

EXPERT OPINION

ON

“THE RA LAW ON MAKING AMENDMENTS AND SUPPLEMENTS TO THE LAW "ON CORRUPTION PREVENTION COMMISSION" ADOPTED ON 13.09.2019 AND THE ANTI-CORRUPTION POLICY COUNCIL

On 3 October, 2019, the Government of the Republic of Armenia approved the "Anticorruption Strategy of the Republic of Armenia and its Implementation Action Plan for 2019-2022" (hereinafter: the Strategy), one of the most important tasks of which is the transformation and development of the anti-corruption institutional system in Armenia.

The fight against corruption in the framework of the government program is one of the priorities of the government. Parallel to this, the Government avoids to introduce sustainable institutional systems to move from a decentralized system to a centralized struggle.

At the same time, even if the Government has adopted **a policy of having a decentralized anti-corruption institutional system**, yet, the solutions proposed by the political authorities do not guarantee the independence and non-politicization of anti-corruption systems.

It is also noteworthy that although the Government has recently adopted a new anti-corruption strategy, it has, among other things, outlined the model of Armenia's anti-corruption institutional system and the bodies involved therein. However, prior to the adoption of the Strategy, both the Government and the National Assembly had taken some steps to form the institutional system bodies.

Below references are made to the legislative provisions regulating the activities of the Corruption Prevention Commission (hereinafter referred to as the Commission) and the Anti-Corruption Policy Council (hereinafter referred to as the Council), as well as the steps taken by the Government and the National Assembly to form them, outlining key developments and issues arising therefrom.

A) **Corruption Prevention Commission**

On 13.09.2019, the National Assembly, in the second reading and fully, adopted the **“RA Law on Making Amendments and Supplements to the Law on Corruption Prevention Commission”** (hereinafter: the Law) submitted in the order of deputy’s legislative initiative by NA Speaker Ararat Mirzoyan. Notably, after

its first reading on 25.06.2019, the law was criticized by the professional community, including the CSO Anti- Corruption Coalition of Armenian (hereinafter: the Coalition)¹.

During the period from the first to the second reading, the draft was amended, and despite the fact that the Coalition had sent relevant letters to the NA Speaker Ararat Mirzoyan urging to recall the draft law, it was submitted for a second reading without significant changes.

Corresponding memos were also submitted to heads of all parliamentary factions and international structures, as the Coalition believed that the regulations provided in the draft made **the process of electing the commission members politicized, biased, non-specialized, non-transparent and controlled by the governing political authority.**

The draft legal act of such importance was not submitted for public discussion with the participation of key stakeholders in the field, nor did it provide for fundamental and mandatory legal processes in the process of elaborating the draft law.

Moreover, the Coalition proposed prior to the second reading to present the findings and justification of the expertise of the draft law, urgently initiate parliamentary hearings with the participation of all stakeholders of the field to discuss the draft, to form a NA-CSO-Government working group aimed at the development of draft legal acts for the introduction of the Armenian model of anti-corruption body, which were also not taken into account.

The law proposes a **procedure for direct nomination of commission members by the three wings of the government**, instead of the competitive procedure: The first member will be nominated by the **Government**, the second by the **ruling faction of the National Assembly**, the third and fourth by the **two opposition factions in the National Assembly**, and the fifth by the **Supreme Judicial Council**. The law provides for the formation of the first composition of the Commission by 30 November, 2019.

Notably, the Law on the Corruption Prevention Commission was adopted in 2017, and on 20 June, 2018, **the Competition Board for the election of candidates for the members of the Commission** was formed, by the Order No. K-195 of the President of the National Assembly of the 6th Convocation, which until the formation of the 7th convocation National Assembly formed in January 2019, had convened sessions to carry out significant preparatory activities for the organization of the competition. Further, taking into account the fact that the technical part of regulation of the work of the Competition Board was legally assigned to the National Assembly, after the Velvet Revolution, the Competition Board **had no objective opportunity** to convene sessions and carry out work. Then, Ararat Mirzoyan, who was elected in January 2019 as the Speaker of the National Assembly, **based solely on the fact of forming the National Assembly of the 7th convocation, sent corresponding letters without any legal justification** to 5 bodies authorized to

¹ Statements by the CSO Anti-Corruption Coalition of Armenia made on 25.06.2019 and 03.07.2019 are available at <https://armla.am/en/4411.html> and <https://armla.am/en/4537.html>.

nominate a member of the Competition Board². In response, **these bodies again submitted the nominations of the same members included in the already existing Competition Board, except for one representative of the Constitutional Court.** This was due to the fact that the CC representative was elected as a deputy of the 7th convocation of NA and thus was replaced by another CC representative. Moreover, the response to the written inquiry by the iravaban.net news website to the Speaker of the National Assembly showed that no sitting of the Competition Board had taken place after Ararat Mirzoyan was appointed the NA Speaker. This proves that **from the very beginning, the NA Speaker Ararat Mirzoyan did not want to work with the staff of the Board that was acting; did not accept the results of extensive work done by the Board; and finding out that the same members would be represented in the new Board, initiated the development of the Draft Law.**

Following the adoption of the Law by the National Assembly, the Coalition applied to the President of the Republic of Armenia on 4 October, 2019, proposing not to sign the Law and to apply to the Constitutional Court of the Republic of Armenia to determine the issue of compliance of the Law with the Constitution. This is due to the fact that the regulations of the Law **contradict the international treaties ratified by the Republic of Armenia** (Articles 5 and 13 of the UN Convention against Corruption, Article 20 of the Council of Europe Criminal Law Convention on Corruption), **the Constitution of the Republic of Armenia** (Article 5, Part 3), **the international commitments of the Republic of Armenia, the resolutions and principles adopted by reputable international organizations** (Council of Europe Committee of Ministers Resolution (97) 24 on the 20 Principles for Fight against Corruption (in particular Principle 3), Recommendations 1 and 3 of the Fourth Round Monitoring Report on Armenia within the framework of the Organization for Economic Cooperation and Development (OECD) Istanbul Anti-Corruption Action Plan, and Jakarta Principles)³.

It should be reminded that in the OECD report on 4th Round of monitoring of the Anti-Corruption Network for Eastern Europe and Central Asia, in the report for 2018 entitled “Anti-Corruption Reform in Armenia”, OECD has recommended **“to ensure transparency and objectivity of the appointment of Commissioners, free from any, including political interference and that the process is seen as objective by the public at large”**.

² Pursuant to Article 11(2) of the RA Law on Corruption Prevention Commotion adopted on 09.06.2017, the Competition Board consisted of the members appointed by the Constitutional Court, the Human Rights Defender, the Chamber of Advocates, the Public Council and the representatives of the opposition factions of the NA, the Pubic Council and the Chamber of Advocates (one nominee from each).

³ The letter of the CSO Anti-Corruption Coalition to the President of the RA, proposing not to sign the “RA Law on Making Amendments and Supplements to the Law on Corruption Prevention Commission” adopted in the second reading and fully by the NA on 13.09.2019, is available at: <https://armla.am/en/4955.html>:

It is noteworthy that **initially the RA Ministry of Justice** was against the regulations proposed by the Law on the establishment of the Commission on non-competitive basis. Representatives of the Ministry publicly stated this during public discussions on the draft new anti-corruption strategy.

However, on 9 August, 2019, **a New Draft Law on Making Amendments and Supplements to the Law on Corruption Prevention Commission was submitted for public discussion along with the package of Draft Law on Making Amendments and Supplements to the Constitutional Law of the RA Judicial Code and related laws.** Here, although the following Coalition's call and recommendations, the arrangements for the selection of the members of the Commission in a competitive manner and the formation of a Competition Board for its implementation have been restored, however, the new Draft Law provided that **the first composition of the Commission** shall be composed of the candidates nominated by the Government, the factions of the National Assembly, and the Supreme Judicial Council.

In the Joint Opinion adopted at the 120th Plenary Session of the Venice Commission on 11-12 October 2019 on the above-mentioned legislative package⁴, in relation of the “Law on Making Amendments and Supplements to the Law on Corruption Prevention Commission” the Venice Commission mentioned that **the current version of formation of CPC may be acceptable as a “provisional solution”**, which needs to be revisited once the CPC becomes operational **to ensure a less politicized process of nomination of candidates.** The Venice Commission has raised other important issues in this opinion, which were also previously presented by the Coalition⁵ for discussion to the Government and the National Assembly, but have never been accepted by the political authorities.

It is also worth noting that prior to the adoption of the mentioned legislative package by the Venice Commission, during a meeting of the Venice Commission experts on 18 September, 2019, the experts of the Armenian Lawyers' Association presented the opinion of ALA and the Coalition on controversial regulations of the Law⁶.

Thus, although the above-mentioned international instruments ratified by the Republic of Armenia exclusively emphasize the need to introduce such mechanisms at the domestic level, which should guarantee **the structural, functional and financial independence of anti-corruption bodies, free from any influence, including political**, as well as the importance of **"ensuring the necessary independence, self-**

⁴ Armenia - Joint opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate General of Human Rights, and rule of law (DGI) of the Council of Europe, on the amendments to the Judicial Code and some other laws, adopted at its 120th Plenary Session, Venice, 11-12 October 2019 is available at: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2019\)024-e&fbclid=IwAR2YqiVm3gfGuXGFdAoOJJ8xPwvQUtKbepj_gQHXPiP4tdLUdx5M5HLj2Qo](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2019)024-e&fbclid=IwAR2YqiVm3gfGuXGFdAoOJJ8xPwvQUtKbepj_gQHXPiP4tdLUdx5M5HLj2Qo)

⁵ The “Opinion, Comments and Recommendations on the Drafts of the Judicial Code, the Law on Corruption Prevention Commission and other Related Laws” of the Armenian CSO Anti-Corruption Coalition and the Armenian Lawyers' Association is available at: <https://armla.am/en/5046.html>

⁶ Information about the meeting is available at: <https://armla.am/en/5013.html>:

sufficiency and autonomy without any influence, including political" by paying greater attention to wide public participation in the fight against corruption, however, the reality is completely different. The current political authorities presenting ungrounded and subjective reasoning, in particular that their style of conduct is conditioned by the "**objective need for urgent formation of the Commission**", try by all means to use their political influence and authority, and form the Commission in a non-competitive manner, which, from the outset, does not guarantee the **apolitical stance, impartiality, neutrality, integrity and competence of the members of the Commission**.

B) Anti-Corruption Policy Council

According to the RA Prime Minister's Decision N 808-N of 24 June, 2019, the Council is a consultative body with the **main objective** to discuss the priorities of the Republic of Armenia in the fight against corruption, to tackle corruption and the proposed solutions, as well as to express position on draft policies, programs and legal acts promoting prevention of corruption. Following the adoption of this decision, the former Anti-Corruption Council ceased to function and initially there was an impression that after the restructuring, this Council would be a newly created body with new powers. But in reality it does not differ substantially from the former Anti-Corruption Council. Moreover, this new Council is a regression in its composition and regulations in the fight against corruption, as justified below.

Thus, **without any justifications, the role of CSOs, local government agencies, and opposition factions has been decreased in the area of anti-corruption policy development and implementation, as the Public Council, the Coalition, the Union of Communities of Armenia, have been left out of the Anti-Corruption Policy Council**.

Moreover, the decision **did not provide for organizing a competition for the Coalitions for membership in the Council**. And thus based on the results of the extraordinary session of the Governing Board of the CSO Anti-Corruption Coalition of Armenia on 3 July 2019, the Governing Board of the Coalition issued a statement⁷ noting that **the artificial withdrawal of the Coalition from that above mentioned Commission is not justified in any way**, thus Member organizations of the Governing Board of the Coalition find it expedient to participate in **the competition for the membership of CSOs** in the Anti-Corruption Policy Council with the procedures defined in the decision of the Prime Minister. At the same time, despite this decision, the CSO Anti-Corruption Coalition of Armenia and members of the Governing Board of the Coalition, without becoming members of the Anti-Corruption Policy Council, will continue to

⁷ See reference 1

further support the Government in the development and improvement of anti-corruption policies, with the purpose of building a corruption-free, harmonious, and happy society in the Republic of Armenia.

It should also be emphasized that the competition for NGO involvement in the Council was organized with a number of violations.

This is evidenced by the investigation of an independent news website <https://iravaban.net/en>⁸.

Thus, regulations of the Decision do not allow to extend the deadline for the already announced competition, but the Ministry of Justice of Armenia, without any authorization, has postponed the deadline for the competition by one day.

Interestingly, 4 out of the 6 structures that won in the competition had applied for participation just on this one-day extension. In such circumstances, there are reasonable grounds for suspecting that there was a prior unlawful and illegitimate arrangement between the NGOs and the Ministry of Justice of the Republic of Armenia, and the one-day extension of the planned competition was arranged to ensure the entry of pre-agreed NGOs into the Anti-Corruption Policy Council.

Interestingly, after the publication of an investigation by the independent news website <https://iravaban.net/en> the “Investigative Journalists” NGO, which was included in the one of the organizations included in the Anti-Corruption Policy Council, left the Council. The latter, like the other 3 NGOs, had submitted its application on the day of extending the competition by one day.

It should also be noted that the Ministry of Justice of the Republic of Armenia has not made any official explanation regarding the investigation.

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

The Coalition has proposed to the Prime Minister to revise his Decision and to foresee a competition for the Coalitions to join the Anti-Corruption Policy Council.

24 October, 2019

Note:

⁸ The Investigation is available at: <https://iravaban.net/en/232524.html>:

a/ The Anti-Corruption Coalition of Civil Society Organizations of Armenia was established on 28 November 2014. It currently has around 90 member CSOs from Yerevan and RA marzes. The main objectives of the Coalition are: to raise the efficiency of CSO control over anti-corruption reforms; to contribute to the enforcement and development of anti-corruption institutional mechanisms; and to contribute to the increased anti-corruption understanding and awareness-raising in the society,

b/ By the decision of Armenian CSO Anti-Corruption Coalition, Armenian Lawyers' Association is the Secretariat of the Coalition.