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ANSWERS TO THE SELECTIVE QUESTIONS (Judiciary and public prosecution service) OF THE

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

ANTI-CORRUPTION NETWORK FOR EASTERN EUROPE AND CENTRAL ASIA

ISTANBUL ANTI-CORRUPTION ACTION PLAN

FOURTH ROUND OF MONITORING

ARMENIA

The information is true as for February 2018.

Prepared by the legal expert Hasmik Harutyunyan of the “Protection of Rights without Borders” NGO based on the information available publicly and based on the Organization’s own work.



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<i>ary and public prosecution service</i>	
Judiciary	
Recommendation 22 from the Third Monitoring Round report on Armenia: Judiciary	
<ul style="list-style-type: none"> • Continue Constitutional reform and ensure its proper implementation providing better separation of powers and independence of the judiciary, including by improving the procedures for nomination of judge candidates and appointment of judges • Ensure in practice proper financing of the judiciary. • Establish a mechanism that will ensure equal participation of judges in self-governing bodies; clarify competences of these bodies, as well as the role of the court chairpersons. • Ensure that automated case assignment among judges based on objective criteria and ensure that information on case assignment is open to judges, parties and the public is in place and functioning. • Ensure that independence of the judiciary includes the independence from interference by other judges and if such practice takes place it is dealt with through disciplinary means against judges taking part in such practice. • Modify grounds for disciplinary liability of judges by establishing clear and precise criteria in compliance with international standards and best practice, and ensure that the law reflects the fact that disciplinary liability requires a disciplinary offence and a different than the disciplinary procedure should be considered in dismissing judges who are unable to fulfil their tasks. • Ensure that the disciplinary proceedings comply with fair trial guarantees, in particular by separating investigation, prosecution and decision-making in such proceedings, and afford the judges with adequate means to defend themselves. 	
<i>Questions</i>	<i>Replies</i>
6.1 Please provide current versions of the laws (e.g. the Constitution and the Judicial Code) on the judicial system, status and career of judges, judicial council, liability of judges and other relevant laws.	<p><i>Currently there is no official translation of the Judicial Code of the RA.</i></p> <p><i>Some chapters in English of the draft Judicial Code, which is not yet in force, is available in the official website of the Venice Commission-</i> http://www.venice.coe.int/webforms/documents/?opinion=893&year=all</p> <p><i>The Constitution with the changes of 2015 is available in</i> http://www.president.am/en/constitution-2015/</p>
6.2 What measures have been taken to adopt constitutional reform in order to better separate powers and ensure independence of the judiciary, including by improving the procedures for nomination of judge candidates and appointment	<i>According to the concept of the Constitutional amendments the consistent implementation of the principle of rule of law, which plays crucial role in the formation of a legal state, has always been one of the pivotal goals of the constitutional reform. In that sense</i>



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<p>of judges? Please provide copies of the documents to which references are being made in this answer.</p>	<p><i>judiciary exercises a counterbalancing and stabilizing function on other branches of power. As one of the results of the Constitutional changes of 2015 the status of judges, the requirements for the candidates, the procedure for the selection and appointment of judges, the status of higher courts have changed dramatically which will be presented in detailed in the questions below.</i></p> <p><i>However, the Draft Judicial Code does not correspond to the Constitutional provisions and this was pointed out by the Venice Commission- http://www.venice.coe.int/webforms/documents/?opinion=893&year=all</i></p>
<p>6.3 Please describe how the strategic anti-corruption policy documents cover the judiciary.</p>	<p><i>The past anti-corruption policies have not targeted the judiciary as a separate topic of anti-corruption strategy in the Country. It has been left for the Strategic programme of legal and judicial reform in the country¹.</i></p>
<p>6.4 Are there any sectoral anti-corruption programmes or action plans in the judiciary?</p>	<p><i>All The programmes and action-plans related the judiciary in Armenia have been foreseen in the 2012-2016 Strategic Programme for legal and judicial reforms. The later has been prolonged until 2017. The reform program for 2012-2016 was not properly implemented and did not bring to real changes in the system. The President’s new decree of 2016 November 30 replaced the deadline of the program implementation. 49 activities out of 130 almost 38% have been transferred for the implementation for 2017 year². 3 activities from 49 relate to the procedural requirements of the program implementation process. The official report available in the MoJ web-site on the program implementation for the 2017 provides the following results: 11 activities have not been implemented. 21 have been implemented and 14 have been partially implemented³.</i></p>

¹ <http://www.gov.am/am/anti-corruption-strategy/>

² http://moj.am/storage/files/legal_acts/legal_acts_145550184671_tarekan-hashvetvutyun-2017-datairavakan.pdf

³ http://moj.am/storage/files/legal_acts/legal_acts_145550184671_tarekan-hashvetvutyun-2017-datairavakan.pdf



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	<p><i>The new Strategic plan for legal and judicial reforms for 2018-2023 and its Action plan includes separate section on “Judiciary free from corruption and sponsorship⁴”</i></p>
<p>6.5 How is institutional, operational and financial independence of the judges ensured?</p>	<p><i>There are legislative guarantees both provided in the Constitution of 2015⁵ and amended Judicial Code⁶ for the institutional, operational and financial independence of the judges.</i></p> <p><i>According to the article 173 of the Constitution the Supreme Judicial Council (replacing the Justice Council) shall be an independent state body that guarantees the independence of courts and judges.</i></p> <p><i>According to the Article 42 of the new Judicial Code the budget request for each court is prepared by the respective court and General Assembly of judges. The Judicial Department, upon the receipt of budget request from each court prepares the project on budget which includes also the budget of Supreme Judicial Council. The budget is presented to the Supreme Judicial Council for its approval. Once approved by the SJC the budget is presented to the Government. The draft Code, however, does not prescribe the rules of budget distribution amongst the courts.</i></p> <p><i>However, no operational improvements are seen as the legislation is not executed, moreover, the omissions pointed out by the Venice Commission and by the decisions of the European Court of Human Rights are not fully reflected in the draft legislation.</i></p>
<p>6.6 What is the composition, mandate, powers of the Council of Justice? Please describe any recent changes in this regard. Have any changes taken place since October 2014?</p>	<p><i>After the Constitutional changes of 2015 the Council of Justice is replaced by the Supreme Judicial Council.</i></p> <p><i>The Article 174 of the Constitution prescribes the composition and procedure of the</i></p>

⁴ <https://www.e-draft.am/projects/594/about>, available in Armenian

⁵ Article 164 of the Constitution

⁶ Articles 10, 88 and 42 of new Judicial Code



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formation of SJC. The latter is detailed in draft Judicial Code.

According to the article 174 1. The Supreme Judicial Council shall be composed of ten members.

2. Five members of the Supreme Judicial Council shall be elected by the General Assembly of Judges, from among judges having at least ten years of experience as a judge. Judges from all court instances must be included in the Supreme Judicial Council. A member elected by the General Assembly of Judges may not act as chairperson of a court or chairperson of a chamber of the Court of Cassation.

*3. **Five members of the Supreme Judicial Council shall be elected by the National Assembly**, by at least three fifths of votes of the total number of Deputies, from among academic lawyers and other prominent lawyers holding citizenship of only the Republic of Armenia, having the right of suffrage, with high professional qualities and at least fifteen years of professional work experience. The member elected by the National Assembly may not be a judge.*

4. Members of the Supreme Judicial Council shall be elected for a term of five years, without the right to be re-elected.

5. The Judicial Code may prescribe incompatibility requirements for the members of the Supreme Judicial Council elected by the National Assembly.

6. The Judicial Code may prescribe a requirement on the suspension of powers of judge-members while holding office in the Supreme Judicial Council.

7. The Supreme Judicial Council shall, within the time limits and under the procedure prescribed by the Judicial Code, elect a Chairperson of the Council, successively from among the members elected by the General Assembly of Judges and the National Assembly.

8. Details related to the formation of the Supreme Judicial Council shall be prescribed by the Judicial Code.

Article 175 of the Constitution: 1. The Supreme Judicial Council shall: (1) draw up and approve the lists of candidates for judges, including candidates subject to promotion;



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	<p>(2) propose to the President of the Republic the candidates for judges subject to appointment, including those subject to appointment by way of promotion;</p> <p>(3) propose to the President of the Republic the candidates for chairpersons of courts and the candidates for chairpersons of chambers of the Court of Cassation, subject to appointment;</p> <p>(4) propose to the National Assembly the candidates for judges and for Chairperson of the Court of Cassation;</p> <p>(5) decide on the issue of secondment of judges to another court;</p> <p>(6) decide on giving consent for initiating criminal prosecution against a judge or depriving him or her of liberty with respect to the exercise of his or her powers;</p> <p>(7) decide on the issue of subjecting a judge to disciplinary liability;</p> <p>(8) decide on the issue of terminating the powers of judges;</p> <p>(9) approve its estimate of expenditures as well as those of the courts, and submit them to the Government, in order to include them in the Draft State Budget as prescribed by law;</p> <p>(10) form its staff in accordance with law.</p> <p>2. In case of discussing the issue of subjecting a judge to disciplinary liability, as well as in other cases prescribed by the Judicial Code, the Supreme Judicial Council shall act as a court.</p> <p>3. The Supreme Judicial Council shall, in the cases and under the procedure prescribed by law, adopt secondary regulatory legal acts.</p> <p>4. Other powers and rules of operation of the Supreme Judicial Council shall be prescribed by the Judicial Code.</p>
<p>6.7 Is the procedure for selection, appointment, promotion of judges based on merit-based and transparent criteria? Describe procedure for recruitment and promotion of judges, role of authorities taking part in the process, initial training, etc.</p>	<p><i>The selection, appointment and promotion of judges is prescribed by the Chapter 16 of the draft Judicial Code.</i></p> <p><i>The recruitment for the entry-level judicial positions starts with creating a pool of candidates of judges. The reserve lists are created by the SJC based on the qualification checks of candidates. The check of candidates includes the check of application, written examination and interview.</i></p>



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	<p><i>Article 107 of the draft Code prescribes clear criteria for the candidates.</i></p> <p><i>Article 108 prescribes the process of the application presentation. The Application shall include necessary documents prescribed in the second part of the article. According to point 11 of second part of the Article 108 the candidate shall provide also “.. consent in the form prescribed by the SJC, according to which the SJC can request necessary information from state bodies and officials on the position of a judge, for the verification of compliance with the claimant’s requirements, within the limits of the required personal data, including medical secret and other information”.</i></p> <p><i>Although this provision has been changed after the opinion presented by the Venice Commission on the draft code, the wording is still broad and in practice may lead to abuse and violation of personal data. Therefore the conditions and limitations under point 11 still need to be clearly defined.</i></p> <p><i>The main concerns related to the appointment of judges relate to the involvement of National Assembly in this process (5 members of the SJC are appointed by the NA, see point 6.6). The ruling party which has always been perceived with corruption risks has a decisive role in the National Assembly. Consequently, the decisions taken by the National Assembly with the majority vote of that party is accompanied with risks. In these circumstances the form of judges appointment has changed but the substance has not changed.</i></p>
<p>6.8 What are the requirements for a candidate to become a judge at different levels?</p>	<p><i>Article 165 of the Constitution</i></p> <p><i>Requirements Set Forth for the Candidates for Judges</i></p> <p><i>1. A lawyer with higher education, having attained the age of forty, holding citizenship of only the Republic of Armenia, having the right of suffrage, with high professional qualities</i></p>



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	<p><i>and at least fifteen years of professional work experience may be elected as a judge of the Constitutional Court.</i></p> <p><i>2. A lawyer with higher education, having attained the age of forty, holding citizenship of only the Republic of Armenia, having the right of suffrage, with high professional qualities and at least ten years of professional work experience may be appointed as a judge of the Court of Cassation.</i></p> <p><i>3. A lawyer with higher education, holding citizenship of only the Republic of Armenia, having the right of suffrage may be appointed as a judge of a court of first instance and a court of appeal.</i></p> <p><i>4. The candidates for judges must have command of the Armenian language.</i></p> <p><i>5. The Law on the Constitutional Court and the Judicial Code may prescribe additional requirements to the candidates for judges.</i></p> <p><i>The requirements for a candidate to become a judge at different levels (judges for Court of Appeal and Court of Cassation) are prescribed in the Articles 135 and 144 of the draft Judicial Code.</i></p>
<p>6.9 How are integrity and transparency of the selection and appointment process ensured? What is the procedure of testing during the selection?</p>	<p><i>Article 112 of the draft Code ensures the transparency of the written tests and interviews. During tests and interviews representatives from MoJ, Chamber of advocates and CSOs may participate. This possibility is welcomed. However, it is not clear based on which criteria was decided the number of representatives/observers. Particularly, the draft provides the following: 1 representative from MoJ, 2 from Chamber of advocated and max 3 representatives from CSOs based on the application presented based on the “first come first served” criteria.</i></p> <p><i>This limitation is not clear and is not reasoned by any justification.</i></p> <p>Testing process</p> <p><i>The testing process of candidates is insured by the Evaluation Commission. It is composed of 5 judges of relevant specialization and 2 academic lawyers specialized in the relevant field of law. In this regard, the Venice Commission noted that the number of non-judicial members may still be insufficient⁷.</i></p>

⁷ [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2017\)019-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2017)019-e)



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<p>6.10 How is tenure of judges secured by the constitution and the law?</p>	<p><i>Judges shall hold office until attaining the age of sixty-five, whereas judges of the Constitutional Court — until attaining the age of seventy.</i></p> <p><i>The powers of a judge shall discontinue upon expiry of the term of powers thereof, in cases of loss of citizenship of the Republic of Armenia or acquisition of citizenship of another State, entry into force of a criminal judgment of conviction rendered against him or her, termination of criminal prosecution on non-acquitting grounds, entry into force of a civil judgment on declaring him or her as having no active legal capacity, as missing or dead, in case of his or her resignation or death.</i></p> <p><i>9. In cases of violation of incompatibility requirements, engaging in political activities, impossibility of holding office for health reasons, in case of committing essential disciplinary violation the powers of a judge of the Constitutional Court shall be terminated upon the decision of the Constitutional Court, whereas the powers of a judge — upon the decision of the Supreme Judicial Council.</i></p>
<p>6.11 Please provide statistics on appointment and promotion of judges for the past years (2014-2107).</p>	<p><i>Information request has been sent to receive statistics under this question.</i></p> <p><i>The answer to the request has not been yet received.</i></p>
<p>6.12 Please provide the total number of judicial positions and the current number of judicial vacancies. How did the total number of positions change during 2014-2017?</p>	<p>See point 6.11</p>
<p>6.13 What measures were taken since October 2014 to ensure that res judicata principle is respected?</p>	<p>No information is available.</p>
<p>6.14 Describe the procedure for appointment/dismissal of judges to/from administrative posts in a court. What is the scope of powers of the chairpersons of courts?</p>	<p><i>According to the Judicial Code, only presidents of the courts are having capacities for the administration of the courts (Article 25 of the Judicial Code).</i></p> <p><i>The chairpersons of the courts of first instance and courts of appeal shall be appointed by the President of the Republic, upon recommendation of the Supreme Judicial Council, from among the members of the corresponding court, for a term of three years.</i></p> <p><i>The liabilities of chairpersons, plus to the functions of judge, include:</i></p> <ul style="list-style-type: none">- <i>Supervision of the work of court personnel</i>



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	<ul style="list-style-type: none"> - Ensures the normal functioning of the court - Provides judges with their vacation prescribed by law - Represents the court in other state bodies - Applies to the Supreme Judicial Council, the General Assembly of judges with questions related to the normal functioning of the court - When disclosing an obvious violation of the norms of conduct by a judge, submits relevant report to the Ethics and Disciplinary Committee of General Assembly - Exercises other powers prescribed by law.
<p>6.15 What changes have been made since October 2014 to the legislation on the judiciary and the status of judges, in particular on:</p> <p>a) the system of judicial self-governances, competences and composition of bodies of judicial self-governance;</p> <p>b) disciplinary proceedings;</p> <p>c) dismissal and recusal of judges.</p> <p>Please provide copies of the legislative acts.</p>	<p><i>The main changes on judiciary derive from the Constitutional Changes of 2015 and Draft Judicial Code of 2017 already passed by first hearing in the PA.</i></p> <p><i>Judicial Self-Governance</i></p> <p><u><i>The existing regulation as of February 2018</i></u></p> <p><i>According to Article 70 of the Judicial Code in force, the Judicial self-governing bodies are the General Assembly of Judges, the Justice Council and the Council of Court Chairpersons.</i></p> <p><i>The bodies responsible for the judicial self-governance, under <u>article 10 of Draft Judicial Code</u>, are General Assembly of Judges and Supreme Judicial Council.</i></p> <p><i>The General Assembly of judges is composed of all judges of the RA, who are official members of General Assembly.</i></p> <p><i>The General Assembly is presided by the Chairman of the Court of Cassation.</i></p> <p><i>The powers of General Assembly, under article 82 of the Draft Code, include:</i></p> <ul style="list-style-type: none"> - Discussion of any question related to the normal functioning of judiciary - Submits suggestions to the Supreme Judicial Council and other state agencies for



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- the improvement of courts’ functioning of its powers*
- Approves the working procedure of committees and working groups*
- Selects and proposes the candidates of the members of Constitutional Court*

- Forms ethics and disciplinary, educational committees and working groups for better functioning of judiciary*

- Selects the members of Supreme Judicial Council*

- Defines the ethical rules of judges*

- Carries out other powers prescribed by law*

Supreme Judicial Council

The Supreme Judicial Council is an independent state body guaranteeing the independence of courts and judges. It is composed of ten members. Five members of the SJC are elected by the General Assembly of Judges, from among judges having at least ten years of experience as a judge. Judges from all court instances must be included in the SJC. A member elected by the General Assembly of judges may not act as chairperson of a court or chairperson of a chamber of the Court of Cassation.

Five members of the SJC are elected by the National Assembly, by at least three fifths of votes of the total number of deputies, from among academic lawyers and other prominent lawyers holding citizenship of only the Republic of Armenia, having the right of suffrage, with high professional qualities and at least fifteen years of professional work experience. The members elected by the NA may not be a judge.

Members of the SJC shall be elected for a term of five years, without the right to be re-



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elected.

The Supreme Judicial Council shall:

- (1) draw up and approve the lists of candidates for judges, including candidates subject to promotion;*
- (2) propose to the President of the Republic the candidates for judges subject to appointment, including those subject to appointment by way of promotion;*
- (3) propose to the President of the Republic the candidates for chairpersons of courts and the candidates for chairpersons of chambers of the Court of Cassation, subject to appointment;*
- (4) propose to the National Assembly the candidates for judges and for Chairperson of the Court of Cassation;*
- (5) decide on the issue of secondment of judges to another court;*
- (6) decide on giving consent for initiating criminal prosecution against a judge or depriving him or her of liberty with respect to the exercise of his or her powers;*
- (7) decide on the issue of subjecting a judge to disciplinary liability;*
- (8) decide on the issue of terminating the powers of judges;*
- (9) approve its estimate of expenditures as well as those of the courts, and submit them to the Government, in order to include them in the Draft State Budget as prescribed by law;*
- (10) form its staff in accordance with law.*
- (11) other powers prescribed under article 98 of the draft Judicial Code.*

It is remarkable that the powers of SJC prescribed under Article 98 of the Judicial Code are not exhaustive, moreover include also administrative functions.

According to Article 38 of Draft the proper implementation of the powers given by law to courts, to SJC, General Assembly of judges and its committees insures the Judicial Department. The Supreme Judicial Council acts on behalf of Judicial Department. The



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central body of Judicial Department is the personnel of JD.

According to the changes provided by the draft code, the SJC receives powers also related to the administration of courts. Those powers are performed, according to the current regulation of Judicial Code, by Judicial Department.

The main issue in this regard is the referral of administrative tasks to SJC. The main role of the SJC, according to the Constitution, is the appointment, promotion, transfer and disciplinary issues related to judges. The burden of SJC with administrative tasks creates risks for the proper functioning of this body in regards to its main purpose and constitutional powers.

The performance of administrative tasks by SJC may even have impact on the independence of judiciary.

Disciplinary Proceedings

The provisions on disciplinary proceedings of judges are given under chapter 18 of Draft Judicial Code.

According to Article 148 the main body responsible for making the decisions of the judge’s disciplinary responsibility is the SJC.

The grounds of disciplinary responsibility are provided under article 149: obvious and grave violation (gross negligence) of laws, grave violation of the rules of conduct and failure to participate in mandatory trainings for judges.

*Although points 2 and 3 of article 149 explain what obvious and grave violation means, it is still not clear what constitutes grave violation within article 148. Taking into consideration the practice of the disciplinary proceedings in Armenian judiciary and the legal culture, the mentioned grounds **may be subjected to very subjective interpretation***



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and lead to abuses.

Bodies authorised to initiate disciplinary proceedings

- *Ethics and disciplinary committee (EDC) of General Assembly of judges*
- *Minister of Justice*

According to the regulation provided by draft Code a disciplinary procedure may have two stages: institution of the procedure by MoJ or EDC and examination of the case by SJC.

The case may be turned to MoJ or EDC from mass media, or individual communication by physical persons, state agencies or local bodies.

It appears from the draft Code that the MoJ or EDC may close the proceedings before reaching to SJC finding that there is no case.

This regulation creates additional concerns explained by the following.

*The EDC, according to Article 85 of draft Code, is composed of only judges. **It is therefore doubtful** whether the body composed solely of judges will proceed with cases of disciplinary proceeding against judges. One solution could be the change of the EDC’s composition and involvement of non-judicial members with balanced voting rights.*

The EDC and the MoJ should inform each other about cases being examined, and the proceedings before one body should be suspended if another is already examining the same case. If the first body decides not to proceed with the case, the second body may still bring this case to the SJC. This approach is reasonable: where there is a disagreement about a case, it should be resolved by the SJC. However, from the text of the Draft Code it appears that this mechanism works only when the same case is examined by the two bodies simultaneously. It is not clear however what happens when one of those bodies overrules



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the other.

This concern has been raised also by the Venice Commission.

The absence of right to appeal the decision of the SJC

One of the major concerns with the disciplinary proceedings and SJC is the absence of right to appeal the decision of the SJC in disciplinary matters.

Under article 156 of the Draft Code, when hearing disciplinary cases the SJC acts as a court.

However, the article 4 of the draft Code does not foresee the SJC in the list of courts in the RA judicial system.

The decisions taken by the SJC as a court in disciplinary proceedings are final (article 162).

This means that the judges are deprived of any right to appeal those decisions.

The only possibility given to judges is the right to lodge constitutional complaint before the RA Constitutional Court. This possibility however cannot be seen as an appellate review. The reasons are different: the scope of review is very narrow, only matters related to constitutionality may be reviewed. Further, there is no clear basis for such a complaint. And finally, the purpose of the restriction of right to appeal is not reasoned.

The Venice Commission itself accepted, in its opinion on draft Judicial Code, that a constitutional complaint by the aggrieved judge can't qualify as a proper appeal against the disciplinary sanction, which is a source of concern.

Dismissal. Termination of powers



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	<p><i>The powers of a judge maybe terminated by a decision of SJC.</i></p> <p><i>The grounds of the dismissal from post are prescribed under article 165 of the draft Code. This includes: violation of incompatibility requirement, health condition not allowing to carry out his or her powers, the engagement in political activities, committing grave disciplinary offence.</i></p> <p><i>According to Article 66 of the Draft Code, one of the rules of conduct prescribed for judges is not to be engaged in political activities, the violation of this requirement may lead to dismissal.</i></p> <p><i>It is clear from these two articles that political engagement of a judge may lead to dismissal either as a disciplinary sanction or as a separate generis sanction (As noted in the opinion provided by Venice Commission). This regulation creates problems. And In the opinion of the Venice Commission, those two parallel regimes should be merged into one, governed by the rules of disciplinary proceedings and by the principle of proportionality.</i></p>
<p>6.16 How equal participation of judges in self-governing bodies is ensured and what is the role of courts chairpersons in these bodies?</p>	<p>See point 6.15 first part</p>
<p>6.17 Please provide data on state financing of the courts for 2014-2017, including:</p> <p>a) budget needed</p> <p>b) budget allocated</p>	<p>See point 6.11</p>
<p>6.18 What is current basic salary rate for judges?</p>	<p><i>The remuneration of a judge shall be determined in compliance with his or her high status and responsibility. The amount of remuneration of a judge is prescribed by law.</i></p>



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<p>6.19 Please provide information on the average monthly judicial remuneration for 2014-2017, including:</p> <p>a) local courts</p> <p>b) courts of appeal</p> <p>c) local economic courts</p> <p>d) economic courts of appeal</p> <p>e) circuit administrative courts</p> <p>f) administrative courts of appeal</p>	<p><i>See point 6.11</i></p>
<p>6.20 Are there any additional benefits provided to judges (bonuses, housing subsidy, fees for assistants or consultants, travel allowance, etc.)? Please specify what benefits and in what amount apply</p>	<p><i>The provisions on additional benefits provided to judges are prescribed by the law on “Remuneration of state officials”. Under article 13 of the law judges receive additional remuneration for their experience equal to 2% for each year.</i></p>
<p>6.21 What measures have been taken since October 2014 to ensure sufficient and transparent funding of the judiciary and remuneration of judges?</p>	
<p>6.22 What measures have been taken since October 2014 to review the system of automated distribution of cases among judges to remove loopholes that allow manipulating the system?</p>	<p><i>Both the current regulation and the draft Code provide random case distribution of cases among judges.</i></p> <p><i>According to article 44 of Draft Judicial Code, cases among judges are distributed based on the principles of specialization and random selection by the computer system.</i></p> <p><i>The distribution of cases is done through a special computer program decided by the SJC.</i></p> <p><i>The SJC is responsible for the elaboration, development, implementation and security</i></p>



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	<p><i>insurance of the program.</i></p> <p><i>The automatic case allocation between judges aimed the decrease of case-overload. However, the practice shows that the case-load of judges has not been changed in a positive way⁸.</i></p> <p><i>The available information shows that the automatic case distribution system has failed to decrease the overload of judges. Particularly, the court chairpersons enjoy in this regard broad privileges and receive only 25-10% cases received. For example, a court chairperson specialized in civil matters may have only 35 cases, whereas another judge in the same court may have 1069 cases. This problem resulted from complicated and confusing calculation system and existing exceptions which overall lead to manipulation in practice⁹.</i></p> <p><i>The distribution system provided by the draft code is not yet clear and will be possible to assess its effectiveness once the draft Code is adopted and new system is presented by the SJC.</i></p> <p><i>Moreover, in the small communities with only one residence of the court and with one judge the system of the distribution of the cases in not working.</i></p>
<p>6.23 Is the information about the automated distribution of cases open to judges, parties and the public?</p>	<p><i>The case distribution is secret for the parties, but it can be accessed by the court clerks once the case is assigned and it is available for parties via datalex.am.</i></p>

⁸ This information has been revealed by the organization from judges within different proceedings in courts.

⁹<https://www.hraparak.am/posts/59f91a6cc30db40b2cb81136/%D5%A4%D5%A1%D5%BF%D5%A1%D5%AF%D5%A1%D5%B6-%D5%A3%D5%B8%D6%80%D5%AE%D5%A5%D6%80%D5%AB-%D5%A7%D5%AC%D5%A5%D5%AF%D5%BF%D6%80%D5%B8%D5%B6%D5%A1%D5%B5%D5%AB%D5%B6-%D5%B4%D5%A1%D5%AF%D5%A1%D5%A3%D6%80%D5%B8%D6%82%D5%B4%D5%A8-%D5%B1%D5%A1%D5%AD%D5%B8%D5%B2%D5%BE%D5%A1%D5%AE>



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6.24 Are the results of the automated distribution of cases included in the case-file?	<i>From the case file it can be seen to whom it was distributed via datalex.am and whether it is re-assigned.</i>
6.25 Please describe any ICT tools that have been introduced in the judicial procedures and court functioning since October 2014.	<i>The electronic system Datalex.am has been renewed in 2017. A new section was added called “Smart search” applicable only for criminal cases. This allows to find cases through key words or based on articles. The cases are classified as civil, criminal, administrative and by the court instances where the cases of the Cassation Court and the judgments by the European Court of Human rights are presented.</i>
6.26 What measures to increase transparency of the judiciary were taken since October 2014? Please provide details	<i>As it was mentioned in points 6.25 the court judgments are publicly accessible, moreover, www.court.am web-page provides information about the courts, judges, court statistics and all relevant information about the court functioning (except samples for the submission of the court applications).</i>
6.27 How is media attendance and coverage of court hearings regulated? Please provide relevant legal provisions.	<p><i>Court hearings in Armenia are public (Article 20 of Judicial Code in force, and Article 14 of Draft Code).</i></p> <p><i>The proceeding may be held behind closed door based on the decision of court and cases prescribed by law.</i></p> <p><i>Very lately positive changes have been brought to the Administrative procedure law. According to the changes media representatives can broadcast administrative proceedings based on the court’s decision upon the agreement of both parties. Previously, media representatives could broadcast the proceeding upon the motion of one party which in practice created many problems.</i></p> <p><i>By another positive change in the law, the refusal of administrative body as a party to the proceeding for media coverage of the court hearing should be reasoned.</i></p>



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<p>6.28 What are other rules regulating public access to court hearings (publication of information about cases, schedule of hearings, access to premises, etc.)?</p>	<p><i>The court hearings and the schedule are published in datalex.am page where everyone may have access and check the schedule.</i></p> <p><i>It is supposed that in each court building there should be separate monitor of schedule, however in practice, particularly in regions, the electronic monitors sometimes do not work and the information is checked and received directly from court staff.</i></p>
<p>6.29 Please describe the system for publication of court decisions.</p>	<p><i>Court decisions are published in datalex.am official page.</i></p> <p><i>The later provides CMS functions such as calendar management, case allocation, and statistics. The general public may have access to judicial decisions judgments through it.</i></p> <p><i>Datalex is not deployed for prosecutors.</i></p> <p><i>In order to get full information, it is required to log in the system. In practice there are cases when once right to privacy is violated as the website publishes also decisions taken within closed-door proceedings.</i></p>
<p>6.30 What court decisions are not subject to publication?</p>	<p><i>The decisions where the parties requested closed court hearings are not available. Recently, the tendency observed for the military cases, decisions of which are not published without any justification. This is unlawful general rule. Simple search of a military case in datalex system does not result in any information on that case.</i></p>
<p>6.31 Are interim court decisions being published?</p>	<p><i>Interim court decisions such as decisions on pre-trial detention are not subjected to publication.</i></p>
<p>6.32 Please provide statistics on judicial workload in 2014-2017.</p>	<p><i>Please see point 6.11</i></p>
<p>6.33 Please describe the procedure of transfer or secondment of judges to other courts. Please provide statistics</p>	<p><i>According to current regulation the decision of transfer of judges is taken by the Council of Courts' Chairpersons (article 14 of Judicial Code). The judge may be transferred to</i></p>



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<p>for 2014-2017.</p>	<p><i>other court of the same jurisdiction for a period of up to 6 months. The same judge cannot be transferred within 1 year after that period.</i></p> <p><i>According to Article 53 of the Draft Code the decision of transfer is taken by the SJC upon the consent of that judge. The transfer is possible for up to 1 year.</i></p> <p><i>The same judge can't be transferred again within 1 year after the previous transfer.</i></p>
<p>6.34 Please describe the procedure of performance evaluation in the judiciary. Please provide statistics on results of this evaluation in 2014-2017.</p>	<p><i>The performance evaluation of judges as a key action prescribed in the action plan of Legal and Judicial reform has been marked as <u>not implemented</u> as of December 2017¹⁰. The reason of the absence of performance evaluation is the lack of technical and program insurance system of the performance evaluation due to the absence of financial means.</i></p> <p><i>Under the Draft Code there is a separate chapter dedicated to the performance evaluation of judges. (Chapter 13).</i></p> <p><i>The criteria of the performance evaluation are set in Article 78 of the Draft Code, the procedure and method of the evaluation should be decided by the SJC based on the criteria prescribed by the Code (it is not publicly available). Whether these criteria can be measured in practice and lead to effective and independent evaluation of judges may be answered once implemented in practice. To escape from subjective or abusive evaluation, further development and clarification of the criteria is needed. Moreover, it should be clarified how the results of the evaluation are going to be analysed and used. Under article 81 the judges who receive minimum results have to undergo compulsory training courses. It is unclear what results in cases when the judge does not attend training courses.</i></p> <p><i>According to the Code failure by the judge to participate in mandatory trainings is a disciplinary offence and may lead to his dismissal. In these circumstances it is also</i></p>

¹⁰ http://moj.am/storage/files/legal_acts/legal_acts_145550184671_tarekan-hashvetvutyun-2017-datairavakan.pdf



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	<p><i>important to clarify which bodies are competent to deal with those cases and ensure that those bodies provide sufficient guarantees of independence and procedural fairness.</i></p> <p><i>Article 77 provides the types of the evaluation, and such foresees two cases: regular evaluation in every 5 years, and special evaluation by the initiation of a judge.</i></p> <p><i>It is unrealistic to expect special evaluation by judges’ initiative in Armenia.</i></p> <p><i>As to the regular evaluation, the time frame prescribed is too long.</i></p>
<p>6.35 Are all decisions on disciplinary liability of judges being published?</p>	<p><i>If there are decisions on disciplinary liability, they are usually published. Rejection to proceed examination and sanction a judge are not published.</i></p>
<p>6.36 What are the rules of conduct or ethical rules that cover judges? Please provide text of such rules.</p>	<p><i>The rules of conduct of judges are prescribed under Chapter 11 of the draft Judicial Code. Article 63 of the draft provides that the Ethics and Disciplinary Commission of the GA of Judges may provide advisory opinions on the rules of conduct upon the request made by judge.</i></p> <p><i><u>It should be noted however,</u> that the EDC has also the power to bring disciplinary proceedings before the SJC. These two important functions are made by the same body which creates concerns: when examining the judge’s behaviour in a specific case, the EDC may feel bound by its own previous opinion on the same matter.</i></p> <p><i>The general rules of conduct are prescribed by article 66 of the Draft.</i></p> <p><i>According to Article 64 the violation of the rules of conduct may result in a</i></p>



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disciplinary sanction.

The Article 65 foresees also ethical rules. According to the first part of the article the General Assembly prescribes ethical norms which are included in the training courses of judges.

According to the second part of the same article the ethical rules are personal and behavioural limitations which the judge accepts consciously and voluntarily with the aim to keep the reputation of the judge and judiciary.

According to the third part of the article the violation of ethical rules does not result in disciplinary responsibility.

In this regard it is unclear not only the precise list of ethical rules but also the consequences in case of violation of those rules.

Article 67 of the draft provides also rules of conduct for official capacity. This includes:

- To follow the Constitution and laws*
- Examination and solution of questions in its jurisdiction*
- Authority in delivering judgments*
- Objectivity*
- Participation in compulsory training courses*
- Etc*

Besides the above-mentioned regulations of draft Judicial Code, there is currently a decision of 2016 N 01-Ů by the General Assembly of Judges on Rules of Conduct of judges. The rules of conduct are divided into 2 groups: rules of conduct for the



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	<i>behaviour in official capacity and rules of conduct when acting in non-official capacity¹¹.</i>
6.37 Who is in charge of enforcing ethics rules for judges?	<p><i>The ethical rules are prescribed by the General Assembly of judges. It is not clear from the Draft Code who is in charge for the enforcement of these rules.</i></p> <p><i>Moreover, according to the Draft the violation of ethical norms does not result in responsibility,</i></p> <p><i>This provision creates concerns, as ethical norms are vague, not listed. It is difficult to differentiate between the rules of conduct and ethical rules. There is a risk that violations can be qualified as a violation of ethical rules and thus free the judge from any kind of responsibility.</i></p>
6.38 What are the sanctions for violating such rules? Please provide statistics on application of relevant sanctions to judges for the past years (2014-2017)	<p><i>The violation of rules of conduct may result in disciplinary responsibility.</i></p> <p><i>The types of disciplinary responsibility are provided in article 155 of the draft and include:</i></p> <ul style="list-style-type: none"><i>- Warning</i><i>- Reprimand</i><i>- Severe reprimand</i>
6.39 What is the mechanism for prevention and resolution of conflict of interests for judges? Please provide the text of relevant provisions	<p><i>Both in the Code in force and in the draft Code there is one provision related to the conflict of interest of judges.</i></p> <p><i>Under the second part of article 89 of the Code in force there is a provision related to the prohibition of conflict of interest of judges.</i></p>

¹¹ <http://www.arlis.am/DocumentView.aspx?docID=104548>



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	<p><i>Similar provision exists under article 67 (7) of draft Code within the rules of conduct related to the core professional activities of judges.</i></p> <p><i>The text is the following: judges are obliged not to allow conflicts of interest, to exclude the influence of familial, social or other relations in the exercise of their professional duties.</i></p>
<p>6.40 What are the sanctions for violating rules on conflict of interests applicable to judges? Please provide statistics on application of such sanctions for the past years (2014-2017).</p>	<p><i>The analysis of the article 67 and 64 shows that the violation of the rules on conflict of interest may result in disciplinary responsibility.</i></p>
<p>6.41 What are the restrictions applicable to judges, in particular with regard to: accepting gifts; engaging in activities (paid or non-paid) or holding positions outside of the main office (incompatibilities); owning shares in companies or other financial interests; post-employment; other (please specify).</p>	<p><i>Under Article 95 of the Judicial Code there is a restriction for judges in relation to accepting gifts.</i></p> <p><i>There are similar restrictions related also to their engagement in entrepreneurial activities, engagement in activities and posts not related to the post of judge, involvement in commercial organizations, perform other paid work except academic, pedagogical and creative work.</i></p> <p><i>The restrictions related to accepting gifts are prescribed under article 70 of the Draft Code.</i></p> <p><i>Other restrictions on the activities incompatible with the official capacity of judge are prescribed in details under article 7 of the draft Code including the restrictions mentioned in question 6.41.</i></p>
<p>6.42 Who is in charge of enforcing the above-mentioned restrictions with regard to judges?</p>	<p><i>The enforcement of restrictions applicable to judges currently is done by Ethics and disciplinary Commission.</i></p>



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<p>6.43 What are the sanctions for violating the above-mentioned restrictions by judges? Please provide statistics on application of such sanctions for the past years (2014-2017).</p>	<p><i>The possible consequence for the violation of those restrictions is a disciplinary responsibility. However, the language of the provisions under article 153 (Grounds for disciplinary responsibility) and under article 89 (General rules of conduct) is complicated and vague enough to allow its application in practice.</i></p> <p><i>For example, one of the grounds for disciplinary responsibility is gross or systemic violation of the rules of conduct by judge. What constitutes gross or systemic violation of rules of conduct is not clear.</i></p> <p><i>Under draft Code the enforcement of those restrictions is provided to the Ethics and Disciplinary Commission of General Assembly. At this stage it is too early to make any conclusions on the effectiveness of implementation of those provisions.</i></p>
<p>6.44 Are the any special rules on asset and interests disclosure that apply to judges (i.e. rules different from other public officials, e.g. civil servants, with regard to filing, publishing, verification of declarations)?</p>	<p><i>Issues related to the asset and interests declaration are prescribed by Judicial Code and Law on Public Service.</i></p>
<p>6.45 What are the sanctions for violating assets and interests disclosure requirements applicable to judges? Please provide statistics on application of such sanctions for the past years (2014-2017)</p>	<p><i>There is obligation under article 96 of the Judicial Code for judges to submit assets and interests declaration.</i></p> <p><i>This requirement is prescribed under Chapter 12 on Rules of Conduct of Judges. The failure by a judge to submit asset declaration can result in disciplinary responsibility. However, under article 153 disciplinary responsibility may be imposed only in cases of gross or systemic violation of rules of conduct. It is not clear thus in which cases the failure to present asset declaration could be qualified as gross violation and result in any kind of responsibility.</i></p> <p><i>In 2017 this regulation has been changed by the adoption of the Law on Corruption Prevention Commission (the law Is not yet in force). The letter received power to present</i></p>



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	<p><i>suggestions in relation of violations of assets and interest disclosure. This reform can't be assessed at this moment.</i></p>
<p>6.46 What is the mechanism for judges to obtain advice and guidance on the issues of conflicts of interests, restrictions, financial disclosure, ethics rules, etc.? Please describe such mechanism and how it functions in practice.</p>	<p><i>According to the draft Judicial Code Judges may receive guidance and opinions from Ethics and Disciplinary Commission upon their written request.</i></p> <p><i>Similar provisions exists in the Code in force under article 88.</i></p>
<p>6.47 What training is provided to judges on anti-corruption restrictions, ethics, and financial disclosure?</p>	<p><i>According to the information available in April 2016 7 judges attended seminar on Professional ethics of judges, 84 judges attended training courses on professional ethics in November and December 2016. Within 28 November and 8 December 2016 23 judges attended training courses on topic of Fight against corruption in public service. In 2017 19 judge candidates participated in training course on professional ethics of judges.</i></p> <p><i>In 2014 20 judge candidates have been trained on the topic of “Judges professional ethics” and “Justice and Ethics”.</i></p> <p><i>In 2015 19 judge candidates have been trained on the following topics “anti-corruption issues within public service”, “Judges professional ethics”, “Justice theory and ethics”.</i></p>
<p>6.48 Are there any written guidelines on these issues (specific for judges)?</p>	<p><i>There is a decision by General Assembly of judges of 2016 on Rules of Conduct of judges.</i></p>
<p>6.49 Describe complaint procedure against judges. What authority conducts investigation of complaints?</p>	<p>See point 6.15</p>



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6.50 Is information about sanctions applied to judges (for the above-mentioned violations) published?	The decisions are being published in the court.am web page
6.51 Please describe disciplinary procedures against judges.	See point 6.15
6.52 What body (bodies) or units are in charge of investigation of disciplinary, administrative and criminal offences committed by judges?	<i>Criminal offences committed by judges are investigated by Special Investigative agency.</i>
6.53 How many judges were dismissed in (2014-2017)? Please provide statistics for each separate year and different grounds of dismissal.	
6.54 Please provide statistics for (2014-2017) on the number of judges transferred or seconded to other courts and on the grounds for such transfers.	Please see point 6.11
6.55 Please provide information about training measures on anti-corruption legislation and restrictions, rules on ethics and conflict of interest for judges. Please provide, in particular, details for 2014-2017 on the following: <ul style="list-style-type: none"> • number of trainings, • whether regular or ad hoc, • who conducted/hosted trainings, • standard programme, • number of judges trained, what categories of judges, • who funded trainings. 	See point 6.47
6.56 What other mechanisms to ensure integrity of judges are in place?	
6.57 In your opinion, what are the main problems with ensuring integrity of judges in Armenia? Please explain your conclusions	



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6.58 Please provide detailed statistics on conviction of judges for corruption offences during 2014-2017.	Please see point 6.11
6.59 What is the level of public trust in the judiciary? Please provide relevant surveys	<p><i>According to the results of public perception, about 4% of respondents fully trust in the activity of courts, whereas 31% of respondents have absolutely no trust, which is about 8 times less.</i></p> <p><i>There is almost double difference between 34% of the overall trust and 60% of the overall distrust¹².</i></p>
6.60 What is the perception of corruption within the judiciary? Please provide relevant surveys	
6.61 Please provide information on any other significant measures taken or planned in this area.	
Prosecutors	
Questions	Replies
6.62 Please provide current version of the laws regulating public prosecution service	<p><i>The Prosecution is functioning in a line with the “Law on Prosecution” (entered into force in 2007). The law covers all aspects of the prosecution service. .</i></p> <p><i>It should be noted that on November 2017 a new law has been adopted which enters into force on the date on which the new President of the Republic takes office (April 2018).The law was developed to correspond to the Constitutional changes.</i></p> <p><i>Therefore the answers to the questions raised in questionnaire will be provided with</i></p>

¹² http://moj.am/storage/files/legal_acts/legal_acts_1057954891731_Justice_Monitoring.pdf



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	<p><i>comparative analysis of the existing law and the one entering into force in April.</i></p> <p><i>The English version of the law in force is available in the web page of the Parliament http://www.parliament.am/legislation.php?sel=show&ID=2959&lang=eng</i></p>
<p>6.63 Please describe how the strategic anti-corruption policy documents cover the prosecution service.</p>	<p><i>The prosecution service has not been covered by the previous strategic anti-corruption policy documents.</i></p> <p><i>It is accepted that the next anti-corruption policy will cover issues related to the examination of corruption related crimes, which therefore will target also the prosecution service.</i></p>
<p>6.64 How is prosecution service organised (structured) in your country?</p>	<p><i>According to Article 8 of the Law in force</i></p> <p><i>The Prosecution shall consist of:</i></p> <ol style="list-style-type: none"><i>1) The General Prosecution Office;</i><i>2) The Yerevan City Prosecution Office;</i><i>3) The Prosecution Office of the Erebouni and Nubarashen Districts of Yerevan;</i><i>4) The Prosecution Office of the Kentron and Nork-Marash Districts of Yerevan;</i><i>5) The Prosecution Office of the Ajapnyak and Davtashen Districts of Yerevan;</i><i>6) The Prosecution Office of the Avan and Nor Nork Districts of Yerevan;</i><i>7) The Prosecution Office of the Arabkir and Kanaker-Zeytun Districts of Yerevan;</i><i>8) The Prosecution Office of the Shengavit District of Yerevan;</i>



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	<p>9) <i>The Prosecution Office of the Malatia-Sebastia District of Yerevan;</i></p> <p>10) <i>The Kotayk Marz Prosecution, with a center in the City of Hrazdan;</i></p> <p>11) <i>The Ararat Marz Prosecution, with a center in the City of Artashat;</i></p> <p>12) <i>The Armavir Marz Prosecution, with a center in the City of Armavir;</i></p> <p>13) <i>The Aragatsotn Marz Prosecution, with a center in the City of Ashtarak;</i></p> <p>14) <i>The Shirak Marz Prosecution, with a center in the City of Gyumri;</i></p> <p>15) <i>The Lori Marz Prosecution, with a center in the City of Vanadzor;</i></p> <p>16) <i>The Tavush Marz Prosecution, with a center in the City of Ijevan;</i></p> <p>17) <i>The Gegharkunik Marz Prosecution, with a center in the City of Gavar;</i></p> <p>18) <i>The Vayotz Dzor Marz Prosecution, with a center in the City of Yeghegnadzor;</i></p> <p>19) <i>The Syunik Marz Prosecution, with a center in the City of Kapan;</i></p> <p>20) <i>The Central Military Prosecution Office, with a center in the City of Yerevan; and</i></p> <p>21) <i>Garrison military prosecution offices, distributed in accordance with the distribution of the armed forces.</i></p> <p><i>The law coming in force from April 2018 does not foresee garrison military prosecution offices anymore.</i></p>
<p>6.65 How is institutional, operational and financial independence of the public prosecution service ensured?</p>	<p><i>The legislation provides guarantees for the autonomy of the prosecutors and</i></p>



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	<p><i>prescribes prohibitions to the interference with prosecutor’s activities.</i></p>
<p>6.66 Please describe the system of: recruitment and appointment of prosecutors; promotion of prosecutors.</p> <p>Please specify what body is responsible for each of the above and criteria for appointment and promotion of prosecutors</p>	<p><i>The general requirements for the recruitment and appointment of prosecutors are prescribed in article 33 of the draft law. According to the first part of article:</i></p> <p><i>May be appointed as prosecutor the citizen of Republic of Armenia from 25 to 65 years old who:</i></p> <ul style="list-style-type: none">- <i>Has obtained in the Republic of Armenia a Bachelor’s degree or a “specialist with diploma” degree in higher legal education, or has obtained a similar degree in a foreign state, which has been recognized and confirmed in terms of adequacy in the Republic of Armenia in accordance with the procedure stipulated by law;</i>- <i>Masters the Armenian language</i>- <i>The restrictions prescribed by article 34 of the law are not applicable to him</i>- <i>Has obtained the study in Justice Academy, if in cases prescribed by law has not been free from that obligation</i>- <i>Has at least 2 years of experience in the capacity of lawyer</i> <p><i>Prosecutors are appointed by General prosecutor from promotion list upon the positive opinion of qualification committee.</i></p> <p><i>The qualification committee, according to Article 23 is composed of 9 members. The members are:</i></p> <ul style="list-style-type: none">- <i>The head of the Justice Academy</i>- <i>Deputy general prosecutor appointed by the general prosecutor</i>- <i>4 prosecutors</i>- <i>And 3 legal academics.</i> <p><i>As it can be seen the list is not balanced and comprises mainly prosecutors.</i></p>



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The General Prosecutor is appointed upon the nomination by permanent committee of Parliamentary Assembly with at least three-fifths of the total number of deputies of Parliamentary Assembly for a term of 6 years (Article 35 of the new law).

The same person cannot be appointed as a general prosecutor more than 2 times.

The involvement of experts and the existence of expert opinion in the selection and appointment process of general prosecutors is a necessary and important requirement.

However, the regulations on this topic in Armenia do not provide any requirement for expert opinion during the selection and appointment process of General Prosecutor.

The candidate of GP is suggested by the permanent committee within PA. The permanent committees within PA are composed of parliamentarians. The involvement of external experts and existence of expert opinions in this process is not foreseen.

Thus, this regulation is not in conformity with international requirements.

The question of the appointment of General prosecutor by PA raises concerns for the following reasons. The majority vote in PA belongs to the Ruling Party which does not have trust from general public. Therefore, the important role of PA in appointment processes of GP and other high positions in the country is accompanied with concerns.



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<p>6.67 How are integrity and transparency of the recruitment and appointment process ensured? What is the procedure of testing during the selection?</p>	<p><i>The candidates' list of prosecutors is replenished through open and closed competition. The open competition conducts the qualification committee within prosecution service once a year. Close competitions are held by the GP to make additions in the list of candidates.</i></p> <p><i>The process of both close and open competition is decided by the GP.</i></p> <p><i>The law, in this connection does not provide concrete criteria for close competitions and provides the GP wide powers.</i></p> <p><i>As to the open competitions, according to Article 38 of the Law, the Qualification committee publishes at least one month before the announcement of the open competition information about the deadline, place and necessary documents for the candidates in a press having at least 3000 publication and in the official web-page of prosecution service.</i></p>
<p>6.68 How is secure tenure of prosecutors ensured? Are prosecutors appointed for a limited term? What are the grounds for dismissal of prosecutors?</p>	<p><i>According to Article 62 of the new law the grounds for dismissal of prosecutors are:</i></p> <ol style="list-style-type: none"><i>1. Personal request to be dismissed</i><i>2. Reaching the age of 65 which is the maximum up to which a prosecutor may serve in office</i><i>3. Death of a prosecutor</i><i>4. Termination of Armenian citizenship</i><i>5. Reduction of staffing</i><i>6. The refusal by a prosecutor to be transferred to another division or prosecution service when that division is liquidated or reorganised</i><i>7. Being declared dead or recognized missing by a court judgment</i><i>8. When the limitations prescribed by article 34 of the law are present</i>



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	<p>9. <i>The existence of a disciplinary sanction based on first part point 5 of article 54 of the law</i></p> <p>10. <i>The court decision proving that he or she has been appointed by violations of law</i></p> <p>- <i>Etc</i></p> <p><i>The provision under point 6 is a matter of interpretation which may create risks in practice. It is not disputed that when a division is liquidated and the prosecutor refuses to be transferred to another division he may be dismissed. But in practice other cases are also possible, particularly when there is a need to “lawfully dismiss a prosecutor without legal grounds”. For example, decision is taken to transfer a prosecutor from Yerevan to a prosecution service in a region, and the prosecutor for some reasonable grounds refuses the offer. This may be a reasonable ground under this Article to dismiss the prosecutor.</i></p> <p><i>Therefore, to avoid from abusive interpretations in practice this list should be revised.</i></p>
<p>6.69 Is there a Council for Prosecutors (to decide on career issues of prosecutors)?</p> <p>6.70 Please provide regulations on such council and description of its status, powers, secretariat, reporting.</p>	<p><i>Article 22 of the draft Law (coming in force in 2018) prescribes the existence of prosecutors’ collegium. The latter shall function in order to discuss fundamental issues related to the organization of the Prosecution activities and decide the implementation of constitutional powers chaired by the General prosecutor.</i></p> <p><i>The collegium Is composed from GP, deputies of GP, heads of divisions within prosecution and prosecutor of Yerevan city.</i></p> <p><i>Career issues of prosecutors are regulated by the Qualification commission referred above.</i></p>
<p>6.71 What is the procedure for appointment and dismissal of the Prosecutor General?</p>	<p><i>See point 6.66 for the appointment</i></p>



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The grounds for dismissal of prosecutor general are prescribed under Article 63 of the Law.

- *The powers of the prosecutor general shall be deemed terminated when the term of his office is expired on the same day of the sixth year following the assumption of office.*

The powers of PG are early terminated when:

- *The GP has reached the age of 65*
- *The loss of Armenian citizenship*
- *Being declared dead or recognized missing by a court judgment*
- *The death*
- *The restrictions prescribed by first part points 1,3,4, 6 and 7 of Article 34 are present*
- *The existence of a conviction by court judgment*
- *termination of criminal prosecution against a prosecutor or non-fulfilment of criminal prosecution on a non-justifying basis*
- *Submitting resignation to the National Assembly. In case of resignation, the powers of PG shall terminate if the resignation application is filled not later than within one week after the first resignation application*

The powers of PG may be terminated if:

- *Has been ill with a serious illness which hinder for a long time the execution of his duties*
- *Has committed a violation of law or rules of conduct of prosecutor, which has discredited the reputation of the prosecution service*
- *Has violated the restrictions prescribed by article 49 and the requirements of incompatibility*
- *There are other insurmountable obstacles for the implementation of powers*

The grounds of termination of PG powers are vague, particularly the one related



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	<p><i>to the</i></p> <p style="text-align: center;">•</p>
6.72 Please provide statistics on appointment and promotion of prosecutors for the past years (2014-2107).	<i>No information is available</i>
6.73 Please provide the total number of prosecutor’s positions and the current number of vacancies . How did the total number of positions change during 2014-2017?	<i>No information is available</i>
6.74 What are the requirements for prosecutor’s positions of different levels, including position of the Prosecutor General?	<i>See point 6.66</i>
6.75 Are there guidelines for withdrawing/referring criminal cases from/to an investigative agency? Please provide their text.	<i>The question is regulated by the Criminal Procedure Code. Other documents such as decisions by GP are not available.</i>
6.76 What are the rules of conduct or ethical rules that cover prosecutors? Please provide text of such rules.	<p><i>The rules of conduct of prosecutors are prescribed by Articles 72-74 of the draft Law.</i></p> <p><i>The requirements deriving from the rules of conduct shall be decided by the PG.</i></p>
6.77 Who is in charge of enforcing ethics rules for prosecutors?	<i>The ethics committee within Prosecution service is responsible for enforcing the rules of conduct, however, no information is available publicly in this regard.</i>
6.78 What are the sanctions for violating such rules? Please provide statistics on application of sanctions for the past years (2014-2017)	<p><i>There is no official information on the statistics.</i></p> <p><i>The sanctions applicable for violating rules of conduct of prosecutors are provided in article 54 of the draft Law.</i></p> <p><i>The following disciplinary sanctions may be applied for prosecutors:</i></p> <ol style="list-style-type: none"> <i>1. Reprimand</i> <i>2. Severe reprimand</i>



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	<p>3. Lowering of the rank 4. Lowering of the position 5. Dismissal</p> <p><i>The dismissal is applicable only in cases when the violation discredits the reputation of prosecution service.</i></p>
<p>6.79 What is the mechanism for prevention and resolution of conflict of interests for prosecutors? Please provide the text of relevant provisions</p>	<p><i>The conflict of interest is prescribed as a rule of conduct for prosecutors in official capacity.</i></p>
<p>6.80 What are the sanctions for violating rules on conflict of interests applicable to prosecutors? Please provide statistics on application of such sanctions for the past years (2014-2017)</p>	<p><i>The analysis of the provisions related to conflict of interests shows that such violations may result in disciplinary responsibility.</i></p> <p><i>As it is a new regulation no information on its applicability can be provided at this moment.</i></p>
<p>6.81 What are the restrictions applicable to prosecutors, in particular with regard to: accepting gifts; engaging in activities (paid or non-paid) or holding positions outside of the main office (incompatibilities); owning shares in companies or other financial interests; post-employment; other (please specify).</p>	<p><i>The restrictions with regards to accepting gifts, engaging in activities or holding positions outside the main office are prescribe under article 49 of the Law (Restrictions applicable to prosecutors and requirements of incompatibility).</i></p>
<p>6.82 Who is in charge of enforcing the above-mentioned restrictions with regard to prosecutors?</p>	<p><i>The Corruption prevention Commission (which will replace the Ethics Commission) is entitled to provide conclusion on the violation of requirements of incompatibility or</i></p>



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	<p><i>restrictions applicable to prosecutors or on the violation of ethics rules. This conclusion is sent within 3 days to the body having authority to examine the question of dismissal. The Commission may also suggest the body (in this case the Ethics commission within Prosecution) to apply disciplinary measures against the prosecutor if the violation is not of administrative or criminal nature¹³.</i></p> <p><i>Under article 55 of the Law on prosecution General prosecutor has the authority to apply sanctions based on the conclusions provided by the Corruption prevention Commission.</i></p>
<p>6.83 What are the sanctions for violating the above-mentioned restrictions by prosecutors? Please provide statistics on application of such sanctions for the past years (2014-2017)</p>	<p><i>Article 53 prescribes the grounds of disciplinary responsibility. According to point 4 of the article a prosecutor may be liable for not following the requirements or violating the restrictions prescribed in article 49.</i></p> <p><i>For sanctions see point 6.78.</i></p>
<p>6.84 Are there any special rules on asset and interests disclosure that apply to prosecutors (i.e. rules different from other public officials, e.g. civil servants, with regard to filing, publishing, and verification of declarations)?</p>	<p><i>The law on “Public service” is applicable for prosecution service which prescribes also the requirements on asset declaration.</i></p>
<p>6.85 What are the sanctions for violating assets and interests disclosure requirements applicable to prosecutors? Please provide statistics on application of such sanctions for the past years (2014-2017)</p>	<p><i>The violations of assets disclosure may result in administrative or criminal responsibility depending on the nature of violation.</i></p> <p><i>For non-submission of asset declarations in time prescribed by law, or submitting declarations in violation of the requirements or presentation procedure, submission of incorrect or incomplete declarations may result in administrative responsibility.</i></p> <p><i>Criminal responsibility is applicable for deliberate/intentional violations: submitting false information or hiding the information subject to declaration.</i></p> <p><i>The regulation on asset declaration for prosecutors is new one therefore there is no</i></p>

¹³ Article 33 of the Law on Corruption Preventing Commission



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	<i>statistics related to it.</i>
6.86 What is the mechanism for prosecutors to obtain advice and guidance on the issues of conflicts of interests, restrictions, financial disclosure, ethics rules, etc.? Please describe such mechanism and how it functions in practice	<i>According to article 57 a prosecutor may apply to Ethics committee within prosecution service to receive interpretations on the rules of conduct.</i>
6.87 Please provide information about training measures on anti-corruption legislation and restrictions, rules on ethics and conflict of interest for prosecutors. Please provide, in particular, details for 2014-2017 on the following: number of trainings, whether regular or ad hoc, who conducted/hosted trainings, standard programme, number of judges trained, what categories of judges, who funded trainings.	<p><i>From 8 August to 9 September 2016, similarly from 18-28 April 2017 12 prosecutor candidates and 31 prosecutors have participated in training courses on Anti-corruption fight and professional ethics of prosecutors</i></p> <p><i>On 30 April 2016 training course within training for judges has been organized for prosecutors on professional ethics of prosecutors.</i></p> <p><i>In 2017 additionally 20 prosecutor candidates participated in the courses on “Professional ethics of prosecution” and “Anti-corruption Contemporary issues in public service”. 36 prosecutors took courses on the same subjects.</i></p> <p><i>In 2015 11 prosecutor candidates participates in the courses “Professional ethics of prosecutors” and “Anti-corruption Contemporary issues in public service”.</i></p> <p><i>In 2014 only 11 prosecutor candidates participated in a course on “Professional ethics of prosecutors”¹⁴.</i></p>
6.88 Are there any written guidelines on these issues (specific for prosecutors)?	<i>There are no specific guidelines on this topic for prosecutors.</i>
6.89 Is information about sanctions applied to prosecutors (for the above mentioned violations) published?	<i>There are no grounds in law for publication of information about sanctions and no information is available in practice.</i>
6.90 What are the rules on allocation of cases among prosecutors?	<i>There are no special rules. The procedure is prescribed by the Criminal Procedure</i>

¹⁴ The statistics are taken from the official document provided by the Justice Academy upon the NGO’s information request



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	<i>Code.</i>
6.91 What is the level of remuneration of prosecutors (average amount of monthly salary for different levels of seniority)	<i>The issues related to the remuneration of prosecutors is regulated by the law on “Remuneration of state officials”.</i>
6.92 Are there any additional benefits provided to prosecutors (bonuses, housing subsidy, fees for assistants or consultants, travel allowance, etc.)? 6.93 Please specify what benefits and in what amount apply	<i>Yes, the legislation foresees additional benefits for prosecutors. According to the law on “Remuneration of state officials” the prosecutor receives additional benefits of 2 per cent for each year of experience as prosecutor, investigator, or investigator of special investigative committee (Article 14 of the Law). However, the law does not prescribe the criteria or conditions for receiving additional benefits.</i>
6.94 How is performance evaluation of prosecutors organised? What indicators are used?	<i>There are no provisions on performance evaluation of prosecutors in the law.</i>
6.95 Describe complaint procedure against prosecutors . What authority conducts inspections of individual prosecutors?	<i>- No special procedure is prescribed by the law. According to the general rule alleged violations of the public officials, including prosecutors, are investigated by the Special Investigative Service (Article 2 “The Law on Special Investigative Service”)</i>
6.96 Please describe disciplinary procedures against prosecutors	<i>The grounds of disciplinary responsibility of a prosecutor are presented under Article 53 of the law. As such it includes:</i> <ul style="list-style-type: none"> <i>- Non-implementation of obligations or improper performance of obligations</i> <i>- Violation of rules of conduct of prosecutors</i> <i>- Periodic violation of disciplinary interior labour rules</i> <i>- Violation of the requirements of incompatibility or restrictions prescribed by law</i> <p><i>According to the first paragraph of Article 56 Disciplinary proceedings against a prosecutor <u>may be initiated by the general prosecutor</u> based on the grounds provided in first part of article 53 in the following cases:</i></p> <ol style="list-style-type: none"> <i>1. By the initiation of GP</i> <i>2. Based on the applications from prosecutors</i>



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3. Based on the ***motions/applications from physical or legal persons, state or local authorities and media publications***
4. Based on a court sanction

Disciplinary proceedings against a prosecutor based on the applications from physical or legal persons or from media publications may be opened also by the ethics commission within prosecution (paragraph 4 of Article 56).

*According to the paragraph 5 of the same article “**the motions specified in paragraph 3 of this article, as well as the applications/motions and publications specified in paragraph 1(3) of this article are not itself grounds to open disciplinary proceedings**”.*

A contradiction between paragraph 5 and paragraph 1 of the same article is obvious. Moreover, It follows from the presented regulations that the applications made by physical or legal persons and media publications may not be subjected to any examination.

In this regard another concern is related with the regulation under paragraph 7 of the same Article. In cases when the PG takes a decision on opening disciplinary proceeding by its or ethics commission’s decision a sub-commission composed of 3 prosecutors is formed or the proceeding is referred to a single prosecutor.

Such regulations are problematic as the carrying out of proceedings by a body composed of only prosecutors or referring it to a single prosecutor can’t guarantee objective examination.

According to article 55 of the law, the decisions on the sanctions prescribed in first part of article 54 (see point 6.78) are taken by the General Prosecutor. The later



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	<p><i>takes decisions on disciplinary responsibility based on a conclusion provided by Corruption prevention Commission on issues related to the violations of incompatibility requirements or restrictions.</i></p> <p><i>The sanctions prescribed by the point 5 of first part of the same article are taken by Prosecutor General based on a conclusion provided by ethics commission within prosecution.</i></p> <p><i>The sanctions prescribed in point 3 of first part of article 54 for prosecutors having high ranking are taken by the President upon the request by Prosecutor General. The decision on lowering of rank of General Prosecutor is taken by the President.</i></p> <p><i>The Article 56 of the Law should be amended. The role and functions of ethics commission within prosecution needs further clarification.</i></p>
<p>6.97 What agency (agencies) or units are in charge of investigation of disciplinary, administrative and criminal offences committed by prosecutors?</p>	<p><i>Criminal offences committed by prosecutors are investigated by Special Investigative agency.</i></p> <p><i>For disciplinary cases see point 6.96</i></p>
<p>6.98 How many prosecutors were dismissed in 2014-2017? Please provide statistics for each separate year and different grounds of dismissal.</p>	<p><i>No information is available</i></p>
<p>6.99 What other mechanisms to ensure integrity of the public prosecution service are in place?</p>	<p><i>No information is available.</i></p>
<p>6.100 In your opinion, what are the main problems with ensuring integrity of the public prosecution service? Please explain your conclusions</p>	
<p>6.101 What is the level of public trust in the prosecution service? Please provide relevant surveys</p>	<p><i>Detailed information under this question may be found here http://hcav.am/wp-content/uploads/2016/02/INDICES-CHARACTERIZING-ACTIONS-OF-LAW-</i></p>



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	<p>ENFORCEMENT-AGENCIES-IN-THE-REPUBLIC-OF-ARMENIA..pdf</p> <p><i>Additionally, According to the results of public perception, about 3,7% of respondents fully trust in the activity of prosecution, whereas 29.2% of respondents have absolutely no trust, which is about 7 times less¹⁵.</i></p>
6.102 What is the perception of corruption within the prosecution service? Please provide relevant surveys	
6.103 Please provide information on any other significant measures taken or planned in this area	<p><i>Transparency and accountability of Prosecution service</i></p> <p><i>The question or transparency of prosecution service is prescribe under article 5 of the law. The regulations are thorough enough to enable transparent and accountable performance of the service. Particularly, the regulations require from the prosecution service accountability both before the Parliament and public through annual reports.</i></p> <p><i>This regulation, however, does not prescribe accountability in terms of financial issues.</i></p>

¹⁵ http://moj.am/storage/files/legal_acts/legal_acts_1057954891731_Justice_Monitoring.pdf



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