Armenia

Open Local Government and Public Ethics

HANDBOOK

A tool to promote public ethics, accountability, transparency, and citizen participation

The Congress
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Handbook on Open Local Government and Public Ethics

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In 2021, six handbooks have been produced with context-specific information for Albania, Armenia, Georgia, the Republic of Moldova, Ukraine, and Kosovo*. They aim to preserve and share the lessons learnt and best practices identified during the implementation of co-operation projects implemented by the Congress of Local and Regional Authorities of the Council of Europe. In addition, the contents of the Handbook are available online on bE-Open platform at bE-Open: Open Local Government | A tool for action (coe.int)

**All references to Kosovo, whether the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.*

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FOREWORD

Governments can function effectively only if they enjoy and sustain the trust of citizens in their commitment to delivering services and policies that serve the citizens. Open local government and a high level of public ethics are key to building confidence in the institutions of government. Local government, municipalities and their elected representatives and civil servants have a crucial role in fostering and sustaining trust-building and participatory decision-making, since they have a certain degree of autonomy over the distribution of resources, play an intermediary role with regards to central governments, and usually represent the first interface between citizens and elected representatives. The professionalism and integrity of elected local government officials and local administrations, and their ability to function in a transparent, responsive, and accountable manner, are a prerequisite for the delivery of enhanced, fair, and equitable services to citizens. Local and regional elected representatives must therefore act as role models in the areas of public ethics, transparency, accountability, and participatory decision-making.

In order to fulfil this role, elected representatives must be well versed in the principles and standards underpinning public ethics. Furthermore, they should understand the legislation in force and the mechanisms and institutions through which the laws are implemented and enforced at the local level. The government authorities should also raise awareness among the public so that they also understand their legal rights and know where they should turn to make a complaint.

However, we cannot ignore the fact that local authorities, as any public authority, are susceptible to corruption, which poses a major threat to the legitimacy of democratic institutions, as well as to the degree of trust that citizens place in their representatives and public officials. A deficit of transparency and shortfalls in public ethics are problems faced by all levels of government, including the local and regional levels. They undermine the provision of services to citizens and businesses alike and pose a threat to the universal access to basic services and to sustainable local economic development. The fight against corruption needs to be a long-term priority for local and regional governments and their associations. Concerted preventive action and the monitoring of corruption risks are both paramount in order to foster economic growth, improve living conditions, and develop citizens' trust.

Where the decentralisation of power and financial resources advances, the quality of local governance becomes even more crucial. Therefore, along with the introduction and consistent application of criminal law provisions against corruption, it is essential to promote public ethics, transparency, accountability, and participatory decision-making in order to reduce the risk of corruption and boost citizens' confidence in local and regional authorities.

The Congress of Local and Regional Authorities of the Council of Europe took a firm step in the promotion of ethical governance by adopting in 1999 the European Code of Conduct for the Political Integrity of Local and Regional Elected Representatives. An advisory group revised this Code, which was then adopted as the European Code of Conduct for all Persons Involved in Local and Regional Governance in November 2018. The updated text addresses new challenges, including new forms of communication, the impact of digital technology and the need to respect the privacy of data, and enlarges the scope of its application to all actors involved in local and regional governance, and not just elected officials.

In its priorities for 2021-2026[1], the Congress underlines the importance of promoting the quality of local and regional democracy and citizen participation. At the same time, the Congress devotes its attention to the challenges arising from the Covid-19 pandemic and underlines the necessity of adapting work and activities to a new situation, including corresponding social, economic, and political changes. The thematic priorities of the Congress also include reducing social inequalities and ensuring that digitalisation and artificial intelligence enhance citizen participation. The Congress underlines that

local and regional authorities should be the main actors for change and points out the importance of the fight against corruption and clientelism, and the participation of citizens in decision-making processes, for the proper functioning of local and regional democracies.

The Congress is determined to sustain a comprehensive, long-term engagement in corruption prevention, and in this spirit has established the position of Spokesperson on Promoting Public Ethics and Preventing Corruption at the Local and Regional Levels. The publication of this Handbook and our intention to actively promote its use are further demonstration of our determination to make this a priority activity for the years to come.

The attitudes and expectations of our citizens with regards to public governance are changing. To renew and sustain confidence in public administration, we need to set up effective mechanisms for the implementation of, and compliance with, standards of ethical conduct. Preventing corruption, reducing its risks, and developing effective, accountable, and transparent institutions at all levels are key components of just and inclusive societies.

With this in mind, this *Handbook on Open Local Government and Public Ethics* is aimed at local authorities, mayors, local councillors, and civil servants, to support them in their efforts to improve the quality of local governance in their villages, towns and cities. The *Handbook* provides local authorities with practical guidelines on transparency and citizen participation, identifying the relevant international standards and domestic legislation, and providing case-law examples and good practices that can be applied and promoted by all local authorities.

Andreas Kiefer
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PURPOSE AND STRUCTURE OF THE HANDBOOK

Transparency and citizen participation are key concepts in the development of good governance. Both help to create the conditions for citizens to understand and evaluate the decisions that the government is taking on their behalf, as well as to ensure that their own needs and views are taken into account in the decision-making process.

Effective application of tools to promote transparency and citizen participation, coupled with stronger accountability and public ethics, can help to drive out corruption and government malpractice. Both concepts also serve to help generate positive and enabling momentum to foster increased trust in public governance.

Finally, they help governments to draw on the skills, knowledge and experience of citizens to enable more informed decision-making, early identification of negative impacts of prospective policies, greater ownership of the resulting decisions, and the delivery of more effective public services.

The Handbook on Open Local Government and Public Ethics in Armenia aims to support local authorities in their efforts to improve the quality of local governance in line with the principles of the European Charter of Local Self-Government (ETS No. 122) and its Additional Protocol on the Right to Participate in the Affairs of a Local Authority (CETS No. 207). It provides them with practical guidance on public ethics and accountability, transparency, citizen participation, and countering corruption, based on Council of Europe principles and guidelines, and drawing on international standards and examples of model legislation.

To fulfil its purpose as a practical reference guide to support local authorities in their daily work, the Handbook on Open Local Government and Public Ethics in Armenia includes specific information about domestic anti-corruption legislation and provides examples of mechanisms and tools to raise standards in public ethics and accountability, transparency, and citizen participation. The Handbook provides a concise assessment of the most prevalent corruption risks and a set of good practices to introduce and implement public ethics and open government.

The implementation of the mechanisms included in this Handbook will also help local authorities contribute to attaining the United Nations' Sustainable Development Goals (SDGs)[2] of the 2030 Agenda for Sustainable Development,[3] namely goals 5 (gender equality), 11 (sustainable cities and communities), 16 (peace, justice and strong institutions) and 17 (partnerships for the goals). In this regard, the implementation of open local government will serve as a powerful driver for deepening the commitment to good governance in the context of sustainable development.

The Handbook is structured in four main chapters:

- **Chapter 1 – Public Ethics and Accountability:**

  This chapter highlights the importance and challenges of public ethics and accountability in Armenia. It demonstrates the essential role that public ethics and accountability play in bringing about effective, transparent and participatory governance.

- **Chapter 2 – Transparency:**

  This chapter introduces five transparency mechanisms, which have been selected to represent the diversity of approaches to transparency. The account of each mechanism includes an introductory description and an outline of international standards. This is followed by four

sections summarising key domestic laws and presenting practical guidelines and best practices which can serve as examples for local authorities in their efforts to enhance transparency.

- **Chapter 3 – Citizen Participation:**

  This chapter introduces five citizen participation mechanisms, which have been selected to represent the diversity of approaches to citizen participation. Following the same structure as in the previous chapter, an introductory description is provided for each mechanism followed by an outline of relevant international standards. The concluding four sections summarise key domestic laws and present practical guidelines and best practices which can serve as examples for local authorities in their efforts to foster and improve inclusive citizen participation.

- **Chapter 4 – Corruption Risks:**

  This chapter introduces the most common corruption risks identified in Armenia and outlines relevant international anti-corruption standards, along with the domestic legal framework pertinent to each form of corruption. This is then supplemented with examples of case law and good practices related to each type of corruption.

Chapter 1

PUBLIC ETHICS AND ACCOUNTABILITY

Introduction

Public ethics and accountability are essential concepts underpinning an effective local or regional authority. They refer to the culture, processes, structures and rules that ensure those in public office act in the wider public interest, rather than their own self-interest. They are an essential feature of good governance, and it is important that they are respected and monitored by relevant organisations.

Ethics embody the rules that define the conduct of public officials[4] in order to ensure that the public is treated fairly and equitably. Ethics help officials make better decisions in the public interest and help people evaluate the decisions taken on their behalf by public officials.

Public accountability ensures that officials are openly answerable for the decisions they are taking on behalf of the public.

In the absence of public ethics and accountability, corruption and malpractice are able to thrive. As outlined in the final chapter, corruption is damaging to individuals, society, the economy, and government in a number of respects. The prioritisation of public ethics and accountability can help curb the worst excesses of power and encourage more responsible and fairer decision-making by local authorities.

Even where corruption is not endemic, the absence of public ethics and accountability can be corrosive to public trust in government, public institutions and officials. While the relationship between public ethics and accountability is complex, consistent and timely application of both can help to build and strengthen trust between the public and government.

Furthermore, public ethics and accountability can contribute to a positive environment where it is recognised that citizens and other stakeholders contribute to the quality of the decision-making process. Combined with citizen participation tools, public ethics and accountability can help to ensure that citizens' personal experiences, expertise, knowledge and scrutiny add value to, and strengthen, decisions taken by government and public officials.

Elected representatives should be aware of the process by which declarations of assets are monitored and by which body, and which sanctions can be applied, and how, in the event that an office-holder makes a false or incomplete declaration. They should know the rules governing whistle-blowing and which official or officials are responsible for considering whistle-blowers' complaints and reports of wrongdoing. Local authorities need to ensure in-house training for newly elected representatives and provide regular refresher training for all elected officials. Knowledge and understanding of the legal and institutional framework are essential if elected representatives are to succeed as role models of political integrity.

Finally, public ethics and accountability are key to improving public services because public services that are more responsive and accountable to people – and benefit from their insights, ideas, energy, and scrutiny – will work better for people and the community as a whole.

Taken together, public ethics and accountability help to ensure that decision-making and resource allocation are fair, efficient and effective, which in turn helps to enable a flourishing democracy, economy and society. To this end, the Congress of Local and Regional Authorities of the Council of Europe

adopted the European Code of Conduct for all Persons Involved in Local and Regional Governance,[5] encouraging local and regional authorities and associations of local and regional authorities to design appropriate educational programmes in integrity management and to implement advisory services to help their staff to identify and deal with potential ethical risk areas and conflict-of-interest situations.

Transparency and citizen participation are important mechanisms for promoting public ethics and accountability in central and local government. A recent report for the European Committee of the Regions on "Preventing Corruption and Promoting Public Ethics at the Local and Regional Level in Eastern Partnership Countries" found that lack of transparency was the main vulnerability in all of the cases assessed.[6] This handbook outlines a range of transparency and citizen participation mechanisms that can be adopted by local and regional authorities.

General domestic context

Public trust towards government very much depends on the government institutions' ethics and accountability.

The Armenian legislation beholds the ethics and accountability of public officials as part of the bigger integrity system, comprising of principles and codes of conduct, incompatibility requirements and other limitations set forth for public officials, restrictions for acting or decision-making in the situation of conflict of interest and for the receipt of gifts. These concepts, although loosely, are set forth in the revised Law on Public Service, adopted in early 2018.

The main body responsible for regulation of the rules of ethics, interpreting the basic principles of conduct, developing a standard code of conduct for public servants, officials, and setting guidelines for sectoral codes of conduct is the Corruption Prevention Commission (CPC).

In general, the legal framework for ethics regulation and accountability in the public service is not complete and some regulations and enforcement mechanisms are still pending.

Neither the Law on Public Service, nor the Law on Local Self-Government regulates the procedure of creation of codes of conduct for the community officials and councils. The mechanisms for establishing ethics commissions and defining the rules of ethics for the members of community councils and municipal officials are not developed and specified either.

Development of standards of ethics and mechanisms of accountability can increase public trust and help national and local authorities successfully implement their policy agendas. Enhancement of these standards and mechanisms can mitigate corruption and bribery and improve the effectiveness of the government.

1.1. CODES OF ETHICS AND PROFESSIONAL CONDUCT

Codes of ethics establish basic principles by which public servants must abide, such as integrity, selflessness and openness. A code of conduct draws on the code of ethics to formulate standards and practices that should be applied to the particular circumstances of an institution.

A code of conduct sets out specific standards of professional behaviour expected in a host of situations and provides public officials with guidance for handling them. In addition, codes of conduct bring transparency and public accountability into governmental operations.

International standards

Well-designed codes of ethics and codes of conduct will help meet the growing expectations from the public, business leaders and civil society for greater transparency and integrity in government, and will places an onus on governments to ensure high ethical standards amongst public officials and elected representatives. As such, they can support the development of trust between the public and government institutions and officials. It is important that codes of conduct are in place for both civil servants and elected officials, and that training and guidance is provided to ensure a full understanding of the codes by all office-holders. Disciplinary measures and sanctions should be clearly stipulated and consistently applied in the event of noncompliance with the codes.

The following international conventions and standards relate to codes of ethics and professional conduct:

- The **Committee of Ministers of the Council of Europe's Recommendation on Codes of Conduct for Public Officials**[7] and the **European Code of Conduct for all Persons Involved in Local and Regional Governance**[8] are the reference texts for local and regional authorities in Europe for ensuring political integrity.
- The **Committee of Ministers of the Council of Europe's Guidelines on Public Ethics**[9] consolidate in one single document Council of Europe core principles, standards and recommendations in this field, covering all categories of public officials, be they elected, appointed or employed. They are complemented by the **Guide on Public Ethics: Practical steps to implementing public ethics in public organisations**,[10] a living document which provides case studies and examples from Council of Europe member states.
- The **OECD Recommendation on Public Integrity**[11] shifts the focus from ad hoc integrity policies to a context-dependent, behavioural, risk-based approach with an emphasis on cultivating a culture of integrity across the whole of society.
- The **Transparency International paper on Implementing Effective Ethics Standards in Government and the Civil Service**[12] provides practical mechanisms for institutionalising high standards of ethical integrity for elected officials and civil servants.

Domestic context

The adoption of the new Law on Public Service in 2018 has changed the approaches to the establishment of the codes of ethics and conduct in state and local self-government bodies, as well as the formation of ethics commissions and promotion of integrity standards.

CPC is designed to be the body that regulates rules of ethics, and is responsible for interpreting the basic principles of conduct, developing a standard code of conduct for public servants, officials, and setting guidelines for sectoral codes of conduct. Obviously, its CPC's establishment in November 2019 marked a new era and advanced expectations for ethical governance and accountability. However, the establishment and full-scale operation of CPC proceeds slowly.

Legislation

The system of ethics in Armenia is decentralized.

CPC acts as an ethics oversight body for persons holding public office, but not for MPs, judges, prosecutors, investigators, who are supposed to establish their own ethics commissions. It does not regulate ethical issues related to public servants, except for incompatibility requirements or other restrictions.

The Constitution of Armenia sets forth a requirement to support regulation of the parliamentary ethics. More specifically, Article 107 of the Constitution states that ad hoc committees may be established upon decision of the National Assembly for the discussion of issues relating to parliamentarian ethics, and for the submission of opinions to the National Assembly.

According to the legislation of Armenia, the institutions regulating the code of ethics of public servants in Armenia are:

- The ad hoc committee of the National Assembly for discussion of issues related to parliamentary ethics;[13]
- The Corruption Prevention Commission;[14]
- The Constitutional Court;[15]
- The Ethics and Disciplinary Commission of the General Assembly of Judges[16];
- The Ethics Commission under the Prosecutor General;[17]
- Ethics Commissions established for types of services – such as the civil service, tax service, customs service, diplomatic service, etc.;[18]
- The position of integrity officer envisaged in the personnel subdivisions of the state and local self-government bodies.

With regard to other community services and community officials, the process of formation of ethics commissions has not yet been regulated by law. The mechanisms for establishing ethics commissions and defining the rules of ethics for the members of the community councils have not been developed and specified yet, either.

Ethics commissions of public servants shall follow up applications on the incompatibility requirements and other restrictions, violations of the code of conduct and situational conflict of interest cases and develop proposals to the respective institutions or officials to prevent or to eliminate conflict of interest situation in question.

The integrity officer, as prescribed by the Article 46 of the Law on Public Service, shall provide professional advice to public servants on incompatibility requirements, other restrictions, rules of conduct, as well as submit a proposal on taking steps to resolve the conflict-of-interest situation.[19]

Guidelines

Law on Public Service states that typical rules of conduct for public servants shall be established by CPC based on the principles of conduct established by the Law on Public Service. Though the Commission started functioning since 2019, the development of the typical rules of conduct is still in process. The rules of conduct of a public servant shall be defined on the basis of the typical rules of conduct established by the Corruption Prevention Commission.

The main issue is that neither the Law on Public Service, nor the Law on Local Self-Government regulates, is the procedure of creation of codes of conduct for the community councils. The Corruption Prevention Commission shall establish the typical rules of conduct for public servants.

The formation of the Ethics and Disciplinary Commission of Judges is regulated by the Judicial Code, defining conditions for the formation of the Ethics and Disciplinary Commission by the General Assembly of Judges. The Ethics and Disciplinary Commission of Judges consists of eight members. six judges and two non-judges. The Ethics and Disciplinary Commission initiates disciplinary proceedings against a judge and performs other functions prescribed by the Judicial Code.[20]

As for prosecutors, the Law on Prosecution Service defines that the Ethics Commission consists of seven members, including one Deputy Attorney General, three legal scholars, three prosecutors. The Ethics Commission is chaired by the Deputy Prosecutor General. The disciplinary sanction established by the Law on the Prosecution Service shall be imposed by the Prosecutor General on the basis of the relevant positive conclusion of the Ethics Commission.[21]

The main requirements for the establishment, activities and procedure of the ad hoc committee on parliamentary ethics are defined in the Constitutional Law on Rules of Procedure of the National Assembly[22]. Nevertheless, as evidenced by the established practice of the National Assembly, the formation of the ad hoc committee on parliamentary ethics never took place in the previous sessions of the National Assembly.

It is worth mentioning that starting from 2019, the UN Development Programme (UNDP) Modern Parliament for a Modern Armenia project provides assistance to the National Assembly to improve the parliamentary integrity system, which includes development of the Code of Ethics for the members of the National Assembly.[23]

The disciplinary commissions, established for investigators, as well as other law enforcement agencies, national security, police, penitentiary and compulsory services, do not monitor the observance of the rules of conduct. For this reason, the process of forming ethics commissions is not legally completed.

Good practices

The implementation of code of ethics and conduct in Armenia is not progressed much.At a national level, there is only one example of the decision of Corruption Prevention Commission on violation of rules of conduct. In 2019, the Commission initiated proceedings on the violation of the rules of ethics by the member of the RA Audit Chamber, based on the complaint of the member of the RA Chamber of Advocates. As a result of the proceeding, the Commission made the following conclusion. The commission noted that the reply letter addressed to the member of the RA Chamber of Advocates, did not reflect the essence of protecting constitutional duty, politeness and respect for human rights by a public servant. However, in the absence of rules of conduct for the public servant, the Commission has no legal basis to characterize it as a violation of the Code of Conduct and to propose disciplinary action against the member of the Audit Chamber on that basis.[24]

1.2. COMPLAINTS MECHANISMS

Complaints mechanisms allow citizens to provide feedback to public authorities on the standards of services they receive. They provide an important accountability mechanism which allows civil servants and elected officials to identify where public services are being delivered ineffectively, inefficiently or inequitably. When such mechanisms result in the prompt and effective handling of complaints, they can help to create the conditions for increased trust of citizens in government administration.

International standards

To ensure confidence in the mechanisms, local authorities should endeavour to consider and resolve each complaint promptly and comprehensively. Complaints mechanisms can be made more accessible by applying a one-stop-shop approach so that citizens do not need to search among different offices and websites.

If government takes a proactive approach to pre-empt the repeat of similar causes for complaint, complaints mechanisms can also help governments to identify new approaches to service delivery and to increase citizen participation. To this end, complaints mechanisms should be combined with periodic evaluations of service delivery, including the use of public opinion surveys, and exchange of experience and tools with other local authorities to encourage wider adoption of good practice and tried and tested tools.

There are no specific international standards for complaints mechanisms relating to public services. However, mechanisms and procedures for responding to complaints are incorporated into an international legal guarantee to the right to participate in the affairs of a local authority, and there are a number of helpful civil society guidelines and handbooks. See for example:

- The **Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207)**[25] provides an international legal guarantee to this right, including the establishment of mechanisms and procedures for dealing with and responding to citizen complaints and suggestions.
- **Transparency International's Complaints Mechanisms: Reference Guide for Good Practice**[26] sets out guiding principles and good practices for establishing and implementing complaint mechanisms that provide safe channels for citizens to alert a public or private institution about any corruption risks or incidences.
- The **Danish Refugee Council's Complaints Mechanism Handbook**[27] describes how to set up and manage a complaints mechanism.
- **World Vision's Overview of NGO-Community Complaints Mechanisms**, with an overview of mechanisms and tools used by development agencies to receive complaints.[28]

Domestic context

Complaints mechanisms as a component of the right to address public authorities, are regulated by Article 53 of the Constitution of Armenia, stating that everyone shall have the right to submit, either individually or jointly with others, petition to state and local self-government bodies and officials, and to receive an appropriate reply within a reasonable time period.

Development of complaints mechanisms is critical in order to reveal problems, resolve them and improve government services with the view to increasing the public trust. This is of particular importance for the local level as it is the first contact point for citizens in accessing public services, and it is crucial to deal with them in accordance with the principles of transparency and openness.[29]

The institute of local government is still emerging in Armenia, as hundreds of communities will undergo the amalgamation/consolidation process. It is not so well established either, as many issues are still resolved at the central or regional governor's level and there is lack of daring to resolve own issues, dependence on central level decision making, as well as lack of independence (given the probability to deprive it).

In order to ensure high quality public services, the Ministry of Justice of Armenia established its first Joint Office of Public Services in the centre of Yerevan, gathering services of the Civil Registry Agency, the State Register of Legal Entities, the State Revenue Committee, the National Archives, the Social Security Service, the Migration Service, the Cadastre Committee, the Funeral Bureau, as well as notary services. The Joint Office of Public Services was established in accordance with the Action Plan of the Government of the Republic of Armenia for 2019-2023, in order to facilitate the lives of citizens using public services. It is based on a one-stop shop principle for providing public services. Generally speaking, the system of feedbacks, including the statistical and content analysis is not well developed in the country.

Legislation

There are no specific legal provisions requiring establishment of complaints mechanisms for local government, and given the lack of central government's regulation or facilitation of such process, the local self-government bodies are free to adopt complaint mechanisms on a voluntary basis.

The Law on Petitions gives an opportunity to raise issues of public importance or to report on the shortcomings of the activities of state and local self-government bodies and officials.[30]

Guidelines

Currently there are no concrete settings for the establishment of complaints mechanisms, as those mechanisms should be adapted to the local context, taking into consideration factors such as cultural norms, existing institutions, social patterns, etc. Even though there are no concrete settings for developing a complaints mechanism, there is a broad consensus on key principles which suggest that the mechanism should be transparent, independent, accountable, accessible, safe and easy to use.[31]

It is worth mentioning here a reference guide on best practices for the implementation of effective complaint mechanisms made by Transparency International.[32] The purpose of this document is to set out guiding principles and good practices for establishing and implementing complaint mechanisms, which provide safe channels for citizens to alert a public or private institution about any corruption risks or incidences.

Good practices

There are a few successful examples of using complaint mechanisms to increase efficiency and public trust towards state and local governments. For example, in 2018 the Ministry of Justice of Armenia proposed to consider the creation of a unified portal for online requests, which would increase the accountability and transparency of public administration, as well as the efficiency of public services (e-request.am). The unified portal for online requests creates opportunities for submitting online applications, requests or complaints to state authorities without visiting them. Legal grounds for the operation of the portal are defined in the RA Government Decree N 524-N from 26 April 2018.

1.3. GRIEVANCE REDRESS MECHANISMS

Grievance redress mechanisms (GRMs) are tools that go beyond complaints mechanisms and other feedback channels as citizens can use a GRM to address government institutions and local municipalities with concerns about the impact of policies and their implementation on the citizens themselves. When the policy of a public agency affects the interests of the citizens, or the decision made by the central or local governmental bodies causes a grievance on the part of the citizens, interested parties can use the redress system created by the government agencies and local municipal bodies to present their grievance. A grievance redress mechanism is not used to replace the court or audit system or formal investigation; nor is it the appropriate mechanism for grievance about potentially criminal acts, such as instances of corruption. GRMs are designed for collaborative solutions of grievances.

International standards

Redress mechanisms serve as a frontline service to be used by citizens to effectively resolve complaints and/or grievances. Furthermore, business organisations can use GRMs to mitigate risks to their business operations and GRMs can become a prompt and effective mechanism for dispute settlement short of legal action.

Effective redress mechanisms can serve to identify patterns of corruption and malpractice, and to forge corruption prevention policies. To ensure greater access, it is important to raise public awareness about GRMs and to provide free advice to citizens on the formulation of grievance claims and how to proceed when seeking redress.

Standards for grievance redress mechanisms are mostly set by international organisations such as the World Bank, Asian Development Bank (ADB), Organisation for Economic Co-operation and Development (OECD), United Nations Development Program (UNDP) and European Commission. These standards are mostly connected with setting the legal framework for the protection of citizens' rights. These standards are presented in the following guidelines:

- **Reliability of Public Services: Ensuring Citizens' Rights**[33] from the OECD addresses citizens' rights to be heard using the legal framework established by state institutions.
- **OECD, Recommendation of the Council on Public Service Leadership and Capability, OECD/LEGAL/0445**[34] – the recommendation has 14 principles and defines the responsiveness of public service.
- **How to make a complaint at EU level by European Commission**[35] is a pamphlet outlining the opportunity for citizens to contact and submit a complaint to the European Commission.
- Guidance developed by the international institutions on the protection of citizens' rights during the implementation of a business project includes the **ADB's Building Capacity for Grievance Redress Mechanisms.**[36]

Domestic context

Every state must act as a warrant of protection of fundamental human rights. One of the ways of such protection is judicial and non-judicial protection. The Constitution of Armenia states that everyone has the right to effective judicial protection of their rights and freedoms. This provision is related to the right for everyone to apply to international bodies for the protection of human rights and freedoms. Closely related to the right to judicial protection is the right to a fair trial, which is considered a fundamental right of a person, enshrined in Article 63 of the Constitution.

The right to a fair trial should be interpreted in the light of the rule of law, which requires the trial participants to have effective remedies to enable them to defend their civil rights. The trial includes the combined examination of all the related claims, which are aimed at solving one common problem, that is, the restoration of the violated right of the person within the framework of that case.

The effectiveness of courts in providing legal protection is conditioned by the fact that judicial acts that have entered into force are binding for execution in the entire territory of the Republic of Armenia by the persons to whom the judicial act refers. Enforcement of judicial acts is ensured through the Compulsory Enforcement Service within the Ministry of Justice of the Republic of Armenia.

The practice of using redress mechanisms is being developed currently, as the Armenian population becomes more and more educated in legal aspects and own rights.

Legislation

The main provisions of the Armenian Constitution on redress were further elaborated in the Law on the Fundamentals of Administration and Administrative Procedure, the Code on Administrative Offenses, the Administrative Procedure Code, the Civil Procedure Code, the Criminal Procedure Code, etc.

In order to protect their rights, individuals have the right to appeal against administrative acts, as well as actions or inactions of an administrative body. This provision is stipulated in Article 69 of the Law. The administrative complaint may be lodged to the administrative body that adopted the act or to the superior administrative body of the administrative body.[37]

The administrative act may be appealed both administratively and judicially. If the act has been appealed both administratively and in court, the appealed act is subject to judicial review, and in this case the proceedings initiated in the administrative body shall be terminated.

Examining the legal provisions on the right to a fair trial, one can conclude that in case of alleged violation of his/her right, the person may apply to the court with restoration or other claims. This right may not be unreasonably restricted. It is also enshrined in the RA Constitution, according to which everyone has the right to compensation for damage caused by unlawful actions or inaction of state and local self-government bodies and officials, and in cases prescribed by law, also by lawful administration.

Guidelines

In 2018, Armenian Government declared as a top priority the development and implementation of a coordinated policy of institutional protection of human rights. In this context, in 2019 the RA government approved the National Strategy for the Protection of Human Rights and its Action Plan for 2020-2022. The strategy provides an assessment of the human rights situation, as well as previous action plans, outlines the principles, goals, priorities of this strategy, monitoring and coordination, accountability and assessment mechanisms. Specific and measurable actions have been planned for the implementation of the goals and issues of the Strategy, which are reflected in the 2020-2022 Action Plan. The Action Plan addresses the following areas of human rights protection: right to life, prohibition of torture, right to a fair trial, freedom of assembly and information, right to health, labor rights, right to education, right to property, equal rights, the prohibition of discrimination, protection of children's rights.[38]

Good practices

In 2020 an electronic platform on National Human Rights Strategy at www.e-rights.am was launched. The platform provides an online access to the National Human Rights Strategy and the resulting Action Plan, provides an opportunity to publish the reports submitted by the state bodies, and comment on the events. In order to raise the awareness of the population, the actions regarding human rights protection, including the right to a fair trial, were separated by the type of right. This platform enables transparency and accountability for all processes related to the Human Rights Strategy and its action plans.

1.4. PROTECTION OF WHISTLE-BLOWERS

Corruption and other actions that harm public interest, including public health, are more prevalent in organisations that lack a culture of transparency and oversight. A whistle-blower is a person who exposes information on illegal or unethical activities in a private or public organisation, and the rights of a whistle-blower who discloses wrongdoing, or acts and omissions harmful to the public interest, should be protected under "whistle-blowing" laws. While usually an employee, the whistle-blower could also be a sub-contractor, supplier, unpaid trainee or volunteer. The protection of whistle-blowers is important also in the private sector, not least where they might uncover bribery to public officials or practices damaging to the environment or public health and safety.

International standards

Most whistle-blowers raise their concerns internally or with regulatory or law enforcement authorities rather than blowing the whistle in public. The protection of whistle-blowers, and an organisational culture that prioritises transparency and dialogue, serves to promote accountability, builds confidence in the integrity of government, and encourages the reporting of misconduct and corruption. Whistle-blower protection can motivate employees to report wrongdoing without fear of reprisals, and fosters transparency and trust within an organisation as well as outwards to citizens that ethics are upheld and misconduct detected and remedied.

The rights of whistle-blowers can be strengthened by stipulating clear processes and providing secure confidential channels for disclosure. Explicit remedies, including penalties, to redress reprisals against whistle-blowers should be introduced and consistently applied. Training of human resources staff in local government and government agencies needs to be complemented by awareness-raising among the public so that citizens and government employees alike understand the positive results from whistle-blowing in terms of sustained value for money, trust in public authorities, and quality of services.

The following international conventions and standards relate to the protection of whistle-blowers:

- Creating comprehensive and effective mechanisms to protect those who disseminate information in the public interest is a recommendation of both the United Nations and the Council of Europe,[39] as well as the Organization for Economic Co-operation and Development (OECD).[40]
- **The Congress of the Council of Europe's resolution and recommendation on *The protection of whistle-blowers Challenges and opportunities for local and regional government*** call on "local and regional authorities to establish and disseminate a whistleblowing policy, with appropriate internal and anonymous reporting channels and to ensure that independent designated institutions exist to oversee and process the disclosure of information."[41]
- The **United Nations Convention against Corruption**[42] is the only legally binding universal anti-corruption instrument.
- It is supported by the **Technical Guide to the Convention.**[43]
- The **EU Directive on the Protection of Persons who Report Breaches of Union Law** requires EU governments to meet minimum standards for establishing reporting channels and ensuring legal protection for whistle-blowers.[44]
- The **Council of Europe's Criminal Law Convention on Corruption (ETS No. 173)**[45] aims to co-ordinate criminalisation of corrupt practices and to improve international co-operation in the prosecution of offences.

- The **Council of Europe's Civil Law Convention on Corruption (ETS No. 174)**[46] defines common international rules for effective remedies for persons affected by corruption.

Domestic context

The need to regulate the legal regime of whistle-blowers in Armenia was first enshrined in the Concept of fight against corruption in the public administration system, adopted in 2014. On June 9, 2017 the RA Law of the Republic of Armenia "On the Whistle-blowing System" was adopted.

The system of whistle-blowing in Armenia is decentralised. There is no central authority in Armenia with the specified mandate for providing protection and ensuring oversight, monitoring, collection of data regarding the protection of whistle-blowers. Individual state and public bodies have to establish reporting channels, receive and investigate reports and provide protection.

In the long-run, the proper function of the protection of whistle-blowers may become a major tool for increasing transparency and accountability. For these purposes, the unified electronic platform for anonymous reports by the whistle-blowers at www.azdararir.am was created. The electronic platform helps persons willing to anonymously report about corruption offences prescribed by the Criminal Code and is operated by the Prosecutor General's office. This system does not provide for reports on conflict of interest cases, violations of ethics rules, incompatibilities and other restrictions. Moreover, given that the Prosecutor General's office screens the reported cases, it does not forward the non-criminal complaints to relevant authorities, including to CPC, which in turn is not connected to the platform.

In response to TIAC's inquiry, the Prosecutor General office informed that in 2020 it has received 140 reports related to corruption, of which 119 were anonymous. Only one case received through the electronic platform has been referred by the Prosecutor General's office to Investigative Service for opening a criminal case.

Legislation

The definition of a whistle-blower is given by the RA Law "On the Whistle-blowing System". Article 2 of the Law states that: "Whistle-blower – is a natural or legal person, who in good faith in the manner prescribed by this law provides information on cases of corruption or conflict of interest or rules of ethics or in connection with incompatibility claims or other restrictions or declarations violation or other damage to the public interest or their threat related to an official or body with whom he is or has been employed or is in civil or administrative relations, or to which he has applied for the provision of services, or which was a misunderstood whistle-blower. A person is considered a misperceived whistle-blower if he/she was perceived as such without whistle-blowing, or where or he/she was the victim of malicious actions."[47]

The current Law "On the Whistle-blowing System" focuses on creating channels for reporting information about corruption crimes, and less on the protection to whistle-blowers, though the scope of the Law is broader and various types of violations can be reported, including corruption offences and other anti-corruption restrictions.

The Law provides two reporting channels: internal and external. Additionally, it sets forth a possibility of anonymous reporting on criminal cases through an e-platform monitored by the Prosecutor General's Office. The Law requires reports to be made in good faith and describes this term as "reasonable grounds for suspicion".

The Law also states that the whistle-blower has the right to protection, right to privacy of his personal data, protection from malicious actions and their consequences. The submission of an anonymous report guarantees the non-disclosure of the whistle-blower's personal data to both the competent authority and other persons.[48]

Guidelines

In order to facilitate the process of whistle-blowing in Armenia, the Government has developed a unified electronic platform for anonymous whistle-blowing, adopted in 2018, on the basis of the Decree of the Government of the Republic of Armenia "On approval of the technical description and the order of operating of the unified electronic platform for whistle-blowing". The Decree established the guides and procedures of regulating the unified electronic platform for whistle-blowing.

When a whistle-blower reports anonymously, their anonymity is guaranteed by encrypting their Internet Protocol Address. Persons visiting the platform may choose their preferred option of whistle-blowing anonymously and/or by way of submitting data, fill in the data by the method of whistle-blowing selected in the relevant fields, attach electronic materials related to the report, confirm the report upon verification of the data filled out and submit it to the system's reports management module.[49] The e-platform also contains guides on how to blow the whistle anonymously, how to do that through submitting data, what should be done after whistle-blowing, how to hide Internet Protocol Address of the device, etc.

In 2019, TIAC in cooperation with TI - Czech Republic, published the Whistle-blower's Guide, the purpose of which is to present the legislation and regulations as simple as possible for the potential whistle-blowers. Additionally, a number of templates and awareness raising video clips have been developed to support whistle-blowers to act competently in situations that they may potentially face in real life.[50] The Whistle-blower's Guide pays attention to such relevant issues as the rights of whistle-blowers and their affiliates, their responsibilities, how to protect the rights of whistle-blowers and their affiliates, the role of the media for whistle-blowing, etc.[51]

Good practices

Since the adoption of the Law "On the Whistle-blowing System" in 2017, there are no cases in Armenia where whistle-blower has been offered protection, which would also increase the trust in the system and boost the practice of whistle-blowing. The data are only available for reports submitted through the electronic platform.[52]

1.5 DISCLOSURE: DECLARATION OF ASSETS AND CONFLICTS OF INTEREST

Disclosure is the act of routinely publishing and updating particular types of information, sometimes required by law, such as the financial interests of public officials. It can support anti-corruption measures by requiring the routine publication of assets and interests that could represent a conflict of interest. A conflict of interest arises, or can be perceived to arise, when the private assets or interests of public officials can improperly influence policies and decisions taken during the exercise of their official duties.

International standards

Disclosure requirements can build citizens' trust in the transparency and integrity of local decision-making. They also assist public officials in having regularly updated information that prevents conflicts of interest arising among employees. Disclosure of financial assets also provides important information to help clarify if elected officials or civil servants do not have wealth that is disproportionate to their income, either protecting them from false accusations or serving as evidence in the case of suspected illicit enrichment.

Service delivery at the local government level, whether it be construction or tendering of waste-management services, is often subject to conflicts of interest due to the proximity of local entrepreneurs to government officials.

Confidence of the public and business that competition for local government tenders, for instance, is open to all without discrimination will be much greater if both elected officials and civil servants involved in design of the tenders and assessment of tender submissions have completed declarations of assets and interests (including of close family members).

It is important that the institutions responsible for gathering and monitoring declarations are provided with protection against political or other interference in their work, for instance through oversight by independent ethics committees. Likewise, local government officials should be provided with clear guidance on what to declare, and also on prevailing anti-corruption legislation. A well-implemented and regularly updated and monitored assets declaration system can complement the work of an effective prosecution service.

Disclosure is an important element in the conventions and standards against corruption listed elsewhere in this handbook. Of particular relevance are:

- The **Committee of Ministers of the Council of Europe's Recommendation on Codes of Conduct for Public Officials**[53] and the **European Code of Conduct for all Persons Involved in Local and Regional Governance**[54] require private interests to be declared, made public and monitored.
- The **Congress of the Council of Europe's Resolution and Recommendation on Conflicts of interest at local and regional level**[55] call on local and regional authorities to promote the proactive disclosure of declarations of interest prior to public request and to ensure that disclosure policies are accompanied by appropriate measures for resolving conflicts of interest.
- The **OECD's Managing Conflict of Interest in Public Service: Guidelines and Country Experiences**[56] provides practical instruments for modernising conflict-of-interest policies.
- The **OECD's Asset Declarations for Public Officials: A Tool to Prevent Corruption**[57] identifies the key elements of asset declaration systems.
- **Consultation, Participation & Disclosure of Information**, International Bank for Reconstruction and Development / The World Bank[58]

Domestic context

Disclosure of declarations of assets, income and interest for public officials and servants was mainly introduced by the Law on Public Service adopted in 2011, and monitored by the Commission on Ethics of High-Ranking Officials of Armenia set up in 2012. Following the change of the Law on the Public Service in 2018, the Commission was replaced by CPC, established in 2019 and guided by the Law on Corruption Prevention Commission.

The electronic system for declaring the property and income of high-ranking officials and related persons thereof, has been operating since 2015.. Between 2018-2021, the new Law on Public Service

completely overhauled the declaration system, enlarging the scope of declarants for about 5 times – from about 750 in 2011 to more than 9,000 in 2021.The template of declarations for all the declarant persons has been unified in terms of entering the office, annual declarations and leaving the office.

The content of the declaration has also been revised. The scope of data has been expanded, the threshold of the expensive property subject to declaration has been reduced, the requirement to declare the actually used property has been introduced, the types of loans and income have been streamlined. Starting from 1 January 2022, the obligation to declare assets and incomes will be applied to the members of political parties' permanent governing bodies.

Over the years, the scope of data to disclose in declaration has gradually expanded. The only information that is not currently subject to disclosure is personal data and declarations of minors.

Legislation

The Law on Public Service completely regulates the system of declarations and its management is centralized and implemented by CPC.

The Law on Public Service specifies 4 groups of public officials, obliged to declare assets, income, expenses and interests. Those are the officials holding:

1. political public positions (e.g. the President, Deputies of the National Assembly, Prime Minister, Deputy Prime Ministers, Secretary of the National Security Council, Ministers and their Deputies, community leaders, their deputies, members of the community council, members of the community councils of communities with a population of more than 15 000, heads of administrative districts of Yerevan community, their deputies, secretary of the staff of Yerevan Municipality, members of the Community Council of Yerevan);

2. administrative public positions (e.g. Chief of Staff of the President, his deputies, Chief of Staff of the National Assembly, his deputies, Chief of Staff of the Prime Minister, his deputy, etc.);

3. autonomous public positions (e.g. Human Rights Defender, Judges, Prosecutor General, Prosecutors, Heads of Investigative Bodies, Deputy Heads, Investigators, members of independent and autonomous bodies, etc.);

4. discretionary public positions (e.g. Advisors, Press Secretaries, Assistants to the President, the Prime Minister and other state officials, etc.).

Additionally, the obligation to declare relates to the following groups of public servants: civil servants holding leadership positions (1nd and 2nd sub-groups); higher commanding positions of military service and higher officer, senior positions of tax, customs services, senior officials in the police, penitentiary and judicial services, as well as persons holding high-ranking positions in the state service of the judicial bailiffs and in the staff of the National Assembly.

Public officials and public servants are required to file a property and income tax return before taking up a relevant position. The annual declarations and those to be filed after leaving the office shall include information on assets, income and expenses. In addition, the declaring official shall fill in the declaration information on the property and income of the co-living adult, as well as of each adult under their guardianship or trusteeship.

Declarations on assets, income, expenses and interests shall be submitted by the persons holding public office (except persons holding discretionary public positions), as well as by the heads of communities, their deputies, secretaries of the staff of the municipality, members of the community councils communities with a population of more than 15,000, heads of administrative districts of Yerevan community, their deputies, secretary of the staff of Yerevan Municipality, members of the Community Council of Yerevan.

Declaration of interest shall be submitted only by the heads of communities, their deputies, secretaries of the staff of the municipality, members of community councils with a population of more than 15,000, heads of administrative districts of Yerevan community, their deputies, secretary of the staff of Yerevan Municipality, members of the Community Council of Yerevan. Thus, the heads of the administrative districts of the enlarged community and their deputies shall not submit a declaration of interests.

In order to enhance transparency and accountability at the local self-governance level, there is also a need to develop a disclosure system at local level. Local community servants do not submit assets and income declarations. Furthermore, the Law on Public Service does not apply to the members of community councils with a population of less than 15,000.

Guidelines

In April 2020, the existing electronic system for filling declarations has been brought in line with the legal changes, and in September 2021 CPC approved the new Guidelines for annual declaration of property, income, expenses and interests for public officials and their interconnected persons.[59] The Guidelines describe in detail the annual declarations of public officials, their family member's property, income, expenses and interests, as well as the principles and methods of completing the declaration of assumption/termination of office by the declaring officials or their family members.

CPC also has adopted the methodology of verification and analysis of declarations. For the verification of data, it is crucial to be connected with other existing state electronic databases through the Government Interoperability Platform (GIP) - the centralised data store enabling data sharing from various state databases. The current system has connections to several state databases (police, real estate, companies, tax, loan history, Central Bank depositary) while the linkage with the electronic systems on public procurement, state pensions and benefits is still pending.

The existing system does not allow yet to analyse declarations based on the red flag risks, which is planned as part of the upgrade.

Good practices

In 2019, the NGO "Investigative Journalists" created a database at data.hetq.am in order to make publicly accessible and user friendly the information published in official and unofficial sources. The application makes possible to get acquainted with the biographies of the MPs of the National Assembly and other officials, their related persons and the diagrams of the declared property in a single domain with a few clicks. Information may also be downloaded in XLS format.It should be noted that the lack of open data as well as open-source data on declarations along with other databases does not allow for more effective engagement of non-governmental actors to assist verification and revealing inconsistences and corruption problems.

Chapter 2

TRANSPARENCY

Introduction

The principle of transparency is applied to ensure that those affected by administrative decisions have comprehensive information about the results and implications of policies and about the process of decision-making. The public availability of information about government policies, programmes and activities enables citizens and local communities to gain a clear understanding of government actions, make informed choices, and participate in local decision-making processes. It also enables elected officials, those in government and those in opposition, to take informed decisions and to exercise effective scrutiny and hold the executive to account for their actions. In addition, access to information is essential for journalists and civil society representatives to effectively perform their watchdog functions and hold the government accountable.

Local government should make data available to the public in an accessible format and do so in a timely manner. This enables citizens and stakeholders to participate in decision-making processes from an informed perspective, and to monitor and evaluate government implementation of policies and decisions in order to hold public officials accountable for their actions. Transparency is achieved through a range of mechanisms, building on the right of citizens to access information. These include the disclosure of the financial assets and interests of senior public officials and elected office-holders, and the publication of information in accessible, intersearchable open-data formats.

According to the definition of the Open Knowledge Foundation, "open data is data that can be freely used, re-used and redistributed by anyone – subject only, at most, to the requirement to attribute and share alike."[60] Therefore, the concept of open data goes beyond the availability of public information and focuses on its use, out of which additional economic, social and political benefits are generated.[61] To make it happen, the data published should be complete, permanent, non-exclusive, non-discriminatory, and non-proprietary, as well as provided by primary sources, in a timely manner and in machine-readable formats.[62]

Limited access to public information negatively affects public trust towards public institutions, increases potential corruption risks, and restricts opportunities for various stakeholders to monitor government performance. It also inhibits citizens and stakeholders' efforts to participate in policymaking and to design evidence-based policy recommendations for positive changes. The practice shows that access to information legislation and proper enforcement measures are an essential part of the enabling environment for citizens' access to information.

Public procurement is considered to be one of the key areas susceptible to corruption. It accounts for around 12 percent of global gross domestic product,[63] and in most high-income economies the purchase of goods and services accounts for one-third of total public spending. In short, public procurement is a significant area for potential corruption, collusion, and other illegal practices. To avoid public procurement-related corruption risks, electronic means and platforms operating through open data solutions are increasingly available and used by government authorities to reform state procurement tendering procedures. Combined with open contracting (where bids and contracts are made public), the increase in fully accessible, well-publicised procurement processes opens tendering to more bidders and reduces the scope for anti-competitive practices and bribery.

Another important component of transparency principles is the openness of the financing of political

parties and election campaigns, as it is important for the electorate to know the sources of financing, and how the money is spent, in order to make informed decisions and to understand which financial, political or other interests are supporting particular candidates or parties. The transparency of political donations is a preventive measure against the use of money emanating from illicit and criminal sources in politics and elections.

Finally, to ensure that state resources are used in an economical, efficient and effective way, the independence and institutional capacity of the body responsible for external audit should be secured. Members of the wider public should have the possibility to familiarise themselves with reports and major recommendations issued by the auditor. External audit is important to identify major challenges in the public sector, improve transparency and performance of public institutions, and design evidence-based policies.

General domestic context

Embarking on a path of revolutionary political change in 2018, the new government announced its commitment to fight corruption and keep citizens at the centre of decision-making. This was a positive sign for the priorities of open government in Armenia, in particular for the fight against corruption and the improvement of transparency and accountability.

While since late 1990s Armenia had a few regulations to ensure transparency in decision-making (such as access to information in environmental and urban planning matters), and the Law on Freedom of Information has been in force since 2003, the country has advanced its legal systems and practices of transparent governance significantly after joining the Open Government Partnership (OGP) initiative on 17 October 2011. The progress of implementation of the OGP commitments under four action plans[64] is remarkable, particularly in sectors such as local self-governance, public procurement, law-making activities, the state funding of non-state actors, beneficial ownership, mining, healthcare, education, etc.

A considerable volume of open data exists in Armenia regarding the draft legal acts, budgets, procurement, elections, companies, asset and income declarations, etc. which are invaluable sources of research and journalistic investigations. Nevertheless, as the need for information grows rapidly, the Government of Armenia often fails in meeting the demands of its citizens, non-governmental actors, journalists, and it was noticeable that the level of government transparency significantly suffered during COVID-19 pandemic.

All state agencies, regional administrations and large communities have their own official websites, where they publish information about their activities and have feedback options. The Law on Local Self-Government establishes a duty for communities to have an official website with publicly available information on documentation, procedures, location and timelines of meetings, public hearings and discussions with community residents. The obligatory documentation also includes the results of public hearings and discussions on decisions of the community council and community head as well as on other documents prescribed by law, procedures on participation of local community residents in the self-government process, procedures of formation and operation of consultative bodies under the mayor, other procedures and relevant information. Yet, municipalities do not always meet this legal obligation due to different reasons, be it related to their financial, human capacities or other reasons.

Generally speaking, observations show that in spite of some democratic developments following the "Velvet revolution" of 2018 and multiple systems put in place, the transparency of governance has not improved.

2.1. ACCESS TO INFORMATION

Access to information is the legal right for citizens to request and receive information from public authorities. It is often enacted by Freedom of Information legislation. As an integral part of the right of freedom of expression, access to information is a human right[332] and everyone should have the right to access information from public bodies and public agencies in accordance with the principle of maximum disclosure subject to only a narrow, clearly defined, set of exceptions proportionate to the interest that justifies them (e.g. grounds of security or data privacy).

International standards

Access to information supports accountability, oversight of government, and monitoring of corruption. It is also critical to informed citizen participation in decision-making, and is therefore fundamental for the effective functioning of democracies. Free access to information empowers civil society to monitor and scrutinise the actions of local authorities, it serves to prevent abuse of power by public officials and provides data for informed public debate.

The proactive publication of the maximum amount of information in the most accessible formats serves to reduce the need for citizens and stakeholders to file individual requests for the release of information. As well as providing the maximum amount of information electronically, local authorities should prioritise the designation of Freedom of Information officers in their municipalities. Such officers should prepare and publish detailed recommendations for both citizens and local authorities, and provide clear guidance on the appeals process in the event that a request for information is not granted. It is also important to analyse information requests from citizens and stakeholder groups, in particular trends and duplication, so that the authorities can subsequently release such information on a proactive basis.

Access to information is a fundamental component of a number of the conventions and standards against corruption listed elsewhere in this handbook. It also underpins a number of key UN human rights documents. The following specifically relate to Access to Information:

- The **Council of Europe's Convention on Access to Official Documents (CETS No. 205)**[65] affirms an enforceable right to information.
- The **Congress of the Council of Europe's Resolution and Recommendation on Transparency and open government**[66] call upon local and regional authorities to increase the use of open data and records management by their administrations, and to publish these in comprehensive, accessible and reusable ways.
- The **Aarhus Convention**[67] grants rights, including access to information, in decisions concerning the environment.
- The **OECD Recommendation of the Council on Open Government**[68] identifies on-demand provision of information and proactive measures by the government to disseminate information as an initial level of citizen participation.
- **Resolution 59 of the UN General Assembly** adopted in 1946, states that "freedom of information is a fundamental human right", and Article 19 of the Universal Declaration of Human Rights (1948) states that the fundamental right of freedom of expression encompasses the freedom to "to seek, receive and impart information and ideas through any media and regardless of frontiers".[69]
- **Directive 2003/98/EC on the re-use of public sector information, nowadays called the Open Data Directive**,[70] previously known as the PSI Directive, encourages EU member states to make as much public sector information available for re-use as possible.

Domestic context

The Constitution and legislation of Armenia provide a wide range of mechanisms for access to information. These mechanisms are widely used by media and civil society organisations as well as active citizens. Though the legislation sets forth the possibility for proactive access to information as well as reactive – based on inquiries, the former format does not get implemented properly.

The report of the Committee to Protect Freedom of Expression shows that in 2018 there have been 98 cases of violations of the right to receive and disseminate information in Armenia, and in 2019 the number of cases grew to 108.[71]

According to research conducted as of July 2019 by Transparency International Slovakia with engagement of TIAC on access to Information in European capital cities, Yerevan holds the last place among 26 European capitals. The study was based on 14 indicators, including access to information, decision-making process of municipalities, management of financial resources, transparency of procurement, availability of information on the content and process of Community Council meetings and format, as well as rules of ethics for elected representatives. The survey was conducted based on a study of the data of the official websites of the municipalities, as well as inquiries sent to the municipalities.[72]

Legislation

The Constitution of Armenia gives citizens the right to freedom of information. Article 42 of the Constitution states: "Everyone shall have the right to freely express his or her opinion. This right shall include freedom to hold one's own opinion, as well as to seek, receive and disseminate information and ideas through any media, without the interference of state or local self-government bodies and regardless of state frontiers".[73]

The Law on Freedom of Information defines the duties of the information holder as well as the procedure, form and conditions for obtaining information.[74] The procedure for registration, classification and maintenance of information developed by or delivered to the state and local self-governing bodies, state institutions, and state-funded organisations, including information requests sent to state bodies in electronic form has been adopted by the Government in 2015.[75]The information must be provided to the applicant within a 5-day period. If additional work is required to provide the information mentioned in the written request, it shall be provided to the applicant within 30 days after receiving the application. In this case the applicant shall be notified in writing form within 5 days after receiving the request from the applicant.[76]

The Law on Mass Media gives basic rights to journalists who work for mass media organisations to operate without unwarranted restrictions. It reaffirms the constitutional right to seek, receive and disseminate information. The law prohibits censorship, the interference in "the legitimate professional activities of a journalist ", and the disclosure of sources without a court order for the purpose of disclosing information pertaining to serious crimes.[77] Amendments to the Law On State Registration of Legal Entities, Separate Subdivisions of Legal Entities, Institutions and Private Entrepreneurs from 06 March 2020, provided the possibility for Mass Media to receive the information from the unified state register of companies without paying state fee.[78]

Legislation also states some limitations to freedom of information. Thus, the information may not be provided, if it:

- contains state, official, banking, trade secret;
- violates the privacy of a person's personal and family life, including the confidentiality of correspondence, telephone conversations, postal, telegraphic and other messages;

- contains the data of the preliminary examination not subject to publication;
- discloses data requiring restriction of access due to professional activity (medical, notarial, lawyer secret);
- infringes copyright or related rights.

At the same time, the provision of information may not be denied if it refers to emergencies threatening the safety and health of citizens, natural disasters and their consequences, presents the general state of the economy of the Republic of Armenia, the real situation in the field of nature protection, environment, healthcare, education, agriculture, trade, culture, and if the denial of provision of information will have a negative impact on the implementation of state programs of socio-economic, scientific-technical, psychological-cultural development of the Republic of Armenia.[79] According to the report of the Committee to Protect Freedom of Expression, there were 98 cases of violations of the right to receive and disseminate information in 2018, and 108 cases in 2019.

The law also envisages the disclosure of information by the government: all state agencies, regional administrations and large communities have their own official websites, where they publish information about their activities and have feedback options. At the same time, state agencies and particularly municipalities do not publish sufficient information as defined by the law, which was especially visible in the situation of emergency in 2020.[80] According to the research of the Freedom of Information Center of Armenia (FOICA), proactive disclosure rules were not properly followed by the government, specifically in the initial period of state of emergency. Further, the government launched a Facebook page and a web site to update the public on pandemic issues, but in some cases these resources were not synchronised.[81]

Guidelines

FOICA published guidelines for civil servants entitled How to Use the Law on Freedom of Information.[82] According to the guidelines, everyone, regardless of their citizenship, has the right to receive and impart information. The institutions responsible for providing information are any state institution, local self-government body, state organisation, state-funded organisations and the official representatives of all the above-mentioned institutions.

The guidelines also explain the availability of information and the responsibility of state institutions to provide information as well as cases when requests for information can be refused. Those cases can be related with requesting information about state or bank secrets or violating the principle of personal data. In addition, the guidelines provide toolkits on how and where to apply in case the information is not provided.

In 2019, FOICA published a handbook for journalists entitled Fact-checking and the right of journalists to receive information. The Handbook presents all the effective online fact-checking tools that are up-to-date and easy to use today, as well as useful and applicable material related to freedom of information. It can help journalists, editors, students, lecturers, and Internet consumers to search extensively, verify the authenticity of information, images, and videos, use satellite data, and become more knowledgeable and media literate.[83]

During 2019-2020, a number of legal reforms were implemented to ensure the transparency of the beneficial ownership legislation, as a result of which the companies with permits for geological exploration of the subsoil for the purpose of mineral extraction in Armenia are obliged to submit declarations about their beneficial owners since February 20, 2020. The end of the company's anonymity is the key to providing transparency and fight against corruption. Starting from the second half of 2020, the creation of an electronic register of beneficial owners was carried out with the support of the World Bank. The platform was integrated into the state register of legal entities. The RA laws defining the

regulations for revealing real beneficiaries were adopted on 3 June 2021, and came into force from 1 September 2021. According to the EITI standard, the information published to prove the identity of the owners, in addition to the names, citizenship and country of residence of the mentioned persons, must also include the date of birth, national identification number, residence address, political influence, etc. The declarations of the beneficial owners are submitted electronically and published on the website of the State Register of Legal Entities Agency of the RA Ministry of Justice (www.e-register.am).

Good practices

With the development of e-government platforms in recent years, the government has increased the opportunities to view and receive information online (www.arlis.am, www.datalex.am, www.e-gov.am, www.e-request.am, www.armeps.am, etc.). Websites provide information on procurements, judicial acts, licenses, or other specific information.[84] In 2018, a unified platform for electronic inquiries – e-request.am – was launched, allowing to send an electronic request to state bodies in one window format, after which inquiries are sorted and sent to the responsible official.[85] The Law on Local Self-Government establishes a duty for communities with more than 3,000 residents to have an official website where, in particular, the following information should be made publicly available: documentation, procedures, location and timelines of meetings; public hearings and discussions with community residents; the results of public hearings and discussions on decisions of the community council and community head as well as on other documents prescribed by law; procedures on participation of local community residents in the self-government process, procedures of formation and operation of consultative bodies under the mayor; conducting open public hearings and discussions, other procedures and relevant information. Starting from 2022, this duty will be applied to all communities, in accordance with the amendments to the Law on Local Self-Government.[86] Another good practice is the "Citizen's Budget", published annually by the Ministry of Finance. The Citizen's Budget is, in fact, the main official budget document, which is developed and addressed to the ordinary citizen, therefore, it should not contain a professional burden, but should be easily understood and accessible to the public. The document aims to answer the following key questions in a simplified way: what policies, programs the government plans to implement in the upcoming budget year, with how much resources, and what results it expects to get. It is a measure to make budget information more accessible to the public.[87]

2.2. OPEN DATA

Open data is the publication of data and information in a format that may be freely used, modified and shared. The OECD states that open data is "a set of policies that promote transparency, accountability and value creation by making government data available to all". By making data generated through the activities of public bodies available, government becomes more transparent and accountable to citizens. It also supports business growth and the development of services centred on citizens, and provides important data for research and innovation by public bodies, the private sector, and civic stakeholders.

International standards

The prepetition of open data through one-stop portals can further increase the scope for interoperability of datasets in terms of search and analysis. The results can improve the efficiency and reach of service delivery and reduce corruption. Awareness-raising among stakeholder groups, the media, businesses, and the wider public can result in effective co-operation among different stakeholders and improvements in solutions on transportation, recreation facilities, parking zones, health services, and much more.

It is important to adopt consistent open data standards for all open data to ensure maximum interoperability and searchability of data. Local authorities should also ensure that qualified staff manage the municipality's open data publication, and train relevant employees in open data standards.

Open data is a relatively new phenomenon without officially endorsed standards. However, a number of useful guidelines exist:

- The **Congress of the Council of Europe's Resolution and Recommendation on Open data for better public services**[88] explain its importance for improving local democracy.
- The **Congress of the Council of Europe's Resolution and Recommendation on Transparency and open government**[89] call upon local and regional authorities to increase the use of open data and records management by their administrations.
- The **United Nations Guidelines on Open Government Data for Citizen Engagement**[90] introduce policy guidelines and good practice recommendations.
- This **World Bank Toolkit**[91] starts from the basics, through to planning and implement, as well as avoiding common pitfalls.
- The **Five Star Open Data Deployment Scheme**[92] provides five steps to fully opening data, explaining the costs and benefits of each.
- The **International Open Data Charter**[93] sets out six principles for open, timely and interoperable government data.
- The **OECD Recommendation of the Council on Open Government**[94] identifies on-demand provision of information and proactive measures by the government to disseminate information as an initial level of citizen participation.

Domestic context

Currently in Armenia, the accumulated and released open data of many state institutions makes up quite a large volume. There are a number of databases which have considerable potential to help anti-corruption and civic journalistic investigations such as single-source procurement[95] and asset and income declarations.[96] Journalists and researchers can use open data to carry out independent investigations and research.[97]

Legislation

There is no legislation that sets forth a requirement for posting open data, though the requirements in different sectors to publish specific data might imply open format publishing. This may refer to budgets, elections results, etc., naturally posted in excel based formats, but also to criminal case statistics, asset and income declarations, etc. that might be accessible in pdf or similar formats.

According to the Law on the Budgetary System, the budget formulation and approval process must be open. The Law states that after presenting the draft law on the state budget to the National Assembly,

the Government must publish the budget within three days, with the exception of issues containing state secrets.

The Law requires local self-government bodies to publish draft community budgets in the local press within three days of submitting the draft to the community council.[98] The Law on Local Self-Government requires all communities to have a website and to publish the budget and its reports on the website.[99]

According to the Law on Prosecution Service the Prosecutor General's Office of the Republic of Armenia shall annually publish a report on the investigation of crimes on the website of the Prosecutor General's Office of the Republic of Armenia. The report shall contain information on the results of the investigation of crimes committed during the previous year, its statistics, comparative analysis and conclusions. As for the information on the results of the investigation of corruption crimes, its statistical data, comparative analysis and conclusions are presented separately.[100]

Guidelines

In October 2014, the Digital Rights non-governmental organisation published policy guidelines on personal data protection.[101] The guidelines provide practical information on national and international practices and policies in the protection of personal data, making references to national and international instruments. In addition, the publication includes a set of European models and practical recommendations for the Armenian context.

In 2017, Personal Data Protection Agency of the Ministry of Justice of the Republic of Armenia has developed a guideline on the protection of children's personal data. The purpose of the guideline is to provide a unified interpretation of personal data protection legislation, raise awareness of the rights and responsibilities of children, parents and data developers, and raise the level of protection of children's personal data. The guideline outlines the principles of personal data protection for children, the rights of children in the field of personal data protection, the responsibilities of data developers, educational institutions, the Internet, the specifics of personal data processing, and the responsibility for violating children's right to personal data protection.[102]

Good practices

A good example of publicly known open data is the state interactive budget,[103] which visually presents budget categories. Local self-government institutions have also adopted this tool for presenting budgets. Thus, Yerevan municipality[104] and Compass NGO in Gyumri[105] already publishes interactive budgets, and state institutions (for example the President's office[106]) have adopted that model. Another example is the website of the Central Electoral Commission (elections.am), an open data electronic system to search information on voters and their register.[107] A similar example is the website of the State Committee of the Real Property Cadastre (www.e-cadastre.am), an open data electronic system to search information on real state and land registries since January 1, 2012. The site is designed to provide e-services by the Committee, including online submission of applications and related documents for state registration of real property rights and restrictions. Thus, it is an example of increasing transparency through open data, electronic tools, and enhancing citizens' access to public services.

2.3 PUBLIC PROCUREMENT

Public procurement refers to the process by which public authorities, including local authorities, purchase work, goods or services. As public procurement is an essential part of public service provision for local and regional authorities, efficient, cost-effective procurement is key to good governance.

International standards

As procurement involves a large proportion of public expenditure and the transfer of public resources to the private sector or non-profit organisations, it is particularly vulnerable to corruption. Public authorities should deploy new technologies to increase transparency over public procurement and encourage new economic actors to enter bidding processes in the confidence that free and fair competition is applied. By posting all tenders on a unified online platform, the occurrence of unpublished tenders and direct awards will be minimised. Use of open contracting and open bidding solutions also allows greater scrutiny of the process, further reducing the scope for corrupt practices. Open contracting systems include a preventive effect because officials will refrain from manipulating the contracting process if they know that comprehensive disclosure of the bidding and contracting processes will be revealed.

Local authorities should ensure that there is a comprehensive system in place to monitor compliance with public procurement legislation, and that there is a responsive mechanism for reviewing appeals and complaints, including prompt and comprehensive replies. Authorities should also monitor contract implementation, in particular time extensions and cost increases, to ensure that the benefits in terms of value for money and quality of delivery are not compromised during contract implementation.

The following international conventions and standards relate to public procurement:

- The **Congress of the Council of Europe's Resolution and Recommendation on Making public procurement transparent at local and regional levels**[108] and the **OECD Checklist for Enhancing Integrity in Public Procurement**[109] provide guidance for enhancing transparency and promoting integrity in procurement.
- The **OECD Recommendation of the Council on Public Procurement**[110] promotes a strategic and holistic use of public procurement systems across all levels of government and state-owned enterprises. The online **Public Procurement Toolbox**[111] provides policy tools, specific country examples as well as indicators to measure any public procurement system.
- The **WTO Agreement on Government Procurement**[112] establishes rules requiring that open, fair, and transparent conditions of competition be ensured in government procurement.
- The **EU Directive on Public Procurement**[113] ensures the best value for money for public purchases and guarantees the respect of the EU's principles of transparency and competition.
- The **UNCITRAL Model Law on Public Procurement**[114] is a legal template available to governments seeking to introduce or reform public procurement legislation for their internal market.
- The **European Bank for Reconstruction and Development (ERBD) Guide to Electronic Procurement Reform**[115] provides information on and assistance with designing and implementing domestic eProcurement reforms.
- **Open Contracting Data Standard (OCDS)**,[116] providing open data standard for publication of structured information on all stages of a contracting process: from planning to implementation.
- **UNODC's (United Nations Office on Drugs and Crime) Guidebook on anti-corruption in public procurement and the management of public finances**,[117] which provides good practices in ensuring compliance with article 9 of the United Nations Convention against Corruption.

- **World Bank's Annual Reports**[118] – Benchmarking Public Procurement, which have been assessing public procurement regulatory systems in different countries.

Domestic context

Public procurement may be conducted both electronically and paper based. The procurement system is mainly regulated by the RA Law on Procurement adopted on December 16, 2016 (entered into effect on April 25, 2017), which also has a separate article defining the documents that are required to ensure the record and storage of information on the procurement procedure, validity of data required from bidders and rules of e-procurement. Armenian legislation provides four methods of procurements: (i) E-procurement; (ii) Tender; (iii) Price Quotation; (iv) Single-Source Procurement. Tender is the preferable procurement method, while other methods of procurement can be used only in cases stipulated by the Law.

Armenian electronic public procurement system ARMEPS (Armenian Electronic Procurement System) was established in 2012. It is aimed at minimizing the risks of conflicts of interests exercising better control over compliance with public procurement procedures, increasing effectiveness and efficiency of usage of E-procurement system, enhancing its transparency and strengthening competition in public procurement.

Legislation

Together with the Constitution of Armenia, the main legislative acts in the area of legislation on public procurement in Armenia consists of the Law on Procurement (adopted on December 16, 2016), Civil Code of the Republic of Armenia and other legal acts.[119] The Law on Procurement determines general legal, organisational and economic principles for conducting public procurement. [120]

Armenian public procurement legislation also includes sub-legal acts, such as Republic of Armenia Government Decree of May 4, 2017 "On Approval of the Procurement Organisation Procedure and on Repealing Republic of Armenia Government Decree of February 10, 2011" (major sub-legislative act on public procurement), Republic of Armenia Government Decree of April 6, 2017 N 386-N "On Approval of the Procedure for E-procurement and on Repealing Republic of Armenia Government Decree N 1370-N of December 5, 2013", the Order of the Minister of Finance No. 219-A "On Approval of the Guideline for E-procurement and on Repealing Order No. 7-A of the Republic of Armenia Minister of Finance of January 10, 2014", and other legal acts.[121]

Guidelines

In order to facilitate the process of online procurement in Armenia, Ministry of Finance developed several guides and manuals for E-procurement, available at the Procurement Official Electronic Bulletin of the Ministry of Finance – https://gnumner.am/hy/[122]. The developed guide on E-auction for "Economic Operator", the guide on E-auction, Guidelines for e-Procurement of PIUs, Foundations and CJSCs Implementing World Bank-Funded Projects, and Manual for E-procurement Planning, Contract Management, Procurement Reporting Modules include step-by-step approach of the Unified Electronic System of State Procurement (armeps.am) directed at suppliers, procuring entities, and any other stakeholders at the central and local levels.

In 2020 the Open Government Partnership (OGP) acknowledged Transparent Public Procurement Rating (TPPR) as one of the main sources for monitoring good governance in public procurement.[123] TPPR methodology of evaluating the level of public procurement transparency includes indicators for evaluating the level of procurement transparency. TPPR's score of public procurement system in Armenia is 66.26%.[124] Accordingly, the central and local authorities can identify existing gaps and take relevant steps to address them.

Good practices

The E-procurement system in Armenia was launched on January 1, 2012. Subsequently, open procurement processes in most of public administration bodies of Armenia are organized electronically through www.armeps.am website. E-procurement system ARMEPS has significantly enhanced transparency in public procurement promoting the fight against corruption at all levels of government.. Due to high level of transparency of the ARMEPS platform, all users are able to identify procurement procedures that may entail a violation of law. However, improvements to the public procurement system are still needed in order to further increase transparency in decision-making.

2.4. EXTERNAL AUDIT

External audit is the regular, independent scrutiny of accounts and financial information to ensure that public money is used appropriately and effectively. External audits are undertaken in accordance with relevant laws and rules to support those external to government to hold it to account. As well as audit of the financial statements of local budget institutions, external audit can look beyond finances to assessing the performance of government against its own objectives, or in providing programmes and services.

International standards

- The **International Public Sector Accounting Standards**[125] focus on the accounting, auditing, and financial reporting needs of national, regional, and local governments, related governmental agencies, and the constituencies they serve.
- The **International Standards of Supreme Audit Institutions**[126] website contains a complete collection of professional standards and best practice guidelines for public sector auditors.
- A number of the conventions and standards for combatting corruption include provisions and clauses relating to external audit.

Domestic context

In Armenia, the audit of state institutions is conducted by the Audit Chamber. The mission of the Audit Chamber is to perform high-quality external state audit, which aims to prevent violations in the areas of public funds and property management, thus improving efficiency.[127]

Legislation

According to the Armenian Constitution, the Audit Chamber is "an independent state body, which conducts audit, in the field of public finance and ownership, over the lawfulness and effectiveness of the use of the State Budget and community budget funds, loans and credits received, as well as state- and community-owned property. The Audit Chamber is entitled to conduct inspections of legal persons only in the cases prescribed by law".[128]

The Law on Audit Chamber[129] states that the Audit Chamber is an independent state body conducting external state audit. The Audit Chamber aims to provide the public and the National Assembly with timely, professional and impartial information on public finances, public funds, state budgets, credits, loans, and the legality and efficiency of the use of state property.

Guidelines

Armenia is a member of International Organization of Supreme Audit Institutions (INTOSAI) since 1998. Armenian Audit Chamber is guided by INTOSAI's International Standards of Supreme Audit Institutions (ISSAI), such as the International standards of higher accounting authorities, including Rules of ethics (ISSAI 130), Quality control for higher audit institutions (ISSAI 140), Basic principles of public sector audit (ISSAI 100), Basic principles of financial audit (ISSAI 200), Principles of performance audit (ISSAI 300), Basic principles of compliance audit (ISSAI 400), etc. These standards are also available at the official website of the Audit Chamber of the Republic of Armenia.[130]

Good practices

The Law on Audit Chamber, states that the Chamber shall, inter alia, conduct audit of the community budgets, use of loans and credits they receive, as well as legality and efficiency of the use of community property. The last such report was on the use of budget funds, the use of community property, as well as the collection of budget revenues by Gyumri Municipality[131]. According to the amendments to the Law on Self-Government of Armenia from January 24, 2020, starting from January 1, 2022 all communities must have a website where they must publish the budget and budget implementation reports. The acting Law establishes a duty to have a website only for communities which have more than 3 000 residents. These mechanisms create opportunities for civil society and citizens to audit budget.

2.5. FINANCING OF POLITICAL PARTIES

Financing of political parties and election campaigns is a necessary component of the democratic process. It enables the expression of political support and competition in elections.

Principles governing the financing of political parties should include fairness in the distribution of state funding, strict rules concerning the transparency and limits on the size of private donations, ceilings on campaign expenditure, full transparency of funding and expenditure, independent election commissions, independent audit of campaign finance, and the consistent imposition of proportionate sanctions on candidates and political parties that violate the rules (such as fines or a reduction in state contributions to future election campaigns).

International standards

Clear rules and transparent reporting of political campaign financing and expenditures are essential to sustain trust in political candidates, political parties, and government institutions. An imbalance in funding of political parties may result in an unfair advantage, handing undue influence to powerful narrow interests, running the risk that policies will be "captured" by narrow private interests, serving their goals over the public interest.[132]

Mechanisms and rules on limits on party political financing, and on state financing of political campaigns, should be designed in a way that provides a level playing field for the different political candidates and parties competing in elections and serves to preserve the political forces' independence from financial supporters.

The following international conventions and standards relate to the financing of political parties:

- The **Congress Resolution 402 (2016) on "The misuse of administrative resources during electoral processes"**;[133]

- The **Guidelines and report on the financing of political parties** (Council of Europe, Venice Commission, 2001);[134]
- The **Compilation of Venice Commission Opinions and Reports concerning Political Parties** (Council of Europe, Venice Commission, 2013);[135]
- The **Recommendation Rec(2003)4 of the Committee of Ministers to member states on common rules against corruption in the funding of political parties and electoral campaigns.**[136]

Domestic context

Political parties are vital to the establishment of a democratic society. Availability of funding is crucial for political parties, without which they cannot develop and gather enough voters to win the election. In a democratic society, the transparency of funding, and the accountability of the parties to the public is crucial to gaining public trust. Therefore, democratic states must not only create favourable conditions for the establishment and development of new political parties, but also provide conditions for their lawful, responsible activity. Illegal access to funding for parties should be prevented as a result of proper state and public control.

Political parties have traditionally been considered one of the least trusted institutions in Armenia. According to the Caucasus Barometer 2015 survey conducted by the Caucasus Research Resource Center (CRRC), among 17 Armenian institutions political parties enjoyed the lowest public trust - only 8%.[137] A public opinion survey conducted by the International Republican Institute in 2018 showed that only 5% of respondents considered the activities of the political parties to be completely transparent and open.[138] Increasing the role and significance of the political parties in the Republic of Armenia is imperative today, taking into account that after the constitutional amendments of 2015, the state has passed to the parliamentary form of government.

Legislation

The Constitution of Armenia stipulates that political parties shall publish annual reports on their sources of funding, expenditures, and assets. This provision is further detailed in article 27, stipulating that political party is obliged to publish in the mass media the report on their sources of funding, expenditures, and assets, as well as the auditor's conclusion on the report in the cases provided by the law, and post it on www.azdarar.am. Political party is then obliged to submit the evidence of its publication to the Corruption Prevention Commission.[139] At the request of the Corruption Prevention Commission, political party is obliged to submit the information necessary for the verification of the report, documents, including information constituting banking secrecy, information on securities transactions, information constituting insurance secrecy, as well as credit information. Before making amendments to the Constitutional Law on Parties in December 2020, political parties were obliged to report to the Supervisory Service of the Central Electoral Commission.[140]

General and current financing of political parties is also regulated by the Constitutional Law on Parties. According to Article 23 the property of a political party shall be formed from the following sources:

- subscription fees when joining a party;
- membership fees,
- donations,
- budget financing,
- income from activities defined by the Law.[141]

The Law stipulates the limits of donations, acceptable sources, prohibited donations for parties. According to Article 24 of the Law, parties have the right to receive property, including cash, including loans, borrowings, donations in the form of repayment of party debt from individuals in the form of other activities in favour of the party. Special regulations and limits are envisaged in terms of real estate. In particular, donation of real estate by one person may not exceed 200,000 times the minimum wage (AMD 200,000,000)[142].

The financing of political parties in the pre-election period is regulated by the RA Constitutional Law on the Electoral Code. According to Article 8 of the Constitutional Law on the Electoral Code, within five days of the deadline to become registered for participation in elections, parties (party alliances) shall present to the Centeral Electoral Commission a declaration on the property and income of a political party (political parties included in the alliance). The declaration shall contain the composition of the property as of the first day of the month in which the documents are presented to the Central Electoral Commission for registration, as well as income received during 12 calendar months preceding the month of the deadline for presenting the registration documents.[143]

Guidelines

Government Decree № 403-N of April 20, 2017 defines the procedure for publishing the sources of funding and expenditures of a political party, procedure on disclosure, filing the return on assets, and the reporting form. It should be noted that on December 29, 2020, amendments were introduced to the Constitutional Law on Political Parties. The amended Article 27 of the Constitutional Law on Political Parties states that the reports should be submitted by the parties to CPC. Accordingly, the Law stipulates that the form of the report and the procedure for its completion shall be established by the Commission. The transitional provisions of the law stipulate that political parties shall submit their annual reports for 2021 in 2022 in an already changed order. To that end, it became necessary to invalidate Government Decree N 403-N of April 20, 2017 on publication of the report approved by the Government, due to the fact that legal provisions regulated by the decree are beyond the competence of the Government.

Good practices

In 2020, the draft law on making amendments and additions to the Constitutional Law on the Electoral Code of the Republic of Armenia was circulated. The draft law authored by the then ruling "My Step" faction of the National Assembly was put up for public discussion in March 2020.

The draft law provided for ensuring financial transparency of the pre-election campaign. To this end, the chapter of the pre-election campaign has been completely changed in the draft law. In particular, the draft tightens the process of giving free gifts or services to voters by candidates during the election campaign[144]. While this draft law is a step forward to enhancing transparency of the pre-election campaign, including transparency of financing the candidates in pre-election campaign, there are many important provisions regarding campaign financing and campaign regulations that have been removed from the draft at the last moment without any discussion with political forces or representatives of civil society.

Chapter 3

CITIZEN PARTICIPATION

Introduction

"The right of citizens to participate in the conduct of public affairs", including at the local level, is explicit in the European Charter of Local Self-Government,[145] the Additional Protocol to which states that "the right to participate in the affairs of a local authority denotes the right to seek to determine or to influence the exercise of a local authority's powers and responsibilities".[146] When local authorities consult with, and engage, citizens on the design of, and evaluation of, public services, they pave the way for better policy outcomes and also for greater mutual trust between citizens and government.

Citizen participation involves outreach to a range of local stakeholders, such as civil society activists, journalists, members of academia, business representatives, local communities, and active citizens. It is important that it is inclusive, taking into consideration the views of the wider public, expert stakeholders, and representative groups, including the vulnerable and marginalised. Moreover, stakeholder engagement must include outreach to those whose lives and interests will be affected by the implementation of the decisions under consideration. To ensure that such stakeholders are identified, public consultations should be launched before a commitment to action has been made or before a draft decision has been tabled. A more open consultative process first invites stakeholders to discuss and identify the problems, challenges and opportunities, then examines the different policy scenarios, before any decisions are drafted.

Participatory mechanisms can be grouped in the following categories that reflect different levels of engagement:

- informing the public about local priorities, government programmes and plans;
- holding consultations with the public and/or particular groups of people regarding public policies and collecting their experience or expertise;
- collaborating with the public and/or particular groups of people to develop solutions to local problems (including co-creation processes such as in the formulation of Open Government Partnership (OGP) Action Plan commitments);
- engaging local communities in decision-making processes through deliberative processes, voting (such as participatory budgeting and referenda), and other decision-making tools.

According to the Additional Protocol, "the law shall provide means of facilitating the exercise" of the right of citizens to participate. In order to ensure that the above-mentioned forms of participation are genuine engagement rather than token exercises, the consultation process around the formation of new policies and legislation needs to be backed up by laws, regulations and guidelines, and also by strong political will.

Inclusive policymaking must at the same time be effective, and the public should be well informed about their rights, opportunities, and ways they can participate in local decision-making. The policymaking processes need to be clearly stated well in advance to enable citizens and stakeholder groups to prepare their submissions and interventions. Timeframes with clear entry-points for citizen engagement need to be published to ensure that citizen participation is a meaningful exercise, and the local authorities should provide feedback to those who make policy proposals or recommendations. The local authority should ensure that the viewpoints and positions of stakeholders are properly reflected and considered

when adopting policies, and feedback should provide clearly stated reasons for the decisions to adopt proposals, or not to adopt them. This inclusive approach ensures that policies are relevant, evidence-based, cater to intersectional needs, and are responsive to public demands.

Local authorities also need to employ officials trained in managing public consultations and ensuring that the feedback to citizens is prompt and comprehensive.

Such inclusive approaches ensure that local authorities make better and more relevant decisions that reflect public interests and are well understood by all citizens. In tandem, local communities can develop a sustained capacity to voice their concerns, design solutions and monitor their proper implementation, resulting in improved public trust towards local service delivery.

General domestic context

Armenian legislation sets forth a number of citizen participation mechanisms, particularly to take part in decision-making related to the environmental matters and urban planning, discussion of draft legal acts, participation in the public councils of sectoral ministries, etc.

Although somehow sufficient citizen participation mechanisms exist in the country, they are not effective, mainly due to the lack of political will of respective institutions or their incapacity to organise due engagement. This problem significantly harms citizens' trust towards different government institutions and questions the genuine nature of the government's will and commitment to democratic processes.

The Law on Local Self-Government provides mechanisms for public participation for any citizen above the age of 16. Local residents shall be duly informed of planned community council sessions, including the agenda, venue, timing, and to facilitate their attendance. The mayor shall ensure the participation of community members in the discussion over the annual budget, as well as on the establishment of a consultative bodies consisting of residents, experts and other stakeholders.

Local self-government bodies take some additional steps in order to ensure more advance citizen engagement. Starting from 2019, different online platforms are being created by municipalities aiming for more effective communication of new projects and ideas, presentation of proposals and discussions. Nevertheless, citizen participation in the affairs of local authority is not much active and effective, conditioned by the passive stance of citizens as well as lack of relevant capacities of authorities.

3.1. OPEN POLICY MAKING

Open policy making is a broad term describing policy development that is transparent and participatory. It describes a way of making policy and decisions that draw on the latest interactive tools that open up policymaking to different stakeholders in an increasingly digital world. There is no one-way to do open policy making: different policy decisions will need different approaches.

International standards

Open policy making approaches enable governments to reach more informed and better designed policy outcomes through collaborative approaches that draw on a variety of perspectives and expertise. Different digital tools and analytical techniques are deployed so that policy is more evidence-based and data-driven. Models of engagement can include a representative citizens panel, crowdsourcing of policy ideas, or the use of collective intelligence to draw on the knowledge and expertise of a diverse public.

By the use of open data and citizen engagement, more informed, inclusive decisions can be reached, and more innovation applied in both the policymaking process and the resulting policy decisions. To maximise the possible gains of open policy making, local authorities could set up an open policy making team that publishes the data used to inform and shape policy decisions. and trains public officials in working with data to inform policymaking.

Although there are no specific open policy making standards, the following are useful points of reference:

- The **Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207)**[147] provides an international legal guarantee to this right, including the establishment of measures to ensure citizen participation.
- The **Council of Europe's Guidelines for civil participation in political decision making**[148] sets out standards for engaging with citizens and civil society.
- The **Committee of Ministers of the Council of Europe's Recommendation on the participation of citizens in local public life.**[149]
- The **Congress of the Council of Europe's Resolution and Recommendation on Transparency and open government**[150] provide standards and mechanisms to enhance transparency and promote the involvement and participation of citizens in the local public life.
- The **Code of Good Practice for Civil Participation in the Decision-Making Process**, adopted by the Conference of International NGOs of the Council of Europe.[151]
- **Civil Participation in Decision-Making Processes. An Overview of Standards and Practices in Council of Europe Member States**, European Center for Not-for-profit Law (ECNL) for the European Committee on Democracy and Governance.[152]
- The **OECD Recommendation on Open Government**[153] helps to design and implement successful open government strategies and initiatives.
- The **OECD's Guiding Principles**[154] support the development of a culture of openness.
- The **OECD's Focus on Citizens: Public Engagement for Better Policy and Services**[155] explores how to put open policy making into practice.
- The **OECD's Observatory of Public Sector Innovation**[156] lists useful toolkits and resources.
- The **Open Government Partnerships Guide**[157] and **Toolbox**[158] provide an extensive range of support.
- The **OECD Background Document on Public Consultation**[159] defines consultation and provides a summary of consultation tools.
- Both **Australia**[160] and **the UK**[161] have both produced useful toolkits.
- The Royal Society of the Arts, UK, and the Forum for Ethical AI addressed some of the AI challenges posed by new technology in **Democratising decisions about technology. A toolkit.**[162]

Domestic context

In Armenia, open policy and public engagement institutions are in the congenital stage. The government has taken steps to reform the policy-making process to make it more transparent.

All policy documents in Armenia are adopted in a form of legal acts, mostly government decrees. In this respect, participatory procedures do not differ from legal acts. In 2016, the Government launched a website (www.e-draft.am) where drafts of legal acts written by governmental bodies are made available on an online platform specially designed for their publication. The website allows for the publication of draft legal acts to the public, receive online comments from the interested parties, submit summary responses, substantiations of the proposal rejections.

Legislation

The Law on Local Self-Government requires that the public must be informed about the sessions of the Community Council. The Law states that the mayor must publish draft agenda of the council meeting at least seven days before the regular session of the community council, indicating the venue, the scheduled date and the time of the session.

The law defines participation of citizens in local government as a basic principle. According to the Law, any citizen who is above 16 years old has a right to participate in local governance. In order to ensure participation of citizens in the five-year community development program, the mayor must form a community advisory body.[163]

The Law on Normative Legal Acts states that draft laws are subject to public consultation, except for the draft law on ratification (joining) an international treaty. Drafts of other normative legal acts may be submitted for public discussion on the initiative of the body developing the draft or the body adopting the draft. The duration of public discussions is at least 15 days.[164] Public hearings may be convened in the National Assembly by the decision of the Chairman of the National Assembly, permanent or ad-hoc commission, or a fraction. In this case, the organisation of hearings is not compulsory[165].

Guidelines

In October 2019, the European Center for Not-for-Profit Law (ECNL) in cooperation with Transparency International Armenia published the Assessment of the civil society environment in the Eastern Partnership countries, developed on the basis of set of standards and indicators in 10 different areas that measure both law and practice.[166]

The report recommends the Government to introduce institutional mechanisms for engaging CSOs in the policy implementation and monitoring, including through state contracting; mandatory consultation in the early stages of decision-making to allow meaningful participation of professional CSOs experienced in relevant public policy areas and increase usage of offline participation tools such as public hearings, expert discussions, and surveys.[167]

Good practices

2019 was marked by the adoption of the new strategies of the state policy in the field of anti-corruption, the protection of human rights, judicial and legal reforms. Civil society organisations were actively engaged in the discussion and adoption of the new 2019-2022 Anticorruption Strategy of the Republic of Armenia and its Action Plan, the 2019-2023 Strategy for Judicial and Legal Reforms of the Republic of Armenia and the Action Plans Deriving the Reform, 2020-2022 National Strategy of Protection of Human Rights and its Action Plan.[168] In contrast to this, the state of emergency introduced in March 2020 significantly reduced the opportunities for CSO consultations, and a number of decisions and legal acts adopted in non-transparent manner.

3.2. PARTICIPATORY BUDGETING

One of the crowdsourcing forms of citizen participation, participatory budgeting invites citizens and community groups to propose new initiatives or improvements to public services that should be funded by the local authority. Different models include voting by citizens, often online, on different projects. It provides a way for community members to have a direct say in how public money should be spent. It creates opportunities for engaging, educating, and empowering citizens. It can also promote transparency, which in turn can help reduce inefficiency and corruption.

International standards

Participatory budgeting began in Porto Alegre, Brazil, in the late 1980s and has spread worldwide. To ensure that participatory budgeting is inclusive and reaches out to different groups, including minority groups and the disadvantaged, both online and in-person information events need to be organised, and support provided to citizens and different community groups and stakeholders in how to prepare a proposal for consideration. The introduction of gender-sensitive participatory budgeting can increase outreach and accessibility and can be planned in close co-operation with local civic groups with a focus on inclusion.

Although there are no specific standards for implementing participatory budgeting, the following serve as important reference materials:

- The **Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207)**[169] provides an international legal guarantee to this right, including the implementation of measures that would facilitate its exercise.
- The **Congress of the Council of Europe's Resolution on Gender budgeting**[170] recommends introducing gender budgeting methods in the annual budgets at local and regional levels.
- The **OECD Policy Brief No. 22**[171] provides a series of policy recommendations for how key stakeholders can contribute to successful participatory budgeting.
- The **World Bank's book Participatory Budgeting**[172] provides an overview of the underlying principles, analyses current practice, and includes seven in-depth case studies.
- The **UN Habitat's 72 Frequently Asked Questions about Participatory Budgeting**[173] explores how to implement participatory budgeting.
- The **World Atlas of Participatory Budgeting**[174] represents the widest compilation of data on the situation of these processes worldwide.
- The **UK's Participatory Budgeting Unit has a useful list of resources and toolkits.**[175]
- The **Subnational Open Budget Survey Questionnaire**[176] of the International Budget Partnership sets out a range of metrics for measuring the openness of local government budgets.
- The **Principles of Public Participation in Fiscal Policy**[177] of the Global Initiative for Fiscal Transparency.

Domestic context

The state budget formation process was limited to the participation of citizens and civil society until 2019. There were no concrete mechanisms prescribed by the Law on State Budget to engage stakeholders in budget making. Instead, there were concrete participatory budget-making mechanisms in the Law on Local Self-Governance.

Since 2019, the citizen and civil society participation is stipulated by the Prime Minister's decision On Launching the Budgetary Process of Elaboration of the 2020-2022 Medium-Term Expenditure Framework[178].

Legislation

According to the Law on the Budgetary System of the Republic of Armenia, during the development of the draft MTEF (including 2021 State Budget), the authorities must discuss budget proposals with the interested civil society organizations in their areas of competence, and approve the outcomes of these discussions (including the summary of acceptance or rejection of the submitted comments and recommendations).[179]

The Law on Local Self-Government provides mechanisms for public participation. Article 84 of the Law states that the mayor shall ensure participation of community members in the formation of the annual budget, as well as creation of a consultative body under the mayor, which will include the residents, experts and other stakeholders. For the same purpose, prior to submission to the council meeting, public hearings or discussions on those documents shall be organized.[180]

Guidelines

The 2015 report on Strengthening Local Democracy in Armenia prepared within the framework of the project "Support for the Consolidation of Local Democracy in Armenia" in cooperation with the European Association of Local Democracy, provides guidelines on how to involve citizens and civil society organizations in implementing the priorities set out in the community budget, and what role they can play in the allocation of resources. It teaches taxpayers to cooperate with the authorities helping them to make budget-related decisions that affect their lives. According to the guidelines, public benefit of the local authorities and civil society organizations working together is that local authorities can collect good ideas, more sensible solutions from the citizens. Furthermore, citizens are beginning to develop public services and their own sense of responsibility towards the community[181].

Good practices

On 1 November 2016, the Gyumri-based Civil Youth Centre NGO presented a number of suggestions to be included in Gyumri's five-year development plan and also in Gyumri's city budget. Thirteen of the suggestions were included in the final plan. The suggestions included lightening up the city, putting new waste containers in the streets and creating new bus stops in the city[182]. The active participation of civil society helped the municipality more efficiently target priorities and develop participatory governance. In 2019 the "Active Citizen" platform was created by Yerevan Municipality to ensure more effective and close communication with citizens and to conduct participatory management. The platform aims to ensure more effective interaction with citizens to discover new projects and ideas, submit and discuss proposals. Thanks to the platform, citizens have the opportunity to improve their living together with the municipality, making the life of the capital more comfortable and attractive. At the same time, the platform is a system for collecting the problems that concern the citizens and a joint means of finding solutions[183]. Nowadays, such platforms are operated in every community. The platforms also contribute to collection of the citizens'u claims and are common means of finding solutions.

3.3. PUBLIC CONSULTATION

Public consultation is a formal, often legally required, process for citizens and other stakeholders to give their views at key stages of the policy process. It can be both online and offline, or a mixture of both. Its main goals are to improve efficiency, transparency, and public involvement in important decisions. Done in a timely and effective way, public consultation can increase the quality of decision making, improve cost-effectiveness, render more sustainable policy solutions, and generate greater public trust in decision-making.

International standards

Different forms of consultation range from informing and consulting citizens to crowdsourcing ideas for policies, deliberative debates and assemblies where citizens can develop potential policy solutions to inform decision-making, and collaboration where social enterprises, civil society organisations or expert groups either participate in the design or delivery of services.

To improve both the inclusiveness and efficiency of public consultations, each local authority should aim to have a unit that takes responsibility for co-ordinating the guidelines and procedures for implementing public consultations, and for ensuring that they are in accordance with the prevailing legislation. Such a unit could also train officers in different departments on running public consultations. In the case of smaller local authorities with more limited resources, a unit in the central government's responsible ministry, such as a ministry of regional development, could provide such training and support on co-ordinating and updating guidance and procedures for public consultations at the local level.

Although there are no specific standards for implementing public consultations, the following are useful reference materials:

- The **Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207)**[184] provides an international legal guarantee to this right, including the establishment of measures to ensure citizen participation, such as consultative processes and local referendums.
- The **OECD Background Document on Public Consultation**[185] defines consultation and provides a summary of consultation tools.
- The **Council of Europe's Guidelines for civil participation in political decision making**[186] set out the different types of civil participation in decision making.
- The **Committee of Ministers of the Council of Europe's Recommendation on the participation of citizens in local public life.**[187]
- The **OECD Recommendation of the Council on Open Government**[188] supports initiatives for designing and delivering public policies and services, in an open and inclusive manner.
- **Reaching Out: Guidelines on Consultation for Public Sector Bodies** sets out good practice in the Republic of Ireland.[189]

Domestic context

Public participation in the law-making process in Armenia is a "growing but ineffective" process. The ministries publish draft laws on the official website for public consultations (www.e-draft.am), but the suggestions are not usually taken into serious consideration.[190] Effective consultation would help policy makers to engage citizens in the policy-making process, to increase the capacity of implementation and to gain public trust, which is crucial for policy making.

Legislation

The Law on Normative Legal Acts (Article 3) states that draft laws are subject to public consultation, except for the draft law on ratification (joining) an international treaty. Drafts of other normative legal acts may be submitted for public discussion on the initiative of the body developing the draft or the body adopting the draft. The duration of public discussions is at least 15 days. The Law also establishes that the procedure for organizing and conducting public hearings shall be established by the Government.[191]

According to the Procedure on Organising and Conducting Public Consultations approved by government decree in 2018, it is mandatory to conduct a public consultation of a draft normative legal act developed by a government agency through its publication on the official website of the given agency as well as on the Unified Website for Publication of Draft Legal Acts maintained by the RA Ministry of Justice.[192]

While the existing Law on Normative Legal Acts provides for mandatory public consultations on all legislative drafts, exceptions are made for projects developed by members of parliament or parliamentary factions (Article 1.3). According to the Procedure on Organising and Conducting Public Consultations, public consultations shall also be conducted through public hearings or public inquiries. According to article 125 of the Constitutional Law On Rules of Procedure of the National Assembly, public hearings may be convened by the decision of the Chairman of the National Assembly, permanent or ad-hoc commission, or a fraction. In this case, the organisation of hearings is not mandatory either.[193]

The Law on Local Self-Government provides a number of opportunities for public participation at the local level. Sessions in the community council are open, and in communities with more than 3,000 residents, sessions must be transmitted online on the community website. Residents of the community must be informed on the local self-governance activities without any discrimination and can directly or indirectly influence the community decisions, either on individual level or through associations and civil initiatives. Community residents can also initiate the inclusion of an item on the session agenda if the necessary number of signatures has been collected.[194]

Guidelines

In 2018 the Government of Armenia approved the procedure of organising and conducting public consultations.[195] It is mandatory to conduct a public consultation of a draft normative legal act developed by a government agency through its publication on the official website of the given agency as well as on the Unified Website for Publication of Draft Legal Acts e-draft.am. maintained by the RA Ministry of Justice.[196] According to the Procedure, the summary, protocols and revised drafts shall be posted on the official website of the body organising public consultation, as well as on the e-draft.am website. Based on the analysis and consolidation of the received proposals, the body carrying out public consultation shall make the necessary amendments in the draft.[197]

Good practices

Tashir and Aygepat communities start broadcasting Council of Elders sessions with the support and advice of the Council of Europe under the project "Local initiatives on ethical governance and transparency"[198], thus improving the quality of discussions. Currently, the community council members are more active in engaging in discussions and expressing their views on issues at stake. Tashir community even went further and, in co-operation with a local NGO, established and institutionalised the Youth Council, defined a mechanism of consultations between citizens and local authorities and allocated funds from the municipal budget to the Youth Council so that it can implement their initiatives.

In terms of public consultations, the "Center of Legislation Development and Legal Researches" Foundation under the Ministry of Justice can serve as an example of successful practice. The foundation was established in 2016 within the framework of USAID-funded project and, among other activities, organised public discussions with participation of state representatives and other bodies and stakeholders, and public awareness-raising campaigns on legal drafts.[199] For example, on December 26, 2021, public discussion on the establishment of a fact-finding commission within the framework of the 2019-2023 Strategy on Judicial Reforms took place. The discussion organised by the "Center of Legislation Development and Legal Researches" aimed at application of best international practices and possible conceptual approaches in this field. The discussion was attended by deputies of the RA National Assembly and about two dozen representatives of state and non-governmental organisations. In November 2018, about 3 000 citizens from the Jermuk Municipality signed a petition to cancel the initiative lodged by the mining company Lydian Armenia with the view to resuming the Amulsar mine operations. The operation of the mine was suspended in August 2018, after the decisive steps taken by a number of local communities and non-governmental organizations. In response to these protests, on December 18, 2018, Jermuk Community Council made a decision to develop Jermuk Community as an environment-friendly economy, banning metal mining on its territory. However, the Armenian government pressured Jermuk and other communities in Armenia, which had decided to abandon mining in their area, to change their mind, arguing that such a decision could not be made at the local level.[200] In March 2019, Lydian Armenia notified the Government of Armenia of a lawsuit filed in an arbitration court for breach of a bilateral investment agreement between the United Kingdom and Canada. The organization continues to put pressure on the Armenian government to allow it to resume operation.

3.4. PUBLIC PETITIONS

Public petitions enable citizens to raise issues with public authorities. The number of signatures collected can indicate the level of support for the issues raised. They aim either to raise the profile of the issue or to demand that specific actions be taken. Petitions are often inspired by civil society activity, but they are increasingly submitted through official, often online, platforms whereby petitions with a defined number of signatures will receive an official response.

International standards

It is important that the official response is provided promptly, and that clear and well-argued reasons are provided for the decisions taken or not taken in response to a public petition.

For public petitions to become a tool that resonates with the wider public, local authorities and civil society organisations should raise awareness of the nature of petitions and the procedures for gathering signatures and submissions of the petitions in their municipalities. Clarity should also be given on the status of electronic signatures to ensure that there is full transparency about the conditions that a public petition must satisfy to receive an official response.

The following international conventions and standards relate to public petitions:

- The **Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207)**[201] provides an international legal basis for this right, including the establishment of measures to ensure citizen participation, such as public petitions.
- The **OECD's Promise and Problems of e-Democracy**[202] provides information on the value and challenges of establishing an online petitioning platform.

Domestic context

Around 72.2% of Armenia's population are active internet users[203]. Moreover, 1 339 000 citizens are actively using social media by their mobile devices.[204] Internet coverage enables citizens to promote and engage in local government activities via different mechanisms. Among them, public petitions are one method by which local authorities can engage more systematically with citizens.

Legislation

Article 53 of the Constitution of Armenia states that "everyone shall have the right to submit, either individually or jointly with others, petition to state and local self-government bodies and officials and to receive an appropriate reply within a reasonable time period". The Constitution provides a mechanism for citizens to initiate constitutional change and propose, upon popular initiative, draft laws to the National Assembly. Article 202 states that if 200 000 citizens (who have the right of suffrage) sign a petition, they shall be entitled to initiate the constitutional amendment process. Article 109 states that citizens shall have the right to propose a bill to the National Assembly on the initiative of the people, if 50,000 citizens sign it. According to Article 109, at least fifty thousand eligible voters have the right to propose a bill to the National Assembly as a civil initiative. Article 204 defines how citizens can reverse rejection by the National Assembly of a draft law presented through a civic initiative. If an additional three hundred thousand citizens join the initiative to adopt the bill, it will be put to a referendum.[205]

The definition of petition is in the RA Law on Petitions, accepted on 21 December 2017. According to article 1 of the Law, petition is "a letter on issues of public importance or a report on the shortcomings of the activities of state and local self-government bodies and officials or a suggestion on improvement of the activities of state, local self-government bodies and officials, regulation of issues related to economic, political, social and other spheres or improvement of current legislation".[206]

According to the Law on Local Self-Government, the residents of the community can start collecting signatures to bring any issue at the community level to the agenda of the Community Council. In order for the issue to be included in the agenda of the Council, the initiative must gather not less than one percent of the community population in communities with more than ten thousand inhabitants, two percent in communities with one thousand to ten thousand inhabitants, and four percent in communities with one thousand inhabitants. The initiative to include an issue in the agenda of the Council of Elders session shall be signed by the residents of the community and presented to the head of the community.

Guidelines

The Council of Europe "Support to Consolidating Local Democracy in Armenia" project, implemented by the Congress of Local and Regional Authorities within the framework of the Council of Europe Action Plan for Armenia 2015-2018 has developed a toolkit to present the results of initiatives to foster citizen participation and dialogue between local authorities and community residents under the project.[207] The citizen participation initiatives, which were part of the CoE in the Congress component, were conducted in the communities of Akhtala, Artik, Urtsadzor and Vardenik. Their objective was to enhance the active participation of citizens and civil society in decision making and problem solving in their communities, and to engage them in community-building efforts, priority setting and budgeting processes through public consultations and close interaction with their mayors and city councils. The project in Armenia was crucial for creating a space of "learning by doing" whereby the residents – while contributing to finding solutions to their communities' problems – improved their knowledge of the workings of local self-government as well as capacities and limitations of municipal autonomy. As a result, the project participants agreed a set of principles, guidelines, methods and useful tips to steer participatory processes, which can be applied to future projects and which are also included in the toolkit, together with an overview of the legal framework for citizen participation at local level in Armenia.[208]

Good practices

In 2020 the unified electronic platform for petitions (e-petitions.am) was launched by the Armenian Government. The platform allows submitting individual and collective petitions electronically, supporting the submitted initiatives, following the petition process, and receiving the petition response electronically. There are also guidelines for submitting petition by means of the platform, as well as joining a petition and setting up an individual account.[209] While the creation of the platform is a step forward to establishment of a transparent and open participatory processes in Armenia, there are some inconveniences associated with submitting electronic petitions. The process of submission requires electronic signature of the person submitting it. In order to become a user of the unified platform of petitions and electronic identification card (eID) is required. This creates problems for those who do not have an ID card or ID card reader, and therefore cannot put their electronic signature on the petition.

3.5. LOCAL REFERENDA

Local referenda, which are widespread in Council of Europe member States, provide a mechanism for local authorities to sound out the citizens' will on concrete issues that directly affect their everyday lives or for citizens to propose an initiative that they would like to see implemented, or even to block a planned decision.[331]

International standards

When initiated by citizens or groups of stakeholders, a referendum might form part of a campaign against a perceived harmful impact on their livelihoods or the natural environment, such as a plan for a new industrial park, a tunnel to re-route cars under a river or some other urban development.

Where there is both legislation providing for local referenda, and guidelines on how to hold referenda, there is usually a minimum percentage of the eligible voting population whose signatures are required to initiate a referendum. In some cases, the mayor or elected council can also decide to formulate a question for a local referendum. Depending on the legislative framework, the referenda may be binding on the local government or consultative, where the final decision rests with the elected council.

It is important that the legislation and procedures are clear, so that citizens know the framework within which the results of a referendum will be acted upon, and what response is required from the executive or elected council of the local authority. As with public petitions, it is important to raise awareness of the procedures for gathering signatures and the status of electronic signatures to ensure that there is full transparency about the conditions that need to be met before a referendum will take place. Transparency on political party financing should also be applied to the funding of a referendum campaign, including ceilings on expenditure, and an independent audit of funding and expenditure.

The following international conventions and standards relate to local referenda:

- The **European Commission for democracy through law (Venice commission), code of good practice on referendums**[210] – provides the principles of holding referendums and practical advice on how to implement those principles.
- The **Council of Europe Committee of Ministers' Declaration on the Code of Good Practice on Referendums**[211] – invites public authorities in the member states to be guided by the Code of Good Practice on Referendums.
- The **Congress of Local and Regional Authorities, Resolution 472 (2021) on Holding**

referendums at local level[212] – provides guidelines for member States to use local referendums responsibly and according to Council of Europe standards,

- **UN Sustainable Development Goal 16: Peace, Justice and Strong Institutions; Target 16.7:**[213] Ensure responsive, inclusive, participatory and representative decision-making at all levels.

Domestic context

As a result of the amendments to the Constitution of the Republic of Armenia in 2015, the regulations of the electoral and referendum institutions were significantly changed. The institutional reforms were also linked to the organisation and conduct of local referendums. In Armenian local self-government system, the direct participation of citizens in self-government is considered to be underdeveloped. The full participatory process is still partially developed. Unlike the referendum, the organization and holding of which is stipulated by the RA Constitution, for local referendums, only the concept and principles of their holding are defined. It is obvious that as a result of the constitutional reforms of 2015, the changes in the institution of referendums imply a new systemic approach to the regulation and organization of local referendums.

Legislation

Citizen participation in local self-government is defined by various laws that enable the authorities to implement processes in their communities, solve problems through cooperation and dialogue.

Article 183 of the Constitution stipulates that the residents of the community can participate directly in the management of community affairs by resolving public issues of community importance through a local referendum.

According to the Law on Local Self-Government, community council is authorised to make a decision on holding a local referendum on the initiative of at least one third of its members or the mayor. The mayor is authorised to take the initiative to call a local referendum, as well as to make a decision on calling a local referendum.[214]

Article 2 of the Law on Local Referendum stipulates that the local referendum is a means of direct participation in the management of community affairs, which is exercised by voting of the community residents on public issues of community importance. The Law also defines the principles of holding a local referendum, regulates the right to participate in a local referendum, the scope of issues of local referendum, the procedure for submitting a draft or public issue of local importance to a local referendum, local referendum announcement, organisation, summing up the results, etc.[215]

Guidelines

In 2014 the "Citizen Observer" initiative developed a booklet on "How to participate in local self-government". The booklet helps better understand what is a local referendum, who can participate in the local referendum and who cannot, what questions can and which cannot be asked in a local referendum, how to formulate a referendum question, who has the right to initiate a local referendum, in which case the referendum commission may refuse to register the initiative group, when it starts collecting signatures, which signatures are considered invalid, who makes the final decision on calling a local referendum, etc..[216]

Examples of best practice

In 2015, the first phase of the amalgamation process of Armenian communities took place. Local referendums were held in May 2015, as a result of which 6 out of 22 communities including Haghartsin, Teghut, Gosh were against the change of community boundaries. However, the opinion of these communities was not taken into account. In 2016, 118 communities were merged, and 15 multi-settlement communities were formed. In 2017, 325 communities were merged, and 34 multi-settlement communities were formed. In 2016 and 2017 no local referendums were held, hence the community opinion was not heard..[217]

Chapter 4

CORRUPTION RISKS

Introduction

In the absence of ethics and public accountability, corruption and malpractice are allowed to thrive, which undermines the foundations of a peaceful, prosperous and just society.

Corruption is a major challenge to democracy and the rule of law. It results in decisions and resource allocation that do not reflect the interests of the public and concentrates political power in the hands of the few. It in turn causes political leaders and institutions to lose legitimacy and public trust, which reduces their ability to govern.

Corruption also causes local and regional authorities to be inefficient and ineffective in exercising their duties. It results in decisions being made not on the basis of what is in the interests of society at large, but what is in the self-interests of the decision maker and their associates. It leads to public money being misspent, with contracts being awarded to inferior providers and budgets being misallocated. At its worst, it enables public officials to misappropriate money and resources, using their position to get rich to the cost of those they have a duty to serve.

Corruption can also result in public officials being appointed on the basis of favouritism rather than merit, meaning that local and regional authorities do not have access to the brightest and best talent. This in turn creates a fertile environment for further corruption and reduces even more the efficiency and effectiveness of the administration.

Inefficient and ineffective organisations, staffed by individuals who gained their position on the basis of something other than merit, result in poor quality public services and infrastructure, thereby eroding public trust and the legitimacy of public institutions. More importantly, however, it results in significant human costs, including poverty, deaths, illness, and restricted life chances.

Finally, corruption harms economic development. It leads to public money being directed to uncompetitive businesses, rather than those that offer more innovative or cheaper products and services. Uncompetitive markets, coupled with the negative impact of corruption on the quality of local public services and infrastructure, means that businesses do not have a solid foundation (of staff, security, investment, etc.) on which to build. In the end, this may cause private and international investors to avoid investing in an area.

General domestic context

Corruption was officially recognised to be a major impediment to Armenia's political, economic and social development still in 2003, when the government adopted its first anticorruption strategy and action plan, later followed by 4 consecutive strategies and implementation plans. The country ratified the UN Convention Against Corruption, Council of Europe (CoE) Civil Law Convention on Corruption and CoE Criminal Law Convention on Corruption. It joined a number of international anti-corruption initiatives, such as the Organization of Economic Cooperation and Development (OECD) Anti-corruption Network Istanbul Action Plan, Group of Countries Against Corruption (GRECO), Open Government Partnership (OGP). Armenia adopted a number of legal acts to prevent corruption and created several institutions. Nevertheless, for more than 15 years there has been no significant progress in the fight against corruption. This was largely explained by the systemic corruption mostly controlled by the political elites, and hence - the lack of genuine will at the highest level of the leadership of the country to eradicate corruption.

Armenia achieved a significant progress in the fight against corruption following the so called "Velvet revolution" in April-May 2018, which itself was largely impelled by the people's aspiration to "confront the existing autocratic corrupt regime and hope for democracy."[218]

The latest public opinion survey on corruption conducted in 2019 by Transparency International Anticorruption Center (TIAC) and Caucasus Research Resource Center (CRRC) revealed a significant progress compared to a similar study held in 2010.

According to the findings of 2010 survey, 83.7% of respondents believed that corruption is widespread in Armenia and exists in all spheres, whereas in 2019 - only 4.4% of respondents expressed such an opinion.[219] In 2010, 49% of respondents thought corruption was widespread at the top levels, 26% said it mostly takes place at middle levels, and 6% noted that it occurs at lower levels. In 2019, only 16% of respondents thought corruption is widespread among top-level officials, while 43% of respondents noted that it is more prevalent among middle-level officials, and 26% responded that it is more common at lower levels.

As perceived by respondents, the most common forms of corruption (such as embezzlement, kickbacks, political corruption) are currently reduced with the exception of nepotism, which therefore attained a larger proportion within the typology - getting 42% in 2019 from 19.8% in 2010.

According to Transparency International's (TI) Global Corruption Barometer study in 2016, which assesses the general public's experience and attitudes towards corruption in countries around the world,[220] only 14% of the respondents of the survey in Armenia rated the anti-corruption efforts of the Armenian Government as fairly well or very well, while 65% rated those as very bad or fairly bad.[221] In response to a similar question in the above-mentioned 2019 survey the vast majority of respondents (81.6%) assessed the Government anti-corruption actions as effective.[222]

Given such developments, in 2018-2019, after many years of signs of stagnation, TI's Corruption Perception Index (CPI) for Armenia marked an essential increase - by 7 points each year, equalling to a score of 49 and raising the position of the country from 107 to 60 among about 180 countries.[223]

Still, about 90 % of Armenian citizens think that corruption is "a very serious or serious problem," whereas the overwhelming majority thought that corruption is "an evil and must be eliminated or neutralised".

Following the "Velvet revolution" of 2018, the new Government came to power with a strong anti-corruption agenda. Though its implementation has not always been smooth, timely and effective, some significant steps are being undertaken with the aim of eradicating corruption.

In June 2019, the Anti-Corruption Policy Council (also known as Anti-Corruption Council) was reorganised with the aim of defining priorities for eradication of corruption and proposing potential solutions. Council also provides opinions on draft policies, programs and legal acts in view of corruption prevention. It is chaired by the Prime Minister, and includes heads of relevant state institutions as well as five representatives of CSOs.[224]

In October 2019, the Anti-Corruption Strategy and its Implementation Plan for the period of 2019-2022 were developed and adopted. The development of the strategy was rather inclusive, as the Ministry of Justice of Armenia took active steps to engage civil society organisations in the development and adoption of the document. Among other priorities, the Strategy focuses on building the system of anti-corruption institutions, such as the Corruption Prevention Commission (to prevent and raise awareness on corruption), Anti-Corruption Committee (to investigate corruption cases), the Prosecutor's Office Department on the corruption crimes (to oversee the investigation and draw allegations on behalf of the state) and the Anti-Corruption Court (to pass judgements on the corruption cases).[225] The first three of these institutions have been established throughout 2019-2021, while the elaboration of the legal basis for the Anti-Corruption Court is still in process.

4.1. BRIBERY

Bribery is the promise, offer, acceptance or solicitation of a personal advantage (e.g. gift, loan, reward, favour, etc.) in exchange for an unethical or illegal action. Bribery results in decisions not being taken in the public interest, which reduces public trust in institutions and leads to poor public services.

International standards

The following international conventions and standards relate to bribery:

- The **OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions**[226] establishes legally binding standards to criminalise bribery of foreign public officials in international business transactions. It is the first and only international anti-corruption instrument focused on the 'supply side' of the bribery transaction.
- The **International Anti-Bribery Standard 37001**[227] specifies a series of measures to help organisations prevent, detect and address bribery.
- The **OECD Good Practice Guidance on Internal Controls, Ethics, and Compliance**[228] which supports the convention on combating bribery.

Domestic context

The results of the above-mentioned public opinion survey on corruption show that since April-May 2018, perceptions of both the number of bribes and the frequency of bribery cases have changed. Thus, 82.4% of respondents believe that the number of bribes has decreased significantly or to some extent. About 91% of respondents thought that the frequency of bribery has decreased. A comparison with the results of a 2010 survey on corruption shows that the share of those who avoid bribery has increased from 23% in 2010 to 37.6% in 2019.[229]

The practice of investigating and pursuing bribery-related cases seem to be improved significantly during the latest years.

Receiving/requesting. The official statistics on the results of the investigation of corruption crimes, published annually by the General Prosecution Service of the Republic of Armenia, shows that in 2017, 104 instances of receiving/requesting a bribe were investigated by law-enforcement agencies, with charges brought against individuals in 73 cases.[230] Investigated cases of receiving/requesting a bribe increased in 2018, with a total of 193 cases, whereas 87 were pursued. In 2019, 256 cases of receiving/requesting a bribe were investigated, out of which charges were brought against 136 individuals. In 2020, 224 cases were investigated, whereas only 132 individuals were charged.[231]

Offering/giving. As for offering/giving a bribe, in 2017 41 cases were investigated and charges brought against 103 individuals[232], compared with 65 cases investigated and 137 persons charged in 2018. In 2019, 42 cases of receiving/requesting a bribe were investigated, out of which 22 were pursued. In 2020, 39 cases were investigated, out of which only 13 were pursued.[233] As it is clear, bribery cases have decreased in recent years while the rate of its prosecution has increased.

Mediating. In regards to mediation in bribery, in 2017 and 2018 seven criminal cases have been investigated, 17 persons were prosecuted. In 2019-2020 only seven cases have been investigated, and 46 persons were prosecuted.[234]

Legislation

The Criminal Code of Armenia sets a number of penalties for the bribery. Article 311 of the Criminal Code establishes liability for passive bribery, i.e. receiving or demanding or accepting a promise or offer to receive money, property, property rights, securities or any other advantage by an official personally or through a proxy, for performing or not performing any action within the scope of his/her competency for the benefit of the briber or the briber's representative, which shall be punished with a fine in the amount of 300 to 500 minimal salaries, or with imprisonment for the term of up to 5 years, with deprivation of the right to hold certain posts or practice certain activities for up to 3 years (depending on the aggravating circumstances).

Active bribery is criminalised in Article 312 of the Code, which states that a person shall be punished for promising, offering or providing money, property, property rights, securities or any other advantage to an official personally or through a proxy, for performing or not performing any action within the scope of his/her competency for the benefit of the briber or the briber's representative. Providing a bribe to an official shall be punished by a fine in the amount of 100-400 times the minimum salary, or with arrest for up to 2 months or imprisonment for up to 3 years. The law also states that the briber-giver shall be exempt from criminal liability if there was an extortion for illegal payment, or if that person has voluntarily reported the illegal payment to law enforcement agencies.

Furthermore, Article 313 of the Code establishes liability for bribery mediation, i.e. promotion of the agreement between the briber and bribe taker or implementation of previously reached agreement, is punished with a fine in the amount of 100-400 minimal salaries or with arrest for 1-3 months or imprisonment for up to 5 years[235].

Example of case law

In 2019, a judge of the Court of General Jurisdiction of the Kotayk Region of the Republic of Armenia was accused of bribery. He was accused of demanding and receiving a bribe in large scales through the intermediary. Avoiding to take the bribe which amounted AMD 1 224 400 in person, and in order to reduce the risk of being exposed, the judge turned to his close friend, member of the RA Chamber of Advocates for help, who promised to help him in advance. The judge was arrested and sentenced to 7 (seven) years with confiscation of property.[236] On August 9, 2021 the National Security Service of the Republic of Armenia issued a statement, according to which cases of bribery and other official crimes committed by the former head of Artashavan community were revealed. During March-July 2017, by making unilateral decisions, the head of Artashavan community organised fish auctions through false documents, as a result of which 67 hectares lands owned by Artashavan community were alienated to a company, for which he received about AMD 67 000 000 bribe.[237]

4.2. CONFLICT OF INTEREST

A conflict of interest is where an individual is in a position to derive personal benefits from the actions or decisions they take in an official capacity. Conflicts of interest –either if they are actual, perceived or potential–[330] result in decisions that are, or are considered to be, unfair and self-interested. This reduces public trust in institutions and results in worse outcomes for the public.

International standards

- The **Committee of Ministers of the Council of Europe's Recommendation on Codes of Conduct for Public Officials**[238] and the **European Code of Conduct for all Persons Involved in Local and Regional Governance**[239] cover the general issues normally thought to be necessary for avoiding such conflicts.
- The **Congress of the Council of Europe's Resolution and Recommendation on Conflicts of interest at local and regional level**[240] propose a set of measures to mitigate the risks of conflict of interest and ensure that it is identified at an early stage.
- The **OECD Guidelines for Managing Conflict of Interest in the Public Service**[241] identify principles and standards for developing policies.
- The **Congress of the Council of Europe's Resolution and Recommendation on Making public procurement transparent at local and regional levels**[242] and the **OECD Checklist for Enhancing Integrity in Public Procurement**[243] provide guidance for enhancing transparency and for promoting integrity in procurement.

Conflict of interest is also covered by the following international standards and guidelines:

- The **United Nations Convention against Corruption**[244] is the only legally binding universal anti-corruption instrument.
- It is supported by this **Technical Guide to the Convention.**[245]
- The **Council of Europe's Criminal Law Convention on Corruption (ETS No. 173)**[246] aims to co-ordinate criminalisation of corrupt practices and to improve international co-operation in the prosecution of offences.
- The **Council of Europe's Civil Law Convention on Corruption (ETS No. 174)**[247] defines common international rules for effective remedies for persons affected by corruption.
- The **European Union's Convention against Corruption Involving Officials**[248] aims to fight corruption involving officials from the EU or its Member States. The **OECD Recommendation on Public Integrity**[249] shifts the focus from ad hoc integrity policies to a context dependent, behavioural, risk-based approach with an emphasis on cultivating a culture of integrity across the whole of society.

Domestic context

Conflict of interest in Armenia is a major phenomenon given the small size of the society and family connections as well as poor awareness and recognition of the issue, inadequate regulations and practices of management.

Conflict of interest is regulated for the public sector - for public officials and public servants. Though the issue was somehow regulated by of the Law on Public Service and was under the supervision of the Commission on Ethics of High-Ranking Officials since 2011, still in 2014, a survey amongst the public officials showed that there was a lack of understanding of the issue. Only 56 % of respondents understood the definition of conflict of interest, and 61 % thought that a civil servant has a right to make a decision in a situation of conflict of interest.[250]

According to the Law on Corruption Prevention Commission passed in 2017, in November 2019, the Commission on Ethics of High-Ranking Officials was replaced with the Corruption Prevention Commission (hereinafter – also CPC), which possessed a broader scope of jurisdiction and more enhanced mechanisms in respect with regulation of conflict of interest matters, including the oversight of compliance of public officials with incompatibility requirements and limitations, assurance of unified

practices, revealing conflict of interest through examination of declarations of assets and income, education and awareness raising, etc.

CPC: The main function of CPC with regards to the conflict of interests is the detection of conflict of interests and violations of ethics rules by persons holding public office (except for the Members of Parliament, Judges and members of the Supreme Judicial Council, prosecutors, investigators), heads of communities, their deputies, heads of administrative districts of Yerevan community, their deputies.[251] CPC does not deal with situational cases of the conflict of interest. Instead, those are dealt by supervisors of respective institutions.

The major mechanism for CPC's control of conflict of interest is the collection, verification and analysis of declarations and data related to assets, income, expenditures and interests of public officials. Declarations submitted by the relevant officials and public servants electronically are published on the website of CPC at www.cpcarmenia.am with an exception of personal data. The current system of declarations is being modernized to ensure interoperability with several state databases (police, real estate, companies, tax) to ensure more effectiveness.

Ethics commissions of public servants - follow up applications on the incompatibility requirements and other restrictions, violations of the code of conduct and situational conflict of interest cases and develop proposals to the respective institutions or officials to prevent or to eliminate conflict of interest situation in question.

Integrity officers within institutions – consult the public servants of their institutions on the incompatibility requirements and other restrictions, code of conduct, suggest measures to resolve conflict of interest related issues; manage the statistics on incompatibility requirements and other restrictions, violations of the code of conduct and conflict of interest cases.

In present, the integrity officers' institute is not functioning yet because of the lack of relevant by-laws and regulations.

Legislation

According to the definition of the conflict of interests of public officials (except judges, deputies, prosecutors, investigators, members of the community council) given in the article 33 of the Law on Public Service, conflict of interest is a situation in which a person holding office performs an action or makes a decision in the exercise of their powers, which can reasonably be interpreted as being driven by their personal interests or that of a person affiliated with them.[252]

The Law establishes some sets of incompatibility requirements and other restrictions for public officials and servants.

Incompatibility requirements: It is forbidden for them to hold positions that are not conditioned by their status in other state or local self-government bodies, any position in commercial organisations, to engage in entrepreneurial activity, to perform other paid work, except for scientific, educational and creative work. It is also forbidden for them to accept a gift or agree to accept it later.[253]

Other restrictions for public officials and servants include a ban on the following:

- representing the third party within the organisation where an official holds a position;
- entering into transactions on behalf of the state with persons in close kinship and in-law relations;
- use the official position for the support of political parties, non-governmental organisation and religious organisations;
- receiving honorarium for publications or speeches related to the official responsibilities;

- using material-technical, financial and informational resources, other state and/or community assets and office-related data for personal or not-official purposes;
- working together with persons in close kinship or in-law relations;
- being hired by an employer under his / her immediate supervision within one year after leaving the official position.

The Law on Public Service states that in the case of conflict of interest, person holding public office is obliged to submit a written statement to their superior or direct supervisor on the circumstances of the conflict of interest. The written statement is subject to immediate examination. The person holding public office should not take any action before receiving instructions from the supervisor. In case of not having a superior or direct supervisor, the person holding public office may submit a written statement to CPC, which proposes to take steps to resolve the situation, including to make a statement on the existence of conflict of interests in a particular situation.[254]

Conflict of interest cases of public servants are supposed to be pursued by the supervisors guided by the consultation of relevant institutions' integrity officers and shall provide solutions to the conflict-of-interest situation. The responsibility for declaration of the conflict of interest lies with relevant public servants. If not declared, the cases can be reported through whistle-blowing mechanisms and followed up respectively.

Oversight and proceeding of conflict of cases during decision-making or action-taking by public officials or public servants is somewhat decentralised. As the Law on Public Service does not regulate the conflict of interest for MPs, judges, prosecutors, investigators and members of the community council, those are accordingly left to the jurisdiction of the respective laws – such as the Law on Guarantees for Activity of RA National Assembly Deputies (MPs), the Constitutional Law on the Judicial Code, Law on the Prosecutor's Office, the Law on the Special Investigation Service, the Law on the Investigative Committee, and the RA Law on Local Self-Government. None of those, however, contains any definitions of conflict of interests.

MPs: Article 4 of the Law on Guarantees for Activity of RA National Assembly Deputies (MPs) stipulates the conflict of interests for MPs as following: "…guided by his personal interests or the interests of his affiliated person means taking the floor with a legislative initiative, submitting a draft resolution, statement or address of the National Assembly, submitting proposals regarding an issue put into circulation in the National Assembly, as well as taking the floor at a sitting of the National Assembly or its committees, asking questions or participating in voting, which, although are legal in themselves, but the MP knows or is obliged to know that it leads or contributes, or reasonably may lead or contribute also:

1. to the improvement of his/her property or legal status and the property or legal status of his/her affiliated person;
2. to the improvement of the property or legal status of a non-profit organisation, of which the MP or his affiliated person is a member;
3. to the improvement of the property or legal status of a commercial organisation with the participation of an MP or his affiliated person;
4. to the appointment to the office of his affiliated person;
5. to his election or appointment to an office, with the exception of the offices specified in paragraph 5 of Article 2 of this Law, as well as his speech as a candidate for an office elected by the National Assembly."[255]

In the case of a conflict of interests, an MP is obliged to take the floor with a statement regarding the conflict of interests, and when taking the floor, shall submit his/her written statement regarding the conflict of interests with a description of the nature of interests.

Judges (including Members of the Supreme Judicial Council): The Constitutional Law on the Judicial Code regulates the conflict of interest for judges as well as Members of the Supreme Judicial Council. Article 70 (Code of Conduct of Judges during Acting in Official Capacities) part 2 point 7 of this law provides the code of conduct for this group of officials stating that the Judge shall not allow conflict of interest, shall exclude any influence of family, public or other type of relations to influence exercise of his / her official authorities. Hence, the conflict of interest for judges is formulated as a code of conduct and non-compliance will generate liability.

Prosecutors: Conflict of interest for prosecutors is regulated by the chapter on Code of Conduct of the Law on Prosecution. According to Article 72 (General Code of Conduct of Prosecutors) part 1 point 6 of this law, the prosecutor shall be autonomous and impartial, independent from influences from the legislative and executive and other state and local government institutions, public and political organisations, mass media outlets, private interests, public opinion and other external influences, pressures, threats and other interference, shall be free from the concerns to be criticised.

Investigators: The Law on Investigation Committee does not contain provisions on the conflict of interest. Article 10 part 1 of this law prescribes that the servants of the Committee are governed by the Law on Public Service, which skips regulating the conflict of interest of investigators. There is no regulation on conflict of interest in the Law on the Special Investigation Service.

Members of Community Councils: Article 21, part 2 point 6 of the Law on Local Self-Government states that the Member of Community Council shall not take part in voting of a decision, which relates to his/her interests or the interests of persons in close kinship or in-law relations with him (parent, spouse, child, brother, sister).

To summarize, in spite of a wide volume of develop regulations, the Armenian legislation still has a number of deficiencies as does not ensure complete and holistic definition of the conflict of interest, and does not ensure effective mechanisms for the exposure and management of conflict of interest and liability measures for all the public officials and public servants.

Example of case law

There have been several cases applied to the CPC to investigate the actions of public servants, but CPC usually concludes that there is no any violation.

On 5 December, 2019, several online media resources published articles making concerns about the violation of incompatibility requirements by the mayor of Yerevan, who after assuming his post has retained his shares in several commercial organisations. On 9 December, 2019 the CPC made a decision to initiate proceedings on the basis of violation of incompatibility requirements by the mayor of Yerevan. The CPC found that the evidence collected as a result of its investigation, including the defendant's explanation, provided grounds to conclude that there was no breach of the incompatibility requirements. Though the formal interpretation of the law shows that not transferring the shares to trust management is a violation of incompatibility requirement, due to the fact that these companies did not actually operate, the CPC concluded that there is no breach of the incompatibility requirements in the substantive sense of the law.[256]

On 30 July 2020, the CPC has initiated proceedings against the Minister of Health on the basis of an incidental conflict of interest. The basis of the proceedings was the note of data.hetq.am, where the CPC was informed that the Ministry of Health had signed service contracts with "Mibs" company, the

director of which is the Minister's wife. Under these contracts, "Mibs" company was obliged to provide hospital services, reimbursement of e-health expenses, computed tomography service. The Ministry of Health has not announced a tender for any of the purchases made from the company of the Minister's wife. Five of the contracts were procured by one person, one was a non-procurement procedure, and one procedure was marked "EU", which is not explained in the procurement site methodology. On 30 November 2020, the CPC has concluded that the contracts signed between the Ministry of Health and "Mibs" LLC in 2019-2020 on the basis of orders issued by the Minister of Health did not lead to his private interest, therefore, there is no conflict of interest.[257]

In another case, on 26 October 2020, the CPC issued a conclusion on the illegal engagement of MP G.T. in entrepreneurial activities. In its conclusion, the CPC specifically mentioned: … "[the participant of the proceedings carried out such actions related to the actual commercial company, the authority for which was already delegated to the trust manager.] … [the examined facts show that the actions under the authority of the trust manager were carried out by the actual official, specifically by participating in the general meeting of commercial companies on 23 June 2020 and 02 July 2020 as the Chair and signing the minutes]".[258] The CPC also established that such behaviour was manifested also during the period preceding the above-mentioned facts and concluded that in addition to a formal violation of the RA Law on Public Service, G.T. has also violated the content of the incompatibility requirements.[259]

4.3. EXTORTION

Extortion is the use of coercion to obtain money, goods, services or some other advantage from an individual or institution. Beyond the damage it does to the victim, extortion reduces public trust in government and can discourage business growth and investment in the area.

International standards

As one type of corruption, extortion is covered by the following international standards and guidelines:

- The **United Nations Convention against Corruption**[260] is the only legally binding universal anti-corruption instrument.
- It is supported by this **Technical Guide to the Convention.**[261]
- The Council of Europe's Criminal Law Convention on Corruption (ETS No. 173)[262] aims to co-ordinate criminalisation of corrupt practices and improve international co-operation in the prosecution of offences.
- The **Council of Europe's Civil Law Convention on Corruption (ETS No. 174)**[263] defines common international rules for effective remedies for persons affected by corruption.
- The **European Union's Convention against Corruption Involving Officials**[264] aims to fight corruption involving officials from the EU or its Member States.

Domestic context

The government's efforts towards the fight against corruption and increased public trust are to some extent "reflected" in the statistics on applications to initiate criminal proceedings on the fact of extortion.

Thus, according to the Summary information on the statistics on offences committed in 2018, published by the Police of the Republic of Armenia, in 2018 only 67 citizens applied to the law-enforcement bodies with a statement on the initiation of a criminal case on the fact of extortion. In this respect, 55 criminal cases were initiated, and in 11 cases law-enforcement bodies refused to initiate a criminal case on the fact to the absence of the body of crime.[265]

In 2019, 92 citizens applied to the law-enforcement bodies with a statement on the initiation of a criminal case on the fact of extortion. 78 criminal cases were initiated, and in 12 cases the law-enforcement bodies refused to initiate a criminal case on the fact to the absence of the body of crime.[266]

In 2020, the number of applications on initiation of criminal cases on the fact of extortion increased to 173. In this respect, 148 criminal cases were initiated, and only in 18 cases law-enforcement bodies found an absence of the body of crime.[267]

Legislation

The Criminal Code of Armenia (Article 182) defines extortion as a threat to publicize defamatory information or information inflicting significant damage to the person's or his relatives' rights or legal interests, the threat to use violence against the person or his relatives, or to destroy (damage) the property owned or managed by the person, his relatives or other persons, with a demand to surrender the property rights, or other actions involving property[268]. Extortion is punished with a fine of 400-800 times the minimum salary, or with arrest for up to 3 months, or with imprisonment for a term of up to 4 years. If aggravating circumstances have been revealed, extortion shall be punished with imprisonment for the term of up to 10 years.

Article 311 of Armenian Criminal Code (Bribery), part 3 establishes criminal liability of receipt of a bribe, committed by extortion, which is punished by imprisonment for a term of 4-10 years, with or without confiscation of property.[269] Article 200 of Armenian Criminal Code (Commercial Bribery), part 4 establishes criminal liability of receipt of a commercial bribe, committed by extortion, which is punished by a fine of 300-500 times the minimum salaries, or deprivation of the right to hold certain positions or engage in certain activities for a term of up to 5 years, or by imprisonment for a term of up to of 5 years.[270]

Besides the above-mentioned types of extortion, the Criminal Code of Armenia establishes liability for commitment of other specific types of extortion, such as:

- Article 234. Theft or extortion of radioactive materials;
- Article 238. Theft or extortion of weapons, ammunition, explosives or explosive devices;
- Article 269. Theft or extortion of drugs or psychotropic substances;
- Article 311.1, part 3. Receiving illegal remuneration through extortion by a public servant or by a person holding public position;
- Article 311.2, part 3. Using real or perceived influence through extortion (Trading in influence).

Example of case law

On November 9, 2012, the RA Special Investigation Service initiated the criminal case on the grounds of the crime envisaged by Article 311, Part 3, Clause 2 of the RA Criminal Code (Bribery committed by Extortion of bribe). A.M., senior investigator of Arabkir Investigation Division of the General Investigation Department of the RA Police, has deliberately demanded from H.A., the suspect of a criminal case under his investigation, a bribe of AMD 200 000 in order for H.A. not being prosecuted for crime of using drugs, which at that moment has already been decriminalised. The accused official was found guilty and sentenced to an imprisonment for 4 years, without confiscation of property.[271] In another case, in 2019 the head of Arshaluys community of Armavir region has been charged by the RA Investigative Committee with extortion (two episodes), extortion in particularly large amounts and abuse of official authority. In February 2019 a decision was made to temporarily suspend the office of the head of Arshaluys community. After receiving the consent of the prosecutor, on March 1, 2019 the above-mentioned decision was sent to the Governor of Armavir Region to fulfil the requirements of the decision.[272]

4.4. FRAUD

Fraud is the use of deceit in order to gain an unfair or illegal advantage. Fraud erodes public trust in government and reduces the capacity of government to act. It often results in the loss of public money, which harms public services and the ability of governments to address the public's needs and aspirations.

International standards

As one type of corruption, fraud is covered by the following international standards and guidelines:

- The **United Nations Convention against Corruption**[273] is the only legally binding universal anti-corruption instrument.
- It is supported by this **Technical Guide to the Convention**.[274]
- The **Council of Europe's Criminal Law Convention on Corruption (ETS No. 173)**[275] aims to co-ordinate criminalisation of corrupt practices and to improve international co-operation in the prosecution of offences.
- The **Council of Europe's Civil Law Convention on Corruption (ETS No. 174)**[276] defines common international rules for effective remedies for persons affected by corruption.
- The **European Union's Convention against Corruption Involving Officials**[277] aims to fight corruption involving officials from the EU or its Member States.

Domestic context

According to the official statistics on the results of the investigation of corruption crimes, published by the General Prosecution Service of the Republic of Armenia, in 2017 there have been 21 registered cases of fraud committed by persons using official position, with charges brought against individuals in 18 cases.

Registered cases of fraud increased almost ten times in 2018, with a total of 206 registered cases. Despite the increase of registered cases in 2018, charges were put forward in only 63 cases.[278]

In 2019, 236 cases of fraud committed by persons using official position were registered by the General Prosecution Service of the Republic of Armenia,[279] out of which only 86 were pursued.

In 2020, 179 cases of fraud committed by persons using official position were registered,[280] out of which only 38 were pursued.

As it is clear, this type of crime has increased in recent years while the rate of its prosecution has decreased significantly. The 2019-2022 Anti-Corruption Strategy and its Action Plan does not include any activities related to combating fraud.

Legislation

The Criminal Code of the Republic of Armenia sets provisions and sanctions related to fraud, through Chapter 21 Article 178, stating: "1. Swindling, i.e. theft of a significant amount or misappropriation of somebody's property rights by cheating or abuse of confidence, is punished with a fine in the amount of 200-500 minimum salaries, or with arrest for the term of up to 2 months, or with imprisonment for the term of up to 2 years".[281] Part 2 of the above-mentioned article establishes criminal liability for committing similar actions by a person using official position. When committed by use of an official position, fraud is punishable by a fine in the amount of 500-1000 minimum salaries or by imprisonment for a term of 2-5 years. Part 3 of the same Article states that the similar actions, committed on a large scale or by an organised group, shall be punished by imprisonment from 4-8 years with or without confiscation of property.

The Criminal Procedure Code of the Republic of Armenia, Article 190, states that the preliminary investigation of the cases on crimes under Article 178 of the Criminal Code of the Republic of Armenia is carried out by police investigators.[282]

Example of case law

On 7 May 2019, the Prosecutor of the RA Ararat Region Prosecutor's Office initiated criminal proceedings against H.G. - the head of Jrahovit community of Ararat region since 2010. Permanently endowed with the authority to carry out organisational-managerial, administrative functions, to manage the property and financial resources of Jrahovit community, using his official position, H.G., in the period from February 2013 to November 2014, embezzled AMD 2 011 857 from the financial means of Jrahovit community of Ararat region through misappropriation and misuse, as well as committed official falsification by compiling and signing false orders, employment contracts, fake work-time calculation bulletins, drawing up a fake official document and presenting it to a state body and fraudulently stole a considerable amount of AMD 396 000 from the RA state budget. He was found guilty and sentenced to an imprisonment for 4 years.[283]

4.5. CLIENTELISM

Clientelism is the promise and acceptance of a personal benefit (e.g. gift, loan, reward, favour, job, etc.) in exchange for political support. It is often based on an unequal relationship between a patron (e.g. political leader) and client (e.g. voter). Clientelism results in decisions that reflect the special interests of a few, rather than the wider public interest, leading to unfair and unjust outcomes.

International standards

As one type of corruption, clientelism is covered by the following international standards and guidelines:

- The **United Nations Convention against Corruption**[284] is the only legally binding universal anti-corruption instrument.
- It is supported by this **Technical Guide to the Convention.**[285]
- The **Council of Europe's Criminal Law Convention on Corruption (ETS No. 173)**[286] aims to co-ordinate criminalisation of corrupt practices and to improve international co-operation in the prosecution of offences.

- The **Council of Europe's Civil Law Convention on Corruption (ETS No. 174)**[287] defines common international rules for effective remedies for persons affected by corruption.
- The **Congress of the Council of Europe's Resolution and Recommendation on Fighting nepotism within local and regional authorities**[288] sets out standards for good practice and presents strategies for preventing corruption in the recruitment procedures of European local and regional governments.
- The **European Union's Convention against Corruption Involving Officials**[289] aims to fight corruption involving officials from the EU or its Member States.

Domestic context

Clientelism occurs pretty widely in Armenia as the officials are often abusing their positions to exert influence on their subordinates to receive services that benefit their private interests. This may also take place in the private organisations, where the employees are dependent. This phenomenon is largely driven by the poor conditions of the labor market, whereas many people appear to be vulnerable to external pressures and eager to maintain or get jobs.

Clientelism may particularly take place during the elections in a form of vote buying, contribution to specific political party's campaign, etc. Patronal voting - a distinct form of clientelism – has been rather widespread a few years ago.

In 2017, a study on the political behavior of the Armenian voters showed that the major part of electorate sided with the ruling Republican Party of Armenia and a tycoon-sponsored Prosperous Armenia Party on the basis of "a familial or relational proximity with the party, which then helps them further their economic mobility." Hence, this creates patronal networks around these parties."[290]

The snap parliamentary elections held in December 2018 - merely 1.5 years after April 2017 elections - provided completely different results, as the Republican Party of Armenia, strongly ruling since 2007, did not even pass the threshold to get the seats in the parliament.

Though some signs of patronal voting still exist, this phenomenon has been considerably declined since the revolution of 2018.

Legislation

The Law on Public Service bans public officials and servants from using their official position to provide actual benefits or privileges to political parties, public organisations, including religious groups. Article 311-2 of the Criminal Code of Armenia bans the use of real or alleged influence for personal or group interests. Such kind of actions is punished with fines of 200-400 times the minimum salary, or with imprisonment for a maximum term of 10 years, with or without confiscation of property.[291]

Generally, there exist many loopholes and there are not concrete enforcement mechanisms to provide guarantees against clientelism.[292]

Example of case law

On 16 May 2019 the Investigator of the Criminal Investigation Department of the Criminal Investigation Department of the RA Police initiated criminal proceedings against A. B. for the fact that in 2017 in the pre-election stage of the regular elections to the National Assembly he demanded from the voter to participate together with all his family members in the elections to be held on 2 April 2017, and to vote for his candidate, promising to give a bribe, in that case - to provide for free a state-sponsored referral,

preferential medical care and services. A.B. was found guilty and sentenced to a fine in the amount of AMD 2 000 000.[293]

In another case, H.A. has been charged and sentenced to a fine in the amount of AMD 2 500 000 for the fact that in 2017 in the pre-election stage of the regular elections to the Yerevan Community Council, gave bribes to the voters in order to vote for the Republican Party of Armenia.[294]

In 2020, the National Security Service of Armenia brought charges against former MP G.T. under Article 154.2 of Armenia's Criminal Code, for vote buying, accepting a bribe in return for a vote, violating the ban on charity during elections, or obstructing the free will of the voter in the 2017 Parliamentary elections.[295] The basis of these charges is an accusation by the Prosecutor General of RA that G.T. lead an organised group that bought more than 17 000 votes for his Prosperous Armenia Party during April 2017 parliamentary elections. Investigators uncovered piles of handwritten and signed letters from prominent MPs from G.T.'s political team formally pledging to provide him with a desired number of votes by any means necessary for the 2017 parliamentary election.[296]

4.6. NEPOTISM

Nepotism is the exploitation of an official position to unfairly benefit a family member or friend (e.g. through giving a job or favour). Nepotism, and other forms of favouritism, results in local and regional authorities not having access to the brightest and best talent. This in turn creates a fertile environment for further corruption and reduces the efficiency and effectiveness of the administration.

International standards

As one type of corruption, nepotism is covered by the following international standards and guidelines:

- The **United Nations Convention against Corruption**[297] is the only legally-binding universal anti-corruption instrument.
- It is supported by this **Technical Guide to the Convention.**[298]
- The **Council of Europe's Criminal Law Convention on Corruption (ETS No. 173)**[299] aims to co-ordinate criminalisation of corrupt practices and to improve international co-operation in the prosecution of offences.
- The **Council of Europe's Civil Law Convention on Corruption (ETS No. 174)**[300] defines common international rules for effective remedies for persons affected by corruption.
- The **European Union's Convention against Corruption Involving Officials**[301] aims to fight corruption involving officials from the EU or its Member States.
- The **Council of Europe's Governance Committee report, Nepotism (Recruitment of Staff)**[302] sets out standards for good practice and presents strategies for preventing corruption in the recruitment procedures of local and regional governments.

Domestic context

In Armenia, favouritism in the form of nepotism and cronyism is considered a governing problem – widespread at both central and local levels.

According to public opinion survey of 2019, 87-98 % of respondents did not encounter corruption when dealing with government officials. At the same time, 42% - the largest portion of respondents

- thought that the most common current form of corruption is favouritism, including nepotism and cronyism. In comparison to the data from 2010, the prevalence of favouritism within other forms of corruption is now about 22 % higher than before and obviously more noticeable.[303]

Legislation

Currently, there is no legislation that would explicitly prohibit or criminalise nepotism in Armenia. Nevertheless, the necessity of fair hiring practices is stipulated in the Law on Public Service of Armenia, which also provides several indirect regulations and limitations of nepotism.

Article 32 of the Law on Public Service prohibits public officials to be in direct subordination or have under direct subordination any persons related to them by close kinship or guardianship. Failure to comply with the prescribed restrictions will result in disciplinary action for public officials and public servants. The provisions on disciplinary liability do not apply to officials holding political office and may be applied to officials holding autonomous positions only in cases provided by law.[304]

Article 39 of the "Content of the Declaration" chapter of the Law on Public Service defines the general data on the declaring official, his / her family composition and persons related by close kinship and guardianship. Article 42 of the Law on Public Service (Declaration of Interest) requires the incumbent to declare participation in commercial or non-commercial organisations, management of commercial or non-commercial organisations, representation in administrative or supervisory bodies, transfer of a commercial organisation's share to trust management, membership in parties and their management, representation in the supervisory or administration bodies, information on his / her or his / her family members' representation, as well as information on the agreements concluded with the Republic of Armenia or the communities by the organisations with their participation.[305]

Article 32 of the Law on Public Service also sets prohibitions for the persons holding public office and public servants, as a representative of the state, to conclude property transactions with persons related to them by close kinship or guardianship, except for the cases provided by the legislation of the Republic of Armenia.[306]

Example of case law

The names of members of the current government are often linked to corruption through nepotism. For example, there were repeated publications about the business interests of the Minister of Health of the Republic of Armenia and her spouse. In particular, it is known that the company owned by Minister's husband has signed 240 contracts with 44 state institutions in recent years, worth about AMD 606 700 000, more than half of which - 137 contracts during her spouse's tenure as Deputy Minister.

In April 2021 the Investigative Journalists of Armenia (Hetq) published an investigation revealing nepotism in the RA Government. Deputy Prime Minister T.A.'s friends and their friends have been appointed to various positions in the "Road Department" SNCO since 2020. One of them has been appointed as a General Director of the SNCO. The childhood friend of the General Director of the "Road Department" SNCO has been appointed as a Deputy General Director of the SNCO. Another friend of his has been appointed as an Advisor to the General Director of the SNCO.[307]

4.7. MISUSE OF ADMINISTRATIVE RESOURCES IN ELECTION CAMPAIGNS

The misuse of administrative resources[329] during the electoral processes involves unlawful or abusive behaviour on the part of politicians and civil servants, who use human, financial, material, in natura and other immaterial resources to influence the outcome of elections, and thus undermine the fairness of the election itself.

International standards

Armenia has ratified the following treaties and is therewith committed to abide by the following treaties and hard law instruments:

- The **United Nations International Covenant on Civil and Political Rights**[308] (Articles 19, 21, 22 and 25), further elaborated in paragraph 25 of the Human Rights Committee's General Comment No. 25.[309]
- The **Council of Europe's European Convention on Human Rights (ETS No. 5),** in particular Articles 10 and 11, and Article 3 of the **Protocol No. 1** to the Convention **(ETS No. 9).**[310]
- The **United Nations Convention against Corruption**,[311] in particular Articles 7, 17 and 19.
- The **Council of Europe's Criminal Law Convention on Corruption (ETS No. 173).**[312]
- The **Council of Europe's Civil Law Convention on Corruption (ETS No. 174).**[313]

The misuse of administrative resources during electoral processes is covered by the following international standards and guidelines:

- The **Council of Europe's Venice Commission and the OSCE/ODIHR Joint Guidelines for Preventing and Responding to the Misuse of Administrative Resources during Electoral Processes**[314] specifies a series of measures and laws to be adopted in that regard.
- The **Council of Europe's Venice Commission report on the Misuse of Administrative Resources during Electoral Processes.**[315]
- The **Congress of the Council of Europe's Resolution 402 (2016)** on "The misuse of administrative resources during electoral processes: the role of local and regional elected representatives and public officials" and its Explanatory Memorandum.[316]
- The **Congress of the Council of Europe's Resolution 401 (2016)** on "Preventing corruption and promoting public ethics at local and regional levels" and its Explanatory Memorandum.[317]
- The **Congress of the Council of Europe's Checklist** for compliance with international standards and good practices preventing misuse of administrative resources during electoral processes at local and regional level.[318]
- The **Congress of the Council of Europe's booklet on *Administrative Resources and Fair Elections provides practical examples and guidance.***[319]

Domestic context

Public trust in elections in Armenia used to be very low. According to a Gallup survey in 2011, only 13% of women and 12% of men believed in the honesty of elections.[320] The OSCE Office for Democratic Institutions and Human Rights (ODIHR) final report on the 2017 parliamentary elections in Armenia urged authorities and political parties to increase public trust in elections.[321] Low level of trust in the electoral system was mostly explained by the widespread electoral fraud lasted for about two decades both at the national and local levels to achieve the favourable results. Reports of both national and

international observation missions kept recording multiple violations and making recommendations for policy change.

Major turn in the electoral practices happened only after the velvet revolution of 2018, when the new political leadership developed a favourable legislative framework and supported environment for the expression of the free will of citizens.

The Organization of Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) final report on the 9 December, 2018 early Parliamentary elections, found that the election held enjoyed the protection of fundamental freedoms and were widely enjoyed by the public trust.[322] The delegation of the Parliamentary Assembly of the Council of Europe (PACE) too concluded that the mentioned elections were held with due regard for fundamental freedoms and enjoyed broad public trust that needs to be preserved through further electoral reforms.[323] For the first time in many years the elections were assessed by the major local observer initiatives – Akanates and Independent Observer, as truly competitive, free and fair.[324]

The national and international observation mission reports on the Snap Elections to the RA National Assembly on 20 June 2021 showed that numerous manifestations of abuse of administrative resources several political parties or alliances, including coercion to participate in or refuse to participate in rallies and obstruction of the exercise of the voter's free will took place.[325] The OSCE / ODIHR Statement of Preliminary Findings and Conclusions of 20 June 2021 Early Parliamentary Elections in Armenia, found that allegations of the misuse of administrative resources also persisted throughout the campaign.[326] Nevertheless, the elections were generally assessed as competitive and free that allowed for the full exercise of the citizens will.

Legislation

Armenian legislation on the regulation or prohibition of use of administrative resources during the election campaigning, remains deficient, even though the legal framework has been recently modified and largely improved.

Article 23 of the Electoral Code of Armenia establishes restrictions for the election campaign, including the prohibition of the use of administrative resources. The code states that candidates who are public servants shall not campaign when undertaking official duties. They also cannot abuse official position in the interest of their party. The law also restricts the use of resources that are given to public officials to implement their official duties. It is forbidden to use the premises, means of transport, means of communication, material and human resources provided for the performance of official duties for the purpose of pre-election campaign. [327]

Example of case law

On 8 June 2021 the Deputy Governor of Lori Province visited Katnaghbyur and Urasar villages of Stepanavan consolidated community during working hours, in order to campaign for the ruling "Civil Contract" Party. He had a meeting of a campaign nature with the teachers and other residents in the school hall, asking the pupils who had not yet finished their lessons at that time to get out of the school building.

In another case, on June 9, by the decision of Goris community deputy mayor, 115 residents were provided with financial assistance in the amount of AMD 6 130 000 from the community budget. In the list of beneficiaries there are also residents of Tegh and Tatev communities. It is noteworthy that compared to the previous quarters, the volumes of financial aid in Goris community have sharply increased.

One more example of misuse of administrative resources is that on 12 June 2021 the heads of "Gazprom Armenia" CJSC's Stepanavan and Tashir regional stations forced their employees to participate in rally of "Armenia" Alliance. The employees of Tashir station were also forbidden to participate in the rallies held by the "Civil Contract" Party on 10 June 2021.[328]

CONCLUSION

Local government plays a critical role for the well-being of citizens, delivering services, and providing the first point of contact between people and public administration. The proximity with citizens can help ensure that public authorities and services are truly responsive and accountable, improving people's lives and their trust and confidence in local institutions. However, the very qualities that make local and regional governments so important to citizens can also make it more prone to corruption.

Local governments in Armenia/Eastern Europe are taking important strides in improving the legal framework towards more open and inclusive decision-making. However, on a practical level, local government units should translate laws and policies into practice and increase their efforts to ensure transparency, accountability and meaningful participation of citizens in policy- and decision-making. As well as being important qualities of local democracy, transparency and civic participation can help deliver effective public services, combat and prevent corruption, and build citizens' trust in government.

The mechanisms outlined in this handbook present a variety of ways in which local and regional authorities can prevent corruption, reduce its risks, and develop effective and accountable institutions at all levels. Other reforms, such as protection of whistle-blowers and support for independent media and civil society, are also critical to building open government, public ethics and accountability. An effective approach to rooting out corruption could be through reporting by public officials, the media and civil society, who need to feel confident that they will be listened to and protected.

The Congress of Local and Regional Authorities of the Council of Europe is committed to supporting local governments in their efforts to improve the quality of local democracy, prevent corruption, increase ethics and public accountability, and promote transparency and citizen participation.

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This handbook aims to support local and regional authorities in their efforts to make communities more open, ethical and citizen-oriented. It provides easy access to relevant international standards and domestic context, legislation, case law, guidelines and examples of good practice relating to public ethics, accountability, transparency, and citizen participation. It also includes a concise assessment of the most prevalent corruption risks.

Effective application of tools to promote transparency and citizen participation, coupled with stronger accountability and public ethics, can help to drive out corruption and government malpractice. They help governments to draw on the skills, knowledge and experience of citizens to enable more informed decision-making, early identification of negative impacts of prospective policies, greater ownership of the resulting decisions, and the delivery of more effective public services.

The Handbook is also available online and as part of the bE-Open online tool.

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The Council of Europe is the continent's leading human rights organisation. It comprises 46 member states, including all members of the European Union. The Congress of Local and Regional Authorities is the institution of the Council of Europe, responsible for strengthening local and regional democracy in its member states. Composed of two chambers – the Chamber of Local Authorities and the Chamber of Regions – and three commitees it brings together 612 elected officials, representing more than 130,000 local and regional authorities.

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