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TITLE

**The Role of Anti-Corruption Agency in Republic of Armenia and legal regulations
under Armenian law**

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INTRODUCTION

Corruption is a serious obstacle to the development of economy, establishment of rule of law and democracy, endorsement of security in every single country of the world. This is why international community has come up with various ideas aimed at prevention and elimination of corruption.

One of the most powerful tools for prevention, criminalization and investigation of corruption appeared in 2003. It was the United Nation's Convention against Corruption (hereinafter also referred

to as UNCAC). The convention addressed all the existing issues regarding corruption, and was unique, as it combined the endeavors of almost all UN member states for elimination of corruption.

Among others, the UNCAC also referred to the necessity of establishment of specialized anti-corruption agencies for the prevention of corruption. Particularly, Article 6 of the Convention states that each member state shall ensure existence of a preventive anticorruption body or bodies to ensure implementation of preventive policies envisaged by the same document¹. Those policies are listed in the Article 5 of the Convention and are mainly directed to promotion of the participation of society in governance and reflection of the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability².

At the same time, the Convention refers to the importance of disclosure of corruption offences and highlights the role of accurate investigation and prosecution of corruption crimes. In particular, the Article 36 of the Convention states, that each member state shall establish a body or bodies specialized in combating of corruption through law enforcement³.

Even though before the adoption of the Convention some countries already had anti-corruption agencies⁴, however, the tendency of creating anti-corruption preventive bodies increased in the last two decades. In order to ensure the implementation of those provisions a number of member states established anti-corruption units (ACU). These units have a broad mandate which extends preventive measures from investigation and prosecution. Other States Parties have preferred to distribute such functions among different investigative and prosecutorial institutions. In some countries those bodies have significant weight and role in the fight against corruption, while in others they fail to meet the requirements set forth by the Convention.

¹https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf

² Ibid.

³ Ibid.

⁴ Corrupt Practices Investigation Bureau of Singapore, or the Independent Commission against Corruption in Hong Kong, referred on p.15

Armenia verified the UNCAC in 2006⁵. After then, a number of important measures in the field of fight against corruption have been implemented. Nowadays, the Armenian Government claims that the fight against corruption is one of its primary goals. The anti-corruption campaign is in the center of attention of the international organizations, civil society, business sector and media. However there is not still a strong and independent anti-corruption body to ensure the transparency in public administration system and carry out the previously stated functions prescribed by the Convention.

At the same time several international organizations, including European Union, Council of Europe, Organization for Economic Cooperation and Development, have periodically recommended Armenia to establish an anti-corruption agency, stressing that consistent and comprehensive fight against corruption requires existence of a permanent and independent body, as only a specialized institution may effectively reveal existing issues and undertake relevant measures to fix them.

Armenian Government has undertaken several initiations to found Anti-corruption bodies. For example, in 2014, the RA Government adopted the Concept on Fight Against Corruption In Public Administration System⁶. Among other important solutions, the Concept predetermined institutional framework of fight against corruption. Based on the Concept on fight against corruption in public administration system, in 2015 the Anti-corruption Council was founded⁷ aimed to improve the existing Anti-corruption model⁸. The Council consists of members of Government, General Prosecutor, Head of Public Council and some other officials. Despite the fact that the public organizations and the opposition parties refused to take seats in the Council, the members of various non-governmental organizations participate in the sittings of the Council and raise corruption related issues existing in different sectors. Even though according to the recent amendments⁹ the non-governmental organizations, including those representing the business sector have become members of the Anti-Corruption Council, the Council still fails to operate properly and address all the raised issues. One of the problems behind is that the Council is not independent body, it does not have own budget

⁵ Information about ratification of Convention is available at <http://www.arlis.am> (last visited on 20.03.2017)

⁶ RA Government Protocol Decision N14, dated 10.04.2014, available at <http://www.arlis.am/> (last visited on 20.03.2017)

⁷ RA Government Decision N165-N, dated 02.19.2015, available at <http://www.arlis.am/> (last visited on 20.03.2017)

⁸ RA Presidential Decree N NH-100-N, dated 06.01.2004, available at <http://www.arlis.am/> (last visited on 20.03.2017)

⁹ RA Government Decision N1383-N, dated 12.29.2016, available at <http://www.arlis.am/> (last visited on 20.03.2017)

and staff; moreover, it convenes three or four times a year and for that reason the Council is not able to ensure the effective coordination of anticorruption strategy and supervision of the implementation of sectoral programs¹⁰.

At the same time a number of state bodies carry out various activities in the anti-corruption field. For example, the Commission of Ethics for High Ranking Officials operates as a body responsible for the ethical behavior of high ranking officials. The Commission also collects and publishes the declarations of assets and incomes of those officials. However, the research proves that the practice of this body is not effective, as it consists of five members, does not have its own budget and is not furnished with proper number of employees to check and verify the declarations of officials. The commission does not even have legal tools to punish the officials demonstrating not ethical behavior, or those who fail to submit their declarations.

Another problem existing in the anti-corruption field is the uncertainty in investigative powers of Armenian law enforcement bodies. There are in number of bodies having mandate of investigation of crimes. For instance, the Investigation Committee, the Special Investigation Service, the National Security Service and the State Revenue Committee adjunct to the Government have powers to investigate corruption offences. Therefore, there is not a unit mainly specialized in investigation of corruption crimes, which results in non-professionalism of investigation.

The above-mentioned issues prove that there is not a single body responsible for prevention or investigation of corruption in Armenia. The lack of an institution coordinating the anti-corruption sector is a huge disadvantage for the country, as there is not a proper prevention of corruption and consequently, the international obligations are not being met. Therefore, there is a serious demand of a deep research in international best experience to reveal the most productive models of anti-corruption bodies and implement the results in Armenian reality. In other words, a competent anticorruption body shall be established in Armenia to ensure proper prevention and investigation of corruption.

¹⁰ Information about Council's operation is available at <http://www.gov.am/am/anti-corruption-sessions/>

Therefore, this paper deeply analyzes the existing corruption problems in Armenia, the international liabilities regarding establishment of anticorruption institution, researches the models of anticorruption agencies and as a result, suggests an effective structure of anti-corruption body.

According to the Decision N 165-N a permanently functioning Expert Task Force (hereinafter referred to as Task Force) composed of independent experts shall be established adjunct to the Council. The main function of the Task Force is the support to the Council to exercise its functions by conducting monitoring of anti-corruption programs, strategies, ensuring the cooperation of the Council with other stakeholders such as civil society, international organizations, etc., supporting the policy development process.

CHAPTER 1

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THE NOTION OF CORRUPTION AND THE FORMS OF ITS APPEARANCE

For the purpose of understanding what kind of institutions shall be created to tackle corruption, it is important to have a comprehensive notion about corruption and its influence on society.

Corruption is often perceived analogical to bribery, mistakenly limiting its notion. However, it is a far more complicated phenomenon with diverse appearances. Being a universal issue, corruption does not have a single agreed definition yet. Transparency International¹¹ (TI) defines Corruption as “abuse of entrusted power for private gain”¹². The World Bank describes corruption as “abuse of public office for private gain”¹³. Of course, there are also narrower definitions. For instance in the work “Corrupt Cities” the authors offer a formula for corruption. That is:

$$C=M+D-A$$

Where C is for Corruption, M is for monopoly, D is for discretion, and A stands for accountability¹⁴. *“If someone has monopoly power over a good or service, has the discretion to decide whether someone gets that good or service or how much they get, and there is no accountability whereby others can see what that person is deciding, then we will tend to find corruption, whether we are in the public sector or the private, whether we are in a poor country or a rich one, whether we are in Beira or Berlin or Beirut...”*, state the authors of “Corrupt Cities”¹⁵.

From the above discussed definitions it is apparent that in a wide sense, corruption is abuse of power for private interests. Hence, when the public power vested to public servants is being used for their private goals, the axis of public service deflects, the gain of society is being ignored on behalf of

¹¹ Transparency International is a global anti-corruption civil society organization. See Official website at <http://www.transparency.org/> (last visited on 20.04.2017)

¹² Definition of corruption by Transparency International is available in <http://www.transparency.org/what-is-corruption#define>, (last seen on 16.04.2017)

¹³ Helping Countries Combat Corruption: The Role of the World Bank, World Bank, (September, 1997) available at <http://www1.worldbank.org/publicsector/anticorrupt/corruptn/cor02.htm#note1>, (last visited on 16.04.2017)

¹⁴ Robert Klitgaard, Ronald MacLean Abaroa, H. Lindsey Parris, *Corrupt Cities: A practical guide to cure and Prevention*, (2000), p. 27

¹⁵ Ibis., p. 28

private interests; in other words, the power vested to the government in the scope of social alliance is being abused.

This phenomenon results in deterioration of economy¹⁶, decrease of life quality, unstably and insecurity; corruption undermines democratic values and rule of law¹⁷.

The professionals separate three types of corruption:

- grand corruption,
- petty corruption,
- political corruption¹⁸.

According to Transparency International's Anti-corruption glossary, **grand corruption** is “the abuse of high-level power that benefits the few at the expense of the many, and causes serious and widespread harm to individuals and society. It often goes unpunished.¹⁹”

Petty corruption is reflected in smaller sizes and refers to everyday corruption, usually happening in institutions providing public services²⁰.

While **political corruption** is defined as “manipulation of policies, institutions and rules of procedure in the allocation of resources and financing by political decision makers, who abuse their position to sustain their power, status and wealth.²¹”

¹⁶ The Impact of Corruption on Growth and Equity, Transparency International, available at http://www.transparency.org/files/content/corruptionqas/Impact_of_corruption_on_growth_and_inequality_2014.pdf. (last visited on 20.04.2017).

¹⁷ Corruption in Justice and Security, Transparency International, available at http://www.transparency.org/files/content/corruptionqas/285_Corruption_in_justice_and_security.pdf (last visited on 20.04.2017).

¹⁸ Anti-corruption glossary of Transparency International, available at http://www.transparency.org/glossary/term/political_corruption. (last visited on 17.04.2017),

¹⁹ Ibid.,

²⁰ Ibid. ,

²¹ Ibid.,

Various forms of corruption have their reflection and relevant sanctions in legislations. For instance, the Criminal Code of the Republic of Armenia includes a number of articles aimed at sanctioning corrupt behavior. The total list of corruption crimes is approved by the order of the Republic of Armenia Prosecutor General's Decree N3 dated 19 January of 2017²² and includes 67 corpus delicties, including active and passive bribery, trading in influence, money laundering and others.

However, the foreign partners get new achievements²³ in the field of fight against corruption, while the level of corruption in Armenia remains the same. This is an alert that Armenia needs serious reforms in the anticorruption field to improve its legislation and ensure its proper implementation by relevant bodies.

CHAPTER 2

INTERNATIONAL OBLIGATIONS OF THE REPUBLIC OF ARMENIA REGARDING ANTI-CORRUPTION INSTITUTIONAL FRAMEWORK

The most significant anti-corruption document verified by Armenia is the United Nations' Convention against Corruption. The Convention was drafted by the United Nations Office on Drug and Crime and was adopted by the UN General Assembly on 31 October of 2003. UNCAC is the only legally binding international document comprehensively addressing corruption and corruption related issues²⁴. UNCAC was ratified by Armenia in 2006 and entered into force on 7 April of 2007.

²² The list of corruption crimes is available at <http://www.prosecutor.am/myfiles/files/Cank.pdf> (last visited on 22.03.2017),

²³ The positive experience of Georgia may be an example.

²⁴ Official webpage of UNODC, available at <https://www.unodc.org/unodc/en/corruption/uncac.html>, (last visited on 20.04.2017)

The Convention outlines the most important activities for combating corruption. For instance, article 5 of the Convention stresses the need of development of preventive policies. In particular, it states:

“1. Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.

2. Each State Party shall endeavour to establish and promote effective practices aimed at the prevention of corruption.

3. Each State Party shall endeavour to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption.²⁵”

The Convention highlights the importance of establishment of an institution which will ensure effective implementation of the above listed activities. In that regard, article 6 of the Convention states:

1. Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate, that prevent corruption by such means as:

(a) Implementing the policies referred to in article 5 of this Convention and, where appropriate, overseeing and coordinating the implementation of those policies;

(b) Increasing and disseminating knowledge about the prevention of corruption.

Analysis of the above mentioned provisions shows that UNCAC requires member states, including Armenia, to develop anti-corruption policies that will

1. Promote the participation of the wider society in anti-corruption activities;

2. Reflect the principles of:

a) Rule of law;

²⁵ United Nation Convention against Corruption, available at https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf (last visited on 20.04.2017)

- b) Proper management of public affairs and public property;
- c) Integrity;
- d) Transparency;
- e) Accountability.

At the same time in order to comply with the provisions of the Convention that anti-corruption body in Armenia shall have mandate for:

1. Development and implementation or maintenance of effective, coordinated anti-corruption policies,
2. Overseeing implementation of those policies,
3. Establishment and promotion of effective practices aimed at the prevention of corruption,
4. Periodical evaluation of relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption,
5. Increasing and dissemination of knowledge about the prevention of corruption.

The second part of UNCAC article 6 envisages the organizational features of preventive anti-corruption body.²⁶ In particular, in order to ensure the effectiveness of the preventive institution Each State Party shall endow that body with necessary functional and organizational independence, financial autonomy. The State shall also furnish **the institution with** necessary material resources and specialized staff and organize periodical training for the staff.

In the field of fight against corruption UNCAC also prioritizes the role of law enforcement bodies. In fact it refers to the importance of disclosure of corruption offences and highlights the role of accurate investigation and prosecution of corruption crimes. For the law enforcement bodies UNCAC, in Article 36, highlights the importance of existence of the same guaranties (necessary independence, specialization, financial autonomy) as for preventive body.

The analyze of the abovementioned articles makes it obvious that the Convention does not require to have one body responsible for prevention, investigation of corruption and awareness rising. The states have a wide discretion for determination of types, functions and numbers of bodies realizing those functions.

²⁶ Ibid.

However, it can be stated that one of the major obligations of Armenia under the UNCAC is establishment of preventive and investigative specialized anti-corruption agencies.

Being a member of the Council of Europe Armenia has ratified other two important international documents directed to prevention and criminalization of corruption: those are the Council of Europe's Civil law Convention on Corruption and Council of Europe's Criminal law Convention on Corruption. The Criminal Law Convention was adopted on 27 January of 1997 and came into force in Armenia on 1 May of 2006²⁷. Article 20 of the Criminal Law Convention on Corruption also emphasizes importance of professionalism in combating corruption. In particular, it states:

“Each Party shall adopt such measures as may be necessary to ensure that persons or entities are specialized in the fight against corruption. They shall have the necessary independence in accordance with the fundamental principles of the legal system of the Party, in order for them to be able to carry out their functions effectively and free from any undue pressure. The Party shall ensure that the staff of such entities has adequate training and financial resources for their tasks²⁸”

Thus, under the Criminal Law Convention also Armenia has an obligation to establish anti-corruption specialized agency. Moreover, that agency shall be free from any improper influence, have an independent budget and well-trained staff.

Armenia is also a member of Istanbul Anti-Corruption Action Plan under the Organization for Economic Co-operation and Development (hereinafter also referred to as OECD). Istanbul Anti-Corruption Action Plan is a project in the framework of the Anti-Corruption Network for Eastern Europe and Central Asia (ACN). This initiative is aimed to support anti-corruption reforms in Armenia, Azerbaijan, Georgia, the Kyrgyz Republic, Kazakhstan, Mongolia, Tajikistan, Ukraine and Uzbekistan through continuous monitoring and country reviews²⁹. The 3rd Round Monitoring Report of the Istanbul Anti-Corruption Action Plan on Anti-corruption Reforms in Armenia also emphasizes

²⁷Available at www.arlis.am (last visited on 20.03.2017)

²⁸Criminal Law Convention on Corruption, available at www.arlis.am (last visited on 20.03.2017)

²⁹ Istanbul Anti-corruption Action Plan, Third Round of Monitoring, Armenia, Progress Update (2016), Paris, p. 3, available at <https://www.oecd.org/corruption/acn/Armenia-ACN-Progress-Update-Oct-2016-ENG.pdf> (last visited on 20.03.2017)

the importance of institutional framework for coordination and monitoring of the anti-corruption strategy³⁰. The report stresses that Armenia failed to strengthen its Anti-corruption institutional framework and recommends Armenia to:

“ - Ensure that the Anti-Corruption Council leads the coordination of the Anti-Corruption Strategy and its monitoring, regularly informs the state bodies and the public about progress and challenges in its implementation and takes measure to strengthen the implementation where necessary;

- Provide the permanent secretariat for the coordination and monitoring of the Anti-Corruption Strategy with a clear mandate for coordination and monitoring of anti-corruption policy and with the human and financial resources necessary for effective and independent work.³¹”

The report was adopted in 2014 and since then three progresses update monitoring sessions have been conducted. Each of the progresses update sessions recorded progress in implementation of the above mentioned recommendation, however, that progress was not considered to be significant³².

Another important international document is the Budget support agreement between Armenia and EU “Support to the Government of Armenia for the implementation of the ENP Action Plan and preparations for the future Association Agreement” Disbursement of the third variable tranche (hereinafter referred to as Budget support agreement), according to which Armenia should implement two conditions related to the Anti-corruption institutional framework³³. In particular, according to the agreement a permanent and independent Anti-corruption Council shall established in Armenia in line with the UNCAC principles (in particular Article 6 on the Preventive anti-corruption body or bodies),

³⁰ OECD Anti-corruption Network for Eastern Europe and Central Asia, Anti-corruption reforms in Armenia (2014), Paris, available at <https://www.oecd.org/daf/anti-bribery/Armenia-Round-3-Monitoring-Report-ENG.pdf> (last visited on 20.03.2017)

³¹ Ibid., p. 28

³² Istanbul Anti-corruption Action Plan, Third Round of Monitoring, Armenia, Progress Update (2016), Paris, p. 6, available at <https://www.oecd.org/corruption/acn/Armenia-ACN-Progress-Update-Oct-2016-ENG.pdf> (last visited on 20.03.2017)

³³ Available at https://eeas.europa.eu/delegations/armenia/11325/support-government-armenia-implementation-enp-ap-and-preparations-future-association-agreement_en (last visited on 20.03.2017)

the Kuala Lumpur Statement on anticorruption strategy³⁴ and the Jakarta Statement on principles for Anti-corruption agencies.³⁵ The Anti-corruption Council shall be furnished with all necessary material resources and specialized staff to carry out its functions. The Council shall have an obligation of annual public reporting.

While talking about the Jakarta Statement on principles for Anti-corruption agencies it should be highlighted that in order to ensure the independence and effectiveness of Anti-Corruption Agencies (hereinafter also called as ACA), the Jakarta Statement states a number of requirements, such as:

- Having clear mandates to tackle corruption through prevention, education, awareness raising, investigation and prosecution.
- Collaboration with state agencies, civil society, the private sector, international organizations, and with other stakeholders.
- Be established by proper and stable legal framework, for ensuring permanency,
- ACA heads and employees shall be granted immunity.
- ACAs shall have financial autonomy.
- ACAs shall develop and establish clear rules and standard in order to ensure internal and external accountability, etc³⁶.

Moreover, as it was already mentioned EU budget support agreement contains two conditions relating to the anti-corruption institutional framework. And the second one is mainly related to the Ethics Commission for High Ranking Officials. According to the 16nd condition the Ethics

³⁴ Kuala Lumpur Statement on Anti-corruption strategies, Kuala Lumpur, 21-22 October, 2013 , https://www.unodc.org/documents/southeastasiaandpacific/2013/10/corruption/Kuala_Lumpur_Statement_on_Anti-Corruption_Strategies_Final_21-22_October_2013.pdf (last visited on 20.03.2017)

³⁵ Jakarta Statement on Principles for Anti-Corruption Agencies, Jakarta, 26-27 November, 2012, available at https://www.unodc.org/documents/corruption/WG-Prevention/Art_6_Preventive_anti-corruption_bodies/JAKARTA_STATEMENT_en.pdf (last visited on 20.03.2017)

³⁶ Ibid.

Commission for High Ranking Officials shall become a fully staffed permanent and financially, organizationally and functionally independent body, with its own budget and shall:

- a) Perform preventive anti-corruption functions;
- b) Ensure effectiveness of the asset declaration system;
- c) Have powers to sanctions for violations of asset and income declaration regulations;
- d) Implement training plan for its institutional development (mandate, capacities, etc.);
- e) Coordinate setting up Codes of Ethics based on the standard code of ethics adopted by the commission on Ethics of High Ranking Officials based on international best practice and guiding Ethics Commission's Strategy, its Action Plan, its training plan and the Codes of Ethics are prepared in line with EU and international good practices in the field³⁷.

As has been noted, while signing the Budget support agreement with European Union Armenian Government has accepted a responsibility to establish an anti-corruption agency complying international requirements for such agencies, as well as obliged to enhance existing system for coordination of ethical behavior of officials.

Summing up, it is obvious that the conventions and international agreements signed by Armenia stress that Armenia has a sound obligation to fulfill a number of requirements aimed at establishment of an independent, accountable, permanent, financially autonomous agency which will be in charge of anti-corruption education, prevention of corruption and investigation of corruption crimes. And only existence and productive operation of that agency may undermine the long roots of corruption in the country.

³⁷ Agreement between European Union and Armenia on "Support to the Government of Armenia for the implementation of the ENP Action Plan and preparations for the future Association Agreement" Disbursement of the third variable tranche

CHAPTER 3

THE ANTI-CORRUPTION INSTITUTIONAL FRAMEWORK IN ARMENIA

The anti-corruption institutional framework in Armenia consists of several institutions established in different time periods. In general, currently anti-corruption policy in the Republic of Armenia is implemented within the scope of preventative institutional model with the following structure:

- Anti-corruption Council - Task force³⁸,
- Responsible bodies for prevention and detection of corruption.

The Anti-corruption Council was initially established in 2004³⁹. However, the creation of a body with more serious preventive functions became an urgent necessity; therefore, on 19 February of 2015 the RA Government established the new Anti-corruption Council⁴⁰. Originally the Council was composed from:

- Prime Minister of the Republic of Armenia (Chairperson of the Council)
- Minister-Chief of Staff of the Government of the Republic of Armenia
- Minister of Justice of the Republic of Armenia
- Minister of Finance of the Republic of Armenia
- Prosecutor General of the Republic of Armenia (upon consent)
- Chairperson of the Ethics Commission for High-Ranking Officials (upon consent)
- One representative from each opposition faction of the National Assembly of the Republic of Armenia (upon consent)

³⁸ More details available at <http://www.gov.am/am/anticorruption-council-members/> (last visited on 20.03.2017)

³⁹ RA Presidential Decree N NH-100-N, dated 06.01.2004, available at www.arlis.am (last visited on 20.03.2017)

⁴⁰ RA Government Decree N165-N dated 19.02.2015, available at www.arlis.am (last visited on 20.03.2017)

- President of the Public Council (upon consent)
- One representative from the Union of Communities of Armenia (upon consent)
- Two civil society representatives (upon consent)⁴¹.

However, non-governmental organizations decided to boycott the new anti-corruption body and refused to take seats in it⁴². So, as a result of the civil society's pressure, the Government decided to add new seats for civil society organizations in the Council. Thus, in 2016, the composition of the Anti-Corruption Council was amended⁴³. The number of non-governmental organizations, including those representing the business sector, was increased. Nevertheless, the Council does not operate properly and address all the raised issues. It does not have own budget and specialized staff. The members of the Council are mostly representatives of various state bodies and are not additionally paid for their membership at the Council⁴⁴. Therefore, the Council is not an independent and permanent body.

The Council meets three or four times a year. Even though important issues are represented at the Council, it does not have sufficient resources to effectively address all those problems. First obstacle for its productive operation is that the Council is not an independent body. Despite the fact that members of non-governmental organizations and some independent bodies have seats in the Council, it still fails to operate independently. Another reason is the fact that the Council is chaired by the Prime Minister of the Republic of Armenia. Even though thanks to that factor the decisions of the Council are being reflected in the form of Prime Minister's decrees and become mandatory for all executive branch of the Government, however, the political pressure on the Council becomes unavoidable. Moreover, the Council does not have a staff to perform its functions. It is not a permanent body. The secretariat of the Council is the Monitoring division of anti-corruption programs of the Government staff⁴⁵.

⁴¹ Ibid.

⁴² More information is available at <http://armlur.am/321809/> (last visited on 27.03.2017)

⁴³ RA Government Decision N1383-N, dated 12.29.2016, available at www.arlis.am (last visited on 27.03.2017)

⁴⁴ See footnote 40

⁴⁵ Ibid.

According to the Government Decree N 165-N, the Council is in charge of coordination, control and monitoring of implementation of anti-corruption strategies, programs, other anti-corruption actions, endorsement of anti-corruption strategy, anti-corruption sectoral programs, submission of recommendations to make amendments in strategies and programs.

The Council is also coordinating the implementation of international obligations that Armenia has in the sphere of fight against corruption.

It is obvious from the functions of the Council that it is mostly a consultative body with little powers. The main objectives of the Council are the participation of the development of anti-corruption policy and control over its implementation. However, it should be noted, that even for those few functions a permanent staff is required. Besides, an important component of prevention of corruption - education and awareness raising, is not included in the functions of the Council.

According to the Decision N 165-N a permanently functioning Expert Task Force (hereinafter referred to as Task Force) composed of independent experts shall be established adjunct to the Council. The main function of the Task Force is the support to the Council to exercise its functions by conducting monitoring of anti-corruption programs, strategies, ensuring the cooperation of the Council with other stakeholders such as civil society, international organizations, etc., supporting the policy development process. However, the performance of the Task force is not visible and one can state that it fails to carry out its functions efficiently.

As stated above, there are also other bodies playing anti-corruption roles in the country. The first responsible body is the **Government of the Republic of Armenia**. To ensure permanent existence of an anti-corruption policy development unit, lately a division on drafting of Anti-corruption policies has been created in the staff of the Ministry of justice. That division also may be considered as a part of the existing anti-corruption framework in Armenia⁴⁶.

Another major anti-corruption preventive body is the **Commission on Ethics of high ranking officials**. The Commission was established by RA Law on Public Service and is mainly responsible for control over ethical behavior of high ranking officials, as well as for supervision of asset declaration process. However, that body does not have a permanent staff and its material support is received from

⁴⁶ Available at the official website of Ministry of Justice, http://moj.am/en/staff/structure_of_the_ministry (last visited on 20.03.2017)

the Republic of Armenia President Office. The latter fact strongly undermines the independence of the Commission. At the same time, the Commission does not have proper mechanisms for elimination of obstacles to its functions. For instance, it does not have a power to initiate administrative proceedings against high ranking officials and impose sanctions on them. The only tool the Commission may use is the right to refer to the General Prosecutor if features of criminal corpus delicti are noticed⁴⁷.

Other bodies exercising anti-corruption policies in various sectors may also be considered as part of antic-corruption system. For instance, the Commission on Ethics of National Assembly, the Commission on Ethics of Council of Courts' Chairmen, Control Chamber, Commission for Protection of Economic Competition, Civil Service Council, Central Election Commission have mandates to detect corruption related offences and impose relevant sanctions.

At the same time the below-listed institutions responsible for investigation and prosecution of corruption cases exist in Armenia:

- the Department on corruption and economic crime of the General Prosecutor's office⁴⁸. This department is specialized in prosecution of corruption cases.
- according to the RA law N HO-31 of May 19th 2014 "On making additions and changes in the RA law" on the Special Investigation Service⁴⁹" a new Department of Corruption, Organized and Official Malfeasance Crimes Investigation was established.⁵⁰
- General Department on Combating Organized Crime of the RA Police has a specialized unit to fight against corruption and economic crimes. The main function of the above-mentioned Department is to prevent and detect corruption related crimes.

Thus, the number of law enforcement bodies with anti-corruption mandates is also wide which may cause uncertainty. Generally, there are a number of institutions in charge of various anti-corruption functions, but almost none of them have sufficient staff or budget to effectively

⁴⁷ RA law on Public Service, available at www.arlis.am (last visited on 20.032017)

⁴⁸ Available at <http://www.prosecutor.am/en/Prosecutor-structure/> (last visited on 20.032017)

⁴⁹ Available at www.arlis.am (last visited on 20.032017)

⁵⁰ RA Law N HO-31, dated 12.19.2014, available at www.arlis.am (last visited on 20.032017)

perform its duties. Duplication of powers, lack of resources or cooperation become a serious obstacle to productive fight against corruption. Therefore, the anti-corruption system in Armenia is vague and requires serious reforms.

CHAPTER 4

MODELS OF ANTICORRUPTION AGENCIES

The study shows that states developed various types of anti-corruption institutional systems. For instance, in vast majority of countries anti-corruption specialized agencies are in charge of

hindering corruption and carry out only preventive measures. In other states preventive policies are developed by executive branch and the main anti-corruption agency is a law enforcement body with an investigative mandate. And only in a number of countries exist single specialized institutions with powers to deal with all anti-corruption issues, irrespective of their character. Consequently, three main groups of anti-corruption agency models are differentiated:

- multi-purpose agencies,
- preventive agencies, and
- law enforcement agencies.

For detailed description of each agency model respective examples will be discussed below.

Multi Purpose Anti-Corruption Agencies

As stated above, some countries developed special single bodies with a wide anti-corruption mandate. Those bodies are in charge of overall control on and fight against corruption and are called multi-purpose agencies. The functions of those agencies include prevention of corruption, investigation of bribery and related crimes, anti-corruption education and awareness rising, development of anti-corruption strategies and policies, cooperation with various organizations. Below the examples of multi-purpose agencies operating in Singapore, Honk Kong, Lithuania and Latvia are shown.

The Corrupt Practices Investigation Bureau of Singapore

The world's oldest multi-purpose anti-corruption agency is considered to be the Corrupt Practices Investigation Bureau of Singapore (hereinafter also referred to as CPIB)⁵¹. CPIB was founded in 1952. Since 1959 the new Government in Singapore started a radical reform in the

⁵¹ The official webpage of CPIB at <https://www.cpiib.gov.sg/about-cpiib/mission-vision-core-values>, (visited on 20.03.2017)

anti-corruption sector and a number of public high ranking officials were investigated and punished. As a result the reputation of CPIB increased. During the last decades its organizational and functional abilities were improved and as a result, currently it is an independent organization, chaired by a director appointed by the President and accountable only to the Prime Minister⁵².

Corrupt Practices Investigation Bureau has a staff of 150 officers, who periodically take trainings and are specialized in specific areas⁵³. The Bureau's main functions are to:

- Receive information on corruption offences and investigate them,
- Investigate corrupt misbehavior of public officials,
- Prevent corruption through awareness raising and education, as well as controlling public service⁵⁴.

The proof of the effective performance of the Bureau is Transparency International's Corruption Perception Index⁵⁵; according to TI, Singapore is one of the least corrupt countries in the world (in 2016 was ranked as 7th in the Index).

The Independent Commission against Corruption in Hong Kong

The Independent Commission against Corruption (hereinafter also referred to as ICAC) of Hong Kong is also one of the oldest multi-purpose agencies. It was established in 1974 and has three main functions: prevention of corruption, investigation of corruption and anti-corruption education⁵⁶.

⁵²Specialised Anti-Corruption Institutions, Review of Models: Second Edition, Anti-Corruption Network for Eastern Europe and Central Asia (2013), p. 63

⁵³ Ibid.

⁵⁴ Ibid, p 60

⁵⁵ Corruption Perception Index, Transparency International, available at https://www.transparency.org/news/feature/corruption_perceptions_index_2016 (last visited on 20.04.2017)

⁵⁶ Specialised Anti-Corruption Institutions, Review of Models: Second Edition, Anti-Corruption Network for Eastern Europe and Central Asia (2013), p. 49

Immediately after its establishment ICAC started investigations against some public and police servants known as corrupt officials. After comprehensive investigation and conviction of those officials the rating of ICAC and public trust toward that body increased, which became an important guarantee for its later successful career⁵⁷.

Like Corrupt Practices Investigation Bureau in Singapore, ICAC is also an independent body accountable only to the head of the executive branch. It has its own staff - about 1300 employees and a large group of 1000 volunteers engaged in educational programs. ICAC has an enormous budget of about 106 million US dollars, which is another serious ground for its independence, impartiality and professionalism⁵⁸. Hong Kong is 15th in the Transparency International's Corruption Perception Index⁵⁹ and is considered as one of the clean of corruption countries in the world.

Corruption Prevention and Combating Bureau in Latvia

The anti-corruption agency in Latvia is called Corruption Prevention and Combating Bureau (hereinafter also referred as KNAB). The Bureau was established in 2002 as an independent institution with its own budget and staff. KNAB is known as one of the most trusted public institutions in Latvia⁶⁰.

The legal basis for KNAB is the Latvian Law on Corruption Prevention and Combating Bureau. Section 7 of the Law on Corruption Prevention and Combating Bureau provides the scope of preventive powers of the Bureau. In particular, it states:

“(1) in order to prevent corruption, the Bureau shall perform the following functions:

1) develop a corruption prevention and combating strategy and draw up a national programme, which is approved by the Cabinet;

⁵⁷Ibid., p.52

⁵⁸ Ibid.

⁵⁹ See footnote 55

⁶⁰ Ibid. p.76

2) co-ordinate co-operation among the institutions referred to in the national programme in order to ensure implementation of the programme;

3) control implementation of the Law On Prevention of Conflict of Interest in Actions of Public Officials, as well as observance of additional limitations specified for public officials in other regulatory enactments;

4) prepare and co-ordinate projects of financial assistance by foreign countries and international authorities;

5) review complaints and submissions in accordance with the competence thereof, as well as carry out inspections proposed by the President of Latvia, the Saeima, the Cabinet and the Prosecutor General;

6) compile and analyse the information regarding carried out inspections, declarations submitted by public officials, any violations detected in the submission thereof and failure to observe the restrictions provided by law;

7) analyse the practice of State authorities in preventing corruption and the resolved cases of corruption, submit recommendations to the relevant Ministry and the State Chancellery for the rectification of discrepancies found;

8) develop a methodology for corruption prevention and combating in the State and local government institutions and in the private sector;

9) compile and analyse the experience of other countries in corruption prevention and combating;

10) analyse regulatory enactments and draft regulatory enactments, as well as propose to make amendments therein, submit recommendations for drafting new regulatory enactments;

11) carry out public opinion surveys and analysis;

12) educate the public in the area of the law and ethics;

13) inform the public regarding corruption development tendencies and cases of corruption resolved, as well as the measures taken in corruption prevention and combating;

14) develop and introduce a public relations strategy;

15) in accordance with the competence thereof evaluate the content and results of inspections performed by other institutions; and

16) examine the declarations of public officials within the scope specified by the Law On Prevention of Conflict of Interest in Actions of Public Officials.

(2) Provide information and recommendations regarding corruption prevention issues upon the request of the Crime and Corruption Prevention Council⁶¹.

The investigative functions of the Bureau in combating corruption, according to section 8 of the Law are to:

“1) hold public officials administratively liable and apply sanctions for administrative violations in the field of corruption prevention in the cases provided by the law;

2) carry out investigative and operational actions to discover criminal offences provided in the Criminal Law in the service of State authorities, if they are related to corruption⁶²”.

Part 2 of the same section provides the Bureau with a right to perform operational activity measures in a particular manner necessary for fulfillment of the functions its functions⁶³.

KNAB also has a power to control the fulfillment of financing regulations by political organizations and associations, as well as oversee the pre-election campaigns to check the conformity with the legal restrictions⁶⁴.

⁶¹Section 7 of the Law on Corruption Prevention and Combating Bureau of the Republic of Latvia, available at https://www.knab.gov.lv/upload/eng/law_knab_eng.pdf (last visited on 20.03.2017)

⁶²Ibid. Section 8

⁶³ Ibid.

⁶⁴ Ibid. Sections 9 and 9.1

From the wide list of entrusted powers one can conclude that KNAB has a quite solid weight in the public administration system on Latvia.

The president of KNAB is appointed by the parliament based on the recommendation of the Government and may be dismissed only by the Saeima⁶⁵ by the recommendation of the Government⁶⁶. The latter fact is a sound guarantee for independence of the Bureau.

Latvia is 55th in Transparency International's ranking⁶⁷.

Special Investigation Service of the Republic of Lithuania

The anticorruption body functioning in Lithuania is called Special Investigation Service of the Republic of Lithuania. The Service was created in 1997 by a President Decree as a part of the Ministry of Interior. However, on 2 May 2000, with the adoption of the Law on the Special Investigation Service the agency became an independent body with a broad mandate of investigating and preventing corruption and is accountable only to the President and the Parliament of the Republic of Lithuania⁶⁸. The Special Investigation Service has 250 employees⁶⁹ and is represented in 5 regions of the country through its departments⁷⁰. The Service is funded by state budget.

The Special Investigative Service, like KNAB in Latvia, is actively engaged in educational processes for creation of intolerance towards corruption.

As mentioned above, currently the legal basis of the Service is the Law on the Special Investigation Service. Article 8 of the Law states that the Service shall perform detection and

⁶⁵ The Parliament of the Republic of Latvia

⁶⁶Section 4 of the Law on Corruption Prevention and Combating Bureau of the Republic of Latvia, available at https://www.knab.gov.lv/upload/eng/law_knab_eng.pdf (last visited on 20.03.2017)

⁶⁷ See footnote 55.

⁶⁸ Specialised Anti-Corruption Institutions, Review of Models: Second Edition, Anti-Corruption Network for Eastern Europe and Central Asia (2013), p. 65

⁶⁹ Annual Performance Report of the Special Investigation Service of the Republic of Lithuania (2015) , available at [http://www.stt.lt/documents/eng/STT_2015_m_veiklos_ataskaita_\(EN\).pdf](http://www.stt.lt/documents/eng/STT_2015_m_veiklos_ataskaita_(EN).pdf), (last visited on 20.03.2017)

⁷⁰ See footnote 25

prevention of corruption, pre-trial investigation of corruption-related crimes, implement corruption prevention and crime-control programs, collect and analyze information concerning corruption.⁷¹

The Service also has a responsibility to report in writing, at least twice a year, to the President of the Republic and the Chairman of the Seimas about the results of the its activities and submit its proposals how to make the activities more effective⁷².

At the same time article 15 of the Prevention of Corruption Law of the Republic of Lithuania states that the Special Investigation Service shall participate in the National Anticorruption Programme development, put forward proposals to President, the Seimas and the Government as to the introduction and improvement of the new legislation necessary for the implementation of corruption prevention, shall take part in the Government's discharge of its functions of coordination and supervision of the activities of the state and municipal agencies in the field of corruption prevention, shall, together with the other state and municipal agencies, implement corruption prevention measures and the National Anti-corruption Programme⁷³.

Similar multi-functional agencies also exist in Poland (Central Anti-corruption Bureau), Indonesia (The Corruption Eradication Commission), Botswana (the Directorate on Corruption and Economic Crime)⁷⁴.

The above presented international experience proves that the anti-corruption agencies operating in Lithuania, Latvia, Hong Kong and Singapore have a common feature – all those bodies have multiple functions aimed at prevention, investigation and education of corruption. The scope of privileges and powers of those agencies may vary, but the ideology behind their operation is the same: existence of a powerful anti-corruption mechanism for control of public and private systems. Of course, provision of all anti-corruption functions to one institution may also have its adverse impact.

⁷¹ Article 8 of the Law on Special Investigation Service of the Republic of Lithuania, available at <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.110823> (last visited on 20.03.2017)

⁷² Ibid.

⁷³ Article 15 of the Prevention of Corruption Law of the Republic of Lithuania, available at <http://www.stt.lt/documents/laws/prevention.pdf> (last visited on 20.03.2017)

⁷⁴ Specialised Anti-Corruption Institutions, Review of Models: Second Edition, Anti-Corruption Network for Eastern Europe and Central Asia (2013), pp. 89-100

For instance, collection of all anti-corruption powers in one organization may cause abuse of influence and authority. However, on the other hand, existence of a single multi-purpose body makes the institutional anti-corruption framework of the particular country clear and coordinated.

Preventive Anti-Corruption Agencies

The second type of anti-corruption agencies is the preventive model. The representatives of this group have only preventive functions, such as development of anti-corruption policies and strategies, normative acts and decrees, control over ethical behavior of public servants, organization of public awareness campaigns and cooperation with domestic or foreign organizations for the purpose of prevention of corruption. The anticorruption agencies of neighboring Georgia and Azerbaijan pertain to this model.

Georgia's Anti-corruption Council

Georgia's agency is called Anti-Corruption Council (hereinafter also referred to as ACC) and was established in 2008 by a Presidential Decree. However, in 2010 the regulations for organization and functions of the ACC were introduced in the Law on Conflict of Interests and Corruption in Public Service. Article 12.1 of the Georgia's Law on Conflict of Interests and Corruption in Public Service refers to the ACC and states:

- “1. The Anti-Corruption Council (Council) should be created, in order to ensure an effective and coordinated fight against corruption.*
- 2. The main functions of the council are to determine the general politics, create a national anti-corruption strategy and action plan, renovation and ensure monitoring on implementation.*
- 3. Members of the Council are determined by the President of Georgia.*

4. Beside the Governmental Sector, members of the Council can also be representatives from local NGOs and international organisations, independent experts, scientists and representatives from non-commercial legal entities;

5. The Structural Sub-division of the Ministry of Justice of Georgia coordinates and ensures the organisational issues of the Council.

6. Authority and other organisational issues are determined by the Council Statute, which is approved by the President of Georgia.”

The above stated norms show that Georgia’s Anti-corruption Council is not an independent institution. It comprises representatives from three branches of power, as well as non-governmental, international and business sector. However, it is obvious that the powers of the Anti-corruption Council are limited to coordination of fight against corruption, and it does not have any investigatory powers. ACC's decisions and recommendations are mandatory only for its members, who implement them on voluntary basis⁷⁵.

Currently, the Anti-corruption Council of Georgia consists of 48 members, 17 of which are representatives of NGOs, international organizations, donors and business sector. Any civil society organization may apply and become a member of the ACC⁷⁶.

Commission on Combating Corruption in Azerbaijan

The functions of a specialized body in the field of prevention of corruption in Azerbaijan are discharged by the Commission on Combating Corruption which consists of members appointed by the executive, legislative and judicial bodies⁷⁷.

⁷⁵Law on Conflict of Interests and Corruption in Public Service of the Republic of Georgia, available at http://csb.gov.ge/uploads/Law_of_Georgia_on_Conflict_of_Interest_and_Corruption.pdf (last visited on 20.03.2017)

⁷⁶ Anti-corruption reforms in Georgia, Fourth Round of Monitoring of Istanbul Anti-corruption Action Plan, OECD (2016), p. 25, available at <http://www.oecd.org/corruption/anti-bribery/Georgia-Round-4-Monitoring-Report-ENG.pdf> (last visited on 20.03.2017)

⁷⁷Law of the Republic Of Azerbaijan On Combating Corruption, available at <http://commission-anticorruption.gov.az/view.php?lang=en&menu=19&id=32> (last visited on 20.03.2017)

Commission for Prevention of Corruption of Slovenia

The anti-corruption agency existing in Slovenia also has features of a preventative model. The body is called Commission for Prevention of Corruption (hereinafter also referred to as CPC). The CPC was established by the Integrity and Corruption Prevention Act of 2010. The head of the CPC is the Chief Commissioner who is being nominated by a special board and appointed by the President of the country. The Commission is an independent state body, has its own budget and reports only to the Parliament⁷⁸.

Article 12 of the Integrity and Corruption Prevention Act of the Republic of Slovenia lists the powers of CPC. In particular, CPC Organizes and conducts trainings for integrity officials, analyzes corruption situation in Slovenia and foreign countries and advises the Government on further improvements, develops legislation and sends to the Government or Parliament, cooperates with national and international bodies, prepares grounds for codes of conduct, publishes professional literature, etc. For effective execution of its functions the Commission may adopt opinions in principle, positions, recommendations and explanations, as well as may give opinions on draft laws and other regulations before their discussion by the Government with regard to alignment of draft laws and other regulations with the laws and regulations governing the prevention of corruption and prevention and elimination of conflict of interest.⁷⁹

This proves that the CPC has a wide range of powers for drafting of anti-corruption legislation, cooperation with national and international bodies, and development of relevant policies. At the same time, the Commission also coordinates and oversees the process of asset and interest declaration of public officials and has powers to impose administrative sanctions towards officials non-compliant to the declaration regulations. CPC has administrative investigative functions as well, including initiation

⁷⁸Specialised Anti-Corruption Institutions, Review of Models: Second Edition, Anti-Corruption Network for Eastern Europe and Central Asia (2013), p. 148

⁷⁹Integrity and Corruption Prevention Act of the Republic of Slovenia, available at http://www.regulatelobbying.com/images/Slovenia_Lobbying_Law-3.pdf (last visited on 20.03.2017)

and conduct of administrative proceedings, questioning public officials, imposing fines and requesting other state bodies to provide information or initiate internal reviews⁸⁰.

Similar preventive bodies exist also in France (Central Service for Prevention of Corruption), Serbia (Anti-corruption Agency), United States (Office of Government Ethics) and a number of other states⁸¹.

Law Enforcement Agencies

The third model of anti-corruption agencies are law-enforcement bodies, with only investigative powers and do not bear responsibility for prevention of corruption.

A typical investigative model is the National Anticorruption Directorate (Directia Nationala Anticoruptie, hereinafter also referred to as NAD) of Romania. NAD is a part of the Prosecutor's Office attached to the High Court of Cassation and Justice. NAD is specialized in investigation and prosecution of grave corruption crimes. The prosecutors working within NAD conduct pre-trial investigations, including ordering, directing and supervising pre-trial investigation activities conducted by the judicial police officers attached to NAD. When technical assistance is needed in a particular case, NAD prosecutors order, direct and supervise technical activities conducted by NAD specialists and experts in economic, financial, information technology and other fields. NAD prosecutors also conduct criminal prosecutions in courts⁸².

Investigative models of anti-corruption bodies also exist in Spain (the Special Prosecutor's office for the Repression of Corruption Related Economic Offences), United Kingdom of Great Britain

⁸⁰Specialised Anti-Corruption Institutions, Review of Models: Second Edition, Anti-Corruption Network for Eastern Europe and Central Asia (2013), p. 148

⁸¹ Ibid. pp.141-163

⁸² Ibid. pp. 109-115

(the Serious Fraud Office), Norway (the Norwegian National Authority for Investigation and Prosecution of Economic and Environmental Crime)⁸³.

CHAPTER 5

SUGGESTION FOR AN ANTI-CORRUPTION AGENCY MODEL IN ARMENIA

The inferences from above discussed issues come to prove that **corruption in Armenia is a serious problem and** needs a more coordinated approach. Allocation of different anti-corruption functions on various state bodies is not the best way to address corruption. International experience shows that development of meaningful anti-corruption polices and their effective implementation are quite difficult tasks that shall be carried out by professionalized staff. Therefore, establishment of specialized anti-corruption institution will be an adequate response to all those internal and external challenges related to corruption.

⁸³ Ibid. pp.121-138

That institution shall be in line with the provisions of the conventions ratified by Armenia and satisfy the recommendations received from international partners. In particular, it shall have the features set forth by the United Nations Convention against Corruption, Council of Europe Criminal Law Convention on Corruption, as well as Jakarta principles for anti-corruption Agencies and OECD Istanbul Action Plan recommendations.

Such a model of anti-corruption agency was developed using the research and information referred in this paper. Current situation in the fight against corruption in Armenia and anticorruption achievements of foreign countries were observed to draft this suggestion.

Combating corruption means fighting against stereotypes, rooted powerful clans and political abuse. Therefore, that job requires hard will, huge resources and enormous power. Taking into account those features of anti-corruption fight, it is more preferable to reflect the legal norms on creation and mandate of the anti-corruption body in Constitution. Similar approach will provide that body a stronger stance and image within the state administration system. Unfortunately, similar regulations were not put down in the Constitutional amendments adopted in 2015. However, there is still a Constitutional ground to create an autonomous body with strong powers.

In particular, Article 122 of the Constitution of the Republic of Armenia in version of 2015 amendments, states:

*“1. In order to ensure exercise of the basic rights and freedoms of the human being and the citizen, as well as to protect public interests of fundamental significance prescribed by the Constitution, **autonomous bodies** may be established by a law adopted by majority of votes of the total number of Deputies.*

2. The members of autonomous bodies shall be appointed by majority of votes of the total number of Deputies... ”⁸⁴

This Article provides an opportunity to create an autonomous body with anti-corruption mandate. It is evident from the Constitution that an autonomous body shall be created through

⁸⁴ Constitution of the Republic of Armenia in version of 2015 amendments, available at www.arlis.am (last visited on 25.03.2017)

adoption of a law by the National Assembly. Creation of an anti-corruption agency through similar process will ensure high stance and permanence of that new agency.

The 3th part of Article 122 of the Constitution recognized the competence of autonomous bodies of adopting secondary regulatory legal acts. That power is an important resource for an anti-corruption body. In particular, those secondary regulatory acts will have binding authority and will be used for effective regulation of the anti-corruption field.

However, the 4th part of the same Article of the Constitution states that the powers of autonomous bodies, guarantees for independence, the requirements set forth for the members and the rules of operation thereof shall be prescribed by law⁸⁵. This means, that a separate law on autonomous bodies will be adopted by the National Assembly for implementation of the above mentioned Constitutional article. Hence, the rules of procedure and guarantees of independence of all autonomous bodies, including the anti-corruption agency, will be regulated by that law.

At the same time a separate law on anti-corruption agency shall be adopted (hereinafter referred to as the Law). The Law shall also determine the scope of functions and powers of the agency as well as its structure and process of organization. That Law shall define the principles for operation of the anti-corruption agency (hereinafter also referred to as ACA) as well. In particular, the agency shall form and operate based on the following principles:

- **Autonomy** - the anti-corruption institution shall be an autonomous body with guarantees of independence and shall obey only the law while carrying out its functions. No a state institution or official shall have a right to intervene in internal affairs of the agency and apply a pressure on it.
- **Accountability** - the agency shall be answerable to the public. Having a wide range of powers, the agency shall not use those powers for illegal purposes or abuse them, as well as shall undertake maximal efforts to productively realize its goals on combating corruption. This is why the agency shall be accountable to the population of the Republic of Armenia. In this regard, the agency shall operate transparently and introduce the results of its operation to public and willingly respond any public inquiry relating to its powers.

⁸⁵ Ibid.

- **Impartiality** - the anti-corruption agency shall operate in an objective basis and refrain from any biased and discriminatory attitude. The head of the agency and employees shall keep political neutrality.

- **Immunity** - the head and the members (or servants) of the agency shall bear the immunity envisaged for the judges. In particular, they shall not be subject to any criminal proceedings or punishment for their official activities unless there are features of criminal offence. The head of the anti-corruption agency shall be appointed or removed by the National Assembly. The law shall include requirements for the candidate of the head of the agency, including politically neutrality, high moral and professional abilities, leadership skills and practice. The law shall also include the exhaustive list of cases, when the head of the agency may be removed from his position.

- **Financial autonomy** - the anti-corruption agency shall have its own budget, which will be used to ensure effective performance and fulfilment of its functions.

By fixing those principles in a relevant law, the requirements of internal and external accountability, permanence and financial autonomy stipulated by the Jakarta Principles for Anti-corruption agencies, as well as the requirement of freedom of any undue pressure stated in UNCAC will be met.

As it was already discussed, the research in national anti-corruption system shows that there are a number of bodies functioning in preventive or investigative fields and cooperation of those bodies is not well-organized. Therefore, there is a need to reform the existing anti-corruption system via regulation and clarification of preventive and investigative branches. For this purpose, it is more desirable to establish a body in charge of both preclusion and sanctioning of corruption. Despite the fact that the neighboring countries preferred preventive model of anti-corruption agencies, the study proves that countries having multi-purpose models revealed corruption more easily⁸⁶. Thus, the Armenian Government shall prefer the multi-purpose model for future anti-corruption agency. In that case the law enforcement functions related to investigation of corruption crimes shall be taken from the Investigative Committee and Special Investigative Service and be provided to the multi-purpose agency. At the same time, preventive mechanisms shall be collected in one place. For instance, the

⁸⁶ For instance, Singapore or Honk Kong

anti-corruption policy development and monitoring function of the Government of the Republic of Armenia, the anti-corruption strategy development and implementation function of the Anti-corruption Council of the Republic of Armenia, as well as functions of the Commission on Ethics of High Ranking Officials in asset declaration field shall be centralized in the anti-corruption agency. Thus, both preventive and investigative functions will be more coordinated and organized. In addition to those, new functions may be entitled to the agency; for instance, in the sector of education and awareness raising, or cooperation with international partners. To be short, the new body shall have three directions of operation:

1. Prevention of corruption, including education and public awareness raising,
2. Investigation of corruption crimes.

For exhaustive fulfillment of its tasks the ACA shall have the below mentioned powers and functions.

Preventive powers of the ACA

Prevention of corruption is the first stage of fight against corruption. It is aimed at establishment of transparency, accountability and integrity in both public and private sectors. Effective prevention of corruption requires a corruption risk assessment, relevant policy development and its effective implementation. For that purpose, the ACA shall⁸⁷:

- *develop national policy on prevention of corruption, submit it to the adoption of the Government and oversee it's implementation by the state bodies,*
- *control integrity in public organizations via researches and studies aimed at checking the transparency and integrity level in various sectors of public administration; for example, health, social security, justice, police, tax and customs etc.,*

⁸⁷ Similar preventive functions has KNAB in Latvia.

- *conduct corruption risk assessment in sectoral levels, develop sectoral policies, control their implementation,*
- *conduct local risk assessments in various regions of the country and develop regional policies for marzes of Armenia,*
- *develop a methodology for combating corruption in the State and local government institutions and in the private sector,*
- *monitor the implementation of anti-corruption policies by State authorities,*
- *analyze the experience of other countries in combating corruption and make proposals for improvement of national practice and regulations.*

The international experience shows that prevention of corruption shall include also some precautionary measures; for instance, anti-corruption agencies in majority of countries⁸⁸ are in charge of collection and verification of asset and interest declarations of public officials. For this reason, the ACA in Armenia shall also have the following functions:

- *collection of declarations of assets and interests of high ranking officials and their publication,*
- *analyzing declarations of actives and interests and their verification them,*
- *initiation of administrative proceedings in case of non-compliance with declaration regulations,*
- *imposition of administrative sanctions on officials for non-abidance with codes of conducts or other rules relating to corruption sector,*
- *anti-corruption expertise of normative legal acts.*

⁸⁸ KNAB in Latvia, CPC in Slovenia, etc.

And eventually, the cooperation with international partners, domestic authorities and civil society is an important tool to unify all endeavors for successful fight against corruption. In this regard, the ACA shall have the right to

- *cooperate with all state and regional bodies, international institutions, non-governmental organizations for the purpose of combating corruption.*

One of the most important prerequisites for elimination of corruption is the adversarial attitude of population towards corrupt behavior. Therefore, dissemination of intolerance towards corruption is an important step to prevent corruption and undermine its roots. This is why the anti-corruption agency shall be in charge of:

- *education of public in the area of law and ethics,*
- *development of informative buckets, books, videos for public,*
- *cooperation with the Ministry of Education and Science for development of a special courses for school and university students,*
- *organization of various events including round tables, seminars, workshops, as well as interviews or competitions aimed at awareness raising of different target groups,*
- *hosting or visiting to various organizations for the purpose of dissemination of anti-corruption information,*
- *informing the public regarding corruption development tendencies and resolved corruption cases,*
- *cooperation with national and foreign scientific, professional, media and non-profitable organizations engaged in the prevention of corruption,*
- *publishing professional literature.*

Thanks to those preventive powers the agency will have a capacity to record corruption risks and outline direction of national anti-corruption policy. ACA will emerge its endeavours with non-governmental organizations to address corruption together. At the same time, the agency will have

the power of collection of asset and interest declarations from high ranking officials. Through this tool the preventive department of the agency will detect incompliances in declarations and will send the information to the investigative unit for further research. Thus, the newly criminalized offence of illicit enrichment will be applied on real cases. The agency will also promote public knowledge on corruption and existing legal tools against it. Simultaneous implementation of all those mechanisms will certainly have its positive result.

Investigative powers of the ACA

As it was mentioned above, the anti-corruption agency shall also have investigative mandate. In that regard, that agency shall have the following powers:

- *carrying out operational actions in order to detect corruption crimes,*
- *investigating corruption cases and corrupt misbehavior of public officials,*
- *cooperating with the Republic of Armenia Prosecution,*
- *holding and periodically publishing comprehensive statistics on corruption cases.*

For this reason, the RA Criminal Procedural Code shall be amended. In particular, the investigation of corruption related crimes shall be vested to the investigators of ACA by Article 190, part 2 of the RA Criminal Procedural Code. In addition, an amendment on the Article 8 of the RA Law on Operative-Investigative Activities shall be made to provide operational-investigative capacities to ACA.

Existence of investigative unit in ACA will positively contribute to its effective operation. In particular, that unit will be specialized in the field of fight corruption, as well as will closely cooperate with the preventive unit.

As far as the ACA will have two main directions of operation, correspondingly it shall have two major departments specialized in those three sectors. The prevention of corruption department shall be responsible for effective performance of the preventive functions, including public education and awareness raising. The agency shall have a special unit on investigation of corruption crimes. in

charge of investigation of all criminal cases bearing corpus delicti features corruption crimes. The Unit shall be composed of investigators with high professional and moral abilities.

As for the chief staff of the ACA, it shall have a director and two vice directors. The vice directors shall be the heads of preventive and investigative units of the agency. They shall be nominated by the director of the ACA and elected by the National Assembly. While the director shall be nominated by the Vice President of the Country and appointed by the Parliament, as it was stated above.

The Law shall determine the requirements for employees of the ACA. For instance, they shall take special exams to prove the required knowledge and abilities. The staff of the agency shall periodically participate in training sessions to increase their professional skills and get acquainted to the latest acquisitions in their sphere.

Taking into account the wide range of ACA's powers and their significance the Government shall undertake measures to ensure its active performance in the whole territory of the country. However, if being located in Yerevan, that body will not manage to productively address corruption issues in regions and rural areas. Therefore, the experience of the Special Investigation Service in Lithuania might be applied in Armenia. That is, the anti-corruption agency shall have its branches in all regions of Armenia in order to ensure equal fight against corruption in the whole territory of the country. In particular, the regional branches shall have officials both responsible of prevention and investigation of corruption. It is desirable to implement the practice of Corrupt Practices Investigation Bureau in Singapore as well and include volunteers in both central and local sectors, who will organize information campaigns and improve population's knowledge.

To sum up, the most desirable model for an anti-corruption agency in Armenia is a multi-purpose model with preventive and investigative powers. Creation of such body will organize the anti-corruption framework in the country and contribute its productive operation. From the other hand establishment and furnishing that body with necessary resources will require enormous expenditures. Therefore, there shall be a constant political will for such a commitment.

CONCLUSION

The research shows that corruption is a serious hazard to democracy, economy, rule of law and other human values. While thriving in many countries, it became a transnational problem undermining international peace and security. Thus, concerned with the threats posed by corruption, international organizations, such as UN, OECD, EU, COE and others developed suggestions for effective

mechanism to tackle that phenomenon. For instance, prevention of corruption through policy development and awareness raising, criminalization of corrupt behavior, detection and prosecution of corruption crimes are internationally recognized parts of anti-corruption fight. Among those measures, the establishment of anti-corruption agencies has become another important mechanism for elimination of corruption.

This paper analyzed the provisions set forth by international documents regarding anti-corruption institutions and represented some of the most common models of those bodies. Comprehensive research shows that all international document prioritize the role of anti-corruption bodies, demanding from member states to found permanent bodies for prevention and prosecution of corruption. Therefore, each state developed own anti-corruption system in accordance with its constitutional order and internal regulations. Nevertheless, there are three main models of anti-corruption agencies - preventive, law enforcement and multi-purpose agencies. The study proved that the last model would be more relevant and efficient for Armenia. As a result a suggestion for an anti-corruption reform in Armenia was developed. In particular, it is proposed to adopt a law on establishing a multi-purpose anti-corruption agency in Armenia and vesting a number of anti-corruption powers to it. The proposed model considers existence of an autonomous body with strong guarantees of independence, well-trained staff and financial resources, as only a truly independent and professional organization may stand against corruption.

In particular, it is offered:

- To create a multi-purpose agency with Constitutional basis, using successful experience of Singapore or Hong Kong,
- Vest that body strong preventive powers, similar to the anti-corruption agencies in Slovenia or Latvia and investigative powers, similar to the agencies of Romania or Lithuania,
- Provide the new ACA powers of collection and verification of asset and interest declarations, which currently is vested to the Commission on Ethics of High Ranking Officials,
- Provide the ACA powers to investigate corruption crimes, currently entitled to Investigative Committee and Special Investigation Service in Armenia.

Establishment of a similar agency in Armenia will be a big step towards complete implementation of international obligations for eradication of corruption. However, the main fact of adoption of a relevant law and establishment of that agency will not be enough for elimination of

corruption. Further persistent work will be required to implement legally provided powers in reality and effectively overcome challenges posed by various corrupt officials and bodies.

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