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## FOURTH EVALUATION ROUND

Corruption prevention in respect of members of  
parliament, judges and prosecutors

### EVALUATION REPORT

### ARMENIA

Adopted by GRECO at its 69<sup>th</sup> Plenary Meeting  
(Strasbourg, 12-16 October 2015)

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## EXECUTIVE SUMMARY

1. The fight against corruption has been high on the political agenda in Armenia for years, as evidenced by a number of legal reforms regarding corruption, integrity and strengthening of the judiciary. Nevertheless, it is widely agreed by observers that corruption remains an important problem for Armenian society.<sup>1</sup> The judiciary is perceived as being particularly prone to corruption. Moreover, according to various national and international reports, the independence of the judiciary – both from external actors such as the executive and from internal judicial actors – appears unsatisfactory. Concerns have also been raised about the lack, in practice, of a clear separation of powers and the weakness of the National Assembly (the national Parliament) and the judiciary; the “excessive concentration of powers”; and the lack of transparency in public decision-making.

2. Against this background, it is crucial that the current reform process is pursued with determination. Regarding the judiciary, reforms launched on the basis of the Strategic Programme for Legal and Judicial Reforms for 2012-2016 – with the aim of ensuring a fair and effective judiciary – benefit from support by an EU-Council of Europe Project on strengthening the independence, professionalism and accountability of the justice system. More generally, a new anti-corruption strategy and a broad constitutional reform are under preparation. The latter foresees, *inter alia*, the introduction of a parliamentary system of government, the strengthening of Parliament’s oversight powers and of the role of the opposition, as well as establishing “an independent, autonomous and accountable judicial branch”.

3. The present report contains recommendations and further suggestions on key challenges to be addressed to improve corruption prevention with respect to MPs, judges and prosecutors. In particular, it is recommended that measures are taken to further improve the transparency of the parliamentary process; to adopt a code of conduct for MPs, coupled with further guidance through training and counselling; to prevent circumvention of the restrictions on business activities by MPs; to strengthen the monitoring and enforcement of existing rules. With regard to judges, further amendments to the architecture of judicial self-government bodies, to the procedures for recruitment, promotion and dismissal of judges and to disciplinary procedures are clearly required. Similarly, the procedures for the recruitment and promotion of prosecutors need to be reformed, as do the procedures for the selection, appointment and dismissal of the Prosecutor General. It is also recommended that a deliberate policy for preventing improper influences on judges and prosecutors as well as conflicts of interest and corruption within the judiciary and the prosecution service be pursued, including through practical measures such as training, counselling and awareness-raising.

4. With respect to all categories of officials under review, the rules on the acceptance of gifts, on the requirement to submit regular asset declarations and on their control and enforcement – notably, by the Commission on Ethics for High-Ranking Officials – need to be further developed and to be made more effective in practice. Finally, the regulations on immunities appear unsatisfactory and for judges it is recommended that they be limited to activities relating to their participation in the administration of justice.

5. To conclude, it must be borne in mind that overarching concerns about the current system of state powers and public governance can only be addressed through a more comprehensive reform process. It is essential that the necessary reforms are carried through without delay, with the support of various political and societal forces, and that they yield concrete and sustainable results.

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<sup>1</sup> See e.g. Transparency International’s 2013 “Overview of corruption and anti-corruption in Armenia” ([http://www.transparency.org/files/content/corruptionqas/Overview\\_of\\_corruption\\_in\\_Armenia\\_1.pdf](http://www.transparency.org/files/content/corruptionqas/Overview_of_corruption_in_Armenia_1.pdf)) and its 2014 National Integrity System Assessment Armenia (<http://transparency.am/files/publications/1430407572-0-563326.pdf>); the 2014 country report on Armenia by Bertelsmann Stiftung ([http://www.bti-project.de/uploads/tx\\_itao\\_download/BTI\\_2014\\_Armenia.pdf](http://www.bti-project.de/uploads/tx_itao_download/BTI_2014_Armenia.pdf)); the Freedom House study “Nations in Transit 2014 – Armenia” ([https://freedomhouse.org/sites/default/files/NIT14\\_Armenia\\_final.pdf](https://freedomhouse.org/sites/default/files/NIT14_Armenia_final.pdf)).

## **I. INTRODUCTION AND METHODOLOGY**

6. Armenia joined GRECO in 2004. Since its accession, Armenia has been subject to evaluation in the framework of GRECO's Joint First and Second (in March 2006) and Third (in December 2010) Evaluation Rounds. Those Evaluation Reports, as well as the subsequent Compliance Reports, are available on GRECO's homepage ([www.coe.int/greco](http://www.coe.int/greco)).

7. GRECO's current Fourth Evaluation Round, launched on 1 January 2012, deals with "Corruption prevention in respect of members of parliament, judges and prosecutors". By choosing this topic, GRECO is breaking new ground and is underlining the multidisciplinary nature of its remit. At the same time, this theme has clear links with GRECO's previous work, notably its First Evaluation Round, which placed strong emphasis on the independence of the judiciary, the Second Evaluation Round, which examined, in particular, the public administration, and the Third Evaluation Round, which focused on the incriminations of corruption (including in respect of parliamentarians, judges and prosecutors) and corruption prevention in the context of political financing.

8. Within the Fourth Evaluation Round, the same priority issues are addressed in respect of all persons/functions under review, namely:

- ethical principles, rules of conduct and conflicts of interest;
- prohibition or restriction of certain activities;
- declaration of assets, income, liabilities and interests;
- enforcement of the applicable rules;
- awareness.

9. As regards parliamentary assemblies, the evaluation focuses on members of national parliaments, including all chambers of parliament and regardless of whether the members of parliament are appointed or elected. Concerning the judiciary and other actors in the pre-judicial and judicial process, the evaluation focuses on prosecutors and on judges, both professional and lay judges, regardless of the type of court in which they sit, who are subject to national laws and regulations. In preparation of the present report, GRECO used the responses to the Evaluation Questionnaire (Greco Eval IV (2015) 1E) by Armenia, as well as other data, including information received from civil society. In addition, a GRECO evaluation team (hereafter referred to as the "GET"), carried out an on-site visit to Armenia from 13-17 April 2015. The GET was composed of Mr Dražen JELENIĆ, Deputy State Attorney General, State Attorney's Office (Croatia), Mrs Dīana KURPNIĒCE, former Head of the Corruption Prevention Division, Corruption Prevention and Combating Bureau (Latvia), Mr Frank RAUE, Deputy Head of Division, Division PM1, Remuneration of Members, Administration, German Bundestag (Germany) and Mr Tibor KATONA, Judge at the Szeged Regional Court of Appeal, Criminal Law Department (Hungary). The GET was supported by Mr Michael JANSSEN from GRECO's Secretariat.

10. The GET held interviews with the Minister of Justice and his Deputy, the Minister – Chief of Staff, representatives of the Human Rights Defender's Office and of the Commission on Ethics for High-Ranking Officials. The GET also interviewed members of the National Assembly (the national parliament) and of relevant committees as well as the Chief of parliamentary staff – General Secretary. The GET spoke with the chair of the Constitutional Court and chairs and judges from courts of all levels and jurisdictions, representatives of the Council of Courts Chairs, the Council of Justice, the Ethics and Disciplinary Commission of the General Assembly of Judges and the Judicial Department, the Prosecutor General, the heads of the Committees on Ethics and on Qualifications and prosecutors of the Prosecutor General's Office, as well as the Rector of the Academy of Justice. Finally, the GET held interviews with representatives of professional organisations (RA Association of Judges and Chamber of Advocates), non-governmental organisations (Europe in Law Association, Helsinki Committee of Armenia, Helsinki

Citizen's Assembly-Vanadzor, Protection of Rights Without Borders and Transparency International Armenia) and the media.

11. The main objective of the present report is to evaluate the effectiveness of measures adopted by the authorities of Armenia in order to prevent corruption in respect of members of parliament, judges and prosecutors and to further their integrity in appearance and in reality. The report contains a critical analysis of the situation in the country, reflecting on the efforts made by the actors concerned and the results achieved, as well as identifying possible shortcomings and making recommendations for further improvement. In keeping with the practice of GRECO, the recommendations are addressed to the authorities of Armenia, which are to determine the relevant institutions/bodies responsible for taking the requisite action. Within 18 months following the adoption of this report, Armenia shall report back on the action taken in response to the recommendations contained herein.

## II. CONTEXT

12. The fight against corruption has been an important priority on the political agenda in Armenia for years. A number of legal reforms regarding corruption, integrity and strengthening of the judiciary have already been carried out. Armenia has performed well in implementing GRECO's recommendations, especially in the Third Evaluation Round. Nevertheless, it is widely agreed by observers that corruption remains an important problem for Armenian society. According to Transparency International (TI), for example, "entrenched corruption, strong patronage networks, a lack of clear separation between private enterprise and public office, as well as the overlap between political and business elites render the implementation of anti-corruption efforts relatively inefficient" and "feed a pervasive political apathy and cynicism on the part of citizens, who do not see an impactful role for themselves in the fight against corruption."<sup>2</sup> During the on-site visit, several interlocutors of the GET were concerned about the dominant role of the President of the Republic and of the ruling party in the political system; an "excessive concentration of powers"; the lack, in practice, of a clear separation of powers and the weakness of the National Assembly (the national parliament) and of the judiciary; political and economic monopolies; the lack of transparency in public decision-making; and selective law enforcement. It was also repeatedly stressed that in Armenia the main problem lies with effective and lawful implementation of the existing rules. The authorities of Armenia state that they do not share the above concerns.

13. While Armenia's scores in TI's yearly corruption perception index (CPI) have improved over the last three years, public perception of corruption remains high. Similar trends can be observed with regard to the World Bank governance indicators rule of law and control of corruption.<sup>3</sup> In the 2014 CPI ranking, Armenia scored 37 on a scale from 0 (highly corrupt) to 100 (very clean) which places it as number 78 on a list of 175 countries.<sup>4</sup> According to TI's Global Corruption Barometer 2013 (GCB), during the years 2011-2013, 43% of the respondents felt that the level of corruption in Armenia was increasing and 19% felt that it was decreasing.<sup>5</sup> In terms of the focus of the Fourth Evaluation Round, in Armenia respondents considered the judiciary to be the most corrupted institution. 68% of respondents considered the judiciary corrupt/extremely corrupt (global average: 56%) and 57% made the same assessment for the National Assembly (global average: 57%). 18% of respondents reported that they or a member of their household had paid a bribe to the judiciary in the preceding 18 months.

14. In this connection, a recent report by the Commissioner for Human Rights of the Council of Europe is particularly relevant,<sup>6</sup> where he states that "improper influence upon judges through bribes and gifts, although prohibited by law, has been extensively reported, including by a special report issued in 2013 by the Ombudsman.<sup>7</sup> The report described the mechanisms of corruption, and revealed that corruption affects all judicial instances, with judges taking bribes at various levels." The Commissioner was also concerned "by the persistence of reports regarding the lack of independence of the judiciary in practice, both from external actors such as the executive power at central

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<sup>2</sup> See TI's 2013 "Overview of corruption and anti-corruption in Armenia", page 1 ([http://www.transparency.org/files/content/corruptiongas/Overview\\_of\\_corruption\\_in\\_Armenia\\_1.pdf](http://www.transparency.org/files/content/corruptiongas/Overview_of_corruption_in_Armenia_1.pdf)). Similar statements can be found, for example, in TI's 2014 National Integrity System Assessment Armenia (<http://transparency.am/files/publications/1430407572-0-563326.pdf>); in the 2014 country report on Armenia by Bertelsmann Stiftung ([http://www.bti-project.de/uploads/tx\\_itao\\_download/BTI\\_2014\\_Armenia.pdf](http://www.bti-project.de/uploads/tx_itao_download/BTI_2014_Armenia.pdf)); and in the Freedom House study "Nations in Transit 2014 – Armenia" ([https://freedomhouse.org/sites/default/files/NIT14\\_Armenia\\_final.pdf](https://freedomhouse.org/sites/default/files/NIT14_Armenia_final.pdf)).

<sup>3</sup> See <http://info.worldbank.org/governance/wqi/index.aspx#home>

<sup>4</sup> See <http://www.transparency.org/cpi2014/results>

<sup>5</sup> See <http://www.transparency.org/qcb2013/country/?country=armenia>

<sup>6</sup> See the Commissioner's report of 10 March 2015, CommDH(2015)2, <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2744704&SecMode=1&DocId=2243332&Usage=2>

<sup>7</sup> The "Human Rights' Defender" (Ombudsman) is an independent official elected by the National Assembly, see article 83.1 of the Constitution.

and local levels (including law enforcement agencies), as well as from internal judicial actors – notably, higher-instance court judges”, and by “a number of reports of unfair use of disciplinary proceedings against judges as a means of pressure aimed at influencing their decisions or retaliating against them.” While the Council of the Association of Judges harshly criticised the Ombudsman’s report as unfounded, various interlocutors interviewed by the GET – including legal professionals – fully shared his concerns and confirmed his findings.<sup>8</sup> According to several international organisations and studies, the low trust in the judiciary, which is “permeated with corruption and remains closely connected to executive authorities”,<sup>9</sup> is one of the country’s major challenges. As GRECO noted in one of its previous reports on Armenia, “it is of vital importance to strengthen the independence of the judiciary without creating impunity or compromising the (individual) accountability of judges and prosecutors. Finding the right balance between these two extremes is a delicate task.”<sup>10</sup>

15. Among recent reforms the adoption of the new Law on Public Service (hereafter LPS) on 26 May 2011 is particularly relevant to the present evaluation.<sup>11</sup> The LPS provides rules on ethics, prevention of corruption and declaration of income and property (hereafter referred to as asset declarations) and mechanisms to implement them. It captures the category “high-ranking officials” which includes members of parliament (MPs), judges and certain prosecutors; the latter groups of persons are however exempted from some of the LPS provisions, e.g. the general rules on conflicts of interest. The LPS also established the Commission on Ethics for High-Ranking Officials, which is tasked among other things with maintaining a register of asset declarations of high-ranking officials and analysing and publishing the declarations.<sup>12</sup> Recent reforms have also led to the introduction of sector-specific rules, including rules of ethics for MPs as well as codes of ethics and conduct for the judiciary, and to the setting-up of specific ethics commissions within the National Assembly, the judiciary and the prosecution service to deal with situations that might give rise to conflicts of interest and breaches of ethics and the related disciplinary procedures.

16. Regarding more particularly the judiciary, reforms have been launched on the basis of the Strategic Programme for Legal and Judicial Reforms for 2012-2016 with the aim of ensuring a fair and effective judiciary. The Programme includes, *inter alia*, improving the selection procedure for judges and introducing objective criteria and procedures for the evaluation of their performance and promotion; enhancing self-governance of judges; revising the procedures and grounds for invoking the disciplinary liability of a judge; developing a new Criminal Code (CC) and Criminal Procedure Code (CPC);<sup>13</sup> enhancing the independence and accountability of the prosecution service, including through a review of procedures for appointments and disciplinary matters. Several legal amendments have already been adopted, e.g. with regard to judicial self-

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<sup>8</sup> The Ombudsman’s report was based, *inter alia*, on interviews conducted with over 120 legal professionals and other experts and on an analysis of all the decisions taken by the COJ during the period 2006-2013, 270 cassation complaints that were taken into proceeding by the Court of Cassation (2012-2013), 500 applications on sentencing judges to disciplinary liability (2011-2013), 200 cassation complaints and the decisions of the Court of Cassation in regards to them (2012-2013), over 35 judicial cases provided by lawyers.

According to TI’s 2014 [National Integrity System Assessment Armenia](#), page 65, “the report met with the highest resistance and critique from the judiciary, but except for general criticism, no research, initiatives or national programmes were initiated by the judiciary to respond to the report or to improve levels of trust.”

<sup>9</sup> See the Freedom House study [“Nations in Transit 2014 – Armenia”](#), page 79. See also, for example, the Round 3 Monitoring Report on Armenia of the OECD Anti-Corruption Network, pages 94 *et seqq.*, (<http://www.oecd.org/daf/anti-bribery/Armenia-Round-3-Monitoring-Report-ENG.pdf>); the [2014 country report on Armenia by Bertelsmann Stiftung](#), page 10; TI’s 2013 [“Overview of corruption and anti-corruption in Armenia”](#), page 5; TI’s 2014 [National Integrity System Assessment Armenia](#), page 65.

<sup>10</sup> See the Joint First and Second Round Compliance Report on Armenia, document Greco RC-I/II (2008) 3E, [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC1&2\(2008\)3\\_Armenia\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC1&2(2008)3_Armenia_EN.pdf) (paragraph 24).

<sup>11</sup> The LPS entered into force on 1 January 2012.

<sup>12</sup> See section 43 LPS

<sup>13</sup> A new Criminal Procedure Code is pending before the National Assembly.

governance, recruitment and evaluation of judges.<sup>14</sup> These moves have been acknowledged, for example, by the European Commission in its 2014 Country Progress Report on Armenia, which at the same time notes that shortcomings such as “the lack of trust in the judicial system and the fight against corruption” persist.<sup>15</sup> The reform process is ongoing and benefits from support by the Council of Europe, in particular, in the framework of an EU-Council of Europe Project<sup>16</sup> which includes components on improving judicial accountability and building public confidence through improved ethical and disciplinary rules and practice, enhancing compliance with European standards in the areas of selection, appointment, promotion and disciplinary measures.

17. Further reforms are currently under preparation, including the development of a new anti-corruption strategy – which will focus on a selected number of risk sectors such as health care, education and police. A constitutional reform launched by the President of the Republic who set up a “Professional Commission of Constitutional Reforms” benefits from international support and expertise including by the Council of Europe’s Venice Commission. The reform is aimed at “implementing the principle of the rule of law, guaranteeing the basic human rights and freedoms, ensuring the complete balancing of powers and increasing the efficiency of public administration”.<sup>17</sup> It foresees, *inter alia*, the introduction of a parliamentary system of government, the strengthening of Parliament’s oversight powers and of the role of the opposition, as well as establishing “an independent, autonomous and accountable judicial branch”.

18. To conclude, the current reform plans as well as recent assessments by relevant Council of Europe bodies and other international organisations already contain a number of lines of action for the prevention of corruption. The Council of Europe – which is currently developing an Action Plan for Armenia 2015-2017 – has noted that the fight against corruption and the strengthening of the justice system remain priorities for its action in Armenia. The present report with its recommendations and further suggestions focuses on a selected number of challenges considered as key for improving corruption prevention with respect to MPs, judges and prosecutors. At the same time, it must be borne in mind that overarching concerns about the current system of state powers and public governance can only be addressed through a more comprehensive reform process.

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<sup>14</sup> See, in particular, Law HO-47-N of 10 June 2014 “On making amendments and supplements to the Judicial Code of the Republic of Armenia”, which entered into force on 3 July 2014.

<sup>15</sup> See [http://eeas.europa.eu/enp/pdf/2015/armenia-enp-report-2015\\_en.pdf](http://eeas.europa.eu/enp/pdf/2015/armenia-enp-report-2015_en.pdf).

<sup>16</sup> “Strengthening the Independence, Professionalism and Accountability of the Justice System in Armenia”, see <http://www.coe.int/en/web/yerevan/strengthening-the-independence-professionalism-and-accountability-of-the-justice-system-in-armenia>.

<sup>17</sup> See the “Concept Paper on Constitutional Reforms of the Republic of Armenia” of 14 October 2014, [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2014\)050-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2014)050-e), which takes into account the Opinion by the Venice Commission on the draft concept paper, see [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)027-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)027-e)

### **III. CORRUPTION PREVENTION IN RESPECT OF MEMBERS OF PARLIAMENT**

#### Overview of the parliamentary system

19. Armenia, officially the Republic of Armenia, is a presidential representative democratic republic. The executive branch of power is composed of the President of the Republic – the head of state – and the government which comprises the Prime Minister appointed by the President and the Ministers. Under the 1995 Constitution as amended in 2005,<sup>18</sup> the legislative power is vested in a unicameral parliament, known as “National Assembly of the Republic of Armenia” (Ազգային ժողով).<sup>19</sup> The National Assembly encompasses 131 deputies (MPs) elected through direct elections for five-year terms: 90 seats are filled by proportional vote on candidates from nation-wide party or coalition lists; 41 seats are filled by direct majority vote, one from within each of the 41 constituencies. Each voter is entitled to one proportional and one majority vote. The threshold for entering parliament through the proportional voting system is 5% of the total number of votes cast in the case of lists submitted by parties and 7% in the case of lists submitted by party coalitions. During the most recent parliamentary elections of 2012, 14 women (11%) gained a seat.

20. The President of the National Assembly is elected by a majority vote of the total number of MPs. S/he chairs the sittings of the National Assembly, manages its material resources and ensures its normal functioning.<sup>20</sup> Two deputies (Vice-presidents) are elected by secret ballot by a majority vote of the MPs participating in the vote provided that more than half of the total number of MPs has participated in the vote.

21. All MPs are elected as public representatives and they must act in the public interest. The MPs elected through the majority election system, in addition to their general obligation to represent the national public interest, act also in the particular interest of the constituency they have been elected from. At the same time, it is to be noted that MPs are not bound by an imperative mandate and shall be guided by their conscience and convictions.<sup>21</sup>

22. In accordance with section 12 of the 2002 Law on Rules of Procedure of the National Assembly (hereafter LRoP),<sup>22</sup> the mandate of an MP is terminated before the expiry of the mandate if the National Assembly is dissolved; if the Constitutional Court invalidates the registration of the MP’s election; if the MP has been engaged in entrepreneurial activities, holds an office/position or has been appointed (elected) to an office incompatible with the office of MP; if s/he loses his/her citizenship, is absent from more than half of the votes held during one regular session without justified reason, has been sentenced to a term of imprisonment, is denied his/her capacity by a final court decision, dies or resigns. The authorities indicate that cases of termination of an MP’s mandate for reasons such as incompatibilities or imprisonment have not occurred in the course of the current fifth convocation of the National Assembly.

23. Pursuant to article 73 of the Constitution, standing committees – not more than twelve – are established for the preliminary review of draft legal acts and other issues and for providing the National Assembly with conclusions thereon. Moreover, *ad hoc* committees may be established for the preliminary review of special draft laws or for submission of conclusions and reports on special issues, events and facts to the National Assembly. The composition of committees<sup>23</sup> must reflect the quantitative ratio of factions, groups of MPs and those who are not part of a group. It is based on

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<sup>18</sup> English version: <http://www.parliament.am/parliament.php?id=constitution&lang=eng>

<sup>19</sup> See <http://www.parliament.am/?lang=eng>

<sup>20</sup> Article 79 of the Constitution

<sup>21</sup> See article 66 of the Constitution.

<sup>22</sup> English version: <http://www.parliament.am/legislation.php?sel=show&ID=38&lang=eng>

<sup>23</sup> For more details, see section 25 LRoP.

nominations by factions and groups of MPs, and requests by MPs who are not part of a group and is approved by the President of the National Assembly. As a rule, the chairs of standing committees are elected by secret ballot, by a majority vote of the MPs participating in the vote provided that more than half of the total number of MPs has participated in the vote. The President of the Republic and some other persons enumerated by law may attend committee sittings. At the invitation of the committee, the Prime Minister and other persons – such as experts, scholars and professionals – may also participate.<sup>24</sup> Decisions are adopted by a majority vote of those committee members who participate in the vote (at least 1/4 of the total number of committee members).

24. Based on legal reforms in 2012, an *ad hoc* Ethics Committee is set up once the factions are formed 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 setting up of the next Ethics Committee of the National Assembly of the same convocation. The President of the National Assembly approves the composition of the Ethics Committee and appoints its chair and vice-chairs once the factions are formed, in accordance with certain criteria defined by law. In particular, each faction has the right to nominate at least one member. The right to consecutively hold the position of the chair of the Ethics Committee belongs to the largest opposition and non-opposition factions. The Ethics Committee is competent to examine possible violations by MPs with respect to incompatibilities and restrictions on secondary activities under the Constitution and the LRoP, with respect to the rules of ethics contained in the LRoP and to the requirement under the LRoP to submit a statement on a conflict of interest. The organisational, legal, documentation, information and analytical activities of the Ethics Committee are provided by its secretariat which is a structural subdivision of the staff of the National Assembly and has a secretary and administrative assistant (aid) included in the staffing list.<sup>25</sup>

25. The National Assembly elects the Human Rights' Defender<sup>26</sup> (Ombudsperson) for a period of 6 years by a majority vote of 3/5 of the total number of MPs. The Human Rights' Defender is an independent official who implements protection against violations of human rights and freedoms by state and local self-government bodies and their officials. S/he is irremovable and endowed with the immunity envisaged for MPs. The National Assembly also appoints five members of the Constitutional Court (on the recommendation of the President of the National Assembly) and the chairs of the Control Chamber – an independent body which oversees the use of budget resources and of state and community property – and of the Central Bank (on the recommendation of the President of the Republic). It furthermore elects half the members of the independent regulatory body tasked to ensure freedom, independence and diversity of the broadcast media.<sup>27</sup>

#### Transparency of the legislative process

26. Members of Parliament and the government have the right of legislative initiative in the National Assembly.<sup>28</sup> The government may determine the sequence of the debate for draft legislation it proposes and may demand that it is voted on only with amendments that it deems acceptable. Provisions to assure transparency of the legislative process are included in the Constitution, the LRoP and the Law on Legal Acts.

27. In particular, public discussions of draft laws must be provided for before they have been put forward to the National Assembly for consideration, by means of publication of the draft legal act and other materials specified by government decision on

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<sup>24</sup> Section 28 LRoP

<sup>25</sup> For more details concerning the Ethics Committee, see sections 24.1 to 24.5 LRoP.

<sup>26</sup> See <http://www.ombuds.am/en>.

<sup>27</sup> See articles 83 to 83.4 of the Constitution.

<sup>28</sup> Article 75 of the Constitution

the website of the body elaborating the draft.<sup>29</sup> The same body may decide to initiate public discussions through public meetings or meetings with stakeholders, open hearings, consultations, public opinion surveys, as well as through communication channels. Observations and suggestions that derive from the public discussions and that have been accepted are among the compulsory documents attached to each draft law presented by the government. Furthermore, during the first and second readings of the draft law, the committee concerned can organise parliamentary hearings and will notify the President of the National Assembly accordingly. Information on the organisation of a hearing must be disseminated to the media three days prior to the date of the hearing. Public interests regarding the issues mentioned in the draft law are mostly represented through non-governmental organisations.

28. Once a draft law has been put into circulation, through the President of the National Assembly, it is listed by the National Assembly Staff in the registry of draft laws, which is available to the public on the official website of the Assembly. The staff of the National Assembly and – if the author of the legislative initiative is an MP – the government, are to submit their conclusions on the draft within 20 days. Only after the submission of these conclusions or after the expiry of the 20 day deadline the draft may be discussed in a sitting of the relevant committee. Amendments adopted in the course of consideration of draft laws are also posted on the parliamentary website under the “Draft History” Section of the corresponding draft. In contrast, agendas and minutes of the sittings of the Assembly and the committees, or information on the persons present in committee meetings are not disclosed.

29. Sittings of the National Assembly are in principle public – and subject to live television and radio transmission; closed-door sittings may be convened by a resolution of the National Assembly.<sup>30</sup> The only information regarding a closed-door sitting that can be disseminated is the official report on its content. The authorities indicate that closed-door sittings take place very seldom; so far, one such case occurred in the course of the fifth convocation of the National Assembly.

30. Committee sittings are public unless otherwise provided by law, namely when the relevant committees discuss classified materials regarding the expenditure articles containing state and official secrets or discuss the proposal of the President of the Republic on declaring amnesty. Sittings of the Ethics Committee are heard *in camera*, unless the MP who is subject to a procedure before the Ethics Committee agrees otherwise.

31. The GET acknowledges the legal measures taken to provide easy access to information, *inter alia*, via the parliamentary website. That said, in practice more could be done to ensure a higher degree of transparency in the legislative process and to involve the public in the law-making process. While the authorities consider that such transparency is guaranteed by the legal framework in place,<sup>31</sup> during the on-site visit the GET’s attention was repeatedly drawn to several specific concerns. Firstly, the GET was informed that contrary to the LRoP, draft laws are not always disclosed and subject to public discussion prior to their reading in the National Assembly. It would appear that the arrangements for holding public discussions prescribed by governmental decree do not work satisfactorily in practice and lack a supervisory mechanism. While civil society organisations seem to be very interested in the law-making process, they often receive information on bills only after their first reading which makes it difficult for them to contribute substantially to that process. Moreover, while bills are published on the

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<sup>29</sup> Section 27.1 of the Law on Legal Acts. The period for carrying out public discussions is at least 15 days. The procedure is regulated more in detail by Government Decision No. 296-N of 20 March 2010.

<sup>30</sup> Article 69 of the Constitution. Possible reasons for holding closed-door sittings are not specified by law.

<sup>31</sup> In this connection, the authorities also mention further tools provided by law such as the carrying out by the Public Council of public expert examination of drafts legal acts, the weekly TV programme “Parliamentary hour” and extraordinary sittings of the National Assembly in accordance with article 70 of the Constitution.

internet as soon as they are submitted, according to the GET's interlocutors this is sometimes just before the sitting of the National Assembly (despite the legal arrangements described above), in particular when the proponent of the bill – most often the government – asks for urgent procedures of adoption, which seems to be a quite frequent phenomenon. This leaves sometimes only a few days for the drafting of amendments and little opportunity for discussion. Such a situation appears all the more worrisome as the vast majority of bills are submitted by the government which, in addition, holds an absolute majority. During the interviews, various interlocutors shared their concerns about the weak role of the National Assembly – and the opposition in particular – and the GET noted with interest that in the current constitutional reform process solutions to this problem are sought. Notwithstanding such more far-reaching attempts, it needs to be ensured that in any case, bills and amendments to them are made available to MPs and the larger public at an early stage, so as to allow for proper scrutiny before they are put to plenary debate and vote.

32. Furthermore, the GET is of the opinion that transparency of committee work needs to be further increased. In the current situation, neither agendas and minutes of committee sittings nor information on the persons present are systematically disclosed. It is thus difficult to identify which external actors were given the possibility to influence draft legislation and which amendments were adopted by committees. Several of the GET's interlocutors furthermore regretted that parliamentary hearings are not organised more often by committees, especially with respect to socially sensitive draft legislation. It would appear that a more frequent use of this tool is hampered by the fact that it is entirely left to the committees' discretion and that the committee decides on this matter by majority, thus making it impossible for representatives of the parliamentary opposition in committees to request a parliamentary hearing. The GET wishes to stress that public hearings of experts are an important tool to link discussion and political competition within Parliament with discussion amongst citizens and interest groups outside Parliament, to make the public aware of possible shortcomings of government proposals and hidden interests and, ultimately, to prevent corruption. In view of the preceding paragraphs, **GRECO recommends that the transparency of the legislative process in the National Assembly be secured and further improved (i) by ensuring that the requirement to carry out public discussions on draft laws is respected in practice and that drafts submitted to the National Assembly as well as amendments are disclosed in a timely manner and (ii) by taking appropriate measures to ensure disclosure of information on the content of and participants in committee sittings, as well as more active use by committees of the possibility to organise parliamentary hearings.** This might be achieved, for example, by obliging committees to hold a public hearing on a draft law if a qualified minority – e.g. a quarter – of their members so requests and by ensuring that in this case, nominees of the minority that requested the hearing must also be heard.

#### Remuneration and economic benefits

33. MPs' salaries are based on coefficients<sup>32</sup> multiplying a salary base<sup>33</sup> which amounted to 66 140 AMD/approximately 122 EUR during the second semester of 2014. The coefficient is 10 for (normal) MPs. On this basis, monthly gross salaries amounted to 661 400 AMD/approximately 1 220 EUR.<sup>34</sup> There are different coefficients for the President of the National Assembly (18), Vice-presidents (14) and chairs of standing committees (12). From a legal perspective there is no obligation on MPs to work for a specified amount of time. The main working time includes the period of sittings of the

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<sup>32</sup> Determined by the Law on the Remuneration of Individuals holding Public Offices.

<sup>33</sup> Determined by the Law on the Annual State Budget.

<sup>34</sup> According to the National Statistical Service of Armenia, the average monthly nominal salary before taxes in Armenia was 173 552 AMD/approximately 321 EUR in October 2014.

National Assembly, its committees, sub-committees, working groups, public hearings, as well as any other time necessary for the exercise of the MP's powers.<sup>35</sup>

34. MPs who have no apartment in Yerevan are provided with compensation equal to the amount of the rent of an apartment in Yerevan. The amount of compensation is determined by the President of the National Assembly<sup>36</sup> and is currently 100 000 AMD/approximately 185 EUR. MPs are not provided with any other additional benefits, except for specific allocations such as payment of secondment expenses when sent on secondment by the National Assembly or payment of 50 000 AMD/approximately 93 EUR for duties performed in their constituency. The costs incurred for business trips are reimbursed to MPs by the National Assembly in the manner prescribed by law.<sup>37</sup>

35. The budget for an MP's office is provided from public resources. MPs are allowed to incur further office costs at their own expense.

36. The MP's workplace is the building of the National Assembly, where a furnished work-station with IT and communications equipment (including a computer and Internet), as well as a seat in the session hall of the National Assembly fitted with a microphone and equipment for individual electronic voting are provided.<sup>38</sup> MPs may have two assistants, one who is paid and the other who works *pro bono*.<sup>39</sup> The position of the paid assistant is determined by the staffing list of the National Assembly; s/he is employed on a fixed term contract on the recommendation of the MP. Assistants are to prepare analytical information and other materials, and to perform clerical services etc.

37. Parliamentary party groups (factions) as well as deputy groups (which may be formed by a minimum of ten MPs) are provided, *inter alia*, with furnished offices, IT and communications equipment, a car, an administrative assistant and experts.<sup>40</sup>

#### Ethical principles and rules of conduct

38. Section 6 LRoP contains a non-exhaustive list of MPs' obligations, *inter alia*, the obligation to participate in the sittings of the National Assembly and the committees, sub-committees and working groups of which they are members, to examine the proposals received from citizens and respond to their applications, and to observe the rules of ethics and the rules on conflicts of interest.

39. The rules of ethics for MPs were introduced to the LRoP in 2012 by legal amendments prepared by a number of MPs. They require MPs to respect and observe the law; respect the moral norms of the society; observe the procedure for the conduct of the sittings of the National Assembly and its committees; not be guided by their interests or those of the persons related to them in the exercise of their powers; not use the reputation of their position in their own interest or that of another person; contribute to developing trust in and respect for the National Assembly by their actions; to conduct themselves in a manner that is appropriate to their position anywhere and in any activity; manifest a respectful attitude towards their political opponents, participants in debates in the National Assembly, as well as all the persons with whom they have contacts when exercising their powers.<sup>41</sup> These requirements relate both to the exercise by MPs of their powers and to their daily conduct. The Ethics Committee of the National Assembly is competent to determine whether there has been a violation of the LRoP rules of ethics by an MP or not.<sup>42</sup>

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<sup>35</sup> See section 8 LRoP.

<sup>36</sup> Section 10 LRoP.

<sup>37</sup> See section 8 LRoP.

<sup>38</sup> Section 8 LRoP.

<sup>39</sup> Section 11 LRoP.

<sup>40</sup> Section 16 LRoP.

<sup>41</sup> Section 6.1 LRoP.

<sup>42</sup> See below under "Supervision and enforcement" (paragraphs 74 to 77).

40. A similar list of ethical rules for public servants and high-ranking officials more generally is included in the LPS. While those rules also apply to MPs, they are not exhaustive and they are complemented by the more specific rules for MPs quoted above.

41. The GET acknowledges the adoption of the rules of ethics for MPs. That said, the rules remain rather vague and appear insufficient to guide MPs in concrete situations. As GRECO has repeatedly pointed out, such standards of ethics and conduct need to provide clear guidance, *inter alia*, on the prevention and avoidance of conflicts of interest, on the acceptance of gifts and other advantages (clearly defining which advantages are prohibited and what conduct is expected from MPs who are offered gifts), on incompatibilities, additional activities and financial interests, on misuse of information and of public resources, and on contacts with lobbyists and other third parties who seek to influence the legislative process, and need to include elaborated examples of possible conflicts of interest. In the view of the GET, such guidance could best be provided by a comprehensive code of conduct, drawn up with a strong involvement of the MPs themselves – in line with GRECO’s previous pronouncements on this issue and with Guiding Principle 15 of Resolution (97) 24 of the Committee of Ministers of the Council of Europe on the twenty guiding principles for the fight against corruption. In this connection, attention is also drawn to Resolution 1214 (2000) of the Parliamentary Assembly of the Council of Europe on the role of parliaments in fighting corruption, according to which parliaments should “instil in their own ranks the notion that parliamentarians have a duty not only to obey the letter of the law, but to set an example of incorruptibility to society as a whole by implementing and enforcing their own codes of conduct”.<sup>43</sup>

42. Such an instrument is not meant to replace the existing legislation imposing obligations on MPs, but to build on it and complement it. Given the fact that relevant legal provisions are contained in different legal acts – mainly, the Constitution, the LRoP and the LPS – it is crucial to develop a comprehensive overview of existing standards in one document and to provide further guidance for their application. At the same time, such an instrument would increase MPs’ awareness about integrity issues, and show the public that they are committed to improving their integrity and that of their peers. Finally, the GET notes that the objectivity of some of the decisions taken by the Ethics Committee has been questioned.<sup>44</sup> The GET could not verify such allegations, but it believes that a more solid basis for the Committee’s activities would further increase both the effectiveness of its work and its reputation.

43. In addition, given that not everything can be captured by written rules, it is crucial that confidential counselling on ethical questions, training and further activities to raise MPs’ awareness are provided to them. In this connection, the GET notes that according to the authorities the establishment of the rules of ethics and of the Ethics Committee has already had a positive impact on MPs: they have started displaying a restrained attitude towards each other and in relationship with other persons; in particular they have become more tolerant when communicating with journalists. However, the GET was concerned to repeatedly hear during the interviews that some MPs tend to ignore specific legal rules such as the prohibition on engaging in entrepreneurial activities and holding a position in commercial organisations. Therefore, the GET was left with the clear impression that there is a need for further raising awareness among MPs of the conduct and integrity expected of them. Consequently, given the preceding paragraphs, **GRECO recommends (i) that a code of conduct for members of parliament be adopted and made easily accessible to the public, which provides clear guidance on conflicts of interest and related areas – including notably the acceptance of gifts and other advantages, incompatibilities, additional activities and financial interests, misuse of information and of public resources and contacts with third**

<sup>43</sup> Paragraph 6b of Resolution 1214 (2000). See <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=16794&lang=en>.

<sup>44</sup> Cf. [the Round 3 Monitoring Report on Armenia of the OECD Anti-Corruption Network](#), page 8.

**parties such as lobbyists; (ii) that it be complemented by practical measures for its implementation such as dedicated training, counselling and awareness-raising.**

#### Conflicts of interest

44. The rules of ethics contained in the LPS require high-ranking officials including MPs to manage their investments so that situations of conflicts of interest are minimised as much as possible. The LPS includes a general definition according to which a conflict of interests is to be understood as "a situation in which when exercising his/her powers a high-ranking official must perform an action or adopt a decision which may reasonably be interpreted as being guided by his/her personal interests or those of a related person".<sup>45</sup> Furthermore, under the above-mentioned specific rules of ethics for MPs which are enshrined in the LRoP, MPs must not in the exercise of their powers be guided by their own interests or those of the persons related to them. In addition, the LRoP contains more detailed rules on conflicts of interests for MPs, which were introduced together with the rules of ethics for MPs in 2012.<sup>46</sup>

45. According to the definition provided by the LRoP, "being guided by their interests or those of the persons related to them" refers to situations where MPs' actions when exercising their right of legislative initiative, submitting a draft resolution to the National Assembly for debate or recommendations on an issue put forward for consideration at the National Assembly, and when speaking or voting at the sittings of the National Assembly, its committee or sub-committees, though lawful, lead to or contribute to or may reasonably be expected to lead or contribute – to the best knowledge of the MP – to:

- a) improvement of the MP's proprietary or legal situation;
- b) improvement of the proprietary or legal situation of a non-commercial organisation of which the MP is a member;
- c) improvement of the proprietary or legal situation of the commercial organisation in which the MP is a participant;
- d) the appointment to an office of any person related to the MP.

46. However, MPs are not deemed to be guided by their interests or those of persons related to them if they act on behalf of the committee, faction or deputy group of the National Assembly or if that action:

- a) relates to the activities of the bodies of state and local self-government, state and community non-commercial organisations, institutions or their officials;
- 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 an MP or privileges, as prescribed by law.

47. In case of a conflict of interest arising at the sittings of the National Assembly, its committees or sub-committees, MPs are obliged to make a statement on the conflict of interests prior to speaking or voting in the relevant sitting; they may then refuse to take part in the voting on the issue. Moreover, when making a legislative initiative, submitting a draft resolution to the National Assembly for deliberation or submitting recommendations on an issue circulated in the National Assembly, MPs must submit their written statement on the conflict of interests along with the relevant documents stating the nature of these interests.

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<sup>45</sup> Section 5(1) item 17 LPS.

<sup>46</sup> See section 6.2 LRoP.

48. The general rules and procedures concerning the prevention and resolution of conflicts of interest apply to those that arise from the private interests of both MPs and persons with whom they have a close association. The LPS defines the latter as individuals interrelated with the MP or with his/her spouse up to the 2<sup>nd</sup> degree of blood ties.<sup>47</sup>

49. The GET acknowledges the recent introduction of quite detailed rules on conflicts of interest and the mechanism for their disclosure. Nevertheless, information gathered during the interviews clearly suggests that in practice, the mechanism does not work effectively and the rules do not gain the attention they deserve, even though the authorities do not share this view. It is therefore crucial that MPs' awareness of the need to avoid and prevent conflicts of interest is raised and that detailed guidance is provided to them, *inter alia*, through the code of conduct recommended above. Moreover, credible supervision and enforcement of the rules need to be ensured, see further below.<sup>48</sup>

### Prohibition or restriction of certain activities

#### *Gifts*

50. The general rule regarding gifts enshrined in the LPS<sup>49</sup> states that high-ranking officials including MPs may not accept gifts – or give consent to accept gifts in the future – in relation to the exercise of their mandate. The law also sets forth an exhaustive list of exceptions to the general rule: gifts, rewards and receptions given on the occasion of official events; books, hardware/software and other such materials provided free of charge for the purpose of use in service; scholarships, grants or allowances awarded as a result of a public competition.

51. With respect to those exceptions, when the value of the gift does not exceed 100 000 AMD/approximately 185 EUR, high-ranking officials donate, with the consent of their superior, the gift to charity or it is deemed to be the property of the relevant state body and is included on the inventory as such. High-ranking officials who have no superior – which is the case of MPs – take the initiative to donate the gift to charity or it is deemed to be the property of the relevant state body and is included on the inventory as such. If the value of the gift exceeds 100 000 AMD, the high-ranking official who has a superior notifies the latter – this requirement is not applicable to MPs. The value of a gift is assessed on the basis of “the reasonable market value which the receiver of the gift knew or could have known at the moment of receiving the gift or thereafter”.

52. According to the definition of the LPS, a gift in this context is presumed to be any proprietary advantage, which would not reasonably have been granted to a person who is not an official. Particularly, the notion of gift does not include domestic hospitality and gifts received from relatives or friends, if the nature and size of the gift is in compliance with the “nature of relationships”.

53. Prohibitions and regulations on gifts are not extended to persons associated with high-ranking officials. There is no specific mechanism for reporting and registering gifts. However, they must be included in the regular asset declarations to be submitted to the Commission on Ethics for High-Ranking Officials if they correspond to any of the categories of property or income specified by law (see further below); the authorities indicate that in principle, all types of gifts and donations except for those received in the form of work or services are to be declared. The Commission is competent to determine whether an advantage received by an MP corresponds to the definition of a gift or whether it is excluded from the above regulations, and whether it is in compliance with the “nature of relationships”. According to the authorities, gifts are seldom registered by

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<sup>47</sup> Section 5(1) item 16 LPS.

<sup>48</sup> See the recommendation in paragraph 80.

<sup>49</sup> See section 29 LPS

MPs in asset declarations (12 cases in the period 2011-2013). No cases of gifts received in violation of the law have been recorded.

54. The GET takes the view that the LPS rules on gifts warrant several amendments. In this connection, it draws attention to the recommendation made below with respect to all categories of persons under review.<sup>50</sup>

*Incompatibilities, accessory activities and post-employment restrictions*

55. Pursuant to article 65 of the Constitution and section 9.1 LRoP, an MP may not be engaged in entrepreneurial activities, hold office in state and local self-government bodies or commercial organisations, or engage in any other paid occupation, except for scientific, pedagogical and creative work. The concepts of “entrepreneurial activities” and of “scientific, pedagogical and creative work” are defined in detail in the LPS.<sup>51</sup> Entrepreneurship means being a private entrepreneur or shareholder in a commercial organisation or holding a post in a commercial organisation/involvement in the performance of representational, administrative or managerial functions for a commercial organisation; it does not include, for example, being a limited partner in a limited partnership or being a depositor in a credit or savings union. Prior to admission to any scientific, pedagogical or creative paid work the MP has a right – but not the duty – to apply to the Ethics Committee of the National Assembly to obtain its opinion.

56. The authorities indicate that currently 23 MPs are engaged in scientific, pedagogical or creative work. In one case, the application by an MP to the Ethics Committee was approved. One application was filed with the Ethics Commission for engaging in paid work that was not scientific, pedagogical or creative in nature and it was dismissed.

57. The law also provides that the duties related to the exercise of the powers of an MP prevail over any scientific, pedagogical and creative work, or any other work that is not prohibited by law.<sup>52</sup> Remuneration for scientific, pedagogical and creative work of an MP 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 an MP. No case of a violation of these rules has been recorded.

58. In order to ensure the above limitations, MPs are obliged within one month from election, as the case may be, to de-register from the state register of private entrepreneurs, to resign from commercial organisations or hand over their full share in the charter capital thereof to trust management, to resign from the position of a trust manager of another’s property in a commercial organisation, to resign from their office in state and local self-government bodies and to resign from any paid work if it is not regarded as scientific, academic or creative work.<sup>53</sup> No case of a violation of these rules has been recorded.

59. Although the rules appear strict on paper, the GET was concerned to hear from MPs, civil society representatives and other interlocutors that it is nevertheless common practice for MPs to perform secondary activities, including business activities – which the authorities deny. In the eyes of many observers, “excessive overlap between political and economic interests in Armenia has depleted public trust in political elites”<sup>54</sup> and “one of the most significant corruption issues in Armenia is the blurred line between the political

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<sup>50</sup> See below under “Crosscutting issues” (paragraph 226).

<sup>51</sup> See section 24 LPS.

<sup>52</sup> See section 9.1 LRoP.

<sup>53</sup> See section 9.2 LRoP.

<sup>54</sup> See the Freedom House study [“Nations in Transit 2014 – Armenia”](#), page 66.

elite and business people".<sup>55</sup> It was repeatedly stated that this phenomenon – rather than lobbying by external professional lobbyists, businesses or interest groups – undermined the democratic process. According to TI, one of the most troubling concerns regarding the National Assembly – which is at present commonly seen as being too weak to play the role of an active and independent branch of state power – is "the presence of 'oligarchs' in the capacity of MPs in the Parliament", and "it can be said that the constitutional provision which prohibits MPs from engaging in any other paid activities has stopped operating".<sup>56</sup> According to the OECD Anti-Corruption Network, "in most of cases, the businesses are registered under the names of related persons or other close relatives" and "even in the cases when the founders/participants of businesses include politicians – these instances are not being picked up and reviewed by the law enforcement authorities."<sup>57</sup> A number of the GET's interlocutors agreed with these findings and some called for legal amendments to prevent circumvention of the existing rules, e.g. by introducing the concept of beneficial ownership. The GET also noted with interest that those engaged in the current constitutional reform process recognised this problem and the need to find solutions by building a mechanism to make the constitutional prohibition work. In view of the above, **GRECO recommends taking appropriate measures to prevent circumvention of the restrictions on members of parliament holding office in commercial organisations and on their engagement in entrepreneurial activities or other paid occupation in entrepreneurial activities.** Moreover, strict supervision and enforcement of the rules are urgently required, as recommended further below.<sup>58</sup>

60. No specific post-employment restrictions apply to MPs. Section 23(1) item 9 LPS contains a general rule according to which a high-ranking official is prohibited, during the first year following the release from post, from working with the employer or becoming the employee of an organisation over which s/he has exercised immediate supervision in the last year of his/her tenure. This rule has been criticized as being neither precise nor comprehensive. Furthermore, the GET's attention was drawn to the fact that there are no practical tools or mechanisms in place to enforce it. While one needs to take account of the fact that a parliamentary mandate will not, as a rule, provide employment that spans a whole career, the GET is however concerned that MPs could influence decisions in the National Assembly while bearing in mind the potential benefit they might gain once they leave the National Assembly possibly to join/return to the private sector. The authorities are encouraged to reflect on the necessity of introducing adequate rules/guidelines for such situations, as is the case in some other European states.

#### *Financial interests, contracts with state authorities, misuse of public resources*

61. There is no specific prohibition or restriction on the holding of financial interests by MPs – except for the above-mentioned rule that MPs may in principle not be shareholders in a commercial organisation<sup>59</sup> – or on them entering into contracts with public authorities in which case the general legislation on public procurement applies. However, MPs may not engage in entrepreneurial activities.

62. Moreover, there are no specific rules on misuse of public resources by MPs. The general provisions of the Criminal Code (hereafter CC) on economic crimes such as theft, fraud and embezzlement apply to MPs. For example, inappropriate use by MPs of the amount of money that has been provided to them for business trips or for ensuring their accommodation in Yerevan may constitute fraud.

<sup>55</sup> See TI's 2013 "[Overview of corruption and anti-corruption in Armenia](#)", page 1; see also e.g. TI's 2014 [National Integrity System Assessment Armenia](#), page 34; and the [2014 country report on Armenia by Bertelsmann Stiftung](#).

<sup>56</sup> See TI's 2014 [National Integrity System Assessment Armenia](#), page 34.

<sup>57</sup> See [the Round 3 Monitoring Report on Armenia of the OECD Anti-Corruption Network](#), page 91.

<sup>58</sup> See paragraph 80.

<sup>59</sup> Except for cases where the shares of the shareholder of a commercial organisation has been completely handed over to entrusted management, see section 24 LPS.

### *Misuse of confidential information and third party contacts*

63. There are no special rules regarding the (mis)use of confidential information particularly by MPs. However, under section 43 LRoP "dissemination of information other than the official report on the content of an *in camera* sitting is prosecuted by law." This provision applies to any persons including MPs who disseminate such information. MPs may be subject to criminal liability for disseminating such information if it contains a state secret.

64. There are no specific prohibitions or restrictions or transparency regulations as regards MPs' contacts with third parties who might try to influence their decisions, except for the transparency rules on public discussions and public hearings on draft legislation as mentioned above. MPs are free to have contact with whoever they wish as part of their political work, including lobbyists, interest groups, NGOs, trade unions, employers' associations or other organisations.

65. According to information gathered on site, some years ago civil society had advocated regulating lobbying activities. However, this initiative had not been followed up by the lawmakers who considered that lobbying was not a frequent or worrying phenomenon – even though various stakeholders are invited to comment on draft legislation. While the GET believes that MPs' direct or indirect involvement in business is indeed a more pressing concern, it is nevertheless convinced that clear rules on lobbying activities would help ensure an adequate degree of transparency in the legislative process – which is crucial to gaining citizens' trust in MPs and in the democratic process. The recommendations made above to increase openness and transparency of the legislative process and to provide guidance to MPs on how to engage with lobbyists and other third parties who seek to influence the legislative process are referred to in this context.<sup>60</sup> In the long term, from the perspective of further developing democratic governance, it would also be desirable to regulate MPs' relations with third parties in a more comprehensive manner and also to place contacts with persons or groups representing specific or sectorial interests on an institutional footing, for example by introducing compulsory registration of lobbyists, requiring MPs to disclose their contacts with third parties in relation with draft legislation, introducing rules of conduct for the third parties concerned (as well as for MPs, as recommended), and to actively promote transparency in this area.

### Declaration of assets, income, liabilities and interests

66. Section 32 LPS requires high-ranking officials including MPs to present declarations of their income and property (asset declarations) to the Commission on Ethics for High-Ranking Officials, within 15 days from the day they assume the mandate or when the mandate is terminated, and on an annual basis (not later than 15 February of the next year).

67. The declarations must contain data on the following:

1) property owned by MPs and their spouses:

- real estate;
- movable property;
- stocks, including bonds, cheques, bills, shares and other units (not bank records) and other documentation confirming any other investment, that have been relinquished or obtained in the fiscal year;
- loans, given by or returned to the declarant in the fiscal year;

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<sup>60</sup> See above under "Transparency of the legislative process" (paragraph 32) and under "Ethical principles and rules of conduct" (paragraph 43).

- any other property that exceeds 8 million AMD/approximately 14 800 EUR or its equivalent in foreign currency;
- monetary funds, including funds in cash and those held in banks;

2) the following forms of income received in AMD, foreign currency or in kind:

- salaries or other equivalent remuneration ;
- royalties deriving from literary, artistic and scientific works, patents, trademarks, projects or models, etc.;
- borrowing received or the interest on granted borrowing;
- dividends;
- revenue from casinos or bingo games;
- prize money from contests and competitions, as well as in-kind or cash lottery winnings;
- property and monetary funds (excluding those deriving from job/service) received as donation or aid;
- property received as inheritance (including monetary funds);
- insurance benefits;
- entrepreneurial income;
- income resulting from the sale of property (excluding the monetary funds);
- rent or any other compensation, the revenues resulting from any other civil contracts;
- lump sums;
- incomes resulting from property rights.

This above list is not exhaustive, other income is also subject to declaration, but the LPS does not specify what kind of income is covered by the term "other". The authorities indicate that in practice, scholarships, awards and income from agricultural activities are declared under this heading.

68. The MP's spouse, parents residing in the same household, and children who have reached the age of majority (18 years), are not married and reside with the MP, also have to declare certain assets together with the MP's declaration and according to the same rules. The relevant family members must declare the same types of income as MPs and spouses must also declare the same items of property. By contrast, parents residing with the MP as well as the children mentioned above are only required to declare the following property: real estate if real estate purchase/sale transactions overall in the fiscal year exceed 50 million AMD/approximately 92 500 EUR; movable property, if transactions on the purchase/sale of movable property overall in the fiscal year exceed 8 million AMD/approximately 14 800 EUR; stocks or any other investment, if transactions on the purchase/sale of stocks or other investments overall in the fiscal year exceed 8 million AMD; loans, if transactions on transfer/return of loan funds overall in the fiscal year exceed 8 million AMD; valuable property which has been purchased or sold in the fiscal year.

69. The data to be submitted with respect to each of the above income and property items are specified by law. Declaration forms are an integral part (appendices) of the relevant Government Decision<sup>61</sup> and of the specific written guidelines<sup>62</sup> developed by the Commission on Ethics for High-Ranking Officials.

70. Once the declarations have been submitted to the Commission on Ethics for High-Ranking Officials, the latter has to register declarations within three working days. The list of data that is subject to disclosure, the content and the form of disclosed materials is

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<sup>61</sup> Government Decision No. 1819-N "On approving standard forms of declarations of property, income and affiliated persons" of 15 December 2011 (<http://www.ethics.am/files/legislation/201.pdf> ), as amended by Decision No. 150-N of 19 February 2015.

<sup>62</sup> Namely (1) Guidelines for filling annual declarations; (2) Guidelines for filling entry and exit declarations; (3) Guidelines for filling the declarations of related persons.

determined by the government.<sup>63</sup> The authorities indicate that the list has recently been widened to cover a) the categories of movable and immovable property, securities, expensive property, monetary assets and income as well as b) the currency and the amount or the price of the asset or transaction. The list of data subject to disclosure may not contain data identifying the person or property, including a) dates of births and passport and contact details, b) address and identification details of property and c) company names and addresses.

71. The authorities indicate that the register of declarations contains information regarding the personal data of high-ranking officials, their position, the dates of declaration submission and others. The electronic database of such information in place since 2013 will make it possible to conduct risk based analysis in the future as well as to connect with different electronic state data systems for declaration verification. Meanwhile, the electronic register of high-ranking officials and the data contained in electronic declarations are published on the official website of the Commission on Ethics for High-Ranking Officials.<sup>64</sup> Declarations are kept without any time limitation and remain on the website.

72. The GET acknowledges the detailed rules on asset declarations but it sees a need for some further amendments. In this connection, the GET draws attention to the recommendation made below with respect to all categories of persons under review.<sup>65</sup>

#### Supervision and enforcement

73. In sittings of the National Assembly, the presiding officer can take the following disciplinary measures against MPs (or other persons) who disturb the order: a warning announcing the MP's name and surname; switching off the microphone; depriving the MP of the right to speak over the microphone during one sitting; prohibiting the MP from being present in the hall at all sittings until the end of that day; depriving the MP from the right to be present in the session hall for up to 6 days. These measures are normally applied from the less strict to the stricter.<sup>66</sup>

74. As indicated above, following legal reforms in 2012, the ad hoc Ethics Committee of the National Assembly is competent to examine possible violations by MPs with respect to incompatibilities and restrictions on secondary activities under the Constitution and the LRoP, with respect to the rules of ethics contained in the LRoP and to the requirement under the LRoP to submit a statement on a conflict of interest.<sup>67</sup> The Ethics Committee acts on such matters only on receipt of a written complaint by any natural or legal person who have to indicate their full name and address. Moreover, MPs can also apply to the Ethics Committee to ascertain whether they: can accept scientific, academic or creative paid work; need to make a statement related to a potential conflict of interests they have raised themselves.

75. If the application is not declined within ten days, e.g. for lack of competence, the Ethics Committee examines the issue, normally within 30 days; if it identifies elements of a criminal offence, it suspends the examination and sends the file to the Prosecutor General. The Ethics Committee has a set of rights pertaining to the exercise of its functions: it may demand and obtain materials and documents from any state or local self-government body, state and municipal institution, state and municipal organisation or their public officials; demand that such bodies or their public officials (with the exception of courts, judges and prosecutors) carry out checks, studies, expert

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<sup>63</sup> Cf. Government Decision No. 1835-N of 15 December 2011, as amended by Decision No. 150-N of 19 February 2015.

<sup>64</sup> <http://ethics.am/hy/declarations-registry/> (Armenian only)

<sup>65</sup> See below under "Crosscutting issues" (paragraph 228).

<sup>66</sup> See section 45 LRoP.

<sup>67</sup> See above under "Overview of the parliamentary system" (paragraph 24) and sections 24.1 to 24.5 LRoP.

examinations on the circumstances surrounding the issue examined; visit freely any state or municipal institution or organisation. Applications are then put forward for consideration at the regular sittings of the Ethics Committee which are, as a rule, held *in camera*. The author of the application, the persons having submitted information to the committee and the MP's representative have a right to speak and to answer the questions raised; the MP concerned must be given the opportunity to issue clarifications on the issues raised in the application and the outcome of the examination.

76. The committee decisions and conclusions must be reasoned and are adopted by the majority of the voting members (more than half of the overall number of committee members). The decisions and conclusions by the Ethics Committee are published during the four-day sitting of the next regular session of the National Assembly, after which it is placed on the parliamentary website, particularly on the webpage of the Ethics Committee. This is, at the same time, the only measure aimed to ensure compliance by MPs with the rules of ethics and the requirement to make a statement on conflict of interest. The authorities indicate that during the first six sessions of the fifth convocation of the National Assembly, 26 applications have been filed with the Ethics Committee and three cases of violation of the rules of ethics for MPs have been recorded. In one of those cases, the MP concerned failed to respect the law, whereas in two other cases MPs displayed a disrespectful attitude towards participants during an agenda item at the National Assembly as well as towards the applicants.

77. Specific rules apply with respect to the incompatibilities and restrictions on secondary activities of MPs. If the Ethics Committee adopts a conclusion identifying a breach of article 65(1) of the Constitution, it is sent within 24 hours to the President of the National Assembly and debated in the National Assembly which adopts a resolution on the matter by secret ballot by a majority vote of the MPs participating in the vote (more than half of the total number of MPs). If the resolution confirms the conclusion by the Ethics Committee, the MP's mandate is terminated. The authorities indicate that during the fifth convocation of the National Assembly, one application concerning a violation of this rule has so far been filed with the Ethics Committee which has not as yet delivered its opinion.

78. While the establishment of the Ethics Committee is to be welcomed as a step in the right direction, the results of its work yielded so far raise serious doubts about the effectiveness of the current mechanism. The almost complete absence of violations detected conflicts with the numerous statements according to which MPs frequently infringe incompatibilities and restrictions of secondary activities, rules of ethics and on conflicts of interest. Although the composition of the Ethics Committee<sup>68</sup> appears to be well-balanced between different parliamentary factions, the assignment of supervisory tasks to such a parliamentary body – i.e. to politicians themselves – might not be the ideal solution in the context of Armenia. It would also be more convincing for the public if complaints against MPs were not investigated by other MPs but by an independent body. Furthermore, the GET notes with concern that the current complaints mechanisms do not allow for anonymous complaints and that the Ethics Committee is not allowed to start cases without a formal complaint being filed, which *de facto* prevents it from investigating misconduct *ex officio* (e.g. in the case of suspicions raised within the National Assembly or in the media). Moreover, it is doubtful whether an *ad hoc* instance such as the Ethics Committee – which is made up of MPs and has only two permanent officials – is sufficiently well placed and equipped to continuously and pro-actively monitor MPs' comportment and compliance with the law. The GET believes that the monitoring mechanism needs to be vested with sufficient powers and resources to carry out investigations (including *ex officio*) and possibly to use sanctions.

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<sup>68</sup> See the details provided above under "Overview of the parliamentary system" (paragraph 24).

79. As far as the scope of supervision is concerned, the GET is of the firm opinion that it needs to be extended to the – yet-to-be established – code of conduct recommended above as well as to the regulations on gifts. The current arrangement where gifts are checked only in the framework of the annual asset declarations, to the extent to which they fall under specified property and income items, is clearly insufficient to ensure continuous and comprehensive monitoring.

80. Finally, the GET is convinced that a credible enforcement mechanism can only be achieved when the competent monitoring body has at its disposal a range of adequate sanctions. In the context described above, the current arrangement – which relies almost exclusively on publication of the Ethics Committee’s decisions – can hardly be seen as an effective deterrent to malpractice. The only exception to this arrangement, namely termination of the MP’s mandate by parliamentary vote in the case of a breach of article 65(1) of the Constitution, might on the other hand be too harsh to be applied in practice. In view of the preceding paragraphs, **GRECO recommends that the mechanism for monitoring compliance by members of parliament with standards of ethics and conduct be significantly strengthened so as to ensure (i) independent, continuous and pro-active supervision of the rules of ethics and rules on incompatibilities and secondary activities, conflicts of interest and gifts (ii) enforcement of the rules through adequate sanctions.** Pro-active supervision implies that the monitoring body should be obliged to start a case as soon as there are indications that a member of parliament has violated the rules, even in the absence of a formal complaint.

81. Asset declarations submitted by high-ranking public officials including MPs are checked by the Commission on Ethics for High-Ranking Officials.<sup>69</sup> As indicated above, an electronic declaration system was developed in 2013. The authorities state that about 98% of high-ranking officials have submitted their annual property and income declarations for 2013 through the new system. For the time being, only preliminary checks of those declarations have been conducted, but it is planned to carry out a more in-depth analysis once the systems for electronic verification and risk-based analysis mentioned above have been developed. Checks are performed by the five members of the Commission who are highly qualified lawyers and economists supported by an assistant.<sup>70</sup> They make use of a manual on “Processing and verifying financial declarations” prepared in the framework of the Eastern Partnership-CoE Facility Project on “Good Governance and Fight Against Corruption”.<sup>71</sup> So far, no violations related to the completion of declarations by MPs have been recorded.

82. In order to exercise its functions, the Commission on Ethics for High-Ranking Officials has the same set of rights as the Ethics Committee. It may demand and obtain materials and documents from any state or local self-government body, state or municipal institution or organisation, or their public officials; demand that such bodies or their public officials (with the exception of courts, judges and prosecutors) carry out checks, studies, expert examinations on the circumstances surrounding the issue examined; visit freely any state or municipal institution or organisation.<sup>72</sup> The authorities indicate that online access to electronic databases of public bodies is under preparation. The electronic declaration system developed recently by the Commission will be connected with other state databases and allow for verification of the data provided in the declarations. On the basis of a recent Government Decree the Commission and relevant state institutions have signed memoranda of cooperation. Databases of the

<sup>69</sup> For more information on the Commission on Ethics for High-Ranking Officials, see below in the chapter “Crosscutting issues” (paragraphs 229).

<sup>70</sup> In addition, with the support of CIM an integrated international expert from abroad joined the Commission in September 2015.

<sup>71</sup> [http://www.coe.int/t/DGHL/cooperation/economiccrime/corruption/Projects/EaP-CoE%20Facility/Technical%20Paper/ECCU-EaP-3%202013\\_Processing%20and%20verifying%20financial%20declarations.pdf](http://www.coe.int/t/DGHL/cooperation/economiccrime/corruption/Projects/EaP-CoE%20Facility/Technical%20Paper/ECCU-EaP-3%202013_Processing%20and%20verifying%20financial%20declarations.pdf)

<sup>72</sup> See section 43(2) LPS

State Register of Legal Entities, the State Committee of Real Estate Cadastre adjunct to the government, the Register of Vehicles of the Traffic Police and the Civil Status Acts Registration Agency will be accessible once the technical solutions for automated information transfer have been implemented. However, the Commission will not be granted access to certain other databases such as those of the tax authorities.

83. While the Commission on Ethics for High-Ranking Officials has the competence to initiate proceedings against high-ranking officials for violation of ethical rules and the event of a conflict of interest,<sup>73</sup> MPs, judges and prosecutors are exempted from this rule. Furthermore, violations pertaining to the asset declaration system do not per se constitute grounds for proceedings. Therefore, a violation of the rules such as failure to submit an asset declaration or submission of incomplete or inaccurate information cannot lead to the opening of proceedings against an MP.

84. The legislation does not foresee any sanctions for violations of the regulations on asset declarations, such as failure to submit a declaration or submission of incomplete or inaccurate information. The only tool that the Commission on Ethics for High-Ranking Officials possesses is publication of a list of non-compliant MPs on its website; however, it is not expressly established in the relevant provisions and is only used in cases of non-submission of a declaration. During the on-site visit, the GET was informed of draft legal amendments to the Code of Administrative Offences and the LPS which were prepared by the Ministry of Justice and are currently subject to governmental consultations. The draft amendments would introduce administrative sanctions, namely warnings and fines, for failure to submit an asset declaration or submission of incorrect or incomplete information. The Commission on Ethics for High-Ranking Officials would be competent to impose such sanctions. The GET can only support this reform process and refers to its comments and the recommendation made below with respect to all categories of persons under review.<sup>74</sup>

85. MPs may be subject to criminal proceedings and sanctions, for example, if they commit offences such as theft, fraud, embezzlement, bribery, trading in influence or disclosure of a professional secret. The parliamentary immunity MPs enjoy under article 66 of the Constitution, during and after their term in parliament, protects them from prosecution and liability for actions arising from their status, including the opinions expressed by them in the National Assembly, provided they are not insulting or defamatory. Moreover, during their mandate MPs may not be prosecuted or charged, detained or subject to administrative liability through a judicial procedure without the consent of the National Assembly (inviolability). They may not be arrested without the consent of the National Assembly unless they are caught in the act of committing a criminal offence; in such cases the President of the National Assembly must be immediately notified. The motion giving consent to arrest, charge or prosecute, or to remand an MP in custody is submitted by the Prosecutor General to the President of the National Assembly.<sup>75</sup> The latter has to immediately notify the MP and to ensure that the motion is distributed to the MPs in the parliamentary building. The motion is then debated in the National Assembly. Resolutions of the National Assembly on giving consent in such cases are adopted by secret ballot and by a majority of the voting MPs (more than half of the total number of the MPs). The authorities indicate that since 2008, in all six cases where a motion has been filed by the Prosecutor General with the National Assembly requesting that consent be given to charge an MP, the requests were granted.

86. The GET finds the rules on the procedure for lifting MPs' inviolability rather vague and notes that there are no written criteria for decision-making by the National

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<sup>73</sup> See sections 43 *et seq.* LPS. The Commission initiates the proceedings on its own initiative, based on someone's application or based on the application of a high-ranking official who wishes to verify the correct application of the rules.

<sup>74</sup> See below under "Crosscutting issues" (paragraph 231).

<sup>75</sup> Section 98 LRoP

Assembly. That said, it would appear that immunity is regularly lifted by the National Assembly in situations where MPs are suspected of having committed an offence, and the GET was not made aware of anything that would indicate that the scope of the immunity afforded to MPs might represent an unacceptable obstacle in the prosecution of corruption-related offences.<sup>76</sup> Therefore, GRECO abstains from making a recommendation in this respect.

#### Advice, training and awareness

87. No specific arrangements are made to raise the awareness of MPs of the above-mentioned rules of ethics and conduct, conflicts of interest, prohibitions and restrictions on certain activities and the requirement to submit asset declarations. The authorities stress in this connection that the laws and legal acts regulating these issues are published and available to everyone.

88. It is the task of the legal department of the National Assembly Staff to provide MPs with legal advice. Furthermore, the Commission on Ethics for High-Ranking Officials provides consultancy on issues pertaining to asset declarations. The authorities state that in practice, MPs quite frequently request advice from both structures.

89. As indicated above, MPs' awareness of and compliance with rules of ethics and conduct seem to be wanting. The GET refers to its comments and the recommendation made above under "Ethical principles and rules of conduct", which is aimed at the provision of guidance and training and at raising awareness of existing standards and of the importance to uphold high levels of integrity.<sup>77</sup>

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<sup>76</sup> See also the Joint First and Second Round Evaluation Report on Armenia, document Greco Eval I-II Rep (2005) 2E (paragraph 56), in which GRECO recommended reducing the categories of persons enjoying immunity – which was accomplished in the course of the compliance procedure:

[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoEval1-2\(2005\)2\\_Armenia\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoEval1-2(2005)2_Armenia_EN.pdf)

<sup>77</sup> See paragraph 43 above.

#### **IV. CORRUPTION PREVENTION IN RESPECT OF JUDGES**

##### Overview of the judicial system

90. The judicial system in Armenia is established by the Constitution and the 2007 Judicial Code (hereafter JC).<sup>78</sup> Courts of First Instance are the Courts of General Jurisdiction (16) and the Administrative Court. Courts of Appeal are the Court of Criminal Appeal, the Court of Civil Appeal and the Court of Administrative Appeal. The Administrative Court and the Court of Administrative Appeal are specialised courts. The highest court instance, except for matters of constitutional justice which is administered by the Constitutional Court – a judicial body separate and independent from the executive, the legislative and the judiciary,<sup>79</sup> is the Court of Cassation. It is to ensure uniformity in implementation of the law.

91. The court system comprises only professional judges. There are 230 judge positions in Armenia and as of April 2015, 226 of these positions were filled by 51 women (i.e. 22.5%) and 175 men. Judges of the Courts of General Jurisdiction have the following specialisations: criminal, criminal and criminal/minor cases, civil and civil/bankruptcy cases. These specialisations are determined and changed by the Council of Court Chairs (see below).

92. The Constitution guarantees independence of the judiciary as a whole and of judges individually.<sup>80</sup> In performing their judicial function, judges are independent and subject to the Constitution and the law. In accordance with article 11 JC, intervention in the activities of a judge, not provided for by law, is prohibited. A judge is obliged to immediately inform the Ethics and Disciplinary Committee of the General Assembly of Judges about any interference, not provided for by law, with his/her activities while administering justice or exercising other powers stipulated by law. Where the Ethics and Disciplinary Committee finds that such interference has taken place, it is obliged to apply to the relevant bodies with a motion to subject the guilty persons to liability. No person or body is entitled to give any instruction to a judge.

93. There are two bodies of judicial self-governance in Armenia:<sup>81</sup> the General Assembly of Judges (hereafter GAJ), composed of all judges, and the Council of Court Chairs (hereafter CCC), which is composed of the chairs of first instance and appellate courts, the Court of Cassation and the Chamber of the Court of Cassation. According to the law, the GAJ is the highest body of judicial self-governance and its decisions prevail over those of the CCC. The chair of the Court of Cassation convenes regular meetings of the GAJ (no less than once a year), which is competent 1) to consider any issue in respect of ensuring the normal operation of the judiciary, including those that fall within the competence of the CCC and 2) to elect the judge members of the COJ. The GAJ has an Ethics and Disciplinary Committee, an Evaluation Committee and a Training Committee. Each Committee has its Regulation which is approved by the GAJ. The CCC is a permanent body presided *ex officio* by the chair of the Court of Cassation. It has a number of important functions, including in relation to the budget, human resources, training of judges and case management. The authorities state that the powers vested in the CCC are related to day-to-day issues of operation of the judiciary, including those of an organisational nature. The general CCC competence to consider any issue in respect of ensuring the normal operation of the judiciary was abolished in 2014.

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<sup>78</sup> English version: <http://www.parliament.am/legislation.php?sel=show&ID=2966&lang=eng>

<sup>79</sup> The Constitutional Court has nine members, five of which are elected by the National Assembly on the recommendation of the President of the National Assembly. The other four members are appointed by the President of the Republic, at his/her discretion.

<sup>80</sup> Articles 94 and 97 of the Constitution

<sup>81</sup> See articles 70 *et seqq.* JC.

94. Furthermore, the Council of Justice (hereafter COJ) is established as an independent body which has a key role in the selection of judges and court chairs, in disciplinary proceedings and in the termination of judges' powers.<sup>82</sup> It consists of up to nine judges elected by secret ballot for a period of five years by the GAJ, two legal scholars appointed by the President of the Republic and two legal scholars appointed by the National Assembly. The powers of the latter four members are terminated once the respective powers of the President and of the National Assembly are terminated and a new appointment is made. The chair of the Court of Cassation chairs the sittings of the COJ, without a voting right.

95. The Judicial Department is a state administration institution aiming to ensure the performance of functions and powers of the courts, the GAJ, the CCC and the COJ. It operates on the basis of a statute approved by the chair of the Court of Cassation. As at 29 April 2015, 823 female and 196 male judicial servants were employed in the Judicial Department.

96. As indicated above in the chapter "Context",<sup>83</sup> judiciary reforms have been launched on the basis of the Strategic Programme for Legal and Judicial Reforms for 2012-2016 which covers, *inter alia*, improving the selection procedure for judges and introducing objective criteria and procedures for their performance evaluation and promotion; enhancing self-governance of judges; and reforming the procedures and grounds for disciplinary action. The reform process is ongoing and benefits from international support, *inter alia*, through an EU-Council of Europe Project<sup>84</sup> which includes components on improving judicial accountability and building public confidence through improved ethical and disciplinary rules and practice, enhancing compliance with European standards in the areas of selection, appointment, promotion and disciplining of judges. In the course of the current reform process, several amendments to the JC have already been introduced by Law HO-47-N of 10 June 2014 "On making amendments and supplements to the Judicial Code of the Republic of Armenia", which entered into force on 3 July 2014. *Inter alia*, this law amended some provisions on judicial self-governing bodies – including the establishment of the GAJ's Ethics and Disciplinary Committee, Evaluation Committee and Training Committee<sup>85</sup> – and on the recruitment of judges and introduced rules on regular performance evaluation.

97. The GET acknowledges the measures already taken and the plans for further amendments in the on-going judicial reform process. During the on-site visit, the GET was interested to hear that the 2014 amendments are not considered as the final responses to the current challenges but that further measures are under preparation, including in areas such as judicial self-governance and recruitment procedures. In this connection, it must be noted that various national and international instances – including different Council of Europe bodies such as the Commissioner for Human Rights and the Venice Commission – have recently expressed significant concerns with regard to the judiciary. On the one hand, they were worried about "the persistence of reports regarding the lack of independence of the judiciary in practice, both from external actors such as the executive power at central and local levels (including law enforcement agencies), as well as from internal judicial actors – notably, higher-instance court judges"; in this connection, it would appear that the reporting mechanism foreseen in the JC as described above does not work in practice.<sup>86</sup> On the other hand, serious concerns have been raised concerning "improper influence on judges through bribes and gifts,

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<sup>82</sup> See articles 94.1 and 95 of the Constitution; articles 97 *et seq.* JC.

<sup>83</sup> See paragraph 16 above.

<sup>84</sup> "[Strengthening the Independence, Professionalism and Accountability of the Justice System in Armenia](#)"

<sup>85</sup> Before the reform, an Ethics Committee and a Training Committee were operating under the CCC.

<sup>86</sup> See the [Report of the Commissioner for Human Rights of the Council of Europe of 10 March 2015](#), paragraphs 16 and 19. See also the [Joint Opinion of the Venice Commission and the Directorate of Human Rights of the Council of Europe on the "Draft Law Amending and Supplementing the Judicial Code of Armenia \(Evaluation System for Judges\)"](#), CDL-AD(2014)007, paragraph 125 ([http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)007-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)007-e)).

although prohibited by law".<sup>87</sup> In the view of the GET, these concerns which were shared by a number of interlocutors met on site need to be addressed as a matter of priority, by strengthening both the independence and the accountability of judges. It is noteworthy that this need is recognised by the authorities – given that “one of the primary conceptual issues of constitutional reforms is the establishment of an independent, autonomous and accountable judicial branch”<sup>88</sup> – and that the above-mentioned EU-Council of Europe Project includes several components to address these issues. The specific recommendations made further below are to be seen in this context.

98. One of the areas of reform is the architecture of judicial self-government bodies. Noting that the current co-existence of different bodies – the GAJ, the CCC and the COJ – may affect the effectiveness and transparency of the judiciary, Council of Europe experts in the framework of the Eastern Partnership Programme suggested transferring the functions of the CCC to the COJ. Such a shift could help “guarantee the involvement of ordinary judges in the self-governance process”.<sup>89</sup> The GET is of the firm opinion that such involvement is crucial, particularly in the context of Armenia which is marked by the too strong role of court chairs that leads to risks of influence being exerted on other judges, as the authorities themselves acknowledge.<sup>90</sup> A particularly strong role is played by the chair of the Court of Cassation who presides the CCC, convenes regular meetings of the GAJ, chairs the sittings of the COJ (although without voting rights) and has a number of specific competences. While the authorities stress that the law provides him only with limited powers,<sup>91</sup> various interlocutors claimed that in practice his role is far more important than his formal mandate might suggest. The GET takes the clear view that his sphere of competence needs to be reduced and it was interested to hear about proposals currently being considered that go in that direction, e.g. abolishing his competence to chair sittings of the COJ.

99. Clearly, it is up to the authorities themselves to decide how independent and efficient self-governance can best be organised. The GET wishes to note however that during its discussions it had not identified a clear need for maintaining a body such as the CCC in parallel to the COJ and the GAJ with its recently established permanent committees – whereas the authorities stress the importance of the CCC for day-to-day operational and organisational matters. According to the “Concept paper on the Constitutional Reforms in the Republic of Armenia”, the focus is on improving established structures rather than creating new institutions. Particular “importance is attached to raising the role and efficiency of the activities of the COJ” which “must have sufficient structural independence for its protection from illegitimate or discretionary influences”.<sup>92</sup> Such an approach can only be supported, bearing in mind that the current set-up and functioning of the COJ has also been subject to criticism, *inter alia*, as regards the role of the chair of the Court of Cassation. During the interviews held, the GET was concerned to hear allegations that the COJ is a tool through which the Court of Cassation directly or indirectly exercises pressure on judges<sup>93</sup> – whereas the authorities stress that the law provides only limited powers to the chair of the Court of Cassation. Furthermore, the fact that the powers of four COJ members (legal scholars) are terminated once the respective

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<sup>87</sup> See the [Report of the Commissioner for Human Rights of the Council of Europe of 10 March 2015](#), para 20.

<sup>88</sup> See the “[Concept paper on the Constitutional Reforms in the Republic of Armenia](#)”, page 18.

<sup>89</sup> See the Report of the Working Group on Independent Judicial Systems, Directorate General of Human Rights and Rule of Law, pages 19 and 20 ([http://www.coe.int/t/dghl/cooperation/capacitybuilding/source/judic\\_reform/ENG%20March%20Report%20In-dependant%20Judicial%20Systems.pdf](http://www.coe.int/t/dghl/cooperation/capacitybuilding/source/judic_reform/ENG%20March%20Report%20In-dependant%20Judicial%20Systems.pdf)).

<sup>90</sup> See the reference made by the Venice Commission in its Opinion on the “Draft Law Amending and Supplementing the Judicial Code of Armenia (Term of Office of Court Presidents)”, CDL-AD(2014)021, paragraph 26 ([http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)021-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)021-e)).

<sup>91</sup> As stated above, the chair of the Court of Cassation has no voting rights in sittings of the COJ. The authorities also refer, *inter alia*, to article 161(2) JC according to which, for the purpose of taking a decision on a matter examined by the COJ, only COJ members have the right to be present in the deliberation room.

<sup>92</sup> See the “[Concept paper on the Constitutional Reforms in the Republic of Armenia](#)”, page 18.

<sup>93</sup> See also the statements made in this respect by the “Human Rights’ Defender” (Ombudsman) in his special report on a right to a fair trial, excerpts of which are contained in the 2013 Annual Report, pages 49 *et seq.*

powers of the President of the Republic and of the National Assembly are terminated and a new appointment is made, appears questionable in terms of their independence.<sup>94</sup> In view of the above, **GRECO recommends that the reform of judicial self-governance be continued, with a view to strengthening the independence of the judiciary, securing an adequate representation of judges of all levels in self-governing bodies and reducing the role of court chairs, in particular the chair of the Court of Cassation.**

100. During the visit, the GET's attention was furthermore drawn to the high and increasing workload (examples referred to included judges having to deal with around 1,500 civil cases per year), the low number of judges (currently 226 judges altogether, i.e. around seven judges per 100,000 inhabitants as compared to the European average of 21<sup>95</sup>) and insufficient technical and material resources (e.g. lack of courtrooms). In this connection, the authorities refer to current plans, for example, to further develop alternative dispute resolution including mediation and to enact a new Law on Bankruptcy. The GET welcomes these initiatives which are embedded in the above-mentioned EU-Council of Europe Project, together with a range of measures aimed at enhancing efficiency of the justice system. That said, the GET notes that according to numerous interlocutors – both from within the judiciary and from the private sector – sufficient resources have to be allocated to the judiciary in order to guarantee the effective and high-quality administration of justice. This would almost certainly require an increase in the number of judges and court staff. In this connection, the GET was informed after the visit that a draft law on increasing the number of judges has been put into circulation for the purpose of reducing the workload in the courts. The authorities are encouraged to actively pursue this reform process and to take the above concerns into account in that context.

#### Recruitment, career and conditions of service

101. Judges and court chairs are appointed by the President of the Republic based on the opinion of the COJ. The office of judge is permanent and terminates on reaching retirement age (65) or in cases prescribed by law (see further below).<sup>96</sup>

102. Judges of Courts of First Instance are selected<sup>97</sup> from a reserve list of candidates<sup>97</sup> who, with a few exceptions, have been successful in tests carried out under the auspices of the Academy of Justice.<sup>98</sup> Every Armenian citizen aged between 28 and 60 years with a Bachelor's Degree or a qualification from a certified higher legal education institution in Armenia or a similar degree from a foreign state, having command of Armenian, with at least three years of professional experience and who is not ineligible to apply to the Judicial School as prescribed by law, is, in theory, eligible for selection; persons who have been convicted of a criminal offence, or in respect of whom criminal prosecution has been terminated for grounds other than acquittal, persons who are currently subject to criminal prosecution, who have a physical disability or illness that hinders their appointment to the position of judge, or who have not completed mandatory military service<sup>99</sup> (unless they have been relieved of such service or have had such service deferred), are excluded.

103. The qualification testing of candidates takes place in September each year if it is necessary to supplement the reserve list, and is announced publicly by the Staff of the COJ based on a decision by the CCC. The law prescribes the documents to be presented

<sup>94</sup> See also the criticism expressed in this regard in [the Round 3 Monitoring Report on Armenia of the OECD Anti-Corruption Network](#), page 94.

<sup>95</sup> According to the 2014 Annual Report of the European Commission for the Efficiency of Justice (CEPEJ), see [http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2014/Rapport\\_2014\\_en.pdf](http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2014/Rapport_2014_en.pdf).

<sup>96</sup> Article 96 of the Constitution

<sup>97</sup> Article 122 JC.

<sup>98</sup> Article 115 JC *et seq*

<sup>99</sup> This requirement only applies to male aspirants.

in support of individual applications, the procedure for the written exam and appeals against exam admission decisions. An Evaluation Commission (composed of five judges and two academic lawyers) is established to check and evaluate the written exams, and an Appellate Commission (composed of two judges and one academic lawyer) is tasked with settling disputes regarding the examination results. Both Commissions are dissolved after their activities in the relevant recruitment procedure. While the activities of the Evaluation and Appellate Commissions are carried out confidentially and behind closed doors, the process of the written examination – and of the interview at the COJ (see below) – are audio and video recorded. Results of written exams are published. Contenders who obtain a pass mark take a psychological test aimed at checking sense of responsibility, ability to listen, self-control, moderate use of reputation (influence) and other required characteristics that are not related to professional knowledge. The Staff of the COJ presents the candidates who obtain the best results in the written test to the COJ (that information is published on Internet). State bodies and officials with information on candidates which casts doubt on their reputation and ability to properly exercise judicial powers, must, within two weeks of publication, communicate it to the COJ. The Staff of the COJ is to make written and verbal enquiries to the relevant state bodies.

104. The COJ conducts interviews with the candidates selected which are aimed at revealing the merits and qualities required for the effective performance of the position of judge through evaluation of the professional experience of the contender, motivation, awareness of requirements in fundamental legal acts relating to the status of a judge, personal characteristics (particularly self-control, conduct, ability to listen, communication skills, fairness, analytical skills, etc.). After the interview each Council member votes for 10 of the candidates and the 10 candidates with the most votes are included in the list; gender equality is to be taken into consideration.<sup>100</sup> It is the President of the Republic who approves the list drawn up by the COJ or returns it requesting a new discussion.<sup>101</sup> There is no requirement for the President to explain his decision. The authorities state that the President takes as a basis for his decision solely the opinion of the COJ. The COJ must, within 15 days following the day of receipt of the list of candidates returned by the President, forward an amended list to the President or may re-submit an unchanged list if two-thirds of the members of the Council vote in favour of it; the latter possibility was introduced by Law HO-47-N of 10 June 2014. The authorities indicate that since the constitutional reforms of 2005 the President has returned the list of candidates only once, in 2015.

105. Once candidates on the list have completed the mandatory (except for ex-judges)<sup>102</sup> professional training course at the Academy of Justice appointment is not guaranteed; they must still be selected from the list and appointed by the President of the Republic.<sup>103</sup> Any candidate accepting an offer made by the chair of the Court of Cassation on behalf of the COJ will be nominated to the COJ for its consideration, which must in turn propose the candidate for appointment by the President of the Republic. Should the candidacy be rejected by the President, the candidate is to be removed from the list of judicial candidates and the nomination procedure for the vacant position starts again if, within a two-week period following receipt of the nomination, the President does not appoint the judge.

106. Judge positions at the Courts of Appeal, the Court of Cassation and specialised courts are filled with experienced judges occupying certain positions, depending on the type of court to which they apply. The appointment procedure is similar to that described

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<sup>100</sup> If the number of candidate judges of either gender is less than 25% of the total number, at least five places are to be guaranteed in the list for the candidates of the relevant gender.

<sup>101</sup> Article 117(9) JC.

<sup>102</sup> See article 182 JC.

<sup>103</sup> Article 122 JC.

above. However, the law stipulates that the President of the Republic “shall” appoint the candidate nominated by the COJ unless the procedural rules have been breached.<sup>104</sup>

107. Movement of judges may occur by way of service promotion, transfer or secondment. In principle, judges cannot be transferred to another court or position against their will. In exceptional cases provided by law they may, however, be seconded without their consent. Namely, if a case cannot be examined by a court due to the insufficient number of judges caused by recusal or self-withdrawal of judges or other reasons, the CCC may assign another judge of the same instance to that court for a term of up to six months. Furthermore, when the volume of cases examined by a court is too small compared to the number of judges working in that court, the CCC may assign a judge of that court to another court for a term of up to six months.<sup>105</sup> In both situations, this term may be extended if the examination of a case is not completed. The same judge may not be re-assigned again within a year from the end of the previous assignment. The authorities indicate that in practice, in all the cases where judges have been seconded to a court of the same instance the respective judges have given their written consent. The GET is nevertheless seriously concerned that the above rules do not require the written consent of the judge concerned. It wishes to stress that irremovability of judges is an important aspect of their independence<sup>106</sup> and that a threat to move a judge from one court to another may be used to exert pressure on a particular judge, or to ensure that a certain judge deals with or does not deal with cases at a particular court. The GET is of the firm opinion that the even distribution of workload and substitution of disqualified or absent judges cannot justify transferring judges without their consent and can clearly be achieved by other means (through recruitment, re-assignment of judges who give their consent, etc.). Its concerns are heightened by the fact that at present, such transfers can occur repeatedly (after a one-year period) and that there is no specific provision allowing the judge concerned to appeal to a court against the decision by the CCC. The GET wishes to draw attention to European standards according to which a judge should not “be moved to another judicial office without consenting to it, except in cases of disciplinary sanctions or reform of the organisation of the judicial system.”<sup>107</sup> Bearing also in mind the above-mentioned allegations of – internal as well as external – pressure on judges in Armenia, **GRECO recommends abolishing the possibility for the Council of Court Chairs to temporarily re-assign judges without their consent either for the purpose of ensuring an even workload for judges/courts or for the purpose of remedying a shortfall in the number of judges at a court.**

108. In order to be promoted, judges must be on the official promotion list of judges compiled by the COJ and approved by the President of the Republic.<sup>108</sup> Court chairs are also appointed by the President of the Republic who receives the opinion of the COJ but is not obliged to follow it. The authorities nevertheless state that the President takes as a basis for his decision solely the opinion of the COJ. Following a public announcement by the chair of the Court of Cassation, judges and court chairs can submit their candidacy for such positions. The COJ studies the personal files of the applicants and may invite them to an interview. In the case of Courts of Appeal, only judges/court chairs occupying certain positions specified by law are suitable candidates for court chair. In the case of the Court of Cassation, no applications are made – the COJ votes on candidates from among judges/chairs occupying certain positions specified by law and submits its proposal to the President of the Republic.

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<sup>104</sup> See articles 130(7), 143(7) and 148(6) JC.

<sup>105</sup> See article 14 JC.

<sup>106</sup> See e.g. the Magna Charta of Judges adopted by the Consultative Council for European Judges (CCJE), para 4 ([https://wcd.coe.int/ViewDoc.jsp?Ref=CCJE-MC\(2010\)3&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864](https://wcd.coe.int/ViewDoc.jsp?Ref=CCJE-MC(2010)3&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864)).

<sup>107</sup> See, in particular, Recommendation Rec(2010)12 of the Committee of Ministers of the Council of Europe to member States on judges: independence, efficiency and responsibilities, paragraph 52 (<https://wcd.coe.int/ViewDoc.jsp?id=1707137>).

<sup>108</sup> See articles 136 *et seqq.* JC.

109. The COJ must take into consideration certain criteria when voting in connection with the compilation of the official promotion list of judges or the appointment of a court chair, a first instance specialised court judge, a Court of Appeal judge, a Court of Cassation chamber judge or chamber chair. They include the judge's professional knowledge and reputation, work skills, the quality of judicial acts, the judge's respect for the reputation of the judiciary and judges and compliance with the Judicial Code of Conduct, oral and written communication skills, participation in educational and professional training programmes, in the self-governance of the judiciary and in law and legislation development projects, the attitude towards colleagues and the judge's organisational and management skills.<sup>109</sup>

110. Rules on performance evaluation were introduced into the JC by the above-mentioned Law HO-47-N of 10 June 2014.<sup>110</sup> They provide that performance of judges is subject to regular evaluation after elapse of two years from the date of their appointment. It serves to identify and point out to judges ways of increasing efficiency and to encourage judges to analyse their performance, and contributes to identifying the best candidates for inclusion on the official promotion lists. The quantitative evaluation of judges' activities is carried out every year through the automated case management system operated by the Judicial Department, and the qualitative evaluation is carried out on the basis of data collected over a four-year evaluation period. In the overall results of the evaluation, the qualitative criteria categories –ability to justify judicial acts, professional abilities (including impartial attitude towards participants of the procedure) and organisational skills – for evaluating activities of judges must exceed the quantitative criteria by at least 20%. Detailed qualitative evaluation criteria are being developed in the framework of the mentioned EU-Council of Europe Project.<sup>111</sup>

111. Evaluations are carried out by the Evaluation Committee of the GAJ, which must take account of judges' self-evaluation sheets. Its current members were elected on 5 September 2014 by the GAJ and comprise a judge as its chair, two further judges, a former judge and an academic. If judges' activities are evaluated as low, they cannot apply for being included in promotion lists and must attend additional training; when the evaluation results are average, such training is recommended; when the results are good or excellent two times consecutively, judges have a preferential right to be included in promotion lists. Decisions by the Evaluation Commission on the evaluation results may be appealed to the Administrative Court. Moreover, judges may submit an objection against decisions of the Evaluation Commission on the evaluation results which are attached to those decisions. The new rules entered into force on 3 July 2014. According to the law, performance evaluation of judges on the basis of qualitative criteria will be carried out as of 2018 only.

112. Reasons for termination of a judge's office are enumerated by law.<sup>112</sup> In particular, based on a suggestion by the COJ, a judge's powers must be terminated by the President of the Republic if due to temporary incapacity for work the judge has been unable to perform his/her official duties for more than four consecutive months, or for more than six months during a calendar year; if a final court judgment rules that the judge has been appointed in violation of the requirements of law; if convicted or if a criminal prosecution in his/her respect has been terminated for grounds other than acquittal; if the annual training programmes have not been passed for two consecutive years; if after appointment a physical disability or illness is acquired that hinders appointment to the position of judge. Furthermore, the term of office of a judge terminates on retirement; on reaching the age of 65; if declared incapable, missing, or dead by a court judgment; and if citizenship of Armenia is lost.

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<sup>109</sup> Article 135 JC.

<sup>110</sup> Law HO-47-N of 10 June 2014 "On making amendments and supplements to the Judicial Code of the Republic of Armenia". The new rules are contained in articles 96.1 to 96.5 JC.

<sup>111</sup> See above under "Overview of the judicial system" (paragraph 96).

<sup>112</sup> See article 167 JC.

113. Finally, termination of a judge's office may result from disciplinary proceedings. The COJ may, as a result of reviewing the matter related to the disciplinary liability of a judge, file a motion with the President of the Republic to terminate the powers of a judge. If the President does not terminate the judge's powers within a two-week period, then the motion is considered rejected. In such cases, the judge is by virtue of law considered to have been subjected to the disciplinary sanction of severe reprimand combined with temporary salary reduction.<sup>113</sup> The authorities indicate that during the period 2007 to 2015, the office of four judges was terminated on grounds relating to disciplinary liability.

114. During the on-site visit, several interlocutors voiced concerns about current rules on recruitment, promotion and dismissal of judges. In particular, the prominent role of the President of the Republic raises questions with regard to judicial independence from the executive. As described above, the President is involved both in approving the list of candidate judges prepared by the COJ and in the final appointment of the COJ's nominees, in approving the official promotion list for judges and in the appointment of court chairs, and in deciding on motions by the COJ for the dismissal of judges. The GET shares the concerns expressed by various instances of the Council of Europe, in particular about the fact that the President has real decision-making power and wide discretion, that he is not required to justify his decisions and that there is no procedure to challenge his decisions.<sup>114</sup> While the GET acknowledges recent amendments to the appointment procedure – which were introduced having regard to international standards – whereby the COJ can overturn the President's disapproval of the list of candidates, this reform only addresses the above concerns to a limited extent. The authorities state that the President bases his decisions on appointment and promotion of judges solely on the opinion of the COJ. However, the law neither requires him to do so nor to explain his decisions. In the view of the GET, this state of affairs is highly problematic with regard to European standards according to which such decisions should be based only on objective criteria, notably on merit.<sup>115</sup> Furthermore, according to existing standards unsuccessful candidates should have the possibility to challenge decisions taken (or at least the procedure) in the recruitment process, and judges should be given the right to challenge decisions on disciplinary sanctions including dismissals.<sup>116</sup> It would appear that the current legislation in Armenia is not in line with these requirements.

115. The need for reform is not diminished by the fact that the President usually follows the COJ's proposals. In this connection, some of the GET's interlocutors claimed that lists for appointment and promotion were already agreed between the COJ and the President before their official submission to the President – which the authorities deny. The GET was not in a position to verify this but is of the strong opinion that the current situation is unsatisfactory, in particular bearing in mind the specific context in Armenia which is marked by a low level of trust in the judiciary and by complaints about insufficient independence, and political influence on the judiciary. In this context, the GET noted with interest during the visit that consideration was being given to revising the role of the President in the course of the current constitutional reform process. Some possible avenues for reform have already been suggested by different bodies of the Council of Europe, such as transferring decision-making powers from the President to a judicial self-

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<sup>113</sup> See articles 157 and 166 JC.

<sup>114</sup> See, in particular, the [Report of the Commissioner for Human Rights of the Council of Europe of 10 March 2015](#), paragraphs 15 to 18.

See also the [Report of the Working Group on Independent Judicial Systems](#), Directorate General of Human Rights and Rule of Law, page 40, as well as the [Opinion by the Venice Commission on the "Draft Law Amending and Supplementing the Judicial Code of Armenia \(Term of Office of Court Presidents\)"](#), paragraphs 34 and 35.

<sup>115</sup> See, in particular, [Recommendation Rec\(2010\)12 of the Committee of Ministers of the Council of Europe to member States on judges: independence, efficiency and responsibilities](#), paragraphs 44 and 48.

See also the [Magna Charta of Judges](#) adopted by the CCJE, paragraph 5, according to which decisions on judges' recruitment and career should be "taken by the body in charge of guaranteeing independence" of judges.

<sup>116</sup> See, in particular, [Recommendation Rec\(2010\)12 of the Committee of Ministers of the Council of Europe to member States on judges: independence, efficiency and responsibilities](#), paragraph 69.

governing body;<sup>117</sup> or “rethinking the powers of the President, for instance by introducing an obligation to motivate any rejection of the COJ’s recommendation or by limiting the basis for such a rejection to certain grounds”.<sup>118</sup> To conclude, the GET wishes to stress how important it is that any such reforms serve to strengthen the role of the judiciary in the recruitment, promotion and dismissal procedures.

116. Finally, the GET has also misgivings about the fact that unsuccessful candidates have no possibility to challenge the decisions made by the COJ in recruitment and promotion procedures. Given the preceding paragraphs, **GRECO recommends reforming the procedures for the recruitment, promotion and dismissal of judges, including by i) strengthening the role of the judiciary in those procedures and reducing the role of the President of the Republic and requiring him to give written motivations for his decisions and ii) ensuring that any decisions in those procedures can be appealed to a court.**

117. The remuneration of judges is regulated by the Law on Remuneration of Persons holding State Offices. On this basis, monthly gross salaries range from 661,400 AMD/approximately 1,260 EUR (for judges of First Instance Courts of General Jurisdiction) to 992,100 AMD/approximately 1,890 EUR (for the chair of the Court of Cassation). Salaries are supplemented by an additional payment of 2% per year of experience and by an additional payment for rank as provided for in the new system of remuneration under that law. The additional payments may not exceed a total of 30% of the main salary. Judges are not entitled to any economic privileges such as housing or tax privileges.

#### Case management and procedure

118. The random allocation of cases is currently being introduced.<sup>119</sup> On the basis of a decision by the CCC<sup>120</sup> the software is already operational in the city of Yerevan. Criminal, civil and administrative cases filed with the First Instance Courts, Courts of Appeal and the Court of Cassation are immediately input into the computerised system and are allocated equally, on the same day at 20:00, to the appropriate specialised judges of the given court on a random basis and without taking into account the sequence of registration. After the visit, the GET was informed about the extension and countrywide implementation of the new system, i.e. in the courts of all *Marzes* and in the Courts of Appeal.<sup>121</sup> The GET welcomes the current reform and encourages the authorities to ensure its effective implementation in practice. Random allocation of cases through an automated system has clear potential for reducing corruption risks. The GET furthermore wishes to stress how important it is that information on case assignment procedures is accessible to judges, the parties to a case and the public.

119. A judge can be removed from a case if there are grounds for disqualification (see further below).

120. While exercising judicial power, judges are obliged to carry out examinations within a reasonable period avoiding unjustified delays.<sup>122</sup> Violation of this rule can lead to the initiation of disciplinary proceedings against a judge. The Civil Code does not foresee

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<sup>117</sup> See the [Report of the Working Group on Independent Judicial Systems](#), Directorate General of Human Rights and Rule of Law, page 41.

<sup>118</sup> See the [Report of the Commissioner for Human Rights of the Council of Europe of 10 March 2015](#), paragraph 18 and the [Opinion by the Venice Commission on the “Draft Law Amending and Supplementing the Judicial Code of Armenia \(Term of Office of Court Presidents\)”](#), paragraph 35.

<sup>119</sup> See the recent articles 21.1 *et seqq.* JC.

<sup>120</sup> Decision by the CCC No. 11L of 21 July 2011 “On approving the procedure of random selection for the distribution of cases in courts of the Republic of Armenia”

<sup>121</sup> Based on CCC Decision No. 25-L of 18 May 2015 “On establishing the peculiarities of distribution of cases in the courts of the Republic of Armenia”

<sup>122</sup> Article 90(3) item 8 JC

the right of persons affected by unreasonably long court proceedings to claim compensation from the state.

121. Court proceedings are as a main rule public.<sup>123</sup> The court hearing or part of it may be held *in camera* only by a court decision, as defined by law, to protect public morals, public order, national security, the privacy of parties to the proceedings, or the interests of justice. In respect of adoption cases, the court hearing may be held *in camera* at the request of the person applying to adopt.

#### Ethical principles, rules of conduct and conflicts of interest

122. Articles 88 to 96 JC include rules of judicial conduct which are binding on all judges. They are aimed at ensuring the impartiality and independence of the courts and contributing to building respect for and confidence in the courts. They include general rules concerning the everyday conduct of judges, both in and outside the court, and lay down the conduct requirements that apply to judges when acting in their official capacity. They furthermore regulate judges' self-withdrawal (recusal) from a case, the exercise of secondary activities and the acceptance of gifts, and they complement the LPS rules on asset declarations.

123. In addition, on 5 September 2014 the GAJ adopted a set of 20 rules of judicial conduct<sup>124</sup> which also concern judicial conduct both in the administration of justice and in non-judicial activities. The rules were published both in the Official Journal<sup>125</sup> and on the official website of the judiciary.<sup>126</sup>

124. Regular violations or a serious violation by a judge of the rules of judicial conduct may lead to disciplinary liability<sup>127</sup> (see further below). The authorities indicate that judges' conduct is monitored by the relevant court chair and the chair of the CCC. In case they detect a violation of the requirements of the rules of judicial conduct by a judge, they are to report it to the Ethics and Disciplinary Committee of the GAJ, if necessary.<sup>128</sup>

125. Finally, it is to be recalled that a set of ethical rules for public servants and high-ranking officials more generally is included in the LPS. While they also apply to judges, they are not exhaustive and so are complemented by the more specific rules for judges quoted above.

126. The above-mentioned rules of judicial conduct also deal with conflicts of interest. *Inter alia*, Rule 16 makes it clear that judges must avoid conflict of interests, must not let their family or social or other relations have an impact on their mission as a judge and must be reasonably informed about the financial activities and interests of their family members. Furthermore, a mechanism for the prevention of conflicts of interest is provided by article 91 JC on judges' recusal (see further below). In contrast, the general definition of conflict of interests for high-ranking officials contained in the LPS is not applicable to judges.

127. The GET takes the view that the rules of judicial conduct enshrined in the JC constitute a quite comprehensive and detailed set of ethical principles and binding obligations on judges. It furthermore acknowledges that the highest self-governing body, i.e. the GAJ, has also adopted rules of conduct and made them accessible to the public on the Internet. That said, this two-track approach seems unnecessarily complicated and

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<sup>123</sup> Article 20 JC.

<sup>124</sup> Cf. Decision of the GAJ No. 01N of 5 September 2014 "On determining the Rules of Judicial Conduct of the Republic of Armenia". It repealed the previous rules of judicial conduct adopted by Decision of the GAJ on 23 April 2010.

<sup>125</sup> <http://www.arlis.am>

<sup>126</sup> <http://www.court.am>

<sup>127</sup> Cf. article 153(2) JC.

<sup>128</sup> Cf. articles 25(1) item 4 JC and 73(2) item 6 JC.

confusing. Council of Europe experts have pointed out that it “creates a risk of overlap and contradiction” and that preferably “all regulations surrounding judicial conduct should come directly from the judiciary itself.”<sup>129</sup> Given that the rules adopted by the GAJ follow quite closely those contained in the JC, one might indeed question whether judges have actually played a leading role in their development. Moreover, according to international principles, such rules should “not only include duties that may be sanctioned by disciplinary measures, but offer guidance to judges on how to conduct themselves”<sup>130</sup> – in the way intended by the 2002 Bangalore Principles of Judicial Conduct, namely “to provide guidance to judges”, “to supplement and not to derogate from existing rules of law and conduct which bind the judge.”<sup>131</sup> The authorities may wish to take the above considerations into account in the judicial reform process. In any case, the GET is of the firm opinion that in the context observed in Armenia, further guidance needs to be provided to judges. A recommendation on complementary measures aimed at raising judges’ awareness of corruption risks, ethical dilemmas and existing standards of conduct and at providing advice on practical questions is made further below.<sup>132</sup>

### Prohibition or restriction of certain activities

#### *Incompatibilities and accessory activities, post-employment restrictions*

128. Judges may not be members of a political party nor engage in any political activity. Other secondary activities (“non-judicial activities”) may be performed only within certain limits. They may not be engaged in entrepreneurial activities, hold an office in state and local self-government bodies or in commercial organisations not connected with their duties, or engage in any other paid occupation, except for scientific, pedagogical and creative work.<sup>133</sup> The performance by judges of secondary activities must not cast reasonable doubt on their ability to act impartially as a judge, diminish the reputation of the judicial office or hinder the proper performance of judicial duties.

129. As a rule, judges must not practice as an advocate even on a pro bono basis, nor act as an asset trustee or executor of a will. Judges may occupy positions in non-profit organisations, without compensation, if the relevant court or a court of lower instance is not examining or reasonably anticipating a case connected with the interests of the organisation and if such a position does not involve the management of funds, execution of civil law transactions on behalf of the organisation, or representation of the property interests of the organisation within state government or local self-government bodies.

130. Judges are obliged to report their secondary activities to the Ethics and Disciplinary Committee of the GAJ within the shortest possible time period, specifying the relevant details.

131. Payment for scientific, pedagogical and creative work of judges may not exceed a reasonable amount, i.e. the amount payable to persons with similar qualifications who are not judges.<sup>134</sup> In principle, judges may receive reimbursement of expenses, if the

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<sup>129</sup> See the [Report of the Working Group on Independent Judicial Systems](https://wcd.coe.int/ViewDoc.jsp?Ref=CCJE(2002)OP3&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3), Directorate General of Human Rights and Rule of Law, page 93, with references to Opinion No. 3 (2009) of the Consultative Council of European Judges (CCJE) on the principles and rules governing judges’ professional conduct, in particular ethics, incompatible behaviour and impartiality ([https://wcd.coe.int/ViewDoc.jsp?Ref=CCJE\(2002\)OP3&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3](https://wcd.coe.int/ViewDoc.jsp?Ref=CCJE(2002)OP3&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3) ).

<sup>130</sup> See, for example, [Recommendation Rec\(2010\)12 of the Committee of Ministers of the Council of Europe to member States on judges: independence, efficiency and responsibilities](https://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf), paragraph 72.

<sup>131</sup> See [http://www.unodc.org/pdf/crime/corruption/judicial\\_group/Bangalore\\_principles.pdf](http://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf) .

<sup>132</sup> See below under “Advice, training and awareness” (paragraph 166).

<sup>133</sup> See article 98 of the Constitution and article 92(1) JC. The concept of “entrepreneurial activities” and of “scientific, pedagogical and creative work” are defined in detail in section 24 LPS, as seen above with respect to MPs

<sup>134</sup> Article 93 JC.

source of such reimbursement cannot be reasonably perceived as being in a position to influence the judge in the performance of judicial duties.

132. Judges are prohibited from being individual entrepreneurs, and from being shareholders of business companies or depositors of trust-based partnerships if this might reasonably imply use of the official position of a judge or engagement in the performance of instructive or managerial functions within the organisation or if it can be reasonably assumed that the commercial organisation will often appear before the respective court as a party to proceedings.<sup>135</sup> Judges are obliged to manage their investments in such a way as to minimise the number of cases where recusal would be required.

133. No specific post-employment restrictions apply to judges, but as is the case for MPs the general rule under section 23(1) item 9 LPS applies. According to this rule, up to one year after release from post, a high-ranking official is prohibited from being admitted to work with the employer or becoming the employee of an organisation over which s/he has exercised immediate supervision in the last year of his/her tenure. As mentioned above in the chapter on MPs, this rule appears neither precise nor comprehensive and there are no practical tools or mechanisms in place to enforce it. The authorities are encouraged to reflect on possibilities to revise the current rule so as to make it more effective in practice.

#### *Recusal and routine withdrawal*

134. Judges are obliged to recuse themselves if they are aware of facts or circumstances that may cast reasonable doubt on their impartiality in a case. Article 91 JC contains a non-exhaustive list of grounds for recusal:

- the judge is prejudiced against a party, his/her representative, advocate, or other participants in proceedings;
- the judge, in his/her personal capacity, is a witness to facts that are disputed in the proceedings;
- there are grounds to believe that the judge or judge's spouse or relative of the judge or spouse (to the third degree of kinship) will act as a party to the case or has taken part in the examination of the case at a lower instance as a judge or as a party in the case;
- the judge is aware that s/he personally or the judge's spouse or relative of the judge or spouse (to the third degree of kinship) has economic interests in the substance of the dispute or in association with any of the parties.

Article 90 CPC contains a similar list.

135. Pursuant to article 91(3) JC, a judge who recuses him/herself is obliged to disclose the grounds of the recusal to the parties, which are to be recorded verbatim. If the judge considers that s/he is capable of being impartial in the case, s/he may propose that the parties discuss the possibility of waiving the recusal in the judge's absence. If the parties decide to waive the judge's recusal, the latter is to carry out the judicial examination of the case after putting the decision of the parties on the record. Article 88(3) CPC provides that parties can submit a motion for the recusal of a judge only prior to the beginning of the court session, unless the relevant circumstances become known to them immediately after the beginning of proceedings.

136. While article 91(4) JC states that the decision on self-recusal may be appealed, the CPC does not contain any such rule. The Constitutional Court ruled that this contradiction "may not be interpreted in the law enforcement practice so as to exclude the right to challenge those decisions directly — in case of self-recusal, and within the

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<sup>135</sup> Article 94 JC.

framework of the appeal of a judicial act on the merits of a case — in case of rejecting the motion for self-recusal.”<sup>136</sup>

### *Gifts*

137. Article 95 JC includes detailed rules on the acceptance and handling of gifts by judges which differ in some respects from the general LPS rules applicable to high-ranking officials.<sup>137</sup> As a rule, judges must not accept a gift from anyone or agree to accept a gift in the future, and they must seek to keep their family members living with them away from such actions. In this context, a “gift” is defined as “any property advantage that would reasonably not be given to a non-judge”; furthermore, the law specifies that the concept of “gift” includes “remitted claims, assets sold or services rendered at a disproportionately low value, borrowing, gratuitous use of the assets of another person, etc.”.

138. The law contains a list of exemptions from the general prohibition, namely “gifts and awards usually given at public events; books, computer software and other similar materials provided at no cost for official use; official protocol; gifts related to the business, professional or other type of activity of a judge’s family member living with the judge (...), provided that the gift cannot be reasonably perceived as serving the aim of influencing the judge; gifts received as ordinary social hospitality; gifts received from relatives, friends or associates on a special occasion, including a marriage, anniversary or birth, if the essence and amount of the gift reasonably corresponds to the event and to the nature of the relationship between them; gifts received from relatives, friends or associates, if the essence and amount of the gift reasonably correspond to the nature of the relationship between them; scholarships, grants or benefits awarded as a result of a public tender under the same conditions and criteria as those applied to other applicants, or as a result of another transparent process; and loans from financial institutions at the ordinary or common terms.”

139. If the value of gifts considered permissible received from one person during the same calendar year exceeds 250 000 AMD/approximately 463 EUR, or if the total value of gifts received during a calendar year exceeds 1 million AMD/approximately 1 850 EUR, a judge must report it to the Ethics and Disciplinary Committee of the GAJ within the shortest possible time period. Furthermore, if a judge learns that a relative (to the third degree of kinship) who does not live in the same household, has received a gift that can reasonably be perceived as having the aim of influencing the judge, then the judge must report it to the Committee within one week of learning of it. If the Committee finds that information submitted to it by a judge is incomplete or doubtful, it may discuss the matter with the participation of the judge. The authorities indicate that no procedure has been established by the Ethics and Disciplinary Committee for registering gifts and verifying the information submitted.

140. Like other high-ranking officials, judges are also required to include gifts received in the regular asset declarations filed to the Commission on Ethics for High-Ranking Officials (43 instances recorded during the period 2011-2013). No instances of gifts received in violation of the law have been recorded.

141. If a judge is given a gift that is not considered permissible and which cannot be returned through reasonable effort, the judge must transfer it to the state. The authorities have not produced a record of practical experience with this rule.

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<sup>136</sup> Constitutional Court decision No. SDO-918 of 28 September 2010.

<sup>137</sup> See section 29 LPS, quoted above with respect to MPs.

142. The GET takes the view that the JC rules on gifts warrant some amendments. In this connection, it draws attention to the recommendation made below with respect to all categories of persons under review.<sup>138</sup>

#### *Third party contacts, confidential information*

143. Judges must refrain from contact with the parties and other participants in the proceedings.<sup>139</sup> Moreover, they must refrain from publicly expressing an opinion on any case examined or anticipated in any court and from expressing their opinion in private, if it may interfere with the examination of the case.<sup>140</sup>

144. Beyond the exercise of judicial authority, judges must not publicise or use confidential information that becomes known to them as a result of performing their official duties, unless otherwise provided for by law.<sup>141</sup>

#### *Declaration of assets, income, liabilities and interests*

145. Section 32 LPS requires high-ranking officials, including judges, to present declarations of their income and property (asset declarations) to the Commission on Ethics for High-Ranking Officials, within 15 days from the day they assume or terminate their official responsibilities, and on an annual basis (not later than 15 February of the next year). The judge's spouse, parents residing in the same household and children who have reached the age of majority (18 years), are not married and reside with the judge, also have to present an asset declaration together with the judge's declaration and according to the same rules. The electronic register of high-ranking officials, and the electronic declarations – within limits defined by the government – are published on the official website of the Commission on Ethics for High-Ranking Officials.<sup>142</sup>

146. The details of the regime applicable to asset declarations by high-ranking officials have been described above with respect to MPs.<sup>143</sup> In addition to those general requirements, judges have to submit to the Commission on Ethics for High-Ranking Officials a declaration on related persons holding a position as prosecutor, judge or investigator, specifying the first name, patronymic and second name as well as the post held.<sup>144</sup> Moreover, they have to send a copy of the asset declaration to the Ethics and Disciplinary Committee of the GAJ.<sup>145</sup> If the latter finds that the information submitted to it is incomplete or doubtful, it may discuss the matter with the participation of the judge.<sup>146</sup>

#### Supervision and enforcement

147. As mentioned above, judges' conduct is monitored by the relevant court chair and the chair of the CCC i.e. the chair of the Court of Cassation. In case they detect a violation of the requirements of the rules of judicial conduct by a judge, they are to report it to the Ethics and Disciplinary Committee of the GAJ, if necessary.<sup>147</sup>

148. The Ethics and Disciplinary Committee was established on 25 July 2014. Its chair and six members are judges of various courts who may not be court chairs or members of the COJ. The Committee's range of competence includes the receipt of information

<sup>138</sup> See below under "Crosscutting issues" (paragraph 226).

<sup>139</sup> Rule 3 of the rules of judicial conduct.

<sup>140</sup> Article 90(3) item 11 JC.

<sup>141</sup> See article 90(3) item 12 JC and Rule 12 of the rules of judicial conduct.

<sup>142</sup> <http://ethics.am/hy/declarations-registry/> (Armenian only)

<sup>143</sup> See paragraphs 66 to 71 above.

<sup>144</sup> Section 36 LPS.

<sup>145</sup> Article 96 JC.

<sup>146</sup> Article 154(2) JC.

<sup>147</sup> Cf. articles 25(1) item 4 JC and 73(2) item 6 JC.

from judges on gifts and secondary activities as well as a copy of their asset declaration. When it receives a report or comes across a violation of the rules of judicial conduct by a judge when examining another matter within the scope of its authority, the Committee must arrange to discuss it with the participation of the judge concerned. It can also take the initiative to organise such a discussion if it finds that information on gifts or assets declared by a judge is incomplete or doubtful. If, as a result of the discussion, the Committee finds that violations are neither serious nor regular, then it may limit its action to a discussion of the matter. Otherwise, the Committee is to instigate disciplinary proceedings.<sup>148</sup>

149. The authorities indicate that during the period 25 July 2014 to 16 April 2015, the Ethics and Disciplinary Committee instituted seven disciplinary proceedings, five of which led to disciplinary sanctions being imposed on a judge. In the case of one judge, the COJ noted the existence of a violation, limited its action to a discussion of the matter and dismissed the proceedings. In one other case, the proceedings were dismissed by the Ethics and Disciplinary Committee.

150. Disciplinary accountability of judges is regulated in articles 153 to 166 JC. The COJ is competent to take disciplinary measures against a judge, on the grounds specified by law. For example, in the case of an obvious and serious violation of a provision of substantive or procedural law in the administration of justice, committed intentionally or through gross negligence; regular violations or a serious violation of the rules of judicial conduct; failure to carry out certain duties/observe certain rules specified by law, including the restrictions on secondary activities, the requirement to participate in mandatory training activities, etc.; failure to notify the Ethics and Disciplinary Committee of any interference in the administration of justice or in the exercise of other powers stipulated by law, or other influence not provided for by law. The criminal, administrative, civil or other liability of a judge does not preclude the application of disciplinary measures, and *vice versa*.

151. Disciplinary proceedings can be instituted by the Ethics and Disciplinary Committee of the GAJ, the Minister of Justice (with respect to judges of first and second instance courts) and the chair of the Court of Cassation (with respect to judges of the Court of Cassation),<sup>149</sup> pursuant to: an individual application; communication from a state or local self-government body or official; the identification, as a result of summarising or studying court practice, or by the persons instituting the proceedings, of an act that gives rise to disciplinary liability; a judicial act issued by an international court acting with the participation of Armenia which has established that a court of Armenia has violated the human rights and fundamental freedoms set out by a relevant international treaty to which Armenia is a party while examining the case. The competent bodies have to inform each other about the institution of disciplinary proceedings in order to avoid duplication.

152. Disciplinary proceedings are subject to detailed regulations. They may not last longer than six weeks. The person instituting the proceedings has a set of rights, *inter alia*, the right to require written explanations from the judge concerned; to request materials from the court or – if no legal act has yet entered into force – to gain knowledge, at the court, of the materials of any criminal, civil or any other case; to summon and hear witnesses; and to demand and receive materials from state and local self-government bodies and officials. As a result of the studies conducted, s/he decides either to dismiss the disciplinary proceedings or to file a motion requesting the COJ to apply disciplinary measures. Before the materials relevant to the disciplinary proceedings are sent to the COJ, the judge concerned is entitled to read them, to submit additional explanations or file a motion requesting an additional investigation. When examining

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<sup>148</sup> See article 154 JC.

<sup>149</sup> These bodies must inform each other about the institution of disciplinary proceedings.

disciplinary cases with respect to judges, the COJ acts as a court. As a rule, the procedure of case examination is subject to the provisions of the Administrative Procedure Code.

153. The COJ may impose on a judge the following disciplinary sanctions – which must be proportionate to the offence: warning; reprimand combined with deprivation of 25% of salary for a six-month period; severe reprimand combined with deprivation of 25% of salary for a one-year period; or, if a serious disciplinary offence or regular disciplinary offences render the judge incompatible with the position, a motion requesting the President of the Republic to terminate the judge’s powers can be filed. Decisions of the COJ are published in the Official Journal and on the official website of the judiciary.<sup>150</sup> During the on-site visit, the GET was informed that so far, the Ethics and Disciplinary Committee of the GAJ had instituted disciplinary proceedings against six judges, five of whom were sanctioned.

154. Disciplinary liability of judges is subject to statutes of limitation, depending on the disciplinary offence in question. For violations of the rules on judicial conduct, disciplinary proceedings may be instigated within one month of discovering the grounds for disciplinary action, and no later than six months after the emergence of such grounds. The GET finds these time limits very short but given that it was not informed about any concrete cases where this had hampered disciplinary action, it abstains from making a formal recommendation. The authorities are however invited to reflect on possible measures to ensure that disciplinary cases concerning improper conduct by judges are decided before the expiry of the statute of limitations.

155. On the basis of newly-emerged circumstances, the COJ may review its decision, on the motion of the person who instigated the disciplinary proceedings or of the judge concerned.

156. The GET acknowledges the current reform process with respect to, *inter alia*, supervision of judges which has led to the establishment of the Ethics and Disciplinary Committee of the GAJ. The new system whereby the competence for initiating and deciding on disciplinary proceedings is assigned to separate bodies appears clearly preferable to the former regime where one body – the COJ – performed both functions simultaneously. That said, the GET sees a need for further amendments in this area. Firstly, the two-track system whereby the Ethics and Disciplinary Committee of the GAJ and the Minister of Justice, and the chair of the Court of Cassation (for the judges of the Court of Cassation) have parallel competence for initiating disciplinary proceedings appears questionable. Various observers have expressed the opinion that in the context of Armenia, the involvement of the Minister of Justice in disciplinary proceedings against judges “is not compatible with judicial independence”.<sup>151</sup> The GET notes that the right of the Minister to initiate proceedings is not in itself in conflict with European standards. However, it has particular misgivings about the rule that permits the body that has initiated proceedings to gain knowledge, at the court, of the materials relating to on-going legal cases. According to Council of Europe experts having analysed the situation, such a rule is questionable in principle as it “opens the door for all manner of improper influence upon the judge” and is “in any event unjustifiable” in the case of the Minister of Justice as part of the executive branch.<sup>152</sup>

157. Secondly, the GET’s attention was drawn to cases of allegedly arbitrary and inconsistent application of disciplinary proceedings by the COJ. Similarly, the

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<sup>150</sup> <http://www.court.am>

<sup>151</sup> See e.g. the [Report of the Working Group on Independent Judicial Systems](#), Directorate General of Human Rights and Rule of Law, page 101. See also the references in the [Report of the Commissioner for Human Rights of the Council of Europe of 10 March 2015](#), paragraph 26.

<sup>152</sup> See the [Report of the Working Group on Independent Judicial Systems](#), Directorate General of Human Rights and Rule of Law, pages 99 and 101.

Commissioner for Human Rights of the Council of Europe has expressed concern about a number of reports of “unfair use of disciplinary proceedings against judges as a means of pressure aimed at influencing their decisions or retaliating against them” received.<sup>153</sup> In that context, the prominent role of the chair of the Court of Cassation in disciplinary proceedings was highlighted. Notwithstanding the position of the Council of the Association of Judges which vigorously refuted such concerns,<sup>154</sup> the GET cannot disregard the fact that a number of cases have been documented in detail by an independent institution – the Ombudsman – and taken up by international bodies including from the Council of Europe. Bearing in mind the specific context in Armenia, where public trust in the judiciary is low and independence of the judiciary is commonly (including by the authorities) considered unsatisfactory, it is crucial that measures are taken to ensure that disciplinary cases are subject to fair proceedings, decided only on objective grounds and free from improper influence. In this connection, the authorities point to already existing legal safeguards, such as the principle of adversarial proceedings and the burden of proof for establishing that there are grounds to subject a judge to disciplinary liability which is borne by the person who instigated the proceedings. However, the GET wishes to stress how important it is that judges are accorded the right to appeal against disciplinary decisions to a court of law as opposed to the current situation where only the COJ – which is to “act as a court”<sup>155</sup> – is involved and judges are not given the possibility to challenge the COJ’s decisions.<sup>156</sup> Moreover, the current wording of legal grounds for disciplinary liability may open up risks of abuse, in particular, as regards the concept of “regular violations or serious violation of the rules of judicial conduct” which is too vague and cannot replace specific disciplinary offences.<sup>157</sup> It would also be preferable to define more precisely a gradation in sanctions, in particular with respect to possible grounds for dismissal and to ensure that the latter include only the most serious offences. Given the preceding paragraphs, **GRECO recommends (i) that the role of the Ministry of Justice in disciplinary proceedings against judges be reviewed; (ii) that adequate safeguards be put in place to ensure that disciplinary proceedings are not used as an instrument of influence or retaliation against judges, including the possibility for judges to challenge disciplinary decisions before a court.**

158. In the same context, the GET takes note of the concerns raised by various international bodies – and by the Ombudsman – over the “independence of individual judges and integrity of their decisions being compromised through the practice of judges to consult with other judges prior to making their judgment”, which “appears to be especially prevalent between lower instance courts and the Court of Cassation, and often happens out of fear that the judgment will be reversed and the judge subjected to disciplining for an ‘illegal’ ruling”.<sup>158</sup> The GET was highly concerned about the findings

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<sup>153</sup> See the [Report of the Commissioner for Human Rights of the Council of Europe of 10 March 2015](#), paragraphs 24 and 25.

<sup>154</sup> See above in the chapter “Context” (paragraph 14).

<sup>155</sup> The norms of the Administrative Procedure Code apply to the procedure of case examination by the COJ, when acting as a court, to the extent as such norms are in their substance applicable and do not contradict the norms of the JC.

<sup>156</sup> See also the [Joint Opinion of the Venice Commission and the Directorate of Human Rights of the Council of Europe on the “Draft Law Amending and Supplementing the Judicial Code of Armenia \(Evaluation System for Judges\)”](#), paragraphs 84 and 128.

<sup>157</sup> See the [Joint Opinion of the Venice Commission and the Directorate of Human Rights of the Council of Europe on the “Draft Law Amending and Supplementing the Judicial Code of Armenia \(Evaluation System for Judges\)”](#), paragraph 117.

Some other grounds such as the concept of “obvious and grave violation of a provision of substantive or procedural law in the administration of justice” had also been criticised by different international instances, as they might be used to punish judges for the content of their judgments. It is to be noted, however, that in the meantime the restrictive elements of “committed intentionally or by gross negligence” were added by way of the 2014 amendments to the JC, in line with [Recommendation Rec\(2010\)12 of the Committee of Ministers of the Council of Europe to member States on judges: independence, efficiency and responsibilities](#), paragraph 66.

<sup>158</sup> Cf. [the Round 3 Monitoring Report on Armenia of the OECD Anti-Corruption Network](#), page 96. See also e.g. the [Joint Opinion of the Venice Commission and the Directorate of Human Rights of the Council of Europe on the “Draft Law Amending and Supplementing the Judicial Code of Armenia \(Evaluation System for Judges\)”](#),

presented by the Ombudsman in his 2013 special report which was based on interviews with over 120 legal professionals and other experts and on the study of numerous court cases.<sup>159</sup> He had concluded that judges who do not reach an agreement with the Court of Cassation on the outcome of sensitive cases (e.g. those that are widely and publicly commented on, defamation and insult cases, etc.) and prefer to make their own decisions “are subjected to a high risk of pressure and ‘prosecution’.” Such practice is incompatible with the principle of individual independence of judges and with the parties’ right of access to the courts and “should be dealt with through disciplinary means against judges taking part in such practice.”<sup>160</sup> As mentioned above, the JC already includes provisions requiring judges to notify the Ethics and Disciplinary Committee of the GAJ of any interference with the administration of justice or the exercise of other powers stipulated by law, or of other influence not prescribed by law, and failure to do so gives rise to disciplinary liability. Moreover, such interference is criminalised in articles 332.1 and 332.3 CC.<sup>161</sup> However, it would appear that this mechanism does not work effectively in practice. It is essential that a more effective mechanism to detect and sanction such instances is developed, not least in order to restore citizens’ trust in the justice system. While it is up to the authorities to further analyse the situation and find appropriate solutions, in the view of the GET it might be necessary to provide for reporting obligations and adequate sanctions both for judges of superior courts trying to influence judges of lower courts and for judges of lower courts seeking instructions. In view of the above, **GRECO recommends that effective rules and mechanisms be introduced for identifying undue interference with the activities of judges in the administration of justice and for sanctioning judges who practice or seek such interference.**

159. In the context described above, it might also be advisable to consider introducing an extraordinary legal remedy enabling citizens, after they have exhausted all other legal remedies, to file a complaint to the Constitutional Court alleging violations of fundamental procedural rights, in particular the right to a fair trial. The GET was interested to hear that these concerns might possibly be reflected in the current constitutional reform process.

160. As described above with respect to MPs,<sup>162</sup> the Commission on Ethics for High-Ranking Officials is competent to check asset declarations of high-ranking officials including judges. However, it has no competence to initiate proceedings against them in cases where the obligation to submit such declarations is not duly performed. The LPS does not foresee any sanctions for violations of the regulations on asset declaration – such as failure to declare or incomplete or inaccurate information – either. The only tool that the Commission on Ethics for High-Ranking Officials possesses is publication of a list of non-compliant judges on its website.

161. As already mentioned, the Ethics and Disciplinary Committee of the GAJ is also competent to receive a copy of judges’ asset declarations and when it finds the information declared incomplete or doubtful, it can organise a discussion with the judge concerned. If, as a result of the discussion, the Committee finds that violations are

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paragraphs 13 and 125; and the [Report of the Commissioner for Human Rights of the Council of Europe of 10 March 2015](#), paragraphs 21 and 22.

<sup>159</sup> For more details, see above in the chapter “Context”, paragraph 14.

<sup>160</sup> See the [Joint Opinion of the Venice Commission and the Directorate of Human Rights of the Council of Europe on the “Draft Law Amending and Supplementing the Judicial Code of Armenia \(Evaluation System for Judges\)”](#), paragraph 18.

<sup>161</sup> Article 332.1 CC: “Any intervention into the activities of the court, with the purpose of hindrance to the administration of justice, is punished with a fine in the amount of 200 to 400 minimal salaries, or with arrest for the term of 1-3 months, or with imprisonment for the term of up to 2 years”. Article 332.3 CC: “The actions envisaged in part 1 or 2 of this Article, committed by a person by abuse of official position, are punished with a fine in the amount of 300 to 500 minimal salaries, or with imprisonment for the term of up to 4 years, with deprivation of the right to hold certain posts or practice certain activities for up to 3 years”.

<sup>162</sup> See paragraphs 81 and 82 above.

neither grave nor regular, then it may limit its action to discussion of the matter. Otherwise, the Committee is to instigate disciplinary proceedings.<sup>163</sup>

162. Judges may be subject to criminal proceedings and sanctions, for example, for theft, fraud, embezzlement, bribery, trading in influence or disclosure of a professional secret. However, they enjoy immunity in accordance with article 97(3) of the Constitution. Thus, they may not be detained, charged or held administratively liable through the judicial process except with the consent of the COJ. They may not be arrested unless they are caught in the act or immediately after the act. If they are arrested under those circumstances, the President of the Republic is to be notified immediately. The authorities indicate that so far there has only been one case, in 2014, where the Prosecutor General has filed a motion to the COJ to submit a recommendation to the President of the Republic to consent to charging and detaining, which was upheld by the COJ.

163. As the Commissioner for Human Rights of the Council of Europe points out, the significant level of corruption in the judiciary which has been reported<sup>164</sup> "is a matter of serious concern, not least because of its detrimental effects upon public trust in the rule of law."<sup>165</sup> Various interlocutors of the GET shared these concerns and saw significant deficiencies in the enforcement regime, given the complete absence of any criminal sanctions imposed on judges for corruption offences. In this context, the Commissioner's urgent appeal to the authorities "to step up their efforts to ensure that all cases of corruption in the judiciary are effectively investigated and prosecuted" can only be supported. In this connection, the GET is concerned about the broad immunity accorded to judges<sup>166</sup> and is of the firm opinion that it represents an unnecessary obstacle to rapid law enforcement action, for example, to secure evidence. While the authorities stress that judges' immunity aims at safeguarding the independence and autonomy of the judiciary and thus public interests, the GET is convinced that this extraordinary protection ought to be limited to what is strictly necessary for carrying out the functions of a judge. That said, the GET is fully aware that judges may need protection from inappropriate disturbance in carrying out their duties for which so called "functional immunity" would be sufficient. In view of the foregoing and with reference to international standards including Guiding Principle 6 of Resolution (97) 24 of the Committee of Ministers of the Council of Europe on the twenty guiding principles for the fight against corruption,<sup>167</sup> **GRECO recommends that the immunity of judges be limited to activities relating to their participation in the administration of justice ("functional immunity").**

#### Advice, training and awareness

164. The Academy of Justice organises 10-hour training courses on ethics which are mandatory for candidate judges. They deal with the general provisions on ethics of judges, the provisions on ethics of judges in the process of performance of justice, ethical rules of judges in non-judicial matters, judicial ethical proceedings and grounds for disciplinary responsibility, disciplinary proceedings, procedures and forms of responsibility. The Academy of Justice also plans to include a similar course for sitting judges in 2016.

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<sup>163</sup> See article 154 JC.

<sup>164</sup> See above in the chapters "Context" (paragraph 14) and "Overview of the judicial system " (para 97).

<sup>165</sup> See the [Report of the Commissioner for Human Rights of the Council of Europe of 10 March 2015](#), para 37.

<sup>166</sup> In the Joint First and Second Round Evaluation Report on Armenia, GRECO had focused on procedural questions relating to judges' immunities. The recommendation made by GRECO in that respect was implemented by Armenia in the compliance procedure.

<sup>167</sup> [https://www.coe.int/t/dghl/monitoring/greco/documents/Resolution\(97\)24\\_EN.pdf](https://www.coe.int/t/dghl/monitoring/greco/documents/Resolution(97)24_EN.pdf)

See also [Recommendation Rec\(2010\)12 of the Committee of Ministers of the Council of Europe to member States on judges: independence, efficiency and responsibilities](#), paragraph 71, and the [Magna Charta of Judges](#) adopted by the CCJE, para 20.

165. As indicated above with respect to MPs, the Commission on Ethics for High-Ranking Officials provides consultancy to high-ranking officials – including judges – on issues pertaining to asset declarations.

166. Current plans to introduce training for sitting judges on ethical questions are to be welcomed. Given the context in Armenia described above, it is crucial that such training is provided to all judges on a mandatory and regular basis, by way of dedicated courses referring to practical examples. Clearly, it will have to include prevention of conflicts of interest and corruption as one of its main focuses. Moreover, practical questions relating to the principles of impartiality and independence – both from internal and external influences – are to be given priority. In this context, attention is drawn to Opinion No. 4 (2003) of the Consultative Council of European Judges (CCJE) according to which “the judiciary should play a major role in or itself be responsible for organising and supervising training”.<sup>168</sup> In the view of the GET, in Armenia the involvement of the judiciary in this process needs to be strengthened. In addition, there is a need for specialised and dedicated counselling within the judiciary, in order to provide judges with confidential advice on such questions, to raise their awareness and to thus prevent risks of conflicts of interest and corruption. In this connection, the authorities’ attention is drawn to international standards according to which “judges should be able to seek advice on ethics from a body within the judiciary”.<sup>169</sup> Clearly, Armenia must itself assess how best to arrange such counselling, which could for example be provided by experienced judges in the courts of appeal or in the framework of a separate body. The GET wishes to stress however, that any such counsellors need to command specific expertise in the field and to be distinct from disciplinary bodies – such as the COJ and the Ethics and Disciplinary Committee of the GAJ, so that they can be consulted and advise in confidence. The requests for consultations and the opinions expressed by the regulator would have to be confidential and only fed into dedicated ethics training on an anonymous basis. To conclude, and bearing in mind that in Armenia perceptions of corruption in the judiciary are particularly high and citizens’ trust in this branch of power is low, it is crucial that measures such as those mentioned above are embedded in a determined and comprehensive corruption prevention policy. Consequently, **GRECO recommends that a deliberate policy for preventing improper influences on judges, conflicts of interest and corruption within the judiciary be pursued which includes (i) the provision of on-going mandatory training to all judges on ethics and conduct, on judicial impartiality and independence and on the prevention of conflicts of interest and corruption, which is to be organised with strong involvement of the judiciary, and (ii) the provision of confidential counselling within the judiciary in order to raise judges’ awareness and advise them with regard to the areas mentioned under (i).**

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<sup>168</sup> See Opinion No. 4 (2003) of the CCJE on appropriate initial and in-service training for judges at national and European levels (paragraph 16), according to which such responsibilities should be entrusted “not to the Ministry of Justice or any other authority answerable to the Legislature or the Executive, but to the judiciary itself or another independent body” ([https://wcd.coe.int/ViewDoc.jsp?Ref=CCJE\(2003\)OP4&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3](https://wcd.coe.int/ViewDoc.jsp?Ref=CCJE(2003)OP4&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3)).

<sup>169</sup> See, in particular, [Recommendation Rec\(2010\)12 of the Committee of Ministers of the Council of Europe to member States on judges: independence, efficiency and responsibilities](#), paragraph 74. See also [Opinion No. 3 \(2009\) of the CCJE](#) on the principles and rules governing judges’ professional conduct, in particular ethics, incompatible behaviour and impartiality (paragraph 49): “it is desirable to establish in each country one or more bodies or persons within the judiciary to advise judges confronted with a problem related to professional ethics or compatibility of non-judicial activities with their status.”

## V. CORRUPTION PREVENTION IN RESPECT OF PROSECUTORS

### Overview of the prosecution service

167. Pursuant to article 103 of the Constitution and section 1(1) of the Law On the Prosecution (hereafter LP), the prosecution service of Armenia is a uniform and centralised system, headed by the Prosecutor General. According to the authorities, this implies that the prosecution service is autonomous and independent from any branch of state power, i.e. the legislative, executive and judicial powers. It is independent in legal, organisational and financial matters. Prosecutors are financially independent and receive their remuneration from the State Budget, which is approved for each fiscal year in a law adopted by the National Assembly.

168. Even if the authorities state that the prosecution service is autonomous and independent from any branch of state power, the GET notes that this status is not explicitly and precisely defined in the Constitution. The above-mentioned "Concept paper on the Constitutional Reforms in the Republic of Armenia" is silent on the matter, but the GET was interested to hear during the interviews that it is envisaged to include it in the current reform process. This appears all the more important in view of repeated allegations that the judiciary is dominated by the executive operating through the prosecution service.<sup>170</sup> The Commissioner for Human Rights of the Council of Europe also noted such concerns, recording *inter alia* that the criminal justice system "is still marked by the legacy of prosecutorial bias" and that "the defence and the prosecution do not enjoy equal access to criminal case materials".<sup>171</sup> During the visit, the GET was told that efforts were being made to curb this prominent role of the prosecution service and to ensure presumption of innocence and equality of arms between the defence and the prosecution – including through the new Criminal Procedure Code – but that citizens' mistrust in the prosecution service persisted. This lack of trust may also be explained by what is alleged to be selective law enforcement and the "low level of prosecution for corruption related crimes", which was considered by TI's 2014 National Integrity System Assessment Armenia as one of its "most worrying findings".<sup>172</sup> In the view of the GET, determined action needs to be taken to raise awareness within the prosecution service about corruption and to promote fundamental principles concerning prosecutors and to ensure their enforcement in practice. Such standards are enshrined in various international declarations of principle<sup>173</sup> and include, *inter alia*, independence and impartiality, adversarial proceedings, respect for the presumption of innocence, for the right to a fair trial, for equality of arms and for the independence of courts. The recommendations and further suggestions made in this chapter are to be read in the context outlined above.

169. In the exercise of their powers, prosecutors take decisions autonomously based on laws and inner convictions, and they are responsible for the decisions they take. Any

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<sup>170</sup> See, for example, TI's 2013 "[Overview of corruption and anti-corruption in Armenia](#)", page 5; the [2014 country report on Armenia by Bertelsmann Stiftung](#), page 10; the Freedom House study "[Nations in Transit 2014 – Armenia](#)", pages 67 and 79.

<sup>171</sup> See the [Report of the Commissioner for Human Rights of the Council of Europe of 10 March 2015](#), paragraph 43.

<sup>172</sup> See TI's 2014 [National Integrity System Assessment Armenia](#), page 19.

<sup>173</sup> See e.g. the European Guidelines on Ethics and Conduct for Public Prosecutors ("Budapest Guidelines"), adopted by the Conference of Prosecutors General of Europe of 31 May 2005, CPGE (2005)05, [http://www.coe.int/t/dqhl/monitoring/greco/evaluations/round4/Budapest\\_guidelines\\_EN.pdf](http://www.coe.int/t/dqhl/monitoring/greco/evaluations/round4/Budapest_guidelines_EN.pdf); as well as relevant opinions by the Consultative Council of European Prosecutors (CCPE), such as Opinion No. 9 of the CCPE on "European norms and principles concerning prosecutors" ("Rome Charter"), [https://wcd.coe.int/ViewDoc.jsp?Ref=CCPE\(2014\)4&Language=lanEnglish&Ver=original&BackColorInternet=DB DCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864](https://wcd.coe.int/ViewDoc.jsp?Ref=CCPE(2014)4&Language=lanEnglish&Ver=original&BackColorInternet=DB DCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864); and Opinion No. 12 (2009) of the Consultative Council of European Judges (CCJE). Opinion No. 4 (2009) of the CCPE on "Judges and prosecutors in a democratic society" ("Bordeaux Declaration"), [https://wcd.coe.int/ViewDoc.jsp?Ref=CCJE\(2009\)OP12&Language=lanEnglish&Ver=original&BackColorInternet=DB DCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864](https://wcd.coe.int/ViewDoc.jsp?Ref=CCJE(2009)OP12&Language=lanEnglish&Ver=original&BackColorInternet=DB DCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864).

interference with the activities of the prosecution, which is not provided for by law, is prohibited.<sup>174</sup>

170. The prosecution service is tasked to instigate criminal prosecution, supervise the lawfulness of inquiry and investigation, defend the charges in court, file court claims on the protection of state interests, appeal against court judgments, rulings and decisions, and to supervise the lawfulness of the enforcement of sentences and other compulsory measures.<sup>175</sup>

171. The prosecution service consists of the Prosecutor General's Office, the Central Military Prosecutor's Office, the Prosecutor's Office of the City of Yerevan, Prosecutors' Offices of the ten administrative divisions of Armenia (*Marzes – մարզ*), Prosecutors' Offices of the seven administrative districts of the City of Yerevan and military prosecutor's offices of the nine garrisons.<sup>176</sup> There are 337 prosecutor positions in Armenia and as at 23 March 2015, 317 were filled, 33 by women (i.e. 10.4%) and 284 by men.<sup>177</sup> As mentioned above, only certain categories of prosecutors are considered "high-ranking officials" in the meaning of the LPS – who are subject to certain specific provisions, e.g. on asset declarations – namely the Prosecutor General and his/her deputies, prosecutors of *Marzes*, the City of Yerevan and those of garrisons (i.e. altogether 25 prosecutors).<sup>178</sup> The other prosecutors are considered "public servants" in the meaning of the LPS.

172. One of the basic principles of the public prosecution function is hierarchy. The Prosecutor General is superior to all prosecutors, the Deputy Prosecutor General is superior to all the prosecutors in the area coordinated by him/her, the *Marz* Prosecutor is superior to all the prosecutors of the Prosecutor's Office of a *Marz*, etc.<sup>179</sup> The immediate superior prosecutor supervises compliance with the rules of work discipline, and if a violation is detected reports it to the Prosecutor General if necessary; supervises the lawful fulfilment of duties prescribed by law, and if a violation is detected issues an instruction to the subordinate prosecutor and reports it to the Prosecutor General if necessary; reports any violation of the requirements of the Code of Conduct to the Prosecutor General if necessary; reallocates duties to other prosecutors in the absence of a prosecutor (leave or other temporary absence); and exercises any other powers provided for by law.

173. The Prosecutor General is appointed by the National Assembly on the recommendation of the President of the Republic for a six-year term.<sup>180</sup> While the National Assembly may reject the candidate nominated by the President, it is not entitled to select another person. The authorities indicate that in such a case – which has not occurred so far – the President would have to bring forward a new recommendation. The law does not stipulate any specific requirements for the position of Prosecutor General in terms of professional qualification and work experience. The same person may not be appointed Prosecutor General for more than two consecutive terms. On the recommendation of the President of the Republic the National Assembly may by a majority vote remove the Prosecutor General from office in the cases specified by law, which include instances where s/he "does not perform his/her duties properly", "has displayed conduct that undermines or does not suit the reputation of the prosecution service" or where there are "other insurmountable obstacles to the exercise of his/her powers."<sup>181</sup>

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<sup>174</sup> Section 6 LP.

<sup>175</sup> Section 4 LP.

<sup>176</sup> Section 8 LP.

<sup>177</sup> One of the female prosecutors had a leading position.

<sup>178</sup> See section 5(1) item 15 LPS.

<sup>179</sup> Section 31 LP.

<sup>180</sup> See article 103 of the Constitution.

<sup>181</sup> See article 103 of the Constitution and section 52 LP.

174. The President of the Republic on the recommendation of the Prosecutor General appoints and releases the four deputies of the Prosecutor General. If the President does not appoint the candidate recommended, the Prosecutor General is to bring forward a new recommendation. To be eligible for appointment to the position of Deputy Prosecutor General, a person must have at least five years' experience working as a judge, prosecutor, advocate, investigator, or lawyer in a state or local government body, or at least 10 years of other work experience as a lawyer. In principle, deputies hold office until retirement.

175. Although the involvement of the executive and/or the legislative body in the appointment of a Prosecutor General is common in many European countries, and according to Recommendation Rec(2000)19 of the Committee of Ministers on the role of public prosecution in the criminal justice system,<sup>182</sup> a plurality of models is accepted, it is clearly preferable if the procedure for the appointment of the prosecutors, and especially of the Prosecutor General, serves to prevent any risk of improper political influence or pressure in connection with the functioning of the prosecution service. As has been pointed out, "it is important that the method of selection and appointment of the Prosecutor General is such as to gain the confidence of the public and the respect of the judiciary and the legal profession."<sup>183</sup> To achieve this, "professional, non-political expertise should be involved in the selection process," e.g. by seeking advice on the professional qualification of candidates from relevant persons such as representatives of the legal community (including prosecutors) and of civil society, or at the level of Parliament, through preparation of the election by a parliamentary committee which should take into account the advice of experts. Similarly, an "expert body should give an opinion whether there are sufficient grounds for dismissal" of a Prosecutor General and the possible grounds for such dismissal need to be clearly defined by law.<sup>184</sup> In the GET's view, the LP regulations which refer to rather vague concepts such as "other insurmountable obstacles" to the exercise of Prosecutor General's powers are unsatisfactory in this regard. In any case, the GET is of the firm opinion that involvement of experts in the selection, appointment and dismissal processes needs to be introduced in Armenia and that these processes need to be made more transparent.

176. In view of the above, and bearing in mind the context in Armenia which is marked by a low level of public trust in the judiciary and the prosecution service, **GRECO recommends that adequate measures be taken to involve professional, non-political expertise in the processes for the selection, appointment and dismissal of the Prosecutor General, to increase their transparency and to minimise risks of improper political influence.** In addition, the authorities might wish to explore possible measures to prevent blockades in the appointment process of the Prosecutor General and his/her deputies – such as limiting the number of times the National Assembly (the President of the Republic) can reject a nominee for the position of Prosecutor General (Deputy Prosecutor General), and requiring the President of the Republic (the Prosecutor General) to present another suitable candidate in case of rejection.

177. "The Prosecution Staff" is a state governance institution under the Prosecutor General tasked with providing support to the prosecution service.<sup>185</sup> Direct management of the staff of the prosecution service is carried out by the Head of Staff.

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<sup>182</sup> Recommendation Rec(2000)19 of the Committee of Ministers of the Council of Europe to member States on the role of public prosecution in the criminal justice system (<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2719990&SecMode=1&DocId=366374&Usage=2>).

<sup>183</sup> See the Report on European Standards as regards the Independence of the Judicial System, Part II – the Prosecution Service, European Commission for Democracy Through Law (Venice Commission), CDL-AD (2010)040, paragraph 34 ([http://www.coe.int/t/dghl/cooperation/capacitybuilding/Source/judic\\_reform/europeanStandards\\_en.pdf](http://www.coe.int/t/dghl/cooperation/capacitybuilding/Source/judic_reform/europeanStandards_en.pdf)).

<sup>184</sup> See the above-mentioned report CDL-AD (2010)040, paragraphs 39 and 87.

<sup>185</sup> See sections 64 *et seq.* LP.

178. In order to discuss fundamental issues related to the organisation of the prosecution activities, a Collegium of 12 members, chaired by the Prosecutor General is established.<sup>186</sup> In addition, an Ethics Committee and a Qualification Committee attached to the Prosecutor General deliver opinions on candidate prosecutors, promotion and liability. The Ethics Committee consists of one deputy Prosecutor General and two prosecutors, appointed by the Prosecutor General, and four legal academics appointed by the President of the Republic for a three-year term. The Qualification Committee is composed of one deputy Prosecutor General, four prosecutors, and four legal academics, all of whom are appointed by the Prosecutor General for a three-year term.<sup>187</sup> The GET has misgivings about the current composition of the Ethics Committee. While it agrees with the authorities that the involvement in such a body of experts from outside the prosecution service may in principle contribute to unbiased decision-making, it is on the other hand concerned that prosecutors are in the minority and are not elected by their peers, and the majority of committee members are appointed by the President of the Republic. Such arrangements are not conducive to strengthening the independence of and public trust in the prosecution service which is urgently required, as seen above. Therefore, **GRECO recommends amending the composition of the Ethics Committee with a view to strengthening the prosecution's independence from improper political influence, notably by ensuring (i) that it is made up of a majority of prosecutors and (ii) that at least some of these prosecutors are elected by their peers.**

#### Recruitment, career and conditions of service

179. Prosecutors are first appointed by the Prosecutor General in light of the opinion of the Qualification Committee of the Prosecutor General's Office. Every Armenian citizen residing permanently in the country and who masters the Armenian language, with a higher legal qualification ("specialist with diploma") is, in theory, eligible for selection.<sup>188</sup> Persons who have been declared by court to have no or limited legal capacity, have a criminal conviction, have a physical disability or illness that hinders their appointment to the position, have not completed mandatory military service<sup>189</sup> (unless they have been relieved of such service or have had such service deferred), or in respect of whom a criminal prosecution has been terminated for grounds other than acquittal are not eligible to apply.<sup>190</sup> The office of prosecutor is permanent and terminates on retirement (at the age of 65) or in cases provided for by law (see further below).

180. Prosecutors are appointed from among the persons included in a list of candidates who have been successful in tests carried out by the Qualification Committee.<sup>191</sup> The qualification testing of candidates takes place, as a rule, in January each year, through an open competition decided on by the Prosecutor General and publicly announced by the Qualification Committee. The law sets out the documents to be presented in support of an individual application, the procedure for the written exam and appeals against exam admission decisions. The Qualification Committee tests the applicants' professionalism, practical skills and moral character, as well as the conformity of documents submitted by them with other requirements provided for by law. The applications that are favourably received by the Qualification Committee are submitted to the Prosecutor General, who chooses from among them and constitutes a list of approved candidate prosecutors. The Prosecutor General is not required to justify his/her decision which cannot be challenged. The authorities indicate that during the period 2009 to 2014, 17 persons included in the

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<sup>186</sup> Section 22 LP.

<sup>187</sup> Section 23 LP.

<sup>188</sup> Section 32 LP.

<sup>189</sup> This requirement only applies to male aspirants.

<sup>190</sup> Section 33 LP.

<sup>191</sup> Section 34 LP.

list of received candidates by the Qualification Commission were not included in the list of approved candidate prosecutors established by the Prosecutor General.

181. Persons included in the list of approved candidate prosecutors must participate in a professional training course at the Academy of Justice, unless they have occupied the position of prosecutor, judge, investigator or advocate for at least three years (less than five years earlier) or they have a doctorate in law, or a PhD in law with five years of service in a legal profession. When a candidate on the approved list has successfully participated in the professional training course, appointment is not guaranteed until s/he is selected from the list and appointed by the Prosecutor General.<sup>192</sup> The Prosecutor General is entitled to choose freely among candidates and is not bound by any specific criteria. The authorities claim that the decision by the Prosecutor General can be appealed through a judicial procedure – although the LP does not contain an explicit provision – given that the Constitution guarantees the right to effective legal remedies, including judicial remedies.<sup>193</sup>

182. In order to be appointed to senior positions, prosecutors must be included in the official promotion list of prosecutors compiled by the Qualification Committee.<sup>194</sup> Such appointments are made by the Prosecutor General who is entitled to select freely from the promotion list. For most senior positions – those specified by law – a positive opinion by the Qualification Committee is required. The authorities indicate that in the framework of the Strategic Programme for Legal and Judicial Reforms for 2012-2016, the Prosecutor General's Office submitted to the Ministry of Justice a draft law<sup>195</sup> which proposes *inter alia* to establish a classification of positions in the prosecution service – making it possible to differentiate between specific promotion lists, to prescribe clear criteria for candidates and to define grounds for removal of a person from the promotion list.

183. The GET welcomes the recent reform initiative of the Prosecutor General's Office which is aimed at defining more precise criteria for the selection of candidates for promotion and for removal from the promotion list. At the same time, it takes the view that more comprehensive amendments to the recruitment and promotion procedures are needed, with a view to increasing objectivity and transparency. The GET has misgivings about the fact that at present, the Prosecutor General can select freely from the candidates proposed by the Qualification Committee – to compile the list of approved candidate prosecutors and to designate candidates from that list for appointment as well as to designate candidates from the promotion list for promotion – without being bound by any written and objective criteria and without being required to justify his/her decisions. Furthermore, during the interviews the GET's attention was drawn to an unsatisfactory degree of transparency at the level of the Qualification Committee and it was suggested, for example, that its meetings should as a rule be open to the public or that the reasoning behind its decisions – e.g. on the selection of candidates in recruitment procedures – should be made accessible to the interested public.

184. Finally, no specific provisions provide legal remedies to unsuccessful candidates for any of the decisions taken in the recruitment and promotion procedures. The mere reference made by the authorities to the constitutional right to effective legal remedies – as far as selection of candidates from the list of prosecutor candidates is concerned – is clearly unsatisfactory. It is essential that the appeal instance and the applicable procedure are precisely defined. To conclude, steps must be taken to ensure that the recruitment and promotion of prosecutors are "governed by transparent and objective criteria, in accordance with impartial procedures, excluding any discrimination and

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<sup>192</sup> See section 36 LP.

<sup>193</sup> Article 18 of the Constitution. According to Article 6, the Constitution has supreme legal force and its norms apply directly.

<sup>194</sup> See sections 35 and 36(5) and (6) LP.

<sup>195</sup> Draft Law "On making amendments and supplements to the Law of the Republic of Armenia on the Prosecution"

allowing for the possibility of impartial review”,<sup>196</sup> as required by European standards.<sup>197</sup> This appears particularly important in Armenia where trust in the judicial system is low and allegations of biased law enforcement are numerous. It is crucial that the above concerns are addressed in the current reform process, and the GET is pleased to note that the Strategic Programme for Legal and Judicial Reforms for 2012-2016 foresees enhancing the independence and accountability of the prosecution service, including through a review of procedures for appointments (and disciplinary matters). In view of the above, **GRECO recommends reforming the procedures for the recruitment and promotion of prosecutors, including by i) increasing transparency of the decision-making process within the Qualification Committee, circumscribing the discretionary powers of the Prosecutor General and requiring him/her to give written motivations for his/her decisions and ii) allowing unsuccessful candidates to appeal to a court, on the basis of specific and precise legal provisions.**

185. In principle, prosecutors may not be transferred to a lower position against their will unless it is by way of a disciplinary sanction or the Qualification Committee decides, based on the results of regular performance evaluation, that a prosecutor is not fit for the position s/he occupies and requests that s/he be transferred to a lower position.<sup>198</sup> Prosecutors may, for a term of up to one year, without their consent, and on condition that they will occupy a position equal to or higher than their current position, be assigned by the Prosecutor General to a different territorial prosecutor’s office or to the Prosecutor General’s Office in case of temporary absence, over-loading, or vacancies.<sup>199</sup> The salary of assigned prosecutors may not be less than they received before transfer.

186. The work of prosecutors – except for certain senior prosecutors specified by law – is subject to regular evaluation by the Qualification Committee,<sup>200</sup> once every three years. An extraordinary attestation may be carried out at least one year after the regular attestation, if ordered by the Prosecutor General or if requested by the prosecutor. The evaluation is aimed at determining whether the prosecutors’ professional knowledge and work skills correspond to their positions, and whether they are suited for promotion. It is to be carried out with the direct participation of the prosecutor. The assessment is to be based on the opinions of the immediate supervisor formed on the basis of performance reports presented annually by the prosecutor.<sup>201</sup> The attestation results are to be made available to the prosecutor and, in case of disagreement, they can be appealed to the Prosecutor General within three days.

187. The term in office of a prosecutor is terminated due to resignation; retirement at the age of 65; conviction; loss of citizenship; staff reductions; refusal to be transferred to a different prosecution unit in the event of closure or reorganisation of the prosecution unit concerned; loss or partial loss of legal capacity, or if missing; if the prosecution of a prosecutor is terminated for reasons other than acquittal; certain forms of illness or physical disability specified by law; violation of the procedure stipulated by law for appointment ; failure to attend work for more than six consecutive months during a year due to temporarily incapacity to work; or if on the basis of the results of regular performance evaluation the Qualification Committee requests his/her dismissal.<sup>202</sup>

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<sup>196</sup> See [Opinion No. 9 of the CCPE](#) on “European norms and principles concerning prosecutors” (“Rome Charter”), paragraph XII.

<sup>197</sup> See also [Recommendation Rec\(2000\)19 of the Committee of Ministers of the Council of Europe to member States on the role of public prosecution in the criminal justice system](#), paragraph 5; the [Report on European Standards as regards the Independence of the Judicial System, Part II – the Prosecution Service](#), European Commission for Democracy Through Law (Venice Commission), paragraph 49.

<sup>198</sup> Section 51 LP.

<sup>199</sup> Section 53 LP.

<sup>200</sup> See section 54 LP.

<sup>201</sup> The evaluation criteria are prescribed by the Order of the Prosecutor General of 1 August 2007 “On defining the procedure for carrying out competency assessment of prosecutors”.

<sup>202</sup> Section 50 LP.

Decisions are taken by the Prosecutor General and can, according to the authorities be appealed through a judicial procedure, although the LP does not explicitly provide for this. The authorities indicate that 159 prosecutors resigned from office during the period 2012 to 2014. Finally, dismissals of prosecutors can result from disciplinary proceedings, as described further below.<sup>203</sup>

188. The remuneration of prosecutors is regulated by the Law on Remuneration of Persons holding State Offices. On this basis, monthly gross salaries range from 297,630 AMD/approximately 550 EUR (beginning of career) to 992,100 AMD/approximately 1,835 EUR (Prosecutor General). The law further provides that prosecutors who have a rank<sup>204</sup> receive a supplement for each year worked as a prosecutor, judge and prosecution investigator in the amount of 4% of the maximum supplement established for their rank. In each case, the supplement paid for the rank cannot exceed the official pay rate. Moreover, prosecutors are entitled to pension, social security and other social protection, but not to any other economic privileges such as housing or tax privileges.<sup>205</sup>

#### Case management and procedure

189. Under the current CPC adopted in 1998, prosecution is mandatory; where there are elements of crime, a criminal case must be instituted.

190. There are no written rules or guidelines concerning the distribution of cases among prosecutors. The authorities indicate that cases are distributed according to the departments and divisions of the prosecution service. Within subdivisions case allocation is managed by the heads of subdivisions who take into account the specialisation, professional qualities and skills of the prosecutors. As a rule, the defence of charges in court is carried out by the prosecutor who supervised the lawfulness of inquiry and investigation in the same criminal case, except when substituted by a superior prosecutor in cases provided for by law.<sup>206</sup> In exceptional cases, the superior prosecutor has the right to also involve other prosecutors in the exercise of procedural powers of the prosecutor pursuing a charge. In the view of the GET, the establishment of clear and objective criteria for case assignment would be preferable, but as it was not made aware of any practical examples where the absence of a regulation has caused specific problems, no formal recommendation is made in this respect. The authorities are nevertheless invited to include this matter in the on-going reform process with a view to introducing clear written rules or guidelines for the allocation of cases among prosecutors and making them accessible to the public. Such arrangements would clearly have potential for increasing transparency of prosecutors' work, limiting risks of undue influence and strengthening citizens' trust in the prosecution service.

191. Executive orders and instructions issued by the superior prosecutor to the subordinate prosecutor with regard to the organisation of activities of the prosecutor's office are binding.<sup>207</sup> The superior prosecutor has the right to cancel or amend the acts adopted by the subordinate prosecutor, except those adopted while supervising the lawfulness of inquiry and investigation. The superior prosecutor reviews and decides on complaints filed against acts and actions (inaction) of the subordinate prosecutor. The subordinate prosecutor is obliged to execute all legal instructions issued by the superior prosecutor, except where a subordinate prosecutor supervising the lawfulness of inquiry and investigation considers that an instruction by the superior prosecutor – which must be given in writing – is groundless or unlawful. The superior prosecutor then has the right to personally undertake the supervision or to assign the supervision to another prosecutor.

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<sup>203</sup> See below under "Supervision and enforcement" (paragraphs 212 *et seqq.*).

<sup>204</sup> Different ranks are defined in section 37 LP.

<sup>205</sup> See sections 55 to 61 LP.

<sup>206</sup> See section 26 LP.

<sup>207</sup> See section 31 LP.

192. In case the prosecutor does not agree with the instructions, executive orders or assignments issued by the superior prosecutor, s/he may appeal against them before the superior of the prosecutor who issued the instruction, executive order or assignment. The appeal does not cancel the binding character of the instruction, executive order or assignment, unless the prosecutor considers that the instruction is unlawful.

193. Public prosecutors must take care to ensure the lawful and prompt resolution of cases. The provisions of the CPC either prescribe precise time limits for exercising prosecutorial powers or they require that these powers are exercised within reasonable time limits. Article 173(5) CPC, according to which the observance of time limits must be confirmed in procedural documents, serves as a guarantee for ensuring this legislative requirement. Moreover, undue delay gives rise to disciplinary liability. The authorities indicate that during the period 2012 to 2014, 19 disciplinary proceedings were instituted against 27 prosecutors for undue delays with regard to procedural time limits.

#### Ethical principles, rules of conduct and conflicts of interest

194. Section 42 LP enumerates the prosecutor's responsibilities, including the duty to comply with the requirements of the Constitution, laws and other legal acts, to maintain work discipline and to comply with the rules of professional conduct of prosecutors. The rules of professional conduct are contained in the Code of Conduct for Prosecutors approved by the Prosecutor General in 2007,<sup>208</sup> which was drafted on the basis of recommendations submitted by the structural subdivisions of the prosecution service. The Code of Conduct is on the official website of the Prosecutor General's Office.<sup>209</sup>

195. The Code of Conduct refers to international legal instruments, including the European Convention on Human Rights as well as relevant Recommendations of the Council of Europe.<sup>210</sup> It is aimed at ensuring the independence of prosecutorial activities, building public confidence in the prosecution service and upholding its high reputation. It includes fundamental principles pertaining to conduct as well as more specific rules of conduct for prosecutors in official and in non-official relations. Disciplinary liability is incurred for significant violations of the Code of Conduct<sup>211</sup> (see further below). Guaranteeing observance of the rules of conduct for prosecutors falls within the remit of the Prosecutor General.

196. In addition, it is to be recalled that a list of ethical rules for public servants and high-ranking officials more generally is included in the LPS. While those rules also apply to prosecutors, they are not exhaustive and are complemented by the more specific rules for prosecutors quoted above.

197. The Code of Conduct for Prosecutors also deals to some extent with conflicts of interest, by making it clear that prosecutors are obliged to refrain from being influenced by personal or group interests or the media or any local, personal, national or political influence; to manage non-official, i.e. family, civil and other relations and their lifestyle in a way that ensures that they do not influence the performance of official activities and proper performance of official duties; and to refrain from personal, financial and business ties that impair the reputation and affect the impartiality of the prosecution service and make them materially or otherwise dependent on certain persons. Furthermore, a mechanism for the prevention of conflicts of interest is provided by article 91 CPC on

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<sup>208</sup> Order of the Prosecutor General No. 17 of 30 May 2007, which repealed the Order No. 6 "On approving the code of conduct for the employee of the Prosecutor's Office of the Republic of Armenia" of 9 March 2005

<sup>209</sup> <http://www.prosecutor.am> (Armenian only)

<sup>210</sup> Namely, [Recommendations Rec\(2000\)19](#) and [Rec\(94\)12](#) of the Committee of Ministers of the Council of Europe.

<sup>211</sup> Cf. section 46 LP.

prosecutors' recusal (see further below). The general definition of conflicts of interest of high-ranking officials contained in the LPS is not applicable to prosecutors.

198. The GET acknowledges that the Code of Conduct for Prosecutors has been developed within the prosecution service and that it makes reference to relevant international standards. Regarding the content of the Code, it addresses the main ethical questions relevant to the exercise of the prosecutorial profession. At the same time, it remains rather general and appears insufficient to properly guide prosecutors in the handling of concrete situations. The GET is convinced that answers to ethical questions need to be provided – for example, as regards conflicts of interest or how to behave in situations where prosecutors are faced with pressure from politicians. As GRECO has highlighted on numerous occasions, a code of conduct is most valuable when it provides practical guidance on how principles apply in daily practice and helps solve concrete dilemmas. Furthermore, bearing in mind the above-mentioned allegations about the lack of an appropriate degree of independence of prosecutors, as well as the low level of public trust in this branch of power, it is crucial that prosecutors' awareness of risks of corruption, ethical dilemmas and existing standards of conduct is further raised. These issues are covered by the recommendation made below under "Advice, training and awareness".<sup>212</sup>

#### Prohibition or restriction of certain activities

##### *Incompatibilities and accessory activities, post-employment restrictions*

199. Restrictions on secondary activities of prosecutors<sup>213</sup> are similar to those applicable to judges. Prosecutors may not hold office in state and local self-government bodies unrelated to the performance of their duties, or a position in commercial organisations, or engage in any other paid occupation except for scientific, pedagogical and creative work for which payment may not exceed a reasonable amount, i.e. the amount payable to persons with similar qualifications who are not prosecutors. Prosecutors may not be individual entrepreneurs, or shareholders in business companies or depositors in trust-based partnerships if, in addition to participation in the general meeting of the company, the prosecutor is also issues instructions or carries out other managerial functions in the organisation. Prosecutors are also prohibited from receiving royalty payments for publications or speeches deriving from the performance of their official duties and from working jointly in direct subordination to one another with persons with whom they are related in law or through kinship.

200. The internal disciplinary rules of the prosecution service provide that secondary activities require written approval by the immediate superior, based on a written reference including the planned schedule submitted by the prosecutor beforehand. Secondary activities may not exceed 20% of total weekly working time and may not imply absence from the workplace for the whole working day. The authorities indicate that currently 23 prosecutors have doctoral degrees, most of whom are engaged in pedagogical activities at different educational institutions of Armenia and at the "Justice Academy" SNCO.

201. Like judges, prosecutors may not be members of a political party or engage in any other political activity.<sup>214</sup> The law contains several further prohibitions, such as a general prohibition on representing third parties, on using their official position for the interests of non-governmental parties, including religious organisations and on membership of trade unions and organising or participating in strikes.<sup>215</sup>

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<sup>212</sup> See paragraph 223 below.

<sup>213</sup> See section 43 LP. The concept of "entrepreneurial activities" and of "scientific, pedagogical and creative work" are defined in detail in section 24 LPS, as seen above with respect to MPs.

<sup>214</sup> Section 7 LP.

<sup>215</sup> See section 43 LP.

202. No specific post-employment restrictions apply to prosecutors but similarly to MPs and judges the general rule under section 23(1) item 9 LPS applies. Accordingly, up to one year after release from post, a public servant or high-ranking official is prohibited from being admitted to work with the employer or from becoming the employee of an organisation over which s/he has exercised immediate supervision in the last year of his/her tenure. As mentioned above in the chapter on MPs, this rule appears neither precise nor comprehensive and there are no practical tools or mechanisms in place to enforce it. The authorities are encouraged to reflect on possibilities to revise the current rule so as to make it more effective in practice.

#### *Recusal and routine withdrawal*

203. According to article 91 CPC the prosecutor may not participate in criminal proceedings

- if related through kinship or other relations of personal dependence with the judge considering the criminal case, or
- if one of the circumstances provided for by article 90 CPC for the recusal of a judge exists with respect to the prosecutor, i.e. circumstances that may raise reasonable doubt about his/her impartiality as regards the case concerned – such as being prejudiced against the party, his/her representative, counsel or other participants in the proceedings; having been a witness to elements that are disputed in the trial; having participated in the examination of the case at a lower instance or if his/her spouse or other relation to the third degree of kinship participated, etc.

204. Prosecutors who are aware of circumstances that exclude their participation in a criminal procedure are obliged to inform the interested participants of the procedure and the body conducting criminal proceedings and, if they doubt that examination of the case can proceed normally with their participation, they are to recuse themselves or file a motion for dismissal from the proceedings. Recusal is decided on by the superior prosecutor – or by the relevant court, with regard to his/her participation in the court session. Participants of the procedure have the right to seek the recusal of prosecutors at any time during the criminal proceedings. The body conducting criminal proceedings is entitled to decide on recusals and motions for dismissal from proceedings. The authorities indicate that decisions on recusal rendered by superior prosecutors may be appealed by participants in the proceedings to prosecutors superior to them, and decisions on recusal rendered by courts may be appealed to superior courts.<sup>216</sup>

#### *Gifts*

205. Section 43 LP prohibits prosecutors from receiving gifts, money or services from other persons for the performance of official duties, except for cases provided for by law. More detailed regulations are contained in section 29 LPS which applies to public servants and high-ranking officials including prosecutors and provides for the definition of a gift, regulates exceptions to the general prohibition and the handling of admissible gifts. Those rules are described above with respect to MPs.<sup>217</sup>

206. The prosecutors who are categorised as high-ranking officials are required to include gifts received in the regular asset declarations submitted to the Commission on Ethics for High-Ranking Officials (only two cases reported during the period 2011-2013). No cases of gifts received in violation of the law have been recorded.

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<sup>216</sup> Articles 91 and 103 CPC.

<sup>217</sup> See paragraphs 50 to 53 above.

### *Third party contacts, confidential information*

207. The authorities indicate that communication by prosecutors with third parties outside the official procedure in association with the case under his/her supervision is regulated by the rules defining the procedure for reception of citizens, consideration of applications and complaints. Furthermore, the Code of Conduct for Prosecutors also includes several rules regarding prosecutors' relations and makes it clear, *inter alia*, that prosecutors are obliged to refrain from personal, financial and business ties that impair the reputation and affect the impartiality of the prosecution service and make them materially or otherwise dependent on certain persons.

208. Pursuant to section 42 LP, prosecutors are obliged to comply with the requirements stipulated by law for working with documents containing state secrets, official secrets or other confidential information protected by law, also after termination of office. The pertinent regulations are included in the Law on the State and Official Secret and in articles 170 to 172 CPC. The latter provisions prescribe measures to protect personal and family privacy, state secrets and official and commercial secrets. The authorities indicate that failure to comply with these rules may under certain circumstances give rise to criminal liability under articles 309 (exceeding official authorities) or 315 CC (official negligence).

### Declaration of assets, income, liabilities and interests

209. Section 32 LPS requires high-ranking officials including certain categories of prosecutors to declare their income and property (asset declarations) to the Commission on Ethics for High-Ranking Officials, within 15 days from the day they assume or terminate their official responsibilities, and on an annual basis (not later than 15 February of the next year). The prosecutor's spouse, parents residing in the same household, as well as children who have reached the age of majority (18 years), are not married and reside with the prosecutor, also have to make an asset declaration, together with the prosecutor and according to the same rules. The electronic register of high-ranking officials and the electronic declarations – within limits defined by the government – are published on the official website of the Commission on Ethics for High-Ranking Officials.<sup>218</sup>

210. The details of the regime applicable to asset declarations by high-ranking officials have been described above with respect to MPs.<sup>219</sup> In addition to the general requirements, high-ranking prosecutors (like judges) have to submit to the Commission on Ethics for High-Ranking Officials a declaration on related persons holding the position of prosecutor, judge or investigator, specifying the first name, patronymic and second name as well as the post held.<sup>220</sup>

211. The authorities indicate that the Prosecutor General's Office has developed a draft law<sup>221</sup> aimed at expanding the category of prosecutors with managerial responsibility obliged to submit asset declarations to also cover heads of departments (divisions) of prosecutors' offices as well as prosecutors of the administrative districts of the City of Yerevan and deputy military prosecutors. The draft law is based on the consideration that the current definition of high-ranking prosecutor for the purposes of asset declaration is incomplete and ill-conceived. In principle, the GET supports this reform initiative and refers to the related comments and recommendation made further below.<sup>222</sup>

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<sup>218</sup> <http://ethics.am/hy/declarations-registry/> (Armenian only)

<sup>219</sup> See paragraphs 66 to 71 above.

<sup>220</sup> Section 36 LPS.

<sup>221</sup> Draft Law "On making amendments and supplements to the Law of the Republic of Armenia on Public Service"

<sup>222</sup> See below under "Crosscutting issues" (paragraph 228).

## Supervision and enforcement

212. Prosecutors may be subject to disciplinary liability, which is regulated in sections 46 to 48 LP, on the following grounds: improper performance of official duties; serious or repeated violation of the law when exercising their powers; significant violation of the requirements of the Code of Conduct for Prosecutors; failure to comply with the requirements of sections 42 and 43 LP; violation of the rules of work discipline; failure to submit an asset declaration, or incorrect declaration.

213. Depending on the gravity of the disciplinary offence, the following disciplinary sanctions may be applied in relation to prosecutors: warning; reprimand; severe reprimand; lowering the rank by one degree; lowering the position; dismissal from office. The Prosecutor General is competent to apply those sanctions in relation to prosecutors appointed by him/her; warning and reprimand may also be applied by the superior prosecutor. Sanctions other than warning and reprimand can be imposed on such prosecutors only on the basis of a relevant opinion issued by the Ethics Committee. In relation to Deputy Prosecutors General, warning and reprimand may be applied by the Prosecutor General; severe reprimand, lowering the rank by one degree and dismissal from office may be applied by the President of the Republic on a proposal by the Prosecutor General. In relation to the Prosecutor General, lowering the rank by one degree may be applied by the President of the Republic.

214. As for judges, the GET has some concerns about the current wording of the possible grounds for disciplinary liability. Rather vague terms such as "improper performance of official duties", "violating the rules of work discipline" and, in particular, "significantly violating the requirements of the Code of Conduct for Prosecutors" may give rise to risks of abuse and need to be replaced by more precise disciplinary offences. It was stated on site that there were plans to abolish the disciplinary liability of prosecutors for failure to submit an asset declaration or for an incorrect declaration as there is no longer a general asset declaration requirement on all prosecutors. The GET, however, is of the view that there is no justification for abolishing this liability given that certain – high-ranking – prosecutors are still required to submit asset declarations. Moreover, the present report advocates extending that requirement to all prosecutors, irrespective of rank.<sup>223</sup> Finally, it would be preferable to define a more precise gradation in sanctions, in particular with respect to the possible grounds for dismissal and to ensure that the latter include only the most serious offences. The authorities are invited to take these suggestions into account in the current reform process.

215. The Prosecutor General and the superior prosecutor are entitled to institute disciplinary proceedings. As a rule, these proceedings may not last longer than three weeks. The prosecutor concerned has the right to be provided with explanations. Warnings and reprimands must be ordered by the person that instigated disciplinary proceedings within a three-day period of the end of such proceedings. The other categories of sanctions may be applied by the Prosecutor General within three days from receipt of the opinion of the Ethics Committee. The Committee is presented with the issue within one week from the end of the disciplinary proceedings. It takes a vote in order to decide whether a disciplinary offence has taken place, whether the prosecutor concerned is guilty of the offence, and, if the Prosecutor General so requests, whether it is appropriate to apply the disciplinary sanction of "dismissal from office." The authorities indicate that the opinion by the Ethics Committee is binding on the Prosecutor General.

216. Disciplinary liability of prosecutors is subject to statutes of limitation: proceedings must be instigated within 30 days of detecting the disciplinary offence, but not later than 12 months from the day on which the offence was committed. Prosecutors have the right

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<sup>223</sup> See below under "Crosscutting issues" (paragraph 228).

to file a court appeal against the disciplinary sanctions ordered against them in accordance with the procedure stipulated by law.<sup>224</sup>

217. As mentioned above, failing to submit an asset declaration or submitting an incorrect declaration constitute possible grounds for disciplinary proceedings. The authorities indicate that in practice, no such cases have so far been recorded. Moreover, as described above with respect to MPs,<sup>225</sup> responsibility for checking the asset declarations of high-ranking officials – which include certain categories of prosecutors – falls within the remit of the Commission on Ethics for High-Ranking Officials. However, the Commission has no competence to initiate proceedings against them if there is a breach of the obligation to declare. Moreover, the LPS does not foresee any sanctions for violations of the regulations on asset declarations – such as failure to submit a declaration or submission of incomplete or inaccurate information. The only tool available to the Commission on Ethics for High-Ranking Officials in this regard is the authority to publish a list of non-compliant prosecutors on its website.

218. The authorities submit that during the period 2012 to 2014, 36 prosecutors were subject to disciplinary proceedings. The disciplinary penalties imposed took the form of an admonition (in 11 cases), a reprimand (in 15 cases), severe reprimand (in 2 cases), demotion in rank by one degree (1 case). Violations by four of the prosecutors were dealt with in the framework of special consultations with the Prosecutor General or the Deputy Prosecutor General coordinating the relevant field and in three cases the prosecutors were removed from office pursuant to an opinion issued by the Ethics Commission. Furthermore, in the same period 85 prosecutors committed violations of provisions of the Code of Conduct for Prosecutors.

219. Prosecutors can also be subject to administrative liability under the Law On Fundamentals of Administrative Actions and Administrative Proceedings and in the general manner prescribed by the Code On Administrative Offences – for example, in case of failure to hand over to the state gifts received in relation to the exercise of their office.

220. Finally, prosecutors may be subject to criminal proceedings and sanctions, for example, for theft, fraud, embezzlement, bribery, trading in influence, breach of professional confidentiality, exceeding official authorities or official negligence. In accordance with section 44 LP, they may not be apprehended without the consent of the Prosecutor General or his/her deputies, unless they are apprehended on the basis of a judicial act. Furthermore, criminal prosecution in relation to a prosecutor may only be instigated by the Prosecutor General or his/her deputies. As regards the above-mentioned criminal offences, the authorities indicate that criminal prosecution was initiated against one prosecutor<sup>226</sup> during the period 2012 to 2014, however, it was decided on 30 December 2014 to terminate the prosecution and dismiss the criminal procedure due to the absence of corpus delicti.

#### Advice, training and awareness

221. The Academy of Justice organises 10-hour training courses on ethics for prosecutors which are mandatory for candidate prosecutors. They deal with the Code of Conduct for Prosecutors, ethical questions relating to the prosecutor's work, problems of corruption and preventive measures, conflicts of interest, asset declaration, disciplinary proceedings and the role of the Ethics Committee. The Academy of Justice plans to include a similar course for sitting prosecutors as well in 2016.<sup>227</sup>

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<sup>224</sup> Section 49(11) LP

<sup>225</sup> See paragraphs 81 and 82 above.

<sup>226</sup> Under articles 309 (exceeding official authorities) and 315 CC (official negligence).

<sup>227</sup> After the visit, the authorities indicated that all prosecutors except the Prosecutor General and his/her deputies undergo annual training with mandatory courses focused on ethics and prevention of corruption.

222. As indicated above with respect to MPs, the Commission on Ethics for High-Ranking Officials provides consultancy to high-ranking officials – including the prosecutors concerned – on issues pertaining to asset declarations.

223. Information gathered by the GET clearly suggests that more needs to be done to raise prosecutors' awareness of ethical dilemmas they may encounter in their professional life, of the existing standards, and to provide practical guidance on how principles apply in daily practice and help in solving concrete dilemmas. This might be achieved through a range of practical measures including dedicated training, confidential counselling within the prosecution service and possibly further written guidance. In this connection, current plans to introduce training for sitting prosecutors on ethical questions can only be supported. In the context described above, it is crucial that such training is provided to all prosecutors on a mandatory and regular basis, by way of dedicated courses referring to practical examples. Clearly, it will have to include prevention of conflicts of interest and corruption as one of its main focuses. Moreover, practical questions relating to the principles of impartiality and independence, adversarial proceedings, respect for the presumption of innocence, for the right to a fair trial, for equality of arms and for the independence of courts, need to be given priority. As far as counselling within the prosecution service is concerned, it is crucial that it is provided by dedicated practitioners who command specific expertise in the field and are distinct from disciplinary bodies – such as the "Ethics Committee", so that they can be consulted and can advise in confidence. Finally, as for judges, it needs to be stressed that under the circumstances in Armenia where perceptions of corruption in the judiciary and the prosecution service are high and citizens' trust in this branch of power is low, it is crucial that measures such as those mentioned above are embedded in a determined and comprehensive corruption prevention policy. Consequently, **GRECO recommends that a deliberate policy for preventing improper influences on prosecutors, conflicts of interest and corruption within the prosecution service be pursued which includes (i) the provision of on-going mandatory training to all prosecutors on ethics and conduct, on impartiality and independence and on the prevention of conflicts of interest and corruption, and (ii) the provision of confidential counselling within the prosecution service in order to advise prosecutors and raise their awareness with regard to the areas mentioned under (i).**

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During the interviews, however, the GET was informed that training modules on such questions were only under preparation for the future, as far as sitting prosecutors are concerned. In any case, it is clear that such training needs to be provided on an ongoing basis in the future.

## **VI. CROSCUTTING ISSUES**

224. As mentioned above in the chapter "Context", a number of legal reforms regarding corruption and integrity have been carried out in recent years, including the adoption of the Law on Public Service (LPS), in force since 2012. The LPS provides rules on ethics, prevention of corruption and declaration of income and property (asset declarations), part of which are applicable to "high-ranking officials" including MPs, judges and certain (high-ranking) prosecutors. It furthermore established the Commission on Ethics for High-Ranking Officials, which is tasked, *inter alia*, with maintaining a register of asset declarations of high-ranking officials and analysing and publishing the declarations.<sup>228</sup> While taking due note of this reform process, the GET is nevertheless of the opinion that there is still room for improvement with respect to several issues covered by the present evaluation, as described below. Notably, it would appear that the general concern expressed by various stakeholders about deficiencies in the effective implementation of the law in Armenia is also pertinent with respect to the regulations provided by the LPS.

225. Firstly, the GET takes the view that the rules on gifts stipulated in the LPS which are described above in the chapter on MPs<sup>229</sup> and are applicable to public servants and high-ranking officials including MPs and prosecutors, warrant several amendments. Namely, the GET finds the lack of comprehensive disclosure obligations<sup>230</sup> (apart from the general requirement to submit annual asset declarations which do not clearly cover any types of gifts or other advantages) unsatisfactory. Furthermore, the GET believes that the existing prohibitions and regulations on gifts do not take sufficient account of persons associated with public servants or high-ranking officials. In order to prevent circumvention of the rules, it is essential that they are extended to gifts given or offered to associated persons in relation to the public servant's or high-ranking official's responsibilities. Moreover, it is unclear whether the concept of "gift" in the meaning of the above-mentioned rules refers only to tangible objects or whether it is broad enough to also cover benefits in kind such as hospitality, free travel and accommodation provided by third parties or invitations to cultural or sports events. Finally, the rules contain several vague terms which need to be clarified, in particular, the element of the definition of a gift "which would not reasonably have been granted to a person who is not an official"; the concept of advantages provided by relatives or friends which are not considered gifts "if the nature and size of the gift is in compliance with the nature of relationships"; as well as the expression "gifts, rewards and receptions given at the time of *official events*" – which may be accepted by public servants and high-ranking officials. Such vague concepts create grey zones and risks of abuse. While practical guidance on these matters needs to be provided by the code of conduct recommended above, clear legal provisions are also required.

226. As far as judges are concerned, the GET notes that the specific rules contained in the JC as described above<sup>231</sup> are in some respects stricter than the general LPS regulations – *inter alia*, the definition of a gift is more detailed and it clearly covers, for example, in-kind benefits such as "services rendered at a disproportionately low value"; the rules take into account gifts given or offered to family members living with the judge; and they include a requirement to report acceptable gifts above certain thresholds to the Ethics and Disciplinary Committee of the GAJ. That said, the GET finds the current thresholds – approximately 463 EUR for gifts received from one person during the same

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<sup>228</sup> See section 43 LPS

<sup>229</sup> See paragraphs 50 to 53 above.

<sup>230</sup> Section 29 LPS requires public servants and high-ranking officials who have a superior to notify the latter of gifts whose value exceeds 100 000 AMD/approximately 185 EUR; this requirement is not applicable to MPs. During the interviews, the GET was told that MPs were nevertheless expected to hand over to the parliamentary administration gifts received, for example, during official visits, but there seems to be no written rule to that effect.

<sup>231</sup> See paragraphs 137 to 141 above.

calendar year, and approximately 1 850 EUR for the total value of gifts received during a calendar year – too high, bearing in mind that the average monthly salary in Armenia amounts to approximately 321 EUR and the monthly gross salary of a First Instance judge to approximately 1,260 EUR. Moreover, similarly to the LPS, the JC regulations on gifts employ several vague terms which need to be clarified, in particular, the element of the definition of a gift “which would reasonably not be given to a non-judge”; as well as several concepts contained in the list of gifts deemed acceptable, such as the concept of advantages provided by relatives, friends or associates which are not considered gifts “if the nature and size of the gift reasonably correspond to the nature of the relationship between them” and the expression “gifts and awards *usually given in public events*”. The authorities indicate in this connection that there is no established practice which would help clarify the exact meaning of those terms. Consequently, **GRECO recommends that the rules applicable to the acceptance of gifts by members of parliament, judges and prosecutors be further developed so as to provide clearer definitions to ensure that they cover any benefits – including benefits in kind and benefits provided to associated persons; to introduce a requirement to report gifts received to an appropriate monitoring body; and in the specific case of judges, to lower the existing thresholds for such reporting.**

227. Another area where further improvement is desirable is the regulation of asset declarations to be submitted by high-ranking officials including MPs, judges and certain prosecutors. Firstly, as far as publication of information is concerned, the GET was pleased to hear that the scope of data to be disclosed to the public on the website of the Commission on Ethics for High-Ranking Officials has recently been widened,<sup>232</sup> however, it shares the concerns expressed by some interlocutors about the rule that no “data identifying the person or property” may be disclosed. While it is clear that the privacy of the officials (and their families) must be appropriately respected, this restriction seems to be too far-reaching. The GET also has misgivings about the fact that the list of data to be published is determined by government decision. The GET would certainly prefer such an important matter to be regulated by the law itself. In addition, the GET very much regrets that the legislation does not provide for the publication of significant irregularities detected by the Commission on Ethics for High-Ranking Officials. These shortcomings limit the preventive impact of asset declaration where integrity is concerned and opportunities for social control through transparency.

228. Secondly, the GET has misgivings about the fact that only a very limited number of – high-ranking – prosecutors, 25 in total, are covered by the rules on asset declaration. As mentioned above in the chapter on prosecutors, the Prosecutor General’s Office has developed a draft law<sup>233</sup> aimed at expanding the category of high-ranking prosecutors obliged to submit asset declarations in order to also include heads of departments (divisions) of prosecutors’ offices as well as prosecutors of the administrative districts of the City of Yerevan and deputy military prosecutors. The draft law is based on the consideration that the current definition of high-ranking prosecutor for the purposes of asset declaration is incomplete and ill-conceived. While the GET supports this reform initiative, it takes the view that for the sake of consistency (bearing in mind that all judges are covered), transparency and corruption prevention, all prosecutors need to be covered – as was the case before the LPS was enacted. Given the foregoing, **GRECO recommends that the existing regime of asset declarations applicable to members of parliament, judges and prosecutors be further developed by defining in law the data subject to publication and excluding only data whose confidentiality is clearly required for privacy reasons; and widening the scope of application of the declaration regime to cover all prosecutors.**

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<sup>232</sup> Before the reform, only financial transactions exceeding specified value threshold were made public.

<sup>233</sup> Draft Law “On making amendments and supplements to the Law of the Republic of Armenia on Public Service”

229. Turning to the supervision and enforcement of the rules on asset declaration, the Commission on Ethics for High-Ranking Officials is responsible for analysing and publishing the declarations. The President of the National Assembly, the Prime Minister, the chair of the Constitutional Court and of the Court of Cassation and the General Prosecutor each nominate one of its five members who are appointed by the President of the Republic for a six-year term. The Commission elects a chair and one deputy chair from among its members. Commission members may not be members of a political party or representative body or hold a post in a state or local self-government body or be engaged in other paid work save scientific, pedagogical and creative work. The law states that Commission members are independent, bound only by the Constitution and laws and not accountable to any other public body or official.<sup>234</sup> Their salaries are established by law. Logistical and organisational support to the activities of the Commission is provided by the staff of the President of the Republic. The President can terminate the powers of Commission members in certain cases such as failure to implement their duties. While the GET acknowledges the establishment of the Commission and the principle of independence of its members enshrined in the law, it is nevertheless concerned about its operational independence – given that the Commission is located in and supported by the office of the President of the Republic and that it has no separate budget. Bearing in mind the context in Armenia as described above, which is marked by concerns about the dominant role of the President of the Republic in the political system and about the lack, in practice, of a clear separation of powers, it is of significant importance that the monitoring system regarding high-ranking officials not only operates in an independent and impartial manner but is also seen to be operating in such a way. This is crucial for public trust in the system.

230. Several interlocutors met by the GET took the view that the Commission on Ethics for High-Ranking Officials was “toothless” – a view which is not shared by the authorities – given that until now, it has only conducted preliminary checks of the asset declarations submitted and that it cannot impose any sanctions – with the exception of publishing a list of non-compliant high-ranking officials. Moreover, at present, the Commission has no competence to initiate proceedings against MPs, judges or prosecutors who violate the rules. In this context, the GET notes that the current reform proposals, mentioned above in the chapter on MPs,<sup>235</sup> are aimed at carrying out more in-depth analyses of the declarations once the systems for electronic verification and risk-based analysis have been fully developed, granting the Commission direct access to state databases, and introducing administrative sanctions – namely warnings and fines to be imposed by the Commission for failure to declare or submission of incorrect or incomplete information. Some interlocutors were of the opinion that the resources of the Commission would need to be brought into line with these increased responsibilities if the draft proposals are adopted.

231. The GET supports this reform process and wishes to stress how important it is that the Commission is provided with a clear mandate and adequate competence to carry out in-depth control of asset declarations, to investigate infringements of the rules and to initiate proceedings against high-ranking officials including MPs, judges and prosecutors. *Inter alia*, it needs to be ensured that the Commission has access to all relevant state databases – it would appear that some relevant instances such as the tax authorities would be reluctant to grant such access. The authorities are also invited to consider providing the Commission with the right to request relevant financial information from banks and other financial institutions, as was advocated by representatives of the Commission interviewed on site. Moreover, the introduction of effective, proportionate and dissuasive sanctions and making the Commission itself competent for enforcing them – or least some of them – would be indispensable for the establishment of a credible supervisory and enforcement regime. In addition to the planned introduction of warnings

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<sup>234</sup> See section 40 LPS

<sup>235</sup> See paragraph 84 above.

and fines, a clear legal basis for publication of any significant irregularities detected by the Commission is also required. For the sake of building an effective mechanism, the technical and personnel resources of the Commission will also have to be reassessed and adequate resources allocated as necessary. Given the preceding paragraphs, **GRECO recommends that appropriate measures be taken to ensure effective supervision and enforcement of the rules on asset declaration applicable to members of parliament, judges and prosecutors, notably by strengthening the operational independence of the Commission on Ethics for High-Ranking Officials, giving it the clear mandate, powers and adequate resources to verify in depth the declarations submitted, to investigate irregularities and to initiate proceedings and impose effective, proportionate and dissuasive sanctions if the rules are violated.**

232. The authorities may also wish to ensure that criminal sanctions are in place – and are effectively applied – in case of serious breaches of the rules on asset declaration. Some of those the GET spoke to advocated the introduction of the criminal offence of illicit enrichment in order to strengthen the enforcement mechanism. According to prosecutors met on site, existing criminal offences such as abuse of official authority (article 308 CC), illegal participation in entrepreneurial activity (article 310 CC) or passive bribery (article 311 CC) could come into play in such cases. However, the GET has to take account of other sources that claim that allegations of such offences being committed by high-ranking officials submitted to the law enforcement bodies are never followed up. The authorities are invited to reflect on possible measures to step up co-operation between the Commission on Ethics for High-Ranking Officials and the relevant law enforcement authorities, for example via the formalised exchange of comprehensive information which could be based on memoranda of understanding (it goes without saying that such co-operation must not prevent law enforcement authorities from conducting investigations on their own initiative if there are reasonable grounds for suspicion). It seems logical that more comprehensive information should also be provided to the disciplinary bodies competent for disciplinary proceedings against officials who are obliged to declare their assets – to the extent that violations of the obligation give rise to disciplinary liability, as is the case for high-ranking prosecutors for example. Some interlocutors shared with the GET their concerns that at present, the relevant instances of the prosecution service do not receive a complete copy of asset declarations submitted by prosecutors to the Commission on Ethics for High-Ranking Officials. To conclude, the GET wishes to stress that only determined action by all competent authorities can help detect irregularities, yield practical results and generate citizens' trust in the system.

## **VI. RECOMMENDATIONS AND FOLLOW-UP**

233. In view of the findings of the present report, GRECO addresses the following recommendations to Armenia:

### *Regarding members of parliament*

- i. **that the transparency of the legislative process in the National Assembly be secured and further improved (i) by ensuring that the requirement to carry out public discussions on draft laws is respected in practice and that drafts submitted to the National Assembly as well as amendments are disclosed in a timely manner and (ii) by taking appropriate measures to ensure disclosure of information on the content of and participants in committee sittings, as well as more active use by committees of the possibility to organise parliamentary hearings (paragraph 32);**
- ii. **(i) that a code of conduct for members of parliament be adopted and made easily accessible to the public, which provides clear guidance on conflicts of interest and related areas – including notably the acceptance of gifts and other advantages, incompatibilities, additional activities and financial interests, misuse of information and of public resources and contacts with third parties such as lobbyists; (ii) that it be complemented by practical measures for its implementation such as dedicated training, counselling and awareness-raising (paragraph 43);**
- iii. **taking appropriate measures to prevent circumvention of the restrictions on members of parliament holding office in commercial organisations and on their engagement in entrepreneurial activities or other paid occupation in entrepreneurial activities (paragraph 59);**
- iv. **that the mechanism for monitoring compliance by members of parliament with standards of ethics and conduct be significantly strengthened so as to ensure (i) independent, continuous and proactive supervision of the rules of ethics and rules on incompatibilities and secondary activities, conflicts of interest and gifts (ii) enforcement of the rules through adequate sanctions (paragraph 80);**

### *Regarding judges*

- v. **that the reform of judicial self-governance be continued, with a view to strengthening the independence of the judiciary, securing an adequate representation of judges of all levels in self-governing bodies and reducing the role of court chairs, in particular the chair of the Court of Cassation (paragraph 99);**
- vi. **abolishing the possibility for the Council of Court Chairs to temporarily re-assign judges without their consent either for the purpose of ensuring an even workload for judges/courts or for the purpose of remedying a shortfall in the number of judges at a court (paragraph 107);**
- vii. **reforming the procedures for the recruitment, promotion and dismissal of judges, including by i) strengthening the role of the judiciary in those procedures and reducing the role of the President of the Republic and requiring him to give written motivations for his decisions and ii)**

**ensuring that any decisions in those procedures can be appealed to a court** (paragraph 116);

- viii. (i) that the role of the Ministry of Justice in disciplinary proceedings against judges be reviewed; (ii) that adequate safeguards be put in place to ensure that disciplinary proceedings are not used as an instrument of influence or retaliation against judges, including the possibility for judges to challenge disciplinary decisions before a court** (paragraph 157);
- ix. that effective rules and mechanisms be introduced for identifying undue interference with the activities of judges in the administration of justice and for sanctioning judges who practice or seek such interference** (paragraph 158);
- x. that the immunity of judges be limited to activities relating to their participation in the administration of justice (“functional immunity”)** (paragraph 163);
- xi. that a deliberate policy for preventing improper influences on judges, conflicts of interest and corruption within the judiciary be pursued which includes (i) the provision of on-going mandatory training to all judges on ethics and conduct, on judicial impartiality and independence and on the prevention of conflicts of interest and corruption, which is to be organised with strong involvement of the judiciary, and (ii) the provision of confidential counselling within the judiciary in order to raise judges’ awareness and advise them with regard to the areas mentioned under (i)** (paragraph 166);

*Regarding prosecutors*

- xii. that adequate measures be taken to involve professional, non-political expertise in the processes for the selection, appointment and dismissal of the Prosecutor General, to increase their transparency and to minimise risks of improper political influence** (paragraph 176);
- xiii. amending the composition of the Ethics Committee with a view to strengthening the prosecution’s independence from improper political influence, notably by ensuring (i) that it is made up of a majority of prosecutors and (ii) that at least some of these prosecutors are elected by their peers** (paragraph 178);
- xiv. reforming the procedures for the recruitment and promotion of prosecutors, including by i) increasing transparency of the decision-making process within the Qualification Committee, circumscribing the discretionary powers of the Prosecutor General and requiring him/her to give written motivations for his/her decisions and ii) allowing unsuccessful candidates to appeal to a court, on the basis of specific and precise legal provisions** (paragraph 184);
- xv. that a deliberate policy for preventing improper influences on prosecutors, conflicts of interest and corruption within the prosecution service be pursued which includes (i) the provision of on-going mandatory training to all prosecutors on ethics and conduct, on impartiality and independence and on the prevention of conflicts of interest and corruption, and (ii) the provision of confidential counselling within the prosecution service in order to advise**

**prosecutors and raise their awareness with regard to the areas mentioned under (i) (paragraph 223);**

*Crosscutting issues*

- xvi. that the rules applicable to the acceptance of gifts by members of parliament, judges and prosecutors be further developed so as to provide clearer definitions to ensure that they cover any benefits – including benefits in kind and benefits provided to associated persons; to introduce a requirement to report gifts received to an appropriate monitoring body; and in the specific case of judges, to lower the existing thresholds for such reporting (paragraph 226);**
- xvii. that the existing regime of asset declarations applicable to members of parliament, judges and prosecutors be further developed by defining in law the data subject to publication and excluding only data whose confidentiality is clearly required for privacy reasons; and widening the scope of application of the declaration regime to cover all prosecutors (paragraph 228);**
- xviii. that appropriate measures be taken to ensure effective supervision and enforcement of the rules on asset declaration applicable to members of parliament, judges and prosecutors, notably by strengthening the operational independence of the Commission on Ethics for High-Ranking Officials, giving it the clear mandate, powers and adequate resources to verify in depth the declarations submitted, to investigate irregularities and to initiate proceedings and impose effective, proportionate and dissuasive sanctions if the rules are violated (paragraph 231).**

234. Pursuant to Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of Armenia to submit a report on the measures taken to implement the above-mentioned recommendations by 30 April 2017. These measures will be assessed by GRECO through its specific compliance procedure.

235. GRECO invites the authorities of Armenia to authorise, at their earliest convenience, the publication of this report, to translate the report into the national language and to make the translation publicly available.

## ANNEX: LIST OF ABBREVIATIONS

<b>Abbreviation</b>	<b>English Title</b>
CC	Criminal Code
CCC	Council of Court Chairs
COJ	Council of Justice
CPC	Criminal Procedure Code
GAJ	General Assembly of Judges
JC	Judicial Code
LP	Law on the Prosecution
LPS	Law on Public Service
LRoP	Law on Rules of Procedure of the National Assembly

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## About GRECO

The Group of States against Corruption (GRECO) monitors the compliance of its 49 member states with the Council of Europe’s anti-corruption instruments. GRECO’s monitoring comprises an “evaluation procedure” which is based on country specific responses to a questionnaire and on-site visits, and which is followed up by an impact assessment (“compliance procedure”) which examines the measures taken to implement the recommendations emanating from the country evaluations. A dynamic process of mutual evaluation and peer pressure is applied, combining the expertise of practitioners acting as evaluators and state representatives sitting in plenary.

The work carried out by GRECO has led to the adoption of a considerable number of reports that contain a wealth of factual information on European anti-corruption policies and practices. The reports identify achievements and shortcomings in national legislation, regulations, policies and institutional set-ups, and include recommendations intended to improve the capacity of states to fight corruption and to promote integrity.

Membership in GRECO is open, on an equal footing, to Council of Europe member states and non-member states. The evaluation and compliance reports adopted by GRECO, as well as other information on GRECO, are available at [www.coe.int/greco](http://www.coe.int/greco).

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