

BRIEF SUMMARY

ON INTRODUCTION OF INSTITUTIONAL ANTI-CORRUPTION SYSTEM

For many years, the fight against corruption in the Republic of Armenia has been carried out through a decentralized system, when a number of state bodies were authorized to fight corruption, but we did not have a single body that was responsible for the recorded results, including the negative ones. **At present it is necessary** to move from the decentralized anti-corruption system to a **centralized anti-corruption system**.

For this purpose, at the meeting of the Anti-Corruption Council (minutes of the meeting are available [here](#)¹), which was held on 15 June 2016, the CSOs' Anti-Corruption Coalition of Armenia presented the results of a study on the institutional models of fight against corruption and, as best option summarized on the basis of international experience, proposed the Government to **establish an independent universal anti-corruption body** that would be have the functions to carry out **anti-corruption education, corruption prevention, operative intelligence and preliminary investigation functions**. And only in the case of impossibility of implementation of this option, a reserve option to create two bodies was offered:

1. **Independent Anticorruption Preventive Body**, which **will engage in anti-corruption education and corruption prevention** functions,
2. On the basis of the capacity of the Special Investigation Service to create a preliminary investigation body investigating only corruption crimes, which will also be endowed with **operative intelligence and preliminary investigation functions**.

As a result, the previous government, failed to show adequate political will, and preferred the **second RESERVE option** which was introduced by the CSOs' Anti-Corruption Coalition of Armenia.

A) Solutions recommended by the Centralized Institutional Anti-Corruption System for fight against corruption.

The centralized institutional anti-corruption system represented by **an independent universal anti-corruption body** (hereinafter referred to as **UNIVERSAL BODY**), provides opportunity for transition from the decentralized model of combating corruption to the centralized model

Experience shows that choosing a single unified model of the anti-corruption body instead of two or more bodies raises the effectiveness of the anti-corruption body, saves the financial resources allocated by the state, and excludes the practice of implementing the same function by different bodies. It works more efficiently, given that resources are in one place, making it easier to implement all the functions that are interconnected. The risk of departmental interests is neutralized; situations of conflict of interests and interdepartmental unhealthy competition are reduced.

As a result, we have a body that, in its functional sense, is endowed with the most important tools to combat corruption, such as **anti-corruption education, prevention and law enforcement**, and at the same time this body bares the full responsibility for the results recorded in fight against corruption. It

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http://www.gov.am/u_files/file/KORUPCIA%2015_06_16%20ev%2017_06_16.pdf?fbclid=IwAR3QdcDqNYTAUv3nX9hnfKEc648xUGimi8NOo5joMnMGwQQtEaBNgHOMQ3k

should also be noted that in international practice it is accepted that the **UNIVERSAL BODY** develops its own program of activities individually and undertakes its implementation.

- **What are the advantages of centralized institutional anti-corruption system?**

- 1) **Capacity to carrying out activities with exceptional guaranties of independence.** Carrying out activities with exceptional guaranties of independence stems from the 2012 Jakarta [Principles²](#) for Anti-Corruption Agencies. In this case, the effectiveness of the institutional struggle against corruption is at a high level, as the **independence of the UNIVERSAL BODY** must be **guaranteed through a stable constitutional legal basis**, and to carry out its activities in the **environment of the rule of law**.
- 2) **UNIVERSAL BODY is accountable for its activities before public authorities and the public.** In the case of a universal body in order to ensure democratic governance, we also deal with the system of checks and balances. As a constitutional independent body, it is **accountable to the National Assembly**, which oversees the activities of the body. Accountability to the National Assembly is realized through quarterly, semi-annual or annual reports, as well as by answering questions from MPs. **UNIVERSAL BODY** is subject to **prosecutorial supervision** by means of prosecutorial supervision over the legitimacy of the investigation and preliminary investigation conducted by the body. **UNIVERSAL BODY** is also accountable to the **public**. In particular, a Council of Specialized Civil Society Organizations, which is overseeing the activities of the **UNIVERSAL BODY**, shall be established on the basis of law.
- 3) **The principles of exercising authority over the human resources and implementation of effective management by the UNIVERSAL BODY are guaranteed by the law as well.**

The National Assembly elects the Head of the **UNIVERSAL BODY** through **competition**. The Head is authorized to act independently develop the action plan, and undertakes its implementation, as well as to form the staff in the order provided by law.

According to Jakarta Principles, the heads of the body heads shall be appointed through a process that ensures their **apolitical stance, impartiality, neutrality, integrity and competence**; and their dismissal shall be exclusively in accordance to the procedure established by law that is equivalent to the procedure of dismissal of legally-protected, independent competent body such as a **judge of the Constitutional Court or the Court of Cassation**.

- 4) When implementing its activities the **UNIVERSAL BODY** is guided by the **principle of effective disposition of funds provided**. In order to ensure the financial independence of the body, the state budget allocates funds in a separate budget line to ensure its regular operation.
- 5) **The Constitution guarantees the immunity of the heads and employees of the UNIVERSAL BODY.**

According to Jakarta principles, the heads and employees of the anti-corruption agency shall have immunity from civil and criminal proceedings for acts committed within the performance of their mandate. ACA heads and employees shall be protected from malicious civil and criminal proceedings.

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https://www.unodc.org/documents/corruption/WG-Prevention/Art_6_Preventive_anti-corruption_bodies/JAKARTA_STATEMENT_en.pdf

- 6) **Legislation provides for the most important systematic values the integrity (competence + ethics + accountability - corruption) for selection and appointing heads and employees of the UNIVERSAL BODY.**

According to Jakarta Principles, the anti-corruption agency heads and employees should adhere to the code of conduct requiring the highest standards of ethical conduct and a strong compliance regime.

It is also due to note that the practice of creating **UNIVERSAL BODIES** is widespread in several countries such as: Lithuania, Latvia, Poland, Bosnia and Herzegovina, Botswana, Hong Kong, Singapore, Bhutan, South Korea and other countries.

Additionally, in the context of effective anti-corruption fight, the establishment and capacity building of a specialized anti-corruption court and the subdivision specialized in corruption crimes in the prosecution it is also important.

B) Solutions proposed by the current Government Program directed to the introduction of the institutional anti-corruption system in Armenia?

Establishment of an independent anti-corruption body with guarantees of independence, which will carry out studies, will have the toolkit required for the identification of corruption offenses, and paragraph 51 of the Draft RA Anti-Corruption Strategy and its Implementation Action Plan for 2019-2022 Action Plan (hereinafter, the Draft) provides for consideration of the issue of joining the functions for **investigation of corruption crimes**, as well as well as **carrying out operative intelligence and preliminary investigation functions in acting one body** or creation of a new body and reservation of these function to the latter.

In fact, it is currently envisaged to introduce a definitely **decentralized institutional anti-corruption system** in Armenia, **which will be as follows:**

- 1) **an anti-corruption body formed on the basis of the Special Investigation Service (SIS), with the law enforcement function,**
- 2) **Corruption Prevention Commission (CEC) with preventive and educational functions,**
- 3) **Public administration system bodies that conducts monitoring of the anti-corruption policy development and anti-corruption measures, represented by the Anti-Corruption Council, the Prime Minister's Office and the relevant units of the RA Ministry of Justice.**

• What are the shortcomings in the proposed decentralized institutional system?

- 1) **The actual independence of these bodies is not guaranteed.** The effectiveness of the institutional struggle against corruption requires that this struggle **be maintained in the frame of the rule of law and secured with a stable constitutional basis.** The above-mentioned bodies (in particular the SIS, the CEC) are not classified as **independent bodies provided by the Constitution**, that is, the independence of these bodies is not guaranteed in the context of constitutional legal provisions. As for the availability of legal guarantees, it should be noted that although the governing laws guarantees the independence and autonomy of these bodies, however in practice it does not work. The fact of a **resignation of the head of the Special Investigation Service**, as a result of the recent political processes in the country is vivid example for it. And this is in the case when the Law on Public Service, provides that the

position of SIS head is an **autonomous position** and the person holding it shall not be changed during his tenure **in case of change of the ratio of political forces**.

- 2) **The principle of accountability is not guaranteed.** No matter what kind of body and what institutional affiliation it has, each anti-corruption body should be integrated into the system of checks and balances to **ensure democratic governance**. One of Jakarta principles is **internal and external accountability, public communication and engagement**.

It is worth mentioning that in the case of the Special Investigation Service there is no legislative provision that the body is **subject to public and parliamentary supervision**, except for the **prosecutor's supervision over the legitimacy** of the preliminary investigation conducted by SIS. Though the law regulating the activities of the CEC regulates touches upon the public and parliamentary oversight, however, there is **no realistic mechanism of supervision by the specialized civil society organizations provided by the law - a Public Oversight Council**.

- 3) **Legislation does not guarantee the authority over human resources and good governance, from the perspective of introducing simple and transparent procedures for recruiting such resources.** According to Jakarta principles, the heads of anti-corruption bodies should be appointed through a process that ensures their apolitical stance, impartiality, neutrality, integrity and competence. According to the same statement, removal should also be carried out through a legally established procedure equivalent to the procedure for the removal of a key independent authority specially protected by law such as the Justice dismissal procedure of Chief Justice: **(In case of Armenia, the Chairman of the Court of Cassation and his dismissal procedure)**. In the case of decentralized bodies, the aforementioned principles will not be maintained as different legal processes are applicable to different bodies.

For example, according to the Law on the Special Investigation Service, the SIS Head is appointed by the **Government upon the recommendation of the Prime Minister**, and the Deputies are nominally appointed by the **Prime Minister**, which already contradicts the aforementioned principles. In addition, the above-mentioned law regulates cases of dismissal of the employee of the Special Investigation Service, which are also applicable to the SIS Head in case of dismissal. Therefore, we cannot draw parallels regarding the regulations for the suspension or termination of the authority of an independent body – the Chairperson of the Court of Cassation, as suspension or termination of his authorities as a judge, which are provided in the Constitutional Law of the Republic of Armenia Judicial Code of the RA.

The same applies to the election of members of the CEC, their independence and immunity, as well as the suspension and termination of the powers of a commission member defined by the Law on the Committee for Prevention Corruption.

- 4) **The principle of effective administration of financial resources for these bodies is not guaranteed.** The funds allocated for the activities of the bodies included in the decentralized institutional system will be allocated from the state budget for each year, which means that in **terms of cost effectiveness** having several anti-corruption bodies will cost much more for the state. In this case, the functions will be duplicated; state property and public funds for their implementation will be allocated to different agencies. It is worth mentioning that the current government pursues a policy of optimizing the public administration system,

excluding duplicated functions, and effectively utilizing public funds allocated to public administration bodies. Therefore, the introduction of such anti-corruption institutional system directly contradicts the policy pursued.

5) **The immunity of the SIS Head and employees is not guaranteed.**

Under Jakarta principles the ACA heads and employees shall have immunity from civil and criminal proceedings for acts committed within the performance of their mandate. ACA heads and employees shall be protected from malicious civil and criminal proceedings.

6) **Legislation does not guarantee the integrity (competence + ethics + accountability - corruption) as the most important systematic values for selection and appointing of CPC and SIS managers and employees.**

SECRETARIAT OF CSOs' ANTI-CORRUPTION COALITION OF ARMENIA

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