



TRANSPARENCY INTERNATIONAL
anti-corruption center



EUROPEAN NEIGHBOURHOOD POLICY

MONITORING ARMENIA'S
ANTI-CORRUPTION COMMITMENTS 2010

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Executive summary

This report assesses the degree to which the Armenian Government has complied with its 2006 European Neighborhood Policy (ENP) commitments. The report monitors progress made throughout 2010 in addressing judicial reform, civil service administration and the fight against corruption (as defined by compliance with GRECO recommendations). These policy areas constitute the first priority area of the EU/Armenia Action Plan. Generally, little change took place over this period, particularly in the areas of the judicial reform and civil service administration.

Objectives	2009 Compliance Score	2010 Compliance Score
Strengthening the Judiciary	46/64 (71.8%)	46/64 (71.8%)
Civil Service Reform	25/50 (50%)	25/50 (50%)
Implementation of GRECO	10/26 (38.4%)	19/26 (73.1%)

Judicial Reform

- The key problems for the Armenian judiciary remain its independence and transparency.
- In 2010, a lack of human, technical and financial resources had a more pronounced impact this year, due to the economic crisis and a decrease of donor funding.
- The only policy change to occur in 2010 was the adoption of the “Rules of Conduct of Judges”, which strengthened the code of conduct for judges laid down in the Judicial Code. However, as the public service ethics regulations remain inadequate and no enforcement mechanism is in place, this legal improvement has had little impact.
- With almost no changes in 2010, it is not surprising that according to TI’s 2010 Global Corruption Barometer (GCB) the judiciary is perceived as the second (tied with police) most corrupt institution in Armenia. In 2009 it was perceived as the most corrupt institution.

Public Sector Reform

- Absence of independence, lack of transparency, high level of politicization, and gaps in the implementation of procurement regulations are still in place in the Armenian civil service system.
- No legal provisions exist ensuring regular training of civil servants and no legislation has addressed whistle-blower protection.
- Reforms in civil service system during 2010 remain static. While some legal improvements took place, in the procedure of appointment and promotion of civil servants, the legal regulation was already close to full compliance. The further improvements have simply widened the gap between legal acts and enforcement.
- In 2010 minor changes took place in the public procurement system. The formal rules aimed at ensuring objectivity of the contractor selection process were slightly improved. However, these changes did not affect the selection process.
- On a positive note the Armenian Parliament passed a new Law on Procurement, which entered into effect on January 1, 2011. The new law is viewed as a positive development, which may address deficiencies, mentioned in the 2009 report, in 2011.
- The GCB survey contends that public officials/civil servants are perceived almost as corrupt as judges and the police.

GRECO Implementation

- This area was more successful in 2010.¹ However, this can be misleading as GRECO recommendations are of a largely legal character. Specifically, they aim to improve anti-corruption legislation regulating human resources, the public sector, and the judiciary.

The problems of GRECO implementation are connected with the substantial delay in the adoption of the Law on Public Service², which will unify diverse types of state and municipal service, regulated by separate laws.

Additionally, the absence of a unified conflict of interest guideline for all public officials and failure to establish criminal liability for legal persons, incriminated in corruption.

¹ As it has been mentioned in the Armenia's 2009 ENP Monitoring Report, 12 GRECO recommendations for Armenia were evaluated in the 2008 Compliance Report on Armenia (made public on November 4, 2008) as "not implemented" or "partially implemented". GRECO requested from Armenia additional information on their implementation, which Armenian authorities provided on December 23, 2009. Based on the provided information, as well as other information, provided by Armenian authorities later, GRECO, at its 47th Plenary Meeting (Strasbourg, 7-11 June 2010), adopted the Addendum to the Compliance Report on Armenia regarding the country's Joint First and Second Evaluation Round (hereafter - Addendum). As it is mentioned in the document: "The adoption of the present Addendum to the Compliance Report: "The Armenian authorities may, however, wish to inform GRECO of further developments with regard to the implementation of recommendations XV, XVI, XVII, XVIII, XIX and XXII." However, it remains unclear the mechanism of the mentioned informing.

² On April 14, 2010 Armenian Government submitted the draft of the Law on Public Service to the National Assembly. The Law is aimed to create in Armenia a unified system of public service, which will include civil service, diplomatic service, service in police and all other types of state service, as well as municipal service, which currently are regulated by separate laws specific to those services. On June 2, 2010 the draft was first included in the NA 2010 spring regular session agenda, and later on June 7 - into the NA extraordinary session. On June 24 the draft was adopted in the first reading. However, as it has been revealed from NA web-site (see http://www.parliament.am/draft_history.php?id=4182 on the current status of the draft), the discussion of the draft in second reading was postponed twice. First, it was postponed for 60 days at the September 14, 2010, opening meeting of the NA 2010 fall session, and then for 90 days at the February 7, 2011, opening meeting of the NA 2011 spring session.

Recommendations

In order to deliver on its ENP commitments, and improve the governance situation, Transparency International encourages the government of Armenia to carry out the following recommendations:

Judicial System

- Strengthen the enforcement of existing legislation. As can be seen from the scores assigned to the sub-objectives, it often occurred that the “law” indicator of a sub-indicator is scored higher, than its “practice” indicator (see, for example, Sub-Objective One issues related to the security of tenure of judges, assignment of cases to judges, protection of judges from external interference or improper influence.). This is evidence of poor enforcement of legal requirements, which, in theory, comply with international standards and yet are inadequately implemented, either because of a lack of political will to enforce them, or the inadequacy of sub-legislation. This recommendation also applies to the field of **Civil Service**.
- Considering the fact that the power to approve or reject any candidate for appointment or promotion in the judiciary is vested with the President by power of the Constitution, and introducing changes and amendments to the Constitution is a rather lengthy process, which is completed by popular referendum, TI recommends that the process pertaining to the selection of judges by the Council of Justice be made more transparent. This could be achieved by recording the minutes of relevant meetings of the Council and posting the material on the judiciary’s web-site: www.court.am. This would be especially helpful, when the candidates for appointment or promotion are former police officers or prosecutors.
- Require the Council of Justice to publicly respond to all cases of disputed decisions and verdicts passed by judges, which are reported in the media.
- Amend the Decision #10-L of 2009 of the RA Council of Chairs of the Courts to establish ad hoc committees in courts responsible for assigning cases to judges.
- Increase the number of public defenders and extend the application of the public defender system to all civil cases (currently they are used only in criminal and certain types of civil cases).
- Increase the remuneration offered to interpreters who render their services in criminal cases, make stricter their criteria for selection, and expand provision of interpretation services at the expense of the state for civil cases.
- Introduce a provision in the Judicial Code explicitly ensuring interpretation for deaf persons.
- Financing of the judiciary should increase proportionally with the increase of the state budget; however, it should not decrease in case the state budget decreases.
- Specify the term “reasonable time” for passing court rulings in the relevant articles of the Criminal Procedure and Civil Procedure Codes.
- Introduce legal provisions in the Criminal Procedure Code and Civil Procedure Code, requiring judges to submit written justification to interested parties and media concerning orders to remove attendees from the courtrooms or bar audio- or video-recording of court sessions.
- Require assignment of large courtrooms for high profile cases to accommodate enough interested people.
- Amend the Judicial Code to allow for the posting of all court verdicts and decisions on the judiciary’s official web-site – www.court.am and ensure that this amendment is properly enforced.
- Ensure that in practice the Republic of Armenia Official Bulletin publishes all judicial acts of the Court of Cassation.
- On the judiciary’s official web-site provide statistics on the sanctions imposed on judges for unethical behavior.

*Civil Service:*³

- Introduce and strictly apply rules preventing conflict of interest for the members of selection and recertification committees.
- Develop and include in the Law on Civil Service clear criteria for the final selection of short-listed candidates.
- Conduct open investigation by the Civil Service Council on cases of politically-motivated dismissals reported by the media.
- Introduce mechanisms and structures for the effective and timely verification of information contained in the declarations of income and property submitted by civil servants and simplify public access to this information.
- Increase the wages of civil servants, especially those on leading and junior positions.
- Improve the quality of training provided to civil servants.
- Introduce training on ethics and conflict of interest for civil servants.
- Explore possibilities to improve the image of whistle-blowers in civil service.
- Introduce a comprehensive code of ethics and conflict of interest regulation for public officials, including civil servants.

GRECO:

- Adopt the Law on Public Service. Its adoption will enable the Government of Armenia to;
 - issue guidelines for use by public officials when confronted with situations of conflict of interest. In the final draft of the Law include a provision, which will make these guidelines applicable to all public servants;
 - introduce a system for verifying declarations of property and income in respect of all public officials;
 - reduce the value of gifts that may be accepted by public officials. In the final draft of the Law include a provision, which will enable reporting of any gifts.
 - introduce a unified code of ethics for public administration. In the final draft of the Law include such a code as a chapter, rather than leave its future adoption to the Government;
 - introduce clear rules and guidelines when training public officials, obliging them to report instances of corruption, as well as establish adequate protection for whistle-blowers.
1. Establish the liability of legal persons for offences of bribery and money laundering.

³ It should be mentioned that many of the listed below recommendations are repeated in the GRECO recommendations and their implementation is contingent upon the adoption of the Law on Public Service. Also, considering the fact that a new law on Procurement entered into effect from January 1, 2011, there is no need for recommendations on the procurement. Such recommendations will be developed after some period of implementation of the new Law.

Background

The European Neighbourhood Policy (ENP) is a framework for bilateral agreements between the European Union (EU) and its neighbours to the south and east. The ENP's stated goal is to avoid "the emergence of new dividing lines between the enlarged EU and our neighbours and instead strengthening the prosperity, stability and security of all concerned". Within the framework of the ENP, "Action Plans" are designed to outline the specific commitments of the state in the context of its relationship with the EU. While many policy areas are covered by Action Plans (e.g. environmental and energy policies, immigration and border control, human rights, economic development, conflict resolution), anti-corruption and good governance feature prominently. Armenia adopted an action plan in 2006 which was the continuation of the earlier signed EU-Armenia Partnership and Cooperation agreement. The Action Plan laid out a series of targeted reforms to be achieved between 2006 and 2011. The reforms aim to push Armenia towards a more democratic and lawful society, with legal and economic systems pegged to European and international standards.

Through its Action Plan, the Armenian government has accepted a set of reform goals and a series of benchmarks against which they can be judged. As such, continuous assessment of Armenia's implementation of the Action Plan has been essential to the development of the ENP process, and the reform agenda itself. Armenian civil society organizations (CSOs) have been at the centre of this process. Additionally, the European Commission published assessments in April 2008 and April 2009.

This report considers three main elements of the Armenian reform agenda: (1) the legal and judicial process; (2) reforms of the civil service; and (3) implementation of international anti-corruption conventions.

The first two areas are considered to be a particular source of concern in Armenia. A well-functioning judiciary is vital for the promotion of democracy, human rights and economic growth. The civil service is similarly important, as it is at the core of the government's ability to deliver on its responsibilities, including social services and protections.

Finally, as corruption is a poison to any reform process and is corrosive to efficiency and equality in public and private life, an anti-corruption strategy was central to the Action Plan. While many aspects of the government's anti-corruption strategy have been successful, it is clear that continued vigilance is essential. Therefore, the ENP Action Plan's requirement to implement the recommendations of the Council of Europe Group of States against Corruption (GRECO) remains highly relevant.

Monitoring & Methodology

While the European Commission (EC) carries out periodic reviews of ENP implementation, many civil society organisations, including TI national chapters, have been actively monitoring government compliance. Historically, the impact of this work has been somewhat limited, due to a lack of analytical monitoring framework, clear benchmarks and timelines. This report seeks to maximize the impact of monitoring efforts by using an indicator-based framework to assess progress in the ENP areas related to governance and anti-corruption activities. It is the second annual report on ENP implementation, the first having been published in May 2010.

The indicators were developed by the Transparency International Secretariat, in consultation with TI national chapters in Armenia, Azerbaijan and Georgia. In developing the indicators the wording of each Action Plan was analyzed and common objectives related to governance and anti-corruption activities were identified. Three core areas emerged: judicial reform, public sector administration and implementation of international anti-corruption conventions. For each of these objectives, specific sub-objectives were identified in line with the principles of independence, transparency, accountability and integrity. Based on international standards and best practices relevant indicators were developed. The scoring systems allows for aggregation across indicators to obtain an overall score for each dimension. The scores are complimented by qualitative analysis.

The data on which this assessment is based was collected using a desk review of legislation and relevant policy documents, as well as interviews with key stakeholders conducted between February and March, 2011.⁴ The report covers progress of the ENP Action Plan implementation until December 31, 2010. Legal acts adopted in 2010, but entered into effect in 2011 are not reviewed, and, consequently, no data was collected on their enforcement.

⁴ Transparency International Anti-corruption Center requested interviews with all those interviewees, who were interviewed last year, but in most cases these requests were denied on the grounds that no changes took place in 2010 in the areas, on which they were interviewed previously.

General Update for 2010

In Armenia the year 2010 was uneventful for reform in general, and specifically those related to the judiciary and civil service. Several factors contributed to the current situation:

- Generally, in Armenia, reforms take place on the eve of elections or in their immediate aftermath. As there were no national or local elections in Armenia, this driving force for reforms was absent.
- Armenia experienced no instances of key appointed decision-makers resigning or being dismissed. However, a string of high profile dismissals did occur at the end of the year - Justice (December 9), Finance (on December 17), Economy (on December 17) or Agriculture (on December 31) – but not in time to result in any substantial change.
- The global financial and economic crisis, which badly hit Armenia, is another explanation for slowly evolving reforms. The country's GDP declined by 15.4% in 2009 (see official data from Armenia's National Statistical Service at www.armstat.am). As a result, the state budget for 2010 was smaller than in 2009 and allocations to target areas were substantially smaller. For example, in 2010 the Judicial Department received only 9,234,755,700 Armenian Drams (25.4 mln USD⁵), whereas in 2009 it received 10,339,849,300 AMD (28.5 mln. USD). Moreover, the Armenian economy did not recover in 2010, instead entering a phase of stagflation (stagnation combined with high level of inflation).⁶ Finally, Armenia received a decrease of financial and technical aid from donors, further diminishing the capacity of state institutions, including the judiciary and civil service system.
- A number of important drafts of laws and codes were either non-adopted (for example, the draft of the Law on Public) or were adopted at the end of 2010 (for example, the Law on Procurement). Thus, some very important legal changes, which should have occurred in 2010, as the Armenian authorities were promising, were moved to a later time.

⁵ The exchange rate applied in the Report is the official rate set by Central Bank of Armenia as of December 30, 2010, which was 363.44 AMD for 1 USD.

⁶ According to Armenia's National Statistical Service (see <http://www.armstat.am/file/doc/99462593.pdf>), GDP growth (2.6%) in 2010 was more than offset by higher rate of inflation (8.2%).

Objective one: Strengthening the Judiciary

	2009 Compliance Score	2010 Compliance Score
Overall Score	46/64 (71.8%)	46/64 (71.8%)

Sub-Objective	2009 Compliance Score	2010 Compliance Score
<i>Independence of Judiciary</i>	19/24 (79%)	19/24 (79%)
<i>Judicial Human Resources</i>	2/2 (100%)	2/2 (100%)
<i>Access to Justice</i>	2/4 (50%)	2/4 (50%)
<i>Judicial Resources</i>	4/8 (50%)	4/8 (50%)
<i>Transparency</i>	8/12 (66.6%)	8/12 (66.6%)
<i>Enforcement</i>	6/8 (75%)	6/8 (75%)
<i>Judicial Integrity</i>	3/4 (75%)	3/4 (75%)

Sub-Objective One: Ensure Independence of Judiciary

Indicators: To what extent are there legal provisions in place requiring that the selection and promotion of judges is based on merit?

Compliance Score: 1

2010 Updates:

No new developments in this area. The major reason for partial compliance of this sub-indicator, mentioned in the 2009 report, was that “the president is authorized to approve or disapprove any candidate and actually intervene in the selection process of the Council of Justice; (therefore) there is no guarantee that selection is always based solely on merit.” The mentioned presidential power is committed by the Constitution, thus, any improvement is only possible through a constitutional amendment.

2009 Note:

The procedure for the appointment of members of the Constitutional Court is defined by Article 1 of the Republic of Armenia (RA) Law on the Constitutional Court. Article 3 of the same law defines the requirements for membership in the Constitution Court. These include: high level of education, minimum 10 years of work experience, work experience in state or educational institutions in the legal area, high moral standards, etc.

Article 115 of the RA Judicial Code sets out the professional criteria that judges must meet, and Articles 115-117 of the code specify the procedure for appointing judges. The promotion of judges is regulated by professional, organisational, ethical, and other similar requirements named in Article 135 of the same code.

In detail, the selection process includes the following steps:

- The Governing Council of the RA Judicial School submits to the RA Council of Justice a list of the 16 candidates who received the highest scores (see Article 116 of RA Judicial Code).
- The Council of Justice reviews the list and invites candidates for interviews (see Article 117 of the code).
- The 13 members of the Council of Justice vote (each member has the right to vote up for 10 candidates).
- The RA president approves the list of candidates.

Some legal experts believe that because the president is authorised to approve or disapprove any candidate and actually intervene in the governing process of the Council of Justice, there is no guarantee that selection is always based solely on merit.

The US State Department's 2009 Human Rights Report on Armenia expressed concern that the RA president retains "a highly influential role over judicial branch personnel" (see p. 7) in the process of nominating candidates for judgeships. This concern is also voiced in one of the ENP monitoring reports (see "Armenia's ENP Implementation in 2009", Partnership for Open Society, 2009, Yerevan, pp. 8-9).

Sub-Objective One: Ensure Independence of Judiciary

Indicators: In practice, to what extent is the selection and promotion of judges based on merit?

Compliance Score: 1

2010 Updates:

No new developments in this area. This was confirmed by the same advocate, who was interviewed last year.⁷

2009 Note:

According to the RA Judicial Department, the selection and promotion of judges is performed based only on legal regulations, in particular, on factors specified by relevant articles of the Judicial Code.

However, in the opinion of the interviewed advocate⁸, judges are not always selected and promoted on the basis of merit: while some of the judges he has worked with demonstrate a high level of professional knowledge, others are far less knowledgeable.

As indicated in the interview with the former judge⁹, despite some progress in establishing a judiciary school, the appointment and promotion of judges continues in many cases to be based on patronage, kinship and personal contacts rather than on merit.

Both a former judge¹⁰ and one of the interviewed legal experts¹¹ pointed out the problem that most current judges have a background as prosecutors or in the police force. This affects their performance quite negatively, as they retain old habits of thinking. That is, they still see the trial from the point of view of a prosecutor or investigator, even if they have been re-trained as judges. As a result, many judges seek to satisfy the prosecutor of a given case rather than to execute justice.

Another interview was conducted with the former prosecutor¹², who confirmed that the use of political affiliation, bribery, kinship and other illegal and unethical means to gain a judgeship is a widespread practice.

Sub-Objective One: Ensure Independence of Judiciary

Indicators: To what extent are there legal provisions which provide for security of tenure (to prevent judges from being threatened with arbitrary termination of their contract)?

Compliance Score: 2

2010 Updates:

No new developments in this area.

⁷ Interview of the project researcher with Ruben Sahakyan, Chair of the Chamber of Advocates of Armenia.

⁸ Interview of the project researcher with Ruben Sahakyan, Chair, the Chamber of Advocates, Yerevan, 2 March 2010.

⁹ Interview of the project researcher with a former judge, Yerevan, 18 March 2010.

¹⁰ Ibid.

¹¹ Interview of the project researcher with Hrayr Ghukasyan, Law Professor, Yerevan State University, Yerevan, 31 March 2010.

¹² Interview of the project researcher with a former prosecutor, Yerevan, 23 March 2010.

2009 Note:

According to Article 96 of the RA Constitution, judges and the Constitutional Court members are appointed on a permanent basis, with the appointment running until the judge reaches the age of 65. Their powers are terminated only in cases and procedures specified by the constitution and laws. Articles 95 and 97 of the RA Constitution provide that no judge or member of the Constitutional Court can be held liable without agreement with the Constitutional Court or the Justice Council, respectively.

Article 10 and Article 14 of the RA Law on the Constitutional Court protect members of the Constitutional Court from arbitrary termination. Article 12 of the same law specifies the immunity of members of Constitutional Court. According to Article 14, the powers of the Constitutional Court member can be terminated in certain cases including death, loss of Armenian citizenship, resignation, court decision on the judge's inability to perform his/her duties, and violation of the law.

According to Article 14 of the RA Judicial Code, judges cannot be replaced. Article 13 of the same code specifies the procedure for detaining a member of the judiciary, involving him/her as a defendant, or exposing him/her to administrative liability.

Sub-Objective One: Ensure Independence of Judiciary

Indicators: In practice is it the case that judges are not removed from office for anything other than misconduct or incapacity to carry out judicial functions?

Compliance Score: 1

2010 Updates:

No member of the Republic of Armenia (RA) Constitutional Court has been removed from office in 2010 for questionable motives. However, two members did leave the Court. One retired and the other passed away. Despite the official announcements, opposition media reports that the latter was forced to resign because of his unethical behavior (see *Haykakan Zhamanak* daily for October 28, 2010).

2009 Note:

No case of early removal of a member of the RA Constitutional Court from office has been recorded.

Formally, no judge has been removed for reasons other than those envisaged by the law. According to the interviewed legal expert, four cases of removing judges from office have been recorded over the last three years, of which two were due to disease hindering the judges' further official activity and two were disciplinary sanctions for poor performance of professional duties, such as unjustified delay of a court case or application of non-adequate sanction (see respectively www.court.am/files/news/411_am.pdf and *Aravot* daily, 2 May 2006).

One of the removed judges claimed that proper removal procedures had been violated and another claimed political repression. Experts and legal practitioners are not united on these matters; some find the removals justified, while others do not. For example, the former prosecutor strongly believes that all dismissals are results of personal revenge or political repression.

The media have noted that disciplinary proceedings against one of the judges were initiated shortly after he set free two businessmen who had accused high-level officials of corruption and had later been controversially prosecuted by Armenian authorities (see www.azatutyun.am/content/article/1590615.html, www.panorama.am/am/law/2007/09/26/ohanyan, www.a1plus.am/am/politics/2007/09/27/20420).

Sub-Objective One: Ensure Independence of Judiciary

Indicators: To what extent are there legal regulations in place to ensure that judicial salaries are comparable to those of other high level government employees?

Compliance Score: 2

2010 Updates:

No new developments in this area.

2009 Note:

The official salary rates of judges and members of the Constitutional Court are specified by Article 2 of the RA Law on Official Salary Rates of High-Level Officials of the RA Legislative, Executive and Judicial Authorities.

According to Article 9 of the same law and Article 64 of the Judicial Code, the official salary rate of judges of the common jurisdiction courts is defined each year by a separate article of the Law on the State Budget (see Article 9 of the RA Law on the 2009 State Budget and the same for 2010). The official salary rates of judges of the Court of Appeal and the Court of Cassation are specified by Article 75 of the RA Judiciary Code. The same article also specifies the bonuses that can be applied to official judicial salary rates.

Sub-Objective One: Ensure Independence of Judiciary

Indicators: In practice, are judicial salaries comparable to the salaries of other high-level government employees?

Compliance Score: 2

2010 Updates:

No new developments in this area.

2009 Note:

Judicial salary rates are normally higher than those of other high-level government employees. Thus, Article 1 and Article 2 of the RA Law on Official Salary Rates of High Level Officials of the RA Legislative, Executive and Judicial Authorities provide that the Constitutional Court chair receives a monthly salary rate of 680,000 AMD (~ US \$1,871), and the Constitutional Court members receive 600,000 AMD (~ US \$1,651) per month.

Meanwhile, according to the aforementioned law, the RA president and the RA prime minister have the official salary rate of respectively 440,000 AMD (~ US \$1,211) and 340,000 AMD (~US \$936) per month, which is comparable to the monthly official salary rate of judges of the RA common jurisdiction courts equal to 440,000 AMD (~ US \$1,211) (see www.minfin.am/up/budget/0.BADGET.LAW.2010.naxagic-%2003.12.09.pdf).

Sub-Objective One: Ensure Independence of Judiciary

Indicators: Is the judiciary legally entitled to propose, allocate and manage its own budget?

Compliance Score: 2

2010 Updates:

No new developments in this area.

2009 Note:

According to Section 1 of Article 64 of the RA Judiciary Code, courts are funded through the Judicial Department of the Republic of Armenia, within the expenditures set out under the state budget.

Funding of the central body and the separate subdivisions is reflected in the budgetary proposal and in the state budget in a separate line – “courts of the RA”. The same article specifies the budgeting procedure for the judicial system.

Thus, courts are funded by a separate line within the expenditures stipulated in the state budget. At the same time, a court decides at its own discretion how to handle the provided funds.

According to Article 7 of the RA Law on the Constitutional Court, the chair of the Constitutional Court submits the estimated expenses of the Constitutional Court to the government for inclusion in the draft state budget.

Sub-Objective One: Ensure Independence of Judiciary

Indicators: In practice, does the judiciary propose, allocate and manage its own budget?

Compliance Score: 2

2010 Updates:

No new developments in this area.

2009 Note:

According to the RA Judiciary Department, the legal provisions described above are implemented in practice.

Sub-Objective One: Ensure Independence of Judiciary

Indicators: To what extent are there regulations regarding the assignment of cases to judges by an objective method administered by the judiciary?

Compliance Score: 2

2010 Updates:

No new developments in this area.

2009 Note:

This process is regulated by Decision #10-L of 2009 of the RA Council of Chairs of the Courts. According to that decision, cases are distributed by district and street among judges examining civil cases within a particular judicial territory, and the territory assigned to a judge changes each year; distribution of cases among judges examining criminal cases is performed pursuant to the reference numbers of the registered cases, in accordance with the reference numbers of the judges' stamps.

Sub-Objective One: Ensure Independence of Judiciary

Indicators: In practice, are judges assigned to cases by an objective method, in a process administered by the judiciary?

Compliance Score: 1

2010 Updates:

No new developments in this area.

2009 Note:

According to the reference received from the RA Judiciary Department, judges are assigned to cases as prescribed by the law.

However, the interviewed advocate¹³ mentioned that some subjective factors could affect the process. For example, if workload is an issue then the judge may take on a simple case rather than a complicated one. Another example is when the case is taken because of personal gain, be it an opportunity for professional success or the expectation of a bribe. As a rule, the subjective personal decision of the chair of the court determines how cases are assigned.

The former judge¹⁴ shared this opinion about subjectivity of the assignment process, especially in criminal cases in which the chair of the court is the one who makes a selection.

The former prosecutor¹⁵ shares this opinion with regard to the subjective nature of decisions of the chair of the court in assigning criminal cases.

Sub-Objective One: Ensure Independence of Judiciary – Freedom from Interference
Indicators: To what extent is there a specific legal framework or constitutional provision to protect judges from external interference or improper influence by public officials or private interests?
Compliance Score: 2

2010 Updates:

No new developments in this area.

2009 Note:

Article 97 of the RA Constitution stipulates that “when administering justice, judges and members of the Constitutional Court shall be independent and shall only be subject to the Constitution and the law”.

According to Article 11 of the RA Judicial Code, “It shall be prohibited to interfere with the activities of a judge in any way that is not foreseen by law. Any such act is subject to criminal prosecution. For public servants, it gives rise also to disciplinary liability, up to and including dismissal from office or service in accordance with the procedure stipulated by the relevant laws regulating public service”.

The law imposes on judges positive obligations to inform the Ethics Commission of the Council of the Court Chairmen about such interferences (see Article 11 of the RA Judicial Code). Moreover, failure to do so can lead to disciplinary action (see Article 153 of the RA Judicial Code).

Members of the RA Constitutional Court shall be independent and subject only to the Constitution and to the law when administering constitutional justice (see Article 9 of the RA Law on the Constitutional Court). The Constitutional Court member has no right to seek or receive instructions in the course of court activities. Any exertion of influence on a member of the court in relation to his/her activities is prohibited and shall be prosecuted by law. Moreover, any interference with or influence on a member of the Constitutional Court in relation to his/her activities shall be immediately reported to the Constitutional Court, which can request that the person who interfered and/or organised the interference be held liable.

Article 6 of the same law stipulates that “In case of any illegal effect or danger of such effect on the immunity of the Constitutional Court member, his/her family members, and his/her office or residence space the authorised state bodies have to undertake all immediate necessary measures to provide the security of the Member of the Constitutional Court, his/her family members, and his/her office or residence space following the request of the Constitutional Court.”

Article 301.1 of the RA Criminal Code prescribes criminal liability if the action was directed toward the RA Constitutional Court. Article 332 prescribes a criminal penalty for hindrance to the

¹³ Interview of the project researcher with Ruben Sahakyan, Chair, the Chamber of Advocates, Yerevan, 2 March 2010.

¹⁴ Interview of the project researcher with the former judge, Yerevan, 18 March 2010.

¹⁵ Interview of the project researcher with the former prosecutor, Yerevan, 23 March 2010.

administration of justice in general, while Article 347 defines any threat or violence towards judges in relation to administration of justice or to preliminary investigations as criminally liable.

Sub-Objective One: Ensure Independence of Judiciary – Freedom from Interference

Indicators: In practice, to what extent are judicial proceedings and decisions free of bias or improper influence by public officials or private interests?

Compliance Score: 1

2010 Updates:

No new developments in this area.

2009 Note:

In the opinion of two interviewed lawyers¹⁶, despite existing legal protection of the impartiality of judges and members of the Constitutional Court, the Armenian judicial system as a whole is significantly influenced by the president of the country and other political and non-political actors.

In addition, the general public perceives the judiciary as extremely corrupt (see www.transparency.org/policy_research/surveys_indices/gcb/2009). The media referred to numerous cases of judges taking bribes, making partial, influenced or simply wrong decisions, and distorting the administration of justice (see www.transparency.am/media_archive.php).

As Hovhanness Manukyan, then the Chair of the RA Court of Cassation, said in a media interview, imperfect regulation of the disciplinary liability of judges gives rise to numerous opportunities to put illegal pressure on them (see www.hhpress.am/index.php?sub=hodv&hodv=20080909_1&flag=am).

The US State Department's 2009 Human Rights Report on Armenia also addresses the problems of political pressure on the Armenian judiciary and judicial corruption (see www.state.gov/g/drl/rls/hrrpt/2009/eur/136018.htm). It was particularly noted that "...the courts were widely perceived as corrupt, and potential litigants in civil cases often evaluated the advisability of bringing suit on the basis of whether they or their opponents had greater resources with which to influence judges". In reference to political prisoners and detainees, the report mentioned that most arrests appeared to varying degrees to be politically influenced.

Another report also refers to observations of biased or influenced judicial decisions. The OSCE/ODIHR Final Report on Trial Monitoring in Armenia, Warsaw, March 2010 indicates that in 42% of the monitored hearings the monitors thought that the judges were not impartial. In many of the observed cases, judges manifested a prosecutorial bias. The report says that the perception that judges "walk hand in hand" with prosecutors undermines the impartiality of judges and the judiciary in general (see pp. 84-85).

Sub-Objective Two: Judicial Human Resources Management - Training of Judges

Indicators: To what extent are there legal provisions to ensure that judges are regularly trained in new judicial practices and procedures and new and/or changing laws?

Compliance Score: 2

2010 Updates:

No new developments in this area.

¹⁶ Interview of the project researcher with two lawyers, Yerevan, 31 March 2010.

2009 Note:

Training of judicial candidates and training and retraining of judges are regulated by the relevant articles of the RA Judicial Code. In particular, according to Article 193 of the RA Judicial Code, the qualification committee defines the main guidelines and total number of training hours for the year prior to October 1 of a given calendar year, with no less than 80 and no more than 120 training hours annually.

According to Article 77 of the same code, in addition to participating in obligatory training courses, a judge has the right to participate in other training programmes, forums, and other professional assemblies of lawyers. Article 167 of the code stipulates that the powers of a judge be terminated by the RA president based on a suggestion by the RA Justice Council if the judge does not pass the annual training programme for two consecutive years.

Sub-Objective Two: Judicial Human Resources Management - Training of Judges

Indicators: In practice, is it the case that judges are regularly trained and given access to new judicial practices and procedures and new and/or changing laws?

Compliance Score: 2

2010 Updates:

According to the public information of the Armenian judiciary (www.court.am), the Judicial School conducted 30 trainings for judges during the second half of 2010. The trainings acquainted them with new laws and amendments, as well as judicial practices related to the enforcement of the provisions contained in international conventions (see <http://www.court.am/?l=lo&id=64> only in Armenian).

2009 Note:

The Judicial School organises ongoing training courses for judges on civil, administrative and criminal law, according to their specialisation. According to the reference provided by the RA Judicial Department, during 2009 training sessions and discussions of legislative changes were organised in response to legislative amendments passed in the fields of civil and criminal law.

There is no available information that calls into question the regularity of training sessions and discussions.

Sub-Objective Three: Access to Justice

Indicators: To what extent are there legal provisions which provide for free public defense for persons without means to cover procedural costs?

Compliance Score: 1

2010 Updates:

No new developments in this area

2009 Note:

According to Articles 19 and 20 of the RA Constitution, everyone has a right to restore his/her violated rights and receive legal assistance.

Article 6 of the RA Law on Advocacy stipulates that the state guarantee free legal assistance for criminal and certain civil cases; pursuant to the procedure stipulated by Article 41 and Article 42 of the same law, this is performed at the expense of the state, although the Office of the Public Defender operates within the Chamber of Advocates.

The US State Department's 2009 Human Rights Report on Armenia commented that "... defendants would at times refuse their public defenders because of the perception that the public defenders colluded with prosecutors" (see p. 8).

According to a local expert there has been no improvement in the state of free public defence, which is far from satisfactory (see "Armenia's ENP Implementation in 2009", Partnership for Open Society, Yerevan, 2009, p. 215).

This is confirmed by other monitoring results according to which defendants in 37% of observed cases had no legal assistance, including free defence, which was caused by the failure of judicial and other relevant officials to inform the defendants of the right to such assistance (see "Implementation of the Right to Fair Trial in the Armenian Judicial System" (Monitoring Results), Open Society Institute, Yerevan, 2009, p. 215).

The latest OSCE/ODHIR report on trial monitoring also concludes that the quality of legal assistance rendered by the Public Defender's Office needs to be improved (see "Final Report Trial Monitoring in Armenia", Warsaw, March 2010, p.8).

Sub-Objective Three: Access to Justice

Indicators: To what extent are there interpretation services (e.g. for non-native language or deaf court users) in place in the court system?

Compliance Score: 1

2010 Updates:

No new developments in this area.

2009 Note:

According to Article 19 of the RA Judicial Code, the court ensures provision of an interpretation service, at the expense of the state, to persons taking part in a criminal case who do not speak Armenian. The same article states that the court ensures provision of an interpretation service, at the expense of the state, for physical persons taking part in administrative cases and certain civil cases stipulated by the law if they do not speak Armenian and prove that they do not have sufficient means to provide interpretation.

However, according to the interviewed advocate¹⁷, though judges are interested in having an interpretation service to ensure a court hearing, the quality of interpretation is not always good. According to Article 19 of the RA Judicial Code and Article 46 of the Civil Code, one of the parties in the trial is supposed to pay for interpretation (which is quite costly), and the parties cannot always afford a qualified interpreter, which in its turn negatively affects the hearing process. In some cases, though, if the interested party proves his/her inability to pay, the costs of interpretation are covered by the state (see Article 19 of the RA Judicial Code).

The last opinion was also supported by the former judge¹⁸. One of the legal experts¹⁹ thinks that the payment of the cost of interpretation by one of the parties in the case, rather than by the state, may lead to partiality on the part of the interpreter.

No special provision is available for deaf persons, but in practice the situation is similar to the situation for interpretation, as mentioned by several legal practitioners.

¹⁷ Interview of the project researcher with Ruben Sahakyan, Chair, the Chamber of Advocates, Yerevan, 2 March 2010.

¹⁸ Interview of the project researcher with the former judge, Yerevan, 18 March 2010.

¹⁹ Interview of the project researcher with Hrayr Ghukasyan, Law Professor, Yerevan State University, Yerevan, 31 March 2010.

Sub-Objective Four: Judicial Resources – Financial Resources

Indicators: To what extent are changes in the overall judicial budget commensurate with the growth of the national budget and also reflective of changes in demands for judicial services?

Compliance Score: 1

2010 Updates:

No new developments in this area.

2009 Note:

According to the reference given by the RA Judicial Department, international experience indicates that a fixed percentage of the national budget is to be allocated to the judiciary. Diverging from this best practice, a fixed amount -- rather than percentage -- is provided for the Armenian judiciary from the national budget. There is no legal regulation of the compatibility of changes in the judicial budget with the growth of the national budget.

Sub-Objective Four: Judicial Resources – Human Resources /Capacity/

Indicators: Are there procedural rules in place to discourage excessive adjournments; ensure judges have adequate time to hear cases and prepare judgments; and ensure that appeals are heard without undue delay?

Compliance Score: 1

2010 Updates:

No new developments in this area.

2009 Note:

According to Article 111 of the RA Law on Civil Procedure Code, a case is to be considered and a ruling made within a reasonable period, and a procedure, as a rule, is to be completed within one session. According to Article 17 of the RA Criminal Procedure Code, everybody has a right to a fair trial of any criminal case affecting one's interests, within a reasonable time and in observance of all requirements of fairness, by an independent and impartial court.

In opinion of the interviewed legal expert and lawyers²⁰, the fact that there is no specification of what time can be considered "reasonable" leaves room for interpretation and leads to arbitrary decisions by judges who may delay the case depending on their convenience or personal interests.

Sub-Objective Four: Judicial Resources – Human Resources /Capacity/

Indicators: In practice, are there cases heard and judgments handed down without lengthy delays and excessive adjournments?

Compliance Score: 1

2010 Updates:

No new developments in this area.

2009 Note:

According to the Judicial Department, studies and summaries regarding procedure periods are carried out periodically. These are having a positive impact on the regulation of this issue. It is also mentioned that the European Court has thus far recorded no breaches of reasonable period in the RA.

²⁰ Interviews of the project researcher with Hrayr Ghukasyan, Law Professor, Yerevan State University, Yerevan, and two lawyers, Yerevan, 31 March 2010.

One of the four removed judges was accused of prolonging “reasonable time” and delaying a case hearing for four months (see *Aravot* daily, 2 May 2006).

Moreover, in the opinion of the advocate²¹, delayed cases are commonplace in the courts, especially with respect to criminal offences. As a rule, the first hearing is always delayed. Causes for delays range from a judge’s expectation of a bribe to a badly organised judicial staff.

As noted by the former judge²², cases are very often delayed. The main reason is an expected gain, mainly in the form of a bribe to speed up the trial process. The interviewed legal expert²³ also referred to an existing practice of unjustified delays in many cases, aimed at forcing parties to start “negotiations” with the judge.

In the opinion of the former prosecutor²⁴, delays normally take place in cases involving political prisoners or/and when there is “an order” from the top leadership to slow down the trial because of personal interests.

Sub-Objective Four: Judicial Resources – Human Resources /Capacity

Indicators: To what extent does the judge have the basic tools necessary to do his or her job, e.g. sufficient office space, adequate support staff, word processing equipment, a law library (whether physical or online), etc.?

Compliance Score: 1

2010 Updates:

No new developments in this area. Due to the economic crisis fewer funds from the state budget were allocated in 2010.

2009 Note:

Article 79 of the RA Judicial Code stipulates that each judge of the common jurisdiction courts and the Court of Appeal shall have an assistant, a secretary, and in some cases also a consultant, while the chairman, chairmen of chambers and judges of the Court of Cassation have two assistants each.

According to the RA Judicial Department, each judge has a separate office; the courts have staff, necessary equipment, internet access, a continuously updated library, and DETALEX information tanks. Measures stipulated by the 2009-2011 strategic action plan for procedural reforms include: improvement of court building facilities and technical equipment, in particular construction of at least 10 new court buildings and equipping of two existing ones with organisational supplies in three stages.

However, the reform process is in progress and not all of the court facilities are fully provided, particularly in some regions.

Sub-Objective Five: Transparency of Judiciary

Indicators: To what extent are courtroom proceedings required by law to be open to the public and the media?

Compliance Score: 1

2010 Updates:

No new developments in this area.

²¹ Interview of the project researcher with Ruben Sahakyan, Chair, the Chamber of Advocates, Yerevan, 2 March 2010.

²² Interview of the project researcher with the former judge, Yerevan, 18 March 2010.

²³ Interview of the project researcher with Hrayr Ghukasyan, Law Professor, Yerevan State University, Yerevan, 18 March 2010.

²⁴ Interview of the project researcher with the former prosecutor, Yerevan, 23 March 2010.

2009 Note:

According to Article 20 of the RA Judicial Code, courtroom proceedings in RA are public.

A court hearing or a part thereof is held *in camera* only by a court decision, for reasons of protecting public morals, public order, national security, the lives of persons taking part in proceedings, or the interests of justice. Hearings of adoption cases are also held *in camera* if such a request has been made by the adopting party. The final part of a judicial act is made public in an open session. In adoption cases, the final part of a judicial act may be made public only with the adopting party's consent.

According to Article 114 of RA Civil Procedure Code, filming and photographing of court sessions, as well as video recording and radio and television broadcasting, is performed by consent of the parties and by permission of the court. Some experts noted that this provides an opportunity for judges to limit the openness of proceedings.

From a criminal law perspective, according to Article 314 of RA Criminal Procedure Code of RA, the orders of the presiding judge are mandatory for all who are present at the court session. In the opinion of legal experts, this power to make a decision without any limitation or condition also creates an opportunity for the corrupt judicial practice of making an arbitrary decision to get rid of journalists and the public.

According to Article 72 of the RA Judicial Code, the Council of Chairs of the Courts develops and approves rules of co-operation of courts with mass media.

Sub-Objective Five: Transparency of Judiciary

Indicators: In practice, are courtroom proceedings generally open to, and able to accommodate the public and the media?

Compliance Score: 1

2010 Updates:

No new developments in this area.

2009 Note:

According to the RA Judicial Department, courtroom proceedings are held publicly in Armenia, except for certain cases stipulated by law, which ensures open access to the courtroom both for citizens and for mass media

However, there are some monitoring findings proving that this is not true in practice. "Final Report Trial Monitoring in Armenia", Warsaw, March 2010 (see p.8) shows that a number of shortcomings such as limited or restricted access to court premises, inaccuracy of court schedules, poor acoustics and lack of technical equipment in courtrooms prevent the public from following trial proceedings. The report indicates that "on several occasions, members of the public were removed from the courtroom without prior warning for applauding defendants" (see p. 32).

Other monitoring findings related to assessment of the fair trial situation showed that the conditions of court buildings and technical equipment inside the buildings can ensure neither the effective work of the courts nor public access to hearings (see "Implementation of the Right to Fair Trial in the Armenian Judicial System" (Monitoring Results), Open Society Institute, Yerevan, 2009, p. 214).

In opinion of the interviewed advocate²⁵, in some "big" cases the courtrooms do not have enough space for all those willing to be present at the hearings, but this do not happen often. In some cases, mainly political ones, there is a practice of filling the room with people from state institutions without revealing their institutional affiliation so as not to allow relatives, journalists, or opposition

²⁵ Interview of the project researcher with Ruben Sahakyan, Chair, the Chamber of Advocates, Yerevan, 2 March 2010.

supporters to be present. The interview with the former judge²⁶ and the former prosecutor²⁷ also revealed such a problem.

This practice was also mentioned in “Final Report Trial Monitoring in Armenia”, Warsaw, March 2010. As indicated in the report, “law enforcement officers in civilian clothing were granted privileged access to the courtrooms on some occasions, while members of the public were told that no seats were available” (see p. 31).

Media reported about similar cases as well (see armtoday.info/default.asp?Lang=Am&NewsID=8015&SectionID=0&RegionID=0&Date=03/07/2010&PagePosition=6, www.hrparak.am/hodvac.php?h_id=4565).

Sub-Objective Five: Transparency of Judiciary

Indicators: To what extent does the law require that judicial decisions be published and open to public scrutiny?

Compliance Score: 1

2010 Updates:

No new developments in this area.

2009 Note:

According to Article 68 of the RA Judicial Code, judicial acts (judgments) of the Cassation Court shall be published in the RA Official Bulletin, as well as on the official website of the RA judiciary. As stipulated by Article 67 of the same code, such information shall to be posted on the website managed by the RA Judicial Department in a way that is publicly accessible. However, other decisions of the Cassation Court are not required to be published.

The RA Council of Chairs of the Courts defines the procedure for publishing other judicial acts on the official website of the RA judicial authority. Nevertheless, in this case also not all verdicts and decisions are to be published. It is up to the Council to decide which decisions should be open to the public.

Sub-Objective Five: Transparency of Judiciary

Indicators: Are judicial decisions published?

Compliance Score: 1

2010 Updates:

No new developments in this area.

2009 Note:

According to the reference from the RA Judicial Department, judicial decisions are published on the official website of the RA judicial authority and the judicial acts of the Court of Cassation are published in the RA Official Bulletin.

Nevertheless, monitoring of the court hearings demonstrated that the decisions made at hearings are not always made public, and sometimes court decisions are not published in full (see “Implementation of the Right to Fair Trial in the Armenian Judicial System” (Monitoring Results), Open Society Institute, Yerevan, 2009, p. 17).

²⁶ Interview of the project researcher with the former judge, Yerevan, 18 March 2010.

²⁷ Interview of the project researcher with the former prosecutor, Yerevan, 23 March 2010.

Sub-Objective Five: Transparency of Judiciary

Indicators: To what extent does the law require that a transcript of courtroom proceedings be maintained and made available to the public?

Compliance Score: 2

2010 Updates:

No new developments in this area.

2009 Note:

According to Article 146 of the RA Civil Procedure Code, which defines the form of transcript of courtroom proceedings, a record is compiled at the court sessions of the court of first instance, court of cassation and court of appeal, as well as outside court sessions when performing separate judicial actions.

Records kept at court sessions of the court of first instance, court of cassation and court of appeal, as well as outside court sessions performing separate judicial actions, are attached to the materials of a case.

As provided by Articles 315 and 148 of the RA Criminal and Civil Procedural Codes, only persons participating in the case have a right to become acquainted with the materials of the case or to make excerpts and copies thereof. Article 20 (4) of the RA Judicial Code provides that after the court verdict has been enforced, all members of the public can request materials of the completed case, along with transcripts of the proceedings. A state duty of 1,000AMD (~ US \$2.50) is to be paid for each request (see Article 9 (13) of the RA Law on State Duty).

Sub-Objective Five: Transparency of Judiciary

Indicators: Is a transcript or some other reliable record of courtroom proceedings maintained and available to the public?

Compliance Score: 2

2010 Updates:

No new developments in this area.

2009 Note:

According to the RA Judicial Department, courtrooms are furnished with modern equipment, including "Femida" recording devices, with the help of which court sessions are audio-recorded on an electronic device and attached to the materials of the case.

There is no evidence to suggest that the records are not available upon request.

Sub-Objective Six: Judicial Enforcement

Indicators: To what extent are there provisions in place which describe the role, organization, status and training of enforcement agents, i.e. those responsible for carrying out the enforcement process (e.g. enforcement and other judicial officers)?

Compliance Score: 2

2010 Updates:

No new developments in this area

2009 Note:

The functioning of the service responsible for enforcement is regulated by the RA Judicial Code and the RA Law on Judicial Service, RA Law on Compulsory Enforcement of Judicial Acts, and the RA

Law on the Service of the Compulsory Enforcement of Judicial Acts. These laws regulate the activities of bailiffs and officers of the compulsory enforcement service responsible for enforcement process.

Articles 18 and 19 of the RA Law on the Service of the Compulsory Enforcement of Judicial Acts define the rights and responsibilities of enforcement agents, and Article 20 defines the powers of the RA Ministry of Justice in organising the compulsory enforcement service. Article 14 of the same law considers the issue of mandatory training of enforcement agents.

The activities of bailiffs are regulated by Articles 194 to 228 of the RA Judicial Code. Article 213, for instance, defines the functions of a bailiff.

Article 209 of the RA Judicial Code stipulates that bailiffs shall receive special training according to the procedures approved by the head of the Judicial Department, upon submission from the head of the Bailiff Service.

Sub-Objective Six: Judicial Enforcement

Indicators: In practice, to what extent are enforcement agents well trained in enforcement practices and procedures?

Compliance Score: 1

2010 Updates:

No new developments in this area.

2009 Note:

According to the official letter from the RA Service of the Compulsory Enforcement of Judicial Acts, dated 11 March 2010, mandatory training and special educational programmes for enforcement agents are regularly conducted based on the RA Government Decision N154 of 10 February 2005. Training is carried out by the Law Institute of the RA Ministry of Justice of RA, in co-operation with the RA Service of the Compulsory Enforcement of Judicial Acts, while the lists of trainees and educational programmes are approved by the RA Ministry of Justice.

The former judge²⁸ mentioned that, as a rule, people who had unsuccessful careers in the police and national security service tend to become enforcement agents. Those agents whom he met in the course of performing his professional duties did not appear to be well trained. The media reported one case in which enforcement agents performed their duties without following the court decision in a precise manner (see news.am/am/news/10298.html).

As for bailiffs, as judicial servants they are subject to relevant provisions of the RA Judicial Code. According to Article 27 of this code, all judicial servants must be trained based on procedures approved by the Council of Chairs of the Courts. Article 175 of the code provides that the RA Judicial School organise and conduct professional training of judicial servants.

The OSCE/ODIHR Final Report on Trial Monitoring Project in Armenia, Warsaw, March 2010, referred to evidence suggesting that a core function of the court bailiff service, to assist the public in exercising their right to access court proceedings, is not ensured. As reported, “a serious effort should be made to ensure that court bailiffs understand and perform this function properly” (see p. 34).

Sub-Objective Six: Judicial Enforcement

Indicators: To what extent are enforcement agents bound by ethical and professional standards as outlined in a written code of ethics?

Compliance Score: 2

²⁸ Interview of the project researcher with the former judge, Yerevan, 18 March 2010.

2010 Updates:

No new developments in this area.

2009 Note:

The RA Council of Chairs of the Courts approved the Code of Conduct of Judicial Servants in its Decision of 16 November 2007.

There is also a code of ethics for enforcement agents ensured by Article 35 of the RA Law on the Service of Compulsory Enforcement of Court Acts. This code was approved on 19 February 2009, by the RA Government Decision #157-N.

No information is available about a special code of ethics for bailiffs, though formally they are subject to the Code of Conduct of Judicial Servants.

Sub-Objective Six: Judicial Enforcement

Indicators: To what extent is this code followed in practice?

Compliance Score: 1

2010 Updates:

No new developments in this area.

2009 Note:

The majority of experts and practitioners from various fields believe that not a single code of ethics is effectively enforced in Armenia. In a recent interview, one state official confirmed that currently there are no effective mechanisms to regulate ethical issues related to state officials (see *Hetq* weekly, 11-17 March 2010).

In addition, the media refers to improper and unethical behaviour by enforcement agents in the performance of their professional duties (see hetq.am/am/politics/press-35/v4.a1plus.am/am/politics/2009/08/31/armen-harutyunyan, www.lragir.am/armsrc/country33002.html).

As indicated by the OSCE/ODIHR Final Report on Trial Monitoring Project in Armenia, Warsaw, March 2010, "Occasionally, the monitors observed seemingly arbitrary decisions made by the bailiffs themselves to expel particular individuals from the court premises and/or deny them access to the courtroom. In some cases, the bailiffs were hostile and impolite towards the relatives of defendants, monitors, and other members of the public" (see p. 31).

Based on observation findings, the report recommends "The Ministry of Justice jointly with the Council of Court Chairpersons ... (to) promulgate a Code of Conduct for the bailiff service that would clearly spell their rights and professional duties *vis-à-vis* the judge, the court personnel, participants of the trial, and the public" (see p. 93).

Sub-Objective Seven: Judicial Integrity

Indicators: To what extent are judges and other relevant actors governed by written codes of ethics which cover issues such as conflicts of interest, inappropriate political activity, etc.?

Compliance Score: 2

2010 Updates:

On April 23, 2010 by the Decision N1-N the General Meeting of the Judges of the Republic of Armenia passed the new "Rules of Conduct" for judges. It replaced the previous Code of Conduct of Judges passed on December 8, 2005 (Decision N77 of the Council of Court Chairs of Armenia).

The new rules supplemented Chapter 12 of the Judicial Code, which is dedicated to the code of conduct of judges.²⁹ The new document includes 27 rules of conduct, categorized into three groups. The first group (Rules 1-6) includes general ethical rules, which dictate judges' behavior in the workplace and outside the courtroom. These rules supplement Article 89 of the Judicial Code. The second group (Rules 7-19), are ethical rules for exercising justice. These supplement Articles 90 and 91 of the Code. Finally, the third group of rules (Rules 20-27) includes ethical rules, which should be followed by judges in their non-judicial activities. This set of rules supplements Articles 92-95 of the Code.

No changes compared to 2009 in the case of prosecutors or advocates.

2009 Note:

Chapter 12 of the RA Judicial Code is entirely dedicated to the code of conduct for judges. Pursuant to section 1.3 of the 2009-2011 strategic action plan of the Judicial-Legal Reform approved by the RA president on 12 February 2010, the draft amendment of the Code of Conduct for Judges, approved by the RA Council of Court Chairmen in 2005, was presented for approval by the RA Council of Courts. The process of approval has not yet been completed.

Rules of conduct for prosecutors were instituted in the Prosecutors' Code of Conduct, approved by the RA prosecutor general in 2007.

Advocates also have a code of ethics approved in 2006 by the Chamber of Advocates.

Sub-Objective Seven: Judicial Integrity

Indicators: To what extent is this code of ethics applied in practice?

Compliance Score: 1

2010 Updates:

The opinions of the experts and practitioners on the efficiency of ethics regulations have not changed since the publication of the previous ENP Monitoring Report.

In response to the official request of the Transparency International Anti-corruption Center (TIAC) to the RA Office of the Prosecutor General for statistics on disciplinary cases initiated against prosecutors, the Office provided in written form the relevant information. According to the information the Ethics Commission initiated two disciplinary cases against three prosecutors. In one case a prosecutor was reprimanded for missing his attestation session without a valid excuse. The second case, against two prosecutors, reprimanded them for smoking in the building of the Office of the Prosecutor General, which is forbidden by an order/decreed of the Prosecutor General. It should be mentioned that a reprimand is the mildest disciplinary sanctions that can be applied to prosecutors according to Article 47 of the RA Law on Prosecution.

Similarly, the Judiciary provided data on disciplinary sanctions against judges as per a TIAC request. According to the Disciplinary Commission of the Council of Justice considered 18 cases against 18 judges. As a result, four judges were reprimanded and penalized 25% of their monthly salaries for six months; one was severely reprimanded and penalized 25% of his/her monthly salary for six months, four received warnings, and five cases were dismissed. However, it is unclear how many cases were connected to code of ethics violations. The respondent did not provide details on the grounds for sanctions applied against judges.³⁰

According to information provided by the Chair of the Chamber of Advocates, the Disciplinary Commission of the Chamber considered 37 cases (22 based on the appeals of citizens and 11

²⁹ Article 87 of the Judicial Code provides that the rules of conduct of judges defined in the mentioned Chapter are not exhaustive and the General Meeting of Judges can supplement them with additional rules.

³⁰ It should be mentioned that information on the decisions of the Council of Justice, including those on imposing disciplinary sanctions against judges, are posted on the www.court.am web-site, which is the official web-site of the judicial system of Armenia. Analysis of these decisions revealed that none of the cases was connected with the violations of ethical rules. Those were violations substantial and procedural norms of the law.

based on statements received from law enforcement bodies and the rulings of courts). Of these cases four were rejected as groundless. In 25 from the remaining 33 cases, the Disciplinary Commission imposed disciplinary sanctions against the lawyers. The remaining eight cases were dismissed as a result of internal investigation.

2009 Note:

As mentioned above, experts and even practitioners believe that ethics regulation is not effective in Armenia. Some of them mention that a sense of corporate solidarity negatively affects the decision-making process when it comes to sanctions against colleagues. Others say that ethical values cannot be respected in a system where material benefits are most valued.

As a result, relatively few cases of misconduct by judges and other actors in the judicial processes were considered last year.

Only three cases related to misconduct of judges were considered by the ethics committee in 2009; no penalty was applied in any of the cases.

The OSCE/ODHIR Final Report Trial Monitoring in Armenia, Warsaw, March 2010, mentioned a number of cases in which "...the judges conducted proceedings in a manner that left their impartiality open to doubt" (see p. 9). There were also instances in which judges treated trial participants without due respect. Therefore, there is a need for additional training of judges and "...a rigorous application of disciplinary mechanisms that ensure their accountability".

As for prosecution, only two prosecutors were under consideration for unethical behaviour last year and both were dismissed.

According to the data obtained from the Chamber of Advocates, in 2009 their special commission considered 29 cases, of which 16 were dismissed.

Objective two: Civil Service Reform

	2009 Compliance Score	2010 Compliance Score
Overall Score	25/50 (50%)	25/50 (50%)

Sub-Objective	2009 Compliance Score	2010 Compliance Score
<i>Independence, Accountability and Transparency of Civil Service</i>	11/16 (68.7%)	11/16 (68.7%)
<i>Human Resources</i>	4/10 (40%)	4/10 (40%)
<i>Civil Service Integrity</i>	1/8 (12.5%)	1/8 (12.5%)
<i>Public Procurement</i> ³¹	9/16 (56.2%)	9/16 (56.2%)

Sub-Objective One: Independence, Accountability and Transparency of Civil Service
Indicators: To what extent are there regulations which prevent undue political interference in the appointment and promotion of civil servants?
Compliance Score: 2

2010 Updates:

On June 6th the National Assembly passed amendments to the RA Law on Civil Service which entered into effect on August 13. The amendments, related to Article 14, 15 and 19, which are the main articles regulating the appointment and promotion of civil servants. These amendments affected the evaluation of interviews, which are conducted at the second stage of the competition, as well as the selection of the successful persons in the appointment process.

In particular, these amendments shifted committee voting from “Pass/Fail” to a “0-10” scale, where “10” is the maximum score. Through such grading the winners of the competition are determined. The winners are decided by the three highest cumulative grades, provided that they received more than 75% of the total maximum score.

Another important amendment (inclusion of Point 11.1 in Article 14 and Point 3.1 in Article 15) was the change of the procedure for appointing junior positions in the civil service. According to these changes, RA Civil Service Council (CSC) shall conduct tests once every three months for citizens wishing to join the junior civil service (after paying a fee for participation). Applicants who answer 90% of the test questions will receive certificates (effective for one year) allowing them to occupy junior civil service positions. The list of the certificate holders is maintained and updated by CSC through its web-site (see http://www.csc.am/fr_index_krts.html). State hiring officials must choose among citizens included on the CSC list without competition. Though this procedure excludes the risk of corruption at the interview stage it still contains corruption risks. Namely, that there are no formal criteria for the hiring official.

³¹ On December 22, 2010, NA passed the new Law on Procurement, which entered into effect from January 1, 2011. During 2010 no amendments or changes have been introduced in the old Law on Procurement. At the same time, Armenian Government adopted three decrees, through which it introduced changes and amendments into its June 5, 2008, Decree N853-N, which is the major sub-legislative act regulating the implementation of the old Law on Procurement. Those are Decree N564-N (adopted on April 15 and entered into effect on May 27), Decree N1701-N (adopted on December 9 and entered into effect on December 28), and Decree N1724-N (adopted on December 16 and entered into effect on January 11, 2011). It should also be mentioned that the new Law on Procurement provides that all legal acts adopted for the implementation of the old Law shall remain in effect, unless they contradict to the provisions of the new Law (see Article 55 of the new Law). Hence, all mentioned Decrees remain in effect.

Amendments made to Article 19 of the Law on Civil Service are not substantial. They: a) add to the list of those civil servants, who are not subject to recertification (attestation), the ones who reached the retirement age (65 years), but, by the decision of the appointing authority and consent of CSC, are permitted to serve one more year; b) specify according to which points of which article the testing and interviewing shall be conducted for recertification; and c) specify how the recertification commission shall make decision on the results of recertification.

2009 Note:

Appointment and promotion of civil servants is regulated by the RA Law on Civil Service through the open competition announced for vacant positions (see Article 14) and attestation (see Article 19).

Article 14 provides that competition for the highest and senior vacant civil service positions is to be organised by the RA Civil Service Council (CSC) staff, while competition for the leading and junior positions is conducted by the staff of the corresponding bodies.

Members of competition and attestation commissions are representatives of the CSC (one third), the respective body (one third) and academia (one third).

The competition process includes two stages, the test and the interview, the results of which are evaluated by competition commissions, members of which vote for each applicant. The head of the corresponding body (in the case of the highest and senior positions) or the head of staff (in the case of the leading and junior positions) then appoints someone from the list of candidates who have passed the minimum threshold (see Article 14).

Each civil servant is subject to attestation once every three years. In some cases, extraordinary attestation can be carried out upon a justified decision of the supervisor of a civil servant. Depending on a civil servant's rank, attestation can be conducted through a review of documents and an interview, or a test and an interview. Attestation commissions vote on each attesting civil servant and submit the results of attestation to those officials who are authorised to make a final decision within the corresponding bodies (see Article 19).

Sub-Objective One: Independence, Accountability and Transparency of Civil Service
Indicators: To what extent are recruitment and promotion regulations effective in preventing political interference (e.g. are selection committees able to work without political interference)?
Compliance Score: 1

2010 Updates:

The first tests took place from January 20 to February 7, 2011 (see http://www.csc.am/fr_index_krts.html). Thirty citizens received licenses of junior civil servants. Their names are now included in the CSC list (see http://www.csc.am/fr_index_krts.html).

2009 Note:

In the expert's opinion, the CSC and the competition and attestation commissions are also subject to external pressure. This pressure is especially significant in the case of "profitable" or "privileged" positions.

A Head of CSC Manvel Badalyan mentioned in a media interview, there is pressure on the institution that he heads, but this pressure comes not from politicians but rather from relatives, friends and neighbours (see hetq.am/am/interview/manvel-badalyan-2/).

Furthermore, there are no clear criteria or requirements for final decisions on appointment or promotion of civil servants. This leaves room for discretionary and biased decisions by corresponding officials. It is up to the minister or the head of staff to hold an open competition for a vacant position or to promote his/her deputies or other loyal servants.

Very often, it is the loyalty of potential employees, kinship or friendship ties, or favours to colleagues or superiors, rather than professional or institutional interest, that matter when appointing or promoting civil servants. Recently, the media reported on one case in which the competition was carried out with obvious violations to promote a candidate under the patronage of the head of that institution (see *Hraparak* daily, 30 March 2010). When it comes to a “privileged” position with more opportunities to benefit from corruption, bribery or political pressure may play a more determining role.

An interview with a former high-level civil servant³² confirmed the opinion of the experts mentioned above. Moreover, he said that questions in both tests and interviews are so simple that even a person with a low level of basic knowledge can clear this selection hurdle and be appointed in the case of patronage or kinship. He personally faced such a situation when people not meeting professional criteria for a particular position were appointed because of intervention from the “top”.

On the other hand, there are cases in which the winning candidate is not appointed, without justification from a corresponding official, which may be a result of pressure or personal interest.

In media interviews, Head of CSC Manvel Badalyan has confirmed the existence of all of the aforementioned problems (see hetq.am/am/interview/manvel-badalyan-2/ and *Iravunk de facto* weekly, 22-25 January 2010).

Sub-Objective One: Independence, Accountability and Transparency of Civil Service
Indicators: To what extent are there comprehensive regulations regarding political activities of existing civil servants (e.g. political party membership, expression of political views)?
Compliance Score: 2

2010 Updates:

No new developments in this area

2009 Note:

According to Article 11 of the RA Law on Civil Service, citizens of the RA meeting the requirements for a given position, knowing the Armenian language, having reached 18 years of age, have the right to occupy a civil service position regardless of their political or other convictions. Thus, the law does not limit the opportunity to occupy a civil service position based on political or other convictions (see Article 12).

At the same time, Article 24 of the law defines that a civil servant does not have the right to violate the principle of the political neutrality (restrain) of a civil servant. The law says that a civil servant shall not use his/her position to serve the interests of parties, non-governmental organisations or religious associations, to proselytise in their favour or to be involved in other political or religious activities while carrying out his/her duties. Such actions are recognised by Article 33 of the law as grounds for relief from the civil service position.

Sub-Objective One: Independence, Accountability and Transparency of Civil Service
Indicators: To what extent are these regulations enforced?
Compliance Score: 1

2010 Updates:

No new developments in this area.

³² Interview of the project researcher with the former civil servant, Yerevan, 24 March 2010.

2009 Note:

Officially, not a single civil servant has been relieved in the last three years for failure to maintain the restrictions applied against civil servants with respect to the principle of political restraint. Moreover, media have repeatedly mentioned that the ruling parties normally use the employees of the state institutions (including civil servants) in their pre-election campaigns and on the voting day (see www.transparency.am/monitor_archive_2008.php & www.transparency.am/monitor_archive_2009.php).

Experts believe that the existing regulations are “effectively” applied by authorities only when it comes to the so-called “radical” opposition. If a person occupying a civil servant position announces his/her political preferences in favour of the real opposition or expresses an alternative position to the one which is considered official, then he/she faces a risk of being dismissed, though the reasons mentioned in the order or decision are never acknowledged to be political. In some cases, people were forced to quit upon their own request. In other cases, they were fired for reasons far from the real ones.

There are numerous references to such cases of de-facto political repression following the tragic post-elections developments in Armenia in 2008 (see *Aravot* daily, 14 February 2008; www.usa.am/news/2009/february/news022509_arm.pdf, pp.45-46; www.nt.am/newsday.php?p=0&c=0&t=0&r=0&year=2008&month=05&day=14&shownews=1003734&LangID=4#1003734).

Sub-Objective One: Independence, Accountability and Transparency of Civil Service
Indicators: To what extent are there legal requirements for the disclosure/declaration of personal assets, income, financial interests for civil servants?
Compliance Score: 2

2010 Updates:

No new developments in this area.

2009 Note:

Declaration of assets and income is mandatory for the RA civil servants according to Article 5 (9) of the RA Law on Declaration of Property and Income of Physical Persons, adopted in 2006. According to the same article, an assets and income declaration is also required from persons related to civil servants (as well as other state officials): spouse, parents living together, and children, sisters and brothers living together and aged 18 years or older.

Article 17 of the law provides that to verify the reliability of the data presented in the declaration, the tax authority (under the RA State Revenue Committee) can perform a study at the site of the other party of the transaction.

The fine to be imposed for not submitting declarations equals 10% of undeclared income (see Article 20). The fine of 10% of hidden or underestimated income can be imposed in cases of hiding real income or not submitting full information on it (see Article 21).

According to Article 169.17 of the RA Law on Administrative Violations, failure to present the declaration to the tax authority in the specified time (for each tax year, up to April 15 of the following year) results in a warning. Failure to present the declaration within 30 days following the warning causes a penalty in the amount of thirty times the minimum salary, and for persons occupying political or discretionary positions in the amount of 200 times the minimum salary.

Sub-Objective One: Independence, Accountability and Transparency of Civil Service
Indicators: To what extent does disclosure of personal assets, income, financial interests of civil servants occur in practice?
Compliance Score: 1

2010 Updates:

No new developments in this area.

2009 Note:

To ensure public monitoring of the effectiveness of disclosure of assets and income of civil servants it is necessary to have access to those data. Such information can be obtained using the 2003 RA Law on Freedom of Information. For example, in 2009 the Freedom of Information Center of Armenia NGO applied to tax authorities with such a request and received declarations made by high-level state officials (see www.foi.am/en/content/101/).

In addition, there is a special procedure to provide journalists with information concerning declarations (see the RA Government Decision N1065-N of 4 September 2008).

This procedure, effective from 1 January 2009, relates only to the provision of information on income and property acquired by state officials during a particular year, but not on dynamics within a particular year or during previous years. Another weakness of this decision is said to be the fact that no information is provided with regard to persons related to state officials.

In a media interview, one state official agreed with a journalist that this new procedure does restrict public access to declarations (see *Hetq* weekly, 11-17 March 2010).

According to official sources, as of October 2009 216 declarers had been made answerable in 2008 for failure to submit declarations (see *Hetq* weekly, 12-18 November 2009). However, no specific data is available on how many of them were civil servants. Neither is specific information provided concerning the number of declarers who submitted wrong data (see ar.newsarmenia.ru/arm1/20080724/41919491.html).

In an expert's opinion, the tax authorities (the RA State Revenue Committee) have no capacity or resources for checking the reliability of the submitted declarations. The necessary methodology and procedures are not in place either. As a result, tax authorities accumulate the relevant information, but do not verify it in a satisfactory manner.

The media have also referred to the ineffectiveness of tax authorities in collecting and verifying data related to income and assets of state officials (see: www.idefacto.am/page.php?section=news_more&id=1008 www.armenianow.com/hy/news/9969/business_or_office_skepticism_lin).

Sub-Objective One: Independence, Accountability and Transparency of Civil Service
Indicators: To what extent are there legal regulations protecting civil servants against arbitrary dismissals or political interference?
Compliance Score: 1

2010 Updates:

No new developments in this area.

2009 Note:

According to the RA Law on Civil Service, the CSC is responsible for protecting civil servants against arbitrary dismissals and political interference (see Articles 32 and 37). The CSC has defined a procedure for conducting an in-service investigation (see the CSC Decision N 124-N of 22 November 2002).

Manvel Badalyan, Head of CSC, sees the fact that a civil servant can be dismissed only with approval of CSC (based on results of the conducted in-service investigation) to be one of the advantages of the current civil service system in Armenia (see hetq.am/am/interview/manvel-badalyan-2/).

However, experts believe that this mechanism only indirectly protects civil servants, while no specific regulations are in place. This makes possible the widespread practice of forcing civil servants to apply for dismissal upon their own request.

Experts also mentioned the existing political and other external pressure on the CSC, which results in firing civil servants without solid evidence of their misconduct or poor performance.

Sub-Objective One: Independence, Accountability and Transparency of Civil Service
Indicators: In practice, are the regulations protecting civil servants from arbitrary dismissal effective?
Compliance Score: 1

2010 Updates:

No new developments in this area.

2009 Note:

The concerns of experts expressed above are somewhat confirmed by the data provided by the CSC. According to this data, about half (48%) of civil servants were dismissed in 2008-2009 pursuant to their request, 25.4% because of staff reduction, 12.1% because of appointment to a position on non-competition basis, and 4.7% because of attestation and the age limit for occupying the position. Officially, not a single civil servant has been dismissed during the last three years because of failure to maintain political restraint.

There were numerous cases of dismissal of civil servants who supported the 2008 presidential candidate Levon Ter-Petrosyan. The opposition supporters were either dismissed from their positions with justifications other than those related to their political affiliation or forced to write a dismissal request before and after the tragic events in March 2008 (see the US State Department's 2008 Human Rights Report on Armenia, pp. 45-46).

There were also media publications confirming such practices (see *Aravot* daily, 14 February 2008 and www.nt.am/newsday.php?p=0&c=0&t=0&r=0&year=2008&month=05&day=14&shownews=1003734&LangID=4#1003734).

Sub-Objective Two: Human Resources
Indicators: To what extent are wages in the civil service competitive enough to sustain an appropriate standard of living for civil servants, in accordance with the country's economic situation?
Compliance Score: 1

2010 Updates:

The average salary for state service was 122, 871 AMD (~ US \$338) per month in 2010. This is an increase of 11.8% relative to the previous year (see from the home-page of the RA National Statistical Service - <http://www.armstat.am/file/doc/99462593.pdf>).

The base monthly salary for civil servants in 2010 remained the at the 2009 level of 40,000 AMD (US \$110.06). This rate is 13% less than the minimum consumer basket for 2010 (43,500 AMD or about US \$119.69 - see *Yerkir* daily for December 9, 2010 for the minimum consumer basket).

2009 Note:

Official salary rates and bonuses for civil servant positions are regulated by the RA Law on Payment of Civil Servants (see Articles 6-14).

The average salary in state service is 112,502 AMD (~ US \$280) per month, which has increased by 4.2% relative to the previous year (see "The 2009 Report on the Amount of Basic Salaries of Civil Servants and Payment System: Protocol Decision of the RA Government # 46 from 6 November 2009").

The basic monthly salary of civil servants is 40,000 AMD (US \$100), which exceeds the minimum consumer basket for 2009 (35,756.5 AMD or about US \$89) by only 13% (see www.b24.am/economy/ra_05112009.html).

Some experts question the validity of the methodology used for calculating the minimum consumer basket. Additionally, an average family in Armenia consists of 3.8 persons (see "The 2009 Report on the Amount of Basic Salaries of Civil Servants and Payment System: Protocol Decision of the RA Government # 46 from 6 November 2009"), while because of the high unemployment rate normally only one adult in a family works. Taking this into consideration, experts conclude that the wages are not sufficient to sustain appropriate living standards.

The head of the CSC confirmed in an interview that salaries of civil servants are very low (see *Iravunk de facto* weekly, 22-25 January 2010). Moreover, he mentioned that there is no system of securing medical insurance and special pensions for civil servants, which makes civil service unattractive for potential employees. He also said that while many positions remain vacant, there is a great deal of interest in applying for positions in the control, review, licensing and inspection bodies. Experts explain such interest through the opportunity to benefit from getting bribes.

Sub-Objective Two: Human Resources

Indicators: To what extent are there legal provisions to ensure that civil servants are regularly trained to improve their technical and managerial competencies?

Compliance Score: 2

2010 Updates:

No new developments in this area.

2009 Note:

Article 53 of the RA Law on Civil Service defines that the initial training, which is mandatory for civil servants, should be carried out in accordance with the curricula developed by the RA School of Public Administration and approved by the CSC. Initial training was mainly dedicated to the newly created civil service system, dealing with legislation and regulations as well as some ethical issues.

Article 20 of the law provides that every civil servant should be trained once every three years. In addition to this, a civil servant should be trained to improve his/her professional knowledge and skills as necessary (e.g. in case of upgrading a position or changing a specialisation). For this purpose, a civil servant can spend one year or more on professional training outside of his/her institution.

According to CSC Head Manvel Badalyan, all training programmes for civil servants following the first one have aimed to address issues related to specifics of professional work for each type of institutions in which civil servants work (see *Iravunk de facto* weekly, 22-25 January 2010). He said that leading specialists from universities and state institutions were involved in training programmes as lecturers on various topics.

Occasionally, the assistance of international institutions is also used to train civil servants on specific issues such as access to information (see *Hayastani Hanrapetutyun* daily, 29 March 2008).

Sub-Objective Two: Human Resources

Indicators: In practice, is it the case that civil servants are regularly trained to improve their technical and managerial competencies?

Compliance Score: 1

2010 Updates:

No new developments in this area.

2009 Note:

According to the interviewed former civil servant³³, the quality of training programmes organised for civil servants time to time is very poor. There is an obvious lack of professionals to carry out high-quality training programmes.

CSC Head Manvel Badalyan agreed that there is a lack of local resources, both human and financial, to ensure proper training.

This is why respective authorities look for new opportunities to improve the quality of training programmes and seek assistance from donors (see *Iravunk de facto* weekly, 22-25 January 2010).

Thus, on 17 November 2009, a memorandum of understanding was signed by the RA Ministry of Economy, the RA Civil Service Council, and the British Council within the 'EU Skills' three-year project. European expertise and standards will be used to develop the skills and knowledge of the Armenian officials (see www.mineconomy.am/am/2/item/1119/).

Sub-Objective Two: Human Resources

Indicators: To what extent are there provisions to ensure that civil servants are regularly trained about ethics, integrity and codes of conduct in the civil service?

Compliance Score: 0

2010 Updates:

No new developments in this area.

Note:

There are no provisions in the civil service legislation with regard to ethics and integrity training.

Sub-Objective Two: Human Resources

Indicators: In practice, is it the case that civil servants are regularly trained about ethics, integrity and codes of conduct in the civil service?

Compliance Score: 0

2010 Updates:

No new developments in this area.

2009 Note:

As experts noted, except for the initial training, which included some ethical issues, no training for civil servants was in place to address ethical and integrity issues on a regular basis.

The interviewed former civil servants³⁴ shared the aforementioned opinion.

³³ Interview of the project researcher with the former civil servant, Yerevan, 24 March 2010.

³⁴ Interview of the project researcher with the former civil servant, Yerevan, 24 March 2010.

Sub-Objective Three: Civil Service Integrity

Indicators: To what extent are there legal provisions in place to protect whistleblowers in the civil service?

Compliance Score: 0

2010 Updates:

No new developments in this area.

2009 Note:

There are no legal provisions in place to protect whistleblowers.

Sub-Objective Three: Civil Service Integrity

Indicators: To what extent are whistleblowers in the civil service protected in practice?

Compliance Score: 0

2010 Updates:

No new developments in this area.

2009 Note:

According to the experts' opinion, there is no protection for whistleblowers.

The interviewed former civil servant³⁵ shared this opinion.

Sub-Objective Three: Civil Service Integrity

Indicators: To what extent are comprehensive codes of conduct regarding conflicts of interest, rules on gifts and hospitality, post-employment restrictions, etc. for civil servants in place?

Compliance Score: 1

2010 Updates:

No new developments in this area.

2009 Note:

The conduct of civil servants is regulated by the RA Law on Civil Service (see Article 24). The law restricts the activity of civil servants in some cases that involve conflicts of interest. In particular, civil servants cannot:

- Be engaged in other paid work, except for scientific, teaching and creative work,
- Be personally involved in entrepreneurial activity,
- Represent third persons if the case is related to the state institution they work for,
- Use their official position while performing their work responsibilities to protect the interests of parties and NGOs,
- Receive honorariums from publications or speeches originating from their official duties,
- Use material, financial and information resources and other public property and service information for non-service purposes,
- Receive gifts, money or services for performing their service duties as representatives of the state,
- Sign property-related contracts and transactions.

In the event that a civil servant has a 10% or higher share in the statutory capital of a commercial organisation, the civil servant shall, immediately after occupying the position, hand over this share for entrusted management. Civil servants also do not have the right to work under direct supervision of a close relative. The legislation defines some post-employment restrictions as well.

³⁵ Ibid.

At the same time, according to Article 37 of the same law, it is the CSC that defines the regulations of ethics for civil servants as well as the procedure for formation of ethics committees and activities and the functions thereof.

In 2002, the CSC approved a non-comprehensive code of ethics for civil servants, which consists of one page and thus only briefly reflects on some of the issues noted above (see the CSC Decision # 13-N from 31 May 2002). It also approved the Order on the Ethics Commissions (see the CSC Decision # 1050-N from 1 December 2004). However, ethics commissions were established (as a pilot project with World Bank assistance) only in three ministries: the Ministries of Labour and Social Issues, Health and Education.

Sub-Objective Three: Civil Service Integrity

Indicators: To what extent are these codes of conduct followed in practice?

Compliance Score: 0

2010 Updates:

No new developments in this area. Neither the web-site of the Civil Service Council (www.csc.am), nor the web-sites of those ministries, where ethics commissions have been established³⁶, contains information about the activities of relevant ethics commissions.

2009 Note:

According to the expert, no official statistics are publicly available with regard to the number of disciplinary sanctions applied to civil servants for breaching the code of ethics.

There is a common understanding among experts that regulations on ethics and conflicts of interest defined by the RA legislation on civil service as well as respective sub-legislative acts are not effectively enforced in practice because of the absence of political will and the lack of working mechanisms to regulate this field.

In particular, experts pointed to the ineffective work of existing ethics commissions. This is also reflected in the interview with one of state officials, who said that ethics commissions do not work (see *Hetq* weekly, 11-17 March 2010).

The former civil servant³⁷ agreed with this assessment, while the CSC head confirmed that there is a problem of unregulated conflict of interest in the Armenian civil service system (see hetq.am/am/interview/manvel-badalyan-2/).

Sub-Objective Four: Public Procurement

Indicators: To what extent do public procurement regulations exist requiring open competitive bidding as a general rule with exceptions regulated in the law kept to a minimum?

Compliance Score: 2

2010 Updates:

No new developments in this area.

2009 Note:

Article 17 of the RA Law on Procurement defines the procurement forms: tender, restricted tender, request for quotation, competitive negotiations and single-source procurement. The same article states that procurement is conducted on competitive basis, except in cases prescribed by the law, in which it is allowed to conduct procurement using its non-competitive forms (see Articles 19-23 and

³⁶ As a pilot project with The World Bank assistance such commissions were established in the Ministries of Health, Education and Science, and Labor and Social Issues.

³⁷ Interview of the project researcher with the former civil servant, Yerevan, 24 March 2010.

44). Procurement procedures for some non-competitive forms are regulated by a number of decisions of the RA Government (# 2274-N from 8 September 2008, # 853-N from 5 June 2008 and # 1521-N from 17 December 2009).

The most recent Government Decision # 1521-N (enforced on 28 January 2010) has toughened the conditions for single-source procurement. In particular, in order to reveal the trustworthiness of such procurement, selective reviews should be conducted. The officials whose actions or inaction have resulted in violation of the time schedule of procurement, and consequently in the necessity to conduct single-source procurement, should be held liable by law.

The RA Law on Procurement also makes it clear that if certain norms defined by international convention(s) are different from those defined by this law, then the norms of the international convention take precedence (see Article 4).

According to experts, the only deficiency of the legislation is that along with emergency situations, "other unforeseen" situations are also mentioned as one of the reasons for urgency of procurement. This is one of the pre-conditions allowing the conduct of single-source procurement (see Article 23). However, these "unforeseen situations" are defined neither by this law nor by any other legal act, which can lead to abuse of single-source procurement and presume high corruption risks.

Sub-Objective Four: Public Procurement

Indicators: In practice, to what extent is open bidding the general rule for public contracts, with exceptions regulated in the law and kept to a minimum?

Compliance Score: 1

2010 Updates:

No new developments in this area.

2009 Note:

According to the data of the RA Ministry of Finance, in 2008 there was growth in the volume of non-competitive state procurement compared with previous years. While in 2007 the volume of single-source state procurement was equal to 11.7 billion AMD (US \$29.25 million), in 2008 it reached 12.2 billion AMD (US \$30.5 million). In 2009, the amount totalled 9.7 billion AMD (US \$24.25 million), which could be explained by the generally decreased volume of state procurement due to the financial-economic crisis.

Experts estimated the following ratios of the volume of procurement performed by open tender to the volume of single-source procurement: 10.03 in 2007, 8.38 and 5.32 in 2009. Taking into account that the lower this ratio, the worse the competitive environment of procurement, experts concluded that the competitive environment of procurement has substantially deteriorated in Armenia.

The World Bank (WB) has also expressed its concern about the continued unjustified use of single-source procurement in the country (see "Armenia: Country Procurement Assessment Report", Report No. 49975-AM, Yerevan, 2009, p. 23). According to WB experts, the main reasons for the continued wide use of single-source procurement are lack of competition and the aforementioned weaknesses of the relevant legislation.

Sub-Objective Four: Public Procurement

Indicators: To what extent are there detailed formal rules (weighting evaluation criteria, use of price lists, certified quality standards, awards set by committees, etc.) to ensure objectivity in the contractor selection process?

Compliance Score: 1

2010 Updates:

During 2010 the Armenian Government adopted three Decrees, through which it introduced amendments to the main sub-legislation legal act that was regulating the implementation of the old Law on Procurement (June 5, 2008 Decree N853-N):

Decree N564-N changed the amount the winner of the tender shall pay as a deposit. Initially, it was equal to the basic unit of procurement³⁸ in the case of procurement of goods, and 50% of the contract price in the case of procurement of services. The decreed changes set the deposit equal to 10% of the price of the contract. This change made it easier for small- and medium-sized businesses to compete for small and easy to implement tenders (less than 10 mln. AMD) He also informed that the mentioned change was proposed by the Ministry of Finance (which, by law, oversees the procurement procedures) and was aimed to encourage small- and medium-sized business to compete for public procurement.

Government Decree N1701 (see *Footnote 28*) amended the previous Government Decree N853-N from June 5, 2008, and according to that amendment, in the case of procurement of cars, the required deposit should be equal to the default interest of the contract.

Responding to the request of TIAC Procurement Expert for the clarification of this issue, the Deputy Head of the Center for Support for Procurement explained that, as a rule, the potential bidders in car procurement are official dealers of large foreign car-making companies such as Toyota, Ford, Kia and others. Their guarantees for timely delivery and later technical maintenance are more valid and reliable, than those of local Armenian commercial banks, which provide guarantees for other procurement contracts. The reliability of such internationally recognized corporations overrides the need for large initial deposits.

At the same time, the mentioned changes did not seriously affect on those factors, which were mentioned in the 2009 Report as the main obstacles hindering the impartial selection of contractors, such as limited coverage of application of non-price criteria, lack of national register of public procurement suppliers, lack of provisions, regulating the use of price lists in the tenders, and, absence of public hearings for clarification of tender documents.

2009 Note:

The impartiality of contractor selection is ensured through the regulation of opening; evaluation and comparison of the bids submitted by the bidders (see Articles 33 and 34 of the RA Law on Procurements). In particular, Article 33 of the law defines that the bids shall be opened at the time mentioned in the tender invitation, at a session of the tender commission, and the day and time of the bid opening should coincide with the deadline of submission of the bids.

Article 34 of the law regulates the evaluation and comparison of the bids submitted for tender. While performing these functions, the tender commission can require from the bidders explanations, which cannot lead to a change in the character of the bid or procurement item. The bid should be rejected if the bidder does not meet the qualification criteria defined by the tender invitation (see Article 27). According to the same article, the invitation content should also include the specification of the procurement items.

The tender commission then evaluates the approved bids. In addition to the bid price, non-price criteria defined by the RA Government should be taken into account. The RA Law on Procurement explicitly requires application of non-price criteria only in cases of procuring consultancy services (see Article 43).

Article 37 of the same law regulates the summarising of the tender results. Within 15 work days following the last day of the submission of the tender bids, the summary session is convened, at which the selected bidder (winner) is announced or the relevant tender is declared as invalid (see

³⁸ According to the old Law on Procurement, the basic unit of procurement was equal to 1 mln. AMD (see Article 2 of the old Law).

Article 38). During that session, the second- and third-place bidders are announced as well, while the rest of the bids are rejected.

In the experts' opinion, the following factors hinder the process of impartial selection of contractors and contain corruption risks in the procurement legislation:

- Limited coverage of application of non-price criteria when evaluating the proposals;
- Lack of a national register of suppliers of public procurement;
- Lack of provisions regulating the use of price lists in the tenders;
- Absence of public hearings for clarification of tender documents as practised in many countries.

Sub-Objective Four: Public Procurement

Indicators: To what extent are these rules followed in practice?

Compliance Score: 1

2010 Updates:

In general, there have been no developments in the implementation of procurement rules since 2009. In addition, the examination of the web-site on the procurement system (<http://gnumner.am>), which is a sub-section of the Armenian Ministry of Finance (www.minfin.am), revealed that the Ministry does not collect statistical data on the businesses that participate in the procurement process. Thus, it was impossible to assess to what extent the decrease of the deposit enabled small and medium business to expand their participation in the procurement process. The Deputy Head of the Center for the Support for Procurement also confirmed that statistics are not available, though he asserted that this measure had encouraged small- and medium-sized businesses to participate in the procurement process.

2009 Note:

According to local experts, a number of problems have occurred in the procurement system associated with selection of the contractor. The primary problem, which was also mentioned by the WB experts in their reports (see "Armenia: Country Procurement Assessment Report", Report No. 49975-AM, Yerevan, 2009, p. 25) is using the bid price as the only criterion for awarding the contract.

As a result, guided by the criterion of the minimum price, the tenders are won by bidders who offer cheap but poor-quality goods, services and works. In addition, tender commissions very often only formally check the grounds of the bid prices according to the procedure of calculation of the offered bid prices, and often decrease the qualification criteria for participants.

Data from monitoring of procurement processes has indicated cases in which the tender commission, voicing the identified deficiencies in the bids, instead of rejecting them, decided to 'speak' to the RA State Procurement Agency, asking them to allow the particular participant to correct the identified deficiencies in the submitted bid and resubmit the same bid (see "Monitoring of the 2008-2009 activities of the State Procurement System in the Republic of Armenia", TI Anti-Corruption Center, Yerevan, 2010, p. 35). Delays of the timeframes defined by the law for evaluation and study of bids or awarding thereof have also been observed in the aforementioned monitoring (see p. 37).

There were observed cases of superficial or vague information in the content of tender invitations. The same deficiencies were revealed in the specifications of the procurement items as well (see p. 38).

The WB experts have also noticed such deficiencies, which are associated with the procuring entities' lack of ability to prepare technical specifications (see "Republic of Armenia: Country Report of Procurement Procedure Evaluation", Report No. 49975-AM, Yerevan, 2009, p. 24).

Another set of deficiencies is related to insufficient professional capacities and the bias of tender commission members, as a result of which the commission members simply fail to perform or wrongly perform their duties, thus influencing the selection of the contractor.

Monitoring findings also indicate incorrect compiling of protocols of procurement procedures, pointless and/or improper interference by commission members during the sessions, failure to check or perfunctory checking of the grounds for bid prices, perfunctory review of compatibility of the bids with the requirements defined in the tender invitation package during the bid evaluation, etc. (see "Monitoring of the 2008-2009 Activities of the State Procurement System in the Republic of Armenia", TI Anti-Corruption Center, Yerevan, 2010, pp. 40-44).

Sub-Objective Four: Public Procurement

Indicators: To what extent does the law provide for a procedure to request a review of and appeal against a procurement decision?

Compliance Score: 1

2010 Updates:

No new developments in this area.

2009 Note:

Article 16 of the RA Law on Procurement mentions that the authorised body of the procurement process (the RA Ministry of Finance) discusses complaints received about procurement transactions, checks these complaints, and takes decisions based on the results, which are subject to execution by the procurement entities. Articles 52-56 of the law regulate appeals by citizens of the actions of the procurement entity, the tender commission, and the authorised body.

According to Article 52, every person has the right to lodge a complaint, if he/she declares that, because of the actions of the procurement entity and/or tender commission, he/she has or could have incurred losses. The person can make a complaint about the actions of the procurement entity or the tender commission not only through the authorised body but also judicially through court action. In the second case, he/she can also complain about the actions of the authorised body.

Article 53 of the law states that complaints shall be submitted in writing and examined by a special unit created within the authorised body for the investigation of complaints and oversight of procurement processes, which then submits a recommendation to the authorised body. The procedures regulating the functioning of that unit are defined by the RA Government Decision # 853 from 5 June 2008.

The time period during which the authorised body shall take a decision about the complaint is limited to no more than 20 days and no less than 10 days following the day of the receipt of the complaint. The decision of the authorised body is deemed final unless the court decides otherwise. The procurement entity becomes liable for the losses and is obligated to compensate them.

Article 54 provides to every person the right to participate in the complaint process prior to a decision by the authorised body on the complaint. Article 55 entitles the authorised body to suspend the procurement process before a decision is made on the complaint, except in cases of the country's defence and national security interests. The actions and decisions of the procurement entity or tender commission, as well as those of the authorised body, can be appealed judicially through court action (see Article 56).

Among the deficiencies of legislative regulation of procedures for appealing and revising decisions on procurement is a failure to make the nature of loss(es) more specific, which violates the rights of those physical or legal persons who have suffered moral loss(es). Another problem is that the non-judicial appeal system is not independent, as the RA Ministry of Finance is simultaneously responsible for both the organisation and the implementation of the procurement process, as well as for investigation and decision-making regarding complaints received about the same process.

Sub-Objective Four: Public Procurement**Indicators:** To what extent are these review mechanisms effective in practice?**Compliance Score: 1****2010 Updates:**

No new developments in this area.

2009 Note:

According to the official public procurement website (www.gnumner.am), in 2008 the authorised body received 53 complaints, while in 2009 the number was 36. Statistical data indicates that at least half of the complaints are satisfied. At the same time, statistics shows that less than 10% of all tenders submit complaints.

As to the data provided by the RA Ministry of Finance to TI Anti-Corruption Center, during 2009 participants in the procurement processes appealed through court two decisions taken by the ministry. One of them was fully satisfied by the court and entered into force, while the other was satisfied partially.

Within the monitoring of the 2008-2009 activity of the state procurement system by TI Anti-Corruption Center, the issues of efficiency of implementation of the existing appealing mechanisms have been discussed with representatives of applicant companies. On the condition of anonymity, the interlocutors have mentioned that because of the corrupt nature of the system they do not have any serious expectations from the appeal process. This, in particular, relates equally to both the authorised body and the judicial appeal. At the same time, these interlocutors mentioned that in terms of following the timeframes and the procedures, requirements of the legislation are normally not violated.

Sub-Objective Four: Public Procurement**Indicators:** To what extent is there a system in place to monitor public procurement as well as to detect misconduct and apply sanctions accordingly?**Compliance Score: 1****2010 Updates:**

No new developments in this area.

2009 Note:

External control over the procurement process is mainly performed by the RA Chamber of Control (see Article 83 of the RA Constitution and Article 5 of the RA Law on the Chamber of Control) and by the RA National Assembly (see Article 77 of the RA Constitution and Articles 87-89 of the National Assembly Procedures).

Civil society institutions can be involved as observers in procurement processes and can receive relevant information unless this information contains state or official secrets (see Articles 3, 9 and 16 of the Law on Procurement). In addition, representatives of NGOs can be a part of the unit created on a permanent basis for consideration of complaints and oversight of procurement process (see the RA Government Decision # 853-N from 5 June 2008).

The procurement entity and the authorised body also have the opportunity to oversee the quantity, quality and schedule of the goods, services and works provided by the supplier (see RA Government Decision # 1521-N from 17 December 2009). Another way to oversee procurement processes is to check the procurement protocols created by the authorised body.

One more possibility for control is oversight (audit) of the execution of state and community budgets, which is regulated by Articles 5, 9 and 17 of the RA Law on the Treasury System and Order # 934-N of the RA Minister of Finance and Economy from 30 December 2002.

There is also another mechanism of control over procurement: the requirements set out for public officials involved in the procurement process, particularly, for prevention or restriction of conflict of interest. However, the only provision that is directly connected with the regulation of conflict of interest in procurement is the RA Government Decision #1521-N from 17 December 2009.

No direct sanctions have been defined for abuses observed in the procurement process. Yet, the sanctions specified for crimes included in chapters 22 (crimes against economic activity) and 29 (crimes against state service) of the RA Criminal Code can be applied to punish abuses observed during the procurement process.

Experts believe that the basic deficiency of legal regulation of oversight over the procurement process and sanctions is the absence of:

- Special subdivisions for control over procurement in the RA Chamber of Control, as well as in law enforcement bodies;
- A code of ethics for employees of the RA State Procurement Agency, which includes conflict of interest issues;
- Specific sanctions in the criminal code against possible abuses in procurement;
- An independent body for oversight of the procurement process;
- Requirements to compile protocols in cases of not exceeding the base unit of the procurement contract.

Sub-Objective Four: Public Procurement

Indicators: To what extent does this monitoring system function effectively in practice?

Compliance Score: 1

2010 Updates:

No new developments in this area.

2009 Note:

According to information provided by the RA Ministry of Finance to TI Anti-Corruption Center, during 2009 the ministry did not conduct any specific inspection aimed at oversight of the implementation of procurement legislation requirements. This means that internal oversight is not performed in an appropriate manner. At the same time, such control is performed by the ministry during the occasional inspections conducted upon the request of the RA law enforcement bodies or following the RA prime minister's assignment.

The RA CC, as a body performing external oversight over procurement, rather regularly performs its functions of oversight of the procurement process within the scope of its powers. In particular, the CC has conducted oversight of the 2006-2008 activities of the State Procurement Agency during the period of 23 February -13 April 2009 (see www.coc.am/hashvet/verjnakan_gnumner_hashv_03.07.pdf). Through its observations the CC revealed abuses by public officials involved in the procurement process.

The RA National Assembly also regularly performs its function of political control over the CC as stipulated by the requirements of the RA Constitution and the National Assembly Procedures, thus executing indirect control over procurement processes.

Unfortunately, the procurement field does not receive due attention from civil society institutions. According to sources in the RA Ministry of Finance, only six NGOs (including TI Anti-Corruption Center) regularly address procurement-related issues. No information is available concerning the monitoring of those five NGOs. Nevertheless, while monitoring the field over the course of several years, TI Anti-Corruption Center did not face serious constraints from procurement officials.

Objective three: Implementation of Armenia – GRECO Recommendations

	2009 Compliance Score	2010 Compliance Score
Overall Score	10/26 (38.4%)	19/26 (73.1%)

Sub-Objective	2009 Compliance Score	2010 Compliance Score
<u>Rec. IV</u> <i>Human Resources Management (Judiciary and Police Officials)</i>	1	2
<u>Rec. XXIII</u> <i>Public Sector Human Resources (Tax)</i>	1	2
<u>Rec. XIX</u> <i>Public Sector Human Resources Management and Whistle-blowing</i>	1	1
<u>Rec. X</u> <i>Public Sector Accountability (Immunity)</i>	0	2
<u>Rec. XI</u> <i>Public Sector Accountability (Immunity)</i>	1	2
<u>Rec. XX</u> <i>Public Sector Accountability</i>	0	2
<u>Rec. XV.A</u> <i>Public Sector – Conflict of Interest</i>	1	0
<u>Rec. XVII</u> <i>Public Sector – Conflict of Interest</i>	1	1
<u>Rec. XV.B</u> <i>Public Sector Integrity (Rotation of Staff)</i>	1	2
<u>Rec. XVI</u> <i>Public Sector – Declaration of Assets</i>	1	1
<u>Rec. XVIII</u> <i>Public Sector – Code of Ethics</i>	1	1
<u>Rec. XXI</u> <i>Private Sector Integrity (Background Checks)</i>	1	2
<u>Rec. XXII</u> <i>Anti-Bribery Legislation (Individual Liability)</i>	0	1

Sub-Objective One: Rec. IV Human Resources Management (Judiciary and police officials)
Indicators: Has the GRECO recommendation on establishing a model for systematic training of police officers, prosecutors and judges on issues of corruption and money laundering been implemented?
Compliance Score: 2³⁹

2010 Updates:⁴⁰

Information contained in the Addendum of the Armenian GRECO Compliance Report (2010) corresponds to contents of the 2009 Armenia ENP Monitoring Report. However, unlike TIAC experts, who attributed value “1” to the Compliance Score in the mentioned report, GRECO experts, who contributed to the development of the Addendum, considered that Recommendation IV has been implemented satisfactorily, which corresponds to value “2”. Thus, the opinion expressed in the Addendum gave ground to the Armenian authorities to claim that this recommendation had been fully implemented in 2009. However, the web-site of the Civil Service Council does not contain any information about regular domestic trainings. Rather, the section devoted to trainings (see http://www.csc.am/fr_index_verap.html) only announces training opportunities abroad.

2009 Note:

According to an official source, a team of trainers has been formed in the RA Central Bank and other institutions to ensure systematic training on money laundering. There are two to three people in each team of trainers, who are to periodically organise training sessions in their related fields.

By the RA Judicial Department Decision of 29 June 2009, a 24-academic-hour-long training course on corruption and money laundering was approved for persons included in the list of judges and candidates for judgeships.

The RA prosecutor general signed a decree on 1 April 2009, which approves the educational programme of periodic training on corruption for prosecutors. Educational standards and teaching methodology were also developed for this course.

As for the police, in 2008 high-, mid- and low-ranking officials were given relevant modules for training courses. Last year, the RA Chief of Police issued a decree on 5 March 2009 to introduce a new schedule and increase the number of topics for an additional four training days.

In an expert’s opinion, some progress has been made on this recommendation. However, there is no evidence that the model is being systematically implemented, so this recommendation cannot be seen as fully implemented.

Sub-Objective Two: Rec. XXIII Public Sector Human Resources Management (Tax)
Indicators: Has the GRECO recommendation on establishing guidelines and providing special training for the tax authorities concerning the detection of corruption offences and their reporting to the competent law enforcement agencies been implemented?
Compliance Score: 2

2010 Updates:

According to the Addendum, RA State Revenue Committee (SRC), with the support of an international expert, adopted Guidelines on the Detection of Corruption Offences and Their Reporting to the Competent Law Enforcement Agency (see www.taxservice.am/uploads/pdf/uxecuyyc.pdf on the SRC’s web-site). This step was considered sufficient for GRECO experts to conclude that this recommendation has been implemented satisfactorily.

³⁹ Compliance Scores for the sub-objectives of Objective 3 correspond to those, given to them by GRECO experts in the Addendum. In particular, GRECO experts’ scores “implemented satisfactorily” and “dealt with in a satisfactory manner” coincide with the value “2” of the Compliance Score used in the Report. Score “had been partly implemented” coincides with the value “1” and score “had not been implemented” to the value “0” of the Compliance Score.

⁴⁰ All updates for 2010 are taken from the mentioned above Addendum to the Compliance Report on Armenia.

2009 Note:

Within the USAID MAAC/Casals&Associates project, over 400 employees of the RA State Revenue Committee were trained.

In addition to this, on the basis of the related OECD manual, a guide was developed in the form of reporting blanks.

However, no guidelines have been yet adopted, so experts see only partial progress in respect to this recommendation.

Sub-Objective Three: Rec. XIX Public Sector Human Resources Management and Whistle blowing

Indicators: Has the GRECO recommendation on introducing clear rules/guidelines and training for public officials to report instances of corruption, or suspicions thereof, which they come across in their duty and, on establishing adequate protection for public officials who report instances of corruption (whistleblowers) in good faith been implemented?*

Compliance Score: 1

2010 Updates:

As the adoption of the Law on Public Service, which will address the requirements reflected in this Recommendation, is still pending, the GRECO experts consider this recommendation as partially implemented.

2009 Note:

According to the RA Deputy Chief of Police Arthur Osikyan⁴¹, the draft Law on Public Service includes some of recommended provisions. In particular, the draft law provides that there shall be compulsory reporting of instances of corruption which are encountered during the performance of public servants' duties. The draft also touches upon the legal protection of reporters.

Nevertheless, the draft law does not include the recommended guidelines. Moreover, there is no attempt to develop more specific legal mechanisms for whistleblower protection (see Objective 2: Civil Service, p. 28).

Therefore, only partial implementation of the given recommendation can be considered at this point.

Sub-Objective Four: Rec. X Public Sector Accountability (Immunity)

Indicators: Has the GRECO recommendation on reducing the categories of persons enjoying immunity from prosecution and abolishing, in particular, the immunity provided for parliamentary candidates, members of the central electoral commission, members of regional and local electoral commissions, candidate mayors and local council candidates been implemented?

Compliance Score: 2

2010 Updates:

On May 20, 2010, RA adopted a Law amending the Electoral Code to abolish immunity for parliamentary candidates, members of the Central Electoral Commission, members of electoral commissions, and candidates at local elections. This measure enabled GRECO experts to conclude that this recommendation has been implemented satisfactorily.

2009 Note:

No real progress has been registered in this direction.

This is why this recommendation cannot be deemed even partially performed.

⁴¹ This state official represents Armenia in GRECO.

Sub-Objective Five: Rec. XI Public Sector Accountability (Immunity)

Indicators: Has the GRECO recommendation on reconsidering the procedures for lifting immunities of prosecutors and judges by reducing the involvement of predominant individual decision makers (i.e. the president of the republic/prosecutor general) been implemented?

Compliance Score: 2

2010 Updates:

On May 20, 2010, RA adopted a law amending the Law on Prosecution abolishing the role of the Prosecutor General in the initiation of proceedings and lifting immunity of prosecutors. GRECO experts considered this step as sufficient to conclude that this recommendation has been implemented satisfactorily. However, no progress has been recorded with regard of judges.

2009 Note:

According to the Armenian legislation, an individual decision-maker, the RA prosecutor general, is still authorised to bring criminal cases against prosecutors and implement criminal prosecution (see Article 44 of the RA Law on the Prosecutor's Office adopted in 2007). The same official also has the power to appoint and dismiss prosecutors (see Articles 36, 47, 49 and 54 of the RA Law on Prosecution).

As for judges, the RA president is still the only person who can lift their immunity, according to the RA Constitution. In fact, the president can, without any comment, decide on the immunity of a judge with no consideration of the recommendation of the RA Justice Council.

This makes the judiciary dependent upon the institution of the presidency, given that the president can also remove the name of any judicial candidate from the list approved by the RA Justice Council (see Objective 2: Civil Service, p. 6).

Therefore, experts agreed on only partial progress made on implementation of this recommendation.

Sub-Objective Six: Rec. XX Public Sector Accountability

Indicators: Has the GRECO recommendation to systematically collect and evaluate - at a central level - information on complaints about breaches of ethical rules within the public administration as well as on the outcome of disciplinary proceedings in order to identify shortcomings in concrete areas of the public administration and, based on this evaluation, to take measures to make the necessary changes for improvement been implemented?

Compliance Score: 2

2010 Updates:

The Civil Service Council (CSC) adopted on May 19/20, 2010, decrees amending its rules demanding that chiefs of relevant staff units have to report breaches of ethics within the public administration to CSC. The Department of Supervision and Analysis of CSC will collect, review and evaluate this information and periodically report to CSC. However, as these procedures were established late, the actual gathering and evaluation of relevant information did not take place.⁴² Despite the late implementation, GRECO experts concluded that this recommendation has been dealt with in a satisfactory manner.

2009 Note:

Though according to the official source, some discussions were held in the CSC on topics under question, still no real steps have been taken to address the problem.

Thus, no progress was observed by experts with regard to this recommendation.

⁴² Such information was not available also on the CSC's web-site – www.csc.am

Sub-Objective Seven: Rec. XV.A Public Sector – Conflict of Interest

Indicators: Has the GRECO recommendation on issuing guidelines for use by all categories of public officials when confronted with situations where personal/financial interests or activities may raise issues of conflict or partiality with regard to public officials' duties and responsibilities been implemented?

Compliance Score: 0⁴³

2010 Updates:

Failure to pass the Law on Public Service in 2010 brought also a failure to issue unified conflict of interest guidelines. Moreover, as GRECO experts mentioned in the Addendum, the draft law does not apply general guidance to all public officials, in relation to their outside interests.

2009 Note:

In terms of some services (including tax, customs, police, civil service, etc.), as well as institutions (such as the National Assembly, the judiciary, etc.), the respective legislation contains a number of restrictions aimed at prevention of conflicts of interest (see, for example, Objective 1: Strengthening of the Judiciary, pp. 18-19 and Objective 2: Civil Service, pp. 28-29).

However, the issue of unified guidelines for all public servants has not been resolved yet. Official sources refer in this regard to the completed draft Law on Public Service as a law designed to address these issues, which can be seen as one step forward compared to 2008, though it still does not comply with the recommended guidelines.

Sub-Objective Eight: Rec. XVII Public Sector – Conflict of Interest

Indicators: Has the GRECO recommendation on lowering the value of any gifts that may be accepted by civil servants, employees or other officials to levels that clearly do not raise concerns regarding bribes or other forms of undue advantage and that a reporting obligation in respect of gifts of any value be introduced been implemented?

Compliance Score: 1

2010 Updates:

Similarly to the previous recommendation, nothing has changed since 2009, as the Law on Public Service has yet to be adopted.

2009 Note:

The progress on this recommendation also depends on adoption of the Law on Public Service, as mentioned by respective officials.

According to Deputy Chief of Police Arthur Osikyan, the draft law lists the cases in view of which restrictions on receipt of "gifts" by the public servant are not applicable. It also states that if the value of permitted gifts received during one year from the same person exceeds 250,000 AMD (US \$625) or if the value of all gifts exceeds one million AMD (US \$2,500), the public servant shall report it to his/her superior.

Taking into consideration that the new law has not been passed yet, experts assessed the progress on this recommendation as partial.

⁴³ As it has been already mentioned (see Footnote 11), the Compliance Scores in the Report for the sub-objectives of Objective 3 are those, given to them by GRECO experts in the Addendum. GRECO experts scored the implementation of Recommendation XV "partly implemented", which is equivalent to the value "1" for its Compliance Score, applied in this Report. However, as this Recommendation, in fact, consists of two sub-recommendations, and this is reflected in the Report, TIAC expert scored each sub-recommendation himself, analyzing separately the implementation of each sub-recommendation brought in the Addendum.

Sub-Objective Nine: Rec. XV.B Public Sector Integrity (Rotation of Staff)

Indicators: Has the GRECO recommendation on making wider use of rotation in sectors of public administration particularly exposed to a risk of corruption been implemented?

Compliance Score: 2

2010 Updates:

In 2010, RA adopted amendments to the Law on Penitentiary Service and Law on the Service Ensuring Compulsory Execution of Court Acts. These acts stipulate compulsory rotation of the heads of penitentiary institutions, unit heads, regional unit heads, deputy unit heads and department heads. This measure enabled a Compliance Score of "2" for this recommendation, provided that it will also be extended to other areas of public service.

2009 Note:

The principle of rotation of public officials had been initially applied in the tax service. It was then introduced to the police system (see the relevant procedure approved at the session of the RA Government on 5 November 2009).

According to Deputy Chief of Police Arthur Osikyan, the rotation will be used more widely (as was recommended) if this pilot application proves to be effective.

Despite some progress made in this direction, experts see this recommendation to be only partially implemented, though there has been definite improvement since 2008.

Sub-Objective Ten: Rec. XVI Public Sector – Declaration of Assets

Indicators: Has the GRECO recommendation on introducing an effective system for verifying declarations of property and income in respect of all public officials whose service duties could be affected by conflicts of interest been implemented?*

Compliance Score: 1

2010 Updates:

There have been no developments since 2009, as the Law on Public Service has yet to be adopted.

2009 Note:

In spite of some discussions around this issue, no real steps have been taken to introduce the system of verification of declarations.

The current practice of verification of financial declarations by public officials still lacks effectiveness. Accordingly, the same is true for the application of sanctions for submission of wrong information (for more detail see Objective 2: Civil Service, pp. 23-24).

Sub-Objective Eleven: Rec. XVIII Public Sector – Code of Ethics

Indicators: Has the GRECO recommendation on giving high priority to the planned preparation of a code of ethics for public administration and ensuring that all public officials receive appropriate training and that the code is accessible to the public been implemented?*

Compliance Score: 1

2010 Updates:

There have been no developments since 2009, as the Law on Public Service has yet to be adopted. Moreover, as GRECO experts mentioned in the Addendum, the draft Law on Public Service does not contain a code of ethics, but rather refers to its future adoption by the Government.

2009 Note:

There are codes of ethics for several services and institutions, while the recommended unified code for all public servants is not yet in place.

According to official sources, the draft Law on Public Service has a separate section on ethics and conflict of interest. It is also envisaged to establish a separate body with a consultative power to review ethics- and conflict-of-interest-related cases connected to high-level public officials.

Based on the aforementioned information, this recommendation is still considered as only partially implemented.

Sub-Objective Twelve: Rec. XXI Private Sector Integrity (Background Checks)

Indicators: Has the GRECO recommendation on ensuring that both natural and legal persons establishing companies are checked and monitored with respect to possible criminal records or professional disqualifications been implemented?

Compliance Score: 2

2010 Updates:

On May 20, 2010, RA amended the Law on State Registration of Legal Persons, according to which past convictions or professional disqualifications are now grounds for refusal of registration. Relevant information has to be submitted by the police regarding past convictions and professional disqualifications. This measure gave ground to GRECO experts to conclude that this recommendation has been implemented satisfactorily.

2009 Note:

The law on state registration of legal entities is now being reprocessed by the RA Ministry of Justice, which will allow for checks on the past activity of directors and other officials who are in the process of registering a new organisation. This can be done on the basis of claiming a reference or trust towards the particular citizen, considering that it is enough to have only a statement by the citizen that he/she is not deprived of the right to be involved in a certain activity. If a further verification reveals false information, then an administrative penalty will follow for presenting a false document.

However, until these legal changes have been enforced no real progress can be registered in this direction.

Sub-Objective Thirteen: Rec. XXII Anti-Bribery Legislation (Individual Liability)

Indicators: Has the GRECO recommendation on establishing liability of legal persons for offences of bribery and money laundering and on provision of sanctions that are effective, proportionate and dissuasive, in accordance with the Criminal Law Convention on Corruption, been implemented?

Compliance Score: 1

2010 Updates:

In the opinion of GRECO experts, liability for legal persons for bribery and influence trading should be foreseen in the Criminal Code. Thus, establishing liability of legal persons for money laundering offences and administrative offences against economic activities which was introduced through the draft amendments to the Code of Administrative Infringements, still do not address the issue raised by the recommendation.

2009 Note:

According to Deputy Chief of Police Arthur Osikyan, this issue has become a subject of scientific dispute around the issue of whether the Criminal Law Convention on Corruption entails criminal responsibility for corruption offences for legal entities or only administrative responsibility would be enough.

The RA Ministry of Justice is now developing for incorporation into the RA Code on Administrative Violations a chapter on legal entities being subject to criminal responsibility, which is perceived as a new approach in Armenia's legal system.

Nevertheless, since the noted relevant legal changes under consideration are not available to the public even as a draft, it is hard to see this recommendation as even partially implemented.

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