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FORMATION OF ANTI-CORRUPTION COURT IN THE REPUBLIC OF ARMENIA

LEGISLATION AND PRACTICE

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EXECUTIVE SUMMARY

With the adoption of the Anti-corruption strategy for 2019-2023, the Republic of Armenia entered a new phase of the fight against corruption. One of the most important pillars of the process was the creation of a specialized anti-corruption court. Its formation was considered as a step to provide additional sustainability and integrity to the system. The procedures for the formation of the anti-corruption court, selection and appointment of judges, transparency and accountability of the process are of particular importance to ensure effective functioning and a real fight against corruption.

"Protection of Rights Without Borders" NGO monitored and analyzed the process of formation of the Anti-corruption court, selection and appointment of judges.¹ Monitoring revealed a number of legal and practical issues presented below. Relevant recommendations are also presented in relation to the revealed issues.

- *Number of judges*

The initial discussions and legislative drafts on the establishment of the Anti-Corruption Court did not contain sufficient justification regarding the required number of judges for the Anti-Corruption Court, including higher instances. For example, it was not clear why it was decided that there should be 10 judges sitting in the Anti-Corruption Chamber of the Court of Cassation, especially as compared to the number of judges sitting in other, more overloaded chambers. To ensure clarity and to justify the number of judges, a proper needs assessment should have been undertaken to better understand the actual need for the number of judges and present it in the concept note, taking into consideration, for example a potential number of cases falling within the jurisdiction of the Anti-corruption court and the backlog of the court, peculiarities of examination of such type of cases, their volumes and complexity.

- *Simplified procedure for candidates with PhD in Law*

The Judicial Code defines a simplified procedure for judge candidates with an academic degree in law. However, the Code does not specify what sectoral academics particularly the order is applicable to. As a result, anyone having any specific field of specialization and academic degree in law may benefit from this entitlement, whereas this candidate may have weaker professional capacities than other candidates. It was necessary to establish a procedure in particular for specialized judges, which would

¹ Within the framework of the research, the selection procedure of judges of anti-corruption specialization in the first -instance court between January and September 2022 was observed, including written examination, psychological testing and interviews. Collection and analysis of publicly available information on judges' candidates selected by the Supreme Judicial Council as well as by the National Assembly to the Anti-Corruption Chamber of the RA Cassation Court. The information reflected in the report was collected and is correct as of November 30, 2022.

permit evaluation of the candidate's specific sectoral abilities and the compliance to the relevant position.

- *Interview with candidates for promotion*

Following the receipt of applications of the judges' candidates to be placed on the list for the promotion to the Courts of Appeal and the Cassation Court, the Supreme Judicial Council examines the personal case of candidate judges in a session, and in case of non-judge candidates, documents filed by the candidate and documents obtained as a result of examination of those documents, and invites the candidates for an interview if required. Having an interview is not a mandatory requirement, it is at the discretion of the Supreme Judicial Council. It is not clear, in what cases such necessity arises, and what kind of questions are discussed during the interview.

- *Public oversight of the selection procedure of judges to the Courts of Appeal and the Cassation Court by the Supreme Judicial Council*

The selection procedure of judges to the Courts of Appeal and the Cassation Court by the Supreme Judicial Council is not subject to public oversight. Unlike the selection procedure of judges to the first instance courts, where observation is envisaged, this is not the case for the Courts of Appeal and the Cassation Court.

- *Selection of organizations developing questions of the written examination for judges' candidates*

According to the Judicial Code and the Procedure approved by Supreme Judicial Council decision РЃИ-98-П-281, the Supreme Judicial Council selects a relevant specialist (specialists) or a specialized organization for developing the questions of the written examination for judges' candidates. However, neither the Judicial Code, nor the Order specifies the eligibility criteria required for the respective specialist or the specialized organization, nor the criteria or requirements to reason the decision on selection of the specialist or specialized organization.

- *Safeguards to ensure confidentiality of the content of the written exam*

According to the Judicial Code, the Judicial Department and in case the development of the questions of the written examination is delegated to the specialized organization, the head of the specialized organization takes a signature from the specialist developing the questions of the written examination on the warning of criminal liability applicable for the intentional violation of the confidentiality of the tests for written qualification examination. The objective of this regulation is essentially to ensure the confidentiality of the written examination and protection of the specialist/specialists from the possible interventions. However, it is not clear whether the relevant regulations are sufficient to ensure those guarantees in practice or what kind of mechanisms are available to detect the alleged violations of confidentiality.

- *Method of written examination*

The content of the tasks elaborated for the written qualification examination does not fully reflect the goals of the written tasks envisaged by the Judicial Code. The code provides that in addition to checking the theoretical legal knowledge of the candidate in the respective fields of the law, the written examination is also aimed at checking the skills of the candidate at analyzing and applying the law. The law provides two alternative methods: either a case study or test assignments. In case of the second, the check of the analytical skills of the candidate is not ensured, as the candidate simply chooses one of the answers presented in the test, and this does not allow to assess their analytical, legal drafting and thinking skills.

Monitoring demonstrates that the tests of the written qualification examination on procedural law for the candidates of the anti-corruption civil court did not meet the requirements set by the Judicial Code. The tests included questions that did not relate to the capacities necessary for the court of that specialization.

- *Psychological testing of candidates*

The report presents a number of issues related to the psychological testing of the qualification assessment in force at the time of monitoring. In particular, the psychological testing was carried out through a combination of psychological tests allowing to check the candidate's emotional intelligence, moral judgment, and the system of values. However, neither the Judicial Code, nor the relevant procedure approved by the Supreme Judicial Council additionally regulate the method of revealing the characteristics of a person according to the specified criteria. Neither they regulate the methods of analysis, evaluation and conclusion of the obtained data. The regulations in relation to which problems were identified, are no longer prescribed by the Judicial Code: the stage of psychological testing was removed from the qualification assessment of judges' candidates. However, no justification by the decision-makers about this amendment was provided.

- *Integrity check*

During the interview stage of the qualification examination, the questions related to the results of the integrity check had a crucial significance. They were based on the filled-out integrity questionnaire and the conclusion issued by the Corruption Prevention Commission. The Council asks questions on the integrity check mainly related to the candidates and their family members, financial situation and financial means, other personal data, which were flagged as raising concerns by the Corruption Prevention Commission.

- The conclusions issued by the Corruption Prevention Commission are not public and are of advisory nature. Monitoring of the practice demonstrates that the Supreme Judicial Council includes persons even with negative integrity assessment on the lists of judges' candidates and lists of promotions without any justification or reasoning.
- The Corruption Prevention Commission provided 'positive' conclusion in regard to seven candidates (44%) out of 16 candidates included in the list of judges' candidates dealing with anticorruption civil

cases and corruption crimes of the anti-corruption specialized department, ‘positive with reservation’ conclusion in regard to eight candidates (50%) and one (6%) ‘negative’ conclusion’.

- The analysis of the interview results and publicly available information allowed to conclude that there are concerns in relation to at least six (38%) out of 16 candidates on the list of candidates to the anti-corruption court approved by the Supreme Judicial Council in terms of integrity check, especially in relation to the declared financial means, their sources and justifications. The concerns mainly relate to the financial means and/or the property in the declarations of the judge candidates or their family members submitted to the Corruption Prevention Commission.
- Four out of eight ‘positive with reservation’ conclusions were based on the inconsistencies revealed in relation to the property of the candidates, three were based on the inconsistencies revealed in relation to the property and previous record of the candidate of being subjected to disciplinary or administrative responsibility, and in one case - previous record of the candidate of being subjected to disciplinary, administrative or criminal responsibility. As for the one ‘negative’ conclusion, it was based on previous record of the candidate of being subjected to disciplinary or administrative responsibility, as well as unreliability of the data presented by the candidate in the integrity questionnaire.
- The Supreme Judicial Council selected six specialists to be judges dealing with the review of appeals of judicial acts of anti-corruption civil cases and four specialists dealing with appeals of judicial acts on corruption criminal cases in the appeal courts. In the first case, five candidates were judges and in the second case, three candidates were judges. In both cases, the results of analysis of publicly available information raised concerns in regard to the financial means of the judge candidates and/or their family members, particularly in regard to the income and the incompatibility of the expenses. In terms of the candidates involved in the list, the cases and the volumes of the received monetary donations are of particular concern.
- The Corruption Prevention Commission provided ‘positive’ conclusions on integrity check in regard to six out of 10 candidates for judges to the appeal courts, ‘positive with reservation’ conclusions in regard to two candidates and ‘negative’ conclusions in regard to the other two candidates.
- Following the consideration of the candidates nominated by the Supreme Judicial Council, six judges were elected to the Anti-corruption Chamber of the Cassation Court, including three members of the panel for investigation of the corruption criminal cases and three members of the panel for anti-corruption civil cases. There are also concerns about some of these judges regarding unsubstantiated donations, family and personal ties, as well as political views.
- The Corruption Prevention Commission issued ‘positive’ conclusion on integrity check in regard to one out of three candidates of the panel for investigation of the corruption criminal cases, ‘positive with reservation’ in regard to the second candidate and ‘negative’ conclusion in regard to the third candidate respectively. Similarly, the Corruption Prevention Commission issued ‘positive’ conclusions in regard to two candidates out of three judge candidates of the panel for anti-corruption civil cases. Because of the equal distribution of the votes of the Commission members, final conclusion on integrity check in regard to one candidate was not issued.
- Although the President of the Republic of Armenia submitted objections to the Supreme Judicial Council in relation to some of the candidates of judges to the Anti-corruption court and candidates subject to promotion to appeal courts and proposed “to make the advisory conclusions and opinions by

the Corruption Prevention Commission and experts subject to consideration”, however during the same period, judge candidates discussed in the report were appointed by the Presidential Decree despite the fact that there were concerns raised regarding their integrity. It is important to ensure the application of a unified approach and the independence of the judiciary, the impartiality and accountability of the appointments.

RECOMMENDATIONS

1. Revise the procedure of appointment of persons with a scientific degree in the field of law for the position of a judge to ensure that the relevant professional abilities and skills of the candidate and the existence of sectoral specialization are evaluated.
2. Define a mandatory interview procedure in the context of compiling a list of judges-candidates to be promoted in the Appeal Courts and Cassation Court, including for the candidates who are acting judges, to provide a clear scope of questions to be discussed during the interview.
3. Ensure the transparency and public accountability of the process of selection of candidates for judges to be promoted in the Appeal courts and the Cassation court by the Supreme Judicial Council, including by providing for the possibility of observation of interviews of all candidates by specialized non-governmental organizations.
4. Further clarify in the Judicial Code the criteria required from the specialists or professional organizations selected by the Supreme Judicial Council for developing questions for the written qualification exams.
5. Define additional guarantees and mechanisms to ensure the confidentiality of the tasks for the written qualification examinations.
6. Ensure that in practice written qualification examination of judges’ candidates correspond to the requirements of the Judicial Code, so to enable the evaluation of analytical thinking and ability to apply the law.
7. Restore the stage of psychological testing for judges’ candidates and provide for an effective methodology and procedure for assessing their emotional intelligence, moral judgment and value system. At the same time, ensure the transparency of the process of engagement of psychologists, the criteria and requirements required of the candidates, and the publicity of psychological tests and evaluation results.
8. Ensure by the legislation the publicity of the conclusions issued by the Corruption Prevention Commission.
9. Ensure by the legislation the publicity and need for reasoning of decisions of the Supreme Judicial Council on selection of judges’ candidates and candidates for promotion, especially of the decisions to select and include in the respective lists the candidates of judges who have received a ‘negative’ and ‘positive with reservation’ conclusions on the integrity check by the Corruption Prevention Commission.