



**TRANSPARENCY INTERNATIONAL**  
anti-corruption center

**ABSTRACT OF POLICY PAPER  
ON PUBLIC PROCUREMENT  
APPEALS SYSTEM  
IN THE REPUBLIC OF ARMENIA**

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The main objective of a 'public procurement complaints review and remedies system' is to enforce the practical applications of public procurement legislation by ensuring that violations of this legislation and intentional or unintentional mistakes of contracting authorities/entities can be corrected. A well-functioning procurement review and remedies system is in the interest of all stakeholders – economic operators, contracting authorities/entities as well as the general public.

According to international standards, such a system has to provide aggrieved tenderers and candidates with remedies, which must be:

- Rapid;
- Effective;
- Transparent;
- Non-discriminatory.

Fundamental requirements for public procurement review and remedies procedures were established by the 1994 World Trade Organization (WTO) Agreement on Government Procurement (GPA) (and also by the UN Commission on International Trade Law – UNCITRAL – Model Law, updated in 2011). According to the WTO GPA: “Challenges shall be heard by a court or by an impartial and independent review body with no interest in the outcome of the procurement and the members of which are secure from external influence during the term of appointment. A review body which is not a court shall either be subject to judicial review or shall have procedures which provide that:

- (a) Participants can be heard before an opinion is given or a decision is reached;
- (b) Participants can be represented and accompanied;
- (c) Participants shall have access to all proceedings;
- (d) Proceedings can take place in public;
- (e) Opinions or decisions shall be given in writing with a statement describing the basis for the opinions or decisions;
- (f) Witnesses can be presented;
- (g) Documents shall be disclosed to the review body”.

As a requirement of the Remedies Directives as well as a matter of international best practice, the independence of the review body should be considered as a cornerstone for ensuring credible results of the remedy procedures against public procurement decisions.

The issues related to independence should be addressed on two levels:

- Independence of the review body as an institution;
- Independence of the members of the review body.

With regard to the institution, whether or not the specialised review body has independent legal status, it has to be (i) independent from the parties of procurement procedures – contracting authorities/entities and economic operators; and (ii) functionally independent of the government.

The current Law on Procurement (LoP) came into force on 1 January 2011, and was developed to meet the basic requirements of the 1994 WTO GPA. It includes several legal instruments of the 2004 EU Public Procurement Directives.

One of the directions for the improvement of procurement environment under the current LoP is within the appeal and complaint system. This paper provides the comparative analysis of the appeal and complaint system from legal viewpoint.

In order to assess the practice of appeal and complaint system the monitoring toolkit was developed. In particular, the following monitoring questions/directions were analysed and covered:

- How easy is the process of filing the complaint?
- Is the process of selecting procurement complaint review board members transparent?
- How strong are mechanisms of oversight conflict of interest of the procurement complaint review board members?
- Are there any merit based selection mechanisms for the organization of a procurement complaint review commission?
- How transparent are the decisions made by the access to procurement complaint review commissions?

Recently some reforms to increase the independence of the review body as an institution were initiated. Our analysis indicates that Armenian procurement complaint review system still lacks independence from both the institutional point of view as well as in the selection process for members. In particular, the rotation mechanisms envisaged in the LoP are not fully implemented in practice. Conflicts of interest, selection of members together with legal provisions of dismissal also needs considerable improvement.

Based on monitoring results, the following key recommendations were suggested:

1. Discuss the possibility of using electronic submission forms for anonymous complaints??
2. Make the hearings for the procurement complaint review commission available online in order to promote transparency ,
3. Initiate a dialogue for strategic litigation (cooperating particularly with the Chamber of Advocates for submission cases to the court in order to create bottom-up pressure).
4. Introduce rotation mechanisms for complaint commission members that are selected,
5. Strengthen the accountability of complaint review board members,
6. Introduce performance appraisal mechanisms for the complaint review board members.