

Armenia / Arménie

Main question. In the judgment *Kolevi v. Bulgaria* (app. no. 1108/02, 5 November 2009), the European Court of Human Rights (hereinafter referred to as “the ECHR”) the applicant’s main allegation was that the investigation had lacked independence and objectivity owing to institutional deficiencies and unlawful practices in the prosecution system and had not examined the possible involvement of high-ranking prosecutors and other officials. In §§ 197-215 the ECHR made its assessment regarding the deficiencies in the prosecution system of Bulgaria (in particular, the ECHR noted that as a result of the hierarchical structure of the prosecution system and, apparently, its internal working methods, no prosecutor would issue a decision bringing charges against the Chief Public Prosecutor. This appears to have been due to the fact that the Chief Public Prosecutor and high-ranking prosecutors have the power to set aside any such decision taken by a subordinate prosecutor or investigator. As a result, it is still the case that the Chief Public Prosecutor cannot be temporarily suspended from duty against his will, as that can only be done if charges have been brought against him). Also in the abovementioned judgment in §§ 138-152 the relevant aspects of several member States’ legal systems, with the emphasis on the guarantees that exist to secure the effective and independent investigation of cases involving suspicion against high-ranking prosecutors were described.

The European Court of Justice in its judgment of 27 May 2019 (case number C-509/18) hold that the Prosecutor General of Lithuania may be considered to be an ‘issuing judicial authority’, within the meaning of Article 6(1) of Framework Decision 2002/584, in so far as, in addition to the findings in paragraph 42 of the present judgment, his legal position in that Member State safeguards not only the objectivity of his role, but also affords him a guarantee of independence from the executive in connection with the issuing of a European arrest warrant. The relevant analyses of the European Court of Justice is available in §§ 42-57 of the abovementioned judgment.

Regarding the independence of the judiciary the judgment of the ECHR in case of *Ramos Nunes de Carvalho e Sa v. Portugal* ([GC], app. nos. 55391/13, 57728/13, 47041/13) should be noted in §§ 144-150 the ECHR recapitulated all the existing principles.

Question 1-4. At the outset, it should be noted, that the domestic legal system of the Republic of Armenia is closely interrelated with international legal standards. This fact is also reflected in the Constitution of the Republic of Armenia (as amended by the referendum of 6 December 2015, hereinafter referred to as “the Constitution”) the relevant parts of which states as follows:

Thus, Article 5, § 3 of the Constitution provides that in case of conflict between the norms of international treaties ratified by the Republic of Armenia and those of laws, the norms of international treaties shall apply. Article 61, 2 provides that everyone shall, in accordance with the international treaties of the Republic of Armenia, have the right to apply to international bodies for the protection of human rights and freedoms with regard to the protection of his or her rights and freedoms. Article 81 provides that the practice of bodies operating on the basis of international treaties on human rights, ratified by the Republic of Armenia, shall be taken into account when interpreting the provisions concerning basic rights and freedoms enshrined in the Constitution. Restrictions on basic rights and freedoms may not exceed the restrictions prescribed by international treaties of the Republic of Armenia.

The general official measures taken for reacting to and implementing the decisions of international courts and treaty monitoring bodies are based generally on the relevant amendments in the domestic legislation and practical measures taken to address possible shortcomings and practical situations. In this respect, it is worth mentioning especially the adoption of the new “Law on the Prosecutor’s Office” (adopted on 17 November 2017, in force from 9 April 2018, hereinafter referred to as “the Law”) of the Republic of Armenia. While drafting the Law all the recommendations of international colleagues, especially those of the

European Commission for Democracy through Law (Venice Commission), the Organisation for Economic Co-operation and Development (OECD), the Group of European States against Corruption (GRECO), Consultative Council of the European Prosecutors (CCPE) were thoroughly taken into account. As a result, mutual relations of superior and inferior prosecutors, regulations regarding appointment, transfer, promotion and discipline of prosecutors, procedure of appointment of the Prosecutor General and Deputy Prosecutor General, material, legal, social and other guarantees were brought in compliance with relevant international standards.

Question 5. There are several decisions of the Constitutional Court relating the Prosecutor's Office. However, these decisions mainly deal with issues concerning the constitutional status of the Prosecutor's Office, the essence of its constitutional authorities, problems stemming while exercising oversight over the lawfulness of pre-trial investigation, relationships between the investigative body and the prosecutor.

Question 6-7. The Prosecutor's Office of the Republic of Armenia does not belong to the judiciary. Moreover, the Prosecutor's Office does not belong to any branch of power in the Republic of Armenia. The Prosecutor's Office is an independent autonomous body with its constitutional powers enshrined in Article 176 of the Constitution of the Republic of Armenia.

According to Article 6, § 1-3 of the "Law on the Prosecutor's Office" each prosecutor shall exercise his or her powers independently based on laws and moral certainty and shall be responsible for his or her decisions adopted in the course of exercising these powers. Intervention in the activities of the prosecutor, not provided for by law, shall be prohibited and shall entail liability prescribed by law. Also it is stipulated that lawful requests of the prosecutor shall be binding for state and local self-government bodies, public servants, organisations and natural persons.

Accordingly, it should be stated that both prosecutors and the Prosecutor's Office are independent from the executive and legislative branches of state power.

Question 6 bis – The independence of judges is broader than that of the prosecutors given that there is not any hierarchical subordination within the judiciary. On the contrary, the activities of the Prosecutor's Office are based on the principle of ensuring hierarchic subordination and uniformity.

Question 7 bis – The principle of prosecutorial independence is fully operating during the relationships with the mentioned bodies. However, it should be noted that during the court proceedings the prosecutor should obey the rules of the court session and lawful instructions of the presiding judge.

Question 8. According to Article 22, § 1-2 of the "Law on the Prosecutor's Office" with a view of discussing fundamental issues related to the organisation of activities of the Prosecutor's Office, determining the directions of exercising the constitutional powers of the Prosecutor's Office, a Collegium chaired by the Prosecutor General operates within the Prosecutor's Office. The Collegium of the Prosecutor's Office comprises the Prosecutor General, Deputy Prosecutors General, heads of structural subdivisions of the General Prosecutor's Office and the Prosecutor of the city of Yerevan. Other prosecutors invited by the Prosecutor General may attend the sitting of the Collegium without the right to vote.

It stems from the legal status of the Collegium that the issues related to the prosecutorial independence may also be discussed during its sessions.

Question 9. The scope of the members of the Collegium is stipulated by the Law. They are not elected and become members of the Collegium by virtue of the relevant provisions of the Law.

Question 10. According to Article 56, § 1-4 of the Law

1. The Prosecutor General may institute disciplinary proceedings [emphasys added] against a prosecutor on the grounds prescribed by part 1 of Article 53 of this Law, except for the case provided for by part 2 of this Article:

(1) on his or her initiative; or

(2) based on the motions of prosecutors provided for by part 3 of this Article; or

(3) based on communications from natural or legal persons, state and local self-government bodies or officials, mass media publications;

(4) based on a court sanction on submitting an application with the Prosecutor General for imposing disciplinary action.

2. In the case of receiving a communication or motion to institute disciplinary proceedings against a prosecutor deemed to be a high-ranking official on the ground prescribed by point 4 of part 1 of Article 53 of this Law, the Prosecutor General or, in the case provided for by part 4 of this Article, the Ethics Commission shall, within a period of three days, forward the communication or motion to the Commission for the Prevention of Corruption. Where the institution of disciplinary proceedings against a prosecutor deemed to be a high-ranking official is initiated by the Prosecutor General, the latter shall, within a period of three days, submit to the Commission for the Prevention of Corruption information on the fact of failure by the prosecutor to comply with the restrictions or incompatibility requirements prescribed by Article 49 of this Law.

3. The following shall be entitled to file a motion with the Prosecutor General to institute disciplinary proceedings:

(1) Deputy Prosecutor General, for disciplinary violations committed by prosecutors belonging to the sector coordinated by the Deputy Prosecutor General in question;

(2) heads of structural subdivisions of the General Prosecutor's Office, for disciplinary violations committed by prosecutors of the subdivision in question, as well as in the case provided for by part 7 of Article 12 of this Law;

(3) Military Prosecutor, for disciplinary violations committed by prosecutors of the Central Military Prosecutor's Office and of military prosecutor's offices of garrisons;

(4) Prosecutor of the city of Yerevan, for disciplinary violations committed by prosecutors of the Prosecutor's Office of the city of Yerevan, prosecutors of the administrative districts of the city of Yerevan and of prosecutor's offices of the administrative districts of the city of Yerevan;

(5) prosecutors of administrative districts of the city of Yerevan, for disciplinary violations committed by prosecutors of the prosecutor's office of the administrative district in question;

(6) prosecutors of marzes, for disciplinary violations committed by prosecutors of the prosecutor's office of the marz in question;

(7) prosecutors of garrisons, for disciplinary violations committed by prosecutors of the prosecutor's office of the garrison.

4. The Ethics Commission shall also have the right to institute disciplinary proceedings [emphasys added] against a prosecutor by the majority vote of the members present at the sitting based on communications provided for by point 3 of part 1 of this Article addressed to the Ethics Commission, except for the case provided for by part 2 of this Article. The procedure for holding the sitting shall fall within the scope of provisions provided for by parts 2 and 4 of Article 57 of this Law.

Question 11. Prosecutors in Armenia are not appointed for life. According to Article 62, § 1 (2), attaining the age of 65 — the maximum age for occupying a position of a prosecutor, is a ground for dismissing a prosecutor from his office.

Question 12. The rules regarding appointment, transfer, promotion and discipline of prosecutors are not similar to those of judges. The applicable legal provisions are also different: regarding the prosecutors relevant issues are regulated by the Law and the orders of the Prosecutor General, regarding the judges the issues are regulated by the judicial Code of the Republic of Armenia and the decisions of the Supreme Judicial Council.

Question 13. No, there are not any provisions in the domestic legislation authorizing the Government to give instructions to the Prosecutor's Office. The Prosecutor's office is an autonomous constitutional body which operates independently from the executive.

Question 14. According to Article 30, § 6 of the Law:

“ An assignment or instruction shall be deemed as an oral or written directive [emphasys added], whereas in the course of exercising the powers prescribed by the Criminal Procedure Code of the Republic of Armenia — only a written directive given to the inferior prosecutor by the superior prosecutor [emphasys added] within the competence thereof and as prescribed by law, designed for performing certain actions, making decisions or abstaining from performance of any action”.

According to Article 32, § 1-2 of the Law:

“1. The assignments and instructions of a superior prosecutor shall be binding for an inferior prosecutor, except for [emphasys added] the cases where the inferior prosecutor finds that the assignment or instruction is illegal or unjustified. In this case, the inferior prosecutor shall, without performing the assignment or instruction of the superior prosecutor, submit a written objection to the superior of the prosecutor having given the assignment, except for the cases where the assignment or instruction has been given by the Prosecutor General. Where the disputed assignment or instruction is oral, the inferior prosecutor may, before submitting an objection, request a written assignment or instruction from the superior prosecutor.

2. Where the inferior prosecutor has considered the assignment or instruction given by the superior prosecutor as illegal or unjustified and has submitted an objection thereon to the superior of the prosecutor having given the assignment or instruction, whereas the assignment or instruction has been considered as legal and justified thereby, the superior prosecutor may, by his or her reasoned decision, dismiss the inferior prosecutor from the proceedings and transfer the case to his or her or to another prosecutor's proceedings.”

Question 14 bis. The issues regarding the allocation of cases between prosecutors are regulated by the relevant order of the Prosecutor General dated 13 March 2017. According to that order the allocation of the cases should be based on the principle of the specialization of the prosecutors with ensuring the equal workload.

Question 15. The courses on rules of prosecutorial conduct, internal investigations, anti-corruption etc. have been included in the 2019 annual mandatory training for prosecutors and effectively delivered (for a total of 49 prosecutors and candidate prosecutors). These courses have been included in the training curriculum of the Justice Academy following a recommendation of the Deputy Prosecutor General. The main topics, included in the training programme, involve, inter alia, issues related to the status of prosecutors in the system of public service of the Republic of Armenia, the guarantees for their independence etc. These courses are to continue in 2020.

Question 15 bis – Rules of conduct of prosecutors are stipulated by Articles 71-74 of the Law, according to which:

“Article 71. Rules of conduct of prosecutors

1. The rules of conduct of prosecutors shall be prescribed by this Law, and the requirements arising from the rules of conduct established by this Law shall be prescribed upon the order of the Prosecutor General.

2. The rules of conduct of prosecutors shall be binding for all prosecutors. The immediate superior prosecutor must also require that the rules of conduct be observed by the subordinate prosecutors.

3. The rules prescribed by points 1-3 and 7-9 of part 1 of Article 72 of this Code shall be binding for the persons included in the list of candidates for prosecutors.

4. A prosecutor shall strive to ensure, through his or her conduct, activities, professional and moral characteristics, the reputation, impartiality and objectivity of the Prosecutor's Office, contribute to building confidence in and respect for the Prosecutor's Office, ensuring the independence of prosecutorial activities, participate in instilling high standards of conduct.

Article 72. General rules of conduct of prosecutors

1. A prosecutor shall be obliged: (1) to refrain, under any conditions and in any situation, from demonstrating — with his or her activities, practical, professional and moral characteristics — any conduct incompatible with or undermining the high reputation of the Prosecutor's Office, decreasing the public confidence in the Prosecutor's Office or casting doubt on the impartiality, objectivity and independence of the Prosecutor's Office, including issuing in favour of any person a personal surety prescribed by the Criminal Procedure Code of the Republic of Armenia;

(2) to avoid, under any conditions and in any situation, practical, professional or moral relations or demonstrating any conduct incompatible with the title of the prosecutor that may disgrace the reputation, good fame, honour or dignity of the prosecutor;

(3) to keep the reputation of the Prosecutor's Office high, inspire respect and confidence in the Prosecutor's Office and in himself or herself with his or her conduct and activities;

(4) to demonstrate political restraint and neutrality, refrain from demonstrating any conduct that may leave an impression of being engaged in political activities, as well as not to demonstrate favouritism towards any political party;

(5) not to become a member of professional or non-governmental organisations the activities whereof are associated with discrimination on the grounds of ethnicity, nationality, faith or physical impairments;

(6) to be autonomous and objective, be independent from extraneous influences, pressure, threats or any other interference coming from legislative and executive authorities or other state bodies or local selfgovernment bodies, non-governmental or political organisations, media, private interests, public opinion and other sources, be free from the fear of being criticised;

(7) to refrain from publicly casting doubt on prosecutorial acts and on actions, professional and personal qualities of his or her colleagues;

(8) to adopt for himself or herself such restrictions that will ensure public perception of him or her as a well-balanced and objective person;

(9) to be law-abiding, righteous, patient, disciplined, reserved, balanced, polite, principled, impartial and strong-willed, listening to and respecting others' opinions and tolerating divergence in views, demonstrate extreme reasonableness and politeness when carrying out actions aimed at restricting the rights of other persons;

(10) to be intolerant towards violations of the rules of conduct committed or immoral conduct demonstrated by colleagues;

(11) to immediately inform the relevant bodies about threats to the lives and health of people or to the safety of the environment, take measures for the timely prevention and elimination of consequences of said threats, protect the human rights and fundamental freedoms and assist in the exercise thereof;

(12) not to carry the service firearm provided to him or her demonstratively in public places.

Article 73. Rules of conduct of prosecutors in official relations

1. In official relations, a prosecutor shall be obliged: (1) to act in compliance with the Constitution, constitutional laws and laws;
- (2) to follow the principle of hierarchical subordination without prejudice to the rule that the superior or immediate superior prosecutor shall refrain from demonstrating such conduct towards the subordinate prosecutor or addressing him or her with such words which may disgrace the honour or dignity of the prosecutor, impair his or her reputation;
- (3) to be independent and objective;
- (4) to demonstrate necessary consistency when complying with the restrictions prescribed by law;
- (5) to be independent in his or her convictions and deliver prosecutorial acts independently, which does not exclude receiving advice from his or her prosecutor colleagues on legal issues;
- (6) to perform his or her official duties in good faith, giving priority to exercising his or her powers over other types of activities prosecutors are legally allowed to engage in;
- (7) to ensure proper level of professional preparedness and proficiency, take measures to enhance his or her professional knowledge of the national and international law, consistently improve his or her skills and personal qualities, provide, upon necessity, professional assistance to colleagues;
- (8) guided by the requirements of the legislation of the Republic of Armenia, to take measures to strengthen the rule of law, reveal and eliminate the causes of offences and conditions contributing to the commission thereof;
- (9) to participate in court sessions wearing a proper uniform, demonstrate selfrestraint under any conditions and in any situation, be emotionally stable, avoid demonstrating any conduct or expressing himself or herself in words incompatible with the title of the prosecutor, that may disgrace the reputation and good fame of the prosecutor and the Prosecutor's Office;
- (10) when performing his or her duties, to show impartiality, refrain from displaying bias through his or her words or conduct, discriminating or creating such impression, act so as not to cast undue doubt on his or her impartiality and objectivity, not to be guided by assumptions, emotions, personal sentiments or other extraneous influence, which does not hinder the prosecutor from freely expressing his or her opinion on solutions regarding official issues;
- (11) to act reasonably so that cases causing a need for his or her dismissal (self-recusal) from the proceedings or examination of the case are reduced to a minimum;
- (12) not to use, disclose or otherwise make accessible non-public information that he or she has become aware of in the course of exercising his or her official duties, unless otherwise provided for by law;
- (13) to treat the participants of the proceedings, colleagues and all persons with whom the prosecutor communicates ex officio, with patience, dignity, respect and politeness;
- (14) to demonstrate understanding when violations and shortcomings committed in the course of performance of official duties are revealed, as well as towards objective criticism, and take measures to eliminate them;
- (15) to contribute to the establishment of a healthy moral and psychological atmosphere in relations with colleagues, be respectful and balanced towards them, respect their opinion, display willingness to help and assist his or her colleagues, not to intervene unlawfully in the performance of official powers of colleagues, which does not hinder the prosecutor from freely expressing his or her opinion on solutions regarding official issues.

Article 74. Rules of conduct of prosecutors in extra-official relations

1. In extra-official relations, a prosecutor shall be obliged: (1) not to use the reputation of the prosecutor's position for his or her or another person's benefit;
- (2) to avoid any conflict of interest, so that his or her family, social and other relationships do not influence the proper exercise of his or her official powers in any way;

(3) to avoid relations undermining the reputation, disgracing the honour and dignity, influencing the objectivity thereof or of the prosecutor's office, making dependent on certain persons materially and otherwise;

(4) to refrain from undue communications with mass media in respect of a case, demonstrate self-restraint under any conditions and in any situation, be emotionally stable, avoid demonstrating any conduct or expressing himself or herself in words incompatible with the title of the prosecutor that may disgrace the reputation and good fame of the prosecutor and the Prosecutor's Office."

Question 16-17. There is no relevant information. However it should be stated that press releases concerning the meetings between the representatives of international bodies and the Prosecutor's Office are posted on the official website of the Prosecutor's Office. During these meetings issues related to prosecutorial independence, may also be discussed.

