

SUMMARY

On the Monitoring of the Open Competition for Replenishing the Candidates' lists of Prosecutors in 2023

In 2022 “The Protection of Rights without Borders” non-governmental organization (hereinafter referred to as the Organization) conducted in-depth examination of legislative regulations in the field of prosecution and simultaneously conducted a monitoring of the open competition for replenishing the list of vacant positions of the prosecutors¹.

Highlighting public trust and transparency towards the recruitment procedure of new staff in the prosecution system, in 2023 the Organization conducted monitoring of the open competition to replenish the list of candidates of prosecutors.

For that purpose, back in December of 2022, the Organization filed an application to the Qualification Commission adjunct to the Office of Prosecutor’s General, requesting to consider the possibility of the Organization to monitor the overall procedural and organizational aspect of the competition, as prescribed by the RA legislation. Obtaining the permit of the Commission, the Organization participated in the open competition organized for the recruitment of the vacant positions for the candidates of the prosecutors, which started from January 20 of 2023.

¹ PRWB, The appointment procedure of Prosecutors in the Prosecution System <https://prwb.am/wp-content/uploads/2022/05/%D4%B6%D5%A5%D5%AF%D5%B8%D6%82%D5%B5%D6%81.%D4%B4%D5%A1%D5%BF%D5%A1%D5%AD%D5%A1%D5%A6%D5%B8%D6%82%D5%A9%D5%B5%D5%A1%D5%B6-%D5%B0%D5%A1%D5%B4%D5%A1%D5%AF%D5%A1%D6%80%D5%A3%D5%B8%D6%82%D5%B4%D5%BA%D5%A1%D5%B7%D5%BF%D5%B8%D5%B6%D5%AB-%D5%B6%D5%B7%D5%A1%D5%B6%D5%A1%D5%AF%D5%B4%D5%A1%D5%B6-%D5%AF%D5%A1%D6%80%D5%A3%D5%A8.pdf>

General information about the competition

The overall number of the applications to participate in the competition was initially 102. The qualification check of the applicants was organized in different days once or twice a week, until March 28 of 2023, respectively.

As shown by the monitoring outcomes, during each regular day of the competition, less than 2-3 applicants participated in the qualification competition. By the final countdown, it can be recorded, that overall 69 applicants out of 102 applicants respectively participated in the competition. One third of the applicants did not participate in the competition.

The Organization participated in the qualification examinations until the date of March 3 of 2023 and managed to monitor the interviews of 47 applicants, which is 68,12% of the overall number of the participants.

Overall, at the end of the qualification examination, only 12 applicants out of 69 candidates were included in the list of candidates.

The monitoring results of interviews

20 applicants out of 47 applicants, respectively were female and 27 applicants were male.

Only 7 applicants out of 47 applicants, respectively received positive conclusion from the Qualification Commission and were included in the list of candidates for the position of prosecutors.

4 applicants receiving positive conclusion were male and 3 of the applicants were female.

32 applicants out of 47 applicants participated in the competition for the first time, 9 candidates for the second time and the rest 6 applicants more than twice.

Cases were recorded, when the applicant applied for the position for the fourth time and again with negative conclusion and as a result was not included in the list of candidates for the position of prosecutor.

The qualification check of the candidates of prosecutors was conducted by the Qualification Commission adjunct to the RA Prosecutor General Office.

The Commission was legally competent during all monitored days of the competition and acted with a composition of 6 members. During all days, the Commission was composed by the following members:

- Arthur Poghosyan, President of the Commission, Deputy Prosecutor General
- Artak Harutyunyan, Member of the Commission, Head of the Department for Combating Crimes against Humans
- Lilith Grigoryan, Member of the Commission, Prosecutor of Yerevan City
- Armen Marukhyan, Member of the Commission, Head of the Department of Organization, Supervision and Legal Assistance,
- Hovhannes Kocharyan, Member of the Commission, Deputy Military Prosecutor.

Sergey Arakelyan, Rector of the RA Justice Academy and Member of the Commission participated in the competition during the first days of the Competition, however, did not have further participation in the qualification check.

During separate days, Tatevik Sujyan, Candidate of Law, Associate Professor, Faculty of Law - Chair of Criminal Processing and Criminalistics of the Yerevan State University participated in the Qualification Competition.

The following members were also included in the composition of the Qualification Commission, who never participated in the competition:

- Ara Gabuzyan, Chair of Criminal Law of the Yerevan State University Faculty of Law
- Arkadi Sahakyan, Lawyer of Union of Advanced Technology Enterprises-UATE, member of the anti-corruption coalition management board

- Vitali Kasko, member, legal expert of the “International Association of Prosecutors” Executive Committee.

It should be noted, that according to the official information published in the website of the RA Prosecutor General’s Office, the participation of Tatevik Sujyan and Ara Gabuzyan in the qualification exams were upon their agreement².

The process of the competition

For each day, there was concrete number of candidates participating in the qualification examination for that day.

As shown by the monitoring outcomes, less candidates, than as prescribed by the list of candidates, participated in the examination, for different reasons. For example, during the first day of Qualification Competition, January 20, 9 candidates should have participated in the qualification exam, however, 7 candidates participated. On the next day, 8 candidates should have participated in the examination, however, 5 candidates participated and the next day 6 candidates, etc.

Such image enables to record, that the efforts, resources and time of the Qualification Commission and other bodies engaged in the competition are more than the consistency of the applicants.

This is also highlighted by the circumstance that the candidates of prosecutors, in a line with the RA Law on Corruption Prevention Commission, should attach the conclusion of integrity check issued by the Corruption Prevention Commission to their document list, and during the interview stage, the Qualification Commission examines also the integrity conclusion issued by the Commission based on the questionnaire.

² The Composition of the Qualification Commission of the RA Prosecutor General’s Office <https://www.prosecutor.am/am/%D5%88%D6%80%D5%A1%D5%AF%D5%A1%D5%BE%D5%B8%D6%80%D5%B4%D5%A1%D5%B6/>

That is, the integrity evaluation is elaborated before the interview stage. However, it is also possible that the candidate of prosecutor will not participate in the interview stage, which was recorded for several time during the qualification examination stage. It turns out, that the Corruption Prevention Commission provides a lot of time and resources, as well as elaborates the integrity conclusion for each candidate, which, however, is not furtherly used, because the applicant failed to participate in the competition.

During each day of the competition, the secretary of the Commission informed whether the sitting was legal or not, by mentioning the members of the Commission.

It was also announced about the participation of the non-governmental organization in the qualification examination by the status of a monitor.

After that, the candidates were invited to the hall of the competition one by one. Before the start of the qualification check with each applicant, the Chairperson of the Commission presented the list of required documents for the candidate, which include:

- An application by the name of the chairperson of the Qualification Commission,
- Identification document
- Certificate of higher legal education of the candidate
- A certificate on the biographical data of the candidate, description of the professional working experience of the candidate after acquiring a degree in law.
- A certificate on the having completed the compulsory military service or a document on being exempted or deferred from compulsory military service in accordance with the law
- A document issued in accordance with the procedure established by the government on the absence of physical defects and diseases preventing the appointment to the position of prosecutor
- A document certifying the existence of a candidate or doctorate degree in legal sciences
- A filled-out integrity check questionnaire issued based on the Republic of Armenia Law on “Corruption Prevention Commission”.

According to the RA Law on “Prosecution”, the candidate has also the right to present letters of recommendation.

By the monitored 47 cases, the candidates presented the letters of recommendation twice issued by the lecturers from the higher education institutions, respectively.

By another case, the documents on health issues of the applicant were a matter of discussion, since there was a need to double check the results of cardiac test. As a result of the in-spot examination of the documents and checks and the explanation given by the applicant, the problem was solved.

The procedure of the competition with each candidate was composed of 3 main parts:

1. Presentation of biographical data.

Presentation of biographical data of the candidate by the Chairperson of the Qualification Commission, after which, the members of the Commission can pose questions related to the biographical data of the candidates. The questions mainly related to

- ✓ Additional clarification about the education
- ✓ Professional work activities, what kind of functions the candidate carried out during the professional work experience.

In all cases, when the applicants did not work by non-criminal profession or did not have professional experience of a lawyer, the members of the Commission asked a mandatory question about the motivation for pursuing the career of prosecutor.

It should be noted, that the half of the 47 applicants did not have professional working experience. By separate cases it was recorded, that the applicants had professional work experience, not experience as a lawyer: they worked as auditors, a salesperson-consultant in a perfume shop, a secretary in the police system, a financial mediator specialist, etc.

7 applicants out of 47 were investigators. 2 applicants out of the 7 applicants were granted with positive conclusion by the Qualification Commission and were included in the list of prosecutors.

As shown by the monitoring, in all the cases when the candidate did not have professional work experience, the answers to the professional check questions were not profound enough.

Even in all cases, when the applicants gave sufficient answers to the questions, they could not do more practical discussion after that.

For example, the candidate presented the definitions of theft and robbery, but failed to give its practical description and examples.

2. The integrity check and its results were a matter of discussion during the second stage of the competition

During this stage of competition, the chairperson of the Commission briefly presented the conclusion of the integrity check issued by the Corruption Prevention Commission (hereinafter CPC), after which the members of the Commission asked questions in this regard.

It should be mentioned, that the integrity conclusion of the integrity check issued by the Corruption Prevention Commission, as well as all the recorded questions were a matter of detailed discussion by the Qualification Commission. Particularly, in case, when the candidate received a negative or positive conclusion with reservation, in this case, the questions were even more detailed.

14 candidates out of 47 monitored candidates received positive conclusion with reservation, 25 candidates positive and 8 candidates negative conclusions, respectively.

In the final countdown of the data received from the Qualification Commission, in regard to 5 candidates out of 12 candidates, the Corruption Prevention Commission issued positive conclusion, in regard to 6 candidates, the CPC issued positive conclusion with reservation and in regard to 1 candidates negative conclusions, respectively.

In case of the majority of the candidates by positive conclusions with reservation, that was issued by the Corruption Prevention Commission, the inaccuracies related to the financial status of the candidate or the family members of the candidate were considered problematic. For example,

- The salary of the parents of the candidates were not fully presented, meanwhile the candidate lived with them and there was such legislative requirement
- The candidate presented incomplete information on the financial resources, the fully received salary was not presented
- There were suspicions on the source of the declared property, etc.

In some cases, positive conclusion with reservation was issued on the ground, that during the employment relations, the candidate was subjected to disciplinary sanction based on the violation of the code of conduct.

The negative conclusions were issued to the applicants, in regard to which a lot of problematic issues, inaccuracies and gaps on their financial status and of their family members were detected.

The candidates were also issued with negative conclusion, who had not presented declarations or their relatives did not declare any kind of financial resources, however, the Corruption Prevention Commission had detected information on their property status. The candidates presented different reasons for filing out incomplete data in the declarations, especially,

- They did not know that complete data should be declared.
- They did not know the amount of salary of their parents and did not ask about it.
- They did not know the net amount of their salary. In such cases, the Members of the Commission asked whether it was not possible to check that information from the employer, to which they responded that they did not think about it.
- The declaration system was not operating properly; it was not possible to fill out the declaration.
- They did not know what kind of data should be declared.

In this and other similar cases, the majority of the members of the Qualification Commission had an opinion, that the candidates did not have a serious approach to declaration and the integrity check or they did not comprehend how the integrity questionnaire should be filled out.

In terms of the integrity check it should be mentioned, that the Chairperson, as well as the Members of the Qualification Commission attached immense importance and consistency to the date and the problems raised by the CPC.

During the interview, which was monitored by the Organization, none of the candidates received positive conclusion, who received negative integrity conclusion by the Corruption Prevention Commission in case, when the answers to the professional related questions were sufficient to be included in the list of candidates for the position of prosecutors.

During the monitored interviews, two candidates received positive conclusion by the Qualification Commission, whose integrity conclusions were evaluated positive with reservation by the Corruption Prevention Commission, which related to the inaccuracies of the financial resources of the candidates.

During the stage of integrity check of the candidates, the members of the Qualification Commission asked questions on the following:

- Availability of the administrative violation, particularly traffic violations.

In this regard, it should be mentioned, that in terms of the majority of the candidates, the Corruption Prevention Commission raised the issue of the administrative violations.

The majority included the violations of red lines, parking in the second row, in regard to which milder approach was demonstrated, in comparison, for example the cases of speeding cases.

Some cases were recorded, when the candidates did not declare the violations, however, they were detected by the CPC. In this regard, the candidates mentioned, that they did not remember about the violations.

By another case, the disciplinary proceedings instituted against the candidate, who previously worked as an investigator, as well as the judicial case with their participation were detected. In this regard, the candidate did not present enough information, mentioning that they did not remember about it.

By another cases, the candidate was the victim by the criminal cases, who was a participant of a fight. In other case, the candidate who was an auditor, was engaged in the

judicial procedure, since the latter had signed under the claim filed by the company and participated in the judicial case, however, the latter did not know any information about the document.

To the question of the member of the Commission, why the latter signed under the document, about which he did not have information, the later mentioned, that his friends had elaborated the claim, he trusted the latter.

None of the aforementioned candidates were included in the list of the candidates of prosecutors.

3. Professional training check.

During the last stage of the competition, the professional preparation of the candidate was checked. The professional knowledge was checked based on specially elaborated questionnaire, which was also previously accessible for the applicants.

During this stage, the candidates were asked 6 professional questions by all the members of the commission or two questions were asked by some members of the Commission.

During all days of the monitoring of the competition it was recorded, that all the members of the Competition asked questions. In all cases, the Chairperson of the Commission asked question.

All the questions were from the previously elaborated publicly available questionnaire. Here are some of the questions:

- Concepts and main differences between necessary protection and urgent necessity
- Circumstances excluding criminal liability
- Types of preferential murder
- Completed and unfinished crime
- Types of accomplices
- The results of operative investigation as evidence
- Types of criminal persecution
- The concepts of theft and robbery, main characteristics

- The concept of theft
- Conciliation proceeding
- The types of restraint measures.

As it has already been mentioned, only 7 candidates out of 47 candidates received positive conclusion, which already creates a certain image about the professional preparation of the candidates.

To the majority of the above mentioned questions wrong answers were given.

Cases were recorded, when the applicant knew the answer of the question, clearly mentioned the answer, as envisaged by legislation, however, he failed to provide the description and practical example to it. For example, the candidate clearly presented the concept of robbery or fraud, however, the latter failed to bring practical examples.

The members of the Commission, as a questions asked the candidates to present description of situation, to which the candidate had to give the description of the crime. For example, the candidate clearly presented the concept of robbery or fraud, however, the latter failed to bring practical examples.

The members of the Commission, as a question asked the candidates to present description of situation, to which the candidate had to give the description of the crime. Such cases related to the practical situations of necessary protection and urgent necessity, self-righteousness, abuse of authority, in the majority cases of which, the candidates were not able to give correct answers.

It is notable, that the candidates with no professional background, who were able to give correct answers, they failed to present in-depth description of the given crime or the situation.

Besides the in-depth professional questions, the members of the Commission also asked questions on the other branches of the law, as prescribed by the questionnaire, for example:

- Administrative procedure and administration
- The concept of the fundamentals of the Constitution order
- Civil transactions

- Constitutional and legal status of the Supreme Judicial Council, etc.

By the monitored interviews, only one candidate was able to answer the question about the administration. None of the candidates could correctly answer the question on the fundamentals of the Constitution order or the Supreme Judicial Council.

The members of the Commission while asking the questions and listening the answers sometimes showed positive attitude, trying to assist the candidates in their answers.

As a general conclusion, it can be mentioned, that even the candidates with positive conclusions had difficulties in giving answers of analytical and profession related in-depth answers.

Besides the lack of professional preparation, there were also problems of incompetent expression of thoughts. Even the correct answers were almost in all cases were incomplete, sometimes the correct answers were in memorized form. It should be noted, that this problem is typical to also the candidates, who worked as investigators too.

Taking into consideration the circumstance, that the half of the candidates were newly graduates, such image reveals more profound problems, which comes from university education and the failure to prepare professions.

By monitoring the quality and the level of professional preparation, as well as the approaches of the majority of the candidates to the competition, it can be concluded that the majority of the candidates did not have general overview of the prosecution system, as well as about the required professional and interpersonal qualities.

The adoption of conclusion by the Commission

The answers to the professional questions were assessed in the following manner:

- Correct
- Mainly correct, partially wrong
- Wrong

In all the monitored cases, when the candidate answered correct to at least 4 questions, possessing a non-negative evaluation from integrity check, received a position conclusion from the Commission. However, taking into consideration that the majority of answers were wrong, the final decision was unanimously negative.

The procedure for the decision making was as follows:

The chairperson of the Commission asked the secretary of the sitting to present the correct-wrong answers, after which the chairperson asked to issue either correct or wrong conclusion. Even though there was no concern on impacting the objectivity of the decisions, however, it should be mentioned, that the decision was adopted by the Chairperson of the Commission based on the recommendation to issue positive or negative vote to the candidate.

Meanwhile, it would be a more acceptable approach, if the Chairperson would offer to vote by refraining to point out what kind of conclusion it was expected to issue and vote the last.

Organization of closed competition

Within the monitoring timeframe, two cases of organizing closed competition were recorded. In a line with the RA Law on “Prosecution”, a closed competition for candidates can be held during the year by the order of the Prosecutor General to make additions to the list of candidates for Prosecutors.

During this kind of competition, the monitor of the Organization did not have the chance to participate in the interview of the candidates, since it is considered a closed, non-transparent procedure and the law does not stipulate an opportunity for monitoring.

Organizational problems

As a monitoring aspect of the organizational procedure of the competition, it should be recorded that the corridor where the candidates were waiting was not properly equipped, there was no chair for the candidates to sit. In separate days, the employees from the closer office room provided chairs. Given the circumstance, that the candidates are invited to the interview on the same day and on the same time, with a slightly difference, the waiting for the candidates under these conditions become psychologically stressful and exhausting.

Conclusions

- By all the monitored cases, the integrity conclusions issued by the Corruption Prevention Commission were a subject of in-detail examination and discussion by the Qualification Commission, and the issued conclusions, with exception of the above-mentioned case (when the candidate was included in the list of candidates, having a negative integrity conclusion) were taken into consideration during the final decision-making process.
- The professional and personal preparation level of the candidates in the competition is concerning, which raise more profound problems. In particular, the problems are connected with the lack of analytical skills, abilities of clear and understandable construction and expression of thought by the candidates.
- Similarly, the majority of the candidates, who were of younger age, had no work experience or had a non-professional work experience, under the condition of which the professional preparation level for working as a prosecutor were not sufficient.
- As a problem, it was recorded the number of candidates who filed application for participating in the competition, however did not participate in the interview, which is conditioned by the fact, that in regard to all the candidates, integrity conclusions were issued by the Corruption Prevention Commission, and the Qualification Commission carried out only organization activities, in this regard. Such image reveals the necessity to make relevant changes in the organizational aspect of the qualification competition.

RECOMMENDATIONS

- Review the list of documents required by the candidates of the prosecutors and envisage a proof of payment at the amount of minimum fee of state duty payment, attached to the application.

The aim of such requirement is to include such potential candidates in the list, who will be consistent enough in regard to the presentation of the application and the participation in the competition.

- Review the requirements and the organizational aspect of the Qualification Competition and establish new procedure. Envisage the Competition by two stages written stage and interview. During written stage, evaluate the professional preparation, analytical mind, as well as the ability of the candidate to express thoughts competently.

The candidates who passed the stage of the written assessment, invite to the interview stage. The aim of the interview stage is to check the communication skills, interpersonal qualities of the candidates, as well as the discussion of the results of integrity check, etc.

- Envisage at legislative level, that the candidates shall undergo the integrity check by the Corruption Prevention Commission, who overcame the written assessment stage of the competition and therefore will participate in the interview.
- Review the following legislative requirement presented to the candidates of prosecutors
 - Set the minimum age of 24 for becoming a prosecutor
 - As a mandatory requirement, envisage the availability of professional experience of a lawyer of at least two years.
- Demonstrate consistency in terms of the integrity conclusions issued to the candidates and overall, exclude the possibility for the candidates with negative conclusion to involve the list of candidates for the position of prosecutors.

- At legislative level envisage an obligation for the Qualification Commission for justified decision making for each candidates of prosecutors, which will ensure the justification of the decision adopted by the Qualification Commission, especially in regard to the candidates, who received, especially positive or negative integrity conclusion with reservation.
- Legally exclude the practice of closed competition and conduct the internal promotions in an open procedure.
- While organizing the competition, ensure the technical aspect for its organization and proper conditions for participation of the candidates. At the same time, invite the candidates to interview with reasonable timing, excluding the practice of waiting for the interview for more than one hour.