



## SUMMARY

# INTRODUCTION OF THE ANTI-CORRUPTION INSTITUTIONAL SYSTEMS

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## Summary

### On Introduction of the Anti-Corruption Institutional System

On 10 June 2019, the RA Ministry of Justice published on the website for publication of drafts of legal acts, [www.e-draft.am](http://www.e-draft.am) the already edited version of the “*the RA Anti-Corruption Strategy* (hereinafter: Strategy) and *Its Implementation Action Plan for 2019-2022* (hereinafter: Action Plan)” (both together further: Revised Draft), by which the Government plans to have a decentralized anti-corruption system in Armenia. The revised draft envisages the creation of an Anti-Corruption Committee to deal with corruption cases. In this case, in essence, a decentralized system will continue to operate in Armenia, and the fight against corruption will be carried out by the following four bodies: *Anti-Corruption Committee, Corruption Prevention Commission, Ministry of Justice of Armenia related to the Development and Implementation of Anti-Corruption Policies, Anti-Corruption Policy Council - Advisory Body.*

It should be noted that the centralised institutional anti-corruption system, ***represented by the specialised independent universal anti-corruption agency (hereinafter: universal agency)***, gives an opportunity to transition from a de-centralised model of fight against corruption to a centralised one. Experience shows that choosing one united model instead of two and more anti-corruption agencies ***increases the efficiency, coordination and level of internal cooperation of the activities of an anti-corruption agency, the funds allocated by the state are saved, and the practice of the same function being fulfilled by different agencies is excluded.*** It works more efficiently, taking into account that the resources are under the same roof which makes the fulfilment of all inter-related functions easier. The **risk of departmental interests** is neutralised, and situations of conflicts of interest and unhealthy departmental competition decrease.

As a result, we have an agency which, functionally speaking, is endowed not only with such important anti-corruption instruments as ***anti-corruption education, preventive and law enforcement functions,*** but that agency also carries full responsibility for the results registered in fight against corruption. We find it necessary to note that it is well-accepted in international practice for the **universal agency** to develop its action plan individually and embark on implementing that plan.

In order to make the above said more tangible, we present below **the flaws and advantages of the centralised and de-centralised institutional anti-corruption systems, as well as the general criteria which must be applied to the anti-corruption agency, regardless of the method selected.**

#### A) Advantages of the centralised institutional anti-corruption system.

1. **Absence of one united responsible agency:** The united centralised universal agency will be responsible for and will coordinate the anti-corruption activities and events in Armenia. It will facilitate exchange of information between units of the anti-corruption agency working in 3 directions (prevention, education, and law enforcement), healthy cooperation and process of reaching the realisation of a common goal. This will create a favourable working environment for the agency, in addition to giving the agency an opportunity to assess and analyse the real anti-corruption situation in Armenia, according to 3 directions. Thus, the centralised agency contributes to **systematisation and unity** of anti-corruption directions **through eradication of the functional competencies of state agencies in different domains.**
2. **Efficient expenditure of state resources, including funds, and exclusion of duplication of functions:** In case of a centralised system, the allocated state resources, including funds, will be saved and duplication of functions by different agencies will be excluded. Thus, the universal agency, when carrying out its activities, is guided by **the principle of effective management of the funds** allocated. In order to ensure the financial independence of the agency, funds are allocated to the agency by a specific line in the state budget. In case of having a united agency **spending funds for the fulfilment of the same functions will be excluded by different state agencies.** For example, each state agency, in order to ensure the efficiency of its activities, at least has the following departments: human resource management, finances and accounting, information and public relations, external relations, internal audit, information technologies, and special communication systems, reception of citizens, and discussion of applications, etc., as well as state property, public funds, for which funds and state property is annually allocated from the state budget. It turns out that in case of having a de-centralised anti-corruption system, the mentioned departments will fulfil similar functions, and they will be provided with state property and public funds.

We find it expedient to mention that the Government leads a policy of public administration system optimisation, exclusion of repeated functions, efficient use of the state funds allocated to the agencies of the public administration system. Therefore, in case of a centralised system, the policy adopted by the government will be ensured.
3. **Exclusion of unhealthy competition between three branches of the centralised system and management of interdepartmental interests:** In case of a centralised system, the unhealthy competition between the three wings (prevention, education, and law enforcement) of the system is neutralised. Because of this, the unhealthy interdepartmental competition between

anti-corruption agencies and the risk of departmental interests are also neutralised, situations of conflicts of interest decrease.

4. **Exclusion of confusion among the public about the activities of anti-corruption bodies.** In the case of a decentralized system, with the operation of 4 anti-corruption bodies in Armenia (*According to the Strategy, the following four anti-corruption bodies will operate in Armenia: Anti-Corruption Committee, Corruption Prevention Commission, Ministry of Justice of Armenia related to the Development and Implementation of Anti-Corruption Policies, Anti-Corruption Policy Council - Advisory Body*), the level of public confusion will be high, as to which body to apply in relation to specific corruption or conflict of interests or other offenses. Moreover, at present, the public, having heard that, for example, the Anti-Corruption Policy Council is headed by the Prime Minister of the Republic of Armenia, identifies all the anti-corruption bodies with the Prime Minister and addresses the Prime Minister with any corruption issue.

#### **B) What are the disadvantages of the decentralized anti-corruption institutional system proposed by the government?**

1. **The actual independence of these bodies is not guaranteed.** The effectiveness of the institutional fight against corruption requires that this fight takes place **in an environment of the rule of law and provided with a stable constitutional and legal basis.** The aforementioned bodies (in particular the Corruption Prevention Commission (CPC), the newly created Anti-Corruption Committee provided by the Strategy) do not fall into the category of independent bodies provided for by the Constitution, i.e. the independence of these bodies is not guaranteed in the context of constitutional and legal regulation. As for the guarantees of legislative regulation, it should be noted that although the regulatory law and the Strategy guarantee the independence and autonomy of these bodies, yet it does not actually work. As a vivid example for this, we can bring the fact of resignation of the head of the Special Investigation Service as a result of recent political processes in the country, in the case where according to the “Law on Public Service” this is a self-governing position, and the person occupying it does not change during his tenure in the case of the changes of ratio of the political forces. Another striking example of the guarantee of independence being endangered is the Draft Law of the Republic of Armenia on

Amendments and Additions to the Law on Prevention of Corruption<sup>1</sup> presented by Ararat Mirzoyan, the President of the National Assembly of the Republic of Armenia. In case of its adoption, the Competition Board shall be abolished without any legal justification. The provision of the council by the legislature was not an end in itself; this body should ensure a process of appointing the Board members which should guarantee the **members' non-political position, impartiality, neutrality, integrity and competence.**

**This is also in line with** the 2012 Jakarta Principles for Anti-Corruption Agencies (hereinafter referred to as the Jakarta Principles)<sup>2</sup>. Further, the proposed legal framework provides that five of the candidates to the Commission are nominated by the ruling political force, one by the Government and 2 by the ruling faction of the National Assembly. Moreover, in case if the opposition factions of the National Assembly are unable to present a candidate, the latter is also nominated the ruling power in the person of the ruling faction of the NA. The last, 5th candidate is nominated by the SJC. As a result, 4 out of 5 members will assigned by the ruling force. With such legal arrangements, **the guarantees of independence are undoubtedly are seriously called under question.**

2. **The principle of accountability is not guaranteed.** No matter what kind of body it is and what its institutional affiliation is, every anti-corruption body should be integrated into a system of restraint and counterbalance **to ensure democratic governance.** Jakarta's principles are **internal and external accountability**, public communication and engagement. Although the law regulating the activities of the Commission refers to public and parliamentary monitoring, yet the law regulating the activity of that body **does not have a real mechanism for oversight by specialized civil society organizations - the Council for Public Oversight.** In the case of the **Anti-Corruption Committee** provided in the Strategy, there is generally no provision for public accountability. The Committee will be accountable only to the Prime Minister and Parliament, whose legal opinions will be available in the case of existence of a draft law.
3. **The principles of the authority over human resources and implementation of good governance are not guaranteed from the point of view of introducing simple and transparent procedures of recruiting and dismissal of such resources.** According to Jakarta principles, heads of anti-corruption agencies shall be appointed through a process that ensures his or her **apolitical stance,**

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<sup>1</sup> The Draft Law of the Republic of Armenia on Amendments and Additions to the Law on Prevention of Corruption” is available at the following link: <http://www.parliament.am/drafts.php?sel=showdraft&DraftID=10588&Reading=0&fbclid=IwAR1tTsQZRZO76ri8iuwmW-nLW54f6zXZD3YiEKQyP5kjeobb-zP44pXVbes>:

<sup>2</sup> <https://armla.am/wp-content/uploads/2019/01/Jakarta-statement-2012.pdf>

**impartiality, neutrality, integrity and competence.** According to the same principles, ACA heads **shall be removed only through a legally established procedure** equivalent to the procedure for the removal of a key independent authority specially protected by law (such as the Chief Justice). **(In the case of Armenia, the President of the Court of Cassation and the procedure for his dismissal).** In the case of decentralized bodies, the above principles will not be respected, as different legal processes apply to different bodies.

**Thus, the automatic termination or imposed termination arrangements of a member of the Commission provided in the Law on the Corruption Prevention Commission do not comply with the above principles.** For example, early termination of the powers of a member of the Commission is imposed by the Commission. Moreover, if the National Assembly adopts the Draft Law on Making Amendments and Addenda to the RA Law on the Corruption Prevention Commission, **the process of election and termination of committee members will be highly politicized and will contradict Jakarta's well-known principles.**

**4. The principle of effective management of funds allocated to these agencies is not guaranteed.**

Funds for the activities of bodies involved in a decentralized institutional system will be allocated from the state budget of each year, which **in terms of cost-effectiveness** means that having several (different) anti-corruption bodies would be much more expensive for the state. In this case, the functions carried out by various state agencies for the implementation of which state property and funds will be allocated, would be duplicated. This is also reflected among the advantages of the centralized body *under the heading "Saving state resources, including finances and excluding duplication of functions"*. It is important to note that the current government carries out a policy of optimizing the public administration system, excluding duplicated functions, and making the use of public funds allocated to public administration bodies effective, consequently, the introduction of a decentralized anti-corruption institutional system directly contradicts the current policy.

**5. The danger of having a shadow system:** In the case of a decentralized system with two separate anti-corruption bodies, there is **a risk of having shadow coordination.** However, it should be borne in mind that coordination will be required in the case of two separate agencies. And from this point of view, it is likely that the existing legal regulations may pose a risk of shadow coordination.

6. **Integrity is not guaranteed.** Legislation and strategy do not guarantee **integrity (accountability and transparency + ethics + competence - corruption)** as the most important value-system basis for the selection and appointment of Commission and Committee Heads and Staff.

**C) Common Criteria we suggest to apply to the Institutional Anti-Corruption Agency, regardless of the selection of the model.**

1. **Independence:** The anti-corruption body should be endowed with **constitutional independence and guarantees**, including **independence from political influence**. The constitution should provide for **the accountability and transparency** of the anti-corruption institutional body, providing for four levels of oversight; **parliamentary, public, prosecutorial, "judicial"** (By "judicial oversight" we mean that criminal cases brought to court by an anti-corruption body will be examined by the anti-corruption court, and the verdict will serve as a "surveillance" tool to assess the law enforcement function of the body). Operating with high guarantees of independence stems from the **Jakarta Principles**. In this case, the effectiveness of the institutional fight against corruption is at a high level, since the independence of the *body* will be guaranteed on *a solid constitutional and legal basis* and activities will be carried out in *an environment of the rule of law*.
2. **Principles of Authority over Human Resources and Effective Management.** The head of the anti-corruption agency **shall be elected by the National Assembly through a competition**. The latter should be empowered to act independently, develop a plan of action, undertake its implementation, and form a staff in accordance with the law. **The latter should be authorised** to act independently, develop an action plan, undertake its implementation, and form a staff in accordance with the law. According to Jakarta Principles: ACA heads shall be appointed through a process that ensures his or her **apolitical stance, impartiality, neutrality, integrity and competence**; and their removal shall be carried out only through a legally established procedure equivalent to the procedure for the removal of a key independent authority specially protected by law (such as the Chief Justice). (In the case of Armenia, the President of the Court of Cassation and the procedure for his dismissal).
3. **Specialised Staff.** The management staff and the personnel of the Armenian institutional body should be based on clearly defined standards, based on a person's professional experience and professionalism and integrity (**integrity = accountability and transparency + ethics + competence - corruption**).

4. **Immunity of heads and employees of the anti-corruption body. The Constitution should guarantee the immunity of heads and employees of the anti-corruption body.** According to Jakarta Principles: 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.
5. **Financial Resources. Financial calculations** should be carried out for the implementation of the Anticorruption Strategy of the Republic of Armenia and its Implementation Action Plan 2019-2022, as well as for the establishment of the Anti-Corruption Agency in the Republic of Armenia and based on these calculations allocations from the state budget should be provided annually, taking into account the capacities and limits of the state budget. State budget allocations **should be appropriately distributed for the development of the three anti-corruption directions and the actions planned under them**, which are; anti-corruption education, prevention of corruption, law enforcement functions.
6. **Work with the public. Strategic communication plans** with the public should be developed by the anti-corruption body and the work with the public should be carried out **through direct democratic (including electronic) tools**, including direct contacts, the organisation of various conferences, meetings, discussions, press conferences, educational programs and other events.

In addition to the aforementioned, in order to carry out an effective anti-corruption fight, it is also important to **develop the capacity of the specialized anti-corruption court and the staff of specialized unit on corruption cases in the Prosecutors Office.**