monday, May 9 was holiday and no session was convened on that day).

⁹³ According to Article 68 of the Constitution, the opening session of the newly elected NA shall be held on the third Thursday following the elections, provided that at least two third of the members of NA have been elected.

⁹⁴ Article 73 of the Constitution

⁹⁵ Article 21 of the Law on NA Regulations

⁹⁶ Article 14 of the Law on NA Regulations As only 6 parties (5 parties and one bloc) are represented in NA, as a result of May 2012 parliamentary elections, there are only 6 factions in NA of the current convocation.

⁹⁷ Article 15 of the Law on NA Regulations

⁹⁸ Armenian Electoral Code allows parties to form coalitions (blocs) to participate in the elections as one entity (Article 106 of the Electoral Code). In that case the bloc forms one joint list for the proportional list system.

Assessment

Capacity

Resources (Law)

To what extent are there provisions in place that provide the legislature with adequate financial, human and infrastructure resources to effectively carry out its duties?

Similar to other governmental institutions and agencies funded from state budget, the allocation of financial resources to NA is regulated through the Law on Budgetary System. According to that Law, state institutions in the timelines, set by the Prime Minister, shall submit their written application with their budget estimate to the RA Ministry of Finance, who is the authorized body for this purpose. After the submissions of the applications, the applicants, including NA, start negotiations with the Ministry of Finance on the final size of the institution's budget. As it can be seen, the budget of NA (as well as other governmental institutions) is not solely determined by NA, and, as a result, NA does not receive as much, as it would desire. However, it has some leverage in its determination and can negotiate with the government to get the substantial portion of what it had requested.

NA Speaker is empowered to manage the mentioned financial and other financial resources (for example, grants and loans received from foreign countries and international organizations), as well as human, technical and infrastructure resources acquired for the functioning of NA.⁹⁹ The same Article of the Law on NA Regulations, as well as the Law on State Service in NA Staff¹⁰⁰, provides that NA Speaker also has the power to appoint and dismiss the head of NA staff¹⁰¹ and heads of departments of NA staff. The appointment and dismissal of the other employees of NA staff is under the competence of the head of NA staff.¹⁰²

The management of these resources is carried out through NA Staff, whose establishment is stipulated by the Law on NA Regulations.¹⁰³ The current Charter and structure of NA Staff are defined by the Decision N NO-005-N of NA Speaker adopted on October 5, 2009 and entered into effect on October 19, 2009.¹⁰⁴

Point 1 of the Charter of NA Staff provides that “NA Staff shall ensure full and effective execution of the powers vested in NA by the Constitution of the Republic of Armenia, its normal functioning and its

⁹⁹ Article 79 of the Constitution and Article 18 of the Law on NA Regulations

¹⁰⁰ Article 16 of the Law on State Service in the National Assembly Staff

¹⁰¹ The Head of NA Staff is *ex officio* Secretary General of NA, which was introduced by the Law on Making Changes and Amendments in the Law on State Service in the National Assembly Staff adopted by NA on May 26, 2011 and entered into effect on July 4, 2011.

¹⁰² *Ibid.*,

¹⁰³ Article 18 of the Law on NA Regulations

¹⁰⁴ RA Official Bulletin 2009/50(716), 09.10.09

involvement in legal-civil relationships.” Through its structural units NA Staff is required (by its Charter) to provide necessary organizational, legal, informational and other types of support to NA members, committees and factions. The Charter defines the objectives and functions of the Staff, its structure, administration, legal status and major functions of its officials and employees, and structural units.¹⁰⁵

A number of provisions of the Law on NA Regulations and Charter of NA Staff explicitly define what types of human and technical resources shall be assigned to NA leadership, members, committees and factions to ensure their effective performance. In particular, the Law on NA Regulations stipulates that NA member shall be provided with working place, which shall be furnished properly and supplied with technical (including computer) and communication (including Internet) means.¹⁰⁶ Those NA members, who do not permanently reside in Yerevan (where NA is located), shall receive reimbursement, equivalent to the size of the rent in Yerevan, the size of which shall be defined by NA Speaker.¹⁰⁷ The Law requires from the local self-administration bodies to supply the NA member, faction or group (upon their demand) at least one day a month a properly furnished room or hall for receiving their constituents.¹⁰⁸ Finally, the Law provides that NA member can have two assistants, one of which shall be employed on a paid basis, and the other – on a voluntary basis.¹⁰⁹

The same Law also stipulates that all factions and groups shall be provided with properly furnished rooms supplied by technical and communication means, drafts of the laws, resolutions of the Government and NA Staff on them, as well as issues of the *Official Bulletin* and *Hayastani Hanrapetutyun* (Republic of Armenia) daily.¹¹⁰ The same Article provides that each faction and group shall be supplied by a car. Finally, the mentioned Article provides that each faction and group shall have one administrative assistant and from one to four experts, depending on their size.¹¹¹ Finally, the mentioned Article provides that these employees shall be hired upon the nomination of the heads of corresponding factions and groups.¹¹²

¹⁰⁵ The Charter of NA Staff provides that the legal status and major functions of NA officials and employees, as well as NA structural units shall be also defined by the Law on NA Regulations, Law on State Service in the National Assembly of the Republic of Armenia and other legal acts (Points 20 and 43 of the Charter).

¹⁰⁶ Article 8 of the Law on NA Regulations

¹⁰⁷ *Ibid.*, Article 10

¹⁰⁸ *Ibid.*, Article 7

¹⁰⁹ *Ibid.*, Article 11 According to Point 41 of the Charter of NA Staff, the paid assistants of NA members are appointed by the Head of NA Staff.

¹¹⁰ *Ibid.* Article 16

¹¹¹ The faction consisting of 10 or less members shall have one expert. The factions consisting of 11 to 14 members shall employ two experts, and factions consisting of more, than 14 members shall have three experts. Article 16 specifically mentions number of experts also for groups in the following way: up to 14 member faction or group have 1 administrative assistant and 3 experts, and more than 14 member faction or group 1 administrative assistant and 4 experts.

¹¹² According to Point 40 of the Charter of NA Staff, the experts of factions and groups are appointed by the Head of NA Staff.

The provision of human, technical and infrastructure resources to NA standing committees is also regulated by the Law on NA Regulations.¹¹³ Each standing committee shall have its own secretariat, which is a structural unit of NA Staff operating on the basis of the Charter of NA Staff and charter of the standing committee and it is supervised by the chair of the standing committee. The standing committee secretariat ensures the organizational, informational, analytic, documentary and professional aspects of the activities of the standing committee. Each standing committee shall have one administrative assistant and three experts. The administrative assistant shall be hired and dismissed upon the consent of the chair of the corresponding standing committee, and the experts – according to the legislation on the state service in NA. The experts of NA standing committees are state servants, and the procedure of their appointment is similar to those of civil servants and is regulated by the provisions containing in Chapter 3 (Articles 11-20) of the Law on the State Service in the Staff of NA.¹¹⁴ The mentioned provisions do not permit the standing committee to be directly involved in hiring of its experts, though its chair or members could be included in the contest commission, if the position of the expert is not filled on the non-competitive basis.¹¹⁵

The same Article of the Law provides that the standing committees may be supplied by legal acts adopted by the President, NA, Government and Constitutional Court, as well as *Hayastani Hanrapetutyun* daily. Finally, NA temporary committees (if established) also shall be provided with experts.¹¹⁶

NA Speaker and both Deputy Speakers each have their own staffs, which are structurally part of NA Staff.¹¹⁷ The staff of NA Speaker consists of NA Speaker's advisers, assistants, press secretary and reviewers (speechwriters),¹¹⁸ who are appointed by NA Speaker.¹¹⁹ They are appointed by the Head of the NA Staff upon the recommendation of the corresponding Deputy Speaker.¹²⁰

According to the Law on the State Service in NA Staff, the salaries of NA Staff employees are defined by the Law on the Remuneration of Civil Servants applying the same procedures as for civil servants and are equivalent to the salaries of the civil servants holding equivalent positions.¹²¹ The same Law also

¹¹³ Article 21 of the Law on NA Regulations

¹¹⁴ Article 4 of the Law on the State Service in NA Staff defines that experts of factions and groups, as well as paid assistants of NA members and advisers and assistants of the Head of NA Staff are not state servants, and by the same Article the provisions of the mentioned Law do not apply on them.

¹¹⁵ Article 40 of the Law on the State Service in NA Staff provides that NA members can also be included in the contest commission.

¹¹⁶ Article 22 of the Law on NA Regulations

¹¹⁷ Point 13 of the Charter of NA Staff

¹¹⁸ *Ibid.*,

¹¹⁹ *Ibid.*, Point 17

¹²⁰ *Ibid.*, Point 30

¹²¹ Article 29 of the Law on the State Service in NA Staff

requires for all state servants employed in NA Staff to undergo training at least once in three years, and all expenses of the training shall be covered from the state budget.¹²²

On March 24, 2012 was made amendment into Decision of Speaker of NA NO-005-N, according to which was established Department of Internal Audit.¹²³

Resources (Practice)

To what extent does the legislature have adequate resources to carry out its duties in practice?

Within the Staff of National Assembly there is Publishing Department which is responsible for publishing monthly journal “National Assembly”.¹²⁴ However, in the Internet the only information which is possible to find on this journal is that for the first time it was published in 2003.¹²⁵

The RA Law on the Rules of the Procedure of National Assembly in great details specifies number and functions of employees both for the staff of National Assembly, committees of National Assembly and also of MPs. However, in this field there are issues which present reasonable concerns not only for public in general but also even for the MPs.

Former President of RA National Assembly, Mr. Samvel Nikoyan¹²⁶ in his speech of 6th of December, 2011 mentioned following: “I would like, dear partners, to say two words about the NA staff-parliament, I mean parliamentary relations corps. It seems wrong impression has been formed among us as if it is not the staff provides the deputy’s work, but just the opposite. Here we have things to do.”¹²⁷ During the same speech Mr. Nikoyan also mentioned: “I also don’t consider irrelevant, dear partners, to present you that I deem necessary to have electronic document circulation in the NA Staff, which besides the rise of efficiency and opportunity of controlling working discipline will also give an opportunity to rise the urgency, transparency of the works, as well as the public control.”¹²⁸ Regarding technical equipment some questions are still on place. After renovation of sessions hall of NA it is now well equipped with computers.¹²⁹ However, some MPs complain for old personal computers in their offices at NA.¹³⁰

¹²²*Ibid.*, Article 22

¹²³Decision of NA Speaker NO-015-N (24.03.2012)

¹²⁴http://parliament.am/na_staff.php?sel=division&ID=71&lang=arm

¹²⁵ For example see at

[http://www.parliament.am/news.php?cat_id=2&NewsID=310&year=%7B\\$Year%7D&month=%7B\\$Month%7D&day=%7B\\$Day%7D](http://www.parliament.am/news.php?cat_id=2&NewsID=310&year=%7B$Year%7D&month=%7B$Month%7D&day=%7B$Day%7D)

¹²⁶Mr. Samvel Nikoyan was the Chair of NA from December 6, 2011 to May 31, 2012.

¹²⁷See at

[http://www.parliament.am/news.php?cat_id=2&NewsID=4900&year=%7B\\$Year%7D&month=%7B\\$Month%7D&day=%7B\\$Day%7D&lang=eng](http://www.parliament.am/news.php?cat_id=2&NewsID=4900&year=%7B$Year%7D&month=%7B$Month%7D&day=%7B$Day%7D&lang=eng)

¹²⁸*Ibid*

¹²⁹ See for example interview of MP from Armenian Revolutionary Federation to Report. am at

<http://www.report.am/news/society/lilit-galst-torosyan-aj-dahlich.html>

¹³⁰ See <http://old.hetq.am/am/politics/parliament-39/>

Grisha Balasanyan, investigating journalist of "Hetq", in his article "Fathers and sons of National Assembly" brings examples on how MPs tried to get job of assistants in National Assembly for their children.¹³¹ He particularly notes that sons and daughters of some MPs are hired by colleagues in National Assembly or by themselves directly. According to article 11 of RA Law on Rules of Procedure of the National Assembly each MP can have two assistants with the condition that one of them works on voluntary basis. Assistants have right to use from the office and facilities provided for MPs. Net salary of the paid assistant is 90.000 AMD (around 215 USD).¹³² Net salary of MP is 240.00 AMD (around 574 USD).

According to 2011 budget of Armenia, 2,731,843,200 AMD (around 6,535,510 USD) were allocated to maintenance of staff and MPs of National Assembly¹³³ from which 350,000,000 AMD for travel expenses. In average, for the year of 2011, for each trip of MPs to foreign countries around 3,000 Euros had been allocated.¹³⁴ However, Control Chamber of Armenia found that for 2010 some MPs have debts toward budget as their travel expenditures were more than was envisaged by legislation.¹³⁵ Insufficiency of travel costs allocated by state budget was pointed out by some MPs.¹³⁶

As about research capacities of NA Library, the head of Library department Ms. Fatma Khachatryan, mentioned that the library has 9.400 materials and annually it serves to 500 MPs and employees of the staff, and it satisfies them. Moreover, the library provides online tools for MPs and the required materials can be sent to them via e-mail.¹³⁷

Independence (Law)

To what extent is the legislature independent and free from subordination to external actors by law?

Article 74.1 of the Constitution clearly defines the grounds for the dissolution/dismissal of NA. President of the Republic *shall* dismiss NA, if the latter disapproves the program of the Government two consecutive times in two months. In three other cases the RA President *can* dismiss NA, but only after consulting with NA Speaker and Prime Minister. These cases are:

- a) within three months during its session NA does not adopt any decision on the bill, which was considered as urgent by the Government decision;
- b) NA does not convene regular meetings within three months of the session;

¹³¹ <http://hetq.am/arm/articles/2278/>

¹³² 1 USD = 418.01 Armenian Drams (AMD) according to the official rate defined by the Central Bank of Armenia for June 29, 2012.

¹³³ See <https://www.e-gov.am/interactive-budget/>

¹³⁴ See <http://www.armtown.com/news/en/news/20111005/76680/>

¹³⁵ See <http://www.armlur.am/print.php?id=4848>

¹³⁶ See <http://asekose.am/2011/07/28/%D5%88%D6%80%D6%84%D5%A1%D5%B6-%D5%A5%D5%B6-%D5%BE%D5%A1%D5%BF%D5%B6%D5%B8%D6%82%D5%B4-%D5%B0%D5%A1%D5%B5-%D5%BA%D5%A1%D5%B7%D5%BF%D5%B8%D5%B6%D5%B5%D5%A1%D5%B6%D5%A5%D6%80%D5%A8-%D4%B5%D5%BE%D6%80/>

¹³⁷ See <http://armenpress.am/arm/news/666538/>

- c) during the three months of the session NA does not adopt a decision on an issue it was debating.

Neither Constitution, nor the Law on NA Regulations provide regulations for self-recall of NA.

Among the safeguards of the independence of NA are those constitutional provisions, according to which NA elects its Speaker and both Deputy Speakers,¹³⁸ as well as provides that the timelines and procedures of convening its sessions shall be defined by the Law on NA Regulations.¹³⁹ As it has been already mentioned in the *Structure and Organization* section, NA members elect among themselves the NA Speaker, Deputy Speakers and chairs of standing committees at the first, opening session of NA. During that session, they also form the standing committees. Temporary committees also are established by NA. Finally, the Law on NA Regulations, NA defines the list of NA standing committees, their names, areas of their activities,¹⁴⁰ and general procedures of their formation¹⁴¹. Any other state body or branch of the government has no legal power to intervene in these processes.

According to Constitution, the timetable of NA shall be defined by the Law on NA Regulations, and, as it has already mentioned above in the *Structure and Organization* section, that timetable is defined by Article 35 of the mentioned Law.¹⁴² The Law on NA Regulations stipulates that NA Speaker shall submit the agendas of NA sessions and four-day meetings to NA for their approval.¹⁴³ The same Law also defines the contents of the session agenda and four-day meetings' agenda¹⁴⁴, their debate and approval during the working meeting of NA, preceding the regular meeting¹⁴⁵, as well as the procedures of their debate and voting during the full session meetings¹⁴⁶. At the same time, Armenian Constitution provides that extraordinary sessions or meetings can be initiated not only by NA members (if at least one third of them join a petition for initiation), but also by the President of the Republic or Government, and the timetable and agenda of such sessions or meetings shall be defined by their initiators.¹⁴⁷ Thus, in the cases of extraordinary sessions and meetings (which take place regularly in NA practice) initiated by the President or Government, NA does not control their agendas and timetable. Though the practice of extraordinary sessions and/or meetings is not unique (it exists, for example, in Japan, France and Philippines)¹⁴⁸, the experts of constitutional law view such practice as a manifestation of the efforts of

¹³⁸ Article 79 of the Constitution

¹³⁹ *Ibid.*, Article 69

¹⁴⁰ Article 21 of the Law on NA Regulations

¹⁴¹ *Ibid.*, Article 25

¹⁴² Article 69 of the Constitution

¹⁴³ Point 1.i of Article 18 the Law on NA Regulations

¹⁴⁴ *Ibid.*, Articles 36 and 37 for the session and four-day meetings agendas, respectively

¹⁴⁵ *Ibid.*, Article 110

¹⁴⁶ *Ibid.*, Article 38

¹⁴⁷ Article 70 of the Constitution

¹⁴⁸ *Commentaries to the Constitution of the Republic of Armenia*. Edited by G. Harutyunyan, A. Vagharshyan, Yerevan, "Iravunk" publishing house, 2010 p. 718

the executive to limit the length of regular parliamentary sessions and by that to either avoid legislative control over the executive during the intersession period or expand its law-making powers¹⁴⁹.

Among the powers of NA Speaker is the approval of the security rules in the NA territory and building.¹⁵⁰ The territory and building of NA is in the list of the most important establishments of the country, and, having such status, according to the Law on Police Troops, they are guarded by Police troops.¹⁵¹

As it can be seen, the legal grounds for the independence of Armenian legislature, in general, are in compliance with international standards and ensure the independence of legislature. The legislation excludes any subordination of NA to external actors, empowering it to control its internal procedures of independent functioning. Considering the fact that by Constitution Armenia is a semi-presidential republic, the constitutional provisions on the dismissal of the legislature also put sufficient constraints on the power of the President to dismiss the legislature.

Independence (practice)

To what extent is the legislature free from subordination to external actors in practice?

In 2011 NA convened 4 extraordinary meetings and sessions (1 extraordinary session (21.06.2011) and 3 extraordinary meetings (15.04.2011, 28.11.2011, 06.12.2011).¹⁵² Only last extraordinary meeting of 06.12.2011 was convened by the initiative of MPs for electing deputy for the President of NA.

In 2010 only on 2 occasions were convened extraordinary sessions (23.06.2010 and 13.12.2010).¹⁵³ Session of 23.06.2010 was convened by the initiative of MPs for discussing and adopting some drafts of laws.

During the first half of 2012, one extraordinary session was convened in June, immediately after the end of the first session.¹⁵⁴

MP from ARF, Mr. Artzvik Minasyan stated his frustration regarding the total number of bills initiated by the Government: “76 percent initiative drafts of laws belong to the Government. In fact, the Government carries out not only executive activities, but also legislative ones. In addition, for all of their

¹⁴⁹*Ibid.*,

¹⁵⁰ Article 18 of the Law on NA Regulations

¹⁵¹ Article 3 of the Law on Police Troops

¹⁵² For more information please consult www.parliament.am

¹⁵³ Please consult www.parliament.am

¹⁵⁴ <http://www.parliament.am/agenda.php?AgendaID=314&day=22&month=06&year=2012&lang=#22.06.2012>

drafts of laws to be adopted, the head of the Government exhorts ministers to be active in NA. In fact, 76 percent is not enough and they try to become author for 99 percent of draft laws."¹⁵⁵

Some statements, made by MPs during 2010 winter extraordinary session, suggests that both NA is not able to carry out its work in independent way and that on some occasions parliamentary opposition with great efforts could persuade majority not to act as a rubber stamp for the Government. During the winter extraordinary session of 2010, the Government took back some draft laws from the agenda, which was described by MP from ARF as victory of NA.¹⁵⁶ During the same session, head of "Heritage" parliamentary faction Mr. Styopa Safaryan, encouraged President of NA to take steps that Government takes back draft Laws on language and on public education, otherwise they would take another form of struggle. President of NA promised to negotiate with the Government.¹⁵⁷

Freedom House in its Nations in Transit 2011 report on Armenia notes: "*Armenia's legislation provides for democracy and rule of law, but in reality a small group of elites continues to dominate the political and economic spheres. Political competition remains weak, with incumbent authorities having an unfair advantage over newcomers.*"¹⁵⁸

Bertelsmann Transformation Index's Report on Armenia for 2010 notes: " However, *despite these enhancements, the executive branch still holds a dominant position over the other branches of government and retains control over nearly all of the main instruments of state power. The lack of any effective "checks and balances" or a separation of powers remains the most serious impediment to Armenia's democratic transformation.*"¹⁵⁹

Regarding inadequate separation of powers in Armenia, similar opinion also bears one of domestic famous think-thanks: " *If Prosperous Armenia does not manage to resist the pressure and succumbs, then a Republican-Prosperous-Rule of Law coalition will assure a majority and Armenia's National Assembly will still not serve as a check and balance.*"¹⁶⁰

Heritage Foundation in its 2012 Index of Economic Freedom clearly states that Armenia lacks a dependable rule of law.¹⁶¹

¹⁵⁵ See at <http://old.hetq.am/am/politics/aj-25/>

¹⁵⁶ See at <http://ankakh.com/2010/12/79823/>

¹⁵⁷ *Ibid*

¹⁵⁸ See http://www.freedomhouse.org/sites/default/files/inline_images/NIT-2011-Armenia_0.pdf , page 68

¹⁵⁹ See <http://www.bertelsmann-transformation-index.de/en/bti/country-reports/laendergutachten/cis-and-mongolia/armenia/#democracy>

¹⁶⁰ See www.civilitasfoundation.org (Armenia 2011. Without Illusions) page 35. After May 2012 parliamentary elections Prosperous Armenia Party left the ruling coalition.

¹⁶¹ See at <http://www.heritage.org/index/country/armenia#rule-of-law>

Governance

Transparency (Law)

To what extent are there provisions in place to ensure that the public can obtain relevant and timely information on the activities and decision-making processes of the legislature?

The Law on NA Regulations defines that the voting records of NA open sessions shall be posted on NA web-site.¹⁶² According to the Law on Legal Acts, NA decisions are published in the RA Official Bulletin.¹⁶³ The agenda of NA regular session, as well as changes and amendments to it, is adopted as NA decision and is published in NA Official Bulletin. The draft laws, after they are put into circulation in NA,¹⁶⁴ are posted on NA web-site (¹⁶⁵. The law does not provide the agendas of the meetings of standing committees to be published. The agendas (only in Armenian) of standing committees are available on NA website on the pages of standing committees.¹⁶⁶ On March 19, 2012 the Law on NA Regulations was supplemented by the Law HO-111-N, which introduced new Article 52.1 pertaining to registration of draft laws and NA decisions. According to this article those drafts of laws (package of drafts) and decisions of NA, which had been put into circulation in accordance with article 51 (1) and 52 (3), are being registered in the registrar of issues that were put into circulation at NA (Registrar), and the Registrar itself is being posted at the official website of the NA. Also, agendas of extraordinary sessions are not published in the RA Official Bulletin, though they are published in the *Hayastani Hanrapetutyun* official daily.

There are no legal restrictions for journalists in reporting on the legislature and the activities of its members. At the same time, the Law on Mass Media requires accreditation of the journalist in the state institution, whose activities he/she is going to cover. According to that, the state body is obliged to accredit the journalist, within five days, after the media entity, whom the journalist represents, applies for accreditation to that body.¹⁶⁷ The accreditation is carried out according to the Law on Mass Media and the procedure on accreditation defined by the state body in question. According to the Law on NA Regulations, the procedure of the accreditation of the journalists is approved by NA Speaker.¹⁶⁸ The current procedure of accreditation was adopted on August 21, 2009.¹⁶⁹ The Law on NA Regulations

¹⁶² Article 112 of the Law on NA Regulations

¹⁶³ Article 62 of the Law on Legal Acts

¹⁶⁴ The procedure of putting into circulation of the draft law in NA is regulated by Article 51 of the Law on NA Regulations.

¹⁶⁵ Sub point 22 of the Point 46.1 of the Charter of NA Staff provides that this task shall be carried out by NA Secretariat.

¹⁶⁶ See, for example, agendas of the Spring 2010 session meetings of the NA Standing Committee on Health, Maternity and Childhood on

http://www.parliament.am/committees.php?do=show&ID=111154&showdoc=1529&cat_id=177&month=all&year=2010&lang=arm

¹⁶⁷ Article 6 of the Law on Mass Media

¹⁶⁸ Article 18 of the Law on NA Regulations

¹⁶⁹ *RA Official Bulletin* 2009/42(708), 24.08.09

provides also that the open floor meetings are open for the accredited journalists.¹⁷⁰ Both the Constitution and Law on Regulations define that the sessions shall be open.¹⁷¹ At the same time, the mentioned articles of Constitution and Law on NA Regulations provide that NA also can convene decision closed-door meetings through its decision. However, the mentioned legal documents do not explicitly define the criteria for holding closed-door sessions.

The verbatim records of floor sessions are required to be recorded.¹⁷² The same Article of the Law on NA Regulations that requires recording of the verbatim records provides that within 10 days after the end of 4-day small session, extraordinary session or extraordinary meeting the verbatim records and audio records should be sent to NA library and posted on NA official web-site (www.parliament.am). The Article also permits the publication of verbatim records. There are no legal provisions on the verbatim records of the meetings of standing and ad hoc committees. However, similar to the case of agendas (see above), the transcripts of the meetings of NA standing committees are posted on the NA web-site.¹⁷³

Until 2007 the Law on NA Regulations was providing that Public TV should broadcast the recorded whole session of the announcements made by NA members and the session on the NA members' questions to the ministers of the Government.¹⁷⁴ In addition, the NA open sessions should be aired live by Public Radio, if NA did not adopt decision not to do so.¹⁷⁵ However, in 2007 the Constitutional Court ruled that all mentioned provisions regarding the broadcast of sessions or *Parliamentary Week* program were anti-constitutional.¹⁷⁶ The justification for that ruling was that these provisions violated the provided by Constitution¹⁷⁷ independence of media and other means of information guaranteed by the state and were hindering the activities of independent Public Radio and Public TV aimed at the diversification of their informational, educational, cultural and entertainment programs¹⁷⁸. On April 30, 2009 NA addressed this issue by introducing changes and amendments in the Law on NA Regulations, according to which the broadcast of the mentioned above sessions will be funded from the state budget.¹⁷⁹

¹⁷⁰ Article 43 of the Law on NA Regulations

¹⁷¹ Article 69 of Constitution and Article 43 of the Law on NA Regulations

¹⁷² Article 46 of the Law on NA Regulations

¹⁷³ See, for example, transcript of the November 11, 2011 meeting of the NA Standing Committee on Health, Maternity and Childhood the relevant page of www.parliament.am

¹⁷⁴ Article 35 of the Law on NA Regulations The same Article defines that the announcements of NA shall take place on Tuesdays during the 4-day small session period from 5pm to 6pm (if needed, it can be prolonged for additional 30 minutes) and the questions – on Wednesdays from 4:30pm to 6pm. These sessions should be recorded and broadcast on Public TV at 4-day session Wednesdays, starting from 9:30pm.

¹⁷⁵ *Ibid* Article 112 The same Article was providing that on Sundays at 9pm Public TV should broadcast the *Parliamentary Week* program, which is prepared by NA staff and publicizes the activities of NA, its committees, factions and groups.

¹⁷⁶ SDO-678 ruling of the Constitutional Court from 16.02.2007

¹⁷⁷ Article 27 of the Constitution

¹⁷⁸ It should be mentioned that Public TV decided not to stop airing the *Parliamentary Week* program, though, it is now broadcast not at 9pm (which is prime time on TV), but around 10-11am on Sundays.

¹⁷⁹ Article 41 of the Law on Making Changes and Amendments in the Law on NA Regulations *RA Official Bulletin* 2009/28(694) 3.06.09 Though the Law entered into effect from January 1, 2010, until now no TV station had broadcast live any session of NA. At the same time, on April 12, 2011 NA passed new changes and amendments to

The Law on NA Regulations allows members of public to attend sessions and meetings of NA and its standing committees, if they are open.¹⁸⁰ For that reason the citizen shall receive invitation. In the case of NA full session the invitation shall be received from either the “entitled” committee (standing or temporary committee, which is entitled to present the particular topic of the session agenda¹⁸¹) or the one, who chairs the session.¹⁸² In the case of the meetings of committees the invitation shall be received from the chair of the committee. By the proposition of the chair of the session or head of the leading committee, NA can decide to allow the invited individual(s) to express his/her opinion on the issue under debate. In addition, NA Speaker can invite members of public to the NA at the NA working meetings, which, as a rule, are held at 5:30pm on Fridays, preceding the start of NA spring or autumn sessions or regular 4-day sessions.¹⁸³ The procedure of issuing invitation is not regulated by the Charter of NA Staff.¹⁸⁴

Both NA and its members individually are required by law to respond to the queries of the citizens. In addition, NA staff also is required to receive citizens. Meeting with citizens and receiving them is among the rights of NA member.¹⁸⁵ Besides that among the duties of NA member is to study the suggestions received from citizens and respond to their queries.¹⁸⁶

According to the Decision of NA Speaker on the Approval of the Charter and Structure of NA Staff¹⁸⁷, one of the major functions of the staff is the study analysis and summarizing of the letters addressed to NA Speaker and NA staff, their re-sending, if needed, to the relevant official bodies or authorities and submission of corresponding report to NA leadership on the work performed related to these letters, as well as organization of the reception of citizens and registration of their suggestions, applications and appeals.¹⁸⁸ These functions are performed by the Section of Reception and Letters of Citizens (NA Reception) of NA staff.¹⁸⁹

The publicizing of NA activities is regulated by the Law on NA Regulations and charter of NA staff. As it has been already mentioned, the Law on Regulations provides that the activities of NA, its committees,

the Law on NA Regulations (entered into effect on April 14), and according to one of them, not later than from January 1, 2012 NA open sessions shall be broadcast on-line on the NA web-site (www.parliament.am). Commenting this change, many newspapers wrote that this has been done to bypass the requirement of live broadcast on TV.

¹⁸⁰ Articles 28 (for the case of standing committees) and 43 (for the case of NA full session) of the Law on NA Regulations

¹⁸¹ Article 30 of the Law on NA Regulations on the procedure of nominating the “entitled” committee

¹⁸² *Ibid.*, Article 43

¹⁸³ *Ibid.*, Article 110

¹⁸⁴ The invitations are prepared by NA Secretariat.

¹⁸⁵ *Ibid.*, Article 5

¹⁸⁶ *Ibid.*, Article 6

¹⁸⁷ *RA Official Bulletin 2009/50(716), 9.10.09*

¹⁸⁸ Points 12.8 and 12.9 of the Decision of NA Speaker on the Approval of the Charter and Structure of NA Staff

¹⁸⁹ *Ibid.*, Point 46.12

factions and groups shall be publicized through the *Parliamentary Week* weekly TV program.¹⁹⁰ According to the charter of NA staff, the program shall be prepared by the Department of Public Relations and Information of NA staff.¹⁹¹ By the same Point of the charter, the same Department is also responsible for all aspects of public relations of NA, as well as maintaining the *News* page on the NA official web-site. In addition, another unit in the structure of NA staff, the Publishing House, ensures the publication of the *National Assembly* monthly magazine.

The income and assets disclosure of legislators is regulated by the Law on Public Service¹⁹², as for other high ranking public officials¹⁹³. The Law provides that within 3 days after receiving the declaration, the Commission on the Ethics of High-Ranking Public Officials¹⁹⁴, to which the officials shall submit their declarations, shall include it in the register of the declarations.¹⁹⁵ However, the Law only provides that the Government shall decree the list and the contents of the data from the declarations, which could be publicized (accessed).¹⁹⁶ This implies that the register of declarations, which contains full information on the assets and income of the high-ranking officials, is not publicly accessible.¹⁹⁷

Transparency (Practice)

To what extent can the public obtain relevant and timely information on the activities and decision-making processes of the legislature in practice?

This is the field where National Assembly demonstrates achievements. Its well-developed official website www.parliament.am is being regularly updated and available in 4 languages (Armenian, Russian, English and French). As Foreign Policy Center notes: “The National Assembly has also continuously improved its web presence and today provides, through its website, access to a database of

¹⁹⁰ Article 112 of the Law on NA Regulations

¹⁹¹ Point 46.5 of Decision of NA Speaker on the Approval of the Charter and Structure of NA Staff

¹⁹² NA adopted the Law on Public Service on May 26, 2011, and it entered into effect on January 1, 2012. The entrance into effect of this Law revoked the Law on Declaration of Income and Assets of Physical Persons. It should also be mentioned that, in contrast to the Law on Declaration of Income and Assets of Physical Persons, which was requiring submission of declarations by most of the state officials, the Law on Public Service provides that only high-ranking public officials shall submit such declarations. Article 5 of the Law defines the high-ranking public officials and that definition includes also NA members.

¹⁹³ In addition to NA members, Article 5 of the mentioned Law defines high-ranking public officials also the Head of NA Staff and his/her deputies, as well as advisors and assistants of NA Speaker. Thus, they are also required to submit declarations.

¹⁹⁴ The establishment and functioning of the mentioned Commission is foreseen by the same Law on Public Service (Chapter 8 (Articles 38-44) of the Law). The Commission was formed on January 9, 2012 by the Decree of RA President.

¹⁹⁵ Article 37 of the Law on Public Service

¹⁹⁶ By the December 15, 2011 Decree N1835-N the Government defined the mentioned list and contents, as well as the form of the declarations.

¹⁹⁷ Point 2 of Article 37 of the Law on Public Service provides that data (from the declarations), which can be published, shall not involve information that identifies the person and his/her property.

all draft legislative acts that have been submitted to the legislature.”¹⁹⁸ The website provides information regarding draft bills, agendas of committees, protocols of committees’ sittings and of National Assembly in general, time line of the parliament, and almost all necessary information. However, Freedom of Information Center in its 2011 Report on Freedom of Information in Armenia considers National Assembly, along with RA Police, as the worst state body in terms of responding to queries.¹⁹⁹

Public Chanel H1 broadcasts each Sunday during sessions a program called “Parliamentary Hour”, while sittings are being broadcasted online. The draft bills are being published, however, it is worth to cite the following extract: “There exists no express requirement that civil society representatives be consulted in the process of drafting a law. The actual cases of consultation present a fragmented picture rather than a distinct pattern, and the decision to involve civil society is left at the discretion of the government agency in question. The report on Armenia’s ENP Implementation in 2010 notes with concern the practice of “expedient” legislative process when laws are passed in three readings during one day, which reduces to the minimum the effect from consultations. The ENP Implementation Report also notes the emerging trend of “handpicking” civil society representatives single-handedly and in an ad hoc manner to involve them in working groups to draft legislation.”²⁰⁰

Budget of NA, as well for all other state bodies, in great details is available via interactive budget at <https://www.e-gov.am/interactive-budget/>. Reports on the government performance are being published. Voting records also is available at the website for each voting. The declarations of income and property of all NA members for 2011 are posted on the web-site of the Ethics Commission for High Level Public Officials of High-Ranking Officials in the Register of Declarations.²⁰¹

Accountability (Law)

To what extent are there provisions in place to ensure that the legislature has to report on and be answerable for its actions?

According to Constitution, one of the powers of the Constitutional Court is to decide on the conformity of the laws and decisions adopted by NA to the Constitution.²⁰² The review of such cases by the Constitutional Court is regulated by the Law on Constitutional Court.²⁰³

The Law on NA Regulations foresees the mechanism of parliamentary hearings, through which the public can present its opinions and views on the drafts of the laws.²⁰⁴ The same Article also stipulates

¹⁹⁸ See Foreign Policy Center page 41

¹⁹⁹ http://foi.am/u_files/file/Eng_monitoring.pdf

²⁰⁰ FPC, Spotlight on Armenia, page 41

²⁰¹ See <http://www.ethics.am/restr/category/parliament>

²⁰² Article 100 of the Constitution

²⁰³ Article 68 of the Law on Constitutional Court

that hearings shall be organized by NA standing committees or NA Speaker, and such hearings cannot be conducted on Fridays or days, when there are floor debates. Each standing committee shall conduct at least one hearing during the big (spring or autumn) session. However, there are no legal provisions, which would ensure that the legislators take into account the concerns and opinions expressed by public. Another form of public consultation provided by law is responding by NA members to the suggestions of legislative character, expressed in the queries of the citizens (see above in the discussion on the **Transparency** indicator). The law does not require NA members to report to their constituents²⁰⁵, though, as it has been already mentioned, the local self-administration bodies are required to allocate a room or hall for the meetings of NA members with their constituents. In addition, NA Speaker recently was empowered to form consultative bodies consisting of representatives of the public.²⁰⁶

The decisions/actions of NA, as a state body, can be appealed by physical and legal persons in the same way as in the case of other state bodies using the RA Code of Administrative Procedure. NA members do not pass themselves separate legal decisions. Regarding the NA member's actions, if these actions ensue from their status of NA member, then they are immune from prosecution (see below).

The Constitution²⁰⁷ and Law on NA Regulations²⁰⁸ ensure the immunity of NA members. During the period of his/her term and after that, NA member cannot be prosecuted and held liable for the actions ensuing from his/her status as NA member, including for expressing his/her opinion, if it does not contain libel or insult. Only with the consent of NA, the NA member can be arrested (except the cases, when the arrest is performed at the moment of committing the crime by NA member, in which case the law enforcement body, conducting the arrest, shall immediately inform NA Speaker about the arrest), be involved in trial as defendant, be detained or file against him a case on administrative liability.

Armenian Constitution vests the right drafting of the legislation in NA members and the Government.²⁰⁹ Thus, NA standing committee, as an entity, does not have the power to draft legislation, which weakens its capacity to provide internal accountability mechanisms for NA. In this aspect, as the legal experts note, Armenian parliamentary standing committees play much smaller role, than their counterparts in many countries, especially EU member ones (for example, Italy Spain, UK or Bulgaria).²¹⁰ However, it plays important role in refining of bills, being the sole entity inside any, who has relevant powers for that. Within 2 days after receiving the bill, NA Speaker shall send it to all standing committees and

²⁰⁴ Article 32 of the Law on NA Regulations

²⁰⁵ The classical approach of reporting to the constituents is applicable only to 41 NA members, who are elected through the majoritarian vote. For the remaining 90 MPs, elected on the proportional vote, this approach is applicable on a party level.

²⁰⁶ Article 1 of the Law on Introducing Changes and Amendments in NA Law on NA Regulations The Law was adopted on April 8, 2010 and entered into effect on May, 15, 2010.

²⁰⁷ Article 66 of the Constitution

²⁰⁸ Article 9 of the Law on NA Regulations

²⁰⁹ Article 75 of the Constitution

²¹⁰ *Commentaries to the Constitution of the Republic of Armenia*. p. 727

appoint the leading committee.²¹¹ In their regular meetings, which are convened every Friday during the session²¹², the standing committees discuss the bills. At NA flour meetings during the debates on the bill, the leading standing committee shall present its conclusion on the bill, and other standing committees also can submit their conclusions.²¹³ These conclusions usually seriously affect the outcome of the vote on the flour. The power of the standing committee to initiate parliamentary hearings²¹⁴, as well as the power to establish sub-committee(s) and working groups within the standing committee²¹⁵ can also be considered as factors strengthening the role of standing committees. Finally, a very important power of the standing committee is its power to make inquiries to state agencies, institutions, organizations, as well as other organizations.²¹⁶ Such inquiries related to the bills that the particular standing committee is discussing.

Accountability (practice)

To what extent do the legislature and its members report on and answer for their actions in practice?

Public consultations present fragmented picture rather than a distinct pattern. Several unpopular bills, which were put into circulation without prior consultation with public, raised complaints among civil society organizations. For example, in 2010 the Government initiated changes and amendments into the Law on Language and Law on Public Education aimed at removing the ban that language of education in Armenia shall be only Armenian. This project gave rise to organization of civil society group called "We are against opening foreign language schools".²¹⁷ Another such example was the public initiative called "Protection of Rights of Individual Taxi Drivers".²¹⁸

The culture of reporting by various factions, groups of legislature and MPs is not well developed in Armenia. Since 2009, only parliamentary opposition faction "Heritage" presented report on activities for 2009.²¹⁹

Integrity mechanisms (Law)

²¹¹ Article 51 of the Law on NA Regulations

²¹² *Ibid.*, Article 27

²¹³ *Ibid.*, Article 55

²¹⁴ *Ibid.*, Article 32

²¹⁵ *Ibid.*, Article 23

²¹⁶ *Ibid.*, Article 30.1

²¹⁷ See <http://organize-now.am/am/>

²¹⁸ [http://organize-](http://organize-now.am/am/%D5%B6%D5%A1%D5%AD%D5%A1%D5%B1%D5%A5%D5%BC%D5%B6%D5%B8%D6%82%D5%A9%D5%B5%D5%B8%D6%82%D5%B6%D5%B6%D5%A5%D6%80%D5%A1%D5%B6%D5%B0%D5%A1%D5%BF-%D5%BF%D5%A1%D6%84%D5%BD%D5%B8%D6%82-%D5%BE%D5%A1%D6%80%D5%B8%D6%80%D5%A4%D5%B6%D5%A5%D6%80%D5%AB-%D5%AB%D6%80%D5%A1%D5%BE%D5%B8%D6%82%D5%B6%D6%84%D5%B6%D5%A5%D6%80%D5%A1%D5%B6%D5%B0%D5%A1%D5%BF-%D5%BF%D5%A1%D6%84%D5%BD%D5%B8%D6%82-%D5%BE%D5%A1%D6%80%D5%B8%D6%80%D5%A4%D5%B6%D5%A5%D6%80%D5%AB-%D5%AB%D6%80%D5%A1%D5%BE%D5%B8%D6%82%D5%B6%D6%84%D5%B6%D5%A5%D6%80/)

[now.am/am/%D5%B6%D5%A1%D5%AD%D5%A1%D5%B1%D5%A5%D5%BC%D5%B6%D5%B8%D6%82%D5%A9%D5%B5%D5%B8%D6%82%D5%B6%D5%B6%D5%A5%D6%80%D5%A1%D5%B6%D5%B0%D5%A1%D5%BF-%D5%BF%D5%A1%D6%84%D5%BD%D5%B8%D6%82-](http://organize-now.am/am/%D5%B6%D5%A1%D5%AD%D5%A1%D5%B1%D5%A5%D5%BC%D5%B6%D5%B8%D6%82%D5%A9%D5%B5%D5%B8%D6%82%D5%B6%D5%B6%D5%A5%D6%80%D5%A1%D5%B6%D5%B0%D5%A1%D5%BF-%D5%BF%D5%A1%D6%84%D5%BD%D5%B8%D6%82-%D5%BE%D5%A1%D6%80%D5%B8%D6%80%D5%A4%D5%B6%D5%A5%D6%80%D5%AB-%D5%AB%D6%80%D5%A1%D5%BE%D5%B8%D6%82%D5%B6%D6%84%D5%B6%D5%A5%D6%80%D5%A1%D5%B6%D5%B0%D5%A1%D5%BF-%D5%BF%D5%A1%D6%84%D5%BD%D5%B8%D6%82-%D5%BE%D5%A1%D6%80%D5%B8%D6%80%D5%A4%D5%B6%D5%A5%D6%80%D5%AB-%D5%AB%D6%80%D5%A1%D5%BE%D5%B8%D6%82%D5%B6%D6%84%D5%B6%D5%A5%D6%80/)

[%D5%BE%D5%A1%D6%80%D5%B8%D6%80%D5%A4%D5%B6%D5%A5%D6%80%D5%AB-%D5%AB%D6%80%D5%A1%D5%BE%D5%B8%D6%82%D5%B6%D6%84%D5%B6%D5%A5%D6%80/](http://organize-now.am/am/%D5%B6%D5%A1%D5%AD%D5%A1%D5%B1%D5%A5%D5%BC%D5%B6%D5%B8%D6%82%D5%A9%D5%B5%D5%B8%D6%82%D5%B6%D5%B6%D5%A5%D6%80%D5%A1%D5%B6%D5%B0%D5%A1%D5%BF-%D5%BF%D5%A1%D6%84%D5%BD%D5%B8%D6%82-%D5%BE%D5%A1%D6%80%D5%B8%D6%80%D5%A4%D5%B6%D5%A5%D6%80%D5%AB-%D5%AB%D6%80%D5%A1%D5%BE%D5%B8%D6%82%D5%B6%D6%84%D5%B6%D5%A5%D6%80/)

[http://www.parliament.am/news.php?cat_id=2&NewsID=3702&year=%7B\\$Year%7D&month=%7B\\$Month%7D&day=%7B\\$Day%7D](http://www.parliament.am/news.php?cat_id=2&NewsID=3702&year=%7B$Year%7D&month=%7B$Month%7D&day=%7B$Day%7D)

To what extent are there mechanisms in place to ensure the integrity of members of the legislature?

Legal regulation of the legislature integrity is provided by Constitution, Law on Public Service and Law on NA Regulations. Armenian Constitution provides that the legislator cannot be involved in entrepreneurial activities, hold office in state or local self-administration bodies or business entities, or perform other paid job, except those of scientific, pedagogical or creative nature.²²⁰ The Law on Public Service entered into effect from January 1, 2012 provides more detailed definitions of entrepreneurial activities, creative, scientific and pedagogical jobs.²²¹

The Law on Public Service defines the basic rules of ethics for public servants and high ranking public officials, which include, as mentioned above, also NA members.²²² The Law contains provisions on the limitations applied to them both related to their work²²³, as well as their other, not related to their work, activities²²⁴, which also regulate their conduct. These rules, for example, require using material, financial and informational means assigned to the official only for the job-related purposes. In addition, the Law also provides that the rules of ethics, defined by the Law are not exhaustive and could be supplemented by the laws regulating the specific areas of public service.²²⁵ This allows defining additional rules of ethics for NA members. Though the Law on Public Service stipulates establishment and functioning of the special Ethics Commission for High Level Public Officials of High-Ranking Public Officials, that Commission has no jurisdiction over the violations of ethics and conflict of interest of NA members.²²⁶

Public servant or high-ranking public official, including NA member and managerial positions in NA staff, cannot accept gifts or agree to accept it in the future.²²⁷ The same Article of the Law, defines the concept of the “gift”, according to which, the gift “is any property, which, in common sense, could not be given to an individual, who is not public official”. This concept, according to the Law, does not include hospitality in general or gift given by relative or friend²²⁸, if the content and size of the gift “rationally corresponds to the character of relationships between them”. This last formulation is rather

²²⁰ Article 65 of the Constitution

²²¹ Article 24 of the Law on Public Service

²²² *Ibid.* Point 3 of Article 28

²²³ *Ibid.*, Article 23

²²⁴ *Ibid.*, Article 24

²²⁵ *Ibid.* Point 4 of Article 28

²²⁶ *Ibid.*, Point 1.3 of Article 43 It is worth mentioning, however, that, according to the same Law, certain provisions of the Law regarding high-ranking public officials are not applicable for all NA members (the same is true also for the members of the Constitutional Court, judges and prosecutors). Among them are the provisions related to the conflict of interest and jurisdiction of the Commission on the Ethics of High Ranking Public Officials. The Commission has no jurisdiction to deal with the cases of conflict of interest and job-related ethical violations (for NA members even for the cases of non-job-related ethical violations) committed by the mentioned above high ranking public officials.

²²⁷ *Ibid.*, Article 29 Before the entrance into effect of the Law on Public Service, the acceptance of gifts by public officials was regulated by Government Decree N48 from February 17, 1993. Though this Decree is still in effect, however, as in Armenia the law is a legal act superior to the government decree (Article 14 Law on Legal Acts), it should be considered the regulation provided by the Law on Public Service.

²²⁸ For hospitality the Law does not specify by whom it is offered, which could be interpreted that hospitality offered by anyone is allowed.

vague, as the perception, wealth and status of those involved in giving and accepting the gift, influence on the content and size of that gift (for example, the wealthy businessman's gift to his friend definitely will differ in content and size from the gift given by the teacher to his friend). In certain cases the public servant or high-ranking official is allowed to accept gift.²²⁹ Those cases are: a) gifts, awards or hospitality received during official events; b) books, software or other similar materials received for administrative use; and, c) scholarships, grants or allowance awarded through contest. If the market price of such gifts exceeds 100,000 Armenian Drams (AMD), or around 259 USD²³⁰, then the public servant or high-ranking official shall give it up for charity purposes. Here it is not clear, why should the recipient of a book or software, who received them for administrative use, give it up for charity purposes. Thus, no mechanisms are explicitly provided by Law in the case, if the recipient does not give up the gift voluntarily.

The only post-employment restriction for public servant or high-ranking public official is that within one year after ceasing his/her duties he/she cannot be employed by an employer or organization, which was under his/her direct control during the last year of his/her service in the office.²³¹ This applies to NA members and NA staff.

There are also provisions in the Law on NA Regulations, which foresee sanctions for absenteeism with no valid excuse. The Law defines the procedure of ceasing the powers of NA member in the case, if she/he frequently was absent with no valid excuse during the voting at full sessions.²³² In addition, the NA member shall not get salary for the days, when he/she was absent from the sittings of standing committees or public hearings with no valid excuse.²³³

With the adoption of the Law on Public Service starting from January 1, 2012, only high-ranking public officials and persons affiliated to them²³⁴ shall submit declarations on income and assets. Article 33 of the Law provides that the official shall submit his/her declaration within 15 days following the date of assuming his/her position and terminating it, as well as by February 15 of the year following the year subject to declaration.²³⁵ According to the same Article, the declarations shall be submitted to the Ethics

²²⁹ Article 29 of the Law on Public Service

²³⁰ As of June, 2012 1USD=406AMD

²³¹ *Ibid.*, Article 23

²³² Article 99 of the Law on NA Regulations Though Article 33 of the same Law provides registration of MPs' participation in the work of standing committees, there are no provisions foreseeing sanctions for absenteeism with no valid excuse.

²³³ Article 6 of the Law on NA Regulations

²³⁴ According to Article 5 of the Law on Public Service the persons affiliated to the high-ranking public official are persons how are on the 1st and 2nd degree of blood relationship with the official and his/her spouse. Persons, who are at the 1st degree of blood relationship with the official and his/her spouse are their children, parents and siblings. Persons at the 2nd degree of blood relationship are, those, who are at the 1st degree blood relationship with the persons, who are at the 1st blood relationship with the official and his/her spouse.

²³⁵ It should be mentioned that according to Article 49 of the Law, declarations for 2011 shall be submitted by April 15, 2012.

Commission for High Level Public Officials for High-Ranking Public Officials, which is empowered to check these declarations.²³⁶

According to the Law on Public Service, NA members, as high-ranking public officials, are required to submit income and assets declarations to the Ethics Commission for High Level Public Officials of High-Ranking Officials.²³⁷ Moreover, such declarations shall be simultaneously submitted also by their close relatives, including their spouses, as well as parents and single adult children living with him/her.²³⁸ The problem here is that the scope of relatives is rather narrow, as it does not include parents and children, not living with the official, his/her siblings, as well as the relatives of the second kin. The Law provides that within 3 days after receiving the declaration the Commission on the Ethics of High-Ranking Public Officials shall include it in the register of the declarations.²³⁹

On March 19, 2012 was adopted Law no HO-111-N which entered into force on May 31, 2012. By this law were made significant amendments into Law on NA Regulations in the field of securing integrity of NA members. In particular, were introduced rules of ethics for MPs²⁴⁰, conflict of interest of MPs²⁴¹, limitations of activities of MPs and securing of these limitations²⁴², Ethics Commission²⁴³, order of suspension of powers of MPs in case of breaching incompatibility provisions of the Constitution²⁴⁴

The rules of ethics, stipulated by these new amendments, relate to both the exercise by the MP of his powers and also to his daily conduct.²⁴⁵ The rules of ethics for the MP are:

- a) respect and observe the law;
- b) respect the moral norms of the society;
- c) observe the procedure for the conduct of the sittings of the National Assembly and its committees;
- d) in the exercise of his/her powers, not be guided by his/her interests or those of the persons related to him/her;
- e) not use the reputation of the Deputy's office in his/her interest or that of another person;
- f) contribute by his/her actions to developing trust in and respect for the National Assembly;

²³⁶ Article 43 of the Law on Public Service

²³⁷ Point 1 of Article 32 of the Law on Public Service

²³⁸ *Ibid.*, Point 4 of Article 32

²³⁹ Article 37 of the Law on Public Service

²⁴⁰ Article 6.1 of the Law on NA Regulations

²⁴¹ *Ibid.*, Article 6.2

²⁴² *Ibid.* Article 9.1 and Article 9.2

²⁴³ *Ibid.*, Articles 24.1-24.5 on Ethics Commission

²⁴⁴ *Ibid.*, Article 99.1

²⁴⁵ *Ibid.*, Article 6.1

g) to manifest conduct befitting the Deputy anywhere and in any activity;

h) to manifest a respectful attitude towards his/her political opponents, participants of debates in the National Assembly, as well as all the persons with who the Deputy has contacts when exercising his/her powers

The new amendments also prescribe conflict of interest of MPs. The definition of conflict of interest is stipulated under article 6.2. According to it: “Being guided by his/her interests or those of another person related to him/her means for the MP initiating legislation or submitting a draft decision to the National Assembly for debate, submitting recommendations on an issue circulated in the National Assembly, as well as speaking or voting at the sittings of the National Assembly, its committees or sub-committees, which despite being lawful, leads or contributes or reasonably may lead or contribute, to the knowledge of the Deputy, to:

a) improvement of his/her proprietary or legal situation or that of any person related to him/her;

b) improvement of the proprietary or legal situation of the non-commercial organization of which s/he or any person related to him/her is a member;

c) improvement of the proprietary or legal situation of the commercial organization of which s/he or any person related to him/her is a participant;

d) appointment of any person related to him/her to an office.”

From this complicated definition it can be seen that there are 4 types of actions when may rise possibility of conflict of interest. Those actions are:

a) Initiation of legislation

b) Submitting a draft decision to the NA for debate;

c) Submitting recommendations on an issue circulated in the NA;

d) Speaking or voting at the sittings of the NA, its committees or sub-committees.

The same article also prescribes exceptions from the above mentioned conflict of interest definition. According to it: the MP is not guided by his interests or those of the person related to him/her if s/he acts on behalf of the committee, faction or deputy group of the National Assembly or that action:²⁴⁶

a) relates to the activities of the bodies of state and local self-government, state and community non-commercial organizations, institutions or their officials;

²⁴⁶*Ibid*

b) is of universal application and has implications for wide layers of the society to the extent that it cannot be interpreted as being guided by the private interests of the MP or anyone related to him/her;

c) is related to the remuneration of the MP, reimbursement for expenses related to his/her activities as a MP or privileges, as prescribed by Law.

The danger here is that when the MP acts on behalf of a committee, faction or deputy group of the NA, then he is not considered as being guided by his interests or the person related to him. The amendment does not provide the definition of related person to MP, rather it refers to the definition contained in Law on Public Service.²⁴⁷

In case of a conflict of interest arising at the sittings of the National Assembly, its committees or sub-committees, the MP must make a statement on the conflict of interest prior to speaking or voting in the relevant sitting, and when making a legislative initiative, submitting a draft decision to the National Assembly for deliberation or submitting recommendations on an issues circulated in the National Assembly, s/he must submit his/her written statement along with the relevant documents stating the nature of interests.²⁴⁸

The MP makes a statement on conflict of interest at the sitting of the NA in the manner prescribed by sub-paragraph 'f', Paragraph 2 of Article 56 of this Law on NA Regulations. In this case, the MP may also state that s/he refuses to take part in the voting on the issue, and his absence is regarded as justified.²⁴⁹

The problem is that both for violation of rules of ethics and conflict of interest there are no stipulated sanctions. Both are not considered as a basic for termination of powers of the MP in accordance with article 12 of the Law on NA Regulations.

While there are no sanctions for the violation of rules of ethics and conflict of interest, the same does not stand true in case of violating constitutional provision of incompatibilities (article 65 of the Constitution). Violation of this provision forms a basis under article 12 of the Law for the termination of powers of an MP.

The law made amendments also for the constitutional provision of incompatibilities (article 65 of Constitution). According to newly amended article 9.1, in defining the content of scientific, educational or creative works, as well as entrepreneurial activities, a reference must be made to article 24 of Law on Public Service.²⁵⁰ Remuneration for scientific, education or creative works may not be beyond what is reasonable, i.e. the amount that is payable to a person who has similar qualifications but who is not a

²⁴⁷*Ibid.*, part 2

²⁴⁸*Ibid.*, part 3

²⁴⁹*Ibid.*, para 2

²⁵⁰*Ibid.*, Article 9.1 (2)

MP.²⁵¹ The duties of MP prevail to his engagements in scientific, educational or creative works and can not be considered as justification for missing more than half of votes within one regular session.²⁵²

According to newly introduced article 9.2, within one month following the adopting by the relevant electoral commission of a decision on the election of the MP, the latter must:

- a) re-register from the state register of private entrepreneurs;
- b) resign from a commercial organization or hand over his/her full share in the charter capital thereof to trust management;
- c) resign from the position of a trust manager of another's property in a commercial organization;
- d) resign from his/her office in state and local self-government bodies;
- e) resign from any paid work if according to Article 24 of the Law of the Republic of Armenia on Public Service it is not regarded as scientific, academic or creative work.

Article 24.1 of the Law on NA Regulations regulates formation of Ethics Committee. Ethics committee is formed upon the nomination of the factions at the first four-day sitting of the first session of the National Assembly, as well as of each regular session, and functions until the formation of the next ethics committee of the National Assembly of the same convocation.²⁵³ The membership is being approved and the chairperson and vice chairperson are being appointed by the Speaker of the National Assembly.

Each faction has a right to nominate at least one MP in the ethics committee. If the overall number of non-opposition factions is not equal to the overall number of opposition factions, the membership of the ethics committee is expanded with additional member(s) in the following manner: a) if the number of non-opposition factions is bigger than that of opposition factions, then the right to consecutively nominate one additional member in places constituting the difference belongs to the opposition factions; b) if the overall number of opposition factions is bigger than that of non-opposition factions, then the right to consecutively nominate one additional member in places constituting the difference belongs to the non-opposition factions.

The additional member(s) is nominated until the numbers of non-opposition and opposition factions become equal in the ethics committee. The sequence of nomination of the additional member(s) is determined according to the number of factions having the right to nominate them – from the bigger number to the smaller one.

²⁵¹*Ibid*, para. 4

²⁵²*Ibid*, Article 9.1 (3) and (5)

²⁵³ *Ibid.*, Article 24.1

The chairperson and vice chairperson of the ethics committee are appointed from among the members of the ethics committee upon the nomination of the factions. The right to consecutively hold the position of the chairperson of the ethics committee belongs to the largest opposition and non-opposition factions.

If the position of the chairperson of the ethics committee is held by a representative of a non-opposition party, then the right to hold the position of the vice chairperson of the committee belongs to the largest opposition factions and vice versa. Factions have a right to change their members sitting in the ethics committee.

The Commission has secretariat which is composed from 1 secretary and 1 administrative assistant.²⁵⁴ The secretariat is a structural subdivision of the staff. The secretary and administrative assistant (aid) of the ethics committee are recruited and dismissed in conformity with the legislation on the state service in the National Assembly.²⁵⁵

The Competence of the Ethics Committee is stipulated under article 24.2. According to that article the Committee adopts decisions and conclusions. Decisions concern two cases:²⁵⁶

1. Violation of rule of ethics by an MP;
2. Failure by a MP to make a statement on conflict of interest.

Conclusions concern 3 cases:

1. Violation by a MP of incompatibility provisions stipulated under article 65 of Constitution (this is the only type of document which is being submitted to NA for discussion);
2. Submits a conclusion to a MP on compatibility of the work indicated by him with the article 24 of the Law on Public Service;
3. Submits a conclusion to a MP on the need to make a statement on conflict of interest on an issue indicated by him.

The Committee has broad powers such as obtaining documents from state and municipal bodies, organizations, institutions and their public officials²⁵⁷, demanding from them to carry out checks, studies and expert examinations (except from courts, judges and prosecutors)²⁵⁸ and to freely visit any state or

²⁵⁴ *Ibid.*, Article 24.5 (1)

²⁵⁵ *Ibid.*, Article 24.5 (2)

²⁵⁶ *Ibid.*, Article 24.2

²⁵⁷ *Ibid.*, part 2

²⁵⁸ *Ibid.*

municipal organization and institution and to familiarize themselves with any document or material related to the issue under examination by the Committee.²⁵⁹

Anyone can apply to the Committee for those cases which relates to violation of constitutional provision on compatibility (article 65), rules of ethics (article 6.1 (2) of the Law on NA Regulations) and failure on making statement on conflict of interest (article 6.2 (3) of the Law on NA Regulations).²⁶⁰

After receiving the application, during 10 days period the Committee decides to start the examination of the issue or not²⁶¹, and in both cases in 3 days period the secretary of the Committee sends notification both to applicant and to the MP mentioned in the application.²⁶² The time period for the examination of the issue should be 30 days. However, if there is need to collect additional information or documents and if it is impossible to adopt a decision or conclusion on the merits in the remaining period of time, then the period can be extended up to 20 more days.²⁶³

The same article also prescribes cases when the examination must be suspended. There are only 2 cases when the examination must be suspended:²⁶⁴

1. There is an ongoing constitutional, administrative, civil or criminal case and it is impossible for the Committee to adopt a decision or conclusion until a decision (judicial act) will be adopted within the framework of the mentioned ongoing cases;
2. Elements of crime are identified in the course of the examination of the issue by Ethics Committee.

In case when elements of crime are identified, the Committee suspends examination and secretary of the Committee within 24 hours sends all materials to General Prosecutor.

The sittings of the committee are in camera, except when the MP indicated in the application suggests that an open sitting be held.²⁶⁵ Until adoption of final decision or conclusion, the content of the application is subject to nondisclosure.²⁶⁶ The chairperson of the ethics committee publicizes the resolutions and conclusions of the ethics committee at the upcoming four-day sitting of the regular session of the National Assembly, following which they are posted on the website of the National Assembly.²⁶⁷

²⁵⁹ *Ibid.*, part 4 In case if the information contain secrets such as state, commercial, service or any other secrets protected by law, then the Committee's members can get familiarized with such information in accordance with the order prescribed by law

²⁶⁰ *Ibid.*, Article 24.3

²⁶¹ *Ibid.*, part 4

²⁶² *Ibid.*, part 6

²⁶³ *Ibid.*, part 7

²⁶⁴ *Ibid.*, part 8

²⁶⁵ *Ibid.*, Article 24.4

²⁶⁶ *Ibid.*, Article 24.4 (1) (j)

²⁶⁷ *Ibid.*, Part 3

Another amended article is 99.1, which stipulates the procedure of terminating powers of a MP for breaching article 65 of Constitution (provision on incompatibilities of a MP). According to it, if as a result of the examination the Ethics Commission adopts a conclusion on breaching by a MP the terms of article 65 of Constitution, then within 24 hours it is sent to the Speaker of the NA.²⁶⁸ Then, the conclusion of the Commission is being included in the agendas of the regular session of the NA and its forthcoming four-day sitting and being debated out of turn. The conclusion of the Commission is being debated in the NA whereas main reporter acts a member of the Commission authorized for that purpose, while the MP indicated in the conclusion (or another MP authorized by him) can act as co-reporter. Upon the completion of the debate, the issue of breaching article 65 of Constitution is being put to the vote. The decision on this issue by NA is being adopted by secret ballot, by majority of votes of MPs participating in the vote, given that more than half of the total number of MPs have participated. In case of receiving necessary number of votes on breaching article 65, then is being drawn minutes on the termination of powers of the MP. The minutes must be signed by the Speaker of NA who must send it to Central Electoral Commission within a 5 day period.

Overall, the adoption of the Law on Public Service allowed addressing a number of issues related to legislature integrity, not addressed or addressed very insufficiently previously. Among these issues are the basic rules of ethics for high-ranking officials, which include NA members, their post-employment regulations, rules of acceptance of gifts, more realistic mechanisms for the verification of their income and assets declarations and others. At the same time, the mentioned Law does not cover many aspects of legislature integrity, which will be addressed through the adoption of the amendments and changes in the Law on NA Regulations. This seriously narrows independent oversight over the integrity of lawmakers. The Law itself has a number of deficiencies, among them, for example, lack of mechanisms of sanctions for not declaring gifts received or limitations of the scope of relatives, whose income and assets declarations are required for submission.

Integrity mechanisms (Practice)

To what extent is the integrity of legislators ensured in practice?

As OECD notes "This appears to be a major issue of concern that Armenia need to address.... 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."²⁶⁹ The problem is so justified that even

²⁶⁸ *Ibid.*, Article 99.1

²⁶⁹ See OECD , pages 68-69

Prime Minister in one of his interview recognized the fact and mentioned that it must be made steps to ensure that persons who are engaged in business will not become MPs.²⁷⁰ For example the president of coalition party "Prosperous Armenia" Gagik Tsaroukyan is one of famous millionaires in Armenia and who is MP at the same time. In question of journalist of Hetq online whether this fact does not violate RA Constitution, press secretary Khachik Galstyan noted that it is inalienable political right of entrepreneurs as citizens of Armenia. In addition he noted that since 2003 business of Mr. Tsaroukyan is being governed by Multi Group concern, and that he, as an MP, acts in accordance with RA Constitution.²⁷¹

After significant amendments into RA Law on NA Regulations in March of 2012, a separate Ethics Commission will operate within National Assembly, but due to the requirements of Law on Public Service, the declarations will be collected and published by Ethics Commission for High Level Public Officials.

Role

Executive Oversight (Law & practice)

To what extent does the legislature provide effective oversight of the executive?

The Constitution stipulates, if necessary, the establishment and functioning of temporary (*ad hoc*) committees, for preliminary discussion of the drafts of certain laws, and preparation and submission to NA conclusions and fact sheets on certain issues, events or facts.²⁷² The procedures of the establishment and conduct of temporary committees are defined by the Law on RA Regulations.²⁷³ The powers of temporary committee, in particular their right to demand and receive necessary documents from the relevant state and local self-government executive bodies are defined by the corresponding NA decision on the establishment of such committee. Through the establishment and operation of temporary committees NA can (and in practice it did several times) study (but not investigate in the sense of parliamentary investigations well-known in West) the actions of the executive.²⁷⁴ After completing its tasks, the temporary committee shall prepare and submit a report to NA, which is debated on the floor and, based on this report and debates, NA passes its official decision²⁷⁵. However, the temporary

²⁷⁰ See <http://aravot.am/old/am/articles/politics/87347/view>

²⁷¹ See <http://hetq.am/arm/print/3338/>

²⁷² Article 73 of the Constitution

²⁷³ Article 22 of the Law on NA Regulations

²⁷⁴ One such example was the establishment on September 10, 2003 (NA Decision N-014-3 from 10.09.2003 published in *RA Official Bulletin 2003/49(284) 01.10.03*), of the Temporary Committee on the Investigation of the Efficiency of the Use of Loans, Credits, Grants and Humanitarian Aid Received from Foreign Governments and International Organizations. This Committee was investigating the decisions and actions of relevant executive bodies related to the use of the mentioned credits, loans, grants and humanitarian aid received by the Government.

²⁷⁵ Article 22 of the Law on NA Regulations

committee does not have investigative functions, which weakens its oversight function. Another factor that weakens the oversight function of the temporary committee is that NA has no power to require criminal or administrative proceedings against those bodies or officials, which, based on the temporary committee's report, was suspected for wrongdoing, though, in practice, law-enforcement bodies usually initiated such investigations. The mentioned factors, as well as the practice of the establishment of temporary committees, when such committees, as a rule, have been established based on political expedience conditioned by the existing at that moment political situation, give ground for many experts to argue that NA temporary committees actually do not perform oversight functions over the executive.²⁷⁶

Among other instruments of the legislature's oversight over the executive, provided by Constitution, are the power of legislature to approve the Government's Action Plan, MPs' right to submit questions and the right of factions and groups to submit interpellations to the Government. According to the Constitution,²⁷⁷ within 20 days following of its formation the Government shall submit its Action Plan to NA for the latter's approval, and within 5 days following that submission NA shall vote on it. The Action Plan is approved through simple majority vote. At the same time, the Constitution provides that if within two months NA does not approve the Government's Action Plan, then the President of the Republic shall dissolve NA.²⁷⁸ These arrangements stem from another constitutional provision (based on the logic of the semi-presidential system of governance), when the President, who appoints the Government, shall make those appointments based on the configuration of political forces in NA, namely, the Government shall enjoy the support of the majority of the Parliament.²⁷⁹ As a result, the Government automatically gets the support of the parliamentary majority in NA, which makes the passage of its Action Plan just an act of formality, meaning that the oversight aspect of the mentioned approval virtually disappears. Another factor that weakens the oversight function of the Action Plan approval procedure is that the Constitution does not allow MPs to amend or make changes in the Action Plan.

According to the Constitution, MPs can submit written and oral questions and factions and groups – written interpellations to the Government.²⁸⁰ These instruments are considered in the international practice as effective means of legislature's oversight over executive. Each MP can submit only one written and one oral question in one month.²⁸¹ Each faction or group can submit one interpellation per

²⁷⁶ *Commentaries to the Constitution of the Republic of Armenia*. p. 760

²⁷⁷ Article 74 of the Constitution

²⁷⁸ *Ibid.*, Article 74.1

²⁷⁹ *Ibid.*, Point 4 of Article 55

²⁸⁰ Article 80 of the Constitution Articles 5, 105 and 105.1 of the Law on NA Regulations regulate the procedures for the submission of questions and interpellations, their discussion in NA and adoption of relevant NA decisions. In particular, Clause 3 of Article 105 provides that the Government shall answer to the MPs' questions at the last session of the Wednesday meeting during the 4-day NA floor meetings.

²⁸¹ Article 105 of the Law on NA Regulations

session to the Government.²⁸² Though the Constitution does not empower the MPs to submit also *inquiries* to the Government, such power is foreseen by the Law on NA Regulations.²⁸³ However, as the legal experts mention²⁸⁴, the fact that the relevant NA decision stemming from the interpellation shall contain only recommendations to the relevant executive body to whom the interpellations was addressed²⁸⁵, which (NA decision) cannot be considered as a mandatory legal act obliging its execution by the executive body, and thus, entailing to any legal consequences, the institute of interpellation loses its significance as a means of legislature's oversight. The same is true also for the MPs' inquiries. In general, the problems related to the legislature's oversight on the executive, to some extent stem from the fact that neither the Constitution, not the Law on NA Regulations explicitly defines the concept of such oversight.

According to Constitution, NA approves the budget, submitted by the Government.²⁸⁶ The same Article of the Constitution defines that the procedure of the debate on the draft of the budget and its adoption shall be defined by law.²⁸⁷ Also, the Constitution stipulates that the Government shall submit the draft of the budget to NA at least 90 days prior to the start of the fiscal year (January 1).²⁸⁸ By another article of the Constitution²⁸⁹, NA is empowered to oversee the execution of the state budget and, in the presence of the conclusion of the RA Chamber of Control, debate and approve the annual report on the execution of the budget submitted by the Government²⁹⁰. Finally, within 40 days following the end of each quarter of the fiscal year the Government shall submit to NA, statement on the execution of the budget for that quarter.²⁹¹

NA has no power to scrutinize appointments to executive posts, and hold their occupants to account. At the same time, the Constitution empowers NA to impeach the President for high treason or other grave crimes.²⁹² However, the procedure is rather lengthy and difficult. First, NA shall pass a decision by simply majority of vote to appeal to the Constitutional Court. After that the Constitutional Court shall decide on that issue. If the decision will be positive, then NA shall once more vote on impeachment, but this time the decision on impeachment shall pass by qualitative majority (at least two third) of votes.

²⁸²*Ibid.*, Article 105.1

²⁸³*Ibid.*, Article 5

²⁸⁴*Commentaries to the Constitution of the Republic of Armenia*. p. 769

²⁸⁵ Point 5 of Article 105.1 of the Law on NA Regulations

²⁸⁶ Article 76 of the Constitution

²⁸⁷ Chapter 10 (Articles 79-86) of the Law on NA Regulations regulates the floor debate of the budget draft and its adoption.

²⁸⁸ Article 90 of the Constitution

²⁸⁹*Ibid.*, Article 77

²⁹⁰ Chapter 11 (Articles 87-89) of the Law on NA Regulations regulates the floor debate of the annual report of the budget execution.

²⁹¹ Article 86 of the Law on NA Regulations

²⁹² Article 57 of the Constitution

The Constitution also empowers NA to pass (by simple majority) vote of no confidence to the Government (except during the emergency situation or martial law).²⁹³ By the same Article of the Constitution, the draft of the decision on no confidence shall be submitted either by the President of the Republic or at least one third of the members of NA.

According to Constitution, NA appoints the Ombudsman for 6-year term by at least by three fifth of the votes of NA members.²⁹⁴ By the nomination of the President, NA appoints also the Chair of the Chamber of Control for 6-year term with the possibility of not more than one re-appointment.²⁹⁵ The Head of CEC is elected by its members and appointed by the decree of the President (see more about this in the chapter on the *Election Management Body* pillar). There are no direct and explicit control mechanisms via legislature to monitor public contracting by the executive. However, NA can indirectly monitor public contracting through its constitutional power to control the budget adoption and execution.²⁹⁶ In particular, by the same Article of the Constitution, NA shall debate and approve the Government's annual report on budget execution only accompanied by the resolution of the Chamber of Control, which has the power to audit procurement, as well.

As was noted in section of Independence, National Assembly does not play an important role in exercising its powers for checks and balances. As Dr. Nicole Galline from the University Fribourg writes: *“Compared to president’s powers, other political institutions remain weak (namely Parliament). Prime minister enjoys relatively little power. In theory, however, they should be important political players since Armenia has a semi-presidential system. Political parties have little to offer beyond national rhetoric, and could be considered informal associations to secure individual needs and power.”*²⁹⁷ This statement of the individual researcher is being grounded by PACE: *“10. The efficiency of parliaments is to a great extent a result of their representativity, and capacity for serving as a platform for dialogue between different political forces. Regrettably, in a number of countries, dialogue is jeopardized for different reasons: in some of them, parliaments are monopolised by the limited number of political forces (Azerbaijan, Armenia, Russian Federation, Georgia), and/or the opposition is too weak and/or fragmented (Azerbaijan, Russian Federation, Georgia). 19.3. with respect to parliamentary oversight over the activities of the executive and strengthening of the capacity of parliaments: 19.3.1. the Parliaments of Armenia, Azerbaijan, Georgia, the Russian Federation, and Ukraine to review their legislation with a view to strengthening their role of parliamentary oversight over the activities of the executive;”*²⁹⁸

²⁹³ *Ibid.*, Article 84

²⁹⁴ *Ibid.*, Article 83.1

²⁹⁵ *Ibid.*, Article 83.4

²⁹⁶ *Ibid.*, Article 77

²⁹⁷ http://cria-online.org/10_3.html

²⁹⁸ <http://assembly.coe.int/Mainf.asp?link=/Documents/WorkingDocs/Doc10/EDOC12275.htm>

During the last 4 years the only inquiry committee which was formed was the committee for investigation of March 1, 2008. The work of the committee is delicately observed by Parliamentary Assembly of Council of Europe. The latter in resolution 1837 (2011) notes: “2. The Assembly takes note of the report of the Ad Hoc Parliamentary Inquiry Committee of the National Assembly and considers that, despite a number of shortcomings, its recommendations could constitute an adequate basis for addressing the underlying causes of the March 2008 events and for preventing similar situations from occurring in the future. 3. The Assembly reiterates its concern about the lack of results of the inquiry into the 10 deaths that occurred during the March 2008 events. It therefore welcomes the renewed impetus given by the President of Armenia in recent months....”²⁹⁹

Taking into account the current political situation, it can be claimed that legislature’s power of oversight cannot be viewed as effective, simply because of its dependence from executive. It is quite not realistic to anticipate that new convocation of the National Assembly will gradually change the situation.

Legal reforms (Law and practice)

To what extent does the legislature prioritise anti-corruption and governance as a concern in the country?

The indicator to assess the extent to which the legislature prioritizes anti-corruption and governance could be the number of those adopted by NA laws, which have been included in the 2009-2012 Anti-corruption Strategy Action Plan. On December 29, 2011 Armenian Government finally posted (for the first time since the mentioned Action Plan entered into effect on December 3, 2009) on the relevant page of its web-site the Report on the Monitoring of the 2010 Results of the Anti-corruption Strategy 2009-2012 Action Plan (see <http://www.gov.am/files/docs/914.pdf> - only in Armenian) and Report on the Monitoring of the First Half of 2011 Results of the Anti-corruption Strategy 2009-2012 Action Plan (see <http://www.gov.am/files/docs/915.pdf> - only in Armenian). According to these reports, during the period from January 1, 2010 to June 30, 2011 NA adopted 3 new laws and 1 Code, and made changes and amendments in 8 laws or codes, which are envisaged by the Action Plan.³⁰⁰ The new laws were: the Law on Internal Audit (entered into effect from February 5, 2011), new Law on Procurement (entered into effect from January 1, 2011) and the Law on Public Service (entered into effect from January 1, 2012). Also NA adopted the new Electoral Code, which entered into effect from June 26, 2011. NA also made changes and amendments in Customs Code, Criminal Code (twice), Code on Administrative Delinquencies, Law on the State Registration of Legal Persons, old Electoral Code, Law on the Protection of Economic Competition and Law on the Prosecution. Each of these legal acts is aimed, according to the Action Plan, to achieve certain anti-corruption goals. In particular, the Law on Internal Audit will improve the quality audit plans and reports, through the introduction of the audit on financial

²⁹⁹<http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta11/ERES1837.htm>

³⁰⁰ It is worth mentioning that when necessary simultaneously changes and amendments have been adopted in the related laws and codes, as well. These changes and amendments were not taken into account in this study.

and administrative conformity and efficiency, as well as methodologies and procedures of risk assessment. The new Law on Procurement will enhance the transparency, accountability and integrity of the Armenian public procurement system through its decentralization, which will increase the role and capacities of state institutions (under the old Law on Procurement all procurement of the central government was conducted through a centralized body – State Procurement Agency). The major anti-corruption goals to be achieved by the adoption of the new Electoral Code, according to the Action Plan, are exclusion of involvement of political activists in the electoral commissions³⁰¹ through changing the principle of the formation of electoral commissions and improvement of the legal procedures for the appeals and complaints related to the violations during elections. A number of goals defined by the Action Plan will be achieved with the adoption of a very important Law on Public Service. First, through this Law all types of public services, and among them those rendered by state commercial and non-commercial organizations will be regulated by a universal law. Second, universal principles on the rights and duties, recruitment, promotion, dismissal, ethics, conflict of interest and other integrity issues for all public services are defined. Third, a more realistic approach for the verification of income and assets declarations of high-ranking public officials is adopted. However, in the Report on the Monitoring of the First Half of 2011 Results of the Anti-corruption Strategy 2009-2012 Action Plan it was also noted that a number of goals to be achieved, according to the Action Plan, through the adoption of the mentioned Law were not achieved, as relevant provisions were not included in the final text of the Law. First of all, the Law did not provide (as foreseen by the Action Plan) establishment of a unified authorized body (similar to Public Service Council), which will manage the whole area of public service, and develop and implement integrated policy on public service.³⁰² Another provision to be included in the Public Service Law according to Action Plan, which was also not included there, is the provision, which will make the heads of staffs of public institutions as only officials, responsible for the recruitment of staff, and, by that, seriously decrease the role of political officials in the recruitment of public officials. For more detailed discussion on the legal regulation of public service, see *Public Service* pillar.

As a member of the Council of Europe, Armenia through NA ratified the Criminal Law Convention on Corruption (2006) and Civil Law Convention on Corruption (2005). On March 2007 Armenia also ratified UN Convention against Corruption.

As Bertelsmann Stiftung notes: *“Shortcomings in Armenia’s anti-corruption policies have been most clearly demonstrated by the powerful role of Armenia’s small wealthy political elite, the so-called*

³⁰¹The new principle of the formation of Central Electoral Commission (CEC) and territorial electoral commissions (TECs) defined by the new Electoral Code was criticized by experts and opposition parties (see more about that in the discussion on the *Election Management Body* pillar), as in this case the members of these commissions are nominated by state institutions, who, in practice are completely dependent on the President and executive.

³⁰² As the authors of the Report correctly mentioned the introduction of such body implies dissolution of similar bodies in the specific areas of public service (for example, Civil Service Council in civil service), as the simultaneous existence of a unified public service body and analogous body in the particular area of public service will entail to collision and duplication of the functions of both bodies. So far, the government’s preference is to keep already existing bodies in the separate areas of public service.

*oligarchs, who exercise not only commercial and economic power through commodity-based cartels and virtual monopolies, but who have also acquired political power after becoming parliamentary deputies. Left unchecked, their corruption-originating wealth and political power only threatens democratization and the rule of law, and allows them to further consolidate and protect their informal networks of power.*³⁰³

Recommendations on the pillar of Legislature

1. The mechanism of public hearings shall be cohesive and understandable for the general public. In addition, the new mechanism shall be intensively advocated in the society to receive the support, interest and recognition of the public.
2. The accountability of the National Assembly is undermined also by the fact that majority of MPs and factions don't report to public on their conducted work and activities. For this reason, it is recommended either to take soft measures (memorandum between factions of the National Assembly) or hard law measures (making amendments in the Law on NA Regulations to oblige MPs and factions to compose and post on the official website of the National Assembly reports on their conducted activities and provide reasoning for their conducted actions).
3. The definition of the "interrelated person" in the Law on Public Service, is quite narrow, which gives room for its manipulation. The suggestion would be to alter and amend the respective provision cited in this report.
4. There are no sanctions for the violations of rules of ethics and conflict of interest provisions in the Law on NA Regulations. Introduce proper sanctions to have stronger impact of rules of ethics and conflict of interest provisions.
5. Formation of temporary committees is not considered as widespread practice for the National Assembly. While having potential of effective tool of control over the executive branch, the National Assembly failed and fails to utilize this tool. For this reason, it is suggested to amend

³⁰³<http://www.bti-project.org/laendergutachten/pse/arm/2012/#chap3>

and alter the Law on NA Regulations with an aim to make mandatory formation of temporary committees, in case of receiving a petition presented by at least 1.000 citizens.

6. Provide trainings on ethics for MPs.

Executive

Table of Indicator Scores

Executive			
Overall Pillar Score: 52.77			
	Indicator	Law	Practice
Capacity 58.3	Resources		50
	Independence	75	50
Governance 50	Transparency	50	75
	Accountability	50	50
	Integrity	50	25
Role 50	Public Sector Management	50	
	Legal System	50	

Structure and Organization

According to Armenian Constitution, the system of governance in Armenia is semi-presidential republic and in such models President is separated from executive and viewed as the one, who “ensures the normal functioning of legislative, executive and judicial branches of the government”.³⁰⁴ The policies of the Government in different areas are developed and implemented by republican executive bodies (REB), and these bodies are the ministries and state governance bodies affiliated to the Government.³⁰⁵ According to Constitution, the Government consists of Prime Minister and ministers, and, by the nomination of the Prime Minister, the President can appoint one of the ministers as Deputy Minister, who replaces the Prime Minister in his absence.³⁰⁶ Currently, the Minister of Territorial Administration is the Deputy Prime Minister. With the recommendation of the Prime Minister, the President appoints and dismisses the ministers.³⁰⁷

³⁰⁴ Article 49 of the Constitution

³⁰⁵ Decree NH-174-N of the President of the Republic of Armenia from July 18, 2007 on the Establishment of the Procedures of Organization of the Activities of the Government of the Republic of Armenia and Other State Bodies under Its Supervision *RA Official Bulletin 2007/37(561) 25.07.07*

³⁰⁶ Article 85 of the Constitution

³⁰⁷ *Ibid.*, Article 55

The Constitution defines the procedure of the formation of the Government.³⁰⁸ Based on the distribution of the seats in the Parliament (National Assembly - NA) and consultations with the factions, the President appoints the Prime Minister a person, who has the support of the parliamentary majority, and, if it is not possible (there is no such person), then he appoints the one, who has the support of the relative majority of NA members. The Prime Minister supervises the activities of the Government and coordinates the activities of the heads of other state bodies, which are under his subordination.³⁰⁹ Since June 2003 the Armenian Government is a coalition Government, and the coalitions are formed based on the configuration of political forces represented in NA, which resulted from the outcome of parliamentary elections. The composition of the coalition changed over years; however, only one of the parties, Republican Party of Armenia (RPA), was a permanent member of it. Moreover, RPA is always the leading political party there, including in this current configuration. The coalitions are formed based on coalition memoranda or agreements. In June, 2012, after elections to National Assembly, was formed new Government: only ministerial posts are occupied by members of RPA and Rule of Law political party, and also there are ministers, who do not have political affiliation.

The Constitution defines also the cases of the resignation of the Government.³¹⁰ The Government shall resign a) immediately on the day when the newly elected NA convenes its first, opening meeting; b) when the President is inaugurated; c) NA passed a no confidence vote on the Government (see more on this in the *Accountability* indicator); d) NA votes against the program of the government; e) the Prime Minister submits his/her resignation; or, f) the post of the Prime Minister became vacant.

According to Constitution, the structure of the Government shall be defined by law proposed by the Government, and the procedure of the activities of the Government and the structure of other bodies of state governance shall be defined by the decree of the President upon the recommendation of the Prime Minister.³¹¹ The Law on the Structure of the Government stipulates that the Government shall consist of 18 ministries.³¹² Those are:

- Ministry of Labor and Social Issues;
- Ministry of Health;
- Ministry of Justice;
- Ministry of Emergency Situations;
- Ministry of Foreign Affairs;
- Ministry of Nature Protection;
- Ministry of Agriculture;

³⁰⁸*Ibid.*,

³⁰⁹ Decree NH-174-N of the President of the Republic of Armenia from July 18, 2007

³¹⁰ Point 4 of Article 55 of the Constitution

³¹¹*Ibid.* Article 85

³¹²*RA Official Bulletin 2008/40(630) 25.06.08*

- Ministry of Economy;
- Ministry of Power Industry and Natural Resources;
- Ministry of Education and Science;
- Ministry of Culture;
- Ministry of Defense;
- Ministry of Sports and Youth Issues;
- Ministry of Diaspora;
- Ministry of Territorial Administration;
- Ministry of Transportation and Communication;
- Ministry of Urban Development; and,
- Ministry of Finance.

The structure of the ministry includes the Minister, Deputy Ministers, advisers to the Minister, press secretary, assistants, staff of the ministry, territorial units, as well as state bodies and state non-commercial organizations under the subordination of the ministry.

The list of the state governance bodies affiliated to the Government is defined by the Decree of the President.³¹³ Those are the National Security Service, State Committee on Real Estate Cadastre, Police, State Property Management Administration, High Administration on Civil Aviation, State Committee on the Regulation of Nuclear Safety, and State Revenue Service. The structure of the state governance body is similar to that of the ministry.

The staff of REBs includes structural (administration, department and secretariat) and separated divisions (agency and inspection). The agencies are established to provide services to the citizens (for example, State Agency on Employment, State Agency on Health, Agency on Intellectual Property, etc.), and inspections – to control and oversee activities of companies, organizations and enterprises (for example, Labor Inspection, Education Inspection, etc.)

Finally, the regional policy of the Government is implemented by marzpets – governors of provinces, who coordinate the activities of provincial structures of REBs. The marzpets are appointed and dismissed by the Government decisions, which shall be ratified by the President.³¹⁴

³¹³ Decree NH-1063 of the President of the Republic of Armenia from March 16, 2002, on the Establishment of the Structure of the Government of the Republic of Armenia

³¹⁴ Article 88.1 of the Constitution

Assessment

Capacity

Resources (Practice)

To what extent does the executive have adequate resources to effectively carry out its duties?

An illustrative indication regarding insufficiency of financial resources are various grants received from foreign states and international organizations. As US State Department notes: *"Armenia has received significant support from international institutions. The International Monetary Fund (IMF), World Bank, European Bank for Reconstruction and Development (EBRD), as well as other international financial institutions (IFIs) and foreign countries, particularly Russia, are extending considerable grants and loans. These loans are targeted at reducing the budget deficit, stabilizing the local currency; developing private businesses; energy; and the agriculture, food processing, transportation, and health and education sectors. In 2009 Armenia received more than \$ 1.5 billion in donor financing for budget support and different government-led anti-crisis programs. In 2011, the Eurasian Economic Community (EurAsEC), an economic organization in which Russia is a principal participant, provided a loan of \$500 million to finance Armenia's external debt and restructure a number of branches in the Armenian economy, in return for the transfer of major assets. Further, Russian energy conglomerates have pledged to invest \$71 million in natural gas and electricity distribution networks in Armenia in 2011."*³¹⁵

Head of Civil Service Council of Armenia Mr. Badalyan mentioned that because of low salaries civil service is not very attractive for experienced experts who prefer to work in private sector or in international organizations.³¹⁶ Prime Minister also accepted this problem and stated that the government is going to increase attractiveness of jobs in public sector in way of increasing salaries by taking into practice various mechanisms aimed at reduction of bureaucracy.³¹⁷

In this regard, Bertelsmann Transformation Index acknowledges that the Government has developed a fairly effective resource base and made some gains over the past 2 years because of implementation of broad civil service reforms, however Armenia must utilize a new generation of dedicated and skilled personnel.³¹⁸ It especially notes that "the most fundamental shortcoming in resource management has been the lack of meritocratic advancement", because positions and benefits have flowed to those with connections.³¹⁹

³¹⁵ <http://www.state.gov/r/pa/ei/bgn/5275.htm>

³¹⁶ http://www.cdaily.am/home/paper/2011_06_03/news/15544/

³¹⁷ <http://ankakh.com/2011/08/140217/>

³¹⁸ <http://www.bti-project.org/laendergutachten/pse/arm/2012/#chap3>

³¹⁹ *Ibid*

The nexus between corruption and the ability of the government to meet its operational needs was noted in 2010 by the same organization.³²⁰

Independence (Law)

To what extent is the executive independent by law?

The extent of independence of the executive in its decision-making can be assessed by revealing to what extent other actors are involved in the performance of the major functions of the Government and how decisive is that involvement. The only such actor is the President of the Republic, whose involvement, according to the Constitution is limited to the issues of foreign policy, defense and national security. Such involvement is interpreted differently (see below), including the one, which concludes that the executive is, to some extent dependent, from the President.

According to Constitution, the Government develops and implements the domestic policy of the country.³²¹ However, the same Article of the Constitution, stipulates that the Government shall develop and implement the foreign policy together with the President. This can be regarded as a restriction of independence of the executive by the President, though some experts believe that this is not restriction, but rather a mechanism characteristic for semi-presidential form of the government, when the President and Government together formulate and develop the general objectives and principles of foreign policy, President carries out its overall supervision, and the Government ensures its implementation.³²²

Following the logic of the above-mentioned situation with the formulation and implementation of the country's foreign policy, the Constitution provides that the President can convene and chair those meetings of the Government, which are on the issues of foreign policy, defense and national security.³²³ At the same time, the regular meetings of the Government, on which it adopts its decisions, are convened and chaired by the Prime Minister.³²⁴

³²⁰ <http://www.bti-project.org/laendergutachten/pse/arm/2010/index.nc> "Corruption in Armenia represents a significant impediment to both equitable economic development and good governance. Over the longer term, corruption weakens the state and its institutions by undermining the already meager degree of state legitimacy and public trust as well as by limiting the government's financial capacities by lowering essential tax revenues. While the shortfall in tax collection and other corruption-related activities impose inherent limits on state funding for strategic social programs (e.g., education, health care and pensions), they also strain the government's capacity to meet its even more immediate budgetary obligations and normal operational needs."

³²¹ Article 85 of the Constitution

³²² *Commentaries to the Constitution of the Republic of Armenia*. Edited by G. Harutyunyan, A. Vagharshyan, Yerevan, "Iravunk" publishing house, 2010. pp. 829-830

³²³ Article 86 of the Constitution.

³²⁴ *Ibid* It should be mentioned that before the introduction of changes and amendments to Constitution adopted through the November 27, 2005 referendum the same Article was providing that the meetings of the Government should be convened and chaired by the President, or upon his recommendation, by Prime Minister.

There are no legal restrictions on the decision-making related to other important functions of the Government, such as appointment of marzpets,³²⁵ preparation and execution of the state budget, management of state property, conduct of financial, tax and loan policies, etc.³²⁶ Overall, the legal provisions allow to argue that the executive is independent from other actors.

Independence (Practice)

To what extent is the executive independent in practice?

In practice, only the President of the Republic limits the independence of the executive, through the exercise of his discussed above powers vested in him by the Constitution. Not any interference by the side of military, legislature or any other institutional actors occurred during the last three years.

Governance

Transparency (Law)

To what extent are there regulations in place to ensure transparency in relevant activities of the executive?

Similar to other state bodies, the legislative basis for ensuring the transparency of the Government is the Law on Freedom of Information. According to that Law, the state body, who possesses the information shall at least once a year publicize the information on those implemented (or planned) activities and services, which relate to that body, its budget, forms of written requests and instructions how to fill them, as well as other data.³²⁷

Following the above mentioned requirements of the Law on Freedom of Information, the drafts of the decrees of the Government are posted on the web-site of the Government (before the Government meeting, at which those drafts should be discussed and adopted. There are no legal acts stipulating timeframe for posting these drafts.³²⁸

The state budget, part of which is the Government's budget, as well as the timeline of its implementation, is posted on the web-site of the Ministry of Finance (www.minfin.am).³²⁹ Similar to all

³²⁵ Article 88.1 of the Constitution

³²⁶ These and other functions of the Government are listed in Article 89 of the Constitution.

³²⁷ Article 7 of the Law on Freedom of Information

³²⁸ In practice, the drafts of the Government decrees are posted 3 days prior to the Government regular meeting.

³²⁹ Though, as already was mentioned, according to Article 7 of the Law on Freedom of Information, the budget of the state body (in this case – the Government) shall be posted on that body's web-site (in this case – www.gov.am), the budget of the Government is posted on the web-site of the Ministry of Finance.

other laws, the Law on the State Budget (for the particular year) is required to be published in the Official Bulletin.³³⁰

As according to the Law on Public Service, members of the executive are high-ranking public officials³³¹, the disclosure of their income and assets is regulated by the same Law on Public Service and in the same manner, as for other high ranking public officials (see the discussion on the relevant indicator of the *Legislature* pillar).

Concluding the discussion, it should be noted that there are certain deficiencies in the legal regulation of functioning of executive transparency. In particular, there are no legal provisions obliging the Government to make public the minutes of its meetings. Also, no timeframe is defined for posting the drafts of the decrees prior to the meetings, though in practice these drafts are posted regularly, 3 days prior to the Government regular meeting. Finally, the executive transparency is curtailed by the limited scope of information contained in the income and assets declaration allowed to be disclosed (publicized).

Transparency (practice)

To what extent is there transparency in relevant activities of the executive in practice?

The government's official website www.gov.am is designed in user friendly manner. In the new age of Facebook the Prime Minister has own page by which sometimes communicates with people. Also government operates www.e-gov.am website which was recognized as best website by Freedom of Information Center in 2010.³³² The latter website also gives access to interactive budget of Armenia. The minutes of the cabinet meetings are not being published. Regarding disclosure of assets and income the situation presented in the relevant part for legislature applies here too. However, Freedom of Information Center for 2010 collected declarations for assets and income and published.³³³ The Freedom of Information Center, which is an expert NGO in the field does not provide any data on the issue how many times government refused requests. However, according to Freedom of Information Center's Freedom of Information in Armenia 2011 monitoring report, among Central Governmental Bodies the best results have achieved RA Ministry of Justice and RA Ministry of Education and Science.³³⁴ At the same time FOI runs so called "White and Black lists" of officials who either protected right to information or caused obstacles for its implementation. According to this list, for 2011 in black list among others were Ministers of Defence and Emergency Situations. In white list was the Minister of Health.³³⁵

³³⁰ Article 62 of the Law on Legal Acts

³³¹ Article 5 of the Law on Public Service

³³² <http://www.foi.am/en/news/item/260/>

³³³ <http://www.foi.am/hy/declarations/>

³³⁴ http://www.foi.am/u_files/file/Eng_monitoring.pdf

³³⁵ <http://www.foi.am/hy/years/>

Accountability (Law)

To what extent are there provisions in place to ensure that members of executive have to report and be answerable for their actions?

The Constitution endows the power of oversight of the executive to NA and the President. NA shall oversee the execution of the state budget by the Government, as well as the utilization of credits and loans received from foreign countries and international organizations.³³⁶ The same Article also stipulates that NA shall debate and approve the annual report on the execution of the state budget submitted by the Government, and this procedure shall be implemented only with the presence of the resolution of the Chamber of Control. The latter, as well as another, constitutional provision, which provides that the Chamber of Control shall oversee the utilization of budget means, and state and municipal property,³³⁷ allows also the Chamber of Control to oversee the executive. According to the Law on Chamber of Control, it shall carry out financial, compatibility and environmental types of audit.³³⁸

The President of the Republic oversees the executive based on the constitutional provision that the President shall ensure the regular activities of the legislative, executive and judicial branches of the government.³³⁹ Based on that provision, the Oversight Service of the President is empowered to facilitate full and efficient execution of the powers of the President.³⁴⁰

Besides the above-mentioned forms of external oversight of the executive, the legislation foresees also internal forms of oversight. The Prime Minister supervises the activities of the Government.³⁴¹ This supervision is carried out through the Staff of the Government.³⁴² He also has the power to reward and apply disciplinary sanctions against the members of executive.³⁴³ The ministers, heads of other REBs and heads of the bodies of territorial governance periodically report to the Prime Minister on the pace of implementation of the decisions of the Government and Prime Minister related to them. The Staff of the Government also oversees the activities of the mentioned entities, analyzes and summarizes how they implement their activities and periodically report on its findings to Prime Minister. It also oversees the implementation of the annual action plan of the Government.

However, the legal mechanisms of oversight have serious deficiencies. The major problem is that only in the case of NA oversight is the form of sanction for the failure of executive to perform its functions

³³⁶ Article 77 of the Constitution

³³⁷ *Ibid.* Article 83.4

³³⁸ Article 1 of the Law on the Chamber of Control

³³⁹ Article 49 of the Constitution

³⁴⁰ Point 1 of the Instruction of the President NK-126-N from July 18, 2008 on the Approval of the Charter of the Oversight Service of the President of the Republic of Armenia

³⁴¹ Point 121 of the Decree NH-174-N of the President of the Republic of Armenia from July 18, 2007

³⁴² *Ibid.* Point 147

³⁴³ *Ibid.* Point 142

properly clearly defined. According to the Constitution, if NA does not approve the draft of the state budget or the program of activities submitted by the Government, then the procedure of the vote of confidence to the Government shall be initiated.³⁴⁴ In the all other above-mentioned cases of oversight, no sanctions are defined for failing to perform properly, or they are left to the discretion of the President or Prime Minister.

On May 2009 the Government approved the criteria, and based on them, the system of awarding points, for the evaluation of the work of marzpets.³⁴⁵ The establishment of these criteria allowed evaluation of the activities of the public officials of the territorial governance. Unfortunately, neither such criteria are developed, nor the framework of the accountability is defined for other REBs. Also, the mentioned decision does not define sanctions when marzpets fail to meet those criteria meet them only partially.

The Law on Legal Acts provides that, by the decision of the Government or decree of the President, the drafts of the laws developed by the Government and presented to NA *can* be published in print media or other media entities, as well as become a subject for public debate.³⁴⁶ Government Decision N296-N from March 25, 2010 provides the procedure of organization and conduct of public discussions.³⁴⁷

Besides the mechanism of holding accountable the member of executive through judicial procedure, which is universal for all public officials, members of executive can be subject of disciplinary sanctions. Such sanctions can be applied by the Prime Minister or President, and, in the case of applying dismissal as disciplinary sanction, the official, who has the power to appoint him/her.³⁴⁸

Another type of wrongdoing by a high-ranking executive is the failure to submit his/her declaration on income and assets or submission of false information containing in the declaration. The enforcement of the submission of the declarations is regulated by the Law on Public Service. The Commission on the Ethics of High-Ranking Public Officials is the sole body that is authorized to initiate proceedings related to the disclosure.³⁴⁹ However, the Commission's power is limited, as by the same Article of the Law, the Commission is not empowered to penalize the violator. It can only hand its conclusion to the President of

³⁴⁴ Articles 84 and 90 of the Constitution

³⁴⁵ Decision of the RA Government N562-N from May 21, 2009, on the Establishment of the Procedure of the Evaluation of the Activities of Marzpets of the Republic of Armenia, Evaluation Criteria of Those Activities, as well as Points for Assessment Based on that Evaluation”

³⁴⁶ Article 29 of the Law on Legal Acts

³⁴⁷ Decision of the RA Government from March 25, 2010 on the Establishment of the Procedure of Organization and Conduct of Public Discussions

³⁴⁸ Decree NH-174-N of the President of the Republic of Armenia from July 18, 2007

³⁴⁹ *Ibid.* Point 2 of Article 44 The mentioned Point does not explicitly provide initiation of proceedings for the failure to submit declaration or submission of false information containing in the declaration. It only provides that the Commission shall initiate proceedings for the violation of ethical rules committed by the high-ranking public officials. At the same time among the rules of ethics defined by Article 28 of the same Law is the one, which requires respecting the law and obeying to it. And as submission of declaration with correct data is duty, not obeying to that duty can be considered as a violation of ethical rules.

the Republic and supervisor of that official³⁵⁰, who makes the final decision on that case, or sends the materials to the Office of the Prosecutor General, if it finds that there are signs of criminal offense.

According to the Law on Public Service, high-ranking executives, who are also high-ranking officials, as well as their close relatives, are required to declare their income and assets, and these declarations shall be submitted to the Ethics Commission for High Level Public Officials of High-Ranking Public Officials.³⁵¹ For more detail see the discussion on the relevant indicator of the *Legislature* pillar.

To conclude, it could be argued that though the relevant legal framework for the executive accountability exists, its certain aspects mainly connected to the lack of mechanisms of imposing sanctions for failing to perform properly, vagueness in defining the framework of and assessing (in some cases) the executive accountability, as well as non-obligatory character of the provision on consulting with public the drafts of the laws, it does not cover all aspects of the executive accountability and contains loopholes for avoiding genuine accountability.

Accountability (Practice)

To what extent is there effective oversight of executive activities in practice?

The Government submits reports as required by the law. As about internal audits, it must be noted that because the Law on Internal Audit and related sub-legislation were adopted quite recently, it yet to be fully implemented. Chamber of Control conducts audits in agencies and bodies of the government, and so far it seems that this mechanism proves to be efficient. For example, during 2008-2009 based on materials submitted by the Chamber of Control 11 criminal cases were filed, whereas in 2010 no protocols or materials were received by RA Office of Prosecutor General from Chamber of Control.³⁵²

As Nations in Transit 2011 report on Armenia mentions: *“In November, Prime Minister Sargsyan initiated a series of top-level dismissals in the government, focusing on the ministries of agriculture, finance, education, and health. Based on the findings of the National Assembly’s Control Chamber, a body which monitors government spending, Sargsyan accused these departments of chronic corruption and mismanagement and ordered ministers to present structural and personnel solutions to the reported problems within a short timeframe. In several cases, the prime minister demanded specific resignations (under Armenian law, civil servants cannot be fired without the consent of the state Civil Service Council). Two deputy ministers of health resigned soon after the prime minister’s November lambasting; in December, Minister of Agriculture Gerasim Alaverdyan was dismissed, and during the same month,*

³⁵⁰ Point 1.18 of Article 5 of the Law on Public Service defines which high-ranking official is supervisor to another one.

³⁵¹ Article 32 of the Law on Public Service

³⁵² <http://www.genproc.am/am/234/item/6460/>

the head of the State Social Welfare Service at the Ministry of Labor and Social Issues Vazgen Khachikyan was also laid off."³⁵³

Legal requirements on public consultations formally are followed. Regarding the application of sanction mechanisms, they still are applied in rare cases. Among them were the arrest (in late 2009) and sentencing to jail (in August 2010) of 2 high level officials (Head of State Inspectorate for Nature Protection and his deputy) for bribery.³⁵⁴ Another notable case was arrest and subsequent sentencing of former Chief of Road Police Colonel Ohanyan for abuse of office and stealing large quantities of state property (fuel for cars).³⁵⁵ Also, a scandalous one was arrest and subsequent sentencing for 4 years in prison of former head of the RA Police Criminal Investigations' Chief Department, Mr. Hovhannes Tamamyán.³⁵⁶ These were the few positive indications, and still findings of OECD has right to remain as actual one. OECD monitoring group particularly noted: "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."³⁵⁷

An illustrative example that still there are major steps to take is the case of head of the Syunik Marz of Mr. Khachatryan who on November 14, 2011 who punched businesswoman Ms. Hambardzumyan in Armenia Marriot Hotel, which was recorded by the cameras located in the Hotel. A criminal case was opened by RA Special Investigation Service, however Mr. Khachatryan was not charged because Ms. Hambardzumyan did not incur physical damages and Mr. Khachatryan regreted about what he committed, which according to Special Investigative Service was sufficient ground to stop further investigation.³⁵⁸ Mr. Khachatryan still holds his office.

Integrity (Law)

To what extent are there mechanisms in place to ensure the integrity of members of the executive?

The adoption of the Law on Public Service was the first step in the establishment of a comprehensive legal framework for the executive integrity. Before this Law entered into effect the only legal provision relating to the issue of conflict of interest contains in Constitution, according to which, the member of the Government cannot perform entrepreneurial activities, occupy other positions in the state or local self-administration bodies, not related to his/her duties, or perform other paid job, except of scientific,

³⁵³ http://www.freedomhouse.org/sites/default/files/inline_images/NIT-2011-Armenia_0.pdf , page 82

³⁵⁴ <http://www.aravot.am/2010/08/07/180673/>

³⁵⁵ See http://www.freedomhouse.org/report/nations-transit/2012/armenia#_edn2 and <http://www.azatutyun.am/content/article/24598383.html>

³⁵⁶ <http://www.slaq.am/eng/news/55059/>

³⁵⁷ OECD/ACN, *Second Round of Monitoring. Monitoring Report on Armenia*, 2011, p.

³⁵⁸ <http://www.haynews.am/hy/suren-khachatryan-1323766017>

pedagogical or creative jobs.³⁵⁹ The mentioned Law supplemented to some extent this constitutional provision with legal mechanism, as well as defines entrepreneurial activities and scientific, pedagogical or creative jobs.³⁶⁰

The Law on Public Service also defines the basic rules of ethics for public servants and high ranking public officials.³⁶¹ The Law contains provisions on the limitations applied to them both related to their office³⁶², as well as their other, not related to their work, activities³⁶³, which also regulate their conduct. The mentioned articles contain also specific anti-corruption provisions, such as, for example, ban on working with close relatives, if their job responsibilities assume subordination or oversight to each other (except for the case of NA members). These rules also require using material, financial and informational means assigned to the official only for the job-related purposes. In addition, the Law also provides that the rules of ethics, defined by the Law are not exhaustive and could be supplemented by the laws regulating the specific areas of public service.³⁶⁴ This allows defining additional rules of ethics for the high ranking executives.

The relevant provisions of the Law on Public Service on the definition of conflict of interest together with its regulation³⁶⁵, rules on gifts³⁶⁶ and post-employment restrictions³⁶⁷ discussed in the chapter on the *Legislature* pillar, apply also for high-ranking executives. Though the Law on Public Service contains provisions aimed at the protection of whistleblowers³⁶⁸, it applies only on the public servants and will be discussed in the pillar on *Public Sector*.

Integrity (practice)

To what extent is the integrity of members of the executive ensured in practice?

Regarding enforcement of codes and rules little is known. As OECD monitoring group mentions: “A number of codes of conduct and ethics committees are already in place; however, their actual impact is limited.”³⁶⁹ After establishment of Ethics Commission for High Level Public Officials in January, 2012, there is a potential to enforce the Law on Public Service more rigorously. However, abovementioned case of head of Marz and no subsequent punishment and other cases can be employed as indications that for the Commission it will be very challenging to prove its effectiveness.

³⁵⁹ Article 88 of the Constitution

³⁶⁰ Article 24 of the Law on Public Service

³⁶¹ *Ibid.*, Point 3 of Article 28

³⁶² *Ibid.*, Article 23

³⁶³ *Ibid.*, Article 24

³⁶⁴ *Ibid.*, Point 4 of Article 28

³⁶⁵ *Ibid.*, Article 31

³⁶⁶ *Ibid.*, Article 29

³⁶⁷ *Ibid.*, Point 1.9 of Article 23

³⁶⁸ *Ibid.*, Article 22

³⁶⁹ OECD, page 6

Regarding the conflict of interest cases among members of the executive, it must be noted that it is a widespread problem. The head of Hetq online investigative journalist Edik Baghdasaryan in one of his interviews notes that there are a lot of ministers who have business.³⁷⁰ Prime Minister in one of his interviews also mentioned that the ethics package is aimed at securing the constitutional provision that ministers and MPs cannot be engaged in business activities.³⁷¹ There have been no publicized cases on "revolving door" symptom. Only example which can be relevant is the case of ex Minister of Labor and Social Issues Mr. Gevorg Petrosyan who mentioned that the reason of his resignation is new position at an international organization.³⁷²

Regarding the effectiveness of whistleblower provisions, Reporters without Borders notes: "Attempts to censor independent and opposition newspapers continue but in a more civilized way, above all by means of judicial harassment. In 2011, the number of lawsuits against the journalists, who were criticizing politicians, investigating activities of leading private-sector companies or generally covering corruption, has increased."³⁷³ A similar opinion is articulated by one media expert for BTI 2012 country report on Armenia: "the "heavy fines proposed for libel and 'disparaging' reporting" would only encourage greater "self-censorship" among journalists, resulting in a fearful atmosphere in which "journalists will no longer be beaten, but will be summoned to court"³⁷⁴

Role

Public Sector Management (Law and Practice)

To what extent is the executive committed to and engaged in developing a well-governed public sector?

In general, the legal framework for the public sector management by executive is rather well developed, though there are certain deficiencies that still need to be addressed. The major legal act through which the executive acquired appropriate mechanisms to effectively supervise and manage the work of civil service is the Law on Civil Service, which entered into effect in 2002. Following the requirements of that Law, in order to carry out effective supervision of civil service, the Civil Service Council (CSC) and institute of the heads of staff of REBs were established. These two bodies are defined as the bodies responsible for the supervision and management of civil service³⁷⁵ and through CSC and heads of staffs of REBs, the executive supervises and manages the work of activities of civil service. According to Law, CSC implements the unified official civil service policy.³⁷⁶ The powers and functions of the heads of

³⁷⁰<http://www.azatutyun.am/content/article/2211921.html?s=1>

³⁷¹<http://aravot.am/old/am/articles/politics/87347/view>

³⁷²<http://www.report.am/news/politics/gevorg-petrosyan2.html>

³⁷³<http://en.rsf.org/report-armenia.88.html>

³⁷⁴<http://www.bti-project.org/laendergutachten/pse/arm/2012/#chap3>

³⁷⁵ Article 36 of the Law on Civil Service

³⁷⁶ *Ibid.*, Article 37

staffs are defined by the Law on State Administrative Institutions.³⁷⁷ According to that Law the head of the REB, who is a member of executive shall receive reports on the activities of its relevant administrative institution and review the findings, revealed as a result of their inspection.³⁷⁸

By its Protocol Decision N37 from September 10, 2009 on the Concept of Governance and Administrative Reforms of the State Sector of the Republic of Armenia (not published), the Armenian Government approved the new strategy of the reforms of the public sector to be implemented until 2015.³⁷⁹ The major goal of the Concept is to increase the efficiency of the performance of public sector through more purposeful utilization of public resources. Based on this Decision, the Government prepared and submitted to NA the draft of the Law on Public Service, which was adopted by NA on May 26, 2011 and entered into effect on January 1, 2012.

Another important legal act in this aspect is the Government's Protocol Decision N18 from April 30, 2009, on the Approval of the Guide on the Development of Work Plans and Evaluation of Their Execution (not published).³⁸⁰ The Decision defines the principles and procedures of development of work plans and evaluation of the execution of those plans for ministries, their structural and separated units, as well as civil servants.

Concluding the discussion, it could be noted that, in general the legal framework for the public service management by executive is rather adequate. The only major problem is that the Law on Public Service does not foresee existence of a special body, similar to CSC in civil service, which will enable the executive to supervise and manage the whole public service system as a unified entity regulated uniformly through uniform policy mechanisms.

Bertelsman Transformation Index for 2012 on Armenia notes, that institutions are generally underperforming, which *inter alia* reflects their inherent weakness in institutional terms.³⁸¹ At the same time, in terms of basic administration, the same organization notes that it is fairly well-developed with generally competent administrative structures operating on many levels of government, but however, corruption within administrative structures remains a serious challenge and administration remains hindered by the legacy of Soviet-era practices.³⁸² While analyzing about resource management, it was noted that the most fundamental shortcoming is the lack of meritocratic advancement and positions and benefits have flowed to those with connections, inadequate pay scale has fostered a greater cronyism.³⁸³

³⁷⁷ *Official Bulletin* 2001/37(169) 03.12.01

³⁷⁸ Article 12 of the Law on State Administrative Institutions

³⁷⁹ IRTEK legal database on Armenian legal acts (in Armenian)

³⁸⁰ *Ibid.*,

³⁸¹ <http://www.bti-project.org/countryreports/pse/arm/2012#chap4>

³⁸² <http://www.bti-project.org/country-reports/pse/arm>

³⁸³ <http://www.bti-project.org/country-reports/pse/arm>

Also, the adoption of new law on procurement can be considered as a positive indication, which decentralized procurement, and on internal audit. To make assessment on their effectiveness is still early.

Legal System (Law and practice)

To what extent does the executive prioritize public accountability and the fight against corruption as a concern in the country?

In its 2008-12 Program, adopted by the Government Decree N380-A from April 28, 2008 and presented to NA next day, on April 29³⁸⁴, Armenian Government declared fight against corruption as one of its objectives to implement the **second priority** of its activities, namely, development of effective public, local self-governance and private sector governance and rooting corporate governance culture³⁸⁵. It is one of the sub-areas of the **Reform of Governance and Fight against Corruption** area, where among others the Government asserts that fight against corruption is a key component in the policies implemented by the Government³⁸⁶. In the Program, among the major approaches of the Government in fighting corruption, it is mentioned that “the main precondition to fight corruption effectively and to build public confidence will be establishment of fully-fledged multi-partisan system that supports genuine political competition”.³⁸⁷ It will also “pay special attention to corruption cases identified through the activities of law-enforcement agencies”.³⁸⁸

Another major anti-corruption document adopted by the Government in the recent years was the Republic of Armenia Anti-corruption Strategy and 2009-12 Action Plan for Its Implementation, adopted by the Decree 1272-N of the Armenian Government from October 8, 2009, which entered into effect on December 3 of the same year.³⁸⁹ The major goal of the Strategy is the substantial decrease of the level of corruption in Armenia.³⁹⁰ The Government expects that as a result of the implementation of the Action Plan, by 2012 corruption in Armenia will stop to have systemic character, its prevalence will seriously decrease, the quality of public services rendered to population will improve, the perception of social justice among households and businesses will substantially improve, political stability of the country will enhance and prerequisites for the increase of economic productivity will be created, thus increasing the

³⁸⁴ On April 9, 2008, the incumbent President of the Republic was inaugurated and, in compliance to one of the requirements of point 4 of Article 55, the old Government resigned. Following the requirement of Article 74 of Constitution, according to which the newly appointed Government shall present its program to NA within 20 days following its formation, on April 29, 2008, the new Government presented its Program for NA approval. NA approved it and it is in office until today.

³⁸⁵ <http://www.gov.am/files/docs/77.pdf>, pp.13-14

³⁸⁶ *Ibid.*, pp. 22-23

³⁸⁷ *Ibid.*, p.23

³⁸⁸ *Ibid.*,

³⁸⁹ This document is the second such document. The first one was the Strategy and Its Action Plan adopted through the Government Decree N1522-N from November 6, 2003. Its implementation took place during the period from 2003 to 2007.

³⁹⁰ Republic of Armenia Anti-corruption Strategy and 2009-2012 Action Plan for Its Implementation, *RA Official Bulletin vol. 60(726), December 2, 2009* p.73

county's competitiveness and attractiveness for investors.³⁹¹ The Strategy assigns important role to the executive in the bodies, which implement anti-corruption policies, as well as in specialization and training of human resources for the state bodies.³⁹² In particular, according to the Strategy the head of the Council on the Fight against Corruption, which shall enable comprehensive and effective implementation of the official anti-corruption policy,³⁹³ is the Prime Minister³⁹⁴. Members of the executive shall be involved also in the Anti-corruption Strategy Monitoring Commission.³⁹⁵ The Strategy document assigns serious role to Police and State Revenue Committee (both are part of the executive) in the detection and investigation of corruption crimes.³⁹⁶

This Action Plan is much more elaborated and comprehensive than the previous one implemented in 2003-2007. However, it also has certain deficiencies. For example, political corruption does not encompass most of its manifestations and is limited only to the issues of political corruption in the legislature. An important realm of political corruption, such as political party finance is not addressed. Another deficiency is that not all areas, and among them such important ones, as environment protection or defense, are included in the Action Plan, meaning that no measures of anti-corruption character are foreseen in those areas.

The 2009-2012 Action Plan is currently under implementation and on December 29, 2011 Armenian Government posted (for the first time since the mentioned Action Plan entered into effect) on the relevant page of its web-site the Report on the Monitoring of the 2010 Results of the Anti-corruption Strategy 2009-2012 Action Plan (see <http://www.gov.am/files/docs/914.pdf>) and Report on the Monitoring of the First Half of 2011 Results of the Anti-corruption Strategy 2009-2012 Action Plan (see <http://www.gov.am/files/docs/915.pdf>). It should be mentioned that the drafts of all 12 laws and codes, which NA passed and which were included in the 2009-2012 Action Plan (see more about that in the discussion on the **Legal Reform** indicator of *Legislature* pillar) were developed and proposed by the Government. In the framework of the Action Plan, Government adopted 22 decrees. In addition, many ministries and bodies affiliated to the Government issued orders aimed at the implementation of a number of measures listed in the Action Plan.

Virtually all members of the executive announced the need to combat corruption. As OECD monitoring group notes: "Officially, in recent years the President and the Government have regularly expressed their readiness to fight corruption in public statements."³⁹⁷ Above noted cases of arrests of high level policemen have sporadic nature rather than consistent one. From the tripartite coalition members (until

³⁹¹ *Ibid.*

³⁹² *Ibid.*, pp. 76-80

³⁹³ *Ibid.*, pp. 76-77

³⁹⁴ Decree N100-N of the President of the Republic from June 1, 2004 The composition of the Council remained the same after the adoption of the new Strategy in 2009.

³⁹⁵ Republic of Armenia Anti-corruption Strategy and 2009-2012 Action Plan for Its Implementation, p. 77

³⁹⁶ *Ibid.*,

³⁹⁷ OECD monitoring group, country report, Armenia 2011, page 11

2012 elections), only Prosperous Armenia which had included combating corruption in its program and posted at its website.³⁹⁸ President's program also contains provisions about combating corruption.³⁹⁹ However, it must be noted that all programs are articulating the need to establish rule of law and democracy in the country.

³⁹⁸<http://bhk.am/pages.php?al=project>

³⁹⁹<http://president.am/library/program/arm/>

Recommendations on the pillar of Executive

1. To modernize the system of civil service to bring the number of servants to the balanced and necessary level, and at the same time to significantly raise the salaries of servants, for making these offices attractive for highly educated persons.
2. To install vibrant grievance mechanisms in the state system to ensure that personnel will conduct its duties without undue interference and influence by those who occupy high level political positions.
3. To make respective amendments and alterations in the legislation governing the functioning of the executive, with an aim to oblige the government to post the minutes of its meetings during one day period after its conduct.
4. To develop and install criteria for the evaluation of ministers and heads of the adjunct bodies.
5. To make respective amendments and alterations in the Law on Public Service and Administrative Delinquencies Code with the aim to empower Ethics Commission for High Level Public Officials to penalize those officials (and their relatives) who disregard their duty to provide declarations on income and assets. Also, to foresee sanctions in the form of fines for failing to provide declarations.
6. To make public consultations mechanisms effective, visible and regular.
7. To criminalize illicit enrichment.
8. To initiate all inclusive process of developing anti-corruption strategy and action plan
9. To establish a specialized body for the proper enforcement and monitoring of the will-be adopted anti-corruption strategy and action plan

Judiciary

Table of Indicator Scores

Judiciary			
Overall Pillar Score: 61.1			
	Indicator	Law	Practice
Capacity 62.5	Resources	100	50
	Independence	50	50
Governance 70.8	Transparency	75	75
	Accountability	100	50
	Integrity mechanisms	75	50
Role 50	Executive oversight	50	
	Corruption prosecution	50	

Structure and Organization

According to the Armenian Constitution justice in Armenia is administered solely by courts.⁴⁰⁰ Structurally, Armenian judicial system consists of three subsystems, namely, the Constitutional Court of Armenia, courts of general jurisdiction and specialized courts.⁴⁰¹ The highest judicial instance in Armenia, except for the matters related to the constitutional justice, is the Court of Cassation, and besides it the judiciary is comprised of the courts of first instance, courts of appeals, and, also, if prescribed by law, specialized courts.⁴⁰² The same Article of the Constitution also provides that establishment of extraordinary courts is prohibited. The Judicial Code provides that there shall be three courts of Appeal – Civil Court of Appeals, Criminal Court of Appeal and Administrative Court of Appeals.⁴⁰³ By the same Article of the Judicial Code it is defined that specialized courts in Armenia are the Administrative Court and Administrative Court of Appeals.⁴⁰⁴ The Judicial Code also defines that

⁴⁰⁰ Article 91 of the Constitution

⁴⁰¹ *Commentaries to the Constitution of the Republic of Armenia*, p. 906

⁴⁰² Article 92 of the Constitution This provision implies that the subsystems of the courts of general jurisdiction and specialized courts are three level systems, though the Constitution does not explicitly mention that. The first level is comprised of the courts of first instance, second – courts of appeal and third – Court of Cassation.

⁴⁰³ Article 41 of the Judicial Code

⁴⁰⁴ These two specialized courts are the first and second level courts of the system of administrative courts.

there shall be 16 courts of general instance in Armenia (7 in Yerevan and 9 – in marzes⁴⁰⁵), each of which is comprised of the chair of the court and judges.⁴⁰⁶ The number of judges varies from court to court, depending on the size of the population under its jurisdiction. Administrative Court shall be located in Yerevan and consist of the chair and 16 judges.⁴⁰⁷

All three courts of appeal shall be located in Yerevan⁴⁰⁸. Civil Court of Appeals and Criminal Court of Appeals shall consist of the chair and 15 judges, and the Administrative Court of Appeals – chair and 6 judges.⁴⁰⁹ Court of Cassation also shall be located in Yerevan and consist of the chair and 14 judges.⁴¹⁰ It shall consist of two chambers – criminal chamber, and chamber of civil and administrative matters, each of which consist of a chair and 5 and 9 judges, respectively.

Article 93 of the Constitution defines that the constitutional justice in the Republic of Armenia is administered by the Constitutional Court, whose composition, powers, scope of those, who could appeal to Court, as well as basic principles of its performance are defined by Articles 99-102 of the Constitution. In particular, Article 99 of the Constitution defines that the Constitutional consists of 9 members. Four of its members are appointed by the President of the Republic,⁴¹¹ and five – by the National Assembly (NA)⁴¹². NA also appoints the Chair of the Constitutional Court.

Finally, an important component of the Armenian judicial system is the Council of Justice. Article 94.1 defines that the Council of Justice should consist of nine judges elected for five year period through secret ballot at the general meeting of the judges of the Republic of Armenia and four legal scientists, two of whom appointed by the President of the Republic and two others – by the National Assembly. The Council of Justice plays a key role in the appointment, promotion and suspension of powers of judges (except the members of the Constitutional Court), as well as imposing disciplinary sanctions on them.

Assessment

Capacity

⁴⁰⁵ In Yerevan there is one court in each of the largest two administrative districts (Shengavit and Malatia-Sebastia), and the jurisdiction of each of the remaining 5 courts covers two adjacent districts. Outside Yerevan in each of 8 (out of 10 marzes) there is one court, and two adjacent marzes (Ararat and Vayots Dzor, the smallest marz of Armenia) are covered by one court.

⁴⁰⁶ Article 24 of the Judicial Code

⁴⁰⁷ *Ibid.*, Article 37

⁴⁰⁸ *Ibid.*, Article 41

⁴⁰⁹ *Ibid.*

⁴¹⁰ *Ibid.*, Article 52

⁴¹¹ Point 10 of Article 55 of the Constitution

⁴¹² *Ibid.*, Point 1 of Article 83

Resources (Law) – *To what extent are there laws seeking to ensure appropriate tenure policies, salaries and working conditions of the judiciary?*

In general, Armenian Constitution and laws ensure appropriate salaries, working conditions and tenure policies for the judiciary. The salaries of judges and additional payments to those salaries are defined by Article 75 of RA Judicial Code. The same Article, as well as Articles 157 and 165 of the Code, define that the salary of the judge and additional payments to them could not be decreased during the tenure of the judge, except for such cases of disciplinary sanctions against him/her, imposed by law, which envisage temporary reduction of his/her salary. Also, Article 9 of the Law on Official Wages of High-Ranking Officials of the Legislative, Executive and Judicial Branches of the Government of the Republic of Armenia, every year the official wage of the judges of the courts of general jurisdiction of Armenia should be defined by a separate article in the Law on State Budget of the Republic of Armenia for each fiscal year.⁴¹³ Such legal provisions ensure adjustment of the sizes of the salaries of judges in the occasion of inflation.

According to Article 2.1 of the Law on Official Wages of High-Ranking Officials of the Legislative, Executive and Judicial Branches of the Government of the Republic of Armenia, the salary of the Chairman of the Constitutional Court is defined equal to 680,000 AMD, or approximately 1762 USD, and for the member of the Constitutional Court – 600,000 AMD (about 1554 USD). The law also defines that they should receive additional payment based on the length of their service. According to Article 12 of the Law on Constitutional Court, in certain, prescribed by law, cases of termination of powers of the member of the Constitutional Court, he/she should receive pension, which size should be equal to 75% of his/her last remuneration (salary plus additional payments).

According to Article 96 of the RA Constitution, judges and the Constitutional Court members are appointed on a permanent basis, with the appointment running until the judge reaches the age of 65. Their powers are terminated only in cases and procedures specified by the constitution and laws. Articles 95 and 97 of the RA Constitution provide that no judge or member of the Constitutional Court can be held liable without agreement with the Constitutional Court or the Justice Council, respectively.

Article 10 and Article 14 of the Law on the Constitutional Court protect members of the Constitutional Court from arbitrary termination. Article 12 of the same law specifies the immunity of members of Constitutional Court. According to Article 14, the powers of the Constitutional Court member can be terminated in certain cases including death, loss of Armenian citizenship, resignation, court decision on the judge's inability to perform his/her duties, and violation of the law.

⁴¹³ According to Clause 5 of Article 9 of the Law on 2011 State Budget of the Republic of Armenia, the salary of the judge of the court of the general jurisdiction is set equal to 440,000 AMD (about 1140 USD). Article 75 of the Judicial Code defines the salaries of other judges by taking as the unit the salary of the judge of the court of general jurisdiction.

According to Article 14 of the RA Judicial Code, judges cannot be replaced. Article 13 of the same code specifies the procedure for detaining a member of the judiciary, involving him/her as a defendant, or exposing him/her to administrative liability.

The procedure for the appointment of members of the Constitutional Court is defined by Article 1 of the Republic of Armenia (RA) Law on the Constitutional Court. Article 3 of the same law defines the requirements for membership in the Constitution Court. These include: high level of education, minimum 10 years of work experience, work experience in state or educational institutions in the legal area, high moral standards, etc.

Article 115 of the RA Judicial Code sets out the professional criteria that judges must meet, and Articles 115-117 of the code specify the procedure for appointing judges. The promotion of judges is regulated by professional, organisational, ethical, and other similar requirements named in Article 135 of the same code.

In detail, the selection process includes the following steps:

- The Governing Council of the RA Judicial School submits to the RA Council of Justice a list of the 16 candidates who received the highest scores (see Article 116 of RA Judicial Code).
- The Council of Justice reviews the list and invites candidates for interviews (see Article 117 of the code).
- The 13 members of the Council of Justice vote (each member has the right to vote up for 10 candidates).
- The RA president approves the list of candidates.

Because the president is authorised to approve or disapprove any candidate and actually intervene in the governing process of the Council of Justice, there is no guarantee that selection is always based solely on merit.

Armenian legal system regulating the budgetary process, mainly the Law on the Budgetary System, does not contain legal provisions on apportioning a minimum percentage of the state or community budgets to the recipients of budget means, including the judiciary. However, the Law on the Budgetary System legally entitles state institutions to participate in the apportioning of their shares in the state budget.⁴¹⁴ This applies also to the judiciary and the Judicial Code contains provisions⁴¹⁵ regulating the participation of the judiciary (except the Constitutional Court) in this process. In the case of the Constitutional Court,

⁴¹⁴Article 21 of the Law on Budgetary System

⁴¹⁵ In particular, Article 64 of the Judicial Code provides that the Judicial Department submits (after being approved by the Council of the Chairmen of Courts) the annual budget estimate to the Government for approval. After its approval and finalization by the Government and adoption of the State Budget by the National Assembly, it appears in the Law on the State Budget as a separate line item – Courts of the Republic of Armenia.

the Law on the Constitutional Court⁴¹⁶ provides that the Chairman of the Constitutional Court should submit the annual budget estimate to the Government by the deadline prescribed by law. An important legal provision in this process is that if the Government does not approve the request from the Judicial Department or the Chairman of the Constitutional Court, then the Government is required to submit both the estimate prepared by the mentioned judicial bodies and his detailed objections to these estimates to the National Assembly.⁴¹⁷ Thus, the last word in the budget allocation belongs not to the Government (executive), but to the National Assembly (legislature), who decides whether the objections of the Government should be accepted or not. In addition to the main funding, the judiciary is entitled to have Reserve Fund for unforeseen expenses, which is presented in the state budget through a separate line item.

Resources (Practice)

To what extent does the judiciary have adequate levels of financial resources, staffing, and infrastructure to operate effectively in practice?

ABA/CEELI runs Judicial Reform Index to evaluate judicial systems of countries. It is based on 30 factors among which there is pillar called "Financial Resources" which has 4 factors: Budgetary input, Adequacy of judicial salaries, Judicial buildings and Judicial security. In Armenia, ABA/CEELI used this evaluation tool 3 times: in 2002, 2004 and 2008. During those periods of evaluation, factor Budgetary input in 2008 from negative was transformed into neutral, while factor Adequacy of judicial salaries remained neutral.⁴¹⁸ In response to TIAC letter, Judicial Department responded that "the legal procedures of judiciary's budget apportioning and involvement of Judicial Department are strictly followed in practice".⁴¹⁹

Regarding the salaries of the judges and members of the Constitutional Court, it must be mentioned that according to article 9 of the RA Law on Official Wages of High-Ranking Employees of the Legislative, Executive and Judicial Branches of the Government of the Republic of Armenia, the salary of a judge of the court of general jurisdiction, for each single year, is being set by the RA Law on State Budget. In 2011, according to article 9 of RA Law on State Budget for 2011, the salary of a judge of the court of general jurisdiction was set 440,000 AMD. The salary of the member of the Constitutional Court is being stipulated by the RA Law on Official Wages of High-Ranking Employees of the Legislative, Executive and Judicial Branches of the Government of the Republic of Armenia. According to article 2.1 of the mentioned law, the salary of the President of Constitutional Court for 2011 was 680.000 AMD, and the salary of a member of Constitutional Court was 600.000 AMD. These salaries are paid regularly without

⁴¹⁶ Article 6 of the Law on the Constitutional Court

⁴¹⁷ In this case, the Head of the Judicial Department or the Chairman of the Constitutional Court should participate in the floor debates on that part of the bill on the state budget in the National Assembly and present their arguments for the justification of their budget estimate.

⁴¹⁸See "Spotlight on Armenia: edited by Adam Hug", The Foreign Policy Centre, page 37.

⁴¹⁹See

delays and they are much higher than the average salary in the country.⁴²⁰ These salaries are even higher, than those of the President or the Prime Minister⁴²¹.

However, it is a given that in view of prices, the salary is insufficient to keep 4 member household and to make savings, enjoy entertainments or to spend vacations in vacation resorts. In its recommendations to Armenian Government, The Foreign Policy Center bears attention of the latter on the salaries of judges and notes: "Further reform the judiciary by increasing judicial salaries to levels appropriate for their status...".⁴²²

Furthermore, according to Working Group on Independent Judicial Systems budget drafting process for the judiciary is not in line with European best practice, because of limited participation of Justice Council.⁴²³

Regarding the comparison of the salaries of the judges with those of practicing lawyers, it is difficult to make any definite conclusions, as the latter do not receive fixed salaries and their income depends mainly on the number and wealth of their clients, and these factors vary greatly among the lawyers. The practice reveals that the income of a small number of well-known lawyers is higher, than that of the judges. However, the income of the most of the lawyers is lower, than that of the judges.

According to Article 79 of the Judicial Code, each judge of first instance courts and review courts should have one assistant and one administrative secretary, whereas the Chairman of the Court of Cassation, chairmen and judges of the chambers of that Court should have two assistants. Regarding the Constitutional Court, Article 6 of the Law on Constitutional Court requires that the Government should provide the Court with separate building and necessary equipment and facilities for its normal functioning.

In its official response to the TIAC letter, in 2010, the Judicial Department asserts that the courts, especially in Yerevan, currently are well-equipped with technical facilities, have necessary supporting staff, internet access, regularly updated library and DATALEX data base. However, the courts in the regions still are in need for the above-mentioned resources. Nevertheless, according to Working Paper on Implementation of the European Neighborhood Policy in 2010 in Armenia "Some progress was made on

⁴²⁰According to the National Statistical Service of Armenia the average salary in Armenia for the November, 2011 was equal to 114,766 AMD.

⁴²¹ According to Article 1 of the RA Law on Official Wages of High-Ranking Employees of the Legislative, Executive and Judicial Branches of the Government of the Republic of Armenia, the salary of the President is set equal to 400,000 AMD, and according to Article 2 of the same Law the salary of the Prime Minister is set equal to 340,000 AMD.

⁴²²See "Spotlight on Armenia: edited by Adam Hug", The Foreign Policy Centre, page 5

⁴²³See "Project Report Judicial Self-Governing Bodies: Judges' Career", Eastern Partnership, Enhancing Judicial Reform in the Eastern Partnership Countries, Working Group on Independent Judicial Systems, Directorate General of Human Rights and Rule of Law, Strasbourg, September 2011, page 31.

the implementation of the judicial reforms within the Strategic Action Plan for Judicial Reform 2009-2011, particularly on enhancing transparency in the court system, on improving the electronic court statistics data and on the construction and upgrading of court buildings.”⁴²⁴

A number of articles of the Judicial Code relate to the training of judges. In particular, Article 193 of the Code stipulates that by October 1 of the respective calendar year the Qualification committee sets the main guidelines and total hours for the coming year. The total amount of training hours defined by the same Article should not be less, than 80 hours a year and not exceed 120 hours a year. This refers to obligatory trainings organized by the Judicial School.⁴²⁵ In addition, Article 77 of the Code provides that the judge has the right to participate also in other training programs, forums, conferences and other events related to enhancing of their skills and knowledge. Finally, Article 167 of the Code stipulates that the powers of the judge can be terminated, if the judge does not pass annual obligatory training for two consecutive years. All these legal requirements are followed in practice. In addition, it must be noted that OECD Anti-corruption Network for Eastern Europe and Central Asia in its 2011 Monitoring Report notes that monitoring group was reported that a number of trainings took place covering issues of ethics, integrity and anti-corruption.⁴²⁶

Independence (Law)

To what extent is the judiciary independent by law?

Armenian Constitution explicitly states that “The independence of courts is guaranteed by Constitution and laws.”⁴²⁷ While performing the justice, the judge or member of the Constitutional Court are independent and should obey only to Constitution and laws, and he/she could be detained, involved in trial proceedings as defendant or held liable to administrative liability by court only with the consent of the Council of Justice or Constitutional Court, respectively.⁴²⁸ As it has already been mentioned, the Constitution also defines the Court of Cassation as the highest court of Armenia, except the issues related to constitutional law, and the highest court for the constitutional justice is the Constitutional Court.⁴²⁹ . Similar to the adoption of the Constitution, any amendments to it could be made only through popular referendum,⁴³⁰ making Armenian Constitution rather rigid. These constitutional provisions lay the basis of the independence of the judiciary.

⁴²⁴ See “Joint Staff Working Paper: Implementation of the European Neighbourhood Policy in 2010 in Armenia”, COM (2011) {303}, Brussels 25/05/2011. Page 4

⁴²⁵ Part 2 of the Judicial Code (Articles 172-193) regulates the functioning of the Judicial School.

⁴²⁶ See Monitoring Report, OECD Anti-corruption Network for Eastern Europe and Central Asia, page 71

⁴²⁷ Article 94 of the Constitution

⁴²⁸ *Ibid.*, Article 97

⁴²⁹ *Ibid.*, Article 92 and 93

⁴³⁰ *Ibid.*, Article 111

According to Constitution, the President, appoints all judges of all levels of judiciary, including those nine judges, who are members of the Council of Justice.⁴³¹ Upon the suggestion of the Council of Justice, the President also terminates the powers of chairs and judges of the Court of Cassation and its chambers, chairs of review courts, courts of first instance and specialized courts, and gives his/her consent on their arrest, their involvement as defendant in the trial or imposition of administrative sanctions on them through court proceedings.⁴³² . Moreover, certain decisions of the Council of Justice either should be approved or could be changed or amended by the President of the Republic.⁴³³ Therefore, it could be fairly true to assert that the Council of Justice does not have necessary level of independence from the President in the appointment, promotion, suspension from duties of the judges or imposition of sanctions on them.⁴³⁴

According to Article 83 of the Constitution, five out of the nine members of the Constitutional Court are appointed by the National Assembly and according to Point 10 of the Article 55 of the Constitution the remaining four members are appointed by the President of the Republic. The same articles of the Constitution define that only the corresponding bodies, who appointed the particular member of the Constitutional Court, could terminate his/her powers or give consent to detain, involve in trial proceeding as defendant or held liable to administrative liability. The Chairman of the Constitutional Court is appointed by the National Assembly.⁴³⁵ The participation of two branches of the government (President and Parliament) in the formation of the Constitutional Court is supposed to ensure its independence.

The law defines clear professional criteria for the appointment of judges and the conclusions of the Council of Justice should be based on these criteria.⁴³⁶ Similar criteria are set also for the members of the Constitutional Court.⁴³⁷ The judge or member of the Constitutional Court cannot be a member of any political party or participate in any forms of political activity.⁴³⁸ The criterion of party membership is self-evident. However, as the experts mention, the criterion on the participation in any forms of political activity is subject for interpretation, especially related to the participation of the judiciary in electoral processes,⁴³⁹ as a candidate, member of electoral commission, proxy, as well as his/her involvement in the electoral campaign to publicly support candidates or parties. In this aspect, the Judicial Code is more

⁴³¹ *Ibid.*, Point 11 of Article 55

⁴³² *Ibid.*

⁴³³ Articles 117, 123, 137, 138 and 166 of the Judicial Code

⁴³⁴ Though Article 95 of the Constitution assigns rather important role to the Council of Judges in the appointment and promotion of judges, termination of their powers, etc., the fact that the final decisions are made by the President, as well as the composition of the Council of Justice with nine judges already appointed by the President and two academicians in law, who are also appointed by him/her, justify this assertion.

⁴³⁵ Article 83 of the Constitution If the National Assembly fails to appoint the Chairman of the Constitutional Court within 30 days from the moment, when that position becomes vacant, then the appointment of the Chairman is made by the President.

⁴³⁶ Article 115 of the RA Judicial Code and Article 3 of the Law on Constitutional Court

⁴³⁷ Article 3 of the Law on Constitutional Court

⁴³⁸ Article 98 of the Constitution

⁴³⁹ *Commentaries to the Constitution of the Republic of Armenia*, p. 965

specific, than the Law on Constitutional Court, which simply duplicates the mentioned above provision of the Constitution on non-engagement in political activities. The Judicial Code explicitly provides that the judge can act only as a voter in the electoral processes, and cannot be engaged in electoral campaign.⁴⁴⁰ There is no ban for judges or members of the Constitutional Court to make donations to political parties or candidates.⁴⁴¹ Judges and members of the Constitutional Court cannot be proxies during elections.⁴⁴² Also, they cannot be nominated as candidates for election to NA, head of community or member of community (including Yerevan community) council.⁴⁴³ Regarding the nomination as a candidate for presidency, such prohibitions for judges do not exist⁴⁴⁴. However, the presidential candidates, except those, who hold political offices⁴⁴⁵, are required to be relieved from their official duties from the moment of their registration as presidential candidates until the release of the final results of elections.⁴⁴⁶ As the judges and members of the Constitutional Court are not holders of political offices, this requirement applies on them.

The security of tenure of judges and members of the Constitutional Court is protected by Constitution. Article 96 of the Constitution provides that the judge and member of the Constitutional Court are irreplaceable and hold their positions until the age of 65. The same article defines that their powers could be terminated only in the cases defined by Constitution and laws.

Though the Armenian legislation does not directly ensure the right of judges to establish professional associations of judges, the RA Judicial Code refers to such associations (see Article 10 of the Code), which assumes that the law does not limit the judges' right to establish professional associations.

The dominant role of the President in the appointment, promotion and removal of judges is not balanced by the mechanisms for the participation of the civil society in the mentioned procedures, which is another legal deficiency that hinders the independence of the judiciary. Moreover, Article 109 of the Judicial Code provides that the meetings of the Council of Justice should be meetings in camera (closed meetings), except for those cases on imposing disciplinary sanctions on judges, when the judge requires public investigation of his/her case.

Independence (Practice)

⁴⁴⁰ Point 2 of Article 10 of the Judicial Code

⁴⁴¹ Point 3 of Article 25 of the Electoral Code provides that any person, who has voting rights can make donations to the pre-election funds of parties or candidates. Similar situation is with the donations to political parties, which is regulated by Article 25 of the Law on Political Parties.

⁴⁴² *Ibid.*, Point 3 of Article 32

⁴⁴³ *Ibid.*, Article 107 for the case of candidacy to NA member, Article 132 for the case of candidacy for community head or member of community council (except Yerevan) and Article 151 for the case of candidacy for the member of Yerevan Community Council.

⁴⁴⁴ Article 50 of the Constitution sets the criteria, which shall meet any presidential candidate. The candidate shall be above 35, be citizen of Armenia and permanently reside there during the last 10 years and have voting rights. These criteria are duplicated in Article 77 of the Electoral Code.

⁴⁴⁵ Point 3 of Article 4 of the Law on Public Service defines the holders of political offices in Armenia.

⁴⁴⁶ Article 87 of the Electoral Code

To what extent does the judiciary operate without interference from the government or other actors?

First of all it must be noted that in Armenia even in theory it is impossible to claim that appointment of judges are based on a clear professional criteria. In Armenia, last word on appointment of a person as a judge totally depends on the discretion of the President of the country. This is a loophole which was pointed out by several experts. Working Group on Independent Judicial Systems in its project report on "Judicial Self-governing Bodies: Judges' Career" in great details analyses this problem of Armenia.⁴⁴⁷ Experts of Civil Society Eastern Partnership Forum also articulated very similar position.⁴⁴⁸

The practice reveals that some of the newly appointed judges are relatives of high level officials. On 17th of October 2011 the President of RA appointed 11 judges 3 of whom are sons of high level officials and influential figures:⁴⁴⁹ Eduard Amalyan, son of the President of National Commission of TV and Radio, Sargis Eritsyan, son of the Head of State Agency of Language, David Harutyunyan, son of the Head of Bodyguards of the President of Armenia.⁴⁵⁰

The removal of judges before the end of their term is not widespread. In 2011 were registered only 3 cases of early removal. In the first case, ex President of RA Administrative Appeals Court Tigran Mukuchyan immediately after removal was appointed as President of the Central Electoral Commission of RA.⁴⁵¹ In the second case, ex judge of first instance court of general jurisdiction of the administrative districts Arabkir and Kanaker-Zeytoun Souren Ghazaryan was removed based on the motion of the President of Court of Cassation. The latter conditioned his motion with the serious illness of Souren Ghazaryan. However, after his removal the former judge Souren Ghazaryan gave a shocking interview where he blames judiciary of Armenia as a whole.⁴⁵²

Former judge Souren Ghazaryan in the mentioned interview does not deny that he has illness (the type of illness is not specified both in the decision of RA Council of Justice, and is not revealed by Souren Ghazaryan in the course of interview), however he also points out that after appointment of Arman Mkrtumyan as President of Cassation Court the working conditions got worst.

In the third case, judge of first instance court of general jurisdiction for administrative districts of Avan and Nor Nork Samvel Mnacakanyan, was subjected to disciplinary responsibility and Council of Justice

⁴⁴⁷See "Project Report Judicial Self-Governing Bodies: Judges' Career", Eastern Partnership, Enhancing Judicial Reform in the Eastern Partnership Countries, Working Group on Independent Judicial Systems, Directorate General of Human Rights and Rule of Law, Strasbourg, September 2011, page 39-41

⁴⁴⁸Judicial Independence in the Eastern Partnership Countries, page 4 http://www.eap-csf.eu/assets/files/publications/Judicial_Independence_in_the_EaPCountries.pdf

⁴⁴⁹<http://www.president.am/events/decree/arm/?pn=7&id=660>

⁴⁵⁰Please see <http://www.hrparak.am/2011/10/18/nor-datavorner/>

⁴⁵¹<http://elections.am/CecMembers.aspx>

⁴⁵²<http://www.armtimes.com/en/node/27476>

decided to apply to the President of RA with a motion to remove him from the office.⁴⁵³ The sole reason of such harsh action was the judge's decision to release on bail a defendant. Motion to release on bail was made by defense and even prosecutor did not challenge it. However, Council of Justice found that the decision was not reasoned. Against the early removal of former judge Mr. Mnacakanyan, on July 7, 2011 Chamber of Advocates of RA organized action of protest in front of the building of RA Cassation Court.⁴⁵⁴

As it has been already mentioned above, the highest court by Constitution is the Court of Cassation for all cases, except for the cases related to the constitutional justice, and the Constitutional Court for the cases related to the constitutional justice. The legal foundations for these courts are set in the Constitution, which, in general makes them stable over time. However, since the passage of the amendments to Constitution in November 2005 referendum, many changes and amendments have been introduced in the Civil Procedure and Criminal Procedure Codes, which affected the powers of the Court of Cassation.

According to Freedom House, dependence of Armenia's judiciary remains high and the point 5.50 has not been changed during the last 3 years.⁴⁵⁵ According to the detailed analyses of the Freedom House *"The court system remains vulnerable to pressure from the executive branch and frequently engages in corrupt practices."*⁴⁵⁶ The score remained unchanged also for 2012 report.⁴⁵⁷ However, according to Working Paper on Implementation of the European Neighborhood Policy in 2010 in Armenia: *"Some progress was made on enhancing transparency in the court system but no progress was made on enhancing the independence of the Judiciary"*.⁴⁵⁸ The same document further declares: *"However, no progress was made as regards enhancing the independence of the judiciary, which remains a matter for concern. Judges are still strongly influenced by prosecutors, as well as by politically and economically powerful figures."*⁴⁵⁹

Foreign Policy Center of UK in its Spotlight on Armenia 2011 notes: *"Perhaps the greatest impediment to achieving effective rule of law in Armenia however, is the lack of a fully independent and effective judiciary."*⁴⁶⁰ It also mentions that: *"Like many post-Soviet states, Armenia's constitution in theory enshrines the principle of an independent judicial system, yet in practice the judiciary remains subject to*

⁴⁵³ See the decision of Council of Justice (CJ-13-D-17, 2011, U.Iv-13-Ո-17, 2011թ.)

⁴⁵⁴ See http://www.lin.am/arm/a_a_25833.html

⁴⁵⁵ See "Nations in Transit 2011. The authoritarian dead end in the former Soviet Union. Selected data from Freedom House's annual analyses of democratic development in Central and Eastern Europe and the former Soviet Union.", Freedom House, page 18

⁴⁵⁶ *Ibid*, page 70

⁴⁵⁷ <http://www.freedomhouse.org/report/nations-transit/2012/armenia>

⁴⁵⁸ See "Joint Staff Working Paper: Implementation of the European Neighbourhood Policy in 2010 in Armenia", COM (2011) {303}, Brussels 25/05/2011. Page 2

⁴⁵⁹ *Ibid* page 4

⁴⁶⁰ "Spotlight on Armenia: edited by Adam Hug", The Foreign Policy Centre, page 10

political influence and interference.⁴⁶¹ Moreover, according to 2010 report on Armenia of Bertelsmann Transformation Index: "Officially, although an independent judiciary does exist in Armenia, it is still largely subordinate to and overly compliant to the demands of the executive branch, which is unquestionably the strongest and most dominant of the branches of government."⁴⁶²

Monitoring Committee of Council of Europe in its report of 15th of September 2011 on "The functioning of democratic institutions in Armenia" in details addressed the issue of independence of Armenia's judiciary. Particularly it says: "The problems with regard to the justice system and independence of the judiciary are recognized by the authorities, which have made the reform of the judiciary one of the priorities of their reform package. However, despite this priority, the reforms have, to date, not achieved the desired results. Most interlocutors consider the lack of independence of, and corruption in, the judiciary as endemic and one of the main problems hampering the development of Armenian society."⁴⁶³

Penal Reform International in its submission to 103rd Session of Human Rights Committee notes: "PRI believes that the lack of a robust and independent judiciary constitutes a main factor in Armenia's failure to implement Article 9(3) ICCPR."⁴⁶⁴

The aforementioned former judges Mr. Ghazaryan and Mnacakanyan in their interviews clearly mentioned that judges are not independent in Armenia.⁴⁶⁵

The legal ban on political activities of judges and members of Constitutional Court, and, in particular, ban on membership in political parties is effectively enforced, though it does not make the judges and members of Constitutional Court independent from the political leadership of the country. TIAC monitoring of campaign finance at the last three important elections in Armenia (2007 parliamentary, 2008 presidential and 2009 Yerevan City Council) did not reveal cases of direct funding of campaign activities by the members of judiciary.

The Council of Justice is active, however, because of the reasons described above in the *Law* section it is not highly independent body, and, thus, cannot be effective in this sense. The same is true for the only professional association of judges in Armenia – Union of the Judges of the Republic of Armenia, which has a status of NGO.

⁴⁶¹ *Ibid* page 27

⁴⁶² See <http://www.bertelsmann-transformation-index.de/en/bti/country-reports/laendergutachten/cis-and-mongolia/armenia/>

⁴⁶³ See "The functioning of democratic institutions in Armenia: report of Monitoring Committee of CoE", 15.09.2011, page 13, point 61

⁴⁶⁴ See page 12

⁴⁶⁵ See <http://www.armtimes.com/en/node/27476>, and <http://www.azatutyun.am/content/article/24280696.html>

Governance

Transparency (Law)

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the judiciary?

As according to the Law on Public Service, judges and members of the Constitutional Court are high-ranking public officials⁴⁶⁶, their income and assets disclosure is regulated by the same Law on Public Service and in the same way, as for other high ranking public officials (see the discussion on the relevant indicator of the *Legislature* pillar).

The major legal requirement for the judicial bodies to submit to public comments on laws, judgments, judicial statistics, court hearings, records/transcripts, membership of relevant organizations, other activities is the requirement set by Article 111 of the Judicial Code, according to which the decisions and resolutions of the Council of Justice should be published in RA Official Bulletin and official web-site of the judiciary (www.court.am). In addition, through the recently introduced amendment in the Judicial Code, the Council of the Court Chairmen, based on the inquiry of the RA Ombudsman, shall give official advisory clarification on the application of the legal act mentioned in the inquiry.⁴⁶⁷ According to Article 67 of the Judicial Code, judgments of the Court of Cassation shall be posted on the courts' official web-site (www.court.am) and according to Article 68 of the same Code they shall also be published in the Official Bulletin. Other decisions of the Court of Cassation are not required to be published. Publication of the judicial acts of other courts is under the discretion of the RA Council of Court Chairmen, who solely decide which decision should be open to public. According to Article 50 of the Law on Legal Acts, the decisions of the Constitutional Court shall be published, and according to Article 62 of the same Law they shall be published in the Official Bulletin of the Republic of Armenia.

According to Article 146 of the Civil Procedure Code, which defines the form of transcript of courtroom proceedings, a record is compiled at the court sessions of the court of first instance, court of cassation and court of appeal, as well as outside court sessions when performing separate judicial actions.

Records kept at court sessions of the court of first instance, court of cassation and court of appeal, as well as outside court sessions performing separate judicial actions, are attached to the materials of a case.

As provided by Articles 315 and 148 of the Criminal Procedure and Civil Procedure Codes, only persons participating in the case have a right to become acquainted with the materials of the case or to make excerpts and copies thereof. Article 20 (4) of the RA Judicial Code provides that after the court verdict

⁴⁶⁶ Article 5 of the Law on Public Service

⁴⁶⁷ Article 1 Law on the Introduction of An Amendment to the Judicial Code. The Law was adopted by NA on December 7, 2010, and entered into effect on January 6, 2011.

has been enforced, all members of the public can request materials of the completed case, along with transcripts of the proceedings. A state duty of 1,000AMD (~ 2.5USD) is to be paid for each request (Article 9 (13) of the Law on State Duty).

There are no legal requirements for public hearings/proceedings.

Finally, the information on the decrees of the President of Republic on the appointment, move, promotion or removal of judges are regularly published in the *Hayastani Hanrapetutyun* (Republic of Armenia) official daily newspaper and posted on the web-site of the President of the Republic (www.president.am). They also could be found in the IRTEK legal database (only in Armenian).

Transparency (Practice)

To what extent does the public have access to judicial information and activities in practice?

The official web-site of the courts of general jurisdiction and Administrative Court is www.court.am, operated by the Judicial Department and the official web-site for the Constitutional Court is www.concourt.am. These sites provide comprehensive information on the activities of the judicial system, structure and governance.⁴⁶⁸ In addition, as it has been already mentioned in the *Law* section of this indicator, decisions and conclusions of the Council of Justice and judgments of the Court of Cassation should be published in RA Official Bulletin and official web-site of the judiciary.⁴⁶⁹ These legal requirements are followed in practice. However, it must be noted that as for the decision of Council of Justice on the case of former judge Mr. Mnacakanyan, the website www.court.am did not provide relevant decision (last access was made on 05.01.2012).

There is also another website called www.datalex.am which is accessible for public, and people can find information on date and time of court hearings and also read judgments and other judicial acts. Exceptions are those cases which have been trialed in camera. However, this website sometimes does not operate well enough and this fact was accepted also by Mr. Arthur Tunyan who is the Head of Office for Judicial Reforms, in his interview of 9th September, 2011 to the *Hetq.am*.⁴⁷⁰ Information on the court procedures and judgments can be accessed either through the relevant web-sites and Official Bulletin or through the participation of journalists, citizens and representatives of civil society structures in court hearings. The courtroom proceedings are held openly in Armenia, which is legal requirement, except for cases stipulated by law.

⁴⁶⁸Information on spending of the courts can be found in the annual reports on the state budget execution prepared by the Government.

⁴⁶⁹Article 111 of RA Judicial Code stipulates types of decisions and conclusions of Council of Justice which should be published at the official website of the judiciary for entering into legal force. As about judgments of the Court of Cassation, they must be published only in the RA Official Bulletin (Article 51(2), RA Judicial Code).

⁴⁷⁰<http://hetq.am/arm/interviews/4232/dataranneri-shenqery-chbnakecnely-mez-nuynpes-mtahogum-e.html> (Last access on 08.01.2011)

Accountability (Law)

To what extent are provisions in place to ensure that the judiciary has to report and be answerable for its actions?

The major legal criteria for the accountability of the judiciary are: a) requirement for judges and members of the Constitutional Court to give reasons for their decisions; b) existence of an independent body for the investigation of complaints against judges and formal procedure for complaint; c) existence of legal mechanisms for the protection of complainants; and, d) possibility for public censuring/reprimanding, fining, suspending or removing of the judge. Armenian legislation contains sufficient provisions to ensure that judges have to report and be answerable for their actions.

According to Article 130 of the Civil Procedure Code, Article 358 of the Criminal Procedure Code and Articles 112 and 117.14 of the Code of Administrative Procedure, the judges are obliged to justify and explain their verdicts, rulings and decisions. The violation of the mentioned requirement can serve as a ground for the repeal of the verdict, ruling or the decision by the court of higher instance. According to Article 64 of the Law on Constitutional Court, the justification and explanation of the decisions of the Constitutional Court is included in the body of the decision of the Court.

Complaints against judges could be brought to the Commission of Ethics of the Council of Courts Chairmen, Disciplinary Commission of the Council of Justice, Chairman of the Court of Cassation or Minister of Justice. The law does not provide specific mechanisms for the protection of complainants.

The judge or the member of the Constitutional Court could be detained, involved in trial proceedings as defendant or held liable to administrative liability for any crime or wrongdoing he/she had committed. As it has been already mentioned, (see the section on the *Law* dimension of the *Independence* indicator) this can be done by the body, which appoints the judge or nominates the particular member of the Constitutional Court. According to the concept of immunity in the Armenian legal system, immunity applies for certain, defined by law cases, which obviously do not include crimes.

The decisions on censuring/reprimanding or fining the judges are made by the Council of Justice and these decisions together with other decisions of the Council (see above in the *Law* section of the *Transparency* indicator) are subject for publication in the RA Official Bulletin. Similarly, the decrees of the President of the Republic on the suspension or termination of the powers of the judge also are subject for publication in the same Bulletin. This ensures publicity of the disciplinary actions imposed on the judges. The Law on Constitutional Court does not provide disciplinary sanctions against the members of

the Court. Only Article 14 of the Law defines the grounds for suspension or termination of the powers of the member of the Constitutional Court.

Accountability (Practice)

To what extent do members of the judiciary have to report and be answerable for their actions in practice?

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 the judicial portal www.datalex.am and at the website www.court.am.⁴⁷¹

The afore mentioned early termination of former judge Mr. Mnacakanyan's office, caused Chamber of Advocates to complain about not proper reasoning of judicial acts by courts. In motioning to President of RA for early termination of powers of former judge Mr. Mnacakanyan, the Council of Justice as a main reason mentioned failure by Mr. Mnacakanyan to reason why the defendant could be released on bail. In their protests on early termination of powers of the former judge, advocate Lusine Sahakyan mentioned: *"But justifying judicial acts is not widespread in the Republic of Armenia; this question has been repeatedly raised and people are imprisoned without a justified act and no one is held accountable for this,"*.⁴⁷² Moreover, the President of Chamber of Advocates, in response to the abovementioned motion of Council of Justice, applied to President of RA Court of Cassation with suggestions to initiate disciplinary proceedings against 5 judges of Cassation Court for failure to reason their decision.⁴⁷³

Moreover, in its submitted country report on Armenia, to the 103rd Session of the Human Rights Committee, Penal Reform International noted: *"However, PRI's assessment of 82 archived decisions on pretrial authorization requests and initial authorization of pretrial detention suggests that pretrial detention decisions of Armenian courts are predominantly reasoned in a schematic way, based on either of the grounds listed in the Code of Criminal Procedure and without requiring the official requesting authorization of pretrial detention to substantiate those grounds with specific facts of the particular case. The decisions analyzed by PRI tend to include unsubstantiated, schematic assumptions about the risk of absconding, interference with the course of justice or/ and the risk of reoffending. In a number of decisions, PRI identified the gravity of the incriminated crime as the sole justification for the imposition of pretrial detention. This concern has equally been raised in other studies, for example in a survey*

⁴⁷¹See Monitoring Report, OECD Anti-corruption Network for Eastern Europe and Central Asia, page 71

⁴⁷²<http://www.epress.am/en/2011/07/07/armenian-attorneys-protest-council-of-justice-decision-to-strip-judge-of-power.html>

⁴⁷³http://www.advocates.am/index.php?option=com_content&view=article&id=315:2011-07-07-10-41-34&catid=40:2010-09-13-16-28-11&Itemid=67

conducted by OSCE ODIHR, "Final Report Trial Monitoring Project in Armenia (April 2008& July 2009)".⁴⁷⁴

Integrity mechanisms (Law)

To what extent are there mechanisms in place to ensure the integrity of members of the judiciary?

As high-ranking public officials, judges and members of the Constitutional Court, as well as their close relatives, are required to declare their income and assets, as required by the Law on Public Service.⁴⁷⁵ For more detail see the discussion on the relevant indicator of the *Legislature* and *Public Sector* pillars. Also, Article 96 of the Judicial Code requires judges to send their declarations to the Commission on Ethics of the Council of Courts Chairmen.

Chapter 12 of the Judicial Code, which includes Articles 87 to 96, is the Code of Conduct of Judges. Article 91 of the Judicial Code defines the self-rejection of the judge and the grounds for such motion,⁴⁷⁶ and the Civil Procedure, Criminal Procedure and Administrative Procedure Codes define the grounds for the parties involved in the trial for making a motion on self-rejection and procedure for its review. This is the only legal procedure through which the citizens can challenge the impartiality of the judge. However, it should be mentioned that this procedure is not so efficient, as the motion is reviewed by the judge, against whom the motion was initiated. As a result, most of such motions are rejected.

Regarding post-employment restrictions, there are no legal regulations for this issue.

Integrity mechanism (practice)

To what extent is the integrity of members of the judiciary ensured in practice?

Declaration of income and assets remains problematic question in Armenia. OECD Monitoring Group in this regard notes: " 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."⁴⁷⁷ Starting from 2012 judges submit their declarations on assets and income submit to the Ethics Commission for High Level Officials established on January 2012.

⁴⁷⁴ http://www2.ohchr.org/english/bodies/hrc/docs/ngos/PRI-Submission_Armenia_CCPR103.pdf

⁴⁷⁵ Article 32 of the Law on Public Service

⁴⁷⁶ Article 91 of the Judicial Code

⁴⁷⁷ See Monitoring Report, OECD Anti-corruption Network for Eastern Europe and Central Asia, page 51

Yerevan Press Club in its Monitoring of Democratic Reforms in Armenia for the period from 2009-2010 recommends the following: “To make more severe the punishments for unethical behavior by judges and other participants of the judicial process, in order to minimize the risks of corruption.”⁴⁷⁸

In November 16, 2011, the Minister of Justice of RA, Mr. Hrayr Tovmasyan in answering to the question of a journalist on violation of ethics by judges noted that Council of Justice adopted almost 200 decisions relating to the violation of ethics by judges.⁴⁷⁹ In 2011 the Council of Justice adopted 16 decisions on disciplinary issues of judges and in 6 of them found breaches of Code of Conduct of Judges (8 judges).

According to the information published at the end of 2011, 7 cases regarding disciplinary violations of judges were initiated by the Disciplinary Commission and 2 cases were sent to Ethics Commission.⁴⁸⁰ By June 2012, Judicial Council adopted decisions on disciplinary violations committed by 7 judges.

Role

Executive Oversight (Law and practice)

To what extent does the judiciary provide effective oversight of the executive?

Since January 1, 2008 the Administrative Court of the Republic of Armenia is functioning and since October 30, 2010 - the Administrative Court of Appeals. All legal and physical persons residing in Armenia can appeal to the Administrative Court on the actions or inaction of state or local self-administration executive bodies⁴⁸¹ and appeal the decisions of the Administrative Court to the Administrative Court of Appeals⁴⁸². The decisions of the latter are appealed in the Court of Cassation.⁴⁸³

An interesting observation was made by the Partnership for Open Society Perspective: “Conflict of interests between the judiciary and prosecutors is not regulated and close relatives (fathers and sons, siblings) serve in both camps. *In these cases, career advancement of a judge depends on how complacent the judge is with the Prosecutor’s Office.*”⁴⁸⁴

The only legal criterion for this indicator is the possession of jurisdiction by courts to review the actions of the executive. Since January 1, 2008 the Administrative Court of the Republic of Armenia is

⁴⁷⁸ See Monitoring of Democratic Reforms in Armenia, Report 2009-2010, page 14

⁴⁷⁹ <http://hetq.am/arm/interviews/6696/hay-datavorin-kasharaker-datavori-mashkic-patrastats-ator-petq-e.html> (last access on 08.01.2011)

⁴⁸⁰ <http://www.tert.am/am/news/2011/12/29/court/> (last access was made on 08.01.2011)

⁴⁸¹ Article 3 of the Code of Administrative Procedure

⁴⁸² *Ibid.*, Article 117.1

⁴⁸³ *Ibid.*, Article 118

⁴⁸⁴ See Armenia’s ENP implementation in 2010, Partnership for Open Society Perspective, page 8

functioning. In RA Administrative Procedure Code mentioned persons can appeal to the Administrative Court on the actions or inaction of state or local self-administration bodies.

According to Article 100 of the Constitution, the Constitutional Court decides the compliance of the provisions of the decrees of the President of Republic, decisions of the Government, and decisions of the Prime Minister to the Constitution.

Regarding this issue, Bertelsmann Transformation Index 2012 notes that "In the face of a dominant presidency, with the executive branch remaining unquestionably the strongest branch of government, the judiciary can best be described as overly compliant with the demands of the executive."⁴⁸⁵ While the score of Judiciary's Independence for 2012 is not changed by Freedom House (Nations in Transit).⁴⁸⁶

Corruption Prosecution (Practice)

To what extent is the judiciary committed to fighting corruption through prosecution and other activities?

In 2009-2012 Action Plan for the Implementation of Anti-Corruption Strategy, RA Judicial Department is involved and was specified as one of responsible bodies. Monitoring Group of OECD notes "Although, the President Decree¹³ foresees that the Anti-Corruption Strategy Monitoring Commission is responsible for the monitoring of implementation of anti-corruption strategy and anti-corruption programs, little is known about actual assignments and bodies involved."⁴⁸⁷

At the same place, Monitoring Group notes: "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."

As OECD monitoring group notes "*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*

⁴⁸⁵ <http://www.bti-project.org/countryreports/pse/arm/2012#chap4>

⁴⁸⁶ <http://www.freedomhouse.org/report/nations-transit/2012/armenia>

⁴⁸⁷ Monitoring Report, OECD Anti-corruption Network for Eastern Europe and Central Asia, page 14

being investigated and prosecuted for corruption, including law enforcement officers, directors of the organizations, and heads of bodies of local self-governance."⁴⁸⁸

During 2010 2 high level officials were sentenced: head and deputy of National Environmental Inspectorate. Head of the Inspectorate Mr. Grigoryan was sentenced for 7 years of imprisonment and 3.790.000 AMD confiscation for the crime envisaged under RA Criminal Code, article 311, part 4, point 2 (Receiving Bribe), and deputy Mr. Petrosyan was sentenced for 10 years of imprisonment and 210.000 AMD confiscation for the crime envisaged under RA Criminal Code, article 311, part 3, point 3 and part 4, point 2.⁴⁸⁹

Recommendations on the pillar of Judiciary

1. To make respective alterations in the Judicial Code with the aim to make the process of confirmation of the lists of candidates by the President of Armenia mandatory, without right to return the list or to confirm it with those candidates who are acceptable for him.
2. To take measures on studying the possible impacts of the introduction of jury trial in Armenia.
3. To take measures on studying the possibility of introducing elections for 1st instance courts of general jurisdiction and consequently on redesigning of constitutional structure of judiciary.

⁴⁸⁸Monitoring Report, OECD Anti-corruption Network for Eastern Europe and Central Asia, page5

⁴⁸⁹<http://www.panarmenian.net/arm/society/news/52056/>

Public Service

Table of Indicator Scores⁴⁹⁰

Public Service			
Overall Pillar Score:			
	Indicator	Law	Practice
Capacity	Resources		
	Independence	75	
Governance	Transparency	50	75
	Accountability	75	
	Integrity Mechanisms	50	50
Role	Public Education		
	Cooperation with public institutions, CSOs and private agencies in preventing/addressing corruption		
	Reduce Corruption Risks by Safeguarding Integrity in Public Procurement	75	

Structure and Organization

On May 26, 2011 the National Assembly (NA) adopted the Law on Public Service, which entered into effect on January 1, 2012.⁴⁹¹ The Law defines the principles of public service, procedures defining its organization, rules of ethics, as well as relationships connected to the declaration of income, assets and

⁴⁹⁰ As the Law on Public Service entered into effect from January, 1, 2012 and this study covers the period until June 30, 2012, data on the implementation of that Law during the period from January 1 to June 30, 2012 was very scarce to use them for the analysis of the *Practice* dimension of the part of indicators for this pillar. Thus, only the *Practice* dimensions of *Transparency* and *Integrity* indicators are partially discussed in this chapter. Some data on them were collected by TIAC through a small project “Monitoring of the Public Service Legislation” (implemented from January 1 to June 30, 2012), sponsored by the Embassy of UK in Armenia.

⁴⁹¹ According to Article 49 of the Law on Public Service, which regulates the entrance of the effect of the Law, Articles 38, 39, 40 and 42 entered into effect from November 1, 2011. These articles regulate the establishment and functioning of the commissions on ethics for public servants and Ethics Commission for High Level Public Officials for High Ranking Public Officials.

related persons of high-ranking public officials.⁴⁹² Article 3 of the Law on Public Service defines **public service** as executing those powers, which are assigned by Constitution and laws to the state. By the same Article, public service comprises the implementation of policies by state and local self-administration bodies and includes state service, municipal service, and public positions in state and municipal services. Hence, those state and municipal bodies, which, by law are executing those powers, constitute the public sector.

The **state service** includes civil service, service in the judiciary, diplomatic service, special services, which include services in the central executive bodies of defense , police, national security, tax, customs and rescue service, state service in the staff of the National Assembly (NA), , as well as in the National Security Council and other services, prescribed by law.⁴⁹³ The adoption of the Law on Public Service did not entail to the abolition of the laws regulating each type of state service, and now each type is regulated by the Law on Public Service and corresponding law, such as Law on Tax Service⁴⁹⁴, Law on Customs Service⁴⁹⁵, Law on Police Service⁴⁹⁶, Law on Diplomatic Service⁴⁹⁷, and other services.

Municipal service deals with the implementation of policies of local self-administration bodies and is regulated by the Law on Public Service and Law on Municipal Service, and other legal acts.⁴⁹⁸ In its essence, the organizational principles and enforcement of municipal service differ little from those of civil service, in particular, in such aspects as the principles of the service, appointment and promotion regulation, attestation, training, etc. However, there are several important differences. For example, unlike civil service, there is no separate centralized body empowered with governance and organizational functions, as it the Civil Service Council (CSC), in the case of civil service. Also, considering the lack of human resources with relevant qualities to fill the positions of municipal servants, the requirements defined by law for municipal servants are less strict, than those for civil servants. For example, to become municipal servant it is not required to be citizen of the Republic of Armenia. Such positions can be filled also by those, who permanently reside in the particular community, and have status of refugees.⁴⁹⁹

The jurisdiction of the Law on Public Service covers high-ranking public officials and individuals, who hold public service positions in the following state and municipal bodies:⁵⁰⁰

- Staff of the President of the Republic;
- NA staff;

⁴⁹² Article 1 of the Law on Public Service

⁴⁹³ Article 3 of the Law on Public Service

⁴⁹⁴ *Official Bulletin* 2002/33(208), 14.08.02

⁴⁹⁵ *Official Bulletin* 2002/32(207), 08.08.02

⁴⁹⁶ *Official Bulletin* 2002/33(208), 14.08.02

⁴⁹⁷ *Official Bulletin* 2001/39(171), 12.12.01

⁴⁹⁸ *Official Bulletin* 2005/7(379), 26.01.05

⁴⁹⁹ Article 11 of the Law on Municipal Service

⁵⁰⁰ Article 2 of the Law on Public Service

- Staff of the Government;
- Staff of the Constitutional Court;
- Staffs of the ministries;
- Staffs of the state bodies affiliated to the Government;
- Staffs of the permanent functioning bodies (commissions, services, councils), established by the laws;
- Staff of the Central Bank of Armenia;
- Staff of the National Security Council;
- Judicial Department;
- Staffs of the prosecution bodies;
- Staffs of the state bodies functioning under the supervision of the ministries;
- Staffs of the offices of the governors of provinces (marzes);
- Staff of the Yerevan Municipality;
- Staffs of the local self-administration bodies; and,
- Staff of the Ombudsman.

At the same time, the same Article provides that the named Law does not apply on individuals, performing functions of technical support in the state and local self-administration bodies.⁵⁰¹ The mentioned Article provides that the named Law is applicable to high level public officials only in cases when it is directly stipulated by this Law.

The Law on Public Service did not become a genuine omnibus law setting universal criteria and uniform regulation for some aspects of public service, such as, for example, contests for the recruitment and promotion of public servants, their rotation, training, attestation, rewarding, sanctioning or dismissal, etc. In the case of the regulation of these aspects, the Law on Public Service usually defines some general principles based on which these aspects shall be regulated and then explicitly states that the relationships connected with the particular aspect of the public service shall be regulated by the laws and other legal acts on the specific areas of the state, as well as municipal, service. For example, Point 1 of Article 13 of the Law on Public Service provides that filling of the vacant positions shall be carried out through contest or other procedure prescribed by law. Point 2 of the same Article provides that the relationships (regulation) connected with filling of vacant positions in public service shall be regulated by the laws and other legal acts on the specific areas of the state, as well as municipal, service. Also, the Law did not establish a single body, which will be empowered with the function of policy implementation and coordination in the area of public service.

⁵⁰¹ Article 2 of the Law on Public Service

At the same time, the Law on Public Service has the features of the omnibus law. First, it defines the major principles of public service⁵⁰², and regulates such as aspects of legal status of public servants as their major rights⁵⁰³, duties⁵⁰⁴, reporting (which includes important provisions on whistle-blowing)⁵⁰⁵, remuneration and social security⁵⁰⁶, restrictions applied on them⁵⁰⁷, their activities⁵⁰⁸, restrictions on giving assignments to them⁵⁰⁹ and their social guarantees⁵¹⁰. The last mentioned aspects (restrictions applied on them and their activities, restrictions of giving assignments and social guarantees) are extended also on high level public officials.⁵¹¹ However, the most important universal provisions defined by the Law are those, related to the integrity of public servants. Among them are rules of ethics for public servants and high-ranking public officials⁵¹², prohibition of accepting gifts for them⁵¹³ and regulation of establishment and functioning of ethics commissions for public servants and high-ranking public officials⁵¹⁴. These provisions apply also on the high-ranking public officials and will be discussed in more detail in the **Integrity** section of this study.

Apart from the mentioned above regulations applying on public servants and high-ranking public officials, there are also others, which specifically regulate certain integrity issues of high-ranking public officials. Those are the regulation of conflict of interest⁵¹⁵, declaration of income and assets by them and their related persons⁵¹⁶, and establishment and functioning of the Ethics Commission for High-Ranking Public Officials⁵¹⁷ (see more in other relevant sections of the study). By the inclusion of these

⁵⁰² *Ibid.* Article 6

⁵⁰³ *Ibid.*, Article 20

⁵⁰⁴ *Ibid.*, Article 21

⁵⁰⁵ *Ibid.*, Article 22

⁵⁰⁶ *Ibid.*, Article 27

⁵⁰⁷ *Ibid.*, Article 23

⁵⁰⁸ *Ibid.*, Article 24

⁵⁰⁹ *Ibid.*, Article 25

⁵¹⁰ *Ibid.*, Article 26

⁵¹¹ Article 5 of the Law on Public Service enlists the high-level public officials. They include the President, Prime Minister, NA members, members of the Constitutional Court, judges, ministers and their deputies, Prosecutor General and his deputies, prosecutors of marzes, Yerevan and military garrisons, heads and deputy heads of the state bodies established by laws, Head, Deputy Head and members of Board of the Central Bank, heads and deputy heads of the state bodies affiliated to the Government, Chair, Vice Chair and members of the Board of the Chamber of Control, Head and Deputy Heads of the Staff of the President, Head and Deputy Heads of NA Staff, Head of the Staff of the Constitutional Court, Head and Deputy Heads of the Staff of the Government, members of the Ethics Commission of the High-Ranking Public Officials (see below on the Commission), Mayor of Yerevan and his deputies, heads of the Armenian diplomatic missions abroad, Secretary of the National Security Council, advisers and assistants of the President, advisers and assistants to Prime Minister, mayors of the cities having more than 50,000 population, as well as Head of the Oversight Service of the President and Head of the Oversight Service of Prime Minister.

⁵¹² Article 28 of the Law on Public Service

⁵¹³ *Ibid.*, Article 29

⁵¹⁴ *Ibid.*, Article 38

⁵¹⁵ *Ibid.*, Articles 30 and 31

⁵¹⁶ *Ibid.*, Articles 32-37 It is worth mentioning that simultaneously with the entrance into effect of the Law on Public Service on January 1, 2012, the Law on Declaration of Assets and Income of Physical Persons will become void (Article 49 of the Law on Public Service). Thus, from the next year only high-ranking public officials will submit declarations on income and assets (currently, according to Article of the Law on Declaration of Income and Assets of Physical Persons, besides them such declarations shall submit also certain eligible categories of physical persons and almost all categories of state and municipal employees.

⁵¹⁷ *Ibid.*, Chapter 8 (Articles 38-44)

regulations, Armenian Government fulfilled part of its international anti-corruption obligations on GRECO, OECD Istanbul Action Plan and European Neighborhood Policy (ENP).

Assessment

Independence (Law)

To what extent is the independence of the public sector safeguarded by law?

The independence of public servants depends on a number of factors. Among them are the existence of regulations and special bodies aimed at reducing political interference in the appointment and promotion of public servants and existence of regulations regarding their professional impartiality. The major problem, in this regard, is the absence of a single universal body dedicated to protect public servants from undue political influence.

The Law on Public Service declares political restraint and professional impartiality among major principles of public service.⁵¹⁸ In order to hold public service position or high-ranking public office, the Law on Public Service defines certain criteria, requirements and restrictions, and among them is the ban to use his/her office to secure factual advantages or benefits for political parties, public or religious organizations.⁵¹⁹ Those citizens, who are eligible to hold public service positions, have the right to hold them independent from their ethnicity, race, sex, religious, political or other affiliations, social origin, property or other status.⁵²⁰

Generally, the promotion in public service can occur only through the participation in the contest for a higher vacant position and the procedures regulating contests, as was mentioned above, are regulated by the relevant laws on particular areas of state service and Law on Municipal Service. Thus, in order to analyze how legally the public servants are safeguarded from undue political and other type of influence during the contest, one shall look through the mentioned above relevant laws. For example, certain provisions in the Law on Civil Service create possibilities for undue influence, including political influence in the appointment and promotion of civil servants. In particular, the second and the last stage of the contest for filling the vacancies in civil service⁵²¹ is the interview, when those contestants, who successfully passed the first (test) stage are interviewed by the head of the institution or head of the staff of the institution.⁵²² Interview also is conducted in those cases of attestation, which are defined by the Law on Civil Service.⁵²³ The law does not define clear criteria for the evaluation of the interviewee,

⁵¹⁸ Article 6 of the Law on Public Service

⁵¹⁹ *Ibid.*, Article 23

⁵²⁰ *Ibid.*, Article 11

⁵²¹ The only option for civil servant to advance in his/her career, is to participate in the contest for vacancies in higher position, than his/her, current position is. This is implied by Article 14 of the Law on Civil Service.

⁵²² *Ibid.*, Article 14

⁵²³ *Ibid.*, Article 19

which could result to discretionary and subjective decisions, including also politically motivated ones. Also, such procedure is conducive for political or other types of pressure on the interviewer, as well. Another possibility for political and other kind of pressure, this time on the Civil Service Council (CSC), is the provision of the Law on Civil Service⁵²⁴, according to which CSC is the responsible entity for organizing and conducting contests for high-level civil service positions. Such provision contradicts to another provision of the mentioned Law, which defines that CSC is empowered with the function of policy implementation and coordination in the area of civil service.⁵²⁵ Moreover, the possibility of exerting pressure on CSC could impede the Council's ability to effectively oversee the activities of other state bodies in following the legal requirements on civil service.

The Law on Public Service does not provide a single, universal for all types of public service, institution dedicated to protect all public sector employees against arbitrary dismissal or political interference.

There is no legal regulation on parliamentary lobbying for the inclusion/exclusion of publicly procured projects in plans, programs and budgets. However, the parliamentarians can actively influence on such projects during the discussion of the draft budget in NA (see, more on *Executive Oversight* Role indicator of the **Legislature** pillar).

Governance

Transparency (Law)

To what extent are there provisions in place to ensure transparency in financial, human resource and information management of the public sector?

Those public servants, who are at the same time high-ranking officials, shall submit their income and assets declarations, as well as income and assets declarations of some of their affiliated persons (spouse, parents and non-married adult children living with them), to the Ethics Commission for High Level Public Officials of High-Ranking Officials.⁵²⁶ The disclosure of these declarations is regulated by the Law on Public Service in the same manner, as for other high ranking public officials (see the discussion on the relevant indicator of the **Legislature** pillar).

⁵²⁴*Ibid.*, Article 14

⁵²⁵*Ibid.*, Article 37

⁵²⁶ Article 5 of the Law on Public Service provides the definition of public servant. According to that definition, public servant is an individual, who holds any of the positions enlisted in the list of the offices of state service or list of the offices of municipal service or is placed in the personnel reserve of the corresponding public service in a manner and procedure prescribed by law. The list of municipal service positions is brought in the January 5, 2009 Order N03-N of the Minister of the Territorial Administration.

The management of public information is regulated by the Law on Freedom of Information and procedures based on that Law. The Law on State and Official Secret defines the list of information items, which constitute state or official secret.⁵²⁷ The Code of Administrative Delinquencies defines administrative responsibility for public officials for not submitting the requested information.⁵²⁸ The public official can be held liable also for submitting incomplete or wrong information.⁵²⁹ However, a setback that remains with the Law on Freedom of Information is that still the secondary legislation acts stemming from the Law still are not developed, and the absence of such acts still are used by public officials to refuse submitting requested information. Another setback of the Law, also mentioned in the Report on Second Round Monitoring on Armenia of the OECD Anti-Corruption Network for Eastern Europe and Central Asia⁵³⁰, is that it 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 to information a public body has to prove that: a) there is a legitimate interest to restrict access; b) that disclosure would cause significant harm to such interest; and c) that harm outweighs public interest in receiving information.

The issues related to the preparation and publication of legal documents is regulated by the Law on Legal Acts. In particular, Articles 13 to 62 of the Law regulate the procedures of the adoption of legal acts by the adopting bodies and requirements for their publication.

The Law on Procurement regulates the issues related to documents and records pertaining to public procurement.⁵³¹ This will be discussed in the section on *Reduce Corruption Risks by Safeguarding Integrity in Public Procurement* indicator of this pillar.

Appointments on vacant positions in public service are governed by the relevant laws on particular types of state or municipal service. For example, in the case of civil service, according to the Law on Civil Service, the vacant position in civil service shall be filled either through contest or non-competitive basis.⁵³² The procedures of the conduct of contest are defined by CSC.⁵³³ Appointments on a non-competitive basis are foreseen only for very limited cases.⁵³⁴ The state body, who conducts the contest⁵³⁵, shall post announcement on the contest not later, than one month prior to the contest day, in a newspaper

⁵²⁷ Article 9 of the Law on State and Official Secret

⁵²⁸ Article 189.7 of the Code of Administrative Delinquencies

⁵²⁹ Article 148 of the Criminal Code

⁵³⁰ www.oecd.org/dataoecd/38/51/48964985.pdf p. 64

⁵³¹ Articles 7,8, 23, 24, 30, 31 and 34 of the Law on Procurement

⁵³² Article 12 of the Law on Civil Service

⁵³³ CSC Decision N17-N from June 13, 2002 on the Procedure of Conduct of Contest for the Vacant Position in Civil Service

⁵³⁴ Article 12.2 of the Law on Civil Service

⁵³⁵ According to Article 14 of the Law on Civil Service, CSC organizes the contests for vacancies of highest and principal civil service positions, and the relevant state body – for leading and junior positions.

with at least 3,000 copies of circulation and other media entity.⁵³⁶ The procedures of filling the vacancies and relevant appointments remain rather complicated and they do not comply with EU requirements.⁵³⁷

Transparency (Practice)

To what extent are there provisions in place to ensure transparency in financial, human resource and information management of the public sector effectively implemented?

During the first half of 2012 TIAC, in cooperation with *Investigative Journalists* NGO, monitored and analyzed the implementation of the procedures of declaration of income and property by high-ranking officials and their relatives. Two written requests to receive copies of those declarations of selected high-ranking officials, first on April 19, 2012 and the second – on May 10, 2012, were submitted to the Ethics Commission for High Level Public Officials of High-Ranking Officials.⁵³⁸ On June 5, 2012 the Commission responded by submitting a 100-page information on the requested issue. Based on the received materials, during the period from June 13 to 29 the *Investigative Journalists* NGO published 6 articles on its <http://hetq.am> web-site. The major problem revealed as a result of this analysis was that by the time of the completion of this study (June 30, 2012), there have been no cases on the verification of the contents of the declarations by the Commission. However, considering that the Commission was established only on January 9, 2012⁵³⁹ and started its operations by the middle of March of the same year, more time will be needed to reveal, if the verification of the contents of declarations will become the routine task of the Ethics Commission for High Level Public Officials of High-Ranking Officials.

Accountability (Law)

To what extent are there provisions in place to ensure that public sector employees have to report and be answerable for their actions?

Article 22 of the Law on Public Service provides that while performing his/her job duties, the public servant shall inform the relevant public officials in a manner prescribed by law about the violations and illegal actions, including corruption-related offences, committed by his/her colleagues. If the response that he/she received from those officials does not satisfy him/her, then he/she can inform about that in a written form to the head of the corresponding state body or other competent state bodies. The latter shall guarantee the security of the informer (whistle-blower). The procedures of informing and guaranteeing the security of the informer(s) shall be developed by the Government. This is, actually, the first serious

⁵³⁶ Article 14 of the Law on Civil Service

⁵³⁷ These requirements are formulated in the European Neighborhood Policy's EU/Armenia Action Plan (http://ec.europa.eu/world/enp/pdf/action_plans/armenia_enp_ap_final_en.pdf)

⁵³⁸ It should be mentioned that at that time the named Commission did not have its own web-site and the declarations were not publicly accessible.

⁵³⁹ According to Article 49 of the Law on Public Service the Ethics Commission for High Level Public Officials of High-Ranking Officials shall be established on November 1, 2011 and start its operations starting from January 20, 2012.

attempt to comprehensively address the issue of whistle-blowing in public service, and the practice of the implementation and enforcement will show how this regulation will work. Considering Armenian reality with a long record of negative public perception towards whistle-blowing (stemming from its excessive and politically-motivated use during Stalinist era, as well as authoritarian style of management in state bodies), potential deficiencies containing in this Article that could hinder its effective implementation is the obligation for the whistle-blower to inform about the illegalities first to the relevant public officials and then to higher-ranking officials or competent bodies. The only provision for whistle-blowing on misconduct and management of complaints in public procurement procedures is the one containing in Article 16 of the Law on Procurement, according to which among the functions of the Centre for the Support to Procurement is the maintenance of the hot-line for the registration of reports on violations in the procurement procedures and their timely response.

According to Criminal Code, criminal liability for public officials, including civil servants, is foreseen for such criminal offences, as abuse of public office, bribery, extortion, trade in influence, forgery, etc.⁵⁴⁰. As it has been already mentioned (see the **Transparency** section of this pillar), public official can be held liable also for submitting incomplete or wrong information. They are also subject to administrative liability for such administrative violations, which are related to the violation of those rules and procedures on governance, state and public order, nature protection, health and other areas, whose implementation is among the duties of these officials.⁵⁴¹ However, neither the Criminal Code, nor the Code on Administrative Delinquencies defines different level of liability for the violations committed by public official and public servant. As a result, there is a potential that a higher ranking public official and lower ranking public servant could get the same punishment, despite of their status difference.

The major mechanism for citizen and legal persons' complaints against public officials is applying the Law on Principles of Administration and Administrative Procedure.⁵⁴² The Law defines the fundamental principles of administration, procedures of submission, investigation and resolution of appeals of physical and legal persons, relationships related to the adoption, appeal, execution, change, publication, promulgation, termination and invalidation of administrative acts, as well as compensation of damage incurred from the execution of those acts. The Law sets the procedures, which the citizens shall apply to appeal the actions of public institutions in the Administrative Court (see below).

As a result of introduction of changes and amendments to the Constitution, passed through November 2005 referendum, any person has now the right to submit appeals and suggestions to relevant state and local self-administration bodies related to the protection of his/her or public interests and receive proper answer in a timely manner.⁵⁴³ Moreover, if there is a final ruling of the court and the person exhausted all

⁵⁴⁰ Articles 308-314 of the Criminal Code

⁵⁴¹ Article 14 of the Code on Administrative Delinquencies

⁵⁴² *Official Bulletin 2004/18(317), 31.03.04*

⁵⁴³ Article 27 of the Constitution

means of judicial protection, he/she could appeal the compliance of the applied legal act to the Constitution in the Constitutional Court.⁵⁴⁴ Finally, with the adoption of the Administrative Procedure Code, the Administrative Court was established, to which the citizens and legal persons can appeal.⁵⁴⁵ An important supplement to the Law on Principles of Administration and Administrative Procedure is the Law on the Procedure of Review of the Suggestions, Applications and Complaints of the Citizens⁵⁴⁶, which was the only legal act for the appeal of citizens before the adoption of the Law on Principles of Administration and Administrative Procedure. Currently, the Law on the Procedure of Review of the Suggestions, Applications and Complaints of the Citizens is partially in effect – only related to the suggestions of citizens.⁵⁴⁷ At the same time, it should be mentioned that this Law is outdated and needs serious changes to harmonize it with more advanced and more recently adopted Law on Principles of Administration and Administrative Procedure.

Citizens can also submit their applications, complaints and suggestions related to the conduct of public sector agencies to the staff of the President and staff of the Government, who organize the reception of citizens and review of their appeals. The staff of the Government reviews and resolves those appeals, which were not resolved by the governmental agencies, as well as those, which are complaints against the heads of those agencies.

The only independent institution that conducts oversight over public sector agencies is the Chamber of Control of Armenia, which is the supreme audit institution of the country. The Chamber of Control carries out external state control over the use of state and municipal property. The activities of the Chamber of Control are described in the chapter on *Supreme Audit Institution* pillar. Public sector agencies do not directly report to the legislature. However, the legislature indirectly can oversee them through the scrutiny of the reports of the Chamber of Control submitted to NA.

The internal audit of public sector agencies is conducted based on the Law on Internal Audit.⁵⁴⁸ It regulates only financial audit.

Integrity mechanisms (Law)

To what extent are there provisions in place to ensure the integrity of public sector employees?

The Law on Public Service defines the rules of ethics for public servant and high-ranking public official.⁵⁴⁹ Those are:

- Respect and obey the laws;

⁵⁴⁴ *Ibid*, Article 101

⁵⁴⁵ *Official Bulletin* 2007/64(588), 19.12.07

⁵⁴⁶ *Official Bulletin* 1999/31(97), 27.12.99

⁵⁴⁷ Article 113 of the Law on Principles of Administration and Administrative Procedure

⁵⁴⁸ *Official Bulletin* 2011/4(807), 26.01.11

⁵⁴⁹ Article 28 of the Law on Public Service

- Respect the moral norms of the society;
- Enable through his/her performance to the establishment of trust and respect towards his/her office and institution;
- Perform everywhere and in carrying out any activity such conduct, which is appropriate to his/her office;
- Be respectful to all those individuals, with whom he/she deals, while performing his/her duties;
- Use material-technical, financial and information resources, other state property/facilities and information containing service secret attached to him/her for carrying out his/her official duties only for official purposes; and
- Tend to manage his/her investments in such a manner that will minimize occurrence of conflict of interest situations.

As it can be seen, these rules prohibit unauthorized use of official property/facilities and use of official information, if it contains service secret. By the same Article, these rules are not exhaustive and the laws regulating the relevant areas of state and municipal service can include additional rules, as well.

In addition, Article 38 of the Law prescribes establishment of commissions of ethics in all state bodies, which are under the jurisdiction of this Law (see above in the **Structure and Organization** section which are those bodies). The procedures of the establishment, functioning of these commissions and conduct of investigation in the case of the violation of the rules of ethics shall be defined by the laws regulating each areas of state service. By the same Article, also special Ethics Commission for High-Ranking Public Officials was established. That Article, as well as Articles 39-44 of the Law, defines composition of the Commission, selection criteria and status of its members, termination of their powers, their remuneration, functions of the Commission and procedures of carrying out of investigation by the Commission in the case of the violations of the rules of ethics by high-ranking public officials.⁵⁵⁰

Article 30 of the Law on Public Service defines conflict of interest and situations of conflict of interest only for high-ranking public officials. Conflict of interest is defined as performing such actions or making such decisions, which, though are legally correct and performed in conformity with the official duties of that official, are driven by personal interest and entail or can entail or enable to bring to:

- Improvement of proprietary or legal situation of his or a person affiliated with him
- Improvement of proprietary or legal situation of the non trade organization to which he or the person affiliated with him have membership

⁵⁵⁰ It should be, however, mentioned that Article 43 of the law on Public Service has no power to investigate violations of the rules of ethics by NA members under any circumstances, as well as for members of the Constitutional Court, judges and prosecutors, if the violations of those rules occurred while they were performing their official duties. Thus, the Commission can investigate violations of ethical rules by the members of the Constitutional Court, judges and prosecutors, if they occurred in the situations not related to the performance of their official duties.

- Improvement of proprietary or legal situation, of a trade organization, to which he or a person affiliated with him have participation
- Appointment to a position of the person affiliated with him

At the same time this Article provides that these provisions do not apply on NA members, members of the Constitutional Court, judges and prosecutors, for whom the norms of conflict of interest shall be defined by laws regulating their areas. Also, the Article defines that the high-ranking official shall not be considered as not driven by his/her personal interests or personal interests of the person affiliated to him/her, if his/her action or decision has universal applicability and affects on a wide range of individuals, so that it cannot be perceived as driven by personal interests.

In the case of emergence of conflict of interest situation the high-ranking public official, except NA members, members of the Constitutional Court, judges, prosecutors, as well as those high-ranking public officials, who have no senior to them high-ranking officials in the sense of this Law⁵⁵¹, is obliged to submit a declaration in a written form about conflict of interest to his/her superior.⁵⁵² He/she does not have the right to take any action or make any decision, until he/she will not receive consent in a written form from his/her superior to whom he/she submitted that declaration. By the same Article, the official has the right to seek clarification from the Ethics Commission for High-Ranking Public Officials on the necessity to submit the mentioned above declaration. The mentioned Commission has power to investigate and reveal conflict of interest situations related to high-ranking officials (including also those who are not inferior to any other high-ranking official), except of those, related to NA members, members of the Constitutional Court, judges and prosecutors.⁵⁵³ The exclusion of NA members, members of the Constitutional Court, judges and prosecutors from the list of high-ranking public officials whose conflict of interest shall be subject to scrutiny by the Ethics Commission for High-Ranking Public Officials can be viewed as a potential deficiency.

Finally, a provision preventing conflict of interest of public servants during procurement procedures contain also in the Law on Procurement. According to Article 30 of the Law on Procurement, immediately after the meeting on the opening of bids, the member of the tender commission (the tender commissions comprise of public servants and officials of the state body, which is the customer in the procurement) who has conflict of interest related to the tender shall declare self-withdrawal from the activities of the commission or, if he/she does not do so, the chair of the commission shall reject his/her membership. If the chair of the commission has conflict of interest, then he/she shall declare self-

⁵⁵¹ The seniority among high-ranking public officials is defined by Point 18 of Article 5 of the Law on Public Service. According to it, for example, the Head of the Staff of the President, Secretary of the National Security Council, Head of the Oversight Service of the President, as well as advisers and assistants to the President are inferior high-ranking public officials to the President

⁵⁵² Article 31 of the Law on Public Service

⁵⁵³ *Ibid*, Article 43

withdrawal and be replaced by another member of the commission. All members of the tender commission shall sign declaration on the absence of conflict of interest.

The prohibition of accepting gifts by high-ranking public officials and public servants is provided by Article 29 of the Law on Public Service. The Article defines gift as “any material advantage, which reasonably would not be given to the individual, who is not a public official”. The public official shall not accept or agree to accept in the future such gift. At the same time, the same Article defines which items cannot be considered as gifts. Those are gifts, awards given or hospitality provided during official events, books, computer software and similar other materials, given for free for in-service use, stipends or grants awarded as a result of contest, won by the official under equal conditions and criteria applied to all contestants or other transparent procedure, provided that their market price does not exceed 100,000 AMD (about 250 USD)⁵⁵⁴, any other type of hospitality, as well as gifts received from close relatives, relatives and friends, if the gift by its nature and size reasonably corresponds to the character of their relationships. Here the potential deficiency of the legal regulation is that no mechanisms are foreseen to detect the receipts of the gift (it is relied on the good will of the official) and no explicit sanctions are in place, in the case if such receipt is detected.

Article 23 of the Law on Public Service defines certain restrictions that shall be applied over public servants and high-ranking public officials. Among them, in particular, it is prohibited for them to use material-technical, financial and information resources, other state and/or municipal property and official information under his/her possession as office holder for other purposes. It is also prohibited to receive gifts, money or services from other persons connected with the execution of their powers. By the same Article they are also prohibited to work together or as representatives of the state conclude property contracts with their close relatives and in-laws (parents, children, spouse, siblings, as well as parents-in-law, children-in-law and siblings-in-law), if there are supervisor-subordinate or oversight relationships between them.⁵⁵⁵ Finally, by the same Article, within one year period after their resignation, public servants or high-ranking public officials are also prohibited to be employed by an employer or become member of an organization, who have been under his/her oversight during the last year of running their office.

Regulations on the use of official travel are not provided by the Law on Public Service. There is uniform regulation of business travel, including travel by public servants and public officials, provided by Article 209 of the Labor Code and sub-legislative acts, among which the major one is the December 29, 2005

⁵⁵⁴ By the same Article, if the market price of such gift exceeds 100,000 AMD, then the public servant or high-ranking public official shall receive the consent of his/her superior, or, if the high-ranking official does not have superior, then he/she shall hand the gift for benevolent purposes. Such gift becomes the property of the corresponding state body.

⁵⁵⁵ These provisions do not apply to NA members. According to alteration by HO-112-N in article 2 (2), the provisions of the law apply to high level public officials only in cases when it is directly mentioned about it. In this regard, in article 23 it is mentioned that the requirements of the provision applies to high level public officials and there is no exception mentioned in the article about NA members.

Decree N2335 of the Armenian Government, which regulates the procedures of the compensation of business travel expenses, minimal sizes of business travel expenses and minimal and maximal sizes of means allocated from state and municipal budgets for travel expenses, etc.

Article 311 and 312 of the Criminal Code define receiving and taking bribes, respectively, as criminal offense for all public officials, including public servants.

Explicitly, the bidding/contracting documents in public procurement do not contain anti-corruption clauses. However, they contain clauses aimed at enhancing transparency, accountability, and integrity in the procurement processes (see more on that below in the discussion of **Reduce Corruption Risks by Safeguarding Integrity in Public Procurement** section).

Integrity mechanisms (Practice)

To what extent is the integrity of civil servants ensured in practice?

Parallel to the monitoring of the procedures of the declaration of income and property of high-ranking public officials (see above on the discussion on *Practice* dimension of the **Transparency** indicator), TIAC also monitored the situation with conflict of interest and following the rules of ethics by high-ranking public officials. For this purpose, on March 20, 2012 and June 18, 2012 it sent written requests to the Ethics Commission for High-Ranking Public Officials to receive statistical information on the instances of conflict of interest and violations of rules of ethics by high-ranking public officials. Through its two official written responses to these requests (first dated on March 23, 2012 and the second – on June 25, 2012), the Ethics Commission for High-Ranking Public Officials informed TIAC that the Commission did not receive **any** request for clarification about declaring conflict of interest situations or any information about the violations of ethics by high-ranking officials. Considering the short period of monitoring and the fact that by the completion of this study the Commission only started operating, more time is needed to assess how the integrity mechanisms in public service provided by the Law on Public Service will be implemented.

Role

Reduce Corruption Risks by Safeguarding Integrity in Public Procurement (Law)

To what extent is there an effective framework in place to safeguard integrity in public procurement procedures, including meaningful sanctions for improper conduct by both suppliers and public officials, and review and complaint mechanisms?

The integrity in public procurement is addressed in the Law on Procurement, which was adopted by NA on December 22, 2010 and entered into effect on January 1, 2011. The procurement process is based on the following principles:⁵⁵⁶

- Organization of procurement procedures based on uniform rules, competition, transparency, publicity and non-discrimination;
- Extension of the framework of bidders and promotion of competition among them for the conclusion of contracts; and,
- Equality of all participants of the procurement process regardless there are foreign physical persons, organizations or individuals with no citizenship.

The Law on Procurement provides that open bidding (tender) shall be the preferable and major procurement procedure⁵⁵⁷ and other procurement procedures shall be applied only in the cases, prescribed the named Law⁵⁵⁸. The consecutive three articles of the Law (Articles 18-20) clearly define the conditions for the application of each of other forms of bidding.⁵⁵⁹

The objectivity of the contractor selection process is ensured through several provisions containing in the Law on Procurement. First, the invitation to the tender shall define the procedure of the selection of the contractor.⁵⁶⁰ The openness and transparency of the bid opening procedure is another prerequisite to the objectivity of the contractor selection process. Article 30 of the Law ensures such openness and transparency through such requirements as coincidence of the day and time of the bid opening meeting with the deadline of bids submission, mentioned in the bid invitation; announcement of such information during the meeting, which are enlisted in the Article; preparation of the protocol of the meeting, which shall contain information provided by law; possibility for the members of the tender commission and bidders to express in the written form their opinions, which shall be attached to the meeting protocol; right of all bidders to participate in the bid opening meeting; declaration of conflict of interest by the members of tender commission.; and, the availability of the copies of the meeting protocol to all bidders on the next calendar day following the meeting day.

The most important Article of the Law on Procurement related to the selection of the contractor is Article 31 of the Law. It sets the procedures and criteria for the contractor selection. According to that Article, the winner is the bidder, who offered the lowest price, or the one who gained the most coefficients, which are assigned to the price and non-price criteria. Thus, the price is still considered as the dominant criterion in the selection of the bidder. In practice the application of non-price criteria still remains very

⁵⁵⁶ Article 3 of the Law on Procurement

⁵⁵⁷ *Ibid.*, Article 17

⁵⁵⁸ By the same Article of the Law (Article 17) other procurement procedures are competitive dialogue, limited procedures and negotiations procedure.

⁵⁵⁹ Article 18 of the Law defines the conditions for the application competitive dialogue, Article 19 – for the application of limited procedures, and Article 20 – for the negotiations procedures.

⁵⁶⁰ Point 1.5 of Article 25 of the Law on Procurement

limited, and the only criterion is the price. The problem here is that often low-price bids are entailing to low-quality goods, services or works.

The Law on Procurement defines which the standard bidding documents are, and how they shall be used. Those documents are the announcement of the tender, invitation to the bid, as well as protocol and reports on the procurement process and protocols of the major meetings (opening, evaluation and concluding) of the tender commission, which are attached to the protocol of the procurement process. The content and purpose of each of these documents are provided (or included in) by separate article of the Law. In particular, Article 8 of the Law defines that, if the procurement price exceeds the procurement basic unit⁵⁶¹, then the customer shall prepare protocol on the procurement process. The same Article defines the information that shall be included in that protocol. According to the same Article, in the cases of registration of procurement contracts, which create liabilities for the state, or concluding procurement contracts at the expense of the means from state budget or in the case of termination of the procurement procedure, the customer shall file reports on them. Finally, the same Article provides that the customers shall prepare annual reports on their procurement, which shall be submitted to the Ministry of Finance – the authorized body for public procurement. The protocols of the bid opening, bid evaluation and concluding (summarizing) meetings of the tender commissions shall be prepared and attached to the protocol on procurement procedure, according to Articles 30, 31 and 34, respectively.

Article 24 of the Law on Procurement provides that in the case of open tender, in order to attract as much as possible firms to participate in those tenders, an announcement and invitation for bidding shall be published in the Electronic Bulletin of Procurement. This article was amended by law no. HO-157-N (19.03.2012) and now in addition to the Bulletin the announcement and the invitation should be posted also at the website www.azdarar.am (official website of public notifications in the Republic of Armenia). The same Article clearly defines the information that shall be included in the announcement. Based on the announcement, any physical or legal person upon the written request to the customer can receive a hard copy of the bidding invitation.⁵⁶² Finally, Article 25 of the Law on Procurement provides the detailed content of the bidding invitation.

With the adoption of the new Law on Procurement, Armenia adopted the decentralized system of public procurement, the Armenian Ministry of Finance, which is the authorized state body for procurement, has no longer functions of control over procurement. However, the Ministry maintains its regulatory and coordinating functions, such as coordination of activities on the development of drafts of legal acts related to procurement, performance of methodological guidance over the procurement processes,

⁵⁶¹ According to Article 2 of the Law on Procurement, the basic procurement unit in Armenia is set equal to 1 mln. AMD (about 2,591 USD).

⁵⁶² By the same Article, if the procurement price exceeds 50 times the basic procurement unit (50 mln. AMD or about 129,534 USD), then the person has the right to request also bidding invitation translated into English and Russian.

training of procurement coordinators of customers, etc.⁵⁶³ At the same time, the financial control over the procurement can be performed by the Chamber of Control, which is an independent body (see more in the discussion on **Supreme Audit Institution** pillar), as well as inspectoral bodies, such as State Revenue Committee, Oversight Service of the President, Oversight Service of the Prime Minister, etc.

As a result of the decentralization of the procurement system, the former State Procurement Agency, which was conducting procurement for state bodies, was reorganized and now is called Center for the Support to Procurement and is conducting training for procurement coordinators, providing consultancy to customers (for free), bidders and others (for charge), assesses the right and qualification of bidders, monitors and evaluates the characteristics of procurement items and qualification criteria developed by the customers, maintains the hot-line for complaints, etc.⁵⁶⁴ The Center is not connected or depending from other state or municipal bodies, which are performing in the status of customers in the procurement processes.

The Law on Procurement does not explicitly differentiate among the specialists involved in different stages of the procurement process, and, thus, it does not require them to have special qualifications related to their tasks. The only mentioning about such specialists is that each customer (state or municipal body) shall define its procurement coordinator, who is responsible for the organization and coordination of the customer's procurement processes, shall give conclusions on the procurement-related documents approved by the customer, carry out the duties of the secretary of the tender commission, and prepare and submit for approval to the head of the customer the protocol of the procurement procedures and procurement contract.⁵⁶⁵ By the same Article the procurement coordinator can be the corresponding division of the customer, public official(s) or invited person(s) – consultant(s). At the same time, the procurement coordinator, who, as has been mentioned, also performs the functions of the secretary of the tender commission, cannot be a member of that commission.⁵⁶⁶

Article 26 of the Law on Procurement regulates the procedures on clarifications and amendments. Among its provisions there is one, which requires that statements on the contents of request for clarification and clarification itself shall be published in the Electronic Bulletin of Procurement on the next day following the day of the response to the request for clarification, without mentioning any data about the requesting person. By the same Article, amendment(s) to the bidding invitations can be made not later, than 5 calendar days before the deadline of the submission of the bids. In the case of open tender, information about the amendment(s) shall be published in the Electronic Bulletin of Procurement within 3 days following the date of making the amendment(s). In the case of limited procedure of

⁵⁶³ Article 15 of the Law on Procurement

⁵⁶⁴ See more on the functions and powers of the Center for the Support to Procurement in Article 16 of the Law on Procurement

⁵⁶⁵ Article 15 of the Law on Procurement

⁵⁶⁶ *Ibid.*, Article 23

procurement the amendment(s) shall be submitted to all persons (physical and legal), who received the bidding invitations.

Article 10 of the Law on Procurement provides that if the price of the contract exceeds the procurement base unit, then the customer within 7 calendar days following the date of the contract signature, shall send the contract to the Ministry of Finance (authorized state body) a statement about it, which the Ministry shall publish in the Electronic Bulletin of Procurement. During the same period the customer shall publish the mentioned statement at the website www.azdarar.am⁵⁶⁷ This provision does not apply only to those contracts, which contain state, service or bank secrets. The same Article also defines the content of the statement.

Publication of annual reports on public procurement is one of the functions of the Ministry of Finance – the state authorized body for procurement.⁵⁶⁸ However, the Law does not explicitly define the content of those reports, and, thus, it does not oblige the Ministry to include in the report comprehensive statistical information on contracts.

Appealing the procurement process is regulated by Chapter 6 (Articles 45-49) of the Law on Procurement. It establishes the right for appeal (Article 45), establishes the Council on Procurement Appeals (Article 46), as well as defines the activities of the Council (Article 47), procedures of bringing the appeals to the Council (Article 48) and procedures of suspension of procurement procedures (Article 49).

Civil control over the procurement processes is provided through the involvement of NGOs in the Council on Procurement Appeals. Article 46 of the Law provides that one of the members of the Council shall be an officially registered in Armenia NGO, which applied in a written form to the Ministry of Finance. Also, according to Article 8 of the Law requires from the customer to submit the protocol of the procurement procedure and attached to it documents to anyone, who shall request them within 5 calendar days following the date of the request. Finally, by declaring transparency and publicity in the organization of procurement process among the major principles of public procurement⁵⁶⁹, the Law allows civil society organizations to monitor procurement processes, in particular, open tenders.

There are no specific administrative sanctions for criminal offences against public administration in connection with public procurement. However, such offenses are qualified mainly as offenses against state service and are dealt with through the articles of Chapter 29 (Articles 308 – 315.2) of the Criminal Code.

⁵⁶⁷ HO-157-N (adopted on 19.03.2012) on making amendments into Law on Procurement

⁵⁶⁸*Ibid.*, Article 23

⁵⁶⁹*Ibid.*, Article 3

Concluding the discussion of this section, one can assert that the new Law on Procurement improved substantially the legal regulation of procurement processes, making their compliance to the NIS standards better and broader. In particular, conducting sole-sourcing is now more difficult by law; the appeal procedures became stricter and structure dealing with appeals more independent and more inclusive for civil society organizations; and so on. At the same time, for different reasons, certain deficiencies still are not addressed properly. Still, the use of non-price criteria in defining the winner of the tender is not promoted by law. The law does not require differentiation of procurement staff for different procurement stages; it does not explicitly define the content of annual reports on procurement. There is also no explicit mechanism to monitor the procurement processes by civil society organizations. Criminal offences specifically occurring in the procurement processes are not differentiated from other similar offences against public service, etc.

Recommendations on the pillar of Public Service

1. To establish a body, universal for all types of public servants, dedicated to protect all public sector employees against arbitrary dismissal or political interference.
2. To amend the Law on Freedom of Information to include three-step test on the rejection to provide the requested information.

Law Enforcement Agencies

Table of Indicator Scores

Law Enforcement Agencies			
Overall Pillar Score: 58.3			
	Indicator	Law	Practice
Capacity 62.5	Resources		Not scored
	Independence	75	50
Governance 62.5	Transparency	75	75
	Accountability	50	50
	Integrity Mechanisms	75	50
Role 50	Corruption Prosecution	50	

Structure and Organization

The major law enforcement agencies in Armenia are police and prosecution. Their activities are regulated by the Law on Police⁵⁷⁰, Law on Police Service⁵⁷¹, Law on the Prosecution System⁵⁷² and other laws and codes (notably, Criminal Procedure Code).

Since Armenia gained independence, Armenian Police (before the Law on Police came into effect it was called *Militia*), which was part of the system of internal affairs (inherited from Soviet times) until the Law on Police Service came into effect, underwent serious legal and structural changes. Already in 1992 by the Presidential Decree N116 from June 21, 1992 Internal Troops (renamed later Police Troops) of the Ministry of Interior were established. Special structures on the fight against organized crime and fight against drug crimes were established. The High School of Police was reorganized into Police Academy. In 1992 Armenia became member of Interpol. During a short period from November, 1996 to June, 1999 the Ministry of Interior and Ministry of National Security were merged into one Ministry of Interior and National Security. The term “Police” was introduced with the introduction of the Law on Police, and initially it was part of the system of internal affairs. After a number of structural changes, among them, notably, transfer of the jurisdiction of the penitentiary facilities from the Ministry of

⁵⁷⁰RA Official Bulletin 2001/15(147), 31.05.01

⁵⁷¹RA Official Bulletin 2002/32(207), 08.08.02

⁵⁷² RA Official Bulletin 2007/19(543), 11.04.07

Interior to the Ministry of Justice (which was one of the Armenia's obligations to the Council of Europe), the Ministry of Interior was reorganized into the Police of the Republic of Armenia.⁵⁷³

The Police are headed by the Head of Police, appointed by the President of the Republic. He has 5 deputies, one of whom is the First Deputy. Also, the Commander of the Police Troops is Deputy Head *ex officio*. Another *ex officio* Deputy Head of the Police is the Head of the Principal Investigation Department. All deputy heads also are appointed by the President of the Republic. According to the Law on Police, the police system comprises Police and state non-commercial organizations and institutions, which are under the supervision of the Police.⁵⁷⁴ By the same Article of the Law on Police, Police consists of the central bodies, Yerevan City Police Department and Police Departments of Marzes (provinces). Central bodies are composed of Staff of the Head of Police, departments, separate divisions (Communication Division and Operative-Technical Division), as well as entities, which are in the structure of police such as, Police Troops Headquarters, Police Academy and Police Training Center.

Until January 12, 1999 when the first national law on the prosecution entered into effect (adopted by the National Assembly (NA) on July 1, 1998)⁵⁷⁵, the legal regulation of the Armenian prosecution system was carried out through the USSR Law on Prosecution System. The introduction of the national law was stemming from the first post-independent Armenian Constitution (passed through popular referendum on July 5, 1995) Article 103 of which defines the legal status of the Prosecution system. The November 27, 2005 referendum on the changes and amendments to Constitution changed also the mentioned Article 103 on the prosecution system. As a result, now the Prosecutor General, who is the head of the prosecution system, is appointed by NA, not by the President, as previously, though upon the nomination of the latter (see more on this in the *Independence* section of this pillar). Considering the fact that the President still retains the power of appointing the deputies of the Prosecutor General this change in the appointment of the Prosecutor General by NA was intended to balance the influence of the President over the prosecution system with that of the legislature, and by that strengthen its independence. Another important change, though not explicitly stated in Article 103, was that the prosecution system stopped to perform investigative functions.⁵⁷⁶

Following one of the requirements of Article 117 of the Constitution, which provides that NA, within two year period following the entrance into effect of the changes in Constitution, shall adjust the acting laws to those changes, the new Law on Prosecution System was adopted on February 22, 2007, which entered into effect on May 1, 2007.

⁵⁷³ Point 1.b of the Presidential Decree NH-1218-N from December 17, 2002

⁵⁷⁴ Article 9 of the Law on Police

⁵⁷⁵ RA *Official Bulletin* 1998/21(54), 10.09.98

⁵⁷⁶ The prosecution still can initiate criminal prosecution (Article 182 of the Criminal Procedure Code). However, Article 189 of the named Code, which defines which bodies have power to conduct criminal investigation, does not mention the prosecution system, as it was before (the relevant change to this Article was adopted on November 28, 2007 and entered into effect on December 27 same year).

According to Article 103 of Constitution, the prosecution system of Armenia is an integrated system headed by the Prosecutor General of the Republic of Armenia. In the cases and manner prescribed by law, the prosecution system:

- 1) Initiates criminal prosecution;
- 2) Oversees over the legality of the pre-investigation and investigation;
- 3) Defends the charges brought to court;
- 4) Brings a suit to court on defending the interests of the state;
- 5) Appeals rulings, decisions and verdicts of courts;
- 6) Oversees over the legality of the application of penalties and other means of compulsion.

The structure of the prosecution system is defined by law.⁵⁷⁷ The prosecution system is comprised of the Office of the Prosecutor General, Office of the Prosecutor of the City of Yerevan, Offices of the Prosecutor of the administrative districts of Yerevan, Offices of the Prosecutor of marzes (provinces), Central Office of the Military Prosecutor and Offices of the Prosecutor of military garrisons. The law also stipulates functioning of the Board of Prosecution System, which is headed by the Prosecutor General and decides on the major organizational issues of the system⁵⁷⁸, Commission on Ethics and Commission on Qualification under the Prosecutor General⁵⁷⁹ and School of Prosecution System⁵⁸⁰.

Assessment

Capacity

Resources (Practice)

To what extent do law enforcement agencies have adequate levels of financial resources, staffing, and infrastructure to operate effectively in practice?

Independence (Law)

To what extent law enforcement agencies are independent by law?

The general criteria and requirements for the appointment of prosecutors are defined by the Law on Prosecution System, and for the appointment of police officers – Law on the Police Service. For both law enforcement bodies general requirements for appointment are citizenship, meaning that the

⁵⁷⁷ Article 8 of the Law on Prosecution System

⁵⁷⁸ *Ibid.*, Article 22

⁵⁷⁹ *Ibid.*, Article 23

⁵⁸⁰ *Ibid.*, Article 62

appointees should be citizens of the Republic of Armenia⁵⁸¹ and knowledge of Armenian, which is the official language of Armenia.

Besides the above-mentioned requirements, the candidate for the position of the prosecutor, according to the Law Prosecution System, shall have permanent residence in Armenia, bachelor degree of law or have diploma of the specialist with higher education in law or received such degree in a foreign country, which is recognized as such and equivalent to the mentioned Armenian degree.⁵⁸² The prosecutors (except the Prosecutor General and his/her deputies) are appointed by the RA Prosecutor General⁵⁸³ based on the list of candidates for the positions of prosecutors and official list of promotion of prosecutors⁵⁸⁴.

Only those prosecutors can be promoted who are included in the official promotion list of prosecutors (see above) and they can be promoted to only those positions, which are defined by law.⁵⁸⁵ The promotion list is formed by the attestation commission either during the attestation (when, based on the results of attestation, the attestation commission can decide to include the prosecutor in that list) or in an extraordinary procedure, when the Prosecutor General or his deputies make a suggestion to the attestation commission to include the prosecutor in the promotion list as a measure of encouragement.⁵⁸⁶ In the latter case the official, who made such suggestion, shall submit corresponding filled evaluation form and the prosecutor is included into the promotion list, if there is a positive resolution of the attestation commission. In the exceptional cases the prosecutor can be included in both promotion and candidacy lists.⁵⁸⁷ Because attestation, according to law⁵⁸⁸, is aimed to reveal the correspondence of the prosecutor's knowledge and skills to the position he/she occupies, one can argue that, according to law, promotion is based on professional criteria. However, the Law does not define criteria and indicators for the evaluation of the candidates for appointment and promotion, included in the corresponding lists, and, as a result, the appointment and promotion are left under the discretion of the Prosecutor General.

In order to verify that the prosecutor meets the requirements set for his/her position, check his/her knowledge and skills and promote him/her, he/she is required to pass regularly (once in 3 years)

⁵⁸¹ At the same time, Article 3 of the Law on Police Service provides that police officers, except those, who hold highest positions, can be also citizens of other countries, i.e. individuals with double citizenship.

⁵⁸² Article 32 of the Law on Prosecution System

⁵⁸³ *Ibid.*, Article 36

⁵⁸⁴ The procedure of the formation of the list of candidacies for the position prosecutors and the criteria for the inclusion in the list are defined by Article 34 of the Law on Prosecution System. The procedure of formation of the list of official promotion of prosecutors is defined by Article 35 of the Law on Prosecution System.

⁵⁸⁵ Article 36 of the Law on Prosecution System

⁵⁸⁶ *Ibid.*, Article 35

⁵⁸⁷ *Ibid.*, This is applicable only to those candidates, who either have 3-year professional work experience as prosecutor, judge, investigator or lawyer, provided that by the moment of inclusion into the list no more, than 5 years passed after he/she left that job, he/she holds degree of Doctor in Legal Sciences or holds degree of Candidate (equivalent to PhD) in Legal Sciences and has 5-year work experience of lawyer.

⁵⁸⁸ *Ibid.*, Article 54

attestation.⁵⁸⁹ By the same Article of the Law on Prosecution System the Prosecutor General, his deputies, as well as the prosecutors of Yerevan, administrative districts of Yerevan and marzes, military prosecutors of garrisons and heads of the departments and sections are not subject to attestation.

The Prosecutor General of the Republic of Armenia is appointed by NA upon the nomination of the President for 6 year term, and he/she cannot be appointed for more than two consecutive times.⁵⁹⁰ Deputies of the Prosecutor General are appointed by the President upon the nomination of the Prosecutor General.⁵⁹¹ The same Article of the Law on Prosecution System defines the criteria for the appointment of the Deputy Prosecutor General. The Deputy Prosecutor General shall have at least 5 years of work experience of judge, prosecutor, attorney, investigator or lawyer of a state or local self-administration body or at least 10 years of work experience of other legal profession.⁵⁹²

The criteria for the appointment in police service are defined in the Law on Police Service.⁵⁹³ In addition to the citizenship and knowledge of Armenian, the individual, who seeks to serve in Police, shall be of age of maximum 30 years⁵⁹⁴, who has served in Army (except females and those who were exempted from military service, if the exemption was not based on health conditions), and is capable to carry out the duties of police officer based on his/her professional, individual and moral qualities, education, health and physical conditions, and regardless his/her national, racial or social origin, sex, and property and other conditions.⁵⁹⁵ In addition, the same Article of the Law defines who cannot serve in Police. Those are the citizens who were declared as incapable or having limited capability by court ruling, were deprived from holding position in civil or other type of state service by court ruling, have been convicted for intentionally committed crime, or not-intentionally committed crime, if the conviction has not been properly expired (in the latter case), are under criminal prosecution or are not eligible based on the above-mentioned criteria. Finally, the law provides that only those, who have secondary education, can be appointed on junior positions⁵⁹⁶ in Police, and for the appointment on middle positions one shall have

⁵⁸⁹ *Ibid.*, Article 54

⁵⁹⁰ Article 103 of the Constitution The same provision is repeated in Article 36 of the Law on Prosecution System

⁵⁹¹ Article 36 of the Law on Prosecution System

⁵⁹² Interestingly, the mentioned Law has no similar criteria for the position of the Prosecutor General.

⁵⁹³ Articles 11 and 14 of the Law on Police Service It should be mentioned that through the amendment of a new chapter (Chapter 11.1) to the Law on Police Service adopted on December 6, 2007, the institute of special civil service was introduced within the Police system. The amended chapter regulates the status and performance of special civil servants, who are employed in the police system (those are mainly those staff members, who carry out auxiliary functions, such as employees of Finance-Economical Department, Medical Department, etc.) and is based on the principles and mechanisms of the Law on Civil Service.

⁵⁹⁴ The same Article provides that for certain specialties in Police, the list of which shall be defined by the Government, citizens, who do not have the qualification of policeman or police officer also can be appointed based on the results of their training.

⁵⁹⁵ Article 11 of the Law on Police Service The same Article provides that the requirements on professional, physical and health conditions shall be defined by the decision of the Government.

⁵⁹⁶ According to Article 4 of the Law on Police Service, the positions in Police are categorized into 5 categories, which are highest, chief, senior, middle and junior categories. Article 14 of the same Law requires that the promotion of the Police officer to the position of higher category shall take place only after he/she has served at a lower category position for certain, defined by that Article, years. The only exception are middle category positions, to which not only officers of the junior category can be promoted, but also (as it is mentioned in the text)

higher education.⁵⁹⁷ The same Article provides that those citizens of the Republic of Armenia, who graduated from the Armenian higher special police educational institution or equivalent institution in the foreign country, are appointed immediately (without serving on junior positions) on a position of police inspector, who is a middle category position. Similar to the prosecutors, police officers are required to pass regularly (once in 3 years) attestation (except those officers, who occupy highest positions in Police).⁵⁹⁸

Prevention of political interference in the activities of the prosecutors are legally ensured by the requirement for the prosecutor to be de-politicized, limitations set by law on the prosecutor's activities and defining the legal protection of the prosecutor in the law. The Law prohibits the prosecutor to join any political party, be involved in any way in political activities and under any circumstances he/she shall exercise political restraint and neutrality.⁵⁹⁹ In addition, the same Article provides that the prosecutor can participate in national or local self-government elections only as a voter and cannot participate in election campaigns.

One of the limitations applied on the prosecutor or police officer is that he/she does not have the right to use his/her official position in the interests of political parties, public or religious organizations or use that position to advocate for them, as well as carry out political or religious activities, while performing his/her duties.⁶⁰⁰

Finally, the law defines that the prosecutor shall be legally protected.⁶⁰¹ This legal protection means that the prosecutor a) shall be independent and shall obey only the law; b) cannot be dismissed from his/her position, except for the cases defined by Constitution and the Law on Prosecution System; and, c) is not allowed to be arrested without the consent of the Prosecutor General or his/her deputies (except the cases when the arrest is performed on the basis of the court ruling). By the same Article, criminal proceedings against the prosecutor can be initiated only by the Prosecutor General or his/her deputies.⁶⁰² Finally, creating obstacles against performing his/her duties, insulting him/her, if the insult is related to his/her

those, who graduated from Armenian or equivalent foreign special (police) higher educational institutions (academies).

⁵⁹⁷ Article 14 of the Law on Prosecution System

⁵⁹⁸ *Ibid.*, Article 15

⁵⁹⁹ *Ibid.*, Article 7

⁶⁰⁰ Article 43 of the Law on Prosecution System and Article 39 of the Law on Police Service It is worth mentioning that through a recent amendment to this Article (adopted by NA on April 11, 2011 and entered into effect on May 2, 2011), the prosecutors are now allowed to attend demonstrations and rallies. However, the ban on organizing and participating in strikes remained. A similar amendment to Article 39 of the Law on Police Service adopted and entered into effect on the same corresponding days as for the amendment to the Article 43 of the Law on Prosecution System allowed police officers to attend demonstrations and rallies, while upholding the ban on strikes.

⁶⁰¹ Article 44 of the Law on Prosecution System

⁶⁰² Through the amendment to Article 24 (entered into effect on July 3, 2010), arrest or initiation of criminal proceedings against a prosecutor can be performed now not only by the consent of the Prosecutor General, but also his/her deputies.,

professional activities or damaging or threatening to damage his/her or his/her family members' life, health or property shall bring to liability prescribed by law.

There are no legal provisions allowing another authority to instruct the prosecutors not to prosecute specific case.

Independence (Practice)

To what extent are law enforcement agencies independent in practice?

Within the Public Prosecutor's office operates Prosecutor's school and one of the aims of the schools is staffing the system with professionally trained personnel.⁶⁰³ There is little known about the appointment practice of prosecutors in Armenia. However, according to Working Paper on Implementation of the European Neighborhood Policy in 2010 country report: "Armenia should also continue its reform efforts in the area of policing, the security services and the Prosecutor's office. Proper implementation of legislation in all areas and its effective enforcement, capacity building, and enhanced independence of judiciary will be of key importance for the future implementation of the Association Agreement."⁶⁰⁴ As about the Police, little is known. However, draft bill which was presented to the Government aimed at recruiting more professional people. The overall impression from the report presented by the Chief of Police is such, as to say that Police recognizes that it faces problems with its personnel.⁶⁰⁵

Criminal trials in relation to March 1, 2008 events by some organizations were assessed as political trials. For example FIDH on 31.05.2011 welcomed the release of political prisoners and noted: "On numerous occasions, the international community urged the Armenian government to stop politically motivated persecutions, investigate into the events - when 10 people were killed - and to release the opposition activists who were arrested after."⁶⁰⁶ Freedom House in its Nations in Transit 2011 publication notes: " Throughout the year, local and international organizations advocated for the release of Armenia's political prisoners, particularly those tried in connection with the post-election unrest of 2008."⁶⁰⁷ Currently Prosecutor's office remains quite influential institution and as Helsinki Association of Armenia notes in its Report on Human Rights Situation in Armenia for 2010: "Fulfilling the orders of the prosecutor's office and the authorities, the courts fail to exercise justice."⁶⁰⁸ As US State Department in its Human Rights Report 2010 notes: " Authorities continued to detain arbitrarily individuals who held political affiliations or engaged in activities perceived to be in opposition to the government'."⁶⁰⁹

⁶⁰³<http://genproc.am/en/53/>

⁶⁰⁴http://ec.europa.eu/world/enp/pdf/progress2011/sec_11_639_en.pdf , page 3

⁶⁰⁵<http://www.tert.am/am/news/2011/11/10/gasparyan-police/>

⁶⁰⁶<http://www.fidh.org/FIDH-and-CSI-welcome-the-release>

⁶⁰⁷http://www.freedomhouse.org/sites/default/files/inline_images/NIT-2011-Armenia_0.pdf

⁶⁰⁸<http://www.hahr.am/files/report2011pt1eng.pdf> , page 4

⁶⁰⁹<http://www.state.gov/j/drl/rls/hrrpt/2010/eur/154411.htm>

Implementation of European Neighborhood Policy in Armenia 2010, country report of joint staff, notes: "Judges are still strongly influenced by prosecutors, as well as by politically and economically powerful figures."⁶¹⁰ However, by being quite influential institution Public Prosecutor's office is still dependant from executive. Freedom House in its Nations in Transit 2011 report mentions: " Attempts at judicial reform since 2007 have not succeeded in lessening the dependence of the prosecutor's office and court system on the executive branch."⁶¹¹

Governance

Transparency (Law)

To what extent are there provisions in place to ensure that the public can access the relevant information on law enforcement agency activities?

According to the Law on Public Service, Head of Police and his deputies (there are 6 deputy heads), Prosecutor General and his deputies (Prosecutor General has 4 deputies), prosecutors of marzes, Prosecutor of Yerevan and garrison prosecutors, Head and Deputy Head of the Special Investigatory Service are high-ranking officials⁶¹², and, thus, they, as well as their close relatives are required to declare their income and assets, and these declarations shall be submitted to the Ethics Commission for High Level Public Officials of High-Ranking Public Officials⁶¹³. For more detail see the discussion on the relevant indicator of the ***Legislature*** pillar.

It should be mentioned that publicity is declared as one of the major principles on which the activities of the Police and prosecution bodies shall be based.⁶¹⁴ At the same time, considering the specifics of the activities of law enforcement bodies, mainly connected with the prevention and detection of crimes, it is logical to expect that certain limitations stemmed from the requirements of investigation and application of the presumption of innocence should apply. Such information of operative-investigative nature is qualified by law as a type of official secret and its utilization is regulated by law.⁶¹⁵

The law provides that the prosecution bodies shall inform the public about its activities as much as it does not contradict to the rights, freedoms and legitimate interests of the citizens, as well as to the maintenance of state and departmental interests, defined by law.⁶¹⁶ In addition, by the same Article, the Prosecutor General is required to submit on an annual basis to NA and President a statement on the

⁶¹⁰ http://ec.europa.eu/world/enp/pdf/progress2011/sec_11_639_en.pdf , page 4

⁶¹¹ http://www.freedomhouse.org/sites/default/files/inline_images/NIT-2011-Armenia_0.pdf

⁶¹² Point 1 of Article 5 of the Law on Public Service

⁶¹³ *Ibid.*, Article 32

⁶¹⁴ Article 3 of the Law on Police and Article 5 of the Law on Prosecution System

⁶¹⁵ Article 2 of the Law on State and Official Secrets and Article 8 of the Law on Freedom of Information

⁶¹⁶ Article 5 of the Law on Prosecution System

activities of the prosecution bodies during the year, preceding the year of the submission of the statement. Aimed at the application of the mentioned Article in practice, the Prosecutor General signed Order N5 from February 20, 2009 on the Procedure of Participatory Cooperation between the Office of Prosecutor of the Republic of Armenia and Public Organizations.⁶¹⁷

The right of the victims of crimes to access their case files is provided by the Criminal Procedure Code. In particular, the Code defines the right of the victim to acquaint with the materials of his/her case file. Namely, before finalizing the indictment, the investigator shall present it to the victim, if the latter submits corresponding petition.⁶¹⁸ It is worth mentioning that the victim has the right to acquaint with his/her case file, even if the case was terminated.⁶¹⁹

Transparency (Practice)

To what extent is there transparency in the activities and decision-making processes of law enforcement agencies in practice?

Publication of declarations on the website was not mandatory for public prosecutors. The situation will be changed soon, because of the establishment of Ethics Commission for High Level Public Officials, which is obliged to run the register of declarations, including for specified high-ranking prosecutors. The transparency of the work of Public Prosecutor's office can be assessed based on its well-developed website which was recognized as most available one by the Committee to Protect Freedom of Expression.⁶²⁰ Moreover, as an illustration example for its well functioning was the case when in connection with the salaries of public prosecutors were published not correct data and General Prosecutor's office quite quickly published its detail response.⁶²¹

Accountability (Law)

To what extent are there provisions in place to ensure that law enforcement agencies have to report and be answerable for their actions?

The law (in this case – Criminal Procedure Code⁶²²) does not require giving reasons for the decisions to prosecute or not to prosecute, which is a very serious legal deficiency.

The victims of crimes can access the justice system to ensure prosecution. In particular, according to the Law on Police, Police, in a manner prescribed by law, is required to take measures to help those

⁶¹⁷ <http://www.genproc.am/am/46/item/5431/> (in Armenian)

⁶¹⁸ Article 265 of the Criminal Procedure Code

⁶¹⁹ Article 262 of the Criminal Procedure Code

⁶²⁰ http://www.jnews.am/node/743?page=7&quicktabs_2=2&quicktabs_1=2

⁶²¹ <http://www.genproc.am/am/49/item/6796/>

⁶²² Articles 182 and 185 of the Criminal Procedure Code

individuals, who suffered from criminal and other types of offenses, accidents or appeared in the situations, which are dangerous for their lives or health.⁶²³ It is obliged receiving, recording and registering all criminal and other offenses, statements and applications on accidents and taking necessary measures related to them.⁶²⁴ The victims of crimes can also access to justice system directly through the National Security Service, Special Investigatory Service, tax and customs bodies, and Ministry of Defense. These are those bodies, which, together with Police, are empowered to conduct investigation.⁶²⁵

The law provides that the citizens can complain about the misconduct in police action either to the police officer, under whose supervision were the police officers, who did that misconduct, or through court action.⁶²⁶ The same Article also provides that the damage incurred by citizens and organizations as a result of the illegal actions or inaction of police officers shall be compensated through the mechanisms and procedures provided by Civil Code and Law on the Principles of Administration and Administrative Litigation. Besides that, the Criminal Procedure Code allows the persons, involved in the case as victims, defendants, suspects or plaintiffs, to appeal the actions of investigation body, investigator or prosecutor. These standard legal regulations are practiced throughout the world.

In addition, the citizens can complain about the misconduct of police action to the Office of RA Human Rights Defender Ombudsman. Within 30 days after receiving the complaint, the Office shall respond to them⁶²⁷, conducts its examination (investigation) and report to the complainant about the results of the investigation. Based on the results of the examination, the Ombudsman can make the following decisions on. a) suggesting the relevant state or municipal body or its official, whose actions (inaction) entailed to the violation of human rights and freedoms, to redress those violations, pointing to those possible measures, which are needed for that redress; b) absence of human rights and freedoms violations; c) on the dismissal of the complaint, if as a result of the examination, there have been revealed prescribed by law grounds for dismissal or cessation of the complaint; d) on bringing case to court to partially or fully terminate the operation of the legal act, which contradicts to law or other legal acts and violates the human rights and fundamental freedoms, if the state or municipal body or its official refused to partially or fully terminate that act within a period prescribed by law; or e) on suggesting the competent state bodies to take administrative or disciplinary sanctions or to hold criminal proceedings against the official, whose decisions or actions (inaction) brought to the violation of human rights and freedoms.⁶²⁸

⁶²³ Article 10 of the Law on Police

⁶²⁴ Article 11 of the Law on Police

⁶²⁵ Article 190 of the Criminal Procedure Code

⁶²⁶ Article 43 of the Law on Police

⁶²⁷ Article 11 of the Law on the Human Rights Defender After receiving the complaint, the Ombudsman can decide a) examine (investigate) the complaint; b) inform the complainant about the possibilities to protect his/her rights and freedoms; c) in consent of complainant transfer the complaint to those state, municipal bodies or their officials, under whose jurisdiction is the solution of the problem brought in the complaint; or, d) not to examine the complaint.

⁶²⁸ Article 15 of the Law on Human Rights Defender

Finally, the citizen can bring complaints on the police action also to the Prosecution and Special Investigatory Service.

Armenian legislation does not foresee special agencies/entities to investigate and prosecute corruption committed by law enforcement officials. Similarly, Armenian legislation does not contain any provisions that could provide immunity for law enforcement officials from criminal proceedings. Armenian Criminal Code contains special chapter on the crimes committed against state service⁶²⁹ by public officials, and as the law enforcement officers are public officials, these articles are applicable to them. In addition, the Law on Police explicitly provides that the police officer shall be held liable for not performing or improperly performing his/her duties without grounded reasons, abusing his/her office or violating ethical rules defined for police officers.⁶³⁰ Meanwhile, as it has been already mentioned (see the *Independence (Law)* section of this chapter), to make the prosecution bodies less dependent from other state bodies, initiation of criminal proceedings against prosecutors is the prerogative of the Prosecutor General, which makes more difficult to prosecute the prosecutors. The legislation does not contain any explicit provisions on who shall initiate criminal proceedings and how those proceedings shall be initiated against the Prosecutor General.

Accountability (Practice)

To what extent do law enforcement agencies have to report and be answerable for their actions in practice?

The General Prosecutor's office each year presents its report on the previous year to legislature and President, and it is available at the official website of the General Prosecutor's office: www.genproc.am. Generally the prosecutor's office for popular cases gives its reasoning and posts its statements on the website. The Criminal Procedure Code gives opportunity to challenge decisions and actions of prosecution. Detection of corruption crimes in 2011 decreased in comparison with 2010 with -0.6% (634)⁶³¹. However, Nations in Transit 2012 increased the rank for this part by allocating instead of 5.50 to 5.25 points, by comparing the numbers with 2008.⁶³² As OECD monitoring group mentioned: "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."⁶³³

⁶²⁹ Chapter 29 (Articles 308 – 315.2) of the Criminal Code

⁶³⁰ Article 43 of the Law on Police

⁶³¹ http://www.armstat.am/file/article/sv_12_11a_550.pdf

⁶³² <http://www.freedomhouse.org/report/nations-transit/2012/armenia>

⁶³³ OECD page 5

In practice, law enforcement officials are not immune from prosecution, though such instances remain rare. Cases of high level police officers Mr. Ohanyan and Mr. Tamamyan (mentioned above) are adequate examples of this statement.

Integrity mechanisms (Law)

To what extent is the integrity of law enforcement agencies ensured by law?

The legal regulation of the issues related to the integrity of police officers and prosecutors is based either on the relevant laws on those state services, such as Law on Police Service and Law Prosecution System and legal acts stemming from them, or other legal acts, which regulate the corresponding aspects of the public service integrity, among them, for example, Law on Public Service.⁶³⁴

In general, the legal limitations foreseen for the law enforcement officials and officers stem from the general limitations applied for all public servants. However, for those, who serve in law enforcement bodies there are additional limitations, mainly connected with membership to political parties and other types of civil society organizations, as well as those related to post-employment activities.

In particular, the Law on Prosecution System defines that the prosecutor cannot hold any office in state, local self-administration bodies or commercial organizations not related to the execution of his/her duties, perform other paid job, except of scientific, pedagogical or creative jobs, provided that the remuneration for the latter shall not exceed that of other persons, who perform the same job, but are not prosecutors.⁶³⁵ The same Article defines other limitations, as well. The prosecutor does not have the right to receive honoraria for the publications or presentations related to the execution of his official duties, use material, financial or informational resources assigned to him for purposes not related to his/her official duties, or receive gifts, money or services for performing his/her functions, except in the cases prescribed by law.⁶³⁶ He/she cannot be individual entrepreneur, or get involved in managing enterprises or companies. The prosecutor is forbidden to work together with his/her close relatives (parents, spouse, adult children and siblings) or close relatives of his/her spouse, if there are relations of subordination between his/her job and their jobs. Almost identical provisions are foreseen also for police officers.⁶³⁷ In addition, by the same Article 39 within the one-year period following his/her resignation, the police officer does not have the right to work under the subordination of such employer or become member of such organization, which was under his/her direct oversight during the last year of his/her work in Police.

⁶³⁴ For the regulation of integrity issues, especially for police officers, provided by the Law on Public Service see also the discussions on the *Law* dimension of *Integrity* indicator for the **Executive** and **Public Sector** pillars.

⁶³⁵ Article 43 of the Law on Prosecution

⁶³⁶ As police and prosecution officers are public servants, and their management - high-ranking officials, Article 28 of the Law on Public Service applies on them, as well, and this Article defines the exceptions on receiving gifts. See also the relevant discussion on pp.14-15 on **Legislature** pillar.

⁶³⁷ Article 39 of the Law on Police Service

It should be mentioned here, that neither such, nor other post-employment restrictions exist for prosecutors.

The norms of conduct and ethics of the prosecutor are defined in the Code of Conduct of the Prosecutor, which was approved by the Order N17 of the Prosecutor General from May 30, 2007. According to the Order, the guarantor for maintaining the rules of conduct of prosecutors is the Prosecutor General.⁶³⁸ If the prosecutor violates the rules defined in the Code, then disciplinary sanctions shall apply to him/her⁶³⁹, based on the corresponding resolution of the ethics commission. The Law on Prosecution System provides that the ethics commission shall function under the Prosecutor General and shall be composed of 7 members, three of whom shall be appointed by the Prosecutor General (one of which shall be one of his/her deputies and two prosecutors) and four (all of them – lawyers) – by the President for 3 years term.⁶⁴⁰

As high-ranking public officials, Head of Police and his deputies, Prosecutor General and his deputies, prosecutors of marzes, Prosecutor of Yerevan and garrison prosecutors, Head and Deputy Head of the Special Investigatory Service, as well as their close relatives, are required to declare their income and assets, as required by the Law on Public Service.⁶⁴¹ For more detail see the discussion on the relevant indicator of the *Legislature* pillar.

Integrity Mechanisms (practice)

To what extent is the integrity of members of law enforcement agencies ensured in practice?

Trainings are the field where Armenian law enforcement agencies have success. OECD monitoring group notes that "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."⁶⁴²

⁶³⁸ Point 5.2 of the Code of Conduct of the Prosecutor

⁶³⁹ Point 5.1 of the Code of Conduct of the Prosecutor

⁶⁴⁰ Point 2 of Article 23 of the Law on Prosecution System

⁶⁴¹ Article 32 of the Law on Public Service

⁶⁴² OECD, page 40-41

Regarding code of conduct violations in law enforcement agencies little is known. OECD working group mentions that 20 disciplinary proceedings against prosecutors were started in 2010.⁶⁴³ However, as Sakharov Center mentions, in its alternative report, codes of conduct are not being implemented quite often and are being violated, and appropriate supervision is not being secured for regulating behaviour of law enforcement agencies.⁶⁴⁴

Role

Corruption prosecution (Law and practice)

To what extent do law enforcement agencies detect and investigate corruption cases in the country?

The application of proper investigative techniques is regulated by the Law on Operative-Investigative Activities.⁶⁴⁵ The Law does not explicitly provide specifically which investigative techniques shall be applied in detecting corruption cases. At the same time, the operative-investigatory tools defined by Article 14 of the Law contain those, which are generally recognized⁶⁴⁶ as tools aimed at detecting corruption cases, in particular, imitation of giving or receiving bribe (“bribe provocation”). In Armenia, special legal-procedural powers for the investigation and prosecution of corruption crimes do not exist. Police and prosecutors have the same powers with regard to corruption cases, as for other cases, and these powers (search warrants, arrest, access to personal information, etc.) are adequate.⁶⁴⁷

By the November 19, 2008 Order N82 of the Prosecutor General deeds punishable by 31 articles of the Criminal Code were recognized as corruption crimes.

In 2011 634 cases of corruption related crimes were detected. As was already indicated this presents - 0.6% of decrease compared with 2010. According to statistics of Prosecutor General's office, in 2011 14 cases involving 22 persons for bribe taking were adjudicated in the court and got convicted 18.⁶⁴⁸ For bribe giving were 2 cases involving 5 persons all of whom were sentenced. Totally for all 31 types of crimes, which are designated by Prosecutor General as corruption crimes, in 2011 were adjudicated 121 cases involving 189 persons, involving 68 officials. Out of 189 persons 143 persons were convicted.

Recommendations on the pillar of Law Enforcement

1. To make more transparent the procedure of appointment and promotion of prosecutors, by amending the relevant legislation with concrete criteria and indicators.

⁶⁴³OECD

⁶⁴⁴<http://www.sakharovcenter.org/files/analyses/63d090de8.pdf>

⁶⁴⁵RA Official Bulletin 2007/59(583) 28.11.07

⁶⁴⁶ See, for example, <http://www.unodc.org/pdf/crime/toolkit/f5.pdf> pp. 188-191

⁶⁴⁷*Ibid.*,

⁶⁴⁸ <http://genproc.am/upload/File/Korupcia%20dataqnnutyun2011.pdf>

2. To consider the revision of constitutional process of appointment of Prosecutor General. Instead of presenting his candidacy by the President, the corpus of prosecutors should vote for its candidate.
3. To develop special mechanisms on instigating criminal proceedings against Prosecutor General.
4. To bring the level of corruption prosecution to adequate level: the comparison with other countries with similar size, population, soviet legacy proves that the level of prosecution of corruption is far beyond the adequate level.

Electoral Management Body

Summary

The electoral management body (EMB) in Armenia plays a key role in the Armenian political system. The three-level commissions oversee all aspects of elections. As with other state institutions, the legal regulation is assessed rather positive. The same generally is true for the resources, though there are some problems, mainly connected with the lack of space for territorial electoral commissions located in Yerevan and insufficient space for many precinct electoral commissions, especially in the villages. However, the practice seriously lags behind the legal regulation. This is especially evident with the impartiality/independence of electoral commissions, accountability and election administration. These deficiencies are interrelated, as imbalanced commissions hardly could be accountable and administer elections, especially handling complaints, vote counting or working with proxies, observers and media representatives in a proper manner. As a result, in one of the priority recommendations made by OSCE/ODIHR Election Observation Mission deployed to observe May 2012 parliamentary elections in its final report it was explicitly spelled that “Special measures should be undertaken to increase public trust in the integrity of the election process. They could include, but not limited to, increased transparency in the work of the electoral and state authorities, additional voter education on the secrecy of the vote, and enhanced campaigns against vote buying and selling.”⁶⁴⁹

Table of Indicator Scores

Electoral Management Body			
Overall Pillar Score: 65.1			
	Indicator	Law	Practice
Capacity 66.7	Resources	75	
	Independence	75	50
Governance 66.7	Transparency	75	75
	Accountability	75	50
	Integrity	75	50
Role 62.5	Campaign regulation	50	
	Election Administration	75	

Structure and Organization

⁶⁴⁹ See Recommendation 2 in *Republic of Armenia Parliamentary Elections 6 May 2012: OSCE/ODIHR Election Observation Mission Final Report*. Warsaw 26 June 2012, p. 25.

The rules of formation, powers and responsibilities of the electoral system are laid down in the Electoral Code, which was adopted by the Armenian National Assembly (Parliament) May 26, 2011.⁶⁵⁰ According to it, Armenia has a three-tier electoral administration system comprised of the Central Electoral Commission (CEC), Territorial Electoral Commissions (TECs) and Precinct Electoral Commissions (PECs).⁶⁵¹ The number of electoral districts shall be equal to the number of majoritarian seats in the National Assembly (NA)⁶⁵², which is currently equal to 41. Thus, there are now 41 TECs in Armenia (one for each electoral district), which are comprised of 1,923 PECs.

According to the Electoral Code, electoral commissions shall ensure the implementation and protection of the voting rights of the voters.⁶⁵³ CEC is empowered to pass normative and individual legal acts, whereas TECs and PECs can pass only individual legal acts.⁶⁵⁴ Electoral Code also regulates the organization of the activities of electoral commissions⁶⁵⁵, procedure of reviewing the appeals by the higher level electoral commissions⁶⁵⁶ and procedures of vote recount⁶⁵⁷. It also defines the scope of powers of electoral commissions.⁶⁵⁸ Finally, CEC and TEC shall consist of 7 members,⁶⁵⁹ and each electoral commission shall have its chair, deputy chair and secretary.⁶⁶⁰

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Assessment

Capacity

Resources (Law and Practice) – *To what extent does the electoral management body (EMB) have adequate resource to achieve its goals in practice?*

According to the CEC Chair, CEC receives all necessary funding from the state budget in a timely manner, and the means that CEC requests from the Government (Ministry of Finance) through its budget estimate is mainly satisfied.⁶⁶¹ The financial resources allocated from the state are also regularly

⁶⁵⁰ This is the second Electoral Code adopted by the Armenian Parliament. The first one was adopted on February 5, 1999. Before that different types of elections were regulated by corresponding electoral laws, such as, for example, Law on Presidential Elections and others.

⁶⁵¹ Article 34 of the Electoral Code

⁶⁵² *Ibid.*, Article 17

⁶⁵³ *Ibid.*, Article 35

⁶⁵⁴ *Ibid.*, Article 36

⁶⁵⁵ *Ibid.*, Article 44

⁶⁵⁶ *Ibid.* Article 47 According to Article 46 appeals against the decisions, actions (inaction) of PECs or the results of voting in the TEC shall be addressed to the corresponding TEC and appeals against the decisions, actions (inaction) of the TEC shall be addressed to CEC.

⁶⁵⁷ *Ibid.* Article 48

⁶⁵⁸ *Ibid.*, Chapter 10 (Articles 49-53)

⁶⁵⁹ *Ibid.*, Articles 40 and 41 for the CEC and TEC composition, respectively

⁶⁶⁰ *Ibid.*, Articles 39-41 for CEC, TEC and PEC, respectively.

⁶⁶¹ Interview with CEC former Chair Mr. Garegin Azaryan, 26 May, 2010

increasing. For example, if in 2003 the electoral commissions were spending only 0.19 USD per one voter, whereas in 2010 it was almost 1 USD.⁶⁶² Though it is still smaller, than in the developed European countries, where it is varying from 3 to 5 USD, the progress is evident.⁶⁶³

The remuneration of the members of electoral commissions is defined by Article 38 of the RA Electoral Code. In particular, according to that Article, the wages of the CEC Chair and members shall be defined by the RA Law on Official Wages of High-Ranking Officials of the Legislative, Executive and Judicial Branches of the Government of the Republic of Armenia. In particular, the official wage of the CEC Chair shall be equal to the official wage of the member of the Constitutional Court of Armenia.⁶⁶⁴ By the same Article, the wages of the Deputy Chair and Secretary of CEC shall constitute 85% and those of CEC other members – 75% of the wage of CEC Chair. Regarding the remuneration of TEC members, the mentioned Article 38 provides that during the period of conduct of national elections, new or additional elections for the majoritarian seat of the National Assembly, conduct of regular local self-government elections the wages of TEC chairs, deputy chairs and secretaries shall be equal to the wages of CEC members,⁶⁶⁵ The wages of the rest of TEC members shall be equal to 50% of the wages of TEC chairs. During other self-government elections TEC chairs, deputy chairs and secretaries shall receive wages equal to the wages of PEC chairs.

By the same Article, during the period of conduct of elections, PEC chairs shall be remunerated by an amount two times larger, than the officially defined minimal wage of the Republic of Armenia. PEC members shall receive remuneration by an amount equal to the mentioned minimal wage. They shall receive their remuneration after the tally of the voting results, and only if they have signed the official protocols on voting results. Finally, Article 37 of the Electoral Code provides that during the conduct of elections, the wages of TEC and PEC members at their main workplaces shall be preserved.

According to CEC Chair, CEC has sufficient staff employees to ensure the smooth functioning of CEC. In each of 28 electoral districts outside Yerevan CEC has its separated unit and in each unit only one employee works. During the election period CEC temporarily hires additional staff to work in these units. At the same time, CEC Chair admitted that there are still problems in providing with relevant space for electoral districts inside Yerevan, despite the fact that there is special decision of the Armenian Government on this issue.⁶⁶⁶ Technical means (computers, fax machines, etc.) are sufficient and

⁶⁶² *Ibid.*

⁶⁶³ *Ibid.*

⁶⁶⁴ According to Article 2.1 of the Law on Official Wages of High-Ranking Officials of the Legislative, Executive and Judicial Branches of the Government of the Republic of Armenia, the official wage of the CEC Chair shall be the same as for the member of the Constitutional and be equal to 646,190 AMD (around 1,546 USD).

⁶⁶⁵ Article 38 of the Electoral Code defines that the period for remuneration of TEC members shall be equal to 60 days.

⁶⁶⁶ The interview with CEC former Chair Mr. Azaryan took place before the adoption of the current Electoral Code. Article 38 of the Electoral Code now allows CEC to have also off-budget account for funding projects aimed at the improvement of election administration and technical capacities of electoral commissions. Also, the same Article provides that CEC through its decision can use for such purposes up to 15% of the means accumulated on the

regularly up-dated, mainly with the support of international organizations. Regarding transport, they are also mainly adequate, though during elections, the members of electoral commissions sometimes had to use their own cars.

The staff of CEC and TECs, according to CEC Chair, regularly undergoes training, some of which are conducted by international organizations. He claims that the staff members have appropriate qualifications. Their career development of staff employees depends on the creation of new departments in CEC staff or occurrence of vacancies inside the staff.

The presented above information on CEC resources was mainly confirmed by one of the CEC members, who is in opposition to the Government.⁶⁶⁷ She also mentioned that her knowledge of the resources of electoral bodies could not be as detailed as needed, as it is not the main duty of CEC member to deal with issues connected to the resources.

Independence (Law)

To what extent is the EMB independent by law?

Article 34 of the Electoral Code provides that electoral commissions shall carry out their powers independent from state and local self-administration bodies and shall perform based on the principles of collegiality and transparency. More on the legal requirements ensuring the transparency of electoral commissions see in the *Transparency* section of this pillar description. The member of the electoral commission shall act independently from the body, who has appointed him/her.⁶⁶⁸ However, the mere existence of these provisions in the Electoral Code is not enough to ensure legally the independence of electoral commissions. The degree of independence of electoral commissions depends on such factors as inclusion into or exclusion out of any branch of the government, the principle of formation of electoral commissions, division of powers between commission, who makes the decisions, and staff, who administers the daily operation of the electoral body, system of recruitment, methods of appointment and nomination of commission members and its leadership (chair, deputy chair and secretary), regulation on the remuneration of the commission members, grounds and procedures of removal of the members of electoral commissions, and others.

The electoral system is not embedded in the Armenian Constitution. Rather its composition and functioning are regulated by the Electoral Code. CEC and TECs are permanently functioning state institutions, whereas PECs are temporary bodies formed during the particular election period. CEC status

special account of electoral deposits paid by parties and candidates. Moreover, through the special decision of the Government, the remaining 85% of the means of that account also could be allocated to CEC for strengthening of technical capacities of electoral commissions and development and publication of materials on electoral legislation.

⁶⁶⁷ Interview with Ms. Zoya Tadevosyan, 3 June, 2010. By the time of interview Ms. Tadevosyan was representing the Zharangutyun (Heritage) party in CEC.

⁶⁶⁸ Article 37 of the Electoral Code

as a state institution is defined by its procedures, which are adopted by CEC decision.⁶⁶⁹ The same statuses have TECs, whose uniform procedures are also defined and adopted by the same CEC Decision, as for the procedures of CEC. The mentioned Decision also defines the procedures of TECs.

The current Electoral Code adopted the mixed approach in the formation of electoral commissions. Namely, CEC and TECs are formed based on the principle of political neutrality, when certain state bodies nominate and/or appoint the members of electoral commissions, whereas PECs are formed based on party affiliation, when all or most of the members of the commission are appointed by political parties.⁶⁷⁰ The rationale for such choice could be the assumption that at the lowest level, where the voting process and procedures are managed, and votes are counted and tabulated, the mutual control of participating parties and candidates through their representatives in the electoral commissions, is the strongest guarantee for preventing violations during elections. At the same time, at higher levels (CEC and TECs), where the compliance of actions of PECs and others, involved in the elections, to the electoral legislation is important, professionalism, competence and legal training (which most of political parties lack) shall be decisive. The combination of mutual controls and legal competence at different levels, thus, can ensure high degree of independence of the whole electoral system, if properly designed and implemented.

CEC members are appointed by the President of the Republic for 6-year term, upon the nomination by those officials, who are defined by the Electoral Code.⁶⁷¹ The nominating officials are the Ombudsman (nominates 3 members), Chair of the Court of Cassation (2 members) and Chair of the Chamber of Advocates (2 members). Members of TECs shall be appointed by CEC for the whole period of TEC performance.⁶⁷² CEC and TEC members shall work on a permanent basis.⁶⁷³ The current CEC was appointed in July 2011 and TECs were composed one month later – on August 2011.

PEC shall consist of at least 7 members, two of whom are appointed by the corresponding TEC and the remaining at least five members - by political parties (blocs), which have factions in NA and

⁶⁶⁹ For the CEC, as well as TEC and PEC, current procedures see CEC Decision 55-N from August 11, 2011 on the approval of CEC Charter. *RA Bulletin of Departmental Normative Acts, 2011/21(404) 01.09.11*

⁶⁷⁰ It is worth mentioning that under former Electoral Code, all electoral commissions had been forming on the party affiliation basis.

⁶⁷¹ Article 40 of the Electoral Code The requirement to appoint CEC member for 6years does not apply for the CEC first composition, which will be appointed after the Code will enter into effect. The appointment procedure for the first composition is defined by Article 167 of the Electoral Code, which provides that the CEC members nominated by Ombudsman shall be appointed for 3, 5 and 7 years each, those nominated by the Chair of the Court of Cassation – for 5 and 7 years each, and those nominated by the Chair of the Chamber of Lawyers – for 3 and 5 years each.

⁶⁷² *Ibid.*, Article 41

⁶⁷³ *Ibid.*, Article 37. It should be mentioned, however, that unlike CEC members, who are employed on a full-time basis, TEC members shall be employed on a full-time basis only during the national, Yerevan Council, local self-administration general or additional elections for the majoritarian seat of NA elections for 60 day period (Article 38 of the Electoral Code).

corresponding TEC.⁶⁷⁴ By the same Article of the Code, PECs work on a temporary basis: they shall be formed not later, than 25 days before the voting day and shall be dissolved 5 days after the voting day, if the results of the voting have not been appealed.

Though the appointment of members of electoral commissions by the President upon the nomination by other state bodies is acceptable from the standpoint of international standards, especially considering the fact that the President has strictly limited timeframe for making appointment decision⁶⁷⁵, theoretically it is possible that the President can use his power to reject the nomination. This will violate the independence of CEC. Another potential limitation of the CEC independence is to what extent the nominating state officials (Ombudsman, Chair of the Court of Cassation and Chair of the Chamber of Advocates) are really independent in Armenia. Finally, the Electoral Code does not require from nominating officials conducting open and transparent contest to choose their candidates and the nomination completely depends on their discretion. The same is true for the appointment of TEC members. The problem with the method of appointment of PEC members is that such method could only produce independent commissions, if there is balanced representation of political forces (pro-governmental and opposition) meaning equal or almost equal number of pro-governmental and opposition factions and members of PECs appointed by the corresponding TEC also are independent.

Armenian Electoral Code clearly defines that the decision-maker is solely the electoral commission.⁶⁷⁶ The staff of CEC only has administrative functions, ensuring the support of the activities of the mentioned commissions. The staff of CEC has status of so-called state administrative institution, whose functioning is regulated by the Law on State Administrative Institutions (see RA Official Bulletin 2001/37(169)03.12.01) and its charter adopted by CEC (the current charter was adopted by CEC Decision 4-A from March 16, 2006). According to the mentioned Law on State Administrative Institutions, the employees of these staffs are civil servants, and, therefore, their activities, appointment, promotion and removal are regulated by Law on Civil Service (see more on this Law in the chapter on **Public Sector** pillar).

The discussion on the recruitment criteria is relevant only for the members of CEC and TECs, as most of the members of PECs are appointed by political parties based on the criterion of loyalty to his/her party.⁶⁷⁷ Recruitment criteria for the candidates on CEC and TEC membership are defined in Articles 40

⁶⁷⁴ *Ibid.*, Article 42 If the number of factions is more than 4, then each party (bloc) having faction in NA appoints one member of PEC, and if that number is less than 5, then each faction appoints two members.

⁶⁷⁵ Article 40 of the Electoral Code provides that the nomination of the candidate for CEC membership shall take place not earlier than 30, but not later, than 20 days prior to the expiration of the terms of the CEC member and the Decree of the President on the appointment shall be published not later, than 7 days before the expiration of the terms of the CEC member, the President has from 13 to 23 days to make decision. For the CEC first composition, according to Article 167 of the Code, this time limit is only 3 days.

⁶⁷⁶ Article 34 of the Electoral Code

⁶⁷⁷ Some recruitment criteria could be applied for those PEC members, who are appointed by the corresponding TECs. However, such criteria are not defined by Electoral Code, and, moreover, according to Article 42 of the

and 41 of the Electoral Code, respectively. In particular, CEC member could become an Armenian citizen having voting rights and not involved in public socio-political activities, who: a) has university-level legal education and 3 years of relevant job experience during the last 5 years, or, b) scientific degree in law and 3 years of relevant job experience during the last 5 years, or, c) university education and 5 years of public service-related job experience in central governmental bodies during the last 10 years, or d) university education and 3 years of job experience in a permanently functioning electoral commission or election commission staff during the last 5 years. The criteria for the candidates for TEC membership are very similar to those of CEC membership. The job experience in all cases, where for CEC membership it is required equal to 3 years, here shall be equal to 2 years. For criterion c) (which is analogous to criterion c) for CEC membership) the job experience shall be 3 years during the last 6 years and that experience shall include managerial work not only that of in central, but also in local self-administration bodies or state non-commercial organizations. In addition, only those citizens can be appointed as members of PECs, who have underwent professional training courses on conducting elections (organized by CEC) and received certificates on the completion of those courses. These criteria can be qualified as professional and non-discriminatory.

The mentioned above Articles 40 and 41, as well as Article 42 of the Electoral Code, also provide that the chairs, deputy chairs and secretaries of CEC, TECs and PECs, respectively, shall be chosen among the members of relevant commissions and by themselves. This excludes any external influence in the process of formation of the management structures of electoral commissions. Article 43 of the Electoral Code also prevents the arbitrary dismissal of the election commission members by their appointing or nominating officials or political parties (in the case of PECs). It provides that the Chair, Deputy Chair or the Secretary of the commission can be dismissed only through the vote of commission members, if they do not properly execute their duties.⁶⁷⁸ The Article also defines the grounds for early termination of the powers of the members of electoral commissions.⁶⁷⁹

Finally, Electoral Code also clearly defines the sizes, procedures and timeframes of the remuneration of the members of electoral commissions.⁶⁸⁰ The inclusion of such regulation into the Code ensures another aspect of the independence of the members of electoral commissions, namely, their financial independence, as their remuneration does not depend on the will of President, executive, or others.

Independence (Practice) – To what extent does the EMB function independently in practice?

Code, if more than two TEC members (each TEC member, except of its Chair has such right) nominate their candidates, then the two members shall be decided by draw conducted in TEC.

⁶⁷⁸ Article 37 of the Electoral Code stipulates that the duties of the members of the electoral commissions shall be defined by CEC.

⁶⁷⁹ In particular, it provides that, if the member of the CEC or TEC violates the provisions of electoral legislation, then his/her powers shall be terminated by the ruling of the Administrative Court upon the appeal of the President (in the case of CEC member) or CEC (in the case of TEC member). For the same reason PEC member can be dismissed by the corresponding TEC upon the appeal of the party or TEC member, who nominated that member.

⁶⁸⁰ Article 38 of the Electoral Code

In the description of the *Law* dimension of this indicator it was mentioned that the approaches used in the formation of electoral commissions in Armenia could produce independent electoral bodies under certain conditions. In the case of CEC and TECs, as many politicians and experts were mentioning during the process of development of the current Electoral Code, the major concern was that to what extent the bodies nominating the members of these commissions, namely, Ombudsman, Court of Cassation and Chamber of Advocates, will be really independent in nominating their candidates. As of PECs formed on the party representation principle (see above), because of the political configuration of NA, with two opposition factions there, the absolute majority of their members in the above mentioned elections (5 out of 7 members), were representing the ruling political forces. Having such overwhelming majority in the electoral commissions on all levels, the government, obviously, does not need to directly interfere in the activities of electoral commissions, and, actually, there haven't been such incidences.

February 12, 2012 local self-government elections in a number of Armenian communities, and especially May 6, 2012 parliamentary elections, which became the first tests of this new approach in the formation of CEC and TECs, unfortunately, confirmed the perception that these commissions are not independent. The same is true for PECs. Like with previous elections, this time also most part of Armenian public and opposition refused to accept their results. In particular, one of the opposition forces, Armenian National Congress (ANC) bloc filed complaint to CEC requesting invalidation of the proportional vote results due to numerous alleged violations during the campaign period and on Election Day. As it was mentioned in the OSCE/ODIHR EOM Final Report on May 6 parliamentary elections “The CEC dismissed the ANC’s complaint on grounds that invalidation of results can be granted only if violations could have impacted the results, although the CEC did not examine whether the alleged violations occurred.”⁶⁸¹ TECs 3, 6 and 30 received complaints against majoritarian election results and they all were dismissed. Thus, it was predictable that such behavior of the electoral commissions, as well as other actors, involved in the electoral processes, such as law enforcement bodies and courts, forced OSCE/ODIHR EOM to come forward with a priority recommendation calling them to “interpret, implement and enforce the electoral legal framework taking into consideration the spirit and intent of the law which aims to ensure an equal playing field for contestants, free will of the voters and the integrity of the electoral process”.⁶⁸²

Governance

Transparency (Law)

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the EMB?

⁶⁸¹ Republic of Armenia Parliamentary Elections 6 May 2012: OSCE/ODIHR Election Observation Mission Final Report. Warsaw 26 June 2012, p. 24.

⁶⁸² See Recommendation 6 in Republic of Armenia Parliamentary Elections 6 May 2012: OSCE/ODIHR Election Observation Mission Final Report. Warsaw 26 June 2012, p. 26

The Electoral Code explicitly defines that the preparation and conduct of elections should be carried out in a transparent manner⁶⁸³ and all relevant information on election results, timetable, polling stations, campaign funding, etc. are available both in media and the official web-site of CEC (www.elections.am). In addition, according to Law on Legal Acts, CEC decisions shall be published in the RA Bulletin of Departmental Normative Acts.⁶⁸⁴

Article 6 of the Electoral Code provides that during national elections⁶⁸⁵ the individual decisions of CEC shall be posted on CEC web-site on the day of their adoption and CEC normative legal acts shall be posted on the day of their registration at CEC after receiving state registration in a manner prescribed by law. For other types of elections, the mentioned Article sets the end of the next working day as the deadline for posting on CEC web-site. The same Article provides that the proxies, observers and journalists can be present at the meetings of electoral commissions and voting, and can take photos or videotape those meetings, as well as the whole process of voting, without infringing the secrecy of the ballot. It also requires the commissions to provide the citizens with all information on the composition of electoral commissions, location of polling stations, working hours of the commissions, etc. The same Article also provides that the detailed results of voting from all polling stations should be posted on CEC web-site not later, than 24 hours after voting. During national elections, on the voting day at 9 am CEC shall announce publicly on how the elections proceeded. After that, once in 3 hours and until 9 pm CEC shall announce the numbers of already participated in elections voters by marzes (provinces), Yerevan and cities with more than 10,000 registered voters. All this information shall be broadcast by Public TV and Public Radio and posted by precincts on CEC web-site. Other relevant articles of the Electoral Code provide mechanisms for the implementation of these provisions.

Articles 25-27 of the Electoral Code regulate the establishment of the pre-election funds⁶⁸⁶, use of the means accumulated in those funds, and contents and procedures of the reporting of pre-election funds. Campaign finance regulation and role of electoral commissions in this regulation will be discussed in more detail in the **Campaign Regulation** section. Electoral Code allows political parties (participating in the parliamentary and Yerevan Council elections) to make payments to their pre-election funds and to pre-election funds of the candidates nominated by them⁶⁸⁷. Also, CEC is empowered now to oversee the financial activities of parties (not specified which ones) during campaign period through its Oversight

⁶⁸³ Point 1 of Article 6 of the Electoral Code states: “The preparation and conduct of elections shall be carried out publicly.”

⁶⁸⁴ Article 65 of the Law on Legal Acts

⁶⁸⁵ According to Article 2 of the Electoral Code national elections in Armenia are the presidential elections and only proportional list part of parliamentary elections.

⁶⁸⁶ Article 25 of the Electoral Code defines that pre-election funds shall be opened by candidates and parties to finance their campaigns. These funds shall reflect both payments made for covering the campaign expenses and detailed information on those expenses

⁶⁸⁷ Article 25 of the Electoral Code

Audit Service (see more on the Service in the **Campaign Regulation** section).⁶⁸⁸ Thus, the issue of making public certain aspects of party funding and operations become important. In particular, means paid from the accounts of the political parties shall be reflected in the declarations of the pre-election funds⁶⁸⁹ of the parties and party-nominated candidates and shall be made public through posting these declarations on the CEC web-site or, as in the case of party-nominated majoritarian candidates at parliamentary elections or candidates for the heads or council membership at the local self-administration elections, through submitting them to journalists. This will also be discussed in detail in the **Campaign Regulation** section. In addition, Article 6 of the Electoral Code requires political parties to submit to CEC their declarations on income and assets within 5 days after their registration in CEC for the participation in the proportional list parliamentary elections. The same Article also provides that CEC shall post them on its web-site within 3 days after the submission. Finally, the CEC Oversight-Audit Service shall post on CEC web-site summarized information on the financial flows of the pre-election funds, which it receives once in 3 days since the registration of parties and candidates from the banks, where these parties and candidates opened the accounts on their pre-election funds.⁶⁹⁰

Transparency (Practice) – *To what extent are reports and decisions of EMB made public in practice?*

Both the experience of Transparency International Anti-corruption Center (TIAC) during the implementation of the projects on the monitoring of campaign finance in 2007-2012 elections, and interviews with CEC Chair and a member representing opposition party, shows that CEC is working in a transparent manner regarding technical organization of elections. Considering the hierarchical structure of the system of electoral commissions, all information related to elections is released by CEC. The CEC web-site www.elections.am also is very informative. During elections CEC was regularly holding press conferences, and as the CEC Chair and the opposition member noted, in other periods press conferences are held only when there is some urgent issue. Every times when elections period starts, CEC announces its phone numbers, as well as phone numbers of TECs, to allow citizens to make queries.

Accountability (Law)

To what extent are there provisions in place to ensure that EMB has to report and be answerable for its actions?

As it has been already mentioned (see **Independence** section), the Electoral Code provides that in the course of performing their duties electoral commissions are independent from state and local self-

⁶⁸⁸ *Ibid.*, Article 28

⁶⁸⁹ According to Article 27 of the Electoral Code, the declarations on the pre-election funds shall contain the chronology and the size of the payments made to them, chronology and the size of the expenses made to acquire goods and services for campaign purposes, as well as information on the documents verifying those expenses, and funds not spent by the end of the campaign. All contracts on the purchase of goods and services shall be attached to the declarations (though it is not required to post them on CEC web-site).

⁶⁹⁰ Article 25 of the Electoral Code

administration bodies. At the same time, the state and local self-administration bodies shall provide for free premises and property for electoral commissions, and enable electoral commissions in their normal functioning.⁶⁹¹

Article 46 of the Code regulates the procedures and time frames for appealing against the decisions and actions (inaction) of CEC, TECs and PECs. It also defines who can appeal against the decisions and actions (inaction) of electoral commissions and who – the results of the voting in the precinct.⁶⁹² Appeals against the decisions and actions (inaction) of PECs, as well as results of the elections in the precincts shall be filed in the corresponding TEC. Appeals against the decisions and actions (inaction) of TECs are filed in CEC.⁶⁹³ Finally, appeals against the decisions and actions (inaction) of CEC shall be filed in the RA Administrative Court. The decisions of CEC and TECs relating to the results of the elections shall be filed in the RA Constitutional Court. In the case of local self-administration elections, all appeals against the decisions of TECs related to the results of elections shall be filed in the Administrative Court. The same Article of the Electoral Code also establishes the timelines of the appeals.⁶⁹⁴

Armenian Criminal Code and Code on the Administrative Delinquencies contain a number of articles, which define sanctions for the election-related violations.⁶⁹⁵ They provide sufficient legal means for political parties and candidates to redress for electoral irregularities committed by other candidates, parties, their proxies, observers and others involved in the electoral processes.

According to the Electoral Code, within 3 months following the publication of the final results of national elections, CEC Chair or any other member on his/her behalf shall present a statement to NA on the organization and conduct of elections, analysis of the violations of the Electoral Code and suggestions on the improvement of the electoral legislation.⁶⁹⁶ **However, the Code does not define the format of that report and does not oblige any state institution to take any actions in connection of the report.**

All expenses related to the preparation and conduct of elections, as well as for the maintenance of permanently functioning of CEC and TECs, are incurred from the state budget. They are allocated to

⁶⁹¹ *Ibid.* Article 34

⁶⁹² Appeals against the decisions and actions (inaction) of electoral commissions can be filed by any person, whose electoral rights have been violated or could be violated, proxy, observer and member of the electoral commission. Appeals against the results of the voting in the PEC can be filed by the candidate, party participating in the elections, proxy, member of the corresponding electoral commission and member of CEC.

⁶⁹³ In the previous Electoral Code appeals against the decisions and actions (inaction) of TECs could be filed also in the RA Administrative Court. Thus, this change narrows the complainant's choice in appealing the decisions and actions (inaction) of TECs.

⁶⁹⁴ Article 46 of the Electoral Code

⁶⁹⁵ Articles 149-154.6 of the Criminal Code and Articles 40.1 – 40.12 of the Code on Administrative Delinquencies

⁶⁹⁶ Article 49 of the Electoral Code

CEC staff in a procedure, defined by RA Government⁶⁹⁷. That procedure allocation is similar to that of other state institutions and, as in the case of other state institutions, the relevant department of CEC staff is required to submit to the relevant government bodies (Ministry of Finance and State Revenue Service) quarterly and annual financial reports.⁶⁹⁸ The audit of the expenditures of the funds, allocated to CEC is carried out by RA Chamber of Control, and expenditures of the funds allocated to CEC staff – by CEC Oversight Audit Service, which is established during national elections by CEC decision.⁶⁹⁹ In addition, by the same Article of the Electoral Code, within 20 days after the elections TECs shall submit financial reports on its expenditures to CEC. The procedures for revealing the discrepancies in the financial reports are the same, as those for any institution, company or enterprise, and are defined by Armenian legislation.

Accountability (Practice) – *To what extent does the EMB to report and be answerable for their actions in practice?*

In practice, CEC strictly follows the legal requirements on reporting described above in the *Law* section. CEC reports on the organization and conduct of previous national elections are posted on CEC website.⁷⁰⁰ According to CEC former Chair, CEC voluntarily submits its financial reports to the RA Chamber of Control, which is not required by law.

Regarding the meetings of CEC with parties, media and observers, both CEC Chair and opposition member noted that CEC regularly meets with media and representatives of observation missions, especially the international ones. However, they claimed that the practice of meetings with parties does not exist. They attributed this to the absence of interest from parties' side.

However, the most problematic issue connected to the accountability of the electoral commissions is redressing electoral irregularities and, consequently, the efficiency of the resolution of election-related disputes. The problem is acknowledged by CEC former Chair, CEC opposition member, and international observers. However, there are different explanations on the causes of the problem. According to CEC former Chair, the major cause of this problem is the insufficient knowledge of electoral legislation by complainants. For example, the complainant, seeking re-count of votes in the particular precinct takes his/her appeal to CEC, instead of taking it to the relevant TEC, and CEC does

⁶⁹⁷ Article 23 of the Electoral Code The provision of funding electoral commissions and remuneration from the state budget is present in Article 38 of the Code.

⁶⁹⁸ Charter of the RA CEC Staff state administrative institution, Point 34.b

⁶⁹⁹ Article 23 of the Electoral Code

⁷⁰⁰ See, for example, <http://www.elections.am/images/docs/verluc19.02.08.pdf> on the analysis of organization and conduct of 2008 presidential elections.

not have the right to re-address that appeal to TEC.⁷⁰¹ Frequently, the CEC Chair claims, the appeals are incorrectly formulated.

In the opinion of the CEC opposition member, the major cause is the deficiency of the electoral legislation on the appeals process. She claims that considering the scale of irregularities that take place during elections, much more time should be given for reviewing the appeals, especially those, regarding to vote re-counts. At the time of these interviews, the previous Electoral Code was in effect and according to its Article 40, electoral commissions had only 5 days to address the appeals related to the violations on the Election Day, which was assessed absolutely insufficient by the interviewee, considering the large number appeals for re-count. As it can be seen from Article 46 of the current Electoral Code, the situation remains the same. The only solution, according to the interviewee is to increase the time period for addressing the post-election appeals from current 5 days to at least 15-20 days.

Based on the assessment of handling of appeals and complaints by CEC and TECs, international observers recommended election commissions and courts not to take an overly formalistic approach to handling election-related complaints.⁷⁰² In the same Recommendation the observers also called election commissions to “take a proactive role in gathering evidence to substantiate complaints and co-operate more closely with law enforcement agencies in this respect”.

Integrity (Law) – *To what extent are there mechanisms in place to ensure the integrity of members of EMB?*

The Electoral Code actually does not contain provisions related to the integrity of the members of the electoral commissions. At the same time, it contains some provisions that require certain limitations on the employment of the members of CEC, as well as criteria for the qualification of members of CEC and TECs. In particular, Article 37 of the Electoral Code requires that during their service at CEC, members of CEC do not have the right to perform other job, except of scientific, pedagogical or creative work, be a member of any political party or engaged in political activities. The prohibition to join political party or be engaged in political activities applies also on TEC members. Finally, by the same Article of the Code, members of electoral commissions shall publicly read and sign under the obligation “On performance of the duties of the electoral commission member’s incompliance with the Constitution and laws of the Republic of Armenia”.

⁷⁰¹ According to Article 40.2 of the Electoral Code, such appeals for re-count can be brought either by the candidate, member of the electoral commission, who attaches his/her special opinion to the final protocol on the results of the election or the contestant candidate’s or party’s proxy.

⁷⁰² See Recommendation 7 in *Republic of Armenia Parliamentary Elections 6 May 2012: OSCE/ODIHR Election Observation Mission Final Report*. Warsaw 26 June 2012, p. 26

As high-ranking public officials, members of CEC and TECs, as well as their close relatives, are required to declare their income and assets, as required by the Law on Public Service.⁷⁰³ For more detail see the discussion on the relevant indicator of the *Legislature* and *Public Sector* pillars.

Only those citizens of Armenia could be members of TECs and PECs, who underwent special training, organized and conducted by CEC and received certificate.⁷⁰⁴ The same Article also provides that members of Parliament, members of the Constitutional Court, judges, ministers, deputy ministers, governors of marzes (provinces), heads of communities, officials of national security service, police officers, military, prosecutors, bailiffs, employees of penitentiary institutions, officials working in the customs system, employees of banks, proxies, observers, candidates running for elections, as well as those citizens, who have been previously accused for election-related crimes, cannot be members of electoral commissions. Finally, the eligibility criteria for the selection of the members of CEC and TECs are defined by Articles 40 and 41 of the Electoral Code, respectively.

Integrity (Practice) – To what extent is the integrity of EMB ensured in practice?

There is no Code of Conduct for the members of electoral commissions, and for the staff employees the Code of Conduct for Civil Servants apply. The staff employees, as civil servants, sign contracts. Unlike members of electoral commissions, there is no practice of signing declaration or swearing an oath for CEC staff members.

The CEC former Chair asserts (and CEC opposition member confirmed that) that since 2002 there have been no serious cases of breaches or irregularities committed by CEC staff.⁷⁰⁵ Corrupt practices inside CEC staff connected to elections are also excluded, as the staff is not a decision-making body. Obviously, there have been no hearings or investigations regarding CEC staff.

At the same time, the CEC opposition member asserted that corrupt practices are possible among PEC members. An indirect indication of the existence of such practices is the large volume of irregularities and violations committed by PEC members during all recent elections. This claim has been supported by media, who reported numerous such cases during the 2008 presidential, 2009 Yerevan Council and 2012 parliamentary elections.⁷⁰⁶

⁷⁰³ Article 32 of the Law on Public Service

⁷⁰⁴ RA Electoral Code, Article 39

⁷⁰⁵ According to the official response of CEC Chair to TIAC letter, during 2008-09 11 employees of CEC resigned based on their resignation letters. Eight of them were employees working in the CEC separated units in marzes (provinces).

⁷⁰⁶ See compilation of newspaper articles on election topics published during the 2007-12 elections campaigns on TIAC's web-site - www.transparency.am

The 2010 Armenia Corruption Survey of Households conducted by USAID Mobilizing Action against Corruption (MAAC) and implemented by Casals & Associates, Inc., with assistance of IFES and Yerevan Office of Caucasian Research Resource Center (CRRC) revealed that 58% of respondents perceive CEC as “Corrupt to a great extent” or “Corrupt to some extent”.⁷⁰⁷ With such level of perception, CEC is the third most corrupt institution after the law enforcement institutions (Police) and Prosecution among 13 state institutions mentioned in the survey questionnaire. Moreover, with 66% of respondents perceiving as “Very corrupt” or “Somewhat corrupt”, the electoral system/processes shares with police the top two places in the list of most corrupt services.

Role

Campaign Regulation (Law and practice)

Does EMB effectively regulate candidate and political party finance?

As it has been already mentioned, Articles 25-27 of the Electoral Code regulate campaign finance of parties (blocs) and candidates. Armenian legislation clearly separates campaign finance from party finance. The party finance legal regulation and practice is discussed in the chapter on *Political Parties* pillar. So far, electoral commissions have no powers to regulate party finance. However, started from January 1, 2012, that power was transferred to OAS, which operates, as it has been mentioned above, under CEC.⁷⁰⁸

During national elections CEC is required to periodically post the pre-election funds declarations of parties (blocs) participating in the elections and presidential candidates on its web-site. According to Article 27 of RA Electoral Code, CEC is required to post pre-election fund declarations of parties (blocs) and presidential candidates within three days after it receives these declarations. The same Article requires parties (blocs) and candidates to submit their declarations to the Oversight-Audit Service of CEC, three times during the election period. The first declaration shall be submitted on the 10th day from the start of the campaign, second – on the 20th from the start of the campaign, and the last one - not later, than 3 days before the day, which is defined by the Electoral Code as the day of the announcement of the final results of the elections.

The aspects of reporting and transparency of pre-election funds have already been discussed in the section on *Transparency* indicator. Article 25 of the Electoral Code defines that parties (blocs) and candidates can open accounts for pre-election funds for campaign expenses. Armenian electoral legislation provides that political parties (blocs) and candidates participating in the elections open pre-

⁷⁰⁷ Armenia Corruption Survey of Households 2008 *Mobilizing Action against Corruption* Yerevan 2009. p.11.

⁷⁰⁸ This power is vested in OAS by Article 28 of the Electoral Code, which together with some other articles of the Code, did not enter into effect on June 26, 2011 as most part of the Code, but rather entered on January 1, 2012

election funds.⁷⁰⁹ However, as the implementation of the TIAC campaign finance monitoring revealed, in some cases parties and candidates deliberately were avoiding opening such accounts, to hide their campaign expenses.⁷¹⁰

Also, Article 25 of the Code defines through which means the pre-election fund can be comprised.⁷¹¹ The Electoral Code also sets the upper limits for these funds and upper limits of donations by physical, legal persons and parties. In particular, Article 88 of the Electoral Code sets the upper limit for the payment by the presidential candidate in his/her pre-election fund equal to 5 mln. AMD (about 12,445 USD), by party that nominated him/her – 25 mln. AMD (about 62,229 USD), and for individual donation – 100,000 AMD (about 248 USD). The upper limit for the expenditures from the presidential candidate's pre-election fund shall be 100 mln. AMD (about 248,917 USD). The upper limits for the majoritarian candidate's pre-election fund defined by Article 122 are 1 mln. AMD or about 2,489 USD (payment from his/her personal means), 2 mln. AMD or about 4,978 USD (party that nominated him/her), 100,000 AMD (individual donation) and 10 mln. AMD or about 24,891 USD (expenditures). The corresponding limits for the party (bloc) defined by the same Article 122 are 15 mln. AMD or about 37,337 USD (from party's account or in the case of the bloc this is the total amount), 100,000 AMD (individual donation) and 100 mln. AMD (expenditure). For the parties running for the seats of the Yerevan Council (through purely proportional list vote) Article 163 defines the following limits: 10 mln. AMD (from party(ies) account(s)), 100,000 AMD (individual donation) and 75 mln. AMD or about 186,687 USD (expenditure). Finally, Article 140 defines the corresponding limits for candidates for the heads of communities and members of the community councils. These limits are differentiated depending of the size of the community.

Article 26 of the Code regulates which goods and services for campaign purposes shall be procured using the means accumulated in the pre-election funds and how these means shall be used. In particular, candidates and parties can use pre-election funds means to conduct campaign in media, rent halls and other kind of space, preparation and placement of campaign materials (posters, billboards, etc.) acquisition of print materials, etc.⁷¹² It also provides that if it is revealed that the prices of the purchased

⁷⁰⁹ Article 140 of the Electoral Code allows candidates for the membership in the community councils (except those of Yerevan City Council), as well as mayoral candidates for the communities with less, than 10,000 voters, not to open pre-election funds during election campaign at local self-administration elections, if their campaign expenses do not exceed 500,000 AMD (about 1,295 USD).

⁷¹⁰ *Monitoring of Campaign Finance of the 2007 Parliamentary and 2008 Presidential Elections*. Transparency International Anti-corruption Center. Yerevan 2009

⁷¹¹ The pre-election fund of the candidate is formed from his/her personal means, means of the party, which nominated him/her and donations from individuals, who have voting rights. The same sources, except of candidate's personal means (as the same Article provides that candidates included in the party (bloc) lists are prohibited to make donations to their parties), can be used to form the pre-election fund of the party (bloc). Article 25 also explicitly states that means from all other sources directed to fill the pre-election fund shall be transferred to the state budget.

⁷¹² In contrast to the previous Electoral Code, the current one explicitly defines which types of goods and services could be purchased using the means of pre-election funds. However, this legal improvement is substantially offset by the fact that many types of goods and services, which are also purchased for campaign purposes, are not included in that list. Among them, gasoline and rent of transportation means used for campaign trips (visits of party

goods and services for campaign purposes presented in the pre-election fund declarations are not their market prices, then CEC adopts a decision obliging the parties or candidates to transfer to state budget an amount, which exceeds three times the amount of expenditures not declared in the declarations because the mentioned price difference. The same measure shall be applied also when the parties or candidates spent more means, than declared in their pre-election fund declarations. Moreover, if the mentioned amounts exceed three times the upper limits of the pre-election funds, defined by the Code (see above), then, based on the appeal of CEC, the court shall rule to annul the registration of that candidate or party (bloc) list. However, Electoral Code does not clarify the implications from such ruling, which is especially important, if the named violations are revealed after the voting day, but before the official announcement of final results. Among other important provisions of Article 26 are also provisions preventing the use of discounts (goods and services purchased for campaign purposes shall be declared at their market prices), exclusion of goods and services purchased before the start of the campaign (goods and services purchased before the start of campaign shall be reflected in the pre-election funds declarations), ban of using the means of pre-election funds on the voting day and later, regulation of the use of the pre-election funds means left after elections and in the case, if the results of the elections are annulled.

According to Article 28 of the Code, in order to oversee and audit the payments made to pre-election funds and expenditures of campaign, as well as conduct day-to-day oversight of financial activities of political parties, an oversight-audit service (OAS) under CEC shall be established by CEC decision.⁷¹³ The permanent staff of OAS consists of three officials, one of whom is the head of the Service. He/she is appointed by CEC decision and is civil servant. His/her salary shall be equal to 75% of the salary of the CEC member and he/she cannot be a member of any political party. Other two employees shall be civil servants. At the same time, as it was revealed during TIAC monitoring⁷¹⁴ this service is very weak in revealing violations and irregularities that took place in campaign expenditures. This occurred because of the lack of political will in exposing the violations in campaign finance, as well as insufficient human, technical and financial capacities. These findings are indirectly or directly confirmed by CEC former Chair and opposition member.⁷¹⁵

leadership residing in Yerevan to regions or a candidate to villages), remuneration of activists involved in campaign, rent of space for campaign headquarters, etc. This will allow to hide the substantial part of campaign expenses from public scrutiny.

⁷¹³ This service, which by the new Code became a permanent body, effective from January 1, 2012, is also responsible for the internal audit of the means received by electoral commissions and CEC staff from the state budget for the organization and conduct of elections.

⁷¹⁴ *Monitoring of Campaign Finance of the 2007 Parliamentary and 2008 Presidential Elections* Transparency International Anti-corruption Center Yerevan 2009 p. 42. The publication also revealed a number of loopholes in the campaign finance regulation, such as absence of regulation of in-kind contributions, third party financing, discounts given to parties by service and good providers, exclusion of hidden advertising, etc. (see pp. 37-39 of the publication).

⁷¹⁵ In particular, in his interview CEC Chair emphasized how strict was OAS in controlling the flow of donations to presidential candidates in 2008 elections. At the same time, he did not elaborate how OAS oversees campaign expenditures. In the CEC opposition member interview we see the opposite picture, when she was very critical of OAS performance in tracking campaign expenditures

Article 19 of the Electoral Code, which contains the main provisions regulating campaigning in media, provides that during national elections, on the day following the deadline for the registration of parties and candidates, CEC shall define the procedure and time schedule of free and paid political advertisement on Public TV and Public Radio for presidential candidates and parties (blocs) running proportional list elections for Parliament.⁷¹⁶ It provides that Public TV and Public Radio shall ensure equal and non-discriminatory conditions for all parties (blocs) and candidates and be impartial towards all parties (blocs) and candidates.⁷¹⁷ The same applies also for print media established by state or local self-administration bodies.

Regarding the financial aspects of media regulation during elections, Article 19 provides that not later, than 10 days after the announcement of the date of national or Yerevan Council elections Public TV and Public Radio shall publish their rates for one minute of broadcast time and this rate shall not exceed the average rate for commercial ads for the 6 months period preceding the elections and cannot be changed until the end of elections. These provisions fully apply for all TV (non-cable) and radio companies independent from the form of their ownership. The broadcast of campaign ads shall not be interrupted by commercial ads. The analysis of the results of monitoring of campaign finance and use of administrative resources conducted by TIAC during 2007 parliamentary and 2008 presidential elections⁷¹⁸ reveals that the Electoral Code should contain the requirement on Public TV and Public Radio to broadcast campaign ads and other campaign-related materials at the prime time period during elections.⁷¹⁹ However, there are other deficiencies, as well. First, the mentioned provisions on announcing the rates for campaign ads do not cover local self-administration elections, though there is rather developed network of regional TV stations outside Yerevan (see more about that in the chapter on **Media** pillar), which were (and, surely, will be in the future) extensively used by mayoral candidates in big towns for campaigning. Second, there is no definition of campaign materials. As a result, TV or radio programs, which are not explicitly calling to vote for a certain candidate, but implicitly advertise him/her (for example, a program on the biography of a candidate), can be labeled as non-campaign related, and, thus, the expenses on their preparation will not be paid from the pre-election funds.⁷²⁰ Third, no sanctions are foreseen for those TV

⁷¹⁶ The amounts of minutes for free political advertisement on Public TV and Public Radio for different elections are defined in Articles 89 (presidential elections), 123 (parliamentary elections) and 162 (Yerevan Council elections) of the Electoral Code.

⁷¹⁷ The same provisions are repeated in Article 10 of the Law on Television and Radio.

⁷¹⁸ *Monitoring of Campaign Finance of the 2007 Parliamentary and 2008 Presidential Elections*. Transparency International Anti-corruption Center. Yerevan 2009.

⁷¹⁹ During the mentioned elections campaign ads were broadcast at a different, than prime time, time, as a result of which most of the people were deprived to watch them.

⁷²⁰ Article 10 of the Law on Television and Radio provides that campaign-related TV programs, the expenses of which have been paid from pre-election fund, shall be accompanied during the whole period of their broadcast with “Campaign Advertisement” caption. For similar radio programs the same Article provides that during their broadcast at least three times it should be reminded orally that the program has campaign ad character.

and radio companies, which broadcast campaign ads violating the above-mentioned requirements (preliminary announced rates, implicit or hidden advertisement).⁷²¹

The same Article defines that the National Commission on Television and Radio (NCTR) shall be responsible for the control over the implementation of the regulations of media campaign by TV and radio companies. Here an important provision related to campaign finance is that NCTR shall monitor the coverage of campaign activities by TV (non-cable) and radio companies and, on the 10th, 20th days from the start of the campaign, as well as 2 days before the official announcement of election results, publish and submit to CEC the results of the monitoring and NCTR's conclusion based on those results (though it does not specify what consequences shall this monitoring have for those, who were found to violate the provisions of electoral legislation). One of the major criticisms voiced by international observers regarding media coverage of 2012 parliamentary elections, was that “violations regarding biased coverage were not sanctioned, which points to a lack of substantial enforcement mechanisms of the NCTR”.⁷²²

Election Administration (Law) – *Does the EMB effectively oversee and administer free and fair elections and ensure the integrity of the electoral process?*

The Electoral Code empowers electoral commissions to administer and oversee all stages of the electoral process, in particular, the registration of voters' lists, registration of candidates and parties (blocs) contesting in the elections, conduct of campaign, campaign finance, voting and vote count and tabulation.

According to Articles 7-9 and 12 of the Electoral Code, all issues connected to voters' lists (creation and running of these lists, inclusion of the citizens there, following the requirements set by the Electoral Code for the lists) are under the competence of the relevant unit of RA Police.⁷²³ Electoral commissions are not involved in the regulation of these issues, except for cases, connected with additional voters' lists. According to Article 13, such lists are formed by PECs on the voting day during the voting (from 8am to 8pm) and they include the names of those voters, who have not been included in the main lists and presented to PEC the decision of the court on the inclusion into such list or notification of the

⁷²¹ Simultaneously with the adoption of the new Electoral Code, on May 26, 2011 NA passed the Law on Changes and Amendments to the Code of Administrative Delinquencies, which, for the first time specifically defined sanctions for the violations of the procedures of campaign advertising in media (Article 40.7 of the Code). Sanctions are foreseen for not ensuring equal and non-discriminatory conditions for all participating parties (blocs) and candidates, for presenting subjective information about parties (blocs) or candidates during the broadcast of news programs, for covering campaign or directing programs by those reporters, who have been registered as candidates, and for interrupting campaign ads with commercial ads.

⁷²² OSCE/ODIHR Report 2012, p. 15 NCTR can only issue warnings for biased coverage and after issuing three warnings on the same matter suspend the license for broadcasting (see Article 55 of the Law on Television and Radio).

⁷²³ Article 10 of the Electoral Code defines that the Police shall submit the voters' lists to PECs 40 days prior to the voting day.

corresponding Police department. The availability of the voters' lists is provided and regulated by Article 11 of the Electoral Code. It gives the opportunity for the voters to check their names in the lists. In addition, the electronic version of the National Register of Voters prepared by Police is posted on CEC web-site, which is an additional means for voters to check their names. Article 12 of the Code regulates the procedures of correcting the mistakes in the voters' lists, in particular, inclusion of those voters, who were mistakenly taken out from them. All these legal provisions have been followed in practice in the recent elections.

One of the most alarming problems of 2012 parliamentary elections reported by media and observers were inflated voter lists, with the names of deceased and those living abroad, high numbers of voters registered at the same address, as well as presence in the lists of addresses of demolished buildings.⁷²⁴ Very questionable was the fact that the number of registered voters increased by about 170,000 since 2008 presidential elections, whereas, according to official statistical data, more than 200,000 people emigrated from Armenia since 2008. Others factors, such as lack of time or materials or security concerns that hamper the ability of voters to vote are insignificant.

The Electoral Code does not require electoral commissions to run/oversee voter education programs. However, according to CEC former Chair, CEC is conducting voter education programs through public service announcements (PSA), mainly funded by international organizations and during election campaign TV companies broadcast them at least twice a day. An indirect way of voters' education, according to CEC Chairman, is the training of candidates for the seats in the electoral commissions. Already, more than 64,000 citizens underwent these training courses.

Articles 57 and 58 of the Electoral Code regulate the procedures of maintenance of ballot papers, ballot envelopes, seals and ballot boxes by electoral commissions. The whole Chapter 13 (Articles 67-75) of the Electoral Code regulates the procedures of vote count, summary of the voting results their tabulation, definition of inaccuracies and summarization of election results. Finally, Chapter 7 (Articles 29-33) of the Code regulates the status, rights, duties and safeguards for conducting the activities of proxies, observers and media representatives. All mentioned chapters and articles, in general, provide good legal grounds for conducting normal and fair elections, provided that there is genuine political will to conduct such elections.

Unfortunately, the practice, as the opposition parties and candidates and observation missions reported, deviates from the law substantially, especially on PEC level. During 2012 parliamentary elections international observers reported about different violations committed by PECs on the Election Day, though the scales of violations were less, compared to 2008 presidential elections. They also were

⁷²⁴ See, for example, OSCE/ODIHR Report 2012, pp. 8

creating unjustified and/or unlawful obstacles for observers and proxies. All these irregularities are described in detail also in the OSCE/ODIHR EOM report⁷²⁵.

Recommendations for Election Management Body

1. Amend the electoral legislation to safeguard publication of voter lists after an election, in order to mitigate against multiple voting and ballot stuffing, and to provide civil society oversight of the process.
2. Amend the legislation to allow voters, groups of voters, NGOs conducting observation to appeal electoral violations and advocate for public interest electoral reforms.
3. Amend the electoral code to set the requirement on the electoral commissions examining the complaints in accordance with part 6 of Article 46 of the electoral code, to obtain evidence as well.
4. Make an addendum in the electoral code stipulating that proxies, observers and media representatives may not be held criminally liable for opinions expressed about the process of elections and results.
5. Amend the electoral code to restrict the right of public or state officials, as well as members of political parties, to be appointed to the TEC.
6. Remove the knowledge test requirement for observers from the electoral code
7. Amend corresponding legislation and RA Constitution to restore the electoral right of incarcerated individuals.
8. To make corresponding amendment to the legislation prescribing an individual-based approach to electoral rights for people convicted for minor crimes by the courts, so they are not automatically deprived of their electoral rights.
9. Make an addendum to Part 6 of Article 47 of the electoral code, specifying what issues require immediate solution and what action the electoral commissions are required to take.
10. Research the possibility for creating alternatives to invalidating the registration of a candidate or a political party in case of violation of campaign regulations or failure to eliminate the violation in a timely manner.
11. Research the possibility of creating an independent auditing body to audit campaign funds.
12. Ensure comprehensive, thorough and independent investigation by electoral commissions, judicial and law enforcement bodies.
13. Ensure transparency of electoral processes through video-taping and online broadcast of the electoral process
14. Provide official feedback to recommendations made by organizations conducting observation missions
15. Reintroduce mechanisms for citizens residing abroad to exercise their electoral rights.

⁷²⁵ OSCE/ODIHR Report 2012, Part XII (pp. 20-23).

16. Conduct trainings of PEC and TEC members, providing sufficient knowledge and skills about electoral processes and the rights of all individuals involved in the electoral process.

Supreme Audit Institution

Table of Indicator Scores

Supreme Audit Institution			
Overall Pillar Score: 69.4			
	Indicator	Law	Practice
Capacity 58.3	Resources		50
	Independence	75	50
Governance 75	Transparency	100	75
	Accountability	75	75
	Integrity Mechanisms	50	Not scored
Role 75	Effective financial audits		
	Detecting and Sanctioning Misbehavior	75	
	Improving financial management		

Structure and Organization

The supreme audit institution of Armenia is the Chamber of Control of Armenia (CoC). CoC was established on May 29, 1996 with the passage of the Law on the Chamber of Control of the National Assembly of the Republic of Armenia, as a new system of state financial oversight.⁷²⁶ Initially, CoC was under the National Assembly of Armenia, and, hence, it was not an independent body. As a result of introduction of amendments and changes in the Constitution, passed by November 27, 2005 referendum, CoC became an independent body. The new status of CoC necessitated development and passage of a new Law on CoC, which would introduce legal safeguards for CoC independence. The new Law was adopted on December 25, 2006, and entered into effect on June 7, 2007 and is the main legal act, regulating the activities of CoC⁷²⁷. Together with the introduction of new provisions ensuring the independence of CoC (see more on that in the discussion on the *Law* aspect of the *Independence* indicator of this chapter), it also introduced several other important provisions, which are in line with international legal practice related to supreme audit institutions. In particular, CoC can now conduct also extracurricular audits. It also can conduct new (for Armenian CoC) types of audits, such as environmental or efficiency audits.

⁷²⁶Bulletin of the National Assembly of the Republic of Armenia 1996/12

⁷²⁷RA Official Bulletin 2007/3(527), 12.01.07.

CoC structure includes its Chair, who is appointed by NA upon the nomination of the President (see more on this below), Board and staff. The Board is the highest governing body of CoC and consists of seven members, including the CoC Chair, his/her deputy, who replaces the Chair in his absence or in the case of impossibility by the latter to perform his/her functions, and five members. Members of the Board, except CoC Chair, are appointed by the President for 6-year term.

CoC staff is comprised from 14 departments. Eleven out of its 14 departments, which are named by their numbers, for example, First Department, Second Department, etc. conduct audit of certain state bodies. For example, the First Department audits Ministry of Finance, Ministry of Economy and State Revenue Committee. The Third Department audits the community budgets, including subsidies and subventions, which they receive from state budget, as well as the use of community property. The Eleventh Department is responsible for the internal audit of CoC. Besides these 11 departments there are 3 other departments - Department of Methodology, Information Technologies and International Relations, Department of Analysis and Legal Department.

Assessment

Capacity

Resources (Practice)

To what extent does the audit institution have adequate resources to achieve its goals in practice?

The budget of the Chamber of Control for 2012 is 859. 414,3mln. AMD and at the moment of March 25, 2012 were spent around 164mln. AMD.⁷²⁸ For 2011 the budget of the Chamber was 783,886.7mln. AMD and from that allocated measures was not spend 822.6 mln. AMD.⁷²⁹ According to RA Law on the RA Control Chamber, article 8, part 4, point “f”, the President of the Chamber exercises powers of manager towards allocated budgetary measures. For expenditures not foreseen by the budget, there is a depository fund which is part of the budget and the amount of which must be equal to 2 percent of the given year's budget of the Chamber.⁷³⁰ Regarding staff's quality, the head of the Chamber Mr. Ishkhan Zakaryan, during November 17, 2010 sitting of the legislature, in answering to MP Mr. Artak Davtyan mentioned that based on the produced publications, notes, materials it can be said that the Chamber has quite interesting and good employees.⁷³¹ During the same sitting Mr. Zakaryan also mentioned that the Chamber always works on raising qualifications of its employees. Training opportunities are being provided, including international trainings via partner organizations. Screening of the information on

⁷²⁸ See at <https://www.e-gov.am/interactive-budget/> (last access was made on 25.03.2012)

⁷²⁹ See at <https://www.e-gov.am/interactive-budget/2011/> (last access was made on 25.03.2012)

⁷³⁰ See RA Law on the RA Control Chamber, article 13, part 6.

⁷³¹ See at <http://www.parliament.am/transcript.php?AgendaID=2072&day=17&month=11&year=2010&lang=arm> (last access was made on 25.03.2012)

heads of departments revealed that they mainly have local education and 5 of them are in possession of PhD degrees.⁷³²

Independence (Law)

To what extent is there formal operational independence of the audit institution?

The legal status of CoC is defined by Constitution, according to which it is an independent body.⁷³³ Though the corresponding Article of the Constitution provides that CoC annual program of activities shall be approved by NA and CoC shall at least once a year submit a report to NA about its activities, this is viewed by experts not as provisions limiting its independence, but rather as a measure of accountability of CoC to NA, and, by that, to public, whose representatives are elected to NA.⁷³⁴ At the same time, there is no constitutional provision ensuring the independence of its members.

The above-mentioned Article of Constitution defines the relationships between CoC and NA. According to it, NA approves the program of CoC activities. It also appoints the Chair of CoC upon the nomination of the President (for 6-year term and no more than for two consecutive terms). Finally, at least once a year CoC shall submit to NA report on the results of its oversight activities. By the logic of the current wording of Constitution, resulted from the passage of changes and amendments to Constitution through November 27, 2005 referendum, the constitutional safeguard of the independence of CoC is that the appointment of CoC Chair by NA shall take place upon the nomination of the President.⁷³⁵ In addition, the Law on CoC provides that all members of CoC Board, which, by the same Article of the Law, is the governing body of CoC, shall be appointed by the President upon the nomination of CoC Chair (for 6-year term).⁷³⁶ The participation of two institutions (NA and President) in the appointment of CoC Chair is assumed to balance the influence of these institutions, and, by that, make CoC a truly independent body. In addition, under new Law, NA cannot pass a decision on the dismissal of CoC Chair (which was possible under the old law).

The Law on CoC, does not mention any other program, except its annual program of activities, based on which CoC can carry out its oversight. This program is prepared by CoC, and is approved by NA. The Law on CoC provides that CoC is free in the choice of oversight forms and methods.⁷³⁷ The same Article of the Law also defines the methods and forms of the oversight. Thus, CoC has limited degree of freedom to choose methods and types of oversight, as it can choose only among those, which are defined by law.

⁷³² See at <http://coc.am/DepartmentsEng.aspx> (last access was made on 25.03.2012)

⁷³³ Article 83.4 of Constitution

⁷³⁴ *Commentaries to the Constitution of the Republic of Armenia* pp. 800-801

⁷³⁵ As a result of changes and amendments to the Constitution, passed through the November 27, 2005 referendum, CoC acquired status of independent body (before it was under NA).

⁷³⁶ Article 10 of the Law on the Chamber of Control

⁷³⁷ Article 18 of the Law on the Chamber of Control

According to Constitution, a person, who meets the criteria set for NA members, can be appointed to the position of CoC Chair.⁷³⁸ These criteria are defined in Article 64 of Constitution, and the Law on CoC repeats them.⁷³⁹ According to them, the candidate for the position of CoC Chair shall be at least 25 years old, shall hold Armenian citizenship and permanently reside in Armenia during the 5-year period preceding the appointment, and have voting rights. As it can be seen, these criteria do not include requirement of having higher education, which theoretically makes possible appointment to this position a person with high school education.⁷⁴⁰ The Law on CoC sets stricter requirements for CoC Board members, among them - CoC Deputy Chair.⁷⁴¹ The CoC Board member shall be citizen of the Republic of Armenia and have higher education. The same Article also prescribes who cannot be appointed as CoC Board member. Those are persons, who: a) have been recognized as incapable or with limited capability by legally entered into effect court ruling; b) are prohibited by a procedure defined by law to hold certain positions; and, c) have been convicted and the previous convictions have not been expunged.

The Law on Public Service considers both the Chair of CoC and its board members as high level public officials, consequently the limitations and provisions which are applicable to other public officials (for more please see relevant discussions above in this study). Neither the Law on Parties, nor the Law on Professional Unions prohibit CoC Chair, Board members or staff from being members of parties or professional (including trade) unions.⁷⁴² The only restriction in this aspect is that the Law on Parties provides that members of parties, who hold positions in the state or local self-administration bodies, do not have right to use their official positions for the benefit of party interests.⁷⁴³ At the same time, the Law on CoC provides that members of CoC Board, including CoC Chair, cannot be nominated as candidates in the national and local self-administration elections, hold positions in state and local self-administration bodies or perform any other job, except that of scientific, pedagogical or creative nature.⁷⁴⁴

The Law on CoC defines the grounds for the early termination of the powers of the CoC Chair.⁷⁴⁵ Those are: a) his/her resignation; b) termination of his/her Armenian citizenship or acquisition of foreign citizenship; and, c) his/her sentencing to imprisonment or declaring him/her incapable or with limited capability based on the court ruling, which entered into legal effect.⁷⁴⁶ Another Article of the Law on

⁷³⁸ Article 83.4 of Constitution

⁷³⁹ Article 8 of the Law on the Chamber of Control

⁷⁴⁰ It should be mentioned that the old Law on CoC included the criterion of higher education.

⁷⁴¹ Article 11 of the Law on the Chamber of Control

⁷⁴² Article 10 of the Law on Parties and Article 6 of the Law on Professional Unions

⁷⁴³ Article 10 of the Law on Parties

⁷⁴⁴ Article 11 of the Law on the Chamber of Control

⁷⁴⁵ *Ibid.*, Point 5 of the Article 8

⁷⁴⁶ Though the death of CoC member is not mentioned among the grounds for early termination in the mentioned Point of Article 8, it is mentioned in another point of the same Article (Point 8), as one of the bases (together with the mentioned in the text other bases, except the resignation) for drawing up a protocol on early termination of the powers of CoC. The protocol shall be signed by NA Speaker, who shall inform about that the President.

CoC defines the grounds for early termination of the powers of the CoC Board members.⁷⁴⁷ Besides the grounds, applicable for CoC Chair, here it is explicitly mentioned the death of the Board member, and one more ground is added, namely, improper execution of his/her duties, in which case his/her powers shall be terminated by the President upon the recommendation of CoC Chair. However, the Law does not explicitly define the meaning of improper execution of powers. Regarding the CoC staff, as they are civil servants, their appointment, promotion and dismissal are defined by the legislation on civil service (see more in detail in the chapter on *Public Sector* pillar).⁷⁴⁸

The tenure for CoC staff is defined by the provisions of the Law on Civil Service. By international standards, the tenure for CoC Chair and Board members is considered as long enough for excluding political influence.

The legislation on CoC does not contain any explicit provisions ensuring the immunity of CoC Chair, Board members and staff.

As it can be seen from the discussion, the legislation provides sufficient grounds for the independence of CoC. First, organizationally it is not part of legislature or executive, second, it is CoC that defines which entities shall be audited, third, it can audit any public institution, including executive bodies and NA, and, finally, CoC decides the form and the content of its reports. In addition, as CoC prepares its budget estimate and the Government has no control on planning its expenditures. This ensures a sufficient level of financial independence.

Independence (Practice)

To what extent is the audit institution free from external interference in the performance of its work in practice?

As it is noted in President's pillar, the final say almost on every issue, in practice, belongs to RA President. However, compared with other state institutions, the Chamber of Control seems relatively independent. Nevertheless, Bertelsmann Transformation Index 2012 reports the following: " However, the review period witnessed a new recognition of the need for more effective, highly prioritized anti-corruption measures. In late January 2010, President Serzh Sargsyan ordered the parliamentary oversight body, the Audit Chamber to "work more actively" with law enforcement to prosecute state officials suspected of embezzling public funds or of engaging in other corrupt practices. The president also directed the head of the body, Ishkhan Zakarian, to ensure the Audit Chamber was able to "resist pressure" from corrupt officials. For his part, Zakarian reported that the Audit Chamber had already carried out full "inspections" of most ministries and state bodies, and had formally reported 21 criminal

⁷⁴⁷ Article 11 of the Law on the Chamber of Control

⁷⁴⁸ *Ibid.*, Article 28

cases of embezzlement. Zakarian further noted that the body's investigatory work had succeeded in returning some \$3 million (about AMD 1.13 billion) in "embezzled or wasted public funds" to the state budget in 2008 and was currently "recovering money allegedly misused" in 2009.⁷⁴⁹ During 2011, no scandalous dismissals or conflict of interests among staff members or the Council of the Chamber were reported. As about political interference, was notable the "battle" between MP Spartak Melikyan and President of the Chamber. The Chamber conducted examination in the university which belongs to the mentioned MP. The President of the Chamber sued the MP for defamation, but later they achieved friendly settlement.⁷⁵⁰

Governance

Transparency (Law)

To what extent are there provisions in place to ensure that the public can obtain relevant information on the relevant activities and decisions by the SAI?

A number of articles of the Law on CoC define the documents that CoC is required to prepare. First of all, those are the resolutions (conclusions) of CoC on the of the state budget and privatization program implemented by the Government, as well as resolutions on the annual reports of the Central Bank of Armenia.⁷⁵¹ Among the main functions of CoC the same Article also prescribes preparation and publication of reports and periodicals. CoC is required to prepare current⁷⁵² and annual⁷⁵³ reports, as well. The annual report should be published at the Official Bulletin of RA as well at the www.azdarar.am website, after discussion of the report at the NA.⁷⁵⁴ In addition, as it has been mentioned above (see *Independence (Law)* section of the chapter), CoC is required to prepare the draft of its annual program of activities, and, submit it to NA for approval.⁷⁵⁵ The draft shall be submitted to the NA Standing Committee on Finance, Budget and Economy not later, than 60 days before the start of the fiscal year.⁷⁵⁶ The draft shall be debated on NA floor and approved through voting.⁷⁵⁷

CoC is also required (see also above in the *Independence (Law)* section) to submit its annual report to NA (not later, than within 3 months after the end of the reporting year), which shall be debated on NA floor. However, NA does not vote and adopt any decision as a result of these debates, and the report shall be published in *RA Official Bulletin*, at the website of CoC and at the website www.azdarar.am.⁷⁵⁸ Also,

⁷⁴⁹ See at <http://www.bti-project.org/countryreports/pse/arm/2012#chap4> (last access was made on 25.03.2012)

⁷⁵⁰ See at <http://haynews.am/hy/archive-40340> (last access was made on 24.03.2012)

⁷⁵¹ *Ibid.*, Article 5

⁷⁵² *Ibid.*, Article 16

⁷⁵³ *Ibid.*, Article 17 The CoC annual report includes all current reports on all issues foreseen by the annual program.

⁷⁵⁴ HO-133-N adopted on 19.03.2012

⁷⁵⁵ This constitutional provision is included in Article 15 of the Law on the Chamber of Control

⁷⁵⁶ Article 15 of the Law on the Chamber of Control

⁷⁵⁷ Article 100 of the Law on NA Regulations

⁷⁵⁸ Article 101 of the Law on NA Regulations and Article 17 of the Law on the Chamber of Control

based on the analysis of the results of oversight, CoC Board can submit to state bodies, suggestions on improving the existing legal acts.⁷⁵⁹

The Law on CoC prescribes that CoC shall post its annual and current reports and resolutions on its web-site (www.coc.am) within 30 days after its approval by CoC Board. The same Article also prescribes that, within 10 days following the approval of these documents by CoC Board, CoC shall submit them to NA and inform about that the President and Government.

The legal aspect of CoC transparency is enhanced through such provisions, which give the right to NA member to participate at CoC Board meetings⁷⁶⁰ and requirement that not later, than three days prior to the Board meeting CoC Chair shall inform NA Chair, Deputy Chairs, standing committees, factions and groups about the date, time and agenda of the meeting.⁷⁶¹

Overall, the legal regulations allow making public all documents, which CoC prepares on the results of its audit.

Transparency (Practice)

To what extent is there transparency in the activities and decisions of the audit institution in practice?

Programs, annual reports, current reports are being published on official website of the Chamber.⁷⁶² The reports contain necessary information. Committee to Protect Freedom of Speech conducted monitoring of data of official websites of state bodies⁷⁶³ but did not include the Chamber for the monitoring. Regarding timely publishing, it must be noted that for example annual report for 2011 at the moment of March 25, 2012 was not published yet.⁷⁶⁴ The Freedom of Information Center NGO in July 2010 sent query and by 16.12.2011 the manner of response was registered as "silent rejection".⁷⁶⁵

Accountability (Law)

To what extent are there provisions in place to ensure that the SAI has to report and be answerable for its actions?

As it has already mentioned in the previous sections on the *Law* dimension of *Independence* and *Transparency* indicators, CoC is required to submit its annual report to NA, as well as current reports, after they are approved by CoC Board and before posting them on CoC web-site. The Law defines the

⁷⁵⁹ Article 19 of the Law on the Chamber of Control

⁷⁶⁰ Article 5 of the Law on Regulations

⁷⁶¹ *Ibid* Article 7

⁷⁶² See at www.coc.am

⁷⁶³ See at <http://khosq.am/en/2011/01/1594> (last access was made on 23.03.2012)

⁷⁶⁴ See at <http://coc.am/YearReportsEng.aspx> (last access was made on 25.03.2012)

⁷⁶⁵ See at <http://www.givemeinfo.am/hy/entity/197/> (last access was made on 23.03.2012)

structure of those reports. According to it, the current report is the report prepared as a result of oversight of the particular oversight object included in the annual program of CoC activities.⁷⁶⁶ By the same Article, the content of the current report can include: a) note on not detecting violations; b) notes on detecting violations; c) suggestions to the head of the oversight object and other interested parties; d) objections made by the officials of the oversight object; e) conclusions; and f) other relevant information. The annual report of CoC shall include all current reports.⁷⁶⁷

According to the Law on CoC, the financial performance of CoC shall be audited by an independent international auditing company, who shall be selected by CoC Board.⁷⁶⁸ However, the Law does not mention, how the selection shall be made (on competitive basis or some other method of procurement) and shall the results of audit be presented to NA or other government body and published in media or posted on CoC web-site.

Accountability (Practice)

To what extent does the SAI have to report and be answerable for its actions in practice?

The annual reports of the Chamber are fairly detailed and comprehensive and drafted without unnecessary professional language. Independent audit is taking place and its reports are being published on the website of the Chamber.⁷⁶⁹

Integrity mechanisms (Law)

To what extent are there mechanisms in place to ensure the integrity of the audit institution?

CoC staff members are civil servants, and, as civil service is one of the types of public service, the regulations on integrity of public servants, provided by the Law on Public Service, apply on them, as well (see more in the discussion on the regulation of integrity issues of the **Public Sector** pillar).

As high-ranking public officials, CoC Chair, his/her deputy and members of CoC Board, as well as their close relatives, are required to declare their income and assets, as required by the Law on Public Service.⁷⁷⁰ For more detail see the discussion on the relevant indicator of the **Legislature** and **Public Sector** pillars.

Integrity mechanisms (Practice)

To what extent is the integrity of the audit institution ensured in practice?

⁷⁶⁶ Article 16 of the Law on the Chamber of Control

⁷⁶⁷ *Ibid.*, Article 17

⁷⁶⁸ *Ibid.*, Article 13

⁷⁶⁹ See at <http://coc.am/ConclusionsArm.aspx> (last access was made on 23.03.2012)

⁷⁷⁰ Article 32 of the Law on Public Service

As was noted already, in January, 2012 Ethics Commission for High Level Public Officials was formed. The President of the Chamber of Control and members of the Council are considered as high level public officials under the Law on Public Service. They are required to submit declarations to the Ethics Commission and all norms stipulated under Law on Public Service on ethics, conflict of interests and etc. are fully applicable to them. In this regard, it is early to make assessment on whether integrity is ensured or no, because the Ethics Commission just started to operate.

Role

Detecting and sanctioning misbehavior

Does the audit institution detect and investigate misbehavior of public officeholders?

The Law on CoC provides the necessary tools and mechanisms, which CoC can apply in its oversight to identify misbehavior. In particular, the CoC staff member, who conducts an audit has the right to look through all documents, which relate to the financial-economic activities of the oversight object, demand and receive from the head of the oversight object all necessary notes, information, accounting reports and clarifications, freely enter into the territory of the oversight object (if the law does not provide other procedure), and, with consent of the head of oversight object, involve the specialists of the oversight object, if necessary.⁷⁷¹ At the same time, the officials are required to submit within one month from the start of the audit all necessary documents, demanded by the CoC employee, who conducts the audit, refrain from creating obstacles for CoC employees, present necessary documents, data and other information, create necessary conditions for CoC employees conducting the audit and submit to CoC correct information.⁷⁷² By the same Article, the head of the object under oversight (or the official, who substitutes him) shall be held liable for not executing the lawful demands of the CoC auditors. The Law prescribes cooperation of CoC with other bodies and among these bodies there are mentioned the Judicial Department, law enforcement bodies, and other bodies, established by other laws, which are empowered with control and oversight functions, as well as bodies that conduct internal control and/or audit⁷⁷³.

CoC does not have authority to investigate misbehavior it revealed during its audit. Instead, it shall send the protocols and current reports, prepared during the audit, to the Office of the Prosecutor General, if there are doubts that there have been violations of criminal nature.⁷⁷⁴

⁷⁷¹ Law on the Chamber of Control., Article 21

⁷⁷² *Ibid.*, Article 24

⁷⁷³ *Ibid.*, Article 26

⁷⁷⁴ *Ibid.*, Article 6

Recommendations on the pillar of Supreme Audit Body

1. To make the Chamber more independent, by considering providing constitutional immunities and altering the relevant legislation with the aim of removal of vague grounds of resignation of offices by members of the Chamber.
2. To fully cooperate with the Chamber and to stop public criticism of the Chamber by high level public officials.
3. To amend legislation with the aim to stipulate concrete timeframes of posting the responses of other state and municipal bodies to the findings of the Chamber.

Political Parties

Table of Indicator Scores

Political Parties			
Overall Pillar Score: 52.8			
	Indicator	Law	Practice
Capacity 62.5	Resources	75	50
	Independence	75	50
Governance 58.3	Transparency	75	50
	Accountability	50	50
	Integrity	100	25
Role 37.5	Interest aggregation and representation		25
	Anti-corruption commitment		50

Structure and Organization

The current multi-party system in Armenia, which replaced the old, Soviet period one-party totalitarian system, was established in 1991 by the first (since Armenia lost its independence in December 1920) non-Communist government, who came to power as result of May 1990 parliamentary elections. The legal basis for the functioning of that system initially was the Law on Social-Political Organizations⁷⁷⁵, which was adopted on February 26, 1991 by the Supreme Council of Armenia (the former name of the Armenian Parliament). On July 3, 2002 Armenian National Assembly (the name of the Armenian Parliament since 1995, after the adoption of the Constitution) passed the Law on Parties⁷⁷⁶ (entered into effect on November 15, 2002), which is the major legal document regulating the operations of parties.

The most recent information on the number of political parties in Armenia, which is publicly available, can be found on the web-site of the Foundation of Civil and Social Development NGO, who posted the official information it received from the Agency of State Register of Legal Persons of the Ministry of Justice of Armenia and it dates back to January, 2007.⁷⁷⁷ According to that list, by that time there were 74 parties. The ideologies of these parties range from communist to ultraliberal, and, in general, the

⁷⁷⁵ *Bulletin of the Supreme Council of the Republic of Armenia. 1991/4*

⁷⁷⁶ *Official Bulletin 2002/34(209), 15.08.02*

⁷⁷⁷ <http://www.civitasfoundation.org/cf/spotlight/facts-for-thought/729-number-of-political-parties-in-armenia.html>

spectrum of ideologies is very inclusive. Among these parties there are no regional parties and the headquarters of all parties are located in Yerevan, the capital city.

The Law on Parties requires parties to have charter and program. The highest authority of the party is its congress (conference, general meeting, etc.). The congress should be held at least once in 2 years and the congress elects its permanent governing body (board) for the period between the consecutive congresses. The parties have their local organizations in regions. Establishment of local organizations in enterprises, state and local self-administration bodies, etc. (i.e. on non-territorial basis) is forbidden.

Certain categories of public officials cannot be members of parties. Those are judges, prosecutors, law enforcement officers (police, national security service, etc.) and servicemen serving in Armenian Army and other types of military units (for example, police troops). All other public officials are prohibited to use their position to promote their parties' interests.

Political party is the only public association that can participate in the national and local self-government elections, by proposing candidates for seats in the elective bodies or for President.

Finally, the property of the parties is generated through the following means: a) lump sum paid for becoming member (entrance fees) if it is stipulated by the charter of the party; b) membership fees, if it is stipulated under the charter of the party; c) donations; d) financing from the state budget; e) from other sources not prohibited by the law.⁷⁷⁸

There are certain types of donations which are forbidden. Those donations are: a) donations from benevolent or religious organizations, as well organizations with participation of the latter two; b) state and community budgets and (or) off-budget means; c) state and community not for trade organizations and from trade organizations with participation of state or community; d) from legal persons which were registered 6 months prior to the day when the donation was made; e) foreign states, citizens and legal persons, as well from legal persons with foreign participation, provided that foreign participant's stocks, share, in the charter capital of the given legal person is more than 30 percent; f) international organizations and international public movements; g) stateless persons; h) anonymous persons.⁷⁷⁹

It is noteworthy, that the same article considers works and provided services as donations too. The general amount of the donations during one year period shall not exceed a million times more than the minimum wage, including from a trade organization 10.000 times more than the minimum wage, from a non trade organization 1.000 more than the minimum wage, and from a natural person 10.000 times more than the minimum wage. In such cases the party shall, during 2 weeks period after receipt, either

⁷⁷⁸Law on Parties, Article 25

⁷⁷⁹*Ibid*

the whole donation or the part of the donation which is exceeding the allowed amount, to return and if it is possible to transfer to state budget. Failure to do so entails to administrative responsibility, as stipulated under Article 189.16 of the Code on Administrative Delinquencies, in the amount of fine equal to 100-150 times of the minimum wage. If the same delinquency is being repeated during one month after the imposition of the fine, then the new fine will be imposed equal to 200-250 times of the minimum wage.⁷⁸⁰

As about the forbidden sources of donations, the same article of the Code is applicable here too. However, the Law on Parties prescribes diverse procedures and not common one for the all types of forbidden donations. More particularly: a) in case of receiving donation from benevolent or religious organizations (or organizations with their participation), legal persons registered 6 months prior to making the donation and donations received from stateless people, the party shall during 2 weeks period shall return the whole donation or in case of impossibility to do that, the party shall transfer it to state budget; b) for the remaining types of forbidden donations the party shall only transfer the received donation to state budget, in the course of 2 weeks period.⁷⁸¹

It must be noted that all types of the mentioned fines shall be exercised toward respective official (s) of the party.⁷⁸²

The problem here is that works and services also are considered as donations and there is no set mechanism in the law for calculation of performed work and provided services. It is plausible to have such mechanism stipulated in the law, because terms and procedures for the exercise and protection of the rights by natural persons and legal entities and restrictions on the rights and freedoms of natural persons and legal entities, their obligations, as well as forms, extent and procedure for liability thereof, means of compulsion and the procedure for such, types, amounts and procedures for the payment of taxes, duties and other binding fees paid by natural persons and legal entities *shall be set forth exclusively by the laws.* This is Constitutional requirement (article 83.5). Hence, in theory, there is potential to have contradiction with the Constitution.

It is noteworthy also that monetary allotments exceeding 100 times of the minimum wage must be conducted not in cash.⁷⁸³ Article 189.15 of the Code of Administrative delinquencies stipulates responsibility for both donators and for the official of the party.

Assessment

⁷⁸⁰Code of Administrative Delinquencies, Article 189.16

⁷⁸¹Law on Parties, Article 25

⁷⁸²*Ibid*

⁷⁸³*Ibid*

Capacity

Resources (Law)

To what extent does the legal framework provide conducive environment for the formation and operation of political parties?

Armenian Constitution guarantees ideological diversity and existence of multi-party system, as well as establishing political parties freely⁷⁸⁴. The same Article of the Constitution provides that political parties shall promote the formation and expression of the political will of the people, their activities cannot contradict to Constitution and laws, and their functioning – to the principles of democracy. Finally, that Article provides that political parties shall ensure transparency of their financial activities. The Constitution also declares the right of each citizen to establish, together with other citizens, political parties and the right to join them.⁷⁸⁵ This Article of the Constitution contains several other important provisions as well. First, it provides that the mentioned above rights could be limited by law for those citizens, who serve in military, police, national security and prosecution bodies, as well as for judges and members of Constitutional Court. Second, it provides that it is forbidden to force the individual to join political party or association. Finally, the functioning of associations (and political parties have legal status of associations) can be suspended or banned only in the cases, prescribed by law and only through court decision.

Special laws on freedom of association in Armenia do not exist. Currently the activities of political parties are regulated by the Law on Parties, which regulates the relationships connected with the realization of the right to assemble in parties, founding the parties, their legal status, activities, re-founding and dissolution⁷⁸⁶. The Law prohibits establishing such parties, whose goals and activities are aimed at instigating ethnic, religious or racial hatred or propaganda of violence or war.⁷⁸⁷ The same Article prohibits establishing such parties who are aimed to forcefully change the constitutional order in Armenia or its territorial integrity. These restrictions are standard in international legal practice and are in line with such fundamental constitutional provisions as equality of all to the law⁷⁸⁸ and ban on the individuals to exercise his/her rights to forcefully change the existing constitutional order, instigate ethnic, racial or religious hatred, or for the propaganda of violence and war⁷⁸⁹. Other legal restrictions on party ideology do not exist in law.

⁷⁸⁴ Article 7 of Constitution

⁷⁸⁵ *Ibid.*, Article 28

⁷⁸⁶ Article 1 of the Law on Parties

⁷⁸⁷ *Ibid.*, Article 9

⁷⁸⁸ Article 14.1 of Constitution

⁷⁸⁹ *Ibid.*, Article 47

The Law on Parties defines several legal requirements connected to founding political party. First, at the moment of its registration, the party must have at least 200 members⁷⁹⁰ and territorial organizations in, at least, one third of marzes of Armenia, including Yerevan.⁷⁹¹ In addition to these requirements, the Law on Parties stipulates that not later than 6 months after its registration, the party shall have at least 2,000 members throughout the country with at least 100 members in each marz, territorial units in all marzes and Yerevan.⁷⁹² By the same Article, the party is required to inform on that in the written form to the State Register. This requirement has both positive and negative aspects. On the one hand, it facilitates creation and functioning of large parties, which will better aggregate the interests of certain groups of population and better represent them making their opinions and voice heard better. On the other hand, there is a risk of violation of the constitutionally safeguarded freedom of association of those small groups of population, who wish to join together and support such ideology, which is not among mainstream ideologies of the country. Finally, among other requirements for founding a party is the requirement to hold founding congress⁷⁹³ and, publish by the organizers of the congress at the website www.azdarar.am (official website for public notifications in Armenia) a notification on the place and time of the congress at least one month before the congress, accompanying it with the publication of the main directions of the party's draft program and draft charter⁷⁹⁴.

The Law on Parties allows political parties to appeal against rejected registration.⁷⁹⁵ The appeal shall be brought to the RA Administrative Court.⁷⁹⁶ However, it should be mentioned that the court decision does not mean that the registering body⁷⁹⁷ shall immediately register the party. The same Article of the Law on Parties that allows the parties to appeal against their rejected registration provides that the party in such cases shall once more apply for registration and the registering body shall apply the same procedure as before.

Armenian legislation does not foresee any restrictions on party campaigning. At the same time, those restrictions, which are defined by the Law on Freedom of Assembly for legal persons (and political parties have status of legal persons), apply also on political parties.⁷⁹⁸ Campaigning of parties during elections is regulated by the Electoral Code⁷⁹⁹, and the Code does not define any politically motivated restrictions on party campaigning. Similarly, the legislation on parties does not define restrictions on the parties' internal democratic decision-making.

⁷⁹⁰ These 200 or more members could be considered as founders of the party.

⁷⁹¹ Article 5 of the Law on Parties

⁷⁹² *Ibid.*, Point 1.1 of Article 5

⁷⁹³ *Ibid.*, Article 11

⁷⁹⁴ *Ibid.*, Article 12

⁷⁹⁵ *Ibid.*, Article 14

⁷⁹⁶ Article 8 of Administrative Procedure Code

⁷⁹⁷ In this case the Agency of the State Register of the Ministry of Justice

⁷⁹⁸ For grounds of restrictions see Article 5 of the Law on the Freedom of Assembly

⁷⁹⁹ Articles 18-22, 89, 123, 141 and 162 of the Electoral Code

Resources (Practice)

To what extent do the financial resources available to political parties allow for effective political competition?

According to article 27 of Law on Political Parties, means from the state budget are being allocated to those political parties (coalition of political parties), whose electoral lists, during the last elections to National Assembly, has received at least 3 percent from the number of total votes given for all participating political parties and amount of irregularities.⁸⁰⁰In 2009, the Republican Party received 27.183.000 AMD (apprx. 54.366 EUR), Prosperous Armenia 12.129.300 AMD (apprx. 24.258 EUR), Armenian Revolutionary Federation Dashnakcutyun 10.552.900 AMD (apprx. 21.106 EUR), Rule of Law Party 5.654.000 AMD (apprx. 11.308 EUR) and Heritage 4.807.500 AMD (apprx. 9.615 EUR).⁸⁰¹

The Elections Code provides the maximum amount of contributions which can be made to campaign funds. During the campaign period all financial operations must be conducted from the campaign fund.⁸⁰² Both public funding and private funding, so far, could not have decisive effect on elections; simply because of the widespread practice of vote buying during elections conducted in 2007 (parliamentary), 2008 (presidential), 2009 (Yerevan City Council) and 2012 (parliamentary). Yerevan Press Club conducted monitoring of the Armenian TV coverage of elections to Yerevan Council of Elderly, and it notes: "...there are reasons to suppose that the expenses to produce and air most of the concealed promotional pieces are covered by funding other than of the pre-election funds."⁸⁰³ Regarding vote buying, the Congress of Local and Regional Authorities of Council of Europe notes: "Based on observations and reports received, the impression of the delegation during both, pre-electoral and electoral observation period was that the electoral situation in Armenia reflects a general problem of an underdeveloped democratic culture in the country. In this respect, vote-buying – which is described as a well-known "practice" in Armenia – constitutes a major problem and is symptomatic of the situation as a whole. Reportedly, voter bribes can amount to 10.000 drams (20 Euro) in Armenia."⁸⁰⁴

Independence (Law)

To what extent are there legal safeguards to prevent unwarranted external interference in the activities of political parties?

⁸⁰⁰ RA Law on Political Parties, Article 27As a result of May 2012 parliamentary elections

⁸⁰¹ Evaluation Report on Armenia on Transparency of party funding, Third Evaluation Report, GRECO, 03.12.2010, page 6. Available 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) (last access was made on 24.03.2012)

⁸⁰² RA Elections Code, Article 26

⁸⁰³ Monitoring the Armenian TV Coverage of Elections to Yerevan Council of Elderly on May 31, 2009, Yerevan Press Club, Yerevan 2009, page 15

⁸⁰⁴ First Elections to the Mayor of Yerevan, Armenia (31 May 2009), Chamber of Local Authorities, Bureau of the Congress, Rapporteur: Nigel Mermagen, United Kingdom, 17th Plenary Session, CPL (17) 5, 21 Sep. 2009, VII. Intimidations, violations, fraud, point 36. Available at <https://wcd.coe.int/ViewDoc.jsp?id=1508365&Site=COE> (last access was made on 24.03.2012)

The legislation does not contain any specific provisions allowing the state to apply specific approaches in monitoring/investigating parties operations. Political parties have status of legal persons and the state can monitor/investigate political party operations in a same way as in the case of other legal persons. In particular, the Law on Parties provides that the state shall oversee financial operations of political parties in the same manner, as for other legal persons.⁸⁰⁵

The Law on Parties stipulates that political parties shall submit financial and accounting reports to state bodies, in the manner and dates prescribed by the legislation for legal persons.⁸⁰⁶ The party shall not later than March 25 of each year, publish in the media a report on the received and spent means during the reporting period and also conclusion of audit (in cases prescribed by law) and to publish it at the website www.azdarar.am.

The same article prescribes that the report should contain data on the sources and volume of means entered in the account of the party, data on spending of those means, as well as data on possessed property by mentioning its price. The order of publication and submission (including the form of the report) defines state authorized body.⁸⁰⁷ It must be mentioned also, that oversight over parties pertaining to performing requirements of the Law on Parties, carries out state authorized body, while in cases stipulated by law, also other competent bodies in accordance with their powers and with the procedures established under Law on Organization and Conduct of Inspections. The state authorized body, with the aim of checking the published and submitted report, has right to demand information on the cash banking receipts and disbursements, preliminary accounting: the party is obliged to provide this information during 3 days.

Interestingly enough, the same article specifically requires mentioning in the report the number of members who made payments in accordance with Article 23 (1) – lump sum for becoming member and membership fees. In addition, in the report it must be mentioned the source of the donation exceeding the minimum wage 100 times.

However, conditioned with the requirements of audit, there are 2 exceptions from the general rule to publish report not later than March 25. Those exceptions are contained in Article 28.1. According to it those parties assets of which has exceeded 10000 times the minimum wage, are obliged to publish the report only after undergoing to audit and only then the report (together with the audit's conclusion) can be published. The second case again contained in the same article, and it concerns those parties which receive financing from the state budget: these parties also shall publish their reports only together with the audit's conclusion. Also, the Law on Parties stipulates the requirement of audit only for these 2 cases.

⁸⁰⁵ Article 28 of the Law on Parties

⁸⁰⁶ Article 28 of the Law on Parties

⁸⁰⁷ *Ibid*

It must be noted also, that article 22 requires from parties to publish at the website www.azdarar.am report on the usage of property (by mentioning the sources formation), on annual basis.

Not publishing or not submitting the reports, or submitting reports not corresponding to the order, stipulated by the Law on Parties entails responsibility stipulated by law.⁸⁰⁸ Pertaining to this, the Code on Administrative Delinquencies stipulates responsibility for: a) for not submitting or publishing report on the received and paid means by a political party during the reporting year (Article 189.13-fine in the amount of 40-50 times of minimum wage, but if the same delinquency is being repeated during one month after imposition of fine, then the fine range is 400-500 times of the minimum wage); b) for not providing documents stipulated under the law (article 189.14-fine in the amount of 80-100 times of the minimum wage, but if the same delinquency is being repeated during one month after imposition of fine, then the fine range is 150-200 times of the minimum wage).

The Law on Parties defines the cases, when the party can be dissolved.⁸⁰⁹ The party can be dissolved only in 3 cases. First, the party can be self-dissolved. Second, if the party did not inform the authorized state body (in the case of parties it is the Ministry of Justice) about its fulfillment of the requirements defined in Point 1.1 of Article 5 of the Law (see more about that above, in the *Resources (Law)* section of the chapter). Third, the party is subject to dissolution, when it is banned. Except the first case (dissolution), in other cases the dissolution is carried out through court (trial) proceedings. The major problem connected with the dissolution of the party is that the Law on Parties does not provide the mechanisms for the verification of the mentioned-above information on the number of members and existence of local organizations in regions. As a result, many parties can submit false and inflated numbers on their membership and local organization.

According to Constitution,⁸¹⁰ the party can be suspended or banned only by the decision of the Constitutional Court, and the Law on Parties provides that only the President of the Republic can bring the relevant case to the Court on the grounds defined by this Law (see above in the *Resources*) section on the grounds for prohibiting the establishment of a party).⁸¹¹ As the decisions of the Constitutional Court are final and enter into effect immediately after their publication⁸¹², the founders of such party cannot appeal against the ban of their party, which can be considered as a deficiency of the law. Besides that, there are other deficiencies, as well. First, though the Constitution foresees not only ban, but also suspension of the party (which is a milder sanction against the party)⁸¹³, the Law on Parties does not even mention the latter option. Second, the Law on Parties empowers only the President to bring the case

⁸⁰⁸ Law on Parties, Article 28

⁸⁰⁹ *Ibid.*, Article 31

⁸¹⁰ Point 9 of Article 100 of Constitution

⁸¹¹ Article 30 of the Law on Parties

⁸¹² Article 102 of Constitution

⁸¹³ *Ibid.*, Article 28

on the ban of the party to the Constitutional Court, whereas the Constitution empowers also the Government and National Assembly with such power.⁸¹⁴

There are no provisions for mandatory state attendance of political party meetings.

Independence (Practice)

To what extent are political parties free from unwarranted external interference in their activities in practice?

During the last year there have been no cases of dissolution or prohibition of a political party. However, one of traditional political parties of Armenia, Social-Democratic Hinchak Party, faced internal conflicts which resulted in its factual division. Since 2009 this internal conflict, resulted in separation of the members into 2 groups: pro-oppositional with the leadership of Lyudmila Sargsyan and another group under the leadership of Vardan Achemyan. This internal conflict resulted in renewal of registration of the party under the leadership of Gevorg Perkuperkyan in February 2012.⁸¹⁵ According to Gurgen Eghiazaryan, supporter of Lyudmila Sargsyan's team, the authorities gained from this process.

Regarding harassment and attacks on opposition parties, it must be noted that the reason of suspension of dialogue between Armenian National Congress (extra-parliamentary opposition political force which is composed from 18 political parties)⁸¹⁶ and ruling coalition was the detention of 7 young members of the former.⁸¹⁷ In 2011, before proclamation of general amnesty and his subsequent release from prison, Nikol Pashinian, an opposition activist and editor-in-chief of *Haikakan Zhamanak*, was reportedly assaulted by unidentified men while serving a prison sentence.⁸¹⁸ The criminal file was not opened, which according to Mr. Pashinyan's attorney Mr. Vahe Grigoryan that decision was overruled by the General Prosecutor:

Moreover, on March 3, during a protest against the ban on street trade, a crash occurred not only between protestors and police, but also Heritage Party MPs Zaruhi Postanjyan, Anahit Bakhshyan and Armen Martirosyan.⁸¹⁹ However, by March 9, 2011, disciplinary examination was not initiated.⁸²⁰ Regarding treating all political parties equally, it must be mentioned that before starting dialogue between extra parliamentary opposition force Armenian National Congress and the then ruling coalition, the former was being rejected holding demonstrations in Yerevan's Liberty Square.⁸²¹ The formal reason behind it

⁸¹⁴ *Ibid.*, Points 2 and 4 of Article 101

⁸¹⁵ See e.g. <http://www.a1plus.am/am/politics/2012/02/22/sdhk> , <http://www.hayatsk.am/3322.html> (last access was made on 24.03.2012)

⁸¹⁶ See at <http://www.anc.am/am/aboutANC/> (last access was made on 24.03.2012)

⁸¹⁷ See at <http://www.panarmenian.net/arm/news/76520/> (last access was made on 24.03.2012)

⁸¹⁸ See at <http://www.amnesty.org/en/region/armenia/report-2011> (last access was made on 24.03.2012)

⁸¹⁹ See at <http://www.azatutyun.am/content/article/2332242.html> (last access was made on 24.03.2012)

⁸²⁰ See at <http://tert.hayatsk.am/541.html> (last access was made on 24.03.2012)

⁸²¹ See at <http://www.hrw.org/world-report-2012/world-report-2012-armenia> (last access was made on 24.03.2012)

was reconstruction of the square. On dozen of occasions, ANC was rejected holding rallies. However, since March 2011 ANC and other parties are holding demonstration at the Liberty Square and in September 2011 ANC endorsed a week long sit in Liberty Square.⁸²²

Governance

Transparency (Law)

To what extent are there regulations in place that require parties to make their financial information publicly available?

The Law on Parties stipulates that political parties shall submit financial and accounting reports to state bodies, in the manner and dates prescribed by the legislation for legal persons.⁸²³ The party shall not later than March 25 of each year, publish in the media a report on the received and spent means during the reporting period and also conclusion of audit (in cases prescribed by law) and to publish it at the website www.azdarar.am.

The same article prescribes that the report should contain data on the sources and volume of means entered in the account of the party, data on spending of those means, as well as data on possessed property by mentioning its price. The order of publication and submission (including the form of the report) defines state authorized body.⁸²⁴ It must be mentioned also, that oversight over parties pertaining to performing requirements of the Law on Parties, carries out state authorized body, while in cases stipulated by law, also other competent bodies in accordance with their powers and with the procedures established under Law on Organization and Conduct of Inspections. The state authorized body, with the aim of checking the published and submitted report, has right to demand information on the cash banking receipts and disbursements, preliminary accounting: the party is obliged to provide this information during 3 days.

Interestingly enough, the same article specifically requires to mention in the report the number of members who made payments in accordance with article 23 (1) – lump sum for becoming member and membership fees. In addition, in the report must be mentioned the source of the donation exceeding the minimum wage 100 times.

However, conditioned with the requirements of audit, there are 2 exceptions from the general rule to publish report not later than March 25. Those exceptions are contained in article 28.1. According to it those parties assets of which has exceeded 10000 times the minimum wage, are obliged to publish the report only after undergoing to audit and only then the report (together with the audit's conclusion) can

⁸²² <http://www.freedomhouse.org/report/nations-transit/2012/armenia>

⁸²³ Article 28 of the Law on Parties

⁸²⁴ *Ibid*

be published. The second case again contained in the same article, and it concerns those parties which receive financing from the state budget: these parties also shall publish their reports only together with the audit's conclusion. Also, the Law on Parties stipulates the requirement of audit only for this 2 cases.

It must be noted also, that article 22 requires from parties to publish at the website www.azdarar.am report on the usage of property (by mentioning the sources formation), on annual basis.

Failure to publish or submit reports, or submitting reports not corresponding to the order stipulated by the Law on Parties entail to responsibility stipulated by law.⁸²⁵ Pertaining to this, the Code on Administrative Delinquencies stipulates responsibility for: a) for not submitting or publishing report on the received and paid means by a political party during the reporting year (article 189.13-fine in the amount of 40-50 times of minimum wage, but if the same delinquency is being repeated during one month after exercise of means of administrative penalty, then the fine increases to 400-500 times of the minimum wage); b) for not providing documents stipulated under the law (article 189.14-fine in the amount of 80-100 times of the minimum wage, but if the same delinquency is being repeated during one month after exercise of means of administrative penalty, then the fine increases to 150-200 times of the minimum wage).

The regulation of the disclosure of campaigning money is described and discussed in detail in the chapter on *Electoral Management Body* pillar.

Transparency (Practice)

To what extent do political parties make their financial information publicly available?

Financial statements for the reporting years are being publicized in print media not later than March 25 of the succeeding year. In addition, financial statements are being submitted to RA Ministry of Justice, from which citizens can request that information in accordance with the RA Law on Freedom of Information. According to Freedom of Information Center's monitoring, the RA Ministry of Justice showed one of the best results in honoring obligations stipulated under the RA Law on Freedom of Information.⁸²⁶

In April of 2009, Freedom of Information Center NGO, requested those political parties which participated for Yerevan Council of Elders elections, to provide copies of 2008 financial reports and information regarding sources of donations exceeding 100.000 AMD. 6 out of 8 political parties provided the requested information, but the party Rule of Law Country and Armenian National Congress

⁸²⁵ Law on Parties, Article 28

⁸²⁶ Freedom of Information in the Republic of Armenia: Monitoring outcomes, Freedom of Information Center, Yerevan 2011, page 21. Available at http://www.foi.am/u_files/file/Eng_monitoring.pdf (last access was made on 23.03.2012)

(Union of political parties) did not provide the requested information. Rule of Law Country provided insufficient information, while ANC did not respond to the query at all.⁸²⁷

Accountability (Law) –*To what extent are there provisions governing financial oversight of political parties?*

As it has been already mentioned in the *Transparency (Law)* section of this chapter, the Law on Parties requires political parties to submit annual financial reports to the Ministry of Justice. The Law stipulates that the financial report shall include information on the sources and volume of means entered into the party's account, as well as about the party's property mentioning its value.⁸²⁸ By the same Article, the procedure and order of registration and reporting (including the templates of the reports) shall be defined by the Ministry of Justice, the authorized state body. In addition, the financial report shall include the source of such donation, whose value exceeds 100 times of the minimal salary defined by law. The major deficiency of this aspect of party operations is that the legislation does not provide mechanisms for the verification of information containing in the reports. In particular, Article 169.12 of the Code on Administrative Delinquencies provides that refusal to submit financial reports to state bodies by those entities (political parties are among them), which are prescribed to submit such reports in the timelines defined by relevant laws entails to fine equal to 50,000 AMD (about 130 USD). By the same Article, if the named entity refuses to submit financial report within 30 days after being fined, it shall now pay 500,000 AMD (about 1295 USD) fine.

Political parties, as legal persons, also are obliged to submit financial reports to tax bodies. Any provisions specific for parties the relevant laws do not contain.

Accountability (Practice)

To what extent is there effective financial oversight of political parties in practice?

Over the submitted financial reports oversight function conducts Oversight and Audit Service of Central Electoral Commission. This body conducts both general oversights over political parties and over the use of campaign funds.⁸²⁹ In this regard, Venice Commission and OSCE/ODIHR in their joint final opinion on Armenia's Electoral Code note: "Article 28 designates the CEC's Oversight and Audit Service as supervisor of the use of campaign funds and "over financial activities of political parties". Previous opinions of the Venice Commission and OSCE/ODIHR discussed the negative aspect of relegating these responsibilities to the CEC, as opposed to an independent agency without general election administration responsibilities. While the Venice Commission and OSCE/ODIHR recognise CEC's

⁸²⁷Practice of the Judicial Defense of the Right of Access to Information, Freedom of Information Center, Yerevan 2010, page 6. Available at http://foi.am/u_files/file/reports/Courtpractice_eng.pdf (last access was made on 23.03.2012)

⁸²⁸*Ibid.*,

⁸²⁹See at <http://www.elections.am/Default.aspx>

*competence, both reiterate that good practice has shown that an independent commission focusing only on campaign finance is an important means of both increasing public trust in and ensuring the proper functioning of the campaign finance system.*⁸³⁰

Regarding financial reports, OSCE Elections Observation Mission for 2007 parliamentary elections, in its report notes: “*While authorities indicated to the OSCE/ODIHR EOM that these annual reports could serve as a vehicle for supervising early campaigning or other activities related to electoral campaigns, examination of available reports suggested otherwise. All of the party reports reviewed by the OSCE/ODIHR EOM⁴² describe finances only in broad categories, and do not identify specific sources of revenue or types of expenditure, or the purpose for which transactions were made. There is also the serious question whether the reported amounts are accurate or complete. For example, Prosperous Armenia reported that it had no income, expenditures or property at all in 2006, despite its seemingly well financed party infrastructure.*”⁸³¹

Integrity (Law)

To what extent are there organizational regulations regarding the internal democratic governance of the main political parties?

The Law on Parties defines that the party shall operate based on its charter and in compliance to it.⁸³² The charter defines the procedures of formation, powers and timelines of the leading and oversight bodies of its territorial and structural units. The party leadership shall be elected by the party congress and be accountable to the congress, which is defined as the highest authority of the party.⁸³³ The charter of the party defines the procedure of the election of party leadership and procedure of selection of candidates for leadership.⁸³⁴

The Law on Parties requires that the party shall have a program.⁸³⁵ The program of the party shall be adopted at the founding congress of the party.⁸³⁶ All changes and amendments introduced in the party program and/or charter shall be adopted by the party congress.⁸³⁷

In general, the legislation on parties does not contain any provisions, which could hinder the application of democratic mechanisms in the decision making on intra-party issues. According to the Law on Parties

⁸³⁰ Joint Final Opinion on the Electoral Code of Armenia, Venice Commission and OSCE/ODIHR, 26.05.2011, point 54. Available at <http://www.osce.org/odihr/elections/84269> (last access was made on 23.03.2012)

⁸³¹ OSCE/ODIHR Election Observation Mission Report, Republic of Armenia Parliamentary Elections 12 May 2007, page 10. Available at <http://www.osce.org/odihr/elections/armenia/26606> (last access was made on 24.03.2012)

⁸³² *Ibid.*, Article 2

⁸³³ *Ibid.*, Articles 8 and 18

⁸³⁴ *Ibid.*, Article 15

⁸³⁵ *Ibid.*, Article 16

⁸³⁶ *Ibid.*, Article 12

⁸³⁷ *Ibid.*, Article 8

a number of key decisions, such as adoption of the charter and program, formation of party leading and oversight bodies, introduction of changes and amendments in the charter and program, as well as its reorganization and dissolution shall be passed by the majority of the congress delegates, not the majority of the delegates participating at the congress.⁸³⁸ Besides that the Law requires that the congress of the party shall be legal, if it is attended by at least 2/3 of its delegates.⁸³⁹ Finally, the Law on Parties stipulates that the party congress, as the party's highest authority, shall be convened at least once in 2 years.⁸⁴⁰

Integrity (Practice)

To what extent is there effective internal democratic governance of political parties in practice?

Out of 73 political parties, only few of them are active. Among those major political parties, leaders of the latter are the most prominent figures in governing of their respective parties. In this regard, Bertelsmann Stiftung notes: "The core deficiency in the party system is the fact that the main political parties lack ideologies and political platforms and are, instead, defined more by the personality or personal appeal of one or two of their prominent leaders."⁸⁴¹ As one of experts writes: "...real political power in Armenia remains concentrated in the hands of three key political figures: the acting president, Sargsyan, and the two former presidents –Kocharyan and Levon Ter-Petrosyan (1991–98)."⁸⁴²

Leader selection among major parties is not based on truly democratic system. Pursuing this line of reasoning, noteworthy is the case of Prosperous Armenia, which was founded by its leader Gagik Tcarukyan, the same is about Rule of Law Country party. Republican Party since 1998 used to be political platform for high level officials. Armenian National Congress is headed by the former President of Armenia Levon Ter-Petrosyan. Armenian Revolutionary Federation Dashnakcutyun presents unique manner of management of the party, where the decisive voice belongs to party itself.

Interest aggregation and representation (Practice)

To what extent do political parties aggregate and represent relevant social interests in the political sphere?

In general political culture in Armenia has not achieved to the level when different interests of the specific groups of people would be represented by a political party. It is true, that there are such political

⁸³⁸ *Ibid.*, Articles 12 and 19

⁸³⁹ *Ibid.*, Article 19

⁸⁴⁰ *Ibid.*, Article 18

⁸⁴¹ Bertelsman Transformation Index 2012, Armenian Country Report. Available at <http://www.bti-project.org/countryreports/pse/arm/2012#chap3> (last access was made on 24.03.2012)

⁸⁴² Caucasus Analytical Digest, No. 17, May 2010. The Political Systems of the South Caucasus Countries, Political Country Rankings. The political system of Armenia: Form and content. By David Petrosyan. Page 9. Available at <http://www.isn.ethz.ch/isn/Digital-Library/Publications/Detail/?ots591=0c54e3b3-1e9c-be1e-2c24-a6a8c7060233&lng=en&id=116564> (last access was made on 24.03.2012)

parties as Green Party and Youth Party. However, these parties do not play an important role in the political spectrum of Armenia. As expert Aleksandr Iskandaryan writes in his article: *"Thus, in Armenia still does not exist parties which would represent interests of such kind of social groups as peasants or small businessmen, pensioners or middle class. The society still has not formed such political culture when the need of organized representation of interests in the legislature assembly would be realized."*⁸⁴³ Then he continues: *"In fact, at political field it is not political parties which act, but elite groups, and first of all business elites, and legislature assembly gradually becomes a field for representation of economic interests."*⁸⁴⁴

In general political parties in Armenia lack legitimacy. Civil Society Index's Population Survey, 80.9 % of the respondents do not trust political parties.⁸⁴⁵ According to another conducted research, the parliament is the least trusted state body among population.⁸⁴⁶

According to Counterpart International *"...political patronage and clientelism are deeply entrenched patterns of relations..."*.⁸⁴⁷ As the same source mentions, some authorities and ruling political parties in the country have created their own "pocket" nongovernmental organizations to secure foreign funding.⁸⁴⁸

Anti-corruption commitment (Practice)

To what extent do political parties give due attention to public accountability and the fight against corruption?

Mandat NGO provided analyses on preferences of programs of political parties presented in the previous convocation (2007-2012) of the National Assembly.⁸⁴⁹ According to it, ARF puts more stress on creating additional supervision body rather on combating corruption itself. As about Rule of Law party, the expert mentions that the party's program contains commitment to fight against corruption. Heritage devotes huge attention on struggle against corruption. The Program of Prosperous Armenia has visible anti-corruption nature.

⁸⁴³"Armenia between autocracy and poliarchy" by Alexander Iskandaryan, project Pro et Contra, May-August 2011, page 26. Russian version is available at http://carnegieendowment.org/files/ProetContra_52_19-28.pdf. Last access was made on 24.03.2012)

⁸⁴⁴ *Ibid*

⁸⁴⁵ Armenian Civil Society: from Transition to Consolidation. Analytical country report. Counterpart. Yerevan, 2010, page 24. Available at <https://civicus.org/downloads/CSI/Armenia.pdf> (last access was made on 24.03.2012)

⁸⁴⁶ Caucasus Analytical Digest, No. 31, 21 November 2011. Social Capital. (Dis) Trusting People and Political Institutions in Armenia. By Yevgenya Paturyan. Page 7. Available at <http://www.isn.ethz.ch/isn/Digital-Library/Publications/Detail/?ots591=0c54e3b3-1e9c-be1e-2c24-a6a8c7060233&lng=en&id=134593> (last access was made on 24.03.2012)

⁸⁴⁷ Armenian Civil Society: from Transition to Consolidation. Analytical country report. Counterpart. Yerevan, 2010, page 46

⁸⁴⁸ *Ibid*, page 17

⁸⁴⁹ Here and after see www.parliamentmonitoring.am

President of Armenia and at the same time President of the Republican Party, quite often mentions about the need to fight against corruption (for more see President's Chapter). Artur Baghdasaryan, President of Rule of Law Party, in his recent speech devoted to presentation of his party's membership to European People's Party, mentioned that struggle against corruption remains priority for his party.⁸⁵⁰ One of the leaders of Armenian Revolutionary Federation Mr. Hrant Margaryan also mentions the problem of corruption.⁸⁵¹ The leader of Heritage Party, during party's VII congress paid a lot of attention on struggle against corruption.⁸⁵² Leader of Armenian National Congress, ex President Levon Ter-Petrosyan, in his speech delivered on March 1, 2012 also mentioned corruption as one of the main problems of Armenia.⁸⁵³ During the 6th Congress of the Prosperous Armenia Party, its leader delivered a speech, where he did not mention directly the need of struggling against corruption.⁸⁵⁴

Recommendations on the pillar of Political Parties

1. To amend the legislation with the clear mechanisms on calculation of works and provided services as measures of donations.
2. To ensure independence of political parties, by considering constitutional changes. Currently it is only the President of Armenia who has right to bring a petition to Constitutional Court for banning a political party.

⁸⁵⁰ See at

http://www.oek.am/project/index.php?option=com_content&view=category&layout=blog&id=23&Itemid=59 (last access was made on 24.03.2012)

⁸⁵¹ See at http://www.arfd.am/index.php?option=com_content&view=article&id=630:2011-09-19-10-24-02&catid=47:2010-08-20-10-21-46&Itemid=106 (last access was made on 24.03.2012)

⁸⁵² See at <http://heritage.am/congress/VII/speech.htm> (last access was made on 24.03.2012)

⁸⁵³ See at <http://www.anc.am/am/speeches/> (last access was made on 24.03.2012)

⁸⁵⁴ See at http://www.bhk.am/index.php?al=speeches_ofgt&id=1123&act=more (last access was made on 23.03.2012)

Media

Table of Indicator Scores

Media			
Overall Pillar Score: 29.85			
	Indicator	Law	Practice
Capacity 31.25	Resources	25	50
	Independence	25	25
Governance 25	Transparency	25	25
	Accountability	25	25
	Integrity mechanisms	25	25
Role 33.3	Investigate and expose cases of corruption		25
	Inform public on corruption and its impact		25
	Inform public on governance issues		50

Structure and Organization

As of December 31, 2011 there are 62 newspapers published regularly in Armenia, among which 13 are dailies. All dailies are nationwide. The remaining 49 newspapers have different periodicity, but all of them are published at least once a week. From these 49 newspapers 22 are nationwide and 27 – regional. The remaining newspapers are published irregularly, and, considering the fact that since 2004 the practice of official registration of media entities was abolished, it is impossible to verify their exact number. Among journals and magazines (which also are published irregularly) only 5 cover to different extent socio-political topics. Other journals and magazines contain only entertainment topics.

There are 45 air TV channels in Armenia, among which 4 (one is satellite channel) are in the structure of state-owned Public TV and Radio Company. Other 41 channels are privately owned, from which only 6 have national coverage, one of which is for retransmitting a foreign (Russian) broadcaster and 9 cover the capital (Yerevan), among which 3 are retransmitting foreign (2 Russian (ORT and RTR) and CNN)

broadcasters. The remaining 26 are regional (marz) channels, from which only 10 received licenses for broadcasting after January 2015, when the digital switchover will be completed.⁸⁵⁵

There are also 40 cable TV companies, all private, out of which two have licenses for national coverage and two - for Yerevan and one – for adjacent marz coverage. Out of remaining 36 cable TVs, 13 broadcast only in Yerevan, and 23 – in other marzes. Thirteen radio-companies air their programs on 24 channels. Four channels are included in the structure of the Public TV and Radio Company, 4 – in the structure of ArRadioContinental company, and 3 – in the structure of Radio-Hay company.

From the mentioned media entities only a little bit more, than 10% have regularly up-dated on-line versions. In addition, there are about 20 daily up-dated electronic newspapers, which contain news and information about political, economic and social issues of the country and world.

Assessment

Capacity

Resources (Law) – *To what extent does the legal framework provide an environment conducive to a diverse independent media?*

According to Law on Television and Radio, physical or legal persons can be founders of radio and TV companies.⁸⁵⁶ In order to have the right for broadcast, they should obtain license on a competitive basis. This provision is in line with the requirement of Article 10 of the European Convention on Human Rights and Fundamental Freedoms. At the same time, the mentioned Law provides that certain physical and legal persons cannot be founders of private TV and radio companies. Those are the President of the Republic and his/her close relatives, state and local self-administration bodies, members of the Government and their close relatives, National Assembly (NA)members and their close relatives, heads of the local self-administration bodies and their close relatives, members of the Public Television and Radio Board and their close relatives, members of the National Commission on Television and Radio (NCTR) and their close relatives, judges and their close relatives, political parties, citizens under age of 18, and, those, who are declared incapable by court ruling, as well as persons who are convicted and are

⁸⁵⁵ According to the Law on Making Changes and Amendments in the Law on Television and Radio (entered into effect on June 28, 2010) which, actually was the new Law on Television and Radio, until January 1, 2015, the digital TV broadcast network is the property of the Republic of Armenia, (Article 47 of the Law), which means that the digital switchover of TV shall be implemented only by the government. By Article 62 of the Law, on July 20, 2010 the National Commission on Television and Radio shall announce tender for licensing only for 18 TV companies, which will be digitalized by January 1, 2015. This tender was announced and on December 2010, when the results of that tender were announced, 4 TV channels of national and Yerevan coverage were stripped of their licenses and were closed on January 20, 2011, (by the same Article 62 those regional TV stations, which lost the December tenders, will continue broadcasting in the analogous mode until January 1, 2015).

⁸⁵⁶ Article 16 of the Law on Television and Radio

serving a term.⁸⁵⁷ If the authorized state body, in this case NCTR, rejects the founder's application for license, then the latter could appeal that decision in the court.

The Law on Television and Radio sets also other restrictions to set up media entities, aimed to prevent media monopolization and control by foreign physical and legal persons. In particular, legal persons are prohibited to simultaneously own licenses of more than one TV company and one radio company.⁸⁵⁸ By the same Article of the Law, physical person or his/her close relative can become founder and/or cofounder of more than one TV and one radio company, simultaneously. Regarding the restrictions on the involvement of foreign physical or legal persons, the Law provides that "In the course of founding of TV-radio company or afterwards the share of foreign capital shall not be equal or more, than 50% of the shares required for adopting decisions. A larger share can be established only on the basis of inter-governmental agreements."⁸⁵⁹ The restriction relating to foreign ownership is mainly aimed to prevent concealing of ownership of media entities through off-shores.

At the same time, the more serious problem is that Armenian legislation does not ensure conducive and really competitive environment for electronic media, because of the lack of independence of NCTR, which is discussed in a more detail in the *Independence (Law)* section.

There are no legal restrictions for the entry into the journalistic profession. The same is true for setting up print media entities. Since 2004 with the adoption of the new Law on Mass Media there is no licensing of print media entities.⁸⁶⁰

Resources (Practice)

To what extent is there a diverse independent media providing a variety of perspectives?

According to 2012 data, in Armenia there are 1,199 media entities, operating both in the capital and in regions.⁸⁶¹ Armenia's print media is pluralistic, with a growing online community serving as the main arena for a free flow of opinion and information. However, broadcast media, especially television, is subject to significant pressure from government and economic interests.⁸⁶²

According to the Yerevan Press Club's (as CRRC reports) content analysis of Armenian media sources in February and March 2011 " *the most popular news programs are straightforward informational*

⁸⁵⁷ *Ibid.*

⁸⁵⁸ *Ibid.* Article 18

⁸⁵⁹ *Ibid.* Article 16

⁸⁶⁰ Article 4 of the Law on Mass Media explicitly defines that "Media entities shall be issued and disseminated without initial or actual state registration, licensing, accreditation in any state body, or notification to any body."

⁸⁶¹ See at http://lin.am/arm/armenia_economy_65266.html (last access was made on 24.03.2012)

⁸⁶² See Freedom House, Nations in Transit 2011, Country Report on Armenia, page 76. Available at http://www.freedomhouse.org/sites/default/files/inline_images/NIT-2011-Armenia_0.pdf (last access was made on 24.03.2012)

coverage as well as analytical TV news programs, international news, activities of the government of Armenia, and sports."⁸⁶³ CRRC conducted survey, which from the domestic affairs perspective, shows that population would like to receive more coverage on election code, the activities of the President and then the activities of the Government. While from the foreign affairs perspective, Armenians want more coverage on such topics as recognition of the Armenian Genocide, the Karabakh conflict and Armenian-Turkish relations. As about social and economic affairs, the preference is given to situation in the army, price raises, social benefits, and healthcare.

Regarding affordability, it must be mentioned that according to CRRC survey 67% of Armenians do not read newspapers and 13% of those who do not read newspapers as a reason named lack of money.⁸⁶⁴ Most villages and smaller towns, depending on their geography, have the choice of a local channel, the Public Television station, one to three private national domestic channels, and one or two Russian channels, via free terrestrial broadcast. The country's second and third cities, Vanadzor and Gyumri, have a little more access with two and three local channels, respectively.⁸⁶⁵ There are 23 television stations in the regions.⁸⁶⁶ Number of mobile internet users in 2011 was 1.7 million, while broadband internet users 240.000.⁸⁶⁷

Regarding efficiency, IREX reports that the situation in regions is worst than in the capital. Owner of the "Vanadzor Khchankar" Mr. Simikyan told IREX that "In general, the media in regions can only (hope to) survive".⁸⁶⁸ According to IREX, the advertisers are mostly concentrated on TVs and radio, and bloggers don't earn enough revenues and broadcast outlets earn revenue from multiple clients. Nevertheless, this situation does not guarantee absolute independence from advertisers' indirect influence on content or editorial policy. While public media have an adequate and guaranteed source of revenue, however, this also subjects them to government and political interference. Among other sources of revenue for Armenian media are investments by founders, shareholders, founders' businesses (aside from advertising), grants (which are primarily available for regional media), and outsourcing services. IREX for 2012 articulates a similar position. Particularly, it is mentioned: Many broadcast outlets have multiple advertisers, but fees from cable are either non-existent or insignificant. The owners set the editorial policy the outlet. In contrast, the vast majority of online and print media lack diverse revenue strategies. Rather, most have a single source, a donor really, who accordingly stipulates the content and the editorial

⁸⁶³ Here and after see -Armenian Media Landscape, CRRC, by Katy Pearce, October 2011, page 11.

⁸⁶⁴ *Ibid*, page 14

⁸⁶⁵ Media Sustainability Index 2011, The development of Sustainable Independent Media in Europe and Eurasia, IREX, p.138

⁸⁶⁶ Media Sustainability Index 2012. http://www.irex.org/sites/default/files/u105/EE_MSI_2012_Armenia.pdf page 148

⁸⁶⁷ Yerevan Press Club, Media Landscapes of Eastern Partnership Countries, 2011, page 14

⁸⁶⁸ Here and after see - Media Sustainability Index 2011, The development of Sustainable Independent Media in Europe and Eurasia, IREX, p.138 The same report for 2012 uses similar wording, and mentions that regional media struggles, though there are examples of regional outlets that operate at a profit. Page 156 http://www.irex.org/sites/default/files/u105/EE_MSI_2012_Armenia.pdf

approach. Bloggers in Armenia cannot make enough money yet to support their work and are forced to maintain their blogs while holding down other jobs."

On professionalism of journalists, Yerevan Press Club while discussing education of journalists arrives with a conclusion that " *the main problem that impedes the Armenian journalistic education from reaching the modern level is rather the absence of adequate demand for professionals that have command of international standards.*"⁸⁶⁹ In this regard, IREX reports that " *Little lasting progress has been achieved over the years in the professional quality of journalism and respect for ethical norms.*"⁸⁷⁰ IREX notes that reasons of the low quality of professionalism, inter alia are low quality of journalism education, which often emphasizes theory over practice, low salaries, and media's distance from their own audience.⁸⁷¹

Independence (Law) – *To what extent are there legal safeguards to prevent unwarranted external interference in the activities of the media?*

In Armenia freedom of expression is guaranteed by Constitution. It states that "every individual has the right to freely express his/her opinion. It is prohibited to force the individual to renounce or change his/her opinion."⁸⁷² The same Article of the Constitution guarantees also freedom of speech, including freedom of seeking, receiving and disseminating information and ideas using any means regardless state borders. Finally, it guarantees freedom of media and other means of information. The prohibition of censorship is stated in the Law on Television and Radio⁸⁷³ and Law on Mass Media⁸⁷⁴.

The Law on Television and Radio defines that in Armenia TV and radio companies can be public or private, thus, permitting the existence of private TV and radio companies, and they shall have equal rights.⁸⁷⁵ Similar provision in the Law on Mass Media has broader implication and refers to all types of media, including print media.⁸⁷⁶

The Law on Freedom of Information was adopted on September 23, 2003, and entered into effect on November 15, 2003. The Law regulates the issues related to the freedom of information, defines the powers of those, who possess information, as well as the procedures, forms and conditions for obtaining

⁸⁶⁹Yerevan Press Club, Media Landscapes of Eastern Partnership Countries, 2011, page 23

⁸⁷⁰Media Sustainability Index 2011, The development of Sustainable Independent Media in Europe and Eurasia, IREX,p.134

⁸⁷¹ *Ibid*, page 135, Similar wording is used in 2012 index. See at:

http://www.irex.org/sites/default/files/u105/EE_MSI_2012_Armenia.pdf Page 152

⁸⁷² Article 27 of the Constitution

⁸⁷³ Article 4 of the Law on Television and Radio

⁸⁷⁴Article 4 of the Law on Mass Media

⁸⁷⁵ Article 15 of the Law on Television and Radio

⁸⁷⁶ Article 4 of the Law on Mass Media

information. The Law applies on the state and local self-administration bodies, state institutions, organizations funded from state budget, as well as public institutions and their officials.⁸⁷⁷

Until 2010 libel, as well as insult, were considered as criminal offences, according to Armenian legislation. However, on May 18, 2010, the National Assembly passed changes and amendments to the Criminal Code and Civil Code, as a result of which libel and insult were decriminalized.⁸⁷⁸

The Law on Mass Media though explicitly does not declare editorial independence, but by prohibiting any type of censorship and prohibiting any pressure on the media entity or reporter to force him/her not to disseminate information or disseminate information he/she does not wish, it implicitly ensures such independence.⁸⁷⁹ There are no legal barriers for entrance into market for all types of media regardless their format.

The licensing for broadcast is required for TV and radio companies. The licensing body, NCTR, consists of 8 members⁸⁸⁰, half of whom are appointed by the President of the Republic, and the other half – by the National Assembly.⁸⁸¹ Formally, this should ensure independence of NCTR through balancing the influence of the President and National Assembly.

As NCTR is authorized also to oversee how the media entities comply with the requirements of relevant legislation and their licenses,⁸⁸² it controls the political content of their programs. The criteria set by law for granting the license relate not only to technical aspects of broadcasting, but also to the content of programs, the company is proposing.⁸⁸³ Such control of the content of the media programs limits their independence, as NCTR is empowered to sanction media entities under its jurisdiction, for not complying with its requirements, including deprivation from license.⁸⁸⁴

Independence (Practice)

To what extent is the media free from unwarranted external interference in its work in practice?

Independence of National Commission on Television and Radio is a question of concern for ensuring proper functioning broadcasting media in Armenia. As IREX reports licensing procedures is

⁸⁷⁷ Article 1 of the Law on Freedom of Information

⁸⁷⁸ See the Law on Making Changes in the Criminal Code (as a result of which Articles 135 (libel) and 136 (insult) were repealed) and Law on Making Changes and Amendments in the Civil Code (both laws are published in *RA Official Bulletin*, 2010/28(762), 23.06.10)

⁸⁷⁹ Article 4 of the Law on Mass Media

⁸⁸⁰ Article 38 of the Law on Television and Radio

⁸⁸¹ Article 83.2 of the Constitution According to the same Article all members of NCTR are appointed for 6 years term. This provision is repeated also in Article 38 of the Law on Television and Radio.

⁸⁸² Article 36 of the Law on Television and Radio

⁸⁸³ Article 49 of the Law on Television and Radio

⁸⁸⁴ *Ibid*, Clause 11 of Point 1 of Article 36 Also, a whole chapter (Chapter 8 – Articles 58-61) defines measures of liability for violating the provisions of the Law.

politicized⁸⁸⁵ and a clear example of this is that in December 2010 it denied to grant a license to A1+ for 13th time, despite judgment of ECtHR (2008) that the latter's right to freedom of expression was violated.⁸⁸⁶ It also denied bid of Gala regional TV station, which quite often was criticizing government.⁸⁸⁷ In this regard High Commissioner for Human Rights of the Council of Europe, in his report of 2011 mentions: ‘ *Pluralism within the audiovisual media spectrum is the hallmark of a healthy democracy which attaches importance to the principle of freedom of expression. In this context, the Commissioner regrets to note that the last tender for broadcasting licenses did not contribute to the promotion of this principle.* ’⁸⁸⁸

In broadcast media market, Yerevan Press Club notes that after 2002 when A1+ and Noyan Tapan TV Channels were pushed out from the field “*The national and the Yerevan air became void of broadcasters with independent editorial policy and striving to provide diverse news reporting. Various forms of implicit censorship became common.*”⁸⁸⁹As for the print media, it reports that “*Attempts to censor independent and opposition newspapers continue but in a more civilized way, above all by means of judicial harassment.*”⁸⁹⁰

Armenian Committee to Protect Freedom of Expression, in 2011 conducted survey among journalists on hidden censorship. The research arrives with the following findings: “*In some editorial staffs there are lists in which are names of persons and organizations about whom either must be pulbicized materials of positive nature, or nothing is necessary to represent. Also in mass media, and especially in television, there is practice of not elucidating some topics and events at all. There are forbidden topics, also circle of some issues which either is not being touched upon or which is being presented under so called “positive light”*”.⁸⁹¹

Self-censorship remains quite widespread and particularly in broadcast media:⁸⁹² While this practice is not prevalent among online media and blogs.⁸⁹³ Those journalists who freely express themselves and if that opinion will not coincide with the opinion of the owner or the head of the media, this will end up in

⁸⁸⁵ *Ibid*, page 133Almost identical opinion is articulated in 2012 index.

http://www.irex.org/sites/default/files/u105/EE_MSI_2012_Armenia.pdf Page 149

⁸⁸⁶ Human Rights Watch, World Report 2012, Armenian part. Available at <http://www.hrw.org/world-report-2012/world-report-2012-armenia> (last access was made on 24.03.2012)

⁸⁸⁷ SeeFreedom House, Nations in Transit 2011, Country Report on Armenia, page 76

⁸⁸⁸ Report by Thomas Hammarberg Commissioner for Human Rights of the Council of Europe following his visit to Armenia from 18 to 21 January 2011. Available at <https://wcd.coe.int/ViewDoc.jsp?id=1784273> (last access was made on 23.03.2012)

⁸⁸⁹Yerevan Press Club, Media Landscapes of Eastern Partnership Countries, 2011, page 9

⁸⁹⁰See at <http://en.rsrf.org/report-armenia.88.html> (last access was made on 23.03.2012)

⁸⁹¹ Manifestations of hidden censorship in the mass media sphere of Armenia, December 2011, Armenia, page 3. Available at <http://khosq.am/en/2011/12/2491> (last access was made on 23.03.2012)

⁸⁹² Freedom of the Press 2011, Freedom House, Armenia Country Report. Available at:

<http://www.freedomhouse.org/report/freedom-press/2011/armenia> (last access was made on 23.03.2012)

⁸⁹³Media Sustainability Index 2011, The development of Sustainable Independent Media in Europe and Eurasia, IREX,p.135 A similar opinion is articulated in 2012 Index. See at:

http://www.irex.org/sites/default/files/u105/EE_MSI_2012_Armenia.pdf Page 152

change of the job.⁸⁹⁴ There is a lack of really operational trade unions of mass media,⁸⁹⁵ which is another attribute for such kind of working environment.

As about assaults and intimidation, Armenian Committee to Protect Freedom of Expression, in its annual report for 2011⁸⁹⁶ mentions 5 cases of physical violence against journalists committed in the course of 2011, and 49 cases of duress.⁸⁹⁷ Regarding punishment of perpetrators and proper investigation, Yerevan Press Club mentions: *"In the vast majority of cases the incidents remain undisclosed, and the real "clients" were never found. The lack of punishment makes the problem particularly sensitive."*⁸⁹⁸ The issue was also addressed by the Commissioner for Human Rights of the CoE: *"The Commissioner recommends that the political leadership of the country send a clear message stating that violence and intimidation against journalists are unacceptable and will be duly punished. This is all the more crucial in the period surrounding elections. The effective investigation of incidences of violence against journalists is of key importance; to fail to do so can only encourage impunity for human rights violations."*⁸⁹⁹

The broadcast media is controlled by the government to considerable degree⁹⁰⁰ and protests or other activities related to political opposition either are being ignored or poorly covered by mainstream broadcast media.⁹⁰¹ The panelists for the research report of IREX, agreed that public media is not independent from the state or ruling party.⁹⁰² Regarding control of access to official and unofficial sources of information, IREX reports that: *"Armenia media outlets and journalists have unfettered access to international news and news sources and use this freely in their reporting."*⁹⁰³ However, confidentiality of sources of information is not being effectively protected.⁹⁰⁴

⁸⁹⁴Yerevan Press Club, Media Landscapes of Eastern Partnership Countries, 2011, page 18

⁸⁹⁵ *Ibid*

⁸⁹⁶Annual Report 2011. Available at http://khosq.am/2012/01/2576/annual-report_2011-3 (last access was made on 23.03.2012)

⁸⁹⁷ *Ibid* page 7

⁸⁹⁸Yerevan Press Club, Media Landscapes of Eastern Partnership Countries, 2011, page 19

⁸⁹⁹Report by Thomas Hammarberg Commissioner for Human Rights of the Council of Europe following his visit to Armenia from 18 to 21 January 2011.Point 104

⁹⁰⁰Media Sustainability Index 2011, The development of Sustainable Independent Media in Europe and Eurasia, IREX,p.136. A similar position is mentioned in 2012 Index: Of course, broadcast media offer an "alternative" diversity, the so-called controlled dissent. See at:

http://www.irex.org/sites/default/files/u105/EE_MSI_2012_Armenia.pdf. Page 154.

⁹⁰¹ *Ibid*, page 135

⁹⁰² *Ibid*, page 137Similar position is mentioned in 2012 Index: Panelists consistently score the question of the state or public media's reflection of the views of the political spectrum low.

http://www.irex.org/sites/default/files/u105/EE_MSI_2012_Armenia.pdf Page 154

⁹⁰³ *Ibid*, page 134Similar position is articulated in 2012 index: All panelists agreed that citizens' access to domestic or international media is not restricted by law or in fact. Page 154

⁹⁰⁴ *Ibid*, page 133In 2012 Index is mentioned: The law respects the confidentiality of sources, and the panelists could not name any cases of journalists facing prison time for not revealing sources recently. Page 149

As about subsidies and advertisement by the government, Freedom House reports that state and public media receives lion's share of government advertising and small state subsidies are available for private print media⁹⁰⁵ : as about how public television operates, it was discussed above.

Illustrating examples of political influence are denial of broadcasting licenses, which was discussed above, and judicial harassment. In this regard, Reporters Without Borders mentions: *"An increase in lawsuits in 2011 has helped to maintain the pressure on journalists who criticize politicians, investigate the activities of leading private-sector companies or cover corruption."*⁹⁰⁶

Regarding transparency of licensing procedure, IREX reports that *"Licensing, which is limited to both terrestrial and cable broadcast media, is still not considered transparent or even apolitical."*⁹⁰⁷

Governance

Transparency (Law) – *To what extent are there provisions to ensure transparency in the activities of the media?*

The print media entities are required to disclose their ownership by posting relevant information in the newspapers they publish.⁹⁰⁸ The electronic media are required by law to disclose their ownership, when they apply for broadcast license.⁹⁰⁹

The law stipulates that all media entities should publish information on their ownership once every year by March 31.⁹¹⁰ However, there are no legal provisions that would allow the relevant state bodies to investigate who are the real owners of media entity. This shortcoming was also emphasized in the above-mentioned Report of Mr. Harashti, former OSCE Freedom of Media Representative, where he wrote: "NCTR is not authorized to check the ownership structure of the applicant. (...) This means that there are no safeguards to ensure the diversity of ownership, which is the basis of accessibility of information in all societies."⁹¹¹

The law does not require media entities to have rules on disclosure of information relating to internal staff, reporting and editorial policies.

⁹⁰⁵ Freedom of the Press 2011, Freedom House, Armenia Country Report.

⁹⁰⁶ <http://en.rsf.org/report-armenia.88.html>

⁹⁰⁷ Media Sustainability Index 2011, The development of Sustainable Independent Media in Europe and Eurasia, IREX, p. 133 Almost identical finding in 2012. Page 149

⁹⁰⁸ Article 11 of the Law on Mass Media

⁹⁰⁹ Article 48 of the Law on Television and Radio

⁹¹⁰ Article 12 of the Law on Mass Media

⁹¹¹ *The State of Media Freedom in Armenia. Observations and Recommendations* July 26, 2006. p. 6

Transparency (Practice)

To what extent is there transparency in the media in practice?

As was already noted, most of the private TV channels are owned by politicians and major entrepreneurs associated with the authorities.⁹¹² In terms of media ownership, in many cases the officially registered owners are nominal directors and not the real owners or decision makers.⁹¹³ The problematic are print media and online media. While there is a clear division of political orientation of these types of media, the names of real owners remain incognito.⁹¹⁴ Names of chief editors and editors generally are available in the field print media, while other staff members' names are available only for those print medias which possess own webpage. In TV and Radio broadcasting sector, names of staff are not proactively publicized. Regarding editing and reporting policies, some representatives of print media publish their policies in the form of one sentence at the back side of their newspapers. However, it must be noted that according to Caucasus Resources Research Centers' study *"In most cases journalists are well aware of the orientation of their own editorial management and thus practice self-censorship before it reaches their editor"*.⁹¹⁵

Accountability (Law) –*To what extent are there legal provisions to ensure that media entities are answerable for their activities?*

For electronic media the state regulatory body, as it has been already mentioned, is NCTR. Among other powers defined by the Law on Television and Radio, NCTR issues licenses for broadcast for TV and radio companies, approves the forms of the license, oversees the compliance by the licensed TV and radio companies with the requirements defined in the license and laws regulating the activities of electronic media entities, terminates the effect of the issued license(s), etc.⁹¹⁶ However, the mentioned Law does not explicitly empower NCTR to oversee and control the activities of Public Television and radio Company (PTRC), though Article 83.2 of the Constitution defines that the establishment of NCTR is aimed to ensure the freedom, independence and diversity of electronic media. In the opinion of the NGO media expert, this is enough to constitutionally empower NCTR to oversee PTRC.

For print media entities such body is not foreseen by law. The law also does not foresee the institute of media ombudsman. It also does not require media to have means to interact with and get feedback from public. Press councils are not required by law.

⁹¹²See for example Yerevan Press Club, Media Landscapes of Eastern Partnership Countries, 2011, page 10

⁹¹³Media Sustainability Index 2011, The development of Sustainable Independent Media in Europe and Eurasia, IREX, p. 137. Similar position is mentioned in 2012 index, and is noted that when the outlet is an offshore company it is virtually impossible to track or prove ownership. *Ibid* 155.

⁹¹⁴*Ibid*

⁹¹⁵CRRC, Report on In-Depth interviews, by Margarita Hakobyan, Yerevan 2011, page 23. Available at http://www.crcc.am/store/armedia/ARMedia%20IDI%20Analysis_CRRC_English%20September%202011.pdf (last access was made on 24.03.2012)

⁹¹⁶Article 36 of the Law on Television and Radio

The individual or organization has the right to demand from the media entity to refute those factual errors in the disseminated by that entity, which violate his/her rights.⁹¹⁷ The demand in a written form should be submitted within one month, following the publication of the mentioned information.⁹¹⁸ The media entity can deny the demand for refutation, if the demand was submitted later, than the period, defined by law (one month) or the demand refers to such information, which was a quote from a public speech, official document, information from other media entity or arts work, and the source did not refute it. If the media entity agrees to publish the refutation, then it should publish the text of refutation within one week after it received the demand. In the case of the refusal, the individual or organization can file a civil suit in the court against the media entity. The individual or organization shall also accompany the demand for refutation with a demand for response, which should be processed according to the same rules, as those for the refutation. If the demand for response is satisfied, then the media entity should publish also

There are no specific provisions regulating correction of erroneous information by media entities.

Accountability (Practice)

To what extent can media outlets be held accountable in practice?

The only official regulatory body is the National Commission on Television and Radio, which as was mentioned in previous sections, lacks independence and transparency. In 2007, upon the initiative of Yerevan Press Club, was formed Media Ethics Observatory, which has 14 members and the mission of which lies in the consideration of complaints and appeals about violations of the Code of Conduct and making appropriate judgments.⁹¹⁹ The representatives of media, who joined the initiative, acknowledged the right of the MEO to consider the compliance of their materials with the provisions of the adopted Code of Conduct and expressed readiness to place on their pages and in their air the judgments of the MEO on the complaints regarding them. As of July 1, 2011, the Code and the Declaration were signed by 44 media of Armenia, and also the initiative is supported by 9 journalistic associations. As of March 2011, the MEO made 28 judgments/decisions.⁹²⁰ Attempts to set the institute of internal ombudsman failed, pioneers of which were “Aravot” daily and “Gala TV”.⁹²¹

As was noted in the law section, request of denial can take form of reply. In this regard, it must be mentioned that vast amount of judicial harassment cases are all linked with this issue. Moreover, sometimes requests for denials are taking unprecedented forms. For example, on 2nd of October, 2011

⁹¹⁷ Article 8 of the Law on Mass Media

⁹¹⁸ *Ibid*, By the same Article, the demand for refutation should be rejected, if it is anonymous, or is in contradiction with a court ruling, which entered into effect.

⁹¹⁹ Here and after, see Yerevan Press Club, Media Landscapes of Eastern Partnership Countries, 2011, page 16

⁹²⁰ See http://www.ypc.am/self_regul/ln/en (last access was made on 15.03.2012)

⁹²¹ Yerevan Press Club, Media Landscapes of Eastern Partnership Countries, 2011, page 16-17

“Aravot” daily received an e-mail letter from 3 secondary school teachers, where they suggest the text of refutation of an article. The newspaper on 14th October published an article with the title “What to deny?” Later it was clarified that there is court judgment against the newspaper, but the newspaper was not informed about court proceeding at all.⁹²²

An interesting development in this field took place in March of 2012, when the 1st instance court of general jurisdiction for the administrative districts Kentron and Nork-Marash dismissed the case brought by Advocate Arthur Grigoryan against "Hraparak" daily newspaper.⁹²³ Mr. Grigoryan was claiming 18 million AMD, as compensation for the comments of unidentified people, done under the article, published at the webpage of the newspaper. Based on the request of Mr. Grigoryan the newspaper deleted the comments, but which was not enough to prevent Mr. Grigoryan from bringing the lawsuit against the newspaper.

Integrity mechanisms (Law) – *To what extent are there provisions in place to ensure the integrity of media employees?*

The legislation regulating media does not contain any provisions requiring establishment of the codes of conduct for media entities or journalists.

According to the NGO media expert, only two media entities in Armenia have separate code of conduct. Those are *Aravot* daily and *Hetq* electronic newspaper.

On January 9, 2007 Yerevan Press Club (YPC), which is a leading NGO defending journalists, issues an address to the media community of Armenia, suggesting to jointly develop the principal norms of professional ethics. On February 2, 2007 at the meeting of media representatives, supporting the YPC initiative, a working group was formed that developed the **Code of Conduct of Media Representatives** and the **Declaration on Election and Referendum Coverage Principles**. These documents were adopted and signed on March 10, 2007 at the meeting of heads of media and journalistic associations. As of December 2010, 41 entities, representing 44 Armenian media signed Code of Conduct of Media Representatives and the Declaration on Election and Referendum Coverage Principles.⁹²⁴ All mentioned codes and rules are not mandatory.

⁹²² Annual Report 2011, page 30

⁹²³ Here and after see at <http://www.hraparak.am/2012/03/08/haxtec-pastabanin/> (last access was made on 12.03.2012)

⁹²⁴ According to the 2010 annual report of the observer body of the media ethics, established for observing the compliance of media entities, who signed under the universal rules of conduct to those rules, among 44 media entities there were 16 TV and 1 radio companies. Also, 9 journalist associations supported this initiative. (http://www.ypc.am/self_regul/ln/en)

At the mentioned March 10, 2007 meeting the **Media Ethics Observatory (MEO)** was also elected, which currently consists of 7 members, representing newspapers, information agencies, journalistic associations and TV companies. On December 13, 2009 the Regulations of MEO were adopted. The media representatives, signatory to the Code of Conduct, acknowledge the right of MEO to examine the conformity of their acts and publications to the provisions of the Code and state their willingness to publish decisions of MEO in their media. The mission of MEO is the consideration of complaints and appeals regarding the violations of the Code of Conduct and making judgments on these. In 2010 MEO rendered 8 judgments/decisions (in 2009 - 5).

Integrity mechanisms (Practice)

To what extent is the integrity of media employees ensured in practice?

As was noted in the previous section, the Media Ethics Observatory operates in Armenia, Code of Conduct of which was signed by 44 media, and is supported by 9 journalistic associations. The competence of the Media Ethics Observatory was also discussed. However, as IREX reports, ethical standards are not widely used or accepted.⁹²⁵ According to YPC "Around a dozen of Armenian media and the majority of journalistic associations have ethical codes of their own."⁹²⁶ There are professional associations which provide trainings, but their activities are dependent on grants and thus are not stable.⁹²⁷ Also, from time to time, such famous organizations as "Article 19", International Federation of Journalists, European Journalism Center and etc., provide trainings for Armenian journalists.⁹²⁸ There are various NGOs which are aimed at protecting freedom of speech and media independence: however they are not very much effective because they operate when they have funding, grants.⁹²⁹ As IREX reports "The panelists agreed that it is not rare for media professionals to accept payments or gifts in exchange for certain types of coverage."⁹³⁰

Regarding using multiple sources, Margarita Hakobyan in her report, mentions that quite often journalists fail to check multiple sources: "Verification of information, as well as the comprehensive and objective coverage of information were noted as other fundamental standards of journalism. According to the vast majority of the experts, most journalists fail to check and verify information most of the time

⁹²⁵Media Sustainability Index 2011, The development of Sustainable Independent Media in Europe and Eurasia, IREX,p. 135 In 2012 index, a similar negative note relates for the same issue and monitoring bodies. Page 152

⁹²⁶Yerevan Press Club, Media Landscapes of Eastern Partnership Countries, 2011, page 16

⁹²⁷Media Sustainability Index 2011, The development of Sustainable Independent Media in Europe and Eurasia, IREX,p. 140 In 2012 index, a similar negative note relates for the same issue and monitoring bodies. Page 152

⁹²⁸Yerevan Press Club, Media Landscapes of Eastern Partnership Countries, 2011, page 23

⁹²⁹Media Sustainability Index 2011, The development of Sustainable Independent Media in Europe and Eurasia, IREX,p.140

⁹³⁰ *Ibid*, page 135

due to personal and general expedience, the substantial scarcity of news sources (e.g., official press-releases and international media outlets), as well as other issues."⁹³¹

Investigate and expose cases of corruption (Practice)

To what extent is the media active and successful in investigating and exposing cases of corruption?

The only professional organization of investigative journalists is "Hetq" NGO, which has own webpage.⁹³² One peculiarity of Hetq online is that journalistic investigations are often conducted by teams — a new practice in Armenian journalism. These teams also work on investigative documentary films for Hetq, which are being broadcasted by different TV stations in the Republic of Armenia.⁹³³ According to US State Department's Human Rights Report 2010 for Armenia " Investigative journalism was often viewed negatively, especially by those who were the subjects of scrutiny."⁹³⁴ IREX reports that there has been growth in investigative journalists and few periodicals can afford ongoing investigations and follow-up reporting.⁹³⁵

Regarding the high profile cases of corruption investigation by journalists, it can be mentioned investigations of high profile official's conflict of interest issues. In connection, with this, "Hetq" published possessions of the Minister of Nature Protection.⁹³⁶

Inform public on corruption and its impact (Practice)

To what extent is the media active and successful in informing the public on corruption and its impact on the country?

According to 2010 Corruption Survey of Households " Seventy-three percent of 2010 survey respondents mentioned that mass media (i.e. TV, radio, and newspapers) is one of the three main sources of information about corruption."⁹³⁷ However, corruption related constant programs are absent. Seldom air is devoted to corruption related programs. According to one research "The corruption is less discussed topic in radio air, and programs devoted specifically to corruption in tv air one can count on his finger of one hand."⁹³⁸

⁹³¹CRRC, Report on In-Depth interviews, by Margarita Hakobyan, , Yerevan,2011, page 24

⁹³² For more see www.hetq.am

⁹³³ See at <http://hetq.am/eng/about/> (last access was made on 12.03.2012)

⁹³⁴ Human Rights Report 2010 on Armenia, US State Department. Available at <http://www.state.gov/j/drl/rls/hrrpt/2010/eur/154411.htm> (last access was made on 12.03.2012)

⁹³⁵ Media Sustainability Index 2011, The development of Sustainable Independent Media in Europe and Eurasia, IREX,p. 135

⁹³⁶ See at <http://hetq.am/arm/articles/9099/etikayi-handznahoxovy-kzbaxvi-bnapahpanutyany-nakhararov.html> (last access was made on 12.03.2012)

⁹³⁷ Corruption Survey of Households 2010, CRRC, page 46

⁹³⁸ Quantative research of public opinion on corruption, Peculiarities of public perception of corruption in Armenia, 2009, page 25. Available at http://www.crrc.am/store/files/corruption/fellows/Bagrat_Harutyunyan.pdf (last access was made on 23.03.2012)

Inform public on governance issues (Practice)

To what extent is the media active and successful in informing the public on the activities of the government and other governance actors?

According to CRRC conducted research, national TV is considered the most trustworthy source of information, and is fully or partially trusted by 55% of Armenians, and at the same time 42 % of Armenians partially or fully distrust national TV.⁹³⁹ According to YPC conducted research on thematic coverage, TV channels under the study paid twice less attention to the theme "Activities of the Government" (11.4 % of the aggregate news coverage)⁹⁴⁰. In newspapers the coverage of the mentioned topic was devoted 9.6 % references.⁹⁴¹ The result for online publications is 9.9%.⁹⁴²

Recommendations on the pillar of Media

1. To establish the institute of an elected body of Media Ombudsman. In this regard to make necessary constitutional changes. The candidacy of the Media Ombudsman should be proposed by the Ombudsman, and the Media Ombudsman shall be elected by the Parliament for 5 years term. The Media Ombudsman should deal with complaints from public against media entities and NCTR, as well to act as a grievance channel for those journalists who faced censorship.
2. To amend the relevant legislation to introduce Rules of Ethics of journalists and heads of media entities, violation of which should be sanctioned by fines. Hence, to make respective amendments and alterations into Administrative Code of Delinquencies.
3. To ensure independence of NCTR. With this aim to establish public council attached to NCTR recommendations of which shall be considered by the NCTR. The Council shall have the right to demand monthly meetings with the NCTR by notifying 7 days in advance. The meetings shall be open for the public. The Council shall be composed from those representatives of the media who are perceived as independent in society and enjoy the public trust. Members of the Council shall be appointed by the Ombudsman.
4. To study the best practice of libel suits by the members of judiciary with an aim to adjust the legal practice of Armenia with the best practice.

⁹³⁹ Armenian Media Landscape, CRRC, by Katy Pearce, October 2011, page 6

⁹⁴⁰ Yerevan Press Club, Monitoring the Thematic Directions of Armenian Media, 2011, page 11.

⁹⁴¹ *Ibid*, page 17

⁹⁴² *Ibid*, page 19

5. To make the licensing procedure for TV and radio broadcast more transparent.

Civil Society

Summary

The existing legal framework provides for somewhat favorable environment for civil society organizations (CSO), whereby they are entitled to establish freely, register moderately easily and/or operate independently. Meanwhile, the practice of registration proves to be complicated and corrupt and operations proceed under increasing state interference.

Legislation exerts certain restrictions for CSOs to develop their financial base in order to ensure the sustainability of organizations. There are no tax exemptions for non-profit activities as well as no significant incentives for attracting contributions. Besides, the major group of CSOs – public organizations (PO) - is not allowed to generate income through entrepreneurial activities and, thus, to maintain sustainability.

Transparency and accountability to the public are not mandatory by law, but rather take place as voluntary initiatives of individual CSOs. Integrity aspects are not regulated either by legislation, or by sector-wide voluntary acts. The ability and effectiveness of CSOs to hold the government accountable evolves over time, though still is weak mainly due to the lack of genuine willingness of the government to be responsible before the public or civic organizations. Public engagement in decision-making stays rather as an imitation of democratic governance. In fact, there is a growing trend to counter the work of independent CSOs with that of government-oriented non-governmental organizations (GONGOs).

The table below presents the summary of scores of indicators for assessment of the civil society pillar in terms of its capacity, governance and the role within the Armenian national integrity system.

Civil Society			
Overall Pillar Score: 29.2			
Dimension	Indicator	Law	Practice
Capacity 43.75	Resources	50	25
	Independence	75	25
Governance 18.75	Transparency		25
	Accountability		25
	Integrity	0	25
Role 25	Hold government accountable		25
	Policy reform		25

Structure and Organization

There are almost 7000 CSOs registered in Armenia, which include 72% of public organizations (POs), 12% of foundations, 11% of trade unions and 4% of unions of legal entities.⁹⁴³ In addition, there are some non-formal and non-registered movements and groups of active citizens. Majority of CSOs are concentrated in Yerevan and in large cities in the north of Armenia, which may be attributed to the more skillful human resources and funding opportunities as well as centralized CSO registration process in Yerevan.⁹⁴⁴

The number of active CSOs is actually much lower than that of the registered ones. According to USAID, *The 2009 NGO Sustainability Index for Central and Eastern Europe and Eurasia*, only 10-15 percent of NGOs were actively pursuing their missions,⁹⁴⁵ while the Freedom House, *Nations in Transit: Armenia 2010* reported on less than the quarter of those being active.⁹⁴⁶

The notion of CSOs is mostly perceived in respect with POs that may be explained by the latter's larger share within the spectrum of entities representing the non-governmental sector, greater visibility of work and wider recognition within the society. In contrast, the most recognized foundations are the few grant-giving institutions that serve as intermediate structures for channelling foreign funding to the Armenian civil society. There are even fewer known unions of legal entities and no actually visible trade unions. Thus, this assessment concentrates on POs as the biggest and the most active part of the Armenian civil society.

Assessment

Resources (law)

To what extent does the legal framework provide a conducive environment for civil society?

Legal framework, in general, provides for favorable conditions for establishment of CSOs,⁹⁴⁷ however the actual processes of establishment and operation generate inconveniences complicated.

⁹⁴³ Written response of RA Ministry of Justice Agency for State Registry of Legal Persons to the inquiry of "Transparency International Anti-corruption Center" PO (Yerevan, April 15, 2010)

⁹⁴⁴ Freedom House, *Nations in Transit: Armenia* (2010), page 73

⁹⁴⁵ US Agency for International Development (USAID), *The 2009 NGO Sustainability Index for Central and Eastern Europe and Eurasia* (Washington, US Agency for International Development, Bureau for Europe and Eurasia, Office of Democracy, Governance and Social Transition, 2010), page 54

⁹⁴⁶ Freedom House(2010), page 73

⁹⁴⁷ *Ibid.* (2010), page 67

Human and civic right for association is provided by *RA Constitution (2005) Article 28* and formulated as following: “*Everyone shall have the right to freedom of association with others, including the right to form and to join trade unions.*”

Civil Code (1998) outlines the spectrum of formally operating CSOs as non-state, non-commercial organizations, including public organizations (Article 122) as well as trade unions (Article 122), foundations (Article 123) and unions of legal entities (Article 125). These CSOs shall be registered with the Ministry of Justice State Register of Legal Entities and governed by the related legislation – *Law on Public Organizations (2001)*, *Law on Trade Unions (2000)*, *Law on Foundations (2002)* and *Civil Code*, respectively. Besides, specific activities of CSOs may become subject of regulation for *Law on Charity (2002)*.

The Armenian legislation does not mandate registration of CSOs. *Law on Public Organizations* allows for operation of non-registered associations of people as long as those do not engage in financial transactions. Upon having an intention to get funding, the association shall register as a PO. Thus, only the registered organizations may publish more than 1,000 copies of print media, rent meeting venues, broadcast TV or radio programs, etc., though there is no prohibition on individual members doing so.⁹⁴⁸

Armenian laws do not have any restrictions for watchdogging and criticizing the government and advocating for policy change, unless such activities are not interpreted as ones that aim “*at the forced overthrow of the RA constitutional order, incitement of ethnic, racial, religious hatred, or propaganda of violence and war*” or otherwise claimed to be illegitimate. In such cases those organizations may become subject to mandatory closure.⁹⁴⁹

There are significant limitations for POs’ capacity to accomplish their goals and serve their constituencies through litigation. POs may not defend public issues within the scope of their statutory interests and challenge unlawful acts of state institutions in local courts unless those violate the rights of POs,⁹⁵⁰ explicitly limited to themselves and their members.⁹⁵¹

RA legislation prescribes for a complicated and lengthy registration of public organizations. It is 21 days as opposed to 5 days allocated for registering the most of other types of legal entities, which additionally extends to registration with tax authorities and police service. *The 2008 NGO Sustainability Index* considered the process as “*somewhat expensive and burdensome*”, particularly for CSOs that have to

⁹⁴⁸ US State Department, **2009 Human Rights Report: Armenia** (Washington, US State Department Bureau of Democracy, Human Rights and Labor, **March 11, 2010**), available at www.state.gov/g/drl/rls/hrrpt/2009/eur/136018.htm

⁹⁴⁹ Article 21 of the Law on Public Organizations

⁹⁵⁰ Article 3 of the Code of Administrative Procedure

⁹⁵¹ Article 15 of the Law on Public Organizations

travel from provinces in order to register.⁹⁵² The actual registration process is claimed to be “*corrupt and difficult in practice*” and some organizations have reported that “*they were asked to pay “fees” to accelerate the registration process.*”⁹⁵³ According to US State Department 2009 Human Rights Report, registration requirements for associations “*remained cumbersome.*”⁹⁵⁴ In addition, based on the reference of *Civil Code article 56*, the *Law on Public Organizations article 13* require for re-registration of POs, largely following the procedure prescribed by article 12 for registration, in a rather wide range of cases, which creates additional unreasonable administrative burden for them.⁹⁵⁵

Armenian tax legislation does not ensure conducive environment for CSOs. There is no differentiation between taxation of for-profit and non-for-profit entities. Thus, some of CSO incomes (with an exception of grants and membership fees) are considered to be profits and become subject to taxation at the same level as business-generated revenues. Tax exemption is possible only for the value-added tax from the expenditures of grants that are provided within the framework of certain international agreements (e.g. bilateral agreement between the governments of USA and Armenia). However, this includes some “*time consuming formalities with the Ministry of Finance for every VAT-free purchase.*”⁹⁵⁶

Resources (Practice)

To what extent do CSOs have adequate financial and human resources to function and operate effectively?

CSO-related legislation contains multiple of deficiencies and obstacles, which hinder the development of organizations and significantly limit scope and effectiveness of their work as well as their sustainability. Civil Society Index Initiative case studies stated that Armenian CSOs are not financially sustainable institutions able to secure enough funding for their operations⁹⁵⁷ and the regulatory framework “*fails to establish a secure and supportive environment for NGO fundraising efforts by preventing direct income generation and refusing to implement tax mitigation for indirect income-generating activities.*”⁹⁵⁸

According to CIVICUS Civil Society Index 2009 organizational survey, a significant percentage of interviewed CSOs either totally or extensively rely on foreign donors. The study recorded that only

⁹⁵² USAID (2010), page 55

⁹⁵³ *Ibid.*

⁹⁵⁴ US State Department (2010)

⁹⁵⁵ The Organization for Security and Co-operation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR), Opinion on the Draft Law on Amendments to Law on Public Organizations of the Republic of Armenia (Warsaw, December 2, 2009), paragraphs 9 e) and 17, available at <http://docs.google.com/viewer?a=v&pid=sites&srcid=ZGVmYXVsdGRvbWFpbnuZ29sYXdlbmd8Z3g6MjU0O WM0NTFiNGI1ZjhhMg>

⁹⁵⁶ Freedom House (2010), page 74

⁹⁵⁷ Counterpart International/Armenia National Implementation Team (2010), *The CIVICUS Civil Society Index for Armenia Phase 2008-2010*, referred in Civil Society Index Initiative “Case Study: Financial Sustainability of Armenian CSOs” (Yerevan, 2010), page 27 available at civilsocietyindex.files.wordpress.com/2010/08/fin-eng_web.pdf

⁹⁵⁸ *Ibid.*, page 28-29

22.1% of respondents receive government funding, 31.9% benefit from individual donations, 31% collect membership fees, 17.7% make use of service fees and 8% accept corporate funding. Out of surveyed organizations, 5% had income from four sources, 15% - from three, 32% - from two and the rest from one.⁹⁵⁹ The study noted that “*such extensive reliance on a single source of revenue, even if stably secured, jeopardizes the independent functioning and long-term security of an organization.*”⁹⁶⁰

In present, foreign funding is decreased, while competition for grants is growing.⁹⁶¹ Some POs try to raise additional funds from international donors that have not had a strong presence in Armenia in the past.⁹⁶² Many of POs survive from grant to grant given that the acquired funding is mostly small and short-term.⁹⁶³ Some organizations even chase after grants that do not match their mission and goals.⁹⁶⁴ Notwithstanding the fact that the major part of the operative CSO sector receives funding from international organizations and foreign missions located in Armenia – the RA legislation envisages the possibility for and regulates the management of state grants,⁹⁶⁵ which adds to the uncertainty of the environment where CSOs work.

Dwindling of international funding pushes POs to diversify funding sources. There are some recent developments in terms of government funding of CSOs through subsidies/grants or procurement contracts.⁹⁶⁶ Nevertheless, such support in Armenia takes place as an exception rather than as a rule.⁹⁶⁷ It is directed mainly to the areas of social services, public awareness and health campaigns and the recipients are believed to be “*pro-government and noncontroversial*” organizations.⁹⁶⁸ And though the government funding may be considered as an indicator of recognition of CSOs’ work, a representative of donor community expressed a concern that the government tolerates CSOs as long as it is able to control their activities.⁹⁶⁹

Funding of POs from other local sources is largely limited. Businesses “*lack tax breaks or other incentives to engage in philanthropic activities*”, though there are some recent practices of funding CSOs.⁹⁷⁰ Due to social-economic situation in the country, membership fees are usually small and

⁹⁵⁹*Ibid.*, page 15

⁹⁶⁰*Ibid.*, page 5

⁹⁶¹ Freedom House, *Nations in Transit: Armenia* (2009), page 73

⁹⁶² USAID (2010), page 56

⁹⁶³ Transparency International Anti-corruption Center (TI AC), *Study of Watchdog NGOs in Armenia* (Yerevan, 2010)

⁹⁶⁴ *Ibid.*

⁹⁶⁵ RA State Accounting Standards, adopted by RA Government Decision N2159-N 09.12.2005

⁹⁶⁶ Civil Society Index Initiative, “Case Study: Financial Sustainability of Armenian CSOs,” pages 22-27 and USAID (2010), page 56

⁹⁶⁷ Civil Society Index Initiative, “Case Study: Financial Sustainability of Armenian CSOs,” page 23

⁹⁶⁸ USAID (2010), page 56

⁹⁶⁹ Transparency International Anti-corruption Center (TI AC), *Study of Watchdog NGOs in Armenia* (Yerevan, 2010)

⁹⁷⁰ USAID (2010), page 56

symbolic⁹⁷¹ and, hence, unable to ensure sustainability of organizations. International donors, in their turn, have constraints to grant money for endowment funds or overhead expenditures.

Direct income generating activities, including grassroots fundraising, paid services, individual donations or passive income generation (e.g. through lease of property or acquired interest on bank accounts) are considered as entrepreneurial activities in accordance with *RA Civil Code*.⁹⁷² Based on *RA Law on Public Organizations*, POs may implement such activities “only through establishment of commercial organizations or participation in those.”⁹⁷³ Thus, in order to ensure basic funding POs are faced with two major options of artificially changing their status to a foundation, which allows for entrepreneurial activities though implies different format of membership and decision-making, or establishing a separate business company, which has profit-making objectives, separate administration and accounting. The latter option was recognized by CSOs to be financially “too burdensome,”⁹⁷⁴ nevertheless, in the last year an increasing number of CSOs began establishing affiliated for-profit entities.⁹⁷⁵

In spite of recognized obstacles for operation of POs, the Armenian government does not manifest any political will to improve the existing regulatory framework to support the sustainability of organizations. In spite of several efforts of POs to lobby for public funding through 1 percent law, those did not record any progress.⁹⁷⁶ Similarly, there is no advancement with the passage of the law on volunteers.⁹⁷⁷ The draft Endowment Law, initiated by Eurasia Partnership Foundation, submitted to the public scrutiny in 2009,⁹⁷⁸ is still in process of discussions.

Professionalism, activism and devotion of CSO-associated people are perceived to be the biggest strengths of the sector.⁹⁷⁹ Yet, financial difficulties and unpredictable prospects for the continuity of operations are largely reflected on the quality of human resources as it is difficult to hire and maintain skilled professionals. On the other hand, the usual lack of people adds to the workload of the existing personnel affecting the quality of work and the capacity for further development.⁹⁸⁰ Hence, some representatives of international organizations think that there is certain stagnation among POs in

⁹⁷¹ Tatchat Stepanyan, *Country Report: Armenia* for The International Center for Not-for-Profit Law (ICNL), (Legal Analysis, 2005), page 5, also available at http://webcache.googleusercontent.com/search?q=cache:iLqDY_gI53IJ:www.icnl.org/programs/location/crossregional/globalforum/ConferenceMaterials/Eco_Activities_Armenia.doc+Tatshat+Stepanyan,+ICNL+country+report&cd=2&hl=en&ct=clnk

⁹⁷² RA Civil Code, article 2

⁹⁷³ RA Law on Public Organizations, article 4

⁹⁷⁴ Civil Society Index Initiative, “Case Study: Financial Sustainability of Armenian CSOs,” pages 16-17

⁹⁷⁵ USAID (2010), page 57

⁹⁷⁶ US Agency for International Development (USAID), *The 2008 NGO Sustainability Index for Central and Eastern Europe and Eurasia* (Washington, US Agency for International Development, Bureau for Europe and Eurasia, Office of Democracy, Governance and Social Transition, 2009), page 54

⁹⁷⁷ Freedom House (2009), page 72

⁹⁷⁸ Freedom House (2010), page 74

⁹⁷⁹ Transparency International Anti-corruption Center (TI AC), *Study of Watchdog NGOs in Armenia* (Yerevan, 2010)

⁹⁸⁰ *Ibid.*

Armenia in terms of their professional development as well as failure to nurture new generations inside organizations.⁹⁸¹ At the same time, it is noticed that the recent decline of funding and the increased competition contributed to the enhancement of resources and capacities, such as the improved planning, advanced quality of personnel, increased involvement of youth and stronger cooperation.⁹⁸²

POs are mostly organized and continue to be driven by individual charismatic leaders,⁹⁸³ who makes most of high-level decisions and undertakes representation of the organizations. According to USAID *The 2008 NGO Sustainability Index*, CSO boards “continue to be poorly integrated into organizations and do not contribute to improved accountability or impact.”⁹⁸⁴ Legal framework prevents the adoption of structures such as boards of directors or advisory councils that are not elected from the general membership of organizations.⁹⁸⁵ According to Freedom House as well as TI AC study, the CSOs’ “social base remains narrow, and grassroots ties are weak,”⁹⁸⁶ Detachment from their respective constituencies is seen to be a major factor for the distrust by the government towards POs.⁹⁸⁷ It should be noted that this conclusion has been repeated by most of interviewed representatives of the government, international organizations and the media.⁹⁸⁸

Civil Society Index Initiative’s case study on the culture of volunteerism found that Armenian CSOs do not utilize the full potential of volunteer resource base that exists in the country.⁹⁸⁹ Informal, unmanaged volunteerism dominates over the formal volunteering.⁹⁹⁰ It is largely explained by the deficiencies of the regulatory framework.⁹⁹¹ The latter, in particular, allows for interpretation of tax and labour legislation in a way so that to fine organizations who engage volunteers or, in other words, hide the workforce and avoid paying respective taxes.⁹⁹²

Independence (law)

To what extent are there legal safeguards to prevent unwarranted external interference in the activities of CSOs?

⁹⁸¹ *Ibid.*

⁹⁸² USAID (2010), pages 55-56

⁹⁸³ USAID (2010), page 56 and Transparency International Anti-corruption Center (TI AC), *Study of Watchdog NGOs in Armenia* (Yerevan, 2010)

⁹⁸⁴ USAID (2010), page 56

⁹⁸⁵ USAID (2010), page 55

⁹⁸⁶ Freedom House (2009), page 67 and Transparency International Anti-corruption Center (TI AC), *Study of Watchdog NGOs in Armenia* (Yerevan, 2010)

⁹⁸⁷ Anush Dulgaryan et al., *White Paper on Government and NGO Cooperation in Armenia*, Professionals for Civil Society NGO, Yerevan, 2008, page 6, available at www.ngo.am/eng/index.asp?page=ecnl_materials#153

⁹⁸⁸ Transparency International Anti-corruption Center (TI AC), *Study of Watchdog NGOs in Armenia* (Yerevan, 2010)

⁹⁸⁹ Civil Society Index Initiative, “Case Study: Culture of Volunteerism in Armenia,” page 4 available at www.unv.org/fileadmin/docdb/pdf/2010/publications/Culture_of_Volunteerism_English.pdf

⁹⁹⁰ *Ibid.*, page 3

⁹⁹¹ *Ibid.*, pages 13-16

⁹⁹² *Ibid.*, pages 14-15

According to the Armenian legislation the state interference in CSO activities may be assessed as limited to the pursuit of legitimate government interest to perform its role through necessary and proportionate means. Citizens are allowed to engage in CSOs, including ones that promote good governance and anti-corruption, regardless of political ideology, religion or objectives. Their right to associate may be restricted only in case of unlawful activities.

According to *RA Constitution* “activities of associations can be suspended or prohibited only through a judicial procedure and in cases prescribed by the law.”⁹⁹³ Following the mentioned, mandatory closure of public organizations may take place when the activities of an organization are aimed at the forced overthrow of the RA constitutional order, incitement of ethnic, racial and religious hatred, or propaganda of violence and war; an organization has committed numerous or gross violations of law, or carried out activities contravening its statutory purposes; the founder (founders) or the authorized person of the organization has committed gross violations or breaches of law while founding the organization. In addition, an organization may also be dissolved as a result of bankruptcy.⁹⁹⁴

Civil Code article 314 implies that the transactions of legal persons, which contradict the goals defined in their respective charters, may be recognized as invalid by the court upon the claim of the respective oversight body, and thus limit the scope of activities of CSOs to ones that are in compliance with their respective statutory goals.

The right to privacy of persons prescribed by *RA Constitution* article 23 relates to CSOs along with other organizations as according to its article 42.1 “human and civic fundamental rights and freedoms extend also to legal persons as much as those rights and freedoms are applicable for them.”

Law on Public Organizations provides for self-governance of POs, which implies that the state shall not interfere in the governance of these entities. Thus, the state representatives’ attendance/participation in CSO meetings or enrollment in CSO boards is not mandatory by law. On the other hand, there are no limitations for membership of individual high level public officials or public servants in CSOs, including their boards. The only restriction relates to their remuneration, as public servants and high level public officials are not allowed to receive income except for conducting creative, pedagogical and scientific work.⁹⁹⁵

Independence (practice)

To what extent can civil society exist and function without undue external interference?

⁹⁹³ Article 28 of Constitution

⁹⁹⁴ Article 21 of the Law on Public Organizations

⁹⁹⁵ Article 24 of the Law on Public Service

Government oversight is currently practically designed and limited to protect legitimate public interests, nevertheless there have been a few attempts to increase opportunities for intervention. First was the draft Law on Lobbying initiated in 2004-2005, which contained risks of increasing the administrative obstacles and financial costs of getting access to all levels of the government, and explicitly prohibited any advocacy and lobbying funded by foreign organizations.⁹⁹⁶ This initiative was successfully blocked due to an aggressive opposition of a group of active POs.⁹⁹⁷ The second attempt is the amendment to *RA Law on Public Organizations*, initiated in 2009 and still in process of negotiation/concurrence. The preliminary draft of amendments implied increased administrative and financial problems for organizations to ensure transparency and accountability - mainly before the state - as well as a possibility for extended state interference in cases when the supervisory entity – the Ministry for Justice - has any doubts about the accuracy of the reported data. POs were not consulted on the draft of amendments.⁹⁹⁸ It was actively opposed by a about 100 POs as well as criticized by OSCE ODIHR.⁹⁹⁹ Currently, its adoption process within the National Assembly is suspended, the draft is being revised by the Ministry of Justice and some of the controversial provisions have already been removed.

For many years CSOs may exist and function without any interference by the government, in terms of the control by tax authorities or labour inspection, or potential oversight by the Ministry of Justice, when non-statutory actions are in place. However, according to some representatives of international organizations, the general environment where CSOs operate is unpredictable and those usually do not know what to expect from the government and its law enforcement structures.¹⁰⁰⁰ The practice shows that the instruments of control are not applied consistently and rather get reserved for special occasions. E.g., USAID *The 2008 NGO Sustainability Index* reported about visits of tax inspection of a number of politically active CSOs aftermath 2008 presidential elections.¹⁰⁰¹ Hence, though the legislation permits the independent functioning of CSOs, including watchdogging, criticizing of the government and advocating for policy change, some CSOs practice “*self-censorship*”¹⁰⁰² by restricting own scope of activities in order not to be politically persecuted or punished. One of the international donor representatives expressed a concern that the Armenian government follows policies existing in Russia and Azerbaijan by extending the state control over the operation of CSOs.¹⁰⁰³

⁹⁹⁶ “What are the Drawbacks and Advantages of the Bill “On Lobbyist Activity”?” (Yerevan, November 31, 2005) available at http://parliament.am/news.php?cat_id=2&NewsID=1536&year=2005&month=11&day=30&lang=eng

⁹⁹⁷ USAID Civic Advocacy Support Program - Armenia, “*Coalition of Armenian NGOs Blocks Controversial Lobby Law*” (Yerevan, July 30, 2007), available at www.advocacy.am/en/?nid=5&id=31

⁹⁹⁸ Commission of the European Communities, *Implementation of the European Neighborhood Policy in 2009: Progress Report Armenia* (Brussels, My 12, 2009), page 6, available at ec.europa.eu/world/enp/pdf/progres2010/sec10_516_en.pdf

⁹⁹⁹ OSCE ODIHR

¹⁰⁰⁰ Transparency International Anti-corruption Center (TI AC), *Study of Watchdog NGOs in Armenia* (Yerevan, 2010)

¹⁰⁰¹ USAID (2010), page 59

¹⁰⁰² *Ibid.* and USAID (2009), page 53

¹⁰⁰³ Transparency International Anti-corruption Center (TI AC), *Study of Watchdog NGOs in Armenia* (Yerevan, 2010)

Another form of applied interference is intimidation of CSOs, mostly those engaged in human rights and public mobilization, through unofficial warnings of activists,¹⁰⁰⁴ campaigns launched by pro-government media blaming CSOs for the support of colorful revolutions and service to foreign interests,¹⁰⁰⁵ and statements by government representatives against organizations which dare to publicly criticize government policies.¹⁰⁰⁶

As a matter of fact, attacks on civic activists are accompanied by the support and concealing of the attackers and institution of criminal cases against the victims. There are no yet developments in the investigation by police to reveal and hold responsible the attackers of youth leaders - Arsen Kharatyan in May 2008 and Narek Hovakimyan in June 2008. In contrast, the charges against pro-government political party leader Tigran Urikhanyan who criminally assaulted human rights defender Mikael Danielyan in May 2008 were dismissed within a year.¹⁰⁰⁷ In 2009, there were criminal cases opened against several activists, Arshaluys Hakobyan, who was engaged in observation of elections and reported violations,¹⁰⁰⁸ Tigran Arakelyan, who disseminated leaflets on invitation to an oppositional rally,¹⁰⁰⁹ and Mariam Sukhudyun, who reported cases of sexual abuse in a school for children with special needs.¹⁰¹⁰ Unlawful opening of cases was followed by failure to ensure proper and impartial investigation. And though the fabricated charges against activists were dropped within a few months due to intensive public campaigns and lobbying by international organizations, the officials in charge of unlawful acts were not held responsible.

Attacks on civic activists are not a common phenomenon, however those are unpredictable. Usually, those take place in response to the exercise of the right to expression and the right to assembly and the probability increases in connection with politically sensitive matters and, particularly, in times of elections.

In parallel with intimidation techniques exercised against a group of CSOs, the government manipulates some others to imitate democratic governance and cooperation. There are many GONGOs and “pocket” NGO operating under the patronage of government officials, their relatives or affiliates and there is a growing trend to use those organizations for window-dressing. The utilized measures in this respect

¹⁰⁰⁴ Interviews with some CSO representatives, whose names are not mentioned due to security reasons

¹⁰⁰⁵ Vladimir Darbinyan, “Casals and Associates under the Roof of USAID” in *Golos Armenii* (Yerevan, July 3, 2008), Pargev Kochumyan, “The Architects of the Civil Society are Busy Exclusively with Eating Dollars and Serving the Radical Opposition” in *Azatamtutyun* (Yerevan, June 30, 2009), Vrezh Aharonyan, “What is Doing the Transparency International?” in *Hayots Ashkharh* (May 26, 2010), etc.

¹⁰⁰⁶ Speech of A.Ashotyan, Member of Parliament at the extraordinary session of National Assembly on March 1, 2008, at the time of declaring state of emergency

¹⁰⁰⁷ US State Department

¹⁰⁰⁸ *Ibid.*

¹⁰⁰⁹ *Ibid.*

¹⁰¹⁰ *Ibid.*

include arranged statements of NGOs in support of presidential candidates,¹⁰¹¹ alternative observation of elections to ensure positive opinion against the criticism of rigged processes,¹⁰¹² engagement in the so-called “public councils” convened under some state institutions to demonstrate public participation in decision-making,¹⁰¹³ establishment and manipulation of a youth movement “Miasin” to support or build up the government’s agenda in various areas.¹⁰¹⁴

There is a fear expressed by a few representatives of international organizations that given the mentioned trends at some point the Armenian third sector will be deprived from genuine CSOs.¹⁰¹⁵ At the same time, there are international donors that prefer to spend their money funding GONGO activities in order to retain good relations with the government. As an outcome, they support the imitation of democracy and the weakening of actual independent CSOs.

There are no known cases when POs have been officially refused for registration, closed down or otherwise restricted for the legitimate grounds. However, there are instances, when activities of organizations have been unlawfully constrained through suppression of their related civic rights, such as the right to expression and right to assembly. Examples include the rejection for organization of rallies, termination of demonstrations through using police force, putting pressure on private businesses to refuse the rent of hotel venues for discussion of human rights matters and to cancel the reserved halls.¹⁰¹⁶

Transparency (practice)

To what extent is there transparency in CSOs?

Transparency of operations of POs is envisaged through participatory decision-making and openness in front of their members, in accordance with *RA Law on Public Organizations*.¹⁰¹⁷ In addition, the law requires provision of organizational charters upon the request of any physical person as well as assurance of public access to regular activity and asset reports.¹⁰¹⁸ However, in fact, POs are rather transparent before their funding sources than to the public. CIVICUS Civil Society Index 2009 organizational survey revealed that the financial information of about 70 percent of respondent CSOs is publicly available.¹⁰¹⁹

¹⁰¹¹ “They Support Serzh Sargsyan” in www.panorama.am (Yerevan, January 23, 2008), “Seven Organizations Support Serzh Sargsyan” in *168 Hours* (Yerevan, February 16, 2008)

¹⁰¹² Transparency International Anti-corruption Center (TI AC), *Study of Watchdog NGOs in Armenia* (Yerevan, 2010)

¹⁰¹³ *Ibid.*

¹⁰¹⁴ Suzan Simonyan, “Miasin” as a PR Project” in *Hraparak* (Yerevan, August 27, 2009) and Vahagn Hovakimyan, “Prime Minister as a Specialist in Actions” in *Haykakan Zhamanak* (Yerevan, May 21, 2010)

¹⁰¹⁵ Transparency International Anti-corruption Center (TI AC), *Study of Watchdog NGOs in Armenia* (Yerevan, 2010)

¹⁰¹⁶ US State Department and Human Rights Watch, “*Armenia: Events of 2009*” available at www.hrw.org/en/node/87532

¹⁰¹⁷ RA Law on Public Organizations, articles 4, 7 and 14

¹⁰¹⁸ RA Law on Public Organizations, article 16

¹⁰¹⁹ Civil Society Index Initiative, “Case Study on Status of CSO Accountability in Armenia”, page 6

While, according to NGO Sustainability Index, only a few voluntarily publish annual reports and/or post those on their websites.¹⁰²⁰

There are no special requirements for the transparency of state-funded activities, neither there are any good practices of openness of such incomes and expenditures. As a result, there is a perception that “*the mechanisms for distributing government funds lack sufficient levels of transparency and clear procedures.*”¹⁰²¹ E.g., there is obscure information about the activities of the two public organizations – “Center of Public Dialogue and Development” PO and “Development and Integration” PO - appointed by the Orders of RA Presidents in 2005¹⁰²² and 2009,¹⁰²³ respectively, as partner organizations for administering state budget funds to the Armenian CSOs in accordance with RA President Decrees.¹⁰²⁴ These organizations were selected without any competition and with no prescribed, transparent and reasonable criteria, while their activities, revenues and expenditures have not been adequately publicized.¹⁰²⁵

Interviews with representatives of state institutions, political party and mass media revealed a perception that the majority of POs are not transparent, and there is a need for increased transparency especially given that those preach openness by the government. Accordingly, the recent initiative to amend *RA Law on Public Organizations* is often justified with the need for increased transparency of these organizations. Nevertheless, many thought that POs are much more transparent than state institutions, mass media and political parties. At the same time, based on the tendency of increasing the state control over POs, some of respondents highlighted the risks related to their transparency, as, e.g., the publicity of membership or funding sources may increase the pressure on individual members or donors.¹⁰²⁶

Accountability (practice)

To what extent are CSOs answerable to their constituencies?

Accountability of POs is foreseen through accountability in front of their members and some organizations practice this obligation through regular meetings of the membership. However, oftentimes the latter itself is merely nominal, and the governing structures, such as boards and councils, are rather

¹⁰²⁰USAID (2010), page 59

¹⁰²¹Civil Society Index Initiative, “Case Study: Financial Sustainability of Armenian CSOs,” page 22

¹⁰²²Information is not publicly available and has not been officially provided by RA President’s office in response to TI AC’s inquiry

¹⁰²³RA President’s Order N NK-41-A from March 13, 2009

¹⁰²⁴RA President Decree N NH-87-N from May 13, 2005 and RA President Decree N NH-118-N from May 19, 2008

¹⁰²⁵There is no website or any contact information for CPDD. Limited information for DEI is provided on www.dei.am

¹⁰²⁶Transparency International Anti-corruption Center (TI AC), *Study of Watchdog NGOs in Armenia* (Yerevan, 2010)

weak. In organizations, where most of high-level decisions are taken by sole leaders, the accountability becomes quite questionable.¹⁰²⁷

According to Civil Society Index Initiative's case study on CSO accountability, POs are largely accountable to their donors than to own constituencies and beneficiaries, in terms of reporting and assessments/evaluations. However, they also engage stakeholders in their structures and decision-making.¹⁰²⁸ In general, there is rather poor connection of POs with their constituencies, which has been recognized by most of the stakeholders representing the donor community, state organizations and media.¹⁰²⁹ Many POs over time have developed to business-type organizations serving the interests of the leadership rather than their respective constituencies. Many POs even lack the understanding of the need for closer connection with respective citizenry and, thus, do not put many efforts to ensure accountability.¹⁰³⁰ The above-mentioned case study on the status of CSO accountability noted that *"alongside highly sophisticated upward reporting, the Armenian CSOs still lack the necessary skills, resources and even rationale to provide beneficiaries with exhaustive reporting."*¹⁰³¹

According to Freedom House, CSOs *"are sometimes regarded as businesses established for the purpose of generating income. Hostility towards civil society can be based on the perception that it implements a foreign agenda and acts as an agent of foreign influence that may be detrimental to national traditions or values."*¹⁰³²

Integrity (Law) *To what extent are there mechanisms in place to ensure the integrity of CSOs?*

There are no legal mechanisms to ensure the integrity of CSOs. Civil Society Index Initiative reports on the availability of a sector-wide code of conduct,¹⁰³³ which however has not been adopted given that CSOs did not achieve an agreement on the provisions of the code. Also, there was an initiative recently launched by Civic Development and Partnership Foundation in Armenia to promote CSO Development Effectiveness Principles adopted in Istanbul in September 2010 at the Open Forum for CSO Development Effectiveness whereas several discussions were organized with civil society organizations on the ways to promote the principles.¹⁰³⁴

¹⁰²⁷ *Ibid.*

¹⁰²⁸ Civil Society Index Initiative, "Case Study: Status of CSO Accountability in Armenia," pages 31-32, available at civilsocietyindex.wordpress.com/2010/08/16/Armenia-case-study-accountability/

¹⁰²⁹ Transparency International Anti-corruption Center (TI AC), *Study of Watchdog NGOs in Armenia* (Yerevan, 2010)

¹⁰³⁰ *Ibid.*

¹⁰³¹ Civil Society Index Initiative, "Case Study on Status of CSO Accountability in Armenia", page 27

¹⁰³² Freedom House (2009), page 73

¹⁰³³ Civil Society Index Initiative, "Case Study on Status of CSO Accountability in Armenia", page 6

¹⁰³⁴ *A Draft International Framework for CSO Development Effectiveness* available on http://www.cso-effectiveness.org/IMG/pdf/version_2_november_framework_for_cso_dev_eff_final.pdf

Some POs introduced codes of conduct as a form of self-regulation, to regulate some aspects of the integrity of their organizations. About fifty five percent of respondents to the CIVICUS Civil Society Index 2009 organizational survey reported to have a publicly available code of conduct.¹⁰³⁵

Integrity (practice)

To what extent is the integrity of CSOs ensured in practice?

There is no available data on the extent to which the codes of conduct are enforced by CSOs.

As a matter of fact, there are many problems related to the integrity, such as political partisanship of some organizations and promotion of respective political agendas, manipulation of others by the state to imitate public support for government policies, engagement of relatives in the activities of organization, etc. Affiliation with political parties or individual politicians affects CSOs' neutrality and public image of an independent sector. Manipulation of POs for government's agenda and interests often is associated with the dependence on government funding or other type of backing. The practice of recruitment of relatives turns CSOs into a family business thus altering the philosophy of public organizations and affecting their reputation. Consequences of such types of distortions are the fake democracy, forged public participation in decision-making, fraud in financial reporting, etc.

Hold government accountable

To what extent is civil society active and successful in holding government accountable for its actions?

CSOs in Armenia are able to demand and achieve success in holding the government accountable as they mobilize, organize themselves, ensure a leadership and are persistent and principled in their actions and claims. Nevertheless, the extent of success largely depends on the willingness and readiness of the government to be accountable to the public.

CSOs watchdogging role is developed to a certain degree and successfully accomplished by some specialized organizations. Individual CSOs are engaged in ongoing monitoring of their respective sectoral policies, e.g. freedom of expression, freedom of information, freedom of assemblies, local government performance, etc. and come up with recommendations/advocacy actions as necessary. Also, there are larger efforts that engage coalitions of CSOs, e.g. in monitoring of various aspects of election processes, penitentiary institutions, special schools, implementation of European Neighbourhood Policy, etc. These monitoring efforts are followed by proposals and advocacy aimed to change certain policies and practices. Year 2009 was marked with an increased advocacy for reforms in respect with

¹⁰³⁵ Counterpart International/Armenia National Implementation Team (2010), *The CIVICUS Civil Society Index for Armenia Phase 2008-2010*, referred in Civil Society Index Initiative "Case Study: Financial Sustainability of Armenian CSOs" (Yerevan, 2010)

amendments to the Law on Freedom of Information, development of the anti-corruption strategy, establishment of a monitoring group for schools for students with special needs, contribution to formulation of 2010 budget, etc.¹⁰³⁶ However, normally, such proactive and constructive advocacy does not achieve much significant impact due to the weaker mobilization and pressure of CSOs.

Oftentimes, advocacy of CSOs in Armenia is reactive – launched in response to concrete unlawful acts of state institutions and organized rather spontaneously. This type of advocacy has proved to be more successful and recorded more visible impact. Major accomplishments include the suspension of the process of adoption of amendments to the draft Law on POs, change of RA government decision and of a plan that contained essential risks for the environment, release of jailed civic activists and/or closure of their respective criminal cases. Success of these and previous campaigns have been attributed to the aggressiveness and resourcefulness of campaigns, leadership and coordination.

In spite of the positive examples of proactive as well as reactive advocacy, there is no significant progress in terms of government accountability and transparency of decision-making process. The degree of success of the civil society is largely undermined by the negative standing of the government itself, as the latter tends to ignore policy recommendations and assessments by the civil society, which are not in conformity with its own perspectives or conclusions or which relate to sensitive political issues. E.g. according to US State Department, the authorities generally did not deny requests to meet with domestic CSO monitors and followed some of their recommendations, such as those in the field of social welfare, education, and local matters. However, they were unresponsive to CSO *“allegations of mistreatment and abuse committed by law enforcement bodies. Authorities' general response in such instances was that they had investigated the allegations but could not corroborate them.”*¹⁰³⁷ On the other hand, the government creates an artificial picture of its accountability through mobilizing GONGOs and pocket organizations and acting in response to their demand or “critique.”

There are no large anti-corruption campaigns, education and participation initiatives ongoing in the country. There are a number of projects implemented within the framework of USAID Mobilizing Action Against Corruption Activity, which engages a number of CSOs in a variety of discrete activities. The widest initiative of this project is operation of Advocacy and Assistance Centers throughout Armenia, which aims to support citizens in their fight against corruption, however does not refrain from entering into institutionalized collaboration with corrupt governments and officials, which puts under question the effectiveness of efforts and the possibility for change.

The Armenian legislation is somewhat ambiguous in providing opportunities to POs to hold the government accountable and introduce change through litigation. *RA Law on Public Organizations*

¹⁰³⁶ USAID (2010), page 57

¹⁰³⁷ US State Department

allows POs to defend their own rights and the rights of their members in courts.¹⁰³⁸ However, POs may not challenge administrative acts and actions of government institutions related to issues of public concern as *RA Administrative Procedure Code* allows for this activity only in the case when the rights of the entity itself are violated.¹⁰³⁹

Policy reform

To what extent is civil society actively engaged in policy reform initiatives on anti-corruption?

There was almost no civil society participation in the adoption of the first anticorruption policy in force during 2003 – 2007. The second set of policy document - including the Strategy and Its Implementation Plan - were developed and adopted with rather limited participation of civil society organizations. “Transparency International Anti-corruption Center” PO was engaged in the Task Force that developed the scope of work for the strategy, “Freedom of Information” PO was provided access to working documents and organized public hearings with participation of a number of invited CSOs. However, the government adopted the final policy without consultation on the most critical sections of the document given that the grant funding of the latter PO was ended. In addition, the passed document did not address the criticism of some professional CSOs and include actions to deal with political corruption.¹⁰⁴⁰

Current interest of CSOs in anti-corruption policy reforms is high mainly due to the existing assistance of international donors in anti-corruption work. Most of the engaged organizations are working towards awareness-raising and education on corruption related matters and monitoring. There are fewer ones who dare to go further by exposing to high-level of corruption and/or criticizing the government for the poor execution of the fight against corruption.

Generally, CSOs fear to fully utilize their potential and resources along combating corruption and are often not much assertive in their actions. On the other hand, there is a lack of interest by the government to ensure more effective fight against corruption and, respectively, higher quality participation of CSOs. In addition, donor organizations sometimes play a key role in distorting and discrediting the anti-corruption work as those push POs for entering into partnerships with corrupt institutions or provide grants to GONGOs somehow associated with corrupt public officials.

Recommendations on the pillar of Civil Society

1. To allow CSOs to run business to secure own financial sustainability, by making respective legal amendments and alterations

¹⁰³⁸ RA Law on Public Organizations, article 15

¹⁰³⁹ RA Administrative Procedure Code , article 3

¹⁰⁴⁰ Interview with Varuzhan Hokyanyan, TIAC

2. To recognize the right of CSOs to bring *action popularis* claims to courts, provided that the claims have direct link with the mission of CSOs, under their charters
3. To make respective amendments and alterations in the tax legislation with an aim to ease the taxation of CSOs. Currently, the CSO are being taxed as for-profit organizations.
4. To facilitate adoption of the law on volunteers, to boost the dynamic development of civil society

Business

Table of Indicator Scores

Business			
Overall Pillar Score: 36.1			
	Indicator	Law	Practice
Capacity 50	Resources	50	50
	Independence	75	25
Governance 45.8	Transparency	75	50
	Accountability	75	25
	Integrity Mechanisms	25	25
Role 12.5	Anti-corruption Policy Engagement	25	
	Support For/Engagement with Civil Society	0	

Assessment

Capacity

Resources (Law) – *To what extent does the legal framework offer an enabling environment for the formation and operations of individual businesses?*

According to the Law on the State Registration of Legal Persons¹⁰⁴¹, the required documents shall be submitted to the corresponding territorial office of the State Register, under whose jurisdiction is the address, where the legal person¹⁰⁴² or physical person (individual entrepreneur) resides. Based on the results of examination of the submitted documents the business can be registered or its registration could be denied. If the decision is positive, then the head of the territorial office of the State Register assigns to the legal person a registration number, signs and seals the legal persons state registration card, which contains the required information about the legal person, enters the necessary information into the State Register and hands to the legal person the certificate on state registration. The law provides that this process shall not exceed 5 working days for legal persons, and 2 – for physical persons.¹⁰⁴³ Refusal of the registration, as well as evasion from registration by State Register can be appealed through court.¹⁰⁴⁴ The appeal is carried out through the Administrative Court and the process of appeal is regulated in the same way as similar processes on all other appeals brought to the Administrative Court.

In general, the registration of a new basis is a simple process without barriers or limitations.¹⁰⁴⁵ For certain businesses there are limitations based on the specifics of their activities, and also there are minimal requirements stemming from the businesses' legal-organizational status. Certain improvements took place recently in the legal regulation of insolvency. At the same time, the process of winding up of the business still remains complicated, long and cumbersome. The main problem here is that among other documents, the company shall submit to the State Register reference(s) from tax authorities that it has no liabilities to the state budget (i.e. taxes) and social security payments.¹⁰⁴⁶ In order to obtain such reference(s) the tax authority shall conduct a so-called closing inspection. However, the law does not regulate or set time limitations on when the corresponding territorial tax inspection shall conduct the mentioned inspection after the submission of a closure application from the company. As a result, in practice it frequently lasts several months or even years. Another negative consequence from such delay is that the company is still considered as operating, which obliges him to submit regularly reports and statements to different, including tax, bodies.

The number of steps involved in starting a business and the extent of their detail depends on the legal-organizational form of the business, and they are described in detail in the relevant legal acts regulating the operation of each of these forms.

¹⁰⁴¹ On March 19, 2012 NA adopted the new Law on State Registration of Legal Persons (HO-127-N). It shall enter into effect on July 25, 2012.

¹⁰⁴² Article 11 of the Law on the State Registration of Legal Persons

¹⁰⁴³ *Ibid.* Article 16

¹⁰⁴⁴ *Ibid.*

¹⁰⁴⁵ See, for example, Article 56 of the Civil Code, Article 16 of the Law on Foundations, Article 5 of the Law on Credit Organizations, etc.

¹⁰⁴⁶ Article 24 of the Law on the State Registration of Legal Persons

The intellectual rights in Armenia are protected by Constitution¹⁰⁴⁷ and Civil Code¹⁰⁴⁸. The law provides protection enforcement of contracts and contractual rights through judicial mechanisms.¹⁰⁴⁹ The Civil Code contains certain provisions, which allow ensuring enforcement of contracts and protecting the rights of parties to the contract. These provisions apply uniformly to all legal and physical persons. In particular, the amending, changing or terminating the contract is possible only with the agreement of contracting parties, and if one of the parties to the contract substantially breaches the terms of the contract, then the other side can demand through court to make changes or terminate the contract.¹⁰⁵⁰ Finally, if the grounds for the termination or change of the provisions of the contract resulted from the substantial breach of one of the parties to contract, then the other party has the right to demand through court for the compensation of the damages incurred on him/her from that change or termination.¹⁰⁵¹

Concluding the discussion, it is worth mentioning that, in general, the legislation does offer an enabling environment for the formation and operations of businesses. It also protects (on the constitutional level) property rights and enforcement of contracts. The complaint mechanisms in the case of refusal of business registration are also properly regulated by law. The only notable and important exception is the legal regulation of closing down of businesses. As a result, the closure of business still remains a complicated, long and cumbersome process, with loopholes (such as, for example, unregulated procedure of closing inspection) containing corruption risks.

Resources (Practice)

To what extent are individual businesses able in practice to form and operate effectively?

There is huge development in the field of business registration. According to Doing Business Report, Armenia stands at 10th place in the ranking of 183 economies, on the ease of starting business.¹⁰⁵² Since March 2011 the Business Entry One-stop Shop was launched within the Ministry of Justice by which those who want to register a business can get the name reservation, tax identification number and business registration at a single location. The legal time limit is 5 working days but also it is possible to register within 3 days. The regular fee is 17.000 AMD.¹⁰⁵³ In addition, it is possible to register business online. The website www.e-register.am provides such opportunity. This is a field where the efforts of the government are not disputed.

¹⁰⁴⁷ Article 31 of the Constitution

¹⁰⁴⁸ Article 140 of the Civil Code

¹⁰⁴⁹ *Ibid.* Chapters 28-30

¹⁰⁵⁰ *Ibid.* Clause 2 of Point 1 of Article 466 At the same time, Point 3 of the same Article provides that if termination of the contract is allowed by law or is carried out by mutual agreement of contractual parties, then, if a party to the contract completely or partially refuses to execute the contract, the contract shall be declared void or changed without applying to court.

¹⁰⁵¹ *Ibid.*, Point 5 of Article 469

¹⁰⁵² Doing business in a more transparent world. Economy Profile: Armenia 2012. The International Bank for Reconstruction and Development/ the World Bank. Page 16

¹⁰⁵³ *Ibid.*, page 21

Concerning enforcement of the laws, the situation generally is the same as it is in other fields. The biggest impediment is the existence of oligopolies which either directly or indirectly leaves negative impact on the proper functioning of business. In this regard PriceWaterHouseCoopers in its business guide in Armenia for 2011-2012 mentions: "The application of tax, customs (especially valuation) and regulatory rules (especially in the area of trade) can be inconsistent, creating uncertainty for medium-size businesses and market entrants".¹⁰⁵⁴ Insolvency takes 1.9 years on average and costs 4% of the debtor's estate.¹⁰⁵⁵ Heritage Foundation in its 2012 Index of Economic Freedom gave to Armenia 39th position. In the section of Rule of Law, where there is a point devoted to property rights, the index mentions that: "Armenia lacks a dependable rule of law. Its scores for property rights and freedom from corruption are well below world averages... Protection of intellectual property rights is poor."¹⁰⁵⁶ Perhaps the best illustrating definition of current situation of the field gives Freedom House in its Freedom in the World 2011: "Citizens have the right to own private property and establish businesses, but an inefficient and often corrupt court system and unfair business competition hinder such activities. Key industries remain in the hands of so-called oligarchs and influential cliques who received preferential treatment in the early stages of privatization."¹⁰⁵⁷

Independence (Law) – *To what extent are there legal safeguards to prevent unwarranted external interference in activities of private businesses?*

According to Armenian legislation, public officials can interfere in the operations of businesses only through conducting inspections and examinations. The procedures of inspections and examinations are regulated by the Law on Organization and Conduct of Inspections in the Republic of Armenia.¹⁰⁵⁸ Such inspections mainly are carried out by tax and law enforcement bodies. The law provides complaint mechanisms to seek redress and/or compensation in case of undue external interference during such inspections. These mechanisms foresee both internal and external (courts) forms of bringing complaints.¹⁰⁵⁹ In particular, appeals against the actions or inaction of the tax body or tax officials shall be examined and decisions on them shall be adopted through the procedure defined by the Law on Tax Service. The appeals on those actions of tax inspection officials, which entailed to fines, shall be appealed in compliance with the legislation on administrative delinquencies, which foresees also appeal through courts.

Independence (Practice)

To what extent is the business sector free from unwarranted external interference in its work in practice?

¹⁰⁵⁴ Doing business guide in Armenia 2011-2012, PWC, page 6

¹⁰⁵⁵ Doing Business 2012, Economy Profile: Armenia, page 94

¹⁰⁵⁶ See at <http://www.heritage.org/index/country/armenia#regulatory-efficiency> (last access was made on 21.03.2012)

¹⁰⁵⁷ Freedom in the World 2011, Freedom House, Armenia Country Report. Available at: <http://www.freedomhouse.org/report/freedom-world/2011/armenia> (last access was made on 23.03.2012)

¹⁰⁵⁸ RA Official Bulletin 2000/14(112), 23.06.00

¹⁰⁵⁹ Law on Taxes, Article 36

Given the lack of proper checks and balances in Armenia, using the office to exploit the private sector becomes easy. In 2011, when it was not clear whether “Prosperous Armenia”, coalition former partner of the Republican Party in the Government, would keep coalition agreement which stipulates that partners would refrain from competing against each other, pressure was put on business of the head of the latter Mr. Tsarukyan who at the same time is one of the top wealthiest oligarchs in Armenia.¹⁰⁶⁰ As about adoption of laws driven by business interests, in the report Nations in Transit of 2011 is mentioned: “Most members of Parliament (MPs) vote and lobby not according to party affiliation but in favor of the large businesses they lead or represent.”¹⁰⁶¹

In 2008 elections one of few businessmen who supported opposition candidate, Mr. Khachatour Sukiasyan, his business in mineral water sector was seized. According to Saribek Sukiasyan, brother of Khachatour Sukiasyan, trademarks for “Bjni” mineral water and “Noy” water, were seized, because Khachatour Sukiasyan expressed his political stance.¹⁰⁶² As Freedom House mentions: “Key industries remain in the hands of so-called oligarchs and influential cliques who received preferential treatment in the early stages of privatization.”¹⁰⁶³ As was already discussed in judiciary chapter, the judiciary lacks necessary level of independence, and in this situation protection of rights remains weak. This was also mentioned noted by Heritage foundation, as was noted earlier. In addition, protection of rights in courts in legal ways, as was noted by the Chairman of Yerevan Chamber of Commerce and Industry Mr. Andranik Alexanyan, is quite burdensome for small business.¹⁰⁶⁴ Bertelsmann Transformation Index reports: “Armenia has a flourishing private sector that has expanded further over the last two years. The government has recognized the role of the private sector as the engine driving sustained growth, and has improved the business environment by reducing regulations, improving the bankruptcy law and the administration of customs, and strengthening the banking system. *However, burdensome bureaucratic procedures still tend to hamper private-sector commerce.*”¹⁰⁶⁵ At the same time, the same organization in 2012 reports that property rights and the regulation of property acquisition are adequately defined and soundly defended, and that the government has continued to make progress by reducing state interference in business formation and strengthening property rights.¹⁰⁶⁶

Governance

¹⁰⁶⁰ Armenia without Illusions 2011, Civiltas Foundation, p.26

¹⁰⁶¹ Nations in Transit 2010, Freedom House, p. 68

¹⁰⁶² <http://www.armtown.com/news/en/ra/20110701/22464/> (last access was made on March 18, 2012)

¹⁰⁶³ Freedom in the World 2011, Freedom House. Armenia Country report

¹⁰⁶⁴ AMCHAM, Fall-winter 2010, page 55. Available at <http://www.amcham.am/files//files/Fall2010.pdf> (last access was made on 23.03.2012)

¹⁰⁶⁵ Bertelsmann Transformation Index 2012, Armenia. Available at: <http://www.bti-project.org/countryreports/pse/arm/2012#chap4>

¹⁰⁶⁶ <http://www.bti-project.org/countryreports/pse/arm/2012#chap4>

Transparency (Law) – *To what extent are there provisions in place to ensure transparency in the activities of the business sector?*

For certain forms of activities, where businesses could be involved, as well as certain legal-organizational forms of businesses there are clear legal requirements for external independent auditing and public reporting. In particular, this applies to banks and credit organizations, and, to some extent, joint stock companies and funds (foundations). Thus, the international legal good practice of releasing small businesses from the obligation of auditing and publicizing their financial reporting, which is mainly spread in Europe, is followed in Armenia. However, considering the fact that in practice in Armenia many big businesses exist in such legal-organizational forms, which usually elsewhere are forms characteristic to small and medium businesses (for example, limited liability partnerships), absence of legal requirements conditioning the legal-organizational form of the business with its area of activities or its income can be viewed as a deficiency.

In Armenia state or stock exchange does not require independent audit by external auditor. There are statutory codes of conduct for accountants. Finally, there are no annual banking inspections, though such inspections are required by law. The frequency of such inspections is defined by the decision of the Central Bank of Armenia.

A number of legal acts¹⁰⁶⁷ define the technical requirements for the publication of prescribed by law reports and the violation of these requirements entails to liability through legal acts regulating these areas. There are also clear and strict rules of accounting and tax calculation, specific to each legal-organizational form of businesses. In addition, all types of businesses are required to perform regular inventory on annual basis.

Transparency (Practice)

To what extent is there transparency in the business sector in practice?

The government recently launched website www.e-register.am via which is available some limited information, as name of the participants of the company, and date and number of registration of the company. By paying the fixed amount of state fee, one can get immediate access to further information on the target company.

According to World Bank Group's Enterprise Survey Country Note on Armenia only 19 percent of Armenian firms have their financial statements reviewed by an external auditor, and this percentage is much higher for large firms (45 percent) than for medium-size firms (25 percent) or small firms (10

¹⁰⁶⁷ See, for example, the Law on Accounting, Law on Taxes, Law on Central Bank, Law on Banks and Banking Activities, Law on Joint Stock Companies, Law on Foundations, etc.

percent).¹⁰⁶⁸ According to Global Competitiveness Report 2011-2012, strength of auditing and reporting standards of Armenia is only 87th among other countries contained in the report.¹⁰⁶⁹ According to the same report, for ethic behavior of firms, Armenia was granted 4.1 points, which makes Armenia 106th in the world.¹⁰⁷⁰

Regarding Corporate Social Responsibility, UNDP Armenia notes: "The concept of CSR is still in a very early stage in the country and it is mainly the multinational companies that have some understanding of what this is and why it is important. There is also a lot of confusion between strategic CSR and corporate philanthropy. While some local Armenian businessmen are philanthropically quite active, this is often associated with the individual and there is not integration of this activity with the core business model."¹⁰⁷¹ As on countering corruption, companies usually do not disclose much.

Accountability (Law) –*To what extent are there rules and laws governing oversight of the business sector and governing corporate governance of individual companies?*

The relevant legislation contains certain provisions aimed at the establishment of effective system of internal corporate governance. It also provides a hierarchical system of the regulation of issues related to corporate governance. Apart from the laws, the businesses are endowed with sufficient powers to regulate these issues through their charters.¹⁰⁷²

There are clearly defined legal provisions and mechanisms on the establishment of business companies, their governance, as well as role and functions of their boards, management and owners. In addition to that, the Inspection on the Regulation of Stocks has serious powers of oversight over joint stock companies.¹⁰⁷³ In particular, it requires from such companies submission of weekly, bi-monthly, monthly, quarterly and annual reports.

The Law on Stock Market provides that there shall be a stock market oversight body. Such body is a separated department in the structure of the Central Bank of Armenia.

Accountability (Practice)

To what extent is there effective corporate governance in companies in practice?

¹⁰⁶⁸ World Bank Group's Enterprise Survey Country Note on Armenia (2011), page 4. Available at: <http://www.enterprisesurveys.org/~media/FPDKM/EnterpriseSurveys/Documents/Country%20Notes/Armenia-09.pdf>

¹⁰⁶⁹ Global Competitiveness Report 2011-2012, World Economic Forum, page 101

¹⁰⁷⁰ *Ibid*

¹⁰⁷¹ Concept Note on Government of Armenia, Policy on CSR, UNDP Armenia, Yerevan 2010, page 6

¹⁰⁷² For example, Article 20 of the Law on Banks and Banking Activities provides what shall be regulated by the charter of the bank. In particular, Clause f) of Point 2 of the mentioned paragraph provides that the charter shall define the structure, powers and procedures of decision-making of the bank's governance bodies.

¹⁰⁷³ Articles 11, 40, 43 and Chapter 8 of the Law on Stock Market

According to Global Competitiveness Report 2011-2012, in terms of efficacy of corporate boards, Armenia takes 115th place and in terms of protection of minority shareholders' interests 120th.¹⁰⁷⁴ As one research points, role of board of directors of Armenian banks is passive.¹⁰⁷⁵

Integrity mechanisms (Law) – *To what extent are there mechanisms in place to ensure the integrity of all those acting in the business sector?*

There are neither sector-wide or corporate codes of conduct, nor anti-corruption codes, and obviously comprehensive regulation of conflict of interest, gifts and entertainment policies and other ethical issues is absent. At the same time, the Law on the Protection of Economic Competition prohibits as an incidence of unfair competition such activity or conduct of the business, which can create confusion over its identity, activities or product, in the sense that these features are confusingly alike to those of other, more famous company.¹⁰⁷⁶ Also, there are certain regulatory provisions on the conflict of interest regarding the management of banks. The Law on Banks and Banking Activities defines the institute of mutually connected persons (spouses, parents, children, etc.) and regulates their relationships, if they are employed in the same bank.¹⁰⁷⁷

Integrity mechanisms (Practice)

To what extent is the integrity of those working in the business sector ensured in practice?

Armenian authorities informed OECD Monitoring group that "...every company has its own policy and sets standards of conduct, including issues regarding corruption."¹⁰⁷⁸ Regarding application of those codes there is no available data. However, an indicator for the assessment of situation can be Enterprise Corruption Survey according to which "Sixty-seven percent of the respondents are ready to give a bribe when the situation presents itself".¹⁰⁷⁹

According to General Prosecutor's office's statistics for 2011, for commercial bribe were opened 7 files¹⁰⁸⁰ but to the court were sent only 3 cases involving 7 defendants.¹⁰⁸¹ According to Enterprise

¹⁰⁷⁴ *Ibid*

¹⁰⁷⁵ <http://www.armedia.am/?action=InnerLife&what=show&id=22964136&lang=arm> (Last access was made on March 19th, 2012)

¹⁰⁷⁶ Chapter 5 (Article 11-16) of the Law on Protection of Economic Competition

¹⁰⁷⁷ Article 8 of the Law on Banks and Banking Activities

¹⁰⁷⁸ OECD, Second Round of Monitoring, 2011, p. 73, available

<http://www.oecd.org/dataoecd/38/51/48964985.pdf>

¹⁰⁷⁹ Armenia Corruption Surveys of Households and Enterprises, 2009, page 2, available at

http://www.crrc.am/store/files/corruption/2009%20Armenia%20Corruption%20Survey%20of%20Households%20and%20Enterprises_Report_English.pdf (last access was made on 24.03.2012)

¹⁰⁸⁰ <http://www.genproc.am/upload/File/Korupcia%20hetaqnmutyun,%20naxaqnmutyun%202011.pdf> (last access was made on 21.03.2012)

Corruption Survey "The enterprise survey respondents were more inclined to say that corruption is a fact of life in Armenia than were the household survey respondents."¹⁰⁸² Moreover, according to Foreign Policy Center, "*High on the list of factors complicating the business environment are pervasive corruption and the presence of monopolies that distort the playing field.*"¹⁰⁸³

On ethical behavior of firms and efficacy of corporate boards, Armenia was ranked 106th and 115th, respectively.¹⁰⁸⁴ These ranks suggest that there are serious problems in those fields. Regarding trainings, one of the famous training providers is the Business Support Center, which provides trainings and its partners are highly reputable firms.¹⁰⁸⁵

According to one researcher only 3% of the companies give importance to conducting explanatory works among employees as a means of combating corruption. Moreover, 9% of the companies not only does not condemn corruption facts, but on the contrary, try to encourage the corruption, motivating that no successful business will be possible without bribes and other corruption facts.¹⁰⁸⁶

AC policy engagement (Law & practice)

To what extent is the business sector active in engaging the domestic government on anti-corruption?

As OECD Monitoring Group reports " 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. "¹⁰⁸⁷ Diaspora Armenians are more often publicly calling to tackle corruption. For example head of "Paris Coffee" Ms. Valeri-Ashken Gorcunyan sold her business and left Armenia. As a reason of leaving Armenia she mentioned also unpunished corruption.¹⁰⁸⁸ Another famous Diaspora Armenian businessman Levon Hayrapetyan also mentioned need to struggle against corruption.¹⁰⁸⁹ Another Diaspora Armenian businessman, Narek Harutyunyan against whom was opened criminal case, publicly noticed that a lot of state officials misuse their positions.¹⁰⁹⁰ As about membership to UN Global Compact, Armenia has only 14 business participants to it, from which only 7 are active.¹⁰⁹¹

¹⁰⁸¹ *Ibid*

¹⁰⁸² Armenia Corruption Surveys of Households and Enterprises, 2009, page 37

¹⁰⁸³ Spotlight on Armenia, Foreign Policy Center, 2011, page 26

¹⁰⁸⁴ http://www3.weforum.org/docs/WEF_GCR_Report_2011-12.pdf , page 101

¹⁰⁸⁵ www.bsc.am

¹⁰⁸⁶ Corporate Culture as the basis for Economic Democracy, CRRC, by Narine Melikyan, 2008-2009, page 14

¹⁰⁸⁷ OECD, Second Round of Monitoring, Monitoring Report on Armenia, September 2011, page 7

¹⁰⁸⁸ <http://www.orakarg.am/index.php/money/64-companies/682-coffe.html>

¹⁰⁸⁹ <http://hetq.am/arm/news/7149/gortsarar-levon-hayrapetyany-cankanum-e-orakyal-hexapokhutyun-tesnel-hayastanum-tesanyut.html>

¹⁰⁹⁰ <http://hetq.am/arm/news/7996/>

¹⁰⁹¹ See at www.unglobalcompact.org

Support for/engagement with civil society (Law & practice)

To what extent does the business sector engage with/provide support to civil society on its task of combating corruption?

During the last year was not reported any major business-civil society initiatives on combating corruption. As OECD monitoring group mentions, by civil society were organized activities on awareness raising on corruption in business sector. The monitoring group particularly notes: *"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."*¹⁰⁹²

Business sector is not widely engaged in sponsoring civil society. As Freedom House reports in Nations in Transit 2010 *"Support to NGOs from local businesses is scarce; however, a new fund established by businessman and head of Prosperous Armenia coalition party, Gagik Tsarukyan, supported some NGO activity in 2009."*¹⁰⁹³

Recommendations on the pillar of Business

1. To undertake respective legislative measures with the aim to ease the procedure of closing down a business
2. To ensure equal application of tax and customs legislation between oligarchs and regular businesses
3. To issue special regulations for those business which employ 100 and more employees to ensure proper inside grievance mechanisms for violations of employees' rights
4. To properly finance and staff the State Commission for the Economic Competition
5. To introduce tax benefits for supporting CSOs

¹⁰⁹²OECD, Second Round of Monitoring, Monitoring Report on Armenia, September 2011, page 72

¹⁰⁹³ Freedom House, Nations in Transit 2010, Country Report on Armenia, page 72

President

Table of Indicator Scores

President			
Overall Pillar Score:			
	Indicator	Law	Practice
Capacity 75	Resources		75
	Independence	75	75
Governance 33.3	Transparency	50	50
	Accountability	25	25
	Integrity	25	25
Role 50	Legal system		50
	Leadership on Anti-corruption		50

Structure and Organization

The institute of Presidency in Armenia was established in 1991 with the adoption of the Law on the President of the Republic of Armenia.¹⁰⁹⁴ The first presidential elections were held on October 16, 1991 and Levon Ter-Petrossyan was elected as the first President of Armenia. He was reelected on September 1996 presidential elections. On March 1998 after his resignation on February 3, 1998 extra-ordinary presidential elections were held and Robert Kocharyan was elected as the President. He was reelected on February 2003. Finally, on February 2008 Serzh Sargsyan, the current President was elected. It should be mentioned that except the first presidential elections in 1991, all following elections were disputed by other presidential candidates and there is a widespread perception among the public that their results were rigged.

Initially (by the mentioned above 1991 Law), the President was considered as the head of the executive. However, later, with the adoption of the 1995 Constitution this provision was removed and the President is declared as the head of the state, and he/she shall oversee the preservation of the Constitution and ensures the normal functioning of the legislative, executive and judicial branches of the government.¹⁰⁹⁵

¹⁰⁹⁴ *Bulletin of the Supreme Council of the Republic of Armenia 1991/15* The Law was adopted on August 1, 1991 and lost its effect on November 28, 2006

¹⁰⁹⁵ Article 49 of the Constitution

This formulation is characteristic of states with semi-presidential system of constitutional order, notably France.

The President is elected for 5 years term and the same person cannot be elected more than two consecutive times.¹⁰⁹⁶ By the same Article of the Constitution only those persons are eligible to be elected who are above 35 years old, are citizens of the Republic of Armenia and reside permanently in Armenia at least 10 years prior to elections and have right to vote. The candidate for the Presidency shall gain more than half of the votes of those, who participated in the elections.¹⁰⁹⁷ The implication of this provision is that, if there are more than two candidates running for the office, it is possible the second round of elections, if none of the candidates receives more than half of the votes at the first round.¹⁰⁹⁸ Presidential elections are not held under the state of emergency or martial law.¹⁰⁹⁹ The relations of the President with the three branches of the government are reflected in Article 55 of the Constitution, which defines the President's powers. Among these powers are:

- Promulgation (signing) or vetoing the laws passed by the National Assembly (NA);
- Dissolution of NA in the cases and in a manner prescribed by Article 74.1 of the Constitution;
- Appointment of the Prime Minister and members of the Government;
- Appointment of other states officials in the cases prescribed by law;
- Establishment and chairing of the National Security Council;
- Representation of Armenia in foreign relations, overall management of the foreign policy, signing of international conventions and treaties;
- Appointment and dismissal of ambassadors and acceptance of credentials of foreign ambassadors to Armenia;
- Nomination of the candidacies of the Prosecutor General, Chair of the Central Bank and Chair of the Chamber of Control for their appointment by NA;
- Appointment and dismissal of the four (out of 9) members of the Constitutional Court;
- Appointment of the deputies of the Prosecutor General;
- Appointment and dismissal of all judges of all courts upon their nomination by the Council of Justice;
- Appointment of two scientists in law as members of the Council of Justice;
- Commander-in-Chief of the military forces and appointment of all highest military officers;
- Declaration of martial law and total or partial mobilization;
- Declaration of the state of emergency; etc.

¹⁰⁹⁶ *Ibid.*, Article 50

¹⁰⁹⁷ *Ibid.*, Article 51

¹⁰⁹⁸ This happened during 1998 and 2003 presidential elections.

¹⁰⁹⁹ Article 53.1 of the Constitution

A more detailed analysis of the relationships between the President and other state institutions is contained in the discussions on the NIS indicators on this, as well as other relevant pillars.

The President is empowered to issue decrees and instructions, which shall not contradict the Constitution and laws of Armenia.¹¹⁰⁰ He/she enjoys immunity throughout the whole period of his/her term in office and after that for those actions that he/she took stemming from his/her status (see more in detail below).¹¹⁰¹ At the same time, by the same Article of the Constitution, he/she can be held liable for his/her actions not stemming from his/her status.

Article 57 of the Constitution provides that the President can be impeached for high treason or other grave crimes and it lays down also the mechanism of the impeachment. The President also has the right to resign, which is guaranteed by Article 58 of the Constitution, which also provides the procedure of resignation. Finally, the Constitution provides also the mechanism of declaring the President incapable to carrying out his/her functions in the case of serious illness or other insurmountable obstacles, which make impossible the President to carry out his/her functions for a lengthy period of time.¹¹⁰² If the office of the President remains temporarily vacant for the above mentioned reasons, then until the new President will assume the office, the Speaker of NA or, if it is impossible for the Speaker to do so, the Prime Minister temporarily becomes Acting President.¹¹⁰³ However, by the same Article of the Constitution, the Acting President does not have some of the above mentioned powers of the President. In particular, he/she cannot appoint Prime Minister, highest military officers (except under martial law), highest Police and National Security Service officers, as well as dissolve NA, call parliamentary elections, appoint ambassadors, etc.

According to Constitution, the President forms his staff in a manner prescribed by law.¹¹⁰⁴ Though in the mentioned Article it is written "... in a manner prescribed by law", in reality the charter and structure of the Staff of the President are defined not by the law adopted by NA, but rather by the August 17, 2007 Decree NH-193-N of the President.¹¹⁰⁵ The Decree defines the functions to be performed by the Staff and its structural units.

Finally, the same Article 61 of the Constitution provides that the remuneration, service and protection of the President shall be defined by Law. The Law on the Remuneration, Service and Protection of the President¹¹⁰⁶ regulates the mentioned issues.

¹¹⁰⁰*Ibid.*, Article 56

¹¹⁰¹*Ibid.*, Article 56.1

¹¹⁰²*Ibid.*, Article 59

¹¹⁰³*Ibid.*, Article 60 If the NA Speaker becomes Acting President, then the one of his/her two deputies, who was elected with larger number of votes becomes Acting Speaker of NA.

¹¹⁰⁴*Ibid.*, Article 61

¹¹⁰⁵*RA Official Bulletin 2007/43(567), 29.08.07*

¹¹⁰⁶*Bulletin of the RA National Assembly 1996/5-6*

Assessment

Capacity

Resources (Practice)

To what extent does the President have adequate resources to effectively carry out his duties?

The Staff of the President traditionally considered as the assembly point of best specialists, among state bodies. The Chief of the Staff is Mr. Vigen Sargsyan who is one of early Armenian graduates of Fletcher School of Law and Diplomacy since the independence of Armenia.¹¹⁰⁷ For 2012, the staff of the President will be composed from 362 positions.¹¹⁰⁸ This number presents an increase of 6 positions, which is conditioned by the operation of Ethics Commission of High Level officials. The fund for the wages for 2012 is 586,701,500 AMD, while for 2011 it was 470,509,100 AMD. The overall budget for the Staff of the President for 2012 is 2,890,022.7 AMD, while in 2011 it was 2326674.3

Independence (Law)

To what extent is the President independent by law?

While discussing the independence of the Presidency, one should focus on two aspects, which relate to the independence:

- a) immunity, as the guarantee of acting without restrictions (based on his/her inner conviction and political priorities), hence, guarantee of independence; and,
- b) institutional independence

The immunity of the President is guaranteed by the Constitution, which explicitly states that “The President shall enjoy immunity.”¹¹⁰⁹ The same Article provides that during his/her term in office he/she cannot be prosecuted for the actions stemmed from his/her status, but can be held liable for the actions not stemming from his/her status, though only after the end of his/her term.

¹¹⁰⁷ See at <http://president.am/administration/structure/eng/> (last access was made on 22.03.2012)

¹¹⁰⁸ Here and after please see

<http://www.emedia.am/arm/article/7478/%D4%B2%D5%B5%D5%B8%D6%82%D5%BB%D5%A5%D5%B8%D5%BE%20%D5%80%D5%80%20%D5%B6%D5%A1%D5%AD%D5%A1%D5%A3%D5%A1%D5%B0%D5%AB%20%D5%A1%D5%B7%D5%AD%D5%A1%D5%BF%D5%A1%D5%AF%D5%A1%D5%A6%D5%B4%D5%AB%D5%B6%20311%D5%B4%D5%AC%D5%B6%20%D5%A4%D6%80%D5%A1%D5%B4%20%D5%BA%D5%A1%D5%AF%D5%A1%D5%BD%20%D5%AF%D5%B0%D5%A1%D5%BF%D5%AF%D5%A1%D6%81%D5%BE%D5%AB> (last access was made on 21.03.2012)

¹¹⁰⁹ Article 56.1 of the Constitution This Article was introduced in 2005 as a result of November 27, 2005 referendum on the changes and amendments to the Constitution.

Regarding the institutional independence, firstly it should be noted that the Constitution does not contain any explicit provision that declares the independence of the President. Moreover, neither the Constitution, nor other legal acts contain such legal norms, which could reveal the components of the independence of the President.

Indirectly, the institutional independence of the President is defined by the extent of interference of other branches of the government and/or other state bodies in the decision-making of the President. There are two cases defined by the Constitution, when other branches of the government are empowered to interfere into the decision-making of the President, though one can also argue the opposite in the sense that in these cases the President encroaches the decision-making of those branches of the government.¹¹¹⁰ The first case is connected with the role of the President in the conduct of the country's foreign policy. According to Article 55 of the Constitution, the President shall perform the general guidance of the country's foreign policy, which implies empowering him/her with decision-making power in that area. At the same time, Article 85 of the Constitution provides that the Government shall develop and implement the foreign policy of Armenia together with the President (see also on this issue in the chapter on the *Executive* pillar). The other similar case is connected with the President's powers to declare martial law (in the case of military aggression or direct threat of it or declaration of war)¹¹¹¹ and state of emergency (in the case of direct threat to the constitutional order in the country)¹¹¹². By empowering the President with these powers, the Constitution, at the same time, provides that the Armenian Parliament, National Assembly (NA) can terminate the implementation of the measures foreseen by the relevant points of Article 55 (Points 13 and 14) of the Constitution.

Independence (Practice)

To what extent is the President independent in practice?

As was mentioned in previous chapters (Legislature and Executive), the President in practice is the strongest figure under the current scheme of Armenian domestic politics. The President is the head of ruling Republican Party and the coalition government is headed by the Republican Prime Minister and in National Assembly the party of the President has majority. Absolutely no sign of unduly interference was recorded during past 2 years. In addition, as was noted in previous chapters, the President is the one who is head of the ruling elite in Armenia. As Bertelsman Transformation Index reports " *The lack of any effective "checks and balances" or a separation of powers remains the most serious impediment to*

¹¹¹⁰ Actually, such situation can be interpreted not as interference of one branch of government into the decision-making of another one, but rather than application of the checks and balances mechanism between the branches of government in the semi-presidential systems of government, among which is also the Armenian government.

¹¹¹¹ Point 13 of Article 55 of the Constitution

¹¹¹² *Ibid.*, Point 14 of Article 55

Armenia's democratic transformation."¹¹¹³ Regarding the independence of the President one of the experts writes: "The office of the president has in a certain sense taken over the role formerly played by the Communist Party. Despite the restrictions on presidential authority that resulted from the 2005 constitutional reforms, the head of state still retains the right to have a final say on almost all important matters of the country."¹¹¹⁴ Thus, President in practice enjoys almost absolute independence.

Governance

Transparency (Law) – *To what extent are there legal provisions in place to ensure transparency in relevant activities of the President?*

The legal relationships on receiving and publicizing information by the Staff of the President are regulated by the Law on Freedom of Information, like in the case of other state institutions. The mentioned Law, as well as the legal acts that regulate the activities of the Staff of the President,¹¹¹⁵ do not contain explicit provisions requiring the minutes of the meetings of the President with public officials, political party leaders or foreign official delegations. At the same time, according to the Charter of the Staff of the President¹¹¹⁶, among the duties of the Administration of Public Relations and Relations with Media of the Staff are: a) coverage of the activities of the President and Staff; b) preparation of press releases on the activities of the President and Staff; and, c) organization and maintenance of the President's web-site in Internet (www.president.am). These provisions ensure a certain degree of transparency of the institute of presidency.

The situation is rather interesting regarding publication of the budget of the Staff of the President. From one hand, according to the Point 3 of the Article 7 of the Law on the Freedom of Information, the body, possessing information (and the Staff of the President qualifies as such, according to Article 3 of the same Law) shall, at least once a year, publish, among other data, also its budget. Moreover, Point 5 of the same Article stipulates that the mentioned in Point 3 information, including the budget, shall be published in a form, intelligible for the public, and, if the mentioned above body has its web-site, it shall be posted on that web-site. However, from the other hand, Point 6 of the same Article of the mentioned Law provides that the organizations having public significance (Article 3 of the Law defines which are these organizations), as well as organizations receiving funding from the state budget, can decide not to publish information on their budget, payroll list with personal data of their employees, and procedures of

¹¹¹³ See for example <http://www.bertelsmann-transformation-index.de/en/bti/country-reports/laendergutachten/cis-and-mongolia/armenia/> (last access was made on 10.02.2012)

¹¹¹⁴ South Caucasus-20 Years of Independence, Friedrich-Ebert-Stiftung, 2011: "Politics and Governance in Armenia: The Prospects for Democracy" (written by Boris Navasardyan), page 96

¹¹¹⁵ The most notable among such acts is the Decree NH-193-N of the President of RA from August 17, 2007 on the Approval of the Charter and Structure of the Staff of RA President.

¹¹¹⁶ Point 40 of the Charter of the Staff of RA President

hiring together with job announcements.¹¹¹⁷ As, according to the Charter of the Staff of the President,¹¹¹⁸ the Staff has status of state organization, and it receives its whole funding from the state budget¹¹¹⁹, the above mentioned provision of the Point 6 of Article 7 applies to the Staff. Thus, the Staff is not obliged to publish its budget.

According to the Law on Public Service, President as high-ranking official, as well as his close relatives, is required to declare their income and assets, and these declarations shall be submitted to the Ethics Commission for High Level Public Officials of High-Ranking Public Officials.¹¹²⁰ For more detail see the discussion on the relevant indicator of the *Legislature* pillar.

Transparency (Practice)

To what extent is there transparency in relevant activities of the President in practice?

The President's home-page is available in 3 languages: Armenian, English and Russian.¹¹²¹ In 2011 the Committee to Protect Freedom of Expression conducted monitoring of official websites of state authorities, in order to assess their level of information transparency.¹¹²² The monitoring was conducted in two stages. The first stage was from February 1 to April 30. The second stage took place from July 1 to October 15.¹¹²³ During the first stage the website of the President was given 33.03 % while during the second stage the percentage was decreased to 32.5 %.¹¹²⁴ According to experts, such decrease was conditioned with not publishing news and/or documents in speedy manner and sometimes the information was not comprehensive.¹¹²⁵ Information on expenditures of the budget is not accessible at the website of President.¹¹²⁶ Meetings minutes, as such, are not public but the website provides information on meetings of the President and the topics of discussions. Declarations of high level officials were already discussed in previous chapters. However, the President's declaration was not made public for 2011. The leading NGO in the sector of Freedom of Information, Freedom of Information Center, has conducted monitoring of Freedom of Information. However, President's office (Staff of the President) as appeared from the monitoring report was not included in the monitoring.¹¹²⁷ However, the web project "Give me information" provides limited information on the issue.¹¹²⁸ According to this

¹¹¹⁷ The mentioned data are among those data, which are defined for publication by Point 3 of Article 7 of the Law.

¹¹¹⁸ Point 1 of the Charter of the Staff of RA President

¹¹¹⁹ *Ibid.*, Point 53

¹¹²⁰ Article 32 of the Law on Public Service

¹¹²¹ See www.president.am

¹¹²² Accessibility of Information of the Armenian State Authorities, Annual Report, 2011. Available at <http://khosq.am/en/2011/12/2482> (last access was made on 22.03.2012)

¹¹²³ *Ibid*

¹¹²⁴ *Ibid*, page 26

¹¹²⁵ *Ibid*

¹¹²⁶ *Ibid*

¹¹²⁷ Freedom of Information in Armenia, Monitoring 2011, Freedom of Information Center. The Armenian version of the report is available at http://www.foi.am/u_files/file/Arm_monitoring.pdf (last access was made on 22.03.2012)

¹¹²⁸ See at <http://www.givemeinfo.am/en/> (last access was made on 22.03.2012)

project, in June of 2010, the Freedom of Information Center submitted one request and received full and timely response.¹¹²⁹

Accountability (Law) –*To what extent are there provisions in place to ensure that President has to report and be answerable for his actions?*

The only provision in the Constitution that allows oversight over the President is that among the powers of the Constitutional Court is to decide the compliance of the decrees of the President to the Constitution.¹¹³⁰ The Constitution provides that at least one fifth of NA members, RA Government, Ombudsman (only on the compliance to the Section 2 of the Constitution, which is related to human rights) and local self-administration bodies can appeal to the Constitutional Court to challenge the constitutionality of the presidential decrees.¹¹³¹ In addition, the citizens can appeal to the Administrative Court¹¹³² to challenge the compliance of the legal acts of the President to the legal acts of higher legal capacity.¹¹³³

Though the Law on the Chamber of Control does not explicitly mention that the Staff of the President should be audited, it can be audited because of its status as state institution.¹¹³⁴

There is no legal act, which would oblige the President to give reasons for his activities to public or state bodies. He also is not legally obliged to submit reports to anyone. The only case when the President shall appeal with message to people is when he declares state of emergency because of a direct threat to the constitutional order in the country.¹¹³⁵

The Constitution stipulates that in two cases the President shall consult with public officials or special groups. Both cases are defined in Article 55 of the Constitution. The first case relates to the appointment of the Prime Minister, when the President shall consult with the factions represented in NA to make decision on the appointment. There are no legal requirements for the President to consult with public.¹¹³⁶ In the second case, the President shall consult with NA Speaker and Prime Minister, before declaring state of emergency.¹¹³⁷

¹¹²⁹ See at <http://www.givemeinfo.am/en/entity/134/> (last access was made on 22.03.2012)

¹¹³⁰ Article 100 of the Constitution

¹¹³¹ *Ibid.*, Article 101

¹¹³² Article 135 of the Administrative Procedure Code

¹¹³³ The hierarchy of legal acts is defined by the Law on Legal Acts (Chapter 2 of the Law, which includes Articles 8 to 25).

¹¹³⁴ Articles 5 and 6 of the Law on the Chamber of Control

¹¹³⁵ Point 14 of Article 55 of the Constitution

¹¹³⁶ Point 4 of Article 55 of the Constitution

¹¹³⁷ Point 14 of Article 55 of the Constitution

The Constitution declares the immunity of the President (see more on this in the discussion on *Independence* indicator) and due to that, it is almost impossible to hold him accountable for wrongdoing during the term of his office.¹¹³⁸ The only type of wrongdoing, which, though through a rather long and difficult procedure, can bring the President to a punishment, is the high treason or other grave crime.¹¹³⁹ In this case, the President can be impeached by NA (see more on this in the report on the *Legislature* pillar).

Accountability (Practice)

To what extent is there effective oversight of President's activities in practice?

As was discussed in law section, the President is virtually out of any control from other branches of the government. Under the Constitution, the office of the President is considered as a guarantor of the normal operation of 3 branches of the government. The President does not have obligation to conduct public consultations. As was already discussed, the President has the right to deliver addresses to National Assembly and people. However, the content of those addresses is not stipulated under the Constitution. However and regardless of absence of any duty to conduct public consultations, in July of 2011 started dialogue between Armenian National Congress (extra parliamentary opposition) and coalition government, for which was formed the working group.¹¹⁴⁰ There is no reporting requirement for the President under the Constitution.

Regarding sanctions and prosecutions, since the independence of Armenia none of 3 Presidents were held liable and impeachment procedure were never initiated against 3 Presidents. The only incident indirectly connected with the issue, occurred in March 2008, when the contestant of Presidential Elections and first President of Armenia Mr. Levon Ter-Petrosyan was put under de facto domestic arrest.¹¹⁴¹ Also, as was already mentioned, the President remains the most influential political figure in political scheme of Armenia, and an expert points out " *the head of state still retains the right to have a final say on almost all important matters of the country*".¹¹⁴² On audits, the checking of the Control Chamber of Armenia had not revealed that since 2010 was conducted any activity by the latter pertaining to the financial operations in the Staff of the President. However, in December of 2010, the chief accountant of the Staff of the President Mrs. Anahit Zakaryan was fired due to financial irregularities.

¹¹³⁸ However, according to Article 56.1 of the Constitution, which declares the immunity of the President, he can be held accountable for wrongdoing committed during his term, but only after the end of his term.

¹¹³⁹ Article 57 of the Constitution However, it should be mentioned that it remains unclear what other crimes are understood under "...other grave crimes".

¹¹⁴⁰ http://www.europeanforum.net/news/1203/armenian_government_prepared_to_talk_with_opposition_coalition (last access was made on 22.03.2012)

¹¹⁴¹ Parliamentary Assembly of Council of Europe, Ad hoc Committee of the Bureau of the Assembly, Observation of the Presidential Election in Armenia (19 February 2008), Doc. 11564, Rapporteur: Mr. John Prescott, United Kingdom, Socialist Group. Point 67. Available at <http://assembly.coe.int/main.asp?Link=/documents/workingdocs/doc08/edoc11564.htm> (last access was made on 22.03.2012)

¹¹⁴² South Caucasus-20 Years of Independence, Friedrich-Ebert-Stiftung, 2011: "Politics and Governance in Armenia: The Prospects for Democracy" (written by Boris Navasardyan), page 96

¹¹⁴³ The same agency reports that accountancy of the Staff of the President was never checked by Chamber of Control and Control Service of Ministry of Finance.

Integrity (Law) – *To what extent are there mechanisms in place to ensure the integrity of the President?*

According to Article 5 of the Law on Public Service, the President is high-ranking public official, and all regulations on ethics, acceptance of gifts and conflict of interest, as well as limitations on their activities are applicable to him, as well (see, for example, the discussion on these issues in the report on the *Executive* pillar).

As high-ranking public official, President, as well as his close relatives, is required to declare income and assets, as required by the Law on Public Service.¹¹⁴⁴ For more detail see the discussion on the relevant indicator of the *Legislature* pillar. The problem here is that the President is the one, who appoints all 5 members of the Ethics Commission for High Level Public Officials of High-Ranking Public Officials¹¹⁴⁵ and it is difficult to perceive that the Commission will verify these declarations.

Integrity (practice)

To what extent is the integrity of President ensured in practice?

As was noted above, President Sargsyan is the head of the ruling Republican Party. This situation, when under the Constitution the mandate of the President is to ensure the proper performance of 3 branches of the government, can have influence on proper implementation President's mandate in Armenia. The peculiarity of Armenia's governance system make the post of the President independent arbiter and holding post of the President of the ruling party greatly endangers safeguards stipulated under the Constitution.

Until November 2011, President's son-in-law Mr. Mikayel Minasyan was holding the position of First Deputy Chief of Staff of the President¹¹⁴⁶ and just recently he was enrolled in Campaign Staff of the Republican Party.¹¹⁴⁷ Regarding whistleblowers protection in the staff of the President, was not recorded any such accident during the last year.

Role

¹¹⁴³ See at <http://www.newsarmenia.am/arm1/20101209/42357776.html> (last access was made on 24.03.2012)

¹¹⁴⁴ Article 32 of the Law on Public Service

¹¹⁴⁵ Article 38 of the Law on Public Service

¹¹⁴⁶ <http://www.panarmenian.net/arm/news/82823/> (last access was made on 21.03.2012)

¹¹⁴⁷ <http://www.azatutyun.am/content/article/24510619.html> (last access was made on 21.03.2012)

Legal system (law and practice)

To what extent does the President prioritize public accountability and the fight against corruption as a concern in the country?

President Sargsyan always put accent on struggle against corruption when he delivers speeches. During the 13th Republican Convention he delivered a long speech and where he mentioned: *"We must defeat tumor which overwhelmed our society and which is called corruption. Toward that end both surgical and all other legal measures will be applied. It is not difficult to see that the mentioned goals, including Armenia's economic development, are closely interrelated. They are extensions and in the end of the day they are different facets of the same goal. Much has already been done and is being done on that path; however we haven't reached the desirable level yet. An historic opportunity to create Armenia's new appearance and image is in our hands, literally in the hands of each of us. And we will do it."*¹¹⁴⁸

Perhaps the most important statement on fight against corruption, President Sargsyan delivered on the occasion of the 20th anniversary of the Republican Party: *"Dear Party Members, Today, corruption and bribery are the gravest impediments to our progress. Their cause and roots can be talked about for hours, but today the task before us is to eliminate them. There are former Soviet republics which have been able to uproot that problem. Not entirely, of course, but bribery and corruption have been brought to such a minimal level that the people started to trust the "chinovniks", the police, and the judges. It's not a fiction, it's a reality, and it is our tomorrow's reality. We have to bring that tomorrow closer by employing all our abilities. We are proud of our law abiding compatriots residing in foreign countries. I am confident that very soon we will be proud of the respect that our fellow citizens have for the law. Our citizens respect the law when it works for everyone. State structures must ensure equality of all before the law and inescapable punishment for breaking the law. We must do it. Yes, it's not going to be easy, but good things do not come easy in this world."*¹¹⁴⁹

Leadership on Anti-corruption (Law and practice) – *To what extent does the President prioritize public accountability and the fight against corruption as a concern in the country?*

By law, the Oversight Service of the RA President is not directly involved in investigation of corruption cases, as the Criminal Procedure Code clearly defines which bodies can carry out investigation¹¹⁵⁰, and which – preliminary investigation¹¹⁵¹, and the Service is not enlisted in the list of those bodies.

Recommendations on the pillar of President

¹¹⁴⁸ See at <http://president.am/events/statements/eng/?id=123> (last access was made on 24.03.2012)

¹¹⁴⁹ See at <http://www.president.am/events/statements/eng/?year=2010&id=81> (last access was made on 24.03.2012)

¹¹⁵⁰ Article 189 of the Criminal Procedure Code

¹¹⁵¹ Article 56 of the Criminal Procedure Code

1. To undertake respective constitutional changes with an aim to secure for the President the role of impartial arbiter between 3 branches of the government. In this regard, it is essential that President be banned to represent any political party in the country.
2. To undertake measures for securing the transparency and accountability of the Oversight Service of the President.
3. As was noted in the relevant recommendations on the Judiciary, to deprive President from the right to confirm the list of judges with those candidates who are acceptable for him.

Local Self-Administration Bodies

Table of Indicator Scores

Summary

Local self-administration system of Armenia is one of the most important pillars of the Armenian National Integrity System. The assessment of this institution reveals a pattern, which is common for most of the Armenian pillars related directly to public sector. Namely, generally satisfactory level of legal regulation lacks the same quality of implementation, which points to the fact that the institutional development is still far from completion in Armenia.

In the case of local self-administration bodies, some problems in legislation, mainly connected with the absence of mechanisms of implementation of legal provisions in the secondary legislation, create loopholes for the municipal officials and community heads and council members to limit the independence, transparency, accountability and integrity of the system. The analysis of practice reveals that these loopholes are, unfortunately, frequently abused by the above mentioned public officials. Poor performance in practice is mainly result of existing political system in Armenia, which is labeled as authoritarian and partly free by most of the analysts and international organizations. Widespread and endemic corruption also contributes to these low scores in the practice. Another reason for the under-performance in practice is the lack of resources possessed by the communities. Low salaries distract qualified and well educated individuals to work in this area. Limited tax base and consistent reluctance of central government to allocate part of the collected income and profit taxes to the communities as is required by law, further disempower the community and make it dependent on the subsidies received from state budget.

Local Self-Administration Bodies			
Overall Pillar Score: 52.8			
	Indicator	Law	Practice
Capacity 50	Resources	75	25
	Independence	75	25
Governance 58.3	Transparency	75	50
	Accountability	50	50
	Integrity	75	50
Role 50	Public Sector Governance	50	

Structure and Organization

The current local self-administration system of Armenia was established by the adoption of the first Constitution of independent Armenia in 1995 and was introduced after the November 10, 1996 local self-government elections. Armenian local self-government system is a single-level self-administration system with only one self-governing unit – community. The community is a territorial-administrative unit, which includes one or more settlements (villages or towns). It has a status of legal person and possesses with property rights.

The local self-administration body of the community is comprised of community council and community head, who are elected through secret vote based on the universal, equal and direct electoral right. The only exception is Yerevan, the capital city of Armenia, where only the members of the City Council are popularly elected, and the Council then elects from its members the Mayor of City.¹¹⁵² The elections of the community council and community head are held every four years. The electoral system is majoritarian, except for Yerevan, where the proportional list system is in effect.

Currently there are 915 communities in Armenia, from which 49 are urban, and 866 – rural. According to statistical data, by January 1, 2010, the average size of the population of one community was 3,552¹¹⁵³ and the average size of its territory was 20 km².¹¹⁵⁴ Almost half of the Armenian communities have population, less than 1,000 people and many of them are small communities with weak capacities, unable to render service to their residents.¹¹⁵⁵

Inter-community cooperation is still underdeveloped in Armenia. Though the Constitution explicitly allows creation and functioning of inter-community associations, there are still no such associations, which could render services to weak communities, lacking resources. By January 1, 2009, 411 communities, or 44.4% of all communities were involved in 23 regional community unions.¹¹⁵⁶ However, even these unions are not active in protecting the rights of the communities. The only positive and sustainable examples of inter-community cooperation are the structures created by some communities for the purpose of running data bases for their property and land taxes and empowered to collecting these taxes.

¹¹⁵² After the introduction of changes and amendments to the Armenian Constitution, passed through November 27, 2005 referendum, Yerevan became community (before it had status equivalent to province (Marz), which is a territorially administered unit). The local self-administration bodies of Yerevan were formed after May 31, 2009 elections of the Yerevan Council.

¹¹⁵³ Social-Economic Situation of Armenia during January – December 2009 on the Internet site of the Armenian National Service of Statistics - www.armstat.am

¹¹⁵⁴ *Local Self-Government Reforms in Armenia (2004- 2006) Book 2* Edited by D. Tumanyan, PhD in Economics, Yerevan, Noyan Tapan 2009, pp. 32 and 164

¹¹⁵⁵ *Local Self-Government Reforms in Armenia (2007 and 2008) Book 3* Edited by D. Tumanyan, PhD in Economics, Yerevan, Noyan Tapan 2008, pp. 80 and 213

¹¹⁵⁶ *Local Self-Government Reforms in Armenia (2007 and 2008) Book 3* Edited by D. Tumanyan, PhD in Economics, Yerevan, Noyan Tapan 2009, p. 80

Assessment

Capacity

Resources (Law)

To what extent does the legislation on LSG provide the local self-administration (LSA) bodies with adequate resources to effectively perform their functions?

The Constitution of the Republic of Armenia¹¹⁵⁷ and the Law on Local Self-Administration¹¹⁵⁸ provide the communities with such sources of revenues, which would enable the communities to execute their powers. Also, the execution of powers delegated to the communities is funded from the state budget.¹¹⁵⁹

According to the Law on Self-Administration the community budget is formed through the revenues stipulated by laws and other legal acts and these revenue sources include land tax, property tax, hotel tax, tax for parking of transportation means, allocations from income tax, allocations from profit tax and allocations from environmental fees.¹¹⁶⁰ The tax base of the community consists of land and property owned by the community. Armenian Constitution also provides that the land confined within the administrative limits of the community, except the land needed for state needs and the land owned by physical and legal persons, is the property of the community.¹¹⁶¹ The property owned by the state and located inside the community should be transferred to the community.¹¹⁶²

The sizes of allocations from income and profit taxes and environmental fees (in % from total volumes of these revenue sources) are defined each year by the Law on State Budget for that year, which according to experts on the local self-administration, is a serious deficiency. The sizes of allocations, he claims, should be defined and fixed by the Law on Self-Administration. At the same time, each year the Law on State Budget sets the percentage point for these allocations equal to 0 (no allocation). The Law on Self-Administration also provides granting subsidies of financially weak communities from the state budget based on the principle of equalization.¹¹⁶³ Here also there are problems. According to the Armenian Law on Financial Equalization based on which the sizes of subsidies are calculated, the amount of subsidies among others depends from the size of the community population, which not always reflects the economic strength of the community. Another parameter is the fiscal capacity of the community, which does not take into account its actual needs.

¹¹⁵⁷ Article 106 of the Constitution

¹¹⁵⁸ Article 9 of the Law on Local Self-Administration

¹¹⁵⁹ *Ibid.*, Article 10

¹¹⁶⁰ *Ibid.*, Article 57

¹¹⁶¹ Article 105.1 of the Constitution

¹¹⁶² Article 49 of the Law on Local Self-Administration

¹¹⁶³ *Ibid.*, Articles 9 and 58

Resources (Practice)

To what extent, in practice, do the local self-administration (LSA) bodies have adequate resources to effectively perform their functions?

Almost half of 915 communities of Armenia have population less than 1,000 people.¹¹⁶⁴ These small communities have the problem to fill their local staff with qualified employees and their staff lacks employees with relevant education and qualification. By the end of 2008 out of 6688 positions in the municipal service, actually, only 5502 were filled.¹¹⁶⁵

The financial resources of the communities are extremely limited.¹¹⁶⁶ They are not sufficient for LSA bodies to executing their powers prescribed by law. It should be also noted that all LSA bodies in Armenia regardless their size have the same powers, and small communities cannot provide most of the services to their population, which they should according to the law. For example, by 11.11.2009 213 communities were in arrears to their municipality employees,¹¹⁶⁷ and these arrears have been accumulated during several years. According to law, payment of salary is attached highest priority and accumulation of arrears, as well as extremely small budgets of these communities mean that these communities do not render services to their residents.

As it has been already mentioned, in 2008 the total factual expenses of all community budgets in Armenia were only 841.33 bln Armenian Drams (2.157 bln. USD) and these are extremely low numbers. Similar problems exist also with community property. They are inadequate in their numbers, and most part of them was worn out and needs repair. Finally, most of the communities has deteriorated infrastructure.

Independence (Law)

To what extent are the LSA bodies independent?

According to the Armenian Law on Local Self-Administration among the principles of local self-administration are their autonomy and responsibility in performing their functions, as well as protection of the rights, legitimate interests and property of the community by means prescribed by law.¹¹⁶⁸ The mentioned Law explicitly provides that LSA bodies are not part of national government.¹¹⁶⁹ Armenian Constitution provides that the LSA elections should be conducted on the basis of universal, equal, direct

¹¹⁶⁴ Local Self-Government Reforms in Armenia (2004-2006) Book 2, Yerevan 2008, page 40

¹¹⁶⁵ Information obtained from the Armenian Ministry of Territorial Administration

¹¹⁶⁶ Local Self-Government Reforms in Armenia (2007 and 2008) Book 3, Yerevan 2009, pp. 96, 134-136

¹¹⁶⁷ See www.mta.gov.am (Internet site of the Armenian Ministry of Territorial Administration)

¹¹⁶⁸ *Ibid.*, Article 9

¹¹⁶⁹ *Ibid.*, Article 70

voting rights through secret ballot.¹¹⁷⁰ Also, the service in the municipal bodies is regulated by a separate law – Law on Municipal Service. Finally, there are no provisions limiting the independence of LSA bodies in adopting their decisions.

However, on September 30, 2008 Armenian National Assembly (Parliament) amended the Law on Municipal Service, as a result of which, a new provision was introduced in the law, which, in the opinion of the independent expert, endangers the independence of LSA bodies. According to that provision, the list of the municipal service positions of the Staff of the Community Head, as well as the list of the municipal service positions for each group and sub-group of municipal service positions should be confirmed by the state body authorized by the Armenian Government. This means that the power of the community council has been transferred to the central government. Another limitation of the independence of the LSA bodies is the constitutional provision, according to which, Armenian Government, in the cases prescribed by law, can dismiss the head of the community (elected by the community population) based on the decision of the Armenian Constitutional Court.

Independence (Practice)

To what extent are LSA bodies independent in practice?

In practice LSA bodies have little independence. Central government, especially its territorial administration bodies (offices of province governors), frequently irrelevantly intervene into the affairs of LSA bodies.¹¹⁷¹ The governors of provinces (marzpets) simply instruct orders to the community heads.¹¹⁷² The budgets of many communities are developed not by the community councils, but rather the corresponding departments of the offices of the governors (marzpetarans). As a result, relationships between the provincial administrations and LSA bodies are those of supervisor (provincial administration) – subordinate (LSA bodies). The main reasons for this are the insufficient financial, technical and human resources possessed by the communities.¹¹⁷³ In practice, the level of separation between LSA bodies and local organizations of parties of ruling coalition is low. In those communities, where the head of the community is a member of a party from the ruling coalition, he/she simultaneously is the head of the local party organization. Among such examples are towns of Vedi and Berd, and Paravaqar, Nerqin Karmir Aghbyur and Movses villages.

Governance

Transparency (Law)

To what extent are the provisions in place to ensure the transparency of the activities of LSA bodies?

¹¹⁷⁰ Article 4 of the Constitution

¹¹⁷¹ Report on Monitoring of the Democratic reforms in Armenia, 2007-08 on www.ypc.am (Internet site of the Yerevan Press Club), p.36

¹¹⁷² *Ibid.*,

¹¹⁷³ Local Self-Government Reforms in Armenia (2007 and 2008) Book 3, Yerevan 2009, pp. 96, 135-137

The principles of openness and transparency of LSA bodies' activities is prescribed by the Law on Local Self-Administration.¹¹⁷⁴ Article 9 of the mentioned Law defines the principles of the local self-administration, and among those principles are also transparency and openness of the local self-administration bodies.

According to the Armenian Law on Legal Acts, the normative legal acts of the LSA bodies should be officially published, and individual legal acts can be published by the community heads.¹¹⁷⁵ LSA bodies are required to publish legal acts adopted by community heads in the 'Bulletin of Community Legal Acts' or to post them on special notice boards (prepared for that purpose and located in different places of the community), which (if adhered to) could provide information to a wide proportion of the community.¹¹⁷⁶ However, the law does not provide all necessary mechanisms to ensure the implementation of these mechanisms. In particular, there is no provision in law for the creation of a comprehensive information system for LSA bodies.

Publication of the community development program and community budget is required as well the annual report on the execution of the budget shall be published at the www.azdarar.am website.¹¹⁷⁷

According to the Law on Public Service, Mayor of Yerevan and his deputies, as well as mayors of towns with population exceeding 50,000 inhabitants as of January 1 of the year preceding the year of the submission of the declaration¹¹⁷⁸, are high-ranking officials¹¹⁷⁹, and, thus, they, as well as their close relatives are required to declare their income and property, and these declarations shall be submitted to the Ethics Commission for High Level Public Officials of High-Ranking Public Officials. Their income and assets disclosure is regulated by the same Law on Public Service and in the same way, as for other high ranking public officials. For more detail see the discussion on the *Legislature* pillar.

The meetings of the community council are open to public.¹¹⁸⁰ Citizens and representatives of media have the right to freely attend these meetings. In some cases, by the decision passed by two third of the council members attending the meeting, the meeting can be close meeting.¹¹⁸¹ Citizens can obtain information on the activities of LSA bodies by exercising their right to be informed, according to the

¹¹⁷⁴ Article 9 of the Law on Local Self-Administration

¹¹⁷⁵ Article 56 of the Law on Legal Acts

¹¹⁷⁶ *Ibid.*, Article 63

¹¹⁷⁷ Article 64 of the Law on Local Self-Administration and Article 36 of the Law on the Budgetary System of the Republic of Armenia

¹¹⁷⁸ By January 1, 2011 besides Yerevan there were 5 more towns with population exceeding 50,000 inhabitants.

Those were Gyumri, Vanadzor, Abovyan, Hrazdan and Vagharshapat (www.armstat.am)

¹¹⁷⁹ Point 1 of Article 5 of the Law on Public Service

¹¹⁸⁰ Article 14 of the Law on Local Self-Administration

¹¹⁸¹ *Ibid.*

Law on Freedom of Information. However, there is no legal provision that would oblige the community council to publish the minutes of its meetings.

Transparency (Practice)

To what extent are the activities of LSA bodies transparent in practice?

The development of an electronic information system on LSA bodies is still in process and currently 225 communities or only 23.7% of the Armenian communities are involved in that project, which is implemented by the “Center on Information Systems Development and Training” NGO.¹¹⁸² Only 131 (out of 915) municipalities (14.3% from total number) have an internet connection and only 20 municipalities have their web-pages.¹¹⁸³

Information boards are in place only in 645 communities.¹¹⁸⁴ Frequently these boards do not serve to their purpose, namely, for the publication of the decisions of the community head and community council, community budgets and their execution, etc. For example, in the town of Ashtarak these boards were used to post announcements on selling, buying or renting homes and apartments, other not relevant information.¹¹⁸⁵ Those communities, which do not have information boards, do not publish their budgets. Declarations on assets and property are rarely published.

As the studies of the “Freedom of Information Center”¹¹⁸⁶, in general, communities have difficulties with the Law on Freedom of Information. Every year this NGO publishes its “black list”, where it includes the names of those officials, who violated the citizens’ rights for information. In 2008 this list included “Kentron” condominium and 14 mayors of towns and villages. In 2006, there were 30 public officials in the “black list”, among whom 12 were heads of communities. In 2007 these numbers were 46 and 43, respectively, and in 2009 – 19 and 7, respectively.¹¹⁸⁷

At the end of August 2008 *Aravot* daily sent a request to 6 village mayors to submit the copies of the decisions adopted by the community councils.¹¹⁸⁸ Four mayors did not respond to this request and two more responded with substantial delay. Regarding the attendance to the meetings of community councils, neither the citizens and journalist are active and willing to attend, nor do the municipality officials encourage such attendance.

Accountability (Law)

¹¹⁸² See <http://mta.gov.am/region/downloads/docs/System/Hamaynq/irazekum.pdf>

¹¹⁸³ See www.region.am

¹¹⁸⁴ *Ibid*

¹¹⁸⁵ See <http://www.foi.am/rcontent/16/1449/> (On the Internet site of the “Freedom of Information Center” NGO)

¹¹⁸⁶ See www.foi.am

¹¹⁸⁷ *Ibid.*,

¹¹⁸⁸ *Ibid.*, See article ““Benevolent” Heads of Communities before Elections: Communities Are Out of Control ”

To what extent are there provisions in place to ensure that LSA bodies have to report and be answerable for their actions?

Similar to the principle of transparency, the accountability of LSA bodies to the community members is also declared in Article 9 of the Law on Self-Administration.¹¹⁸⁹ However, in contrast to the case of transparency, the mentioned Law has absolutely no provisions, providing mechanisms for operationalization of the principle of accountability of LSG bodies to the population. Examples of such mechanisms, known from international experience, could be presenting the report on the execution of the annual budget of the community, reports on the implementation of projects funded from the community budget, organization of public hearings on the issues, which are in the focus of attention of the community population.

At the same time, the law defines the central government bodies who oversee the activities of LSA bodies and the mechanisms of that oversight, which make accountable LSG bodies to the central government bodies. These bodies are the Ministry of Territorial Administration, Ministry of Justice, branch ministries, under whose jurisdiction is the delegated power, governor of provinces and Chamber of the Control of Armenia.¹¹⁹⁰ The Law on the Budgetary System of the Republic of Armenia defines the procedures of the financial oversight over the budgetary and financial performance of LSA bodies and submission of community budget execution reports.¹¹⁹¹

According to Article 35 of the mentioned Law, the head of the community (mayor) submits to the community council and corresponding governor of the province (marzpet) statement on the execution of the budget on the quarterly basis on the 15-th day of the month following the quarter. The form of the statement is defined through the procedure defined by secondary legislation. The same Article defines that the mayor should submit to the community council report on the execution of the annual budget by March 1 of the year following the year of the report. By March 20 the council should discuss and approve or reject it based on the conclusion of the specialized audit company, hired for auditing the budget. In the case of approval, the mayor should send the report to the marzpet within three days following the approval of the budget by the community council.

The mentioned Article also defines what should be included in the annual report. In particular, it should include a) information on income and expenditures, explanations on whether they are grounded and comparative analysis of these data with corresponding data for the preceding year; b) information on the expenditures from the community reserve fund with their justification; c) information on the budget arrears and their acquittal; and, d) other information, the mayor deems necessary for presenting the results of the budget execution and their justification. The authorized state body, as well as governor of

¹¹⁸⁹ *Ibid.*, Article 9

¹¹⁹⁰ *Ibid.*, Articles 68.1, 77 and Chapter 7.1

¹¹⁹¹ Articles 34 and 35 of the Law on the Budgetary System of the Republic of Armenia

the province, where the particular community is located, can appeal the decisions, actions and inaction of that community in the court and by that hold them accountable.¹¹⁹² However, a major weakness in the legal regulation of accountability is that the law does not provide any explicit provisions to ensure the accountability of the community head to the community population and, hence, no obligation for the community head to consult with the residents.

According to the Armenian Constitution, in the cases of separating or merging the communities, the Armenian Government carries out local referendum in the corresponding communities on that issue.¹¹⁹³ This is the only legal provision that obliges consulting with the population of the community. According to the Law on Local Referendum, a local referendum could be initiated on the issues having significance for the community. The Armenian Code on Administrative Delinquencies defines the fines¹¹⁹⁴, which should be imposed on the LSA bodies and municipal officials for not performing their duties or performing them in a wrong manner. Among those duties are garbage collection, procedures of the alienation or transfer of the right of user of the land under community property, alienation or transfer of the right of user of the land under community property for the purposes not compliant to their purpose or practical use defined by their urban or agricultural layouts, etc. The legal protection of the municipal employees is guaranteed by the Law on Municipal Service.¹¹⁹⁵ In particular, the municipality employee has the right for legal protection, including protection from political persecution. Also, he/she can appeal in the court the decision on imposing disciplinary sanction upon him/her or firing from the job.¹¹⁹⁶

Accountability (Practice)

To what extent is the oversight over LSA bodies effective in practice?

In practice, during the recent years there is a positive trend in the oversight of LSA bodies by those state bodies, which, according to the law (see above), have the power to carry out such oversight.

In compliance to the legal requirements, LSA bodies regularly submit reports, though only on the execution of the community budgets, to the relevant province governors. As it was mentioned earlier, the Chamber of Control carries out inspections of the activities of LSA bodies. These inspections are regular and during their conduct the employees of the Chamber neither are intimidated, nor do the officials of LSA bodies unduly intervene in their inspection.¹¹⁹⁷

¹¹⁹² Article 70 of the Law on Local Self-Administration

¹¹⁹³ Article 110 of the Constitution of the Republic of Armenia

¹¹⁹⁴ For example, Articles 43¹, 56¹, 56² of the Code on Administrative Delinquencies of the Republic of Armenia

¹¹⁹⁵ Articles 5 and 22 of the Law on Municipal Service

¹¹⁹⁶ *Ibid.*, Article 35

¹¹⁹⁷ This was confirmed several times by Mr. Ishkhan Zakaryan, Chairman of the Armenian Chamber of Control during his interviews. Among these interviews was the one he gave to *Herankar* (Perspective) program on *Shant* TV on February 10, 2010.

Media have reported no whistle-blowing cases in the municipalities so far. Similarly, the experts on the local self-administration field have no information on such cases. This can be an indication of the fact that the fear of retaliation for whistle-blowing is a problem.

As it has been mentioned above, the Law on Local Self-Administration does not contain provisions that will provide mechanisms for the accountability of LSA bodies and officials to the population. With no such mechanisms prescribed by law, the degree of accountability of LSA bodies and their officials to the community population depends only on the good will of particular community heads, and as the practice reveals¹¹⁹⁸, such good will is in big shortage.

Integrity (Law)

To what extent are there legal provisions in place to ensure the integrity of LSA bodies?

Aimed at the implementation of the relevant provision of the Law on Municipal Service¹¹⁹⁹, the “Code of Ethics of the Municipal Employees”, adopted through the September 11, 2006 Order of the Minister of the Territorial Administration, is currently in effect for the municipal employees. The Code includes also anti-corruption provisions, such as requirements to be impartial, honest, disciplined, etc.

The Law on Local Self-Administration defines certain limitations for the member of the community council in holding other positions and for avoiding conflict of interest¹²⁰⁰, as well as a provision on the incompatibility for the position of the head of the community¹²⁰¹. According to these provisions, the member of the community council cannot simultaneously a) be employed in the staff of the head of the community, enterprises and institutions funded from the community budget or supervise community enterprises, institutions or organizations; b) be head of community; and, c) work in the law enforcement, national security agencies or judicial bodies. He should not take part in the voting on such decision of the community council, which relates to him/her, members of his/her family and his/her close relatives (parents, siblings and children).

The head of the community does not have the right to hold other position, perform other paid job, except those of creative, scientific or pedagogical nature or simultaneously be member of the community council.

The Law on Municipal Service forbids the municipal employee receive, gifts, money or services for the performance of his/her official duties, be personally involved in entrepreneurial activities.¹²⁰² In addition to the mentioned Law, municipal servants are also under the jurisdiction of the relevant provisions of the

¹¹⁹⁸ Report on Monitoring of the Democratic reforms in Armenia, 2007-08 on www.ypc.am, p. 38

¹¹⁹⁹ *Ibid.*, Article 23

¹²⁰⁰ Articles 18 and 20 of the Law on Local Self-Administration

¹²⁰¹ *Ibid.*, Article 25

¹²⁰² *Law on Municipal Service.*, Article 24, clause f)

Law on Public Service also apply on municipal servants, as municipal service is one of the types of public service. Thus, the relevant provisions on integrity issues discussed in the **Public Sector** pillar completely apply on municipal servants.

As high-ranking public officials, mayors of towns with population exceeding 50,000 inhabitants as of January 1 of the year preceding the year of the submission of the declaration¹²⁰³, as well as their close relatives, are required to declare their income and assets, as required by the Law on Public Service.¹²⁰⁴ Other integrity issues related to high-ranking officials provided by the Law on Public Service (such as conflict of interest, post-employment restrictions and others) also apply to the mentioned mayors. For more detail see the discussion on the relevant indicator of the **Legislature** and **Public Sector** pillars. It is worth mentioning that mayors of other Armenian communities, as well as deputy heads of the mayors of all communities, except Yerevan, are neither high-ranking officials, nor public servants, and, as a result, the regulations of integrity issues provided by the Law on Public Service, do not apply on them. In addition, the Law on Local Self-Administration does not contain any provision on the integrity of community heads, their deputies or members of community councils. Thus, a large number of LSA officials remain out of regulation of integrity issues, which is a serious deficiency of legislation.

With adoption of the new Law on Procurement, which entered into effect on January 1, 2011, community procurement procedures are absolutely the same, as those for state bodies (for more information on procurement see the relevant part of the discussion on **Public Sector** pillar).

Integrity (Practice)

To what extent is the integrity of LSA bodies ensured in practice?

The rules included in the Code of Ethics of Municipal Employees are included in the training programs of the municipal employees. However, only in rare cases disciplinary sanctions were applied for the violation of those rules. There are no reports in media on incidence of conflict of interests. According to the author of this chapter, the phenomenon of “revolving doors” is not widespread in the local self-administration system, only because of the weak capacity of that system.

According to the reports of the Chamber of Control, violations of the requirements of the Law on Procurement have been detected in many communities of Armenia.¹²⁰⁵ Among them were violations of the requirement for applying single-sourcing method of procurement, namely there were no documents, defined by the Armenian Ministry of Finance, with justifications of such procurement, absence of price-listing, failure to conduct competitive, transparent and public procedures of procurement, etc.

¹²⁰³ Point 1 of Article 5 of the Law on Public Service

¹²⁰⁴ Article 32 of the Law on Public Service

¹²⁰⁵ See 2008-2009 reports of the Chamber of Control on the results of audit performed in the communities.

By October 1, 2009 only 7.3% of the procurement decisions adopted by the community councils did not comply with the legal requirements set by laws.¹²⁰⁶ Such decisions were sent back for correction. 85 communities violated the law and did not submit their decisions to the Offices of the governors. Mostly such violations are the result of poor knowledge of laws and other legal acts, though there have been also cases of deliberate violations and weak capacity.¹²⁰⁷

Role

Public Sector Governance (Law and practice)

To what extent are the officials of LSA bodies aimed and involved in the implementation of good municipal governance?

The Law on Municipal Service ensures certain provisions for the effective oversight and supervision of the performance of municipal employees, such as submission of reports by the municipal employees, their encouragement, imposition of disciplinary sanctions on them, etc., as well as bodies prescribed for their oversight and supervision (head of community and community council).

Only during the implementation of projects implemented mainly by international organizations and NGOs, LSA bodies perform their functions in a transparent, inclusive and accountable manner. Unfortunately such projects cover only a very limited number of communities and frequently, the same municipalities return to their old practices immediately after the completion of such projects. For example in 2006-08 UNDP implemented “Performance-Based Budgeting” project, in the framework of which 13 town municipalities (Idjevan, Dilidjan, Masis, Vedi, Abovyan, Meghri, Qadjaran, Ararat, Artik, Ashtarak, Alaverdi, Gavar and Yeghegnadzor) parallel to their line-item budgets developed also performance budgets for their communities. However, after the completion of the project, the author of this report found that the mentioned municipalities currently do not develop and implement performance budgeting in its entirety.

Recommendations on the pillar of Local Self-Administration Bodies

1. To undertake dynamic measures to change the current system of self-governance which has proven of its inefficiency. In the new system to secure in the respective legislation that:
 - a) Communities will receive certain percent of allotments from income, profit taxes, as well environmental fees;

¹²⁰⁶ See www.mta.gov.am

¹²⁰⁷ *Monitoring of the Activities of the Public Procurement System of Armenia in 2008-2009* (in Armenian). Transparency International Anti-Corruption Center, Yerevan 2010, pp. 54-57

- b) Representative bodies of communities be effective and operational, with proper checks and balances over the heads of communities;
- c) The highest standards of transparency and accountability.