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Strengthening Anti-Corruption Legislation in Armenia: current drawbacks and elimination perspectives

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Abstract

Examination of anti-corruption commitments and review of institutional capacity of respective state entities indicates that Armenia triggered by its international obligations undertakes conceptual regulatory readjustments aimed at scattered legislative approximation[1]. Moreover, a significant inadequacy in the law enforcement real-time practice, such as selection process of possible corruption cases to be prosecuted entails wide scales of arbitrary approaches[2]. The inaction towards non-compliance or conflict of interest's situations[3] illustrates that the principle of impartial examination is biased. The absence of fact-based preventive or detective regulations[4] not only impair investigative skills of independent officials and media outlets[5], but also deficiency of standardized compliance framework contributes to the arbitrariness while selecting a suspicious case for examination[6]. Even though, personal income declaration submission is aimed at corruption prevention and detection of possible fact of illicit enrichment, and serves as a fact-based policy measure, the decision to further investigate depends on various "criteria" and "permission". Thus, not all non-compliance issues are priority for extensive considerations. Absent enforceable sanctions for non-compliance with established anti-corruption rules provide a wide margin for non-compliance elaborations.

Although, legislation permits to collect information, furthering on suspicion acts is not mandatory [7]. It may seem, that a prosecution can be enforced if there is a "political will": Therefore, non-compliance cases may remain unrevealed and unaddressed. My paper through revealing deficiencies in current enforcement mechanisms suggests enforceable amendments in law-abiding current procedures. Proposed legislative solutions consider perpetual, appropriate and reasonable control system as a step towards adoption of mandatory compliance standards making "sponsorship re-adjustment" reckless.

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[1] Various legal draft amendments on anti-corruption policy prove the government initiates reforms as to address international concerns on non-compliance between paper-based rules and real time practice. Search engine provides a number of anti-corruption legal reform via www.e-draft.am.

[2] *Available at:*
http://hetq.am/eng/news/76256/swiss-ambassador-to-armenia-reaffirms-that-armenian-law-enforcement-botched-request-for-legal-aid-in-mihran-poghosyan-investigation.html

[3] In its report on conflict of interest Transparency International Armenia (TIA, May, 2016) identifies legal loopholes leading to non-enforcement of legal stipulations. (Report is in Armenian Language)
Available at: *https://transparency.am/files/publications/1435321403-0-425779.pdf*

[4] In its report OECD notes "If public officials know that the data stated in the declarations will most likely never be verified, there is a risk that the system will accumulate a large amount of useless "information" with little connection to reality." OECD, *Fighting Corruption in Eastern Europe and Central Asia, Asset Declarations for Public Officials, A tool to prevent Corruption*, p 71, 2011. *Available at:* http://www.oecd.org/corruption/anti-bribery/47489446.pdf

[5] Enforcement of Anti-Corruption Laws: Armenia UNCAC Civil Society Review, pages 12-13
Available at: *https://transparency.am/files/publications/uncac_cso_report.pdf>*

[6] Among state institutions no unitary approach exists for corruption prevention or detection arrangements.
"Anti-corruption recommendations for visa dialogue" p. 17. Excerpt in Armenian is attached to the hard copy of this paper and published in this paper Available at: https://transparency.am/files/publications/1435321403-0-425779.pdf (pages 11-23) Author Gabriel Balayan. Details are available at: Analytic Centre for Globalization and Regional Cooperation (http://www.acgrc.am/bokeng.pdf).

[7] Although Article 43 of Public Service law prescribes an obligation to analyze and detect violations, the review of Ethics Commission does not provide any evidence of investigated cases. Available at: http://www.ethics.am/files/legislation/239.pdf

"With all the questions that are being raised today about the probity and honesty of public officials, I think all of us should be prepared to place the facts about our income on the public record."

President Truman to the Congress (1951)

Introduction

While corruption impedes economic development and weakens rule of law, the April 2-5 hostilities in Nagorno-Karabakh Republic caused many Armenians to perceive corruption as a national security threat for the first time[8]. Since second quarter of 2016, this has been widely promulgated through different levels[9]. It has become common knowledge that the main reasons of corruption include the convergence of politics and business[10], lack of independent and strong institutions, ineffective management of conflict of interest situations, absent early detective anti-corruption policies, legal loopholes in prevention procedures, poor law enforcement and high public tolerance of corruption[11].

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[8] *Available at:* http://www.huffingtonpost.com/samuel-ramani/why-anticorruption-protests_b_11525610.html

[9] *Available at:* http://hetq.am/eng/news/72789/corruption-in-armenia-new-report-confirms-citizens-believe-its-systemic.html.

[10] On February 7, 2017 EU Ambassador Piotr Switalski stated that the high priority of anti-corruption policy is the importance of disconnecting business from politics. The Ambassador indicated "Political partnerships should not serve the business and vice versa, the business people should not enter politics". *Available at:* http://www.mediamax.am/en/news/society/22101/#sthash.u7jrwDQf.dpuf

[11] Transparency International (2016) report on People and Corruption: Europe and Central Asia highlights that citizens think their rights as whistleblower's is not protected and their reports are useless as nothing can be changed. Besides, they believe corruption is difficult to prove. *Available at:* https://www.transparency.org/whatwedo/publication/7493. p 24-29;
See also https://transparency.am/en/priorities/anti-corruption; Transparency International's 2013 "Overview of corruption and anti-corruption in Armenia" Available at:
http://www.transparency.org/files/content/corruptionqas/Overview_of_corruption_in_Armenia_1.pdf and
http://transparency.am/files/publications/1430407572-0-563326.pdf; the 2014 country report on Armenia by Bertelsmann Stiftung (http://www.btiproject.de/uploads/tx_itao_download/BTI_2014_Armenia.pdf); the Freedom House study "Nations in Transit 2014 –Armenia" (https://freedomhouse.org/sites/default/files/NIT14_Armenia_final.pdf).

On this occasion, the US embassy in Armenia asserted subversive effect of corruption, and clearly highlighted that insufficient follow-up investigative actions make the functions of responsible state agencies, e.g. Ethics Commission on High Ranking Officials, The Prosecutor General's office futile. It was unprejudiced assessment that the four-day war in April not only demonstrated detrimental consequences of corruption but also mandated to hold government and public figures truly accountable [12].

The survey by Transparency International (TI) of 2016 also confirmed Armenia as a high corruption risk country with poor anti-corruption performance. It aimed to reveal:

1. Is corruption pervasive? 37% of citizens believe it is one of the 3 biggest problem the country faces.
2. How focused is Government's anti-corruption policy? 65% rate Government "badly" at fighting corruption.
3. How corrupt are Members of Parliament? 42% responded most or all MPs are corrupted.
4. Is it socially acceptable to report corruption? Fewer than 40% believe whistleblowing is normal.

The answers to questionnaire demonstrated there is a great concern among respondents about wealthy individuals undue influence on public policy for their own sake. Moreover, Armenians believe Government's anti-corruption overall inaction provokes rigorous anti-corruption measures to be enacted as to prevent impunity[13].

Survey results signal out that even internationally binding commitments set in various framework agreements does not alter Armenia's poor performance on enforcement of anti-corruption international standards throughout the years Armenia's Government initiated anti-corruption reforms[14]. Progress evaluation of conducted reforms indicates[15], that without full consideration of endemic nuances within domestic regulations compliance assurance with anti-corruption international practices becomes impractical.

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[12] U.S. Ambassador's to Armenia Richard M. Mills, Jr. official statement of February 1st, 2017
Available at: https://armenia.usembassy.gov/news020117.html

[13] The Global Corruption Barometer is a survey assessment of general public attitudes on corruption. TI Global Corruption Barometer Report of November 2016 *Available at:* https://www.transparency.org/whatwedo/publication/7493. p 5-9, 31.
TI Corruption Perception Index Report 2016 indicates that Armenia shares 113-115 places among 176 countries indicating stagnation of corruption among years. In a TI report, *People and Corruption: Europe and Central Asia*, *2016* around 35% of Armenian citizens highlighted that corruption is one of the three biggest problems that the government should address *Available at:* https://transparency.am/en/cpi;

[14] This source provides a glimpse of Government's initiatives since 2003. Available at: http://gov.am/am/anti-corruption-archive/

[15] This report (in Armenian) highlights that once detected and addressed; because of absent monitoring corruption risks reoccur. "Presentation of research on the quality and transparency of the services delivered by the Medical and Social Expertise Agency of the Ministry of Labor and Social Affairs, Gyumri 2017. Available at: www.logosngo.org

As a participant in international anti-corruption frameworks, Armenia is a signatory of the Council of Europe's[16] (COE) and United Nations[17] (UN) Conventions on Corruption. Bounded by the requirements of these conventions Armenia is obliged to comply with international anti-corruption commitments. COE's Group of States against Corruption (GRECO) assesses the compliance with the international commitments and Organization for Economic Cooperation and Development's (OECD) Istanbul Anti-Corruption Plan (IAP) assists the Commonwealth Independent States (CIS) to approximate their anti-corruption reforms with international standards. GRECO's fourth evaluation report correctly notes that partial compliance with recommendations fails to become practical standard of anti-corruption behavior. It along with OECD's recommendations[18] maintains that improvements are possible if reforms are concrete, implementation is monitored and solutions are problem-driven[19].

It is significant to note, that Armenia's compliance with international obligations should not be considered as a mere commitment to satisfy requirements of European Union or other donor organizations, e.g. World Bank, International Monetary fund etc.[20] Article 6 of the Constitution articulates that ratified international treaties are a constituent part of the legal system of the Republic of Armenia (RA). If a ratified international treaty stipulates norms other than those stipulated in the laws, the norms of the treaty shall prevail[21]. By this Constitution mandates the legal requisite to assure compliance with international commitments and recommendations. Otherwise laws have such a nature, "that if government or even nation repeatedly ignore, misuse and avoid obeying them, at the proper moment, there always

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[16] In 2004 Armenia has ratified two conventions prescribing anti-corruption measures to be taken at national level, for international co-operation and for assessment of implementation of compliance. First one is Council of Europe's Civil Law Convention on Corruption requiring Parties to provide in their domestic law for effective remedies for persons who have suffered damage as a result of acts of corruption, to enable them to defend their rights and interests, including the possibility of obtaining compensation for damage. Article 1 of Civil Law Convention on Corruption, Strasbourg, 4.XI.1999. *Available at:* http://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007f3f6
Second is Council of Europe'sThe Criminal Law Convention on Corruption and its Additional Protocol aimed at criminalization of corrupt practices and behavior by both domestic and foreign public officials. States are required to provide for effective and dissuasive sanctions and measures, including deprivation of liberty that can lead to extradition. It also envisages liability (criminal or non-criminal, including monetary sanctions) for offences committed by legal entities. Criminal Law Convention on Corruption and its Additional Protocol.
Available at: https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/173

[17] In 2006 the National Assembly of RA has ratified UN Convention Against Corruption (UNCAC). Along with the obligations to enact preventive anti-corruption policies and practices, establish specialized anti-corruption bodies, declare conflict of interests, evaluate relevant legal instruments and administrative measures with a view to determine the adequacy to prevent and fight corruption, **the Convention determines legal foundation for signatories to criminalize corrupt behavior. Article 20 of this Convention, namely requesting state party to criminalize illicit enrichment has been legally domesticated after ten years since ratification**.
Available at: https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf; New York, 2004.

[18] OECD, Anti-Corruption Reforms in Eastern Europe and Central Asia, Progress and Challenges 2013-2015, p 66-68. Available at: https://www.oecd.org/corruption/acn/Anti-Corruption-Reforms-Eastern-Europe-Central-Asia-2013-2015-ENG.pdf

[19]See Greco Evaluation IV Report (2015)1E, available at: https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c2bd8

[20] International Crisis Group, available at: https://d2071andvip0wj.cloudfront.net/217-armenia-an-opportunity-for-statesmanship.pdf

[21] See http://www.parliament.am/parliament.php?id=constitution&lang=eng

some external (international or foreign state) hand will become available to force to follow the rules, which are embodied in the Constitution[22]".

Regulatory overview may demonstrate that Armenia is in the process of deliberations on policy measures to harmonize anti-corruption endeavors with international obligations[23]. Almost all anti-corruption policy reforms are triggered by commitments as a state party Armenia holds. However, an efficient institutionalization of corruption prevention practices requires state party to consider endemic specification such as nepotism[24]. Partial implementation of "outside imposed agenda" instead of unbiased execution of already existing regulations and absence of monitoring and permanent supervision over accomplished recommendations leads to the prolonged inefficiencies of both institutions and legislation. This is typical domestic situation, when once identified and punished, corruption risks remain diminished but not eliminated, mainly because absent perpetual and reasonable control. For instance, a case of Medical and Social Expertise Agency when on October 2012 because of revealed corruption risks the head and the staff consisting of 12 public servants were dismissed[25]. In 2017, because of recurrence of the same corruption risk related offences new head was arrested. According to this, it can be concluded that current situation requires early detection. Punishment does not provide prevention[26]. Consequently, this paper aims to present a comprehensive but specified prevention; pro-active detection policies accompanied with follow–up progress evaluations replacing a practice of scattered legal approximation.

Domestically corruption-related crimes are stipulated in Criminal Code (CC) of RA[27]. After the second round of the monitoring by OECD's IAP (2009-2013) Armenia was recommended to narrow down the scope of corruption offences as well as establish precise specialization model of persons or units holding a clear obligation to detect, investigate, prosecute and report the results of possible

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[22] Professor G. Balayan cited on Facebook March 31, 2016, 10.48am retrieved at: https://www.facebook.com/gabriel.balayan.1

[23] For instance, introduction of asset declaration system is an international obligation and code of conduct stipulated in Article 8 (5) of UNCAC, 2004. Currently, the section of anti-corruption state commitments in www.e-draft.am provides an introduction of this approximation.
Available at: https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf, p 11.

[24] Freedom House Report 2013, Armenia. "Corruption is pervasive, and bribery and *nepotism* are reportedly common among government officials, who are rarely prosecuted or removed for abuse of office".
Freedom House Report 2016, Armenia. "Corruption remains pervasive. Watchdogs maintain low expectations of genuine change". *Available at:* https://freedomhouse.org/report/freedom-world/2013/armenia; https://freedomhouse.org/report/freedom-world/2016/armenia

[25] See http://gov.am/en/news/item/6411/

[26] As TIA notes "If a crime reoccurs in the same agency of the same field, it means that what took place was actually a show rather than a fight against corruption. What we need is prevention. Punishments are not the only means of combatting corruption." Available at: https://jam-news.net/?p=21076

[27] The list has been approved by the Prosecutor General's order N82 (November 19, 2008) and amended by order N12 (March 19, 2013). *Available at:* https://transparency.am/en/corruption-in-armenia/crime-types

corruption offences[28]. Still CC provisions continue to be diluted by crimes like smuggling, tax evasion, obstruction to the economic activities, unlawful anti-competition, etc. Lack of explicit articulation of anti-corruption crimes[29], namely the deficiency of specified provisions in conjunction with the absence of legislative or regulatory amendments delineating law enforcement competences on corruption-related cases prone state agencies to exercise overlapping jurisdiction[30]. Because of dispersed and loose specialization model none of the law enforcement agencies in Armenia is placed under pressure to take on corruption cases, especially complex ones or those involving high-level public officials[31].

Furthering on this, IAP report indicates that absent statistical data on position/occupation of the suspect/indicted/convicted official, number of investigations, prosecutions and convictions for each type of offence and sanctions applied[32] proves current multifaceted investigation entails wide scales of arbitrariness while selecting a possible corruption case for prosecution[33]. As a practical illustration of this recent offshore development proved validity of international concerns: Biased examination is a real threat impairing public trust. Moreover, complex investigative structure does not aim to exercise the principle of double checks, rather loose specialization assist to prescribe vague obligations for each respective entity. The ambiguity among preliminary prescribed obligations and anticipated performance results, aids to circumvent accountability. Acknowledging the importance of transparent behavior as an assurance of legal predictability inducing public trust, the Ministry of Justice proposed amendments in the law on Prosecution aimed at regular reporting of anti-corruption progress and follow-up activities[34]. The adoption of this amendment not only addresses IAP requirements as to

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[28] OECD, *Anti-corruption Reforms in Armenia, Round 3 Monitoring of the Istanbul Anti-Corruption Action Plan,* 2014, p 43 *available at:* http://www.oecd.org/daf/anti-bribery/Armenia-Round-3-Monitoring-Report-ENG.pdf

[29] OECD, *Anti-corruption Reforms in Armenia, Round 3 Monitoring of the Istanbul Anti-Corruption Action Plan,* 2014, p 42 *available at:* http://www.oecd.org/daf/anti-bribery/Armenia-Round-3-Monitoring-Report-ENG.pdf

[30] OECD, *Anti-corruption Reforms in Armenia, Round 3 Monitoring of the Istanbul Anti-Corruption Action Plan,* 2014, p 43 *available at:* http://www.oecd.org/daf/anti-bribery/Armenia-Round-3-Monitoring-Report-ENG.pdf

[31] Id., p 43.

[32] OECD, *Anti-corruption Reforms in Armenia, Round 3 Monitoring of the Istanbul Anti-Corruption Action Plan,* 2014, p 44 *available at:* http://www.oecd.org/daf/anti-bribery/Armenia-Round-3-Monitoring-Report-ENG.pdf

[33] OECD recommends structural remodeling of current system. The recommendations aimed at: Strengthening anti-corruption specialization within law enforcement and prosecutorial bodies. Fostering cooperation between law enforcement bodies and control bodies in detecting, investigating and prosecuting corruption-related offences. Encouraging the criminal investigation and prosecution bodies to approach the corruption phenomenon in a more targeted and proactive manner, aiming at persons among high level officials, main risk areas in public administration and economy.
OECD, *Anti-corruption Reforms in Armenia, Round 3 Monitoring of the Istanbul Anti-Corruption Action Plan,* 2014, p 45, 51 *available at:* http://www.oecd.org/daf/anti-bribery/Armenia-Round-3-Monitoring-Report-ENG.pdf

[34] According to this draft amendment, the Prosecutor's Office obliges to provide detailed statistical information on its web-site disclosing corruption offences by officials and follow-up law-enforcement procedures. This is one of the anti-corruption actions initiated by current administration.
Available at: https://www.e-draft.am/projects/3/about

establish explicit statistical database as an assurance of fair treatment, while selection of possible corruption case for prosecution, but also the civil society enhances its autonomous capacity to independently evaluate the performance of investigative entities. However, Investigative Committee furiously opposed to this initiation and stated that strict accountability is on their agenda and implemented as an ordinary routine[35]. Apparent resistance towards adoption of specified regulations, insufficient segregation of preventive, detective and investigative duties among state institutions[36] leads to impunity of the respective agencies failing to ensure rule of law and compliance with prescribed obligations. Moreover, the reluctance towards timely law approximation as in the case of adoption of legal stipulations on illicit enrichment[37] and misinterpretation of initiated reforms not only make the outcome of already initiated policy reforms elusive but also induce mistrust and hinders to comply with international recommendations.

The review of IAP report further indicates that a significant inadequacy between partial application of existing legislation and selective implementation of previous recommendations fails to provide practical anti-corruption reforms. Based on the analysis of current situation transparent behavior of state institution through regular and strict public accountability can have a huge contribution to the overall compliance assurance both with domestic requirements and international obligations. Otherwise, current practice of absent follow-up procedures for example on asset declaration analysis[38] is an example of partial implementation of domestic detective regulations. Designed to prevent official's corrupt behavior, current methodology on submission of income declarations, instead of addressing public concerns on legitimacy of origins of official's wealth, mainly by assuring compliance between actual income and "life style" of official, or at least prove absence of conflict of interest between public duties and official's private interests demonstrates formalistic

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Whereas, collection of the statistical data in a specified format is OECD's recommendation and has not been fulfilled since 2011: "No legislative/regulatory/institutional changes in the collection of the statistical data have been identified by Armenian authorities." OECD, *Anti-corruption Reforms in Armenia, Round 3 Monitoring of the Istanbul Anti-Corruption Action Plan,* 2014, pages 44-45 *available at:* http://www.oecd.org/daf/anti-bribery/Armenia-Round-3-Monitoring-Report-ENG.pdf

[35] In his official statement the official from Investigative Committee of RA assures there is no necessity to provide consistent statistical data analysis on corruption crimes in RA by referring to the comprehensiveness of current legislation. According to his statements adoption of new draft amendments in the Law on Prosecution is not substantiated. *Available at:* http://iravaban.net/155202.html (published on 15 March 2017, 21:00).

[36] Draft amendment is available here https://www.e-draft.am/projects/3/about

[37] Adoption was a result of international observer's pressure and an international obligation since ratification of UNCAC in 2006. OECD, *Anti-corruption Reforms in Armenia, Round 3 Monitoring of the Istanbul Anti-Corruption Action Plan,* 2014, p 29 *available at:* http://www.oecd.org/daf/anti-bribery/Armenia-Round-3-Monitoring-Report-ENG.pdf

[38] Asset Declaration analysis is a legal requirement outlined in article 43 (2) of Public Service Law. *Available at: http://www.ethics.am/files/legislation/239.pdf*

databases of information providing the reviewer with a margin of different assumptions[39].

Considering this as a precedent, the results of recent reform on criminalization of illicit enrichment[40] are quite controversial. One approach fits all cases Armenian perception is executed in this case as well. Certain amendments in CC are made, but no specialized state entity is in charge to persistently monitor, evaluate and report the possible cases of illicit enrichment. Assuming the Ethics Commission of High ranking Officials is in charge (Commission on ECHRO) when no legal specification on follow-up procedures is provided. Absent detailed procedure makes it difficult to conduct case-by-case monitoring, report the results and consequently no public institution has an obligation to prevent the occurrence of illicit enrichment. Moreover, with current human and financial capacity the Commission on ECHRO is not sufficiently autonomous to verify submitted information and accountable enough to assure transparency of transactions excluding any suspicion of illegal gains by officials. In addition to that, Constitutional reforms of 2015 mandate new governance model of a state, and it is ambiguous whether Commission is to continue its activities, based on the notion that the president previously exercised appointment of Commission on ECHRO members[41].

Thus, further assumptions on enforcement mechanisms by this institution are lack of any substantiation. Other hindering factors towards enforcement of CC provisions on illicit enrichment without detailed regulations are the evident resistance and inaction to accept "fresh rules of integrity compliance" as in the case of draft amendments on Law of Prosecution and time lapse since the requirement on domestic adoption on illicit enrichment was set[42]. Besides, as it was mentioned in IAP report no state investigative institution is under pressure to investigate illicit enrichment offence. Conventionally, evident-driven and signed application is a ground to initiate investigations. This obstructs to report suspicion cases appropriately, as no legislative protection is provided for whistleblowers. During his interview, the deputy chair of Commission on ECHRO, maintained that reliance on sole whistleblowing is not justified. The specified body should have a legal obligation to persistently monitor and report about illegal behavior[43]. Currently, the burden of detection is on

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[39] OECD, *Fighting Corruption in Eastern Europe and Central Asia, Asset Declarations for Public Officials, A tool to prevent Corruption*, p 15, 2011. *Available at:* http://www.oecd.org/corruption/anti-bribery/47489446.pdf

[40] Amendment to the Criminal Code of RA envisages criminalization of illicit enrichment in new Article 310.1.

[41] "Anti-corruption recommendations for visa dialogue" p. 8. Excerpt in Armenian is attached to the hard copy of this paper and officially published in this working paper Available at: https://transparency.am/files/publications/1435321403-0-425779.pdf. Author Gabriel Balayan. Details are available at: Analytic Centre for Globalization and Regional Cooperation (http://www.acgrc.am/bokeng.pdf).

[42] After ten years since ratification the legal basis of illicit enrichment criminalization was established. Article 20 of UNCAC, *Available at:* https://www.unodc.org/unodc/en/treaties/CAC/signatories.html ratified by Armenia in March 8, 2007.

[43] Interview with Mr. A. Khudaverdyan, Deputy Chair of Commission on ECHRO. Interview held on March 14, 2017.

applicant claiming misappropriation. Here, most probably the allegation of illicit enrichment would be based on the apparent difference of actual life quality and estimation of actual income. Considering, corruption offence is tough to prove and no institution has a legal obligation to monitor wealth accumulation, sole prescription of sanctions for illicit enrichment in CC is not a well-reasoned solution to eliminate corruption.

Moreover, absent mandatory prescription to monitor official's possession and comparison of actual wealth with legitimate income supposes culture of whistleblowing should have sound legal empowerment. However, whistleblowing is not socially acceptable behavior: Corruption requires comprehensive solutions. In Armenia sole whistleblowing without provision of proper facts is groundless as to initiate investigation. This "vicious cycle" where state investigation entities tolerate corrupt behavior and society is unable to stand against misbehavior should have a solution considering all this nuances.

As to ensure illicit enrichment possible cases would be under persistent control a new developments of information technology as a guarantee of independent verification in line with ISO37001 standard requirements should be applied. This standard mandates to implement anti-corruption policies, procedures and controls based on internal risk assessment[44]. Follow up estimations require continuous control including financial and non-financial compliance, conflict of interests control and institutionalization of reporting mechanisms. This demonstrates an entity has a commonly agreed set of measures needed to prevent and detect corruption. The examination of working principles of this standards indicates that, asset declaration verification can be redesigned into automatic crosschecks of interconnected databases of Real Property Cadaster, Police, State Register of Legal Entities, Tax reports as well as bank accounts accessibility and FATCA (Foreign Account Tax Compliance Act) compliance assurance.[45] Besides, ISO37001 mandates to disclose financial information on transfers including the name of sender (benefactor) and the source of origination of income. Considering mentioned features, it provides credible information on possible violations[46].

Embedding this standard into domestic legislation shall invoke further harmonization of current legislation. Among other specifically designed corruption prevention policies, the standard mandates to adopt well-focused anti-corruption strategy (based on risk assessment), to provide access to bank

[44] See http://www.ethic-intelligence.com/blog/11179-iso-37001-will-implications/
[45] See http://www.ethic-intelligence.com/blog/12059-efficient-compliance-system-organized/
[46] See http://www.ethic-intelligence.com/certification/16365-iso-37001-iso-19600-standards/

information and financial data as to investigate corruption offences proactively and assure protection for whistleblowers. Since, certification requires certain steps towards legal approximation with mandated compliance policy objectives, specification of general rules promotes gradual implementation of accountable, transparent and good governance. In other words, international trends become domestically institutionalized mandatory frameworks. This means that State through its plain commitment to adhere the international compliance standard not only articulates its own mission objectives and prioritize regulatory frameworks but becomes attractive for foreign direct investors as well. This as a current priority of the Government[47] doubles the attractiveness to embed this standard into domestic legislation.

To address above described non-adherence to the laws, this paper through succinct overview of domestic anti-corruption legislation, and implementation status of international obligations provides mechanisms as to enforce existing legislation. Part 1 discusses domestic anti-corruption institutions. In-depth analysis of existing structures and survey of their factual performance clearly highlights the deficiencies of each. Part 2 identifies inefficiencies in the legislative framework, estimates the adherence to the international commitments and considers non-compliance with legal stipulations as the main factor impairing public trust towards real reforms. Part 3 advances on legislative approximation towards compliance enforcement with existing stipulations and offers insights into international best practice with regard to anti-corruption compliance policies, enforcement mechanisms, and ISO 37001 standard. Conclusion succinctly outlines main findings of the research and legal recommendations.

Part I Anti-Corruption Institutional Framework and Policy in Armenia

The functions of anti-corruption policy introduction are mainly carried out by the Ministry of Justice[48] and for further review, coordination and implementation the Government is in charge. State agencies, such as Investigative Committee, the Special Investigation Service, The Police of the RA, the State National Security Service are responsible for investigation of corruption offences. In addition to these, two departments of Prosecutor General's office are responsible for supervision over legality of inquest and preliminary investigation of corruption offences as well as for defense charge in the court[49].

[47] See http://www.gov.am/en/news/item/8862/
[48] Current reforms can be tracked through www.e-draft.am
[49] See http://www.prosecutor.am/en/Prosecutor-structure/

Examination of corruption prevention responsibilities of respective institutions demonstrates that Armenia's corruption combating commitments are exercised through decentralized system of policy development, coordination and enforcement. Various regulations[50] define the scope of anti-corruption activities of state bodies aimed to contribute to anti-corruption compliance. The results of the review end up with the list of more than 10 state bodies[51], which are designed to assist the Government to comply with the anti-corruption obligations, and consequently diminish corruption risks in their respective areas. These group of law compliance assuring entities aims at detection, prevention and elimination of corrupt behavior, conflicts of interest, as well as ethic rules violation. The list is not restricted to the followings: Committee on Ethics of National Assembly, separate Ethics Commissions for prosecutors, for judiciary, for Constitutional Court, for President office, for Ministry of Transport, Communication and Information Technology, for Foreign Affairs, for Justice, for Finance, for Science and Education, for State Revenue Service, Control Chamber, the Civil Service Council, the Central Electoral Commission, the State Commission for the Protection of Economic Competition, Anti-Corruption Council etc.[52]

As it can be noticed, almost all state bodies have ethics commissions. The legal basis of this is stipulated in Article 38 of Public Service law requiring all state entities to establish ethic commission in their staffs[53] as to ensure compliance with laws and ethic regulations. In order to estimate their input in overall anti-corruption performance, a survey conducted as to assess their anti-corruption contribution:

1. The date of the establishment and composition of an ethic commission in the state body.
2. How many complaints were submitted for the ethic commission's review since 2014 to 2015?
3. After examination of complaints what decisions were made?
4. How many applications were not discussed and returned to the applicant or an applicant took its claim back prior to the commission observation?
5. Whether unsigned applications were received during the reporting period, if so, how many?

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[50] OECD, *Anti-corruption Reforms in Armenia, Round 3 Monitoring of the Istanbul Anti-Corruption Action Plan,* 2014, p 50 *available at:* http://www.oecd.org/daf/anti-bribery/Armenia-Round-3-Monitoring-Report-ENG.pdf

[51] "Anti-corruption recommendations for visa dialogue" p. 13-14. Excerpt in Armenian is attached to the hard copy of this paper and published in this paper Available at: https://transparency.am/files/publications/1435321403-0-425779.pdf. Author Gabriel Balayan. Details are available at: Analytic Centre for Globalization and Regional Cooperation (http://www.acgrc.am/bokeng.pdf).

[52] OECD, *Anti-corruption Reforms in Armenia, Round 3 Monitoring of the Istanbul Anti-Corruption Action Plan,* 2014, p 46 *available at:* http://www.oecd.org/daf/anti-bribery/Armenia-Round-3-Monitoring-Report-ENG.pdf.
Empirical evidence of provided information is excerpted from the several Working Papers of the Control Service of the Prime Minister of RA.

[53] Public Service Law, Article 2 and Article 38. *Available at:* http://www.ethics.am/files/legislation/239.pdf

6. Is there a specified statue regulating ethic commission performance activities?[54]

The analysis of survey results demonstrated that during 2014-2015 almost all ethics commissions did not receive any application. The fact is prima facie evidence of the ineffectiveness of commission's performance as local anti-corruption and ethic-ensuring units. In fact, it can be concluded that the results on commission activities obtained from public authorities indicate that the system does not enjoy the confidence of applicants or employees and consequently does not provide any contribution in overall anti-corruption policies. Besides, the survey proved these commissions did not examine unsigned applications, which means that whistleblowing has zero effect in anti-corruption policy execution arrangements.

In its recent Armenia's Anti-Corruption endeavors assessment report OECD notes that ethic commissions established in state bodies are not operational:

"Enforcement of conflict of interest rules in state bodies it not ensured. Codes of ethics in risk sectors are not updated or promoted. Despite anti-corruption mandatory trainings were organized both for civil servants and high-ranking officials, it is not known if trainings provide an impact on the awareness and behavior of public officials. No consideration was given as to establish a central body or capacity to promote uniform enforcement of ethics rules in the whole public service, contrary to the previous (2009) IAP's recommendation"[55].

As for the main corruption detection or prevention state entity, the Commission on Ethics of High-Ranking Officials (Commission on ECHRO) responded that the required information is on their official site[56]. In accordance to it, the Commission on ECHRO has reviewed 26 applications during 2014-2015 and instituted proceedings based on 6. In 2015 the Commission on ECHRO received 5 applications and instituted 2 proceedings during 2015-2016. This body [57] was established in 2012 aimed at institutionalization of domestic asset declaration system[58]. The legislative prescriptions stipulated in Articles 43 and 44 of Public Service Law prescribe an obligation for the Commission to analyze asset declarations and thus prevent, detect and on a regular basis report conflict of interests (COI) and the policy measures taken against detected violations. Besides, these articles outline organizational procedure of inspections aimed at thorough examination of submitted documents and the rules of ethics

[54] "Anti-corruption recommendations for visa dialogue" p. 19. Excerpt in Armenian is attached to the hard copy of this paper and published in this paper Available at: https://transparency.am/files/publications/1435321403-0-425779.pdf, Author Gabriel Balayan. Details are available at: Analytic Centre for Globalization and Regional Cooperation (http://www.acgrc.am/bokeng.pdf).

[55] OECD, *Anti-corruption Reforms in Armenia, Round 3 Monitoring of the Istanbul Anti-Corruption Action Plan,* 2014, p 6 *available at:* http://www.oecd.org/daf/anti-bribery/Armenia-Round-3-Monitoring-Report-ENG.pdf.

[56] The information is available in the Report of Commission's activities for 2012-2015 http://ethics.am/hy/report/

[57] The Commission on EHRO is responsible for enforcing the Law on Public Service in relation to the high-ranking officials.

[58] The RA Law on Public Service, June 14, 2011. ՀՕ-172-Ն, *Available at:* www.arlis.am

of public service in the RA.

Based on the notion, that the above described objectives stated in this law generally remain unimplemented[59], it can be inferred that the establishment of the Commission on ECHRO was aimed to satisfy international requirements and formally demonstrate Government's determination in fight against corruption[60].

Prior to the thorough examination of Commission on ECHRO, it is worth not to omit the role of Anti-Corruption Council as the conglomerate of various state and non-governmental organization responsible for selection of reform's direction. The Council as an integral part of domestic anti-corruption institutional framework was formed in 2015 based on 165-N Government Decision. This decision articulates Anti-Corruption policy objectives, reform implementation institutional capacity, the primary organizational principles of Anti-Corruption Council, procedural rules for Anti-Corruption Programs Monitoring Division under the Government Staff of the RA and Expert Task Force composed of independent experts adjunct to the Council[61]. Chaired by the Prime Minister the board consist of the following members Minister-Chief of Staff of the Government, Minister of Justice, Minister of Finance, the Prosecutor General (upon consent), chairperson of the Ethics Commission for High-Ranking Officials (upon consent), one representative from each opposition faction of the National Assembly (upon consent), President of the Public Council (upon consent), two civil society representatives (upon consent), one representative from the Union of Communities of Armenia (upon consent). The outweighed inclusion of high-ranking officials is already questioning Council's independence and restricts freedom of actions. Experts believe, the Council's performance is "artificial": the members of the Council themselves are not ready to eliminate corruption[62]. The US Ambassador to Armenia, Richard Mills, recently stated about inefficiency of the Anti-Corruption Council's activity. Ambassador pointed out that only 2,5% of the initially intended aid was transferred to the Council's account, since the Council failed to provide factual progress[63].

While decision-making the composition of the Council provides pluralism, membership model

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[59] see http://iravaban.net/en/153416.html

[60] OECD, *Fighting Corruption in Eastern Europe and Central Asia, Asset Declarations for Public Officials, A tool to prevent Corruption*, p 12, 2011. *Available at:* http://www.oecd.org/corruption/anti-bribery/47489446.pdf

[61] Available at: http://gov.am/am/anticorruption-legislation/ Based on this decision the Council holds discussions on a regular basis as to assess the performance of ongoing tasks. Since recent elections further discussions are postponed.

[62] Establishment of the Council caused wide public outcry, because it included such high-ranking officials, who, in the opinion of social and political circles, were not far from that process themselves and the number of medial publications and their property declarations testified to that: while they were holding those posts, their family members were setting up huge businesses and, consequently they can not be fight corruption.

[63] See https://armenia.usembassy.gov/news020117.html

proves it is not independent. Besides, if analyzing through the lens of Article 38 (5) of Public Service law the members should have high moral qualities or known and praised by the public or holding an ethic related background history of at least 10 years[64]. However, this stipulation does not have its practical applicability for both the Council and the Commission on ECHRO. For this type of body's integrity and ethic behavior should have been decisive factors. Moreover, the eagerness towards changes should have been governing factor as to be a valid candidate for Council membership. As to be enforceable the concepts on "high moral values" and "public recognition" should have precise legal articulations. Otherwise, legal requirements will remain dormant and indicate another example of practical inapplicability of Public Service law[65].

Moreover, considering H. Abrahamayan previously chaired the Council and G. Khachatryan was member, absent "merit based appointment" do not assure the prevention of such scenario in future. Hence, "high moral values" and "public recognition" as a preventive rules against such appointments should be in place as a prohibition for making incompatible designations. Besides, absent specified legal elaborations on mentioned concepts as an assurance of Council's integrity threatens its efficient performance. Although current composition of Council mitigates previously raised public mistrust, government impartiality measured through "high moral values and public recognition" may provide impartial assessment of the effectiveness of Council's performance both domestically and internationally[66].

Another institutional deficiency is that there is no legal mechanism to correlate anti-corruption strategy[67] and Council routine agenda: absent quantitative or qualitative outcomes of initiated reforms make it vague to determine the efficiency of Council's discussions. The absence of monitoring toolkits as to gradually determine what has been achieved, what was anticipated and what is envisaged to implement make the Council performance not practical. Consequently, anti-corruption strategy and concept[68] display a declaration of unrealistic desires by the Government. Moreover, Council discussions are not mandatory and on regular basis: Board meetings are held at the initiative of the chairman or one third of the Board members, and not less than once every three months. However, since last meeting that was in February, upcoming meeting, which was scheduled for the end of March,

[64] Public Service Law, available at: http://www.ethics.am/files/legislation/239.pdf
[65] This article precisely defines non-compliance between legal requirements and appointed person's background. *Available at:* http://iravaban.net/en/157847.html
[66] see https://www.theguardian.com/world/2015/aug/12/armenia-corruption-lavish-spending
[67] available at: http://gov.am/u_files/file/xorhurdner/korupcia/1141_1k_voroshum.pdf
[68] available at: http://gov.am/am/anti-corruption-strategy/

is being regularly postponed[69].

Because of absent consistent approach as to stipulate anti-corruption strategic missions[70] in a detailed action plan, no estimation of actual and anticipated outcomes can be provided. This is a clear indication that the overall anti-corruption system cannot be monitored on a regular basis. No information can be provided as to determine compliance with anti-corruption strategy. This has its clear illustration in the following example. The corruption risk segments defined in 2011 are still problematic and the Council outsources recommendations from USAID, Armenian Young Lawyer's Association and Logos NGO as to "once again diagnose corruption related fields and issues" [71]. If instead of formalistic discussions there is a monitoring group aimed to assure implementation of specified anti-corruption measures which are defined by precise action plan and have deadlines for implementation, the redundancy of actions could be eliminated. Moreover, this approach should entail mandatory requirement of reporting function aimed at disclosure the achievements progress[72], otherwise public does not have trust towards such arrangements and that as I have already shown has its reasonable rationale.

Described comprehensive model of engagement by both law enforcement agencies and bodies responsible for prevention of corruption phenomena and non-compliance with regulations is not against international standards per se but such approach requires existence of a rigorously accurate coordinated mechanism to exchange information, monitor gradual implementation of reforms and ensure cooperation[73]. Coordinated behavior enhances transparency and accountability not only among anti-corruption institutions, as they clearly understand their missions and scope of responsibilities, but also coordination implies persistent control over anti-corruption policy implementation and estimation of achievements for further readjustment.

OECD IAP initiative monitoring group while assessing Armenia's compliance with anti-corruption agenda of 2011-2013, mainly institutional capacity to prevent corruption highlighted that having a diversified system of state entities combating corruption without centralized coordination leads to inconsistency in application of anti-corruption laws and regulations. Further on this OECD

[69] Based on official agenda it should have been held on March 30.
[70] See http://gov.am/am/anti-corruption-strategy/
[71] Examination of working papers of Council, Source: The Government Staff of RA. Hard copies of the reports are attached to the paper.
[72] "Anti-corruption recommendations for visa dialogue" p. 7. Excerpt in Armenian is attached to the hard copy of this paper and officially published in this paper Available at: https://transparency.am/files/publications/1435321403-0-425779.pdf. Author Gabriel Balayan. Details are available at: Analytic Centre for Globalization and Regional Cooperation (http://www.acgrc.am/bokeng.pdf).
[73] Id., p 44. The report highlights lack of coordination for pro-active detection, unbiased investigation and follow-up prosecution of corruption-related crimes.

notes:

"While formal existence of ethics commissions is maintained, the output of their performance is futile. Implementation of the Law "On Public Service" is fragmentary and incomplete. There is no mechanism of coordination between these bodies, no analytical or methodological support is provided to them to ensure common standards and practices. For example, the Commission on ECHRO and Parliament's Ethics Commission demonstrate different practices of acceptance of complaints. The former does not accept complaints from citizens unless their rights have been violated as a result of breach of ethical norms by public servants"[74].

Moreover, there are no common instructions for the operation of the ethics commissions and their relations and coordination with other bodies. Except for a few provisions listed in Article 28[75] of Public Service Law there is no common guidance for understanding, interpreting, executing public service standards by the commissions. These commissions do not receive any analytical or methodological support, and their activities are not coordinated to ensure a coherent application of ethics rules across the whole public service.

The Government's argument is:

"A central body for all public service will lead to existence of two or more authorized bodies in the same field, besides ethics rules in various parts of the public service are not uniform".[76]

OECD's quite precise counter-observation maintains that there are already numerous bodies in the same field, but no regular coordination, continuous monitoring of achievements, readjustment of objectives based on factual results and standard of segregation of duties or cooperation mechanisms exist between them[77]. Besides, application of ethic rules and non-compliance should have same legal consequences for all state institutions and officials. Absent common standard hinders to implement, monitor and readjust anti-corruption policies[78].

Inexistent coordination in conjunction with overall poor record of enforcement of corruption offences is an indicator of existing imprecise institutional procedures hindering to adhere the

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[74] OECD, *Anti-corruption Reforms in Armenia, Round 3 Monitoring of the Istanbul Anti-Corruption Action Plan,* 2014, p 45-47 *available at:* http://www.oecd.org/daf/anti-bribery/Armenia-Round-3-Monitoring-Report-ENG.pdf

[75] Article 28 of Public Service law defines rules of ethics for public servants and high-ranking public officials.

[76] OECD monitoring team's surveys with interlocutors revealed that even though ethic commissions' creation in state bodies they practically remained dysfunctional. OECD, *Anti-corruption Reforms in Armenia, Round 3 Monitoring of the Istanbul Anti-Corruption Action Plan,* 2014, p 45-47 *available at:* http://www.oecd.org/daf/anti-bribery/Armenia-Round-3-Monitoring-Report-ENG.pdf

[77] OECD, *Anti-corruption Reforms in Armenia, Round 3 Monitoring of the Istanbul Anti-Corruption Action Plan,* 2014, p 46 *Available at:* http://www.oecd.org/daf/anti-bribery/Armenia-Round-3-Monitoring-Report-ENG.pdf

[78] This was noted as an obstacle towards assurance of compliance with anti-corruption domestic regulations and international recommendations. OECD, *Anti-corruption Reforms in Armenia, Round 3 Monitoring of the Istanbul Anti-Corruption Action Plan,* 2014, p 50 *Available at:* http://www.oecd.org/daf/anti-bribery/Armenia-Round-3-Monitoring-Report-ENG.pdf

international obligations as a signatory Armenia holds[79]. OECD expressed its concerns with a low number of corruption cases initiated, investigated and prosecuted overall. For instance, in 2013 117 cases have been cumulatively initiated by all law enforcement agencies that have jurisdiction to investigate corruption offences[80].

Recent offshore scandal and subsequent developments make it evident: no actual progress can be reported from implemented reforms carried out throughout last years. A comprehensive anti-corruption framework consisting of both policy development and investigation institutions is not assurance to detect possible misappropriation if no pro-active coordination among respective state entities is in place.

In fact, the case of former Major General of Justice Mihran Poghosyan was a unique test identifying main deficiencies of the current anti-corruption institutional framework. According to the domestic media outlets Special Investigative Service of RA on January 26, 2017 stopped investigating the offshore accounts of M. Poghosyan after Swiss and Panamanian authorities refused to help the probe into Panama Papers revelations[81]. This statement was officially dismissed by the Swiss Federal Department of Justice. It read: "The Armenian request for legal assistance on November 8, 2016 rejected because the requirements of the request were not fulfilled. The Armenian authorities can any time specify the request," the email from Ingrid Ryser, a spokesperson for the Swiss Federal Department of Justice added[82]. Further review of the case, reaffirmed this statement. Per Swiss Ambassador to Armenia Lukas Gasser official assertion "The Federal Office of Justice refused the request for legal assistance from the authorities of the RA on November 8th, 2016. However, it is important for us to note that the Armenian side can anytime renew and specify their request. The first request of November 2016 had to be refused because essential requirements of the Swiss side were not fulfilled."[83]

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[79] OECD, *Anti-corruption Reforms in Armenia, Round 3 Monitoring of the Istanbul Anti-Corruption Action Plan,* 2014, p 4 *Available at:* http://www.oecd.org/daf/anti-bribery/Armenia-Round-3-Monitoring-Report-ENG.pdf

[80] Statistical analysis of corruption crimes and comparative analysis with Lithuania as a comparable country highlights the main deficiencies in enforcement procedures. OECD, *Anti-corruption Reforms in Armenia, Round 3 Monitoring of the Istanbul Anti-Corruption Action Plan,* 2014, p 4 *available at:* http://www.oecd.org/daf/anti-bribery/Armenia-Round-3-Monitoring-Report-ENG.pdf

[81] *Available at:* http://hetq.am/eng/news/75066/armenia-ends-probe-into-mihran-poghosyans-panama-papers-scandal-for-alleged-lack-of-evidence.html

[82] *Available at:* https://www.occrp.org/en/component/content/article?id=6012:armenia-ends-probe-into-mihran-poghosan-s-panama-papers-scandal-for-lack-of-evidence

[83] *Available at:* http://hetq.am/eng/news/76256/swiss-ambassador-to-armenia-reaffirms-that-armenian-law-enforcement-botched-request-for-legal-aid-in-mihran-poghosyan-investigation.html

This case clearly indicates that without institutionalization of standardized behavioral patterns for both state entity and public official above delineated inefficiencies will remain unaddressed. As to determine precise solutions below given analysis highlights the main inefficiencies[84]:

1. Capacity of anti-corruption institutions is comprehensive but does not deliver practical achievements from implemented reforms. It requires structural rearrangement of respective state institutions and clear segregation of duties between preventive and investigative entities. Mandatory cooperation for implementation of preliminary defined anti-corruption commitments should have precise legal articulation and direct relation with state entities performance results. In case of inefficiencies a state entity or responsible public official under a question should bear financial loses or dismissal of respective state authorities as a signal of non-compliance behavior with preliminary defined thresholds. Here standardized compliance behavior means preliminary defined benchmark of rules. Non-compliance to them signals out necessity of changes aimed at enforcement of predefined objectives. Appointment of responsible entities for execution of certain parts of anti-corruption strategy makes its implementation feasible. Otherwise, current approach does not clarify legal consequences of failure and non-compliance with strategy goals.

2. Implemented reforms do not have permanent effect, they are vulnerable towards political changes and require revision after every appointment or election. The reason is absent regular reporting mechanism-assuring transparency of state agency performance. No state entity bears an obligation for certain anti-corruption policy implementation. If regular reporting obligation were set to assure transparency and progress achievements[85], it would become reasonable to scrutinize reform implementation status. Otherwise it is difficult to assess actual outcome, practicability of Government's commitments and efficiency of state institutions.

3. Failure to cooperate with international entities and implement imposed recommendations demonstrate shallow characteristics of government initiatives[86]. Relevant anti-corruption trainings should provide in-depth insight towards consequences of persistent non-compliance behavior with laws and become indispensible part of reforms with the clear mission to increase anti-corruption performance

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[84] Although OECD's recent report praises the efforts of the Government to simplify regulation, to increase transparency and effectiveness public services and to prevent corruption risks, but noted that these measures have had no impact on the level of corruption, which remains worryingly high. OECD, *Anti-corruption Reforms in Armenia, Round 3 Monitoring of the Istanbul Anti-Corruption Action Plan,* 2014, p 6 *available at:* http://www.oecd.org/daf/anti-bribery/Armenia-Round-3-Monitoring-Report-ENG.pdf

[85] OECD, Anti-Corruption Reforms in Eastern Europe and Central Asia, Progress and Challenges 2013-2015, p 11 https://www.oecd.org/corruption/acn/Anti-Corruption-Reforms-Eastern-Europe-Central-Asia-2013-2015-ENG.pdf

[86] See International Crisis Group, Available at: https://d2071andvip0wj.cloudfront.net/217-armenia-an-opportunity-for-statesmanship.pdf

of state entities. The significance of this becomes apparent from the failure to fill in application forms for international assistance[87].

To further prevent non-compliance with laws governing anti-corruption compliance prior appointment to the position and throughout timeline holding the office an official, especially the ones holding corruption risk related positions (public procurement, tax, customs, inspection, law enforcement) should be under persistent control by the independent body that analyzes declarations through autonomous interrelated software databases. This is not a new solution it has been successfully implemented in the US since 1980's till nowadays[88].

The second notion is because of absent requirement of merit based appointments and further monitoring of public officials activities or "accumulation of wealth" and annual assurance of compliance with ethic regulations, as in the case of US financial disclosure system, fails to timely detect violations[89]. Moreover, absent legislative provision as to fully divert[90] incompatibilities which may possible arise from intervention of private and public interests or at least set permanent control over such cases make it socially acceptable to assign business individuals to the public office without diverting him/her from assets which are a source of "substantial conflict" "between the private financial interest and state agency's mission".[91]

Assessing current anti-corruption endeavors through the idea of the US Ethics Government act of 1978 makes obvious that domestic asset declaration is impractical and does not serve its main objective to timely deter and further monitor misappropriation risks[92]. In contrast, the US model is compliance-based ethics management aimed to assure conformity with governing laws[93]. Thus, Armenian case requires carefully designed anti-corruption preventive measures with consideration of information technologies (IT) solutions. IT solution requirement is aimed to eliminate subjective factor

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[87] See Organize Crime and Corruption Reporting Project https://www.occrp.org/en/daily/6012-armenia-ends-probe-into-mihran-poghosan-s-panama-papers-scandal-for-lack-of-evidence

[88] see https://www.oge.gov/web/oge.nsf/Public%20Financial%20Disclosure

[89] See https://www.oge.gov/

[90] Article 23 (2) of Public Service Law stipulates an option to prevent possible COI situations, by requiring officials to transfer a 10 or more percent share of his interest in a business to an entrusted management. The entrusted management is regulated under Article 954 (1), Civil Code of RA (1998).

[91] Domestically this principle is not retained and media systematically reports violations, for further details: http://hetq.am/arm/news/76696/200-hazar-dolar-arzhoxutyan-nkaric-minchev-bnakaran-ispaniayum.html/ *Available at:* https://www.law.cornell.edu/cfr/text/5/2635.402 5 C.F.R. 2635.402 (e)(2)

[92] In the Conference of the States Parties to the United Nations Convention against Corruption it was noted that implementation of asset declaration legislation was often challenging and had proved easy to circumvent. Open-ended Intergovernmental Working Group on the Prevention of Corruption (2012). *Available at: https://www.unodc.org/unodc/en/treaties/CAC/working-group4-meeting3.html*

[93] Open-ended Intergovernmental Working Group on the Prevention of Corruption (2012). See *https://www.unodc.org/unodc/en/treaties/CAC/working-group4-meeting3.html* p. 4

in verifications and assure autonomous system is in place as to check compliance of submitted information with the databases providing history background of submissions. Namely, the system itself checks the owners, benefactors, transaction parties and their truthfulness, and based on that highlights possible COI and non-compliance issues revealed from comparison. Otherwise, adoption of imposed agendas, without full consideration of endemic specification will have some remedying effect but will not provide high level of transparency and accountability of the Government.

Another suggestion can be to put possible COI cases under persistent control by respective authorities as to deter development of public official's private interests through its relatives. This arrangement requires keen cooperation between tax authorities and state register of legal entities. Here merit based appointment requires submission of interest declaration[94] prior appointment, which in turn make it possible to identify public officials relatives and in case of engagement in entrepreneurial activities it becomes feasible to detect possible misappropriation. Otherwise, if no illegal behavior determines, when "suspicious" firms where public officials related persons have managerial activities put under control as to assure their compliance with relevant regulations.

Part II Corruption Prevention Legislation and Implementation Inefficiencies in Armenia

The fact that the Commission on ECHRO has a unique role in enforcement of anti-corruption commitments[95] further discussions are aimed to reveal main deficiencies in both legislative framework and organizational arrangements as to determine what early detection policies should be enacted as to assure practical enforcement of domestic anti-corruption compliance policies[96].

According to Public Service law[97], it is the responsibility of the Commission to detect[98] COI,

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[94] See TI helpdesk (2013), Declaration of interests. Available at: http://www.transparency.org/news/feature/holding_politicians_to_account_asset_declarations

[95] The mission of the Commission on ECHRO is to build trust among citizens towards public institutions, to contribute to implementing good governance as well as to ensure transparency and accountability of the high-ranking officials' activities in Armenia. Available at: http://ethics.am/en/

[96] "Anti-corruption recommendations for visa dialogue and corruption risk mitigation procedures", p 7. Excerpt in Armenian is attached to the hard copy of this paper and published in this paper Available at: https://transparency.am/files/publications/1435321403-0-425779.pdf. Author Gabriel, non-official edition (2015). Details are available at: Analytic Centre for Globalization and Regional Cooperation (http://www.acgrc.am/bokeng.pdf).

[97] See Commission on ECHRO decisions May 3, 2014 №7-A, May 23, 2014 №13-A, etc. *Available at:* http://www.ethics.am/en/decisions/page/1/

[98] Public Service Law, Article 28-34 of the law set requirements on public service ethic rules, acceptance of gifts, scope of conflict of interest, content of declaration of property and income. In addition to this, the Law imposes an obligation to submit declaration on interests (Art. 21(9)). Because of the absence of rigorous legal obligation and sanctions for non-compliance this provision has never been reinforced.

violations of the rules of ethics by high-ranking officials and submit elimination and prevention recommendations as well as once in a year to report to the public about detected cases of COI and the measures taken against them[99]. However, examination of decisions by Commission on ECHRO does not reveal any indication of early detection of COI[100]. The overview of Commission's reports[101] provides no practice of prevented COI by the Commission since its operation. And no evidence of reporting can be established from the review of the site[102].

According to Article 38 (4) and (5) Commission on ECHRO consists of five members. The members are appointed and powers of the member are terminated by the President of the RA upon the nomination of the Chairperson of the National Assembly, Prime Minister, Chairperson of the Constitutional Court, Chairperson of the Cassation Court, General Prosecutor – each nominating one candidate for a 6-year term. This is contrary to the principle of independence of Commission on ECHRO as in practice candidates for membership of Commission are the ones who later monitor compliance of the public officials who proposes their candidacy. Besides, there is no legal restriction on appointment of related persons of officials (business associate, friend, relative)[103] having legislative capacity to propose candidacy for a membership in the Commission.

The Commission on ECHRO selects a chairperson and one deputy chairperson from its members. Any person having reached the age of 30 with higher education, high moral qualities, known by the public and having a work history of at least 10 years may be appointed as a member of Commission on

[99] Public Service Law, Article 43 part 1 paragraphs (3), (4), (5) and part 5 prescribe the responsibility of detection and reporting. Art. 44 outlines the procedure of proceedings and stipulates Commission's capacity on initiating proceedings. However as for past as well as current cases the Commission is just a depositary of declarations.

[100] Public Service Law, Article 44. The legal capacity to proceed with application as to determine conflicting interests of public official was exercised by the Commission only once in 2013. The only case challenging the conflicting interests is against Head of State Revenue Service of Armenia G. Khachatryan. Application was submitted by Transparency International of Armenia (TIA). This initiation clearly indicates the Commission failed to proactively detect or report of possible COI. Moreover, examination of Commission's decisions indicates Commission on ECHRO implements two main functions disciplinary and interpretative. See Case V.Hoktanyan and R. Nikoghosyan v. G. Khachatryan. Commission Decision N9-A September 20, 2013. *Available at:* http://www.ethics.am/files/legislation/273.pdf

[101] Through official requirement the Commission on ECHRO was asked to present factual information on implementation of its activities. According to the working paper on "Anti-corruption recommendations for visa dialogue" Commission reffered to its official site publications. P 15, excerpt in Armenian is attached to the hard copy of this paper. Author Gabriel Balayan, officially published in this paper Available at: https://transparency.am/files/publications/1435321403-0-425779.pdf

[102] See http://ethics.am/en/report/. Public Service Law, Article 43 (5) prescribes an obligation to report about Commission's performance on a regular basis.

[103] Anti-corruption recommendations for visa dialogue and corruption risk mitigation procedures", p 8. Excerpt in Armenian is attached to the hard copy of this paper and published in this paper Available at: https://transparency.am/files/publications/1435321403-0-425779.pdf. Author Gabriel Balayan. Details are available at: Analytic Centre for Globalization and Regional Cooperation (http://www.acgrc.am/bokeng.pdf).

ECHRO[104]. As it was noted earlier, legislation does not provide further clarity on merits, such as public recognition and high moral qualities, hence hindering the impartiality of Commission's performance.

According to Article 43 (2), it is the responsibility of the Commission on ECHRO to collect and analyze declarations, identify situations of COI, to give opinions about the violation of the rules of ethics. Examination of Commission's legal capacity revealed an imbalance between Commission's goals, objectives, institutional capacity and preventive tools. Moreover, compliance auditing of domestic provisions in relation to international anti-corruption agenda and unperformed commitments mentioned in previous part of this paper highlighted primary deficiencies and key loopholes of Public Service law. Below the succinct description of main inefficiencies is provided:

1. Legal wording of preventive, detective stipulations is rather misleading or vague.
2. Absent prohibitive articulations and sanctions for non-compliance leave execution of legislative requirements to the conscientiousness of the official.
3. No regulation preventing COI occurrence. Violation can be established and liability (only criminal) can be applied if corroborative evidentiary threshold is maintained[105]. This requires clear and convincing factual circumstances to be held as a precondition towards thorough examination of impartiality concerns, suspicious cases of undue influence or overall integrity compliance.

For the sake to address these inefficiencies, international standards along with the codes of conduct of public officials[106] may serve as comprehending background to reveal uncertain cause and effect relationships in domestic law enforcement methodology. It is necessary to fundamentally review main deficiencies of the law and amend the scope of activities of Commission on ECHRO as to assure it has capacity to prevent possible corrupt practices based on disclosed information[107]. Further analysis highlights loopholes impeding prevention of illegalities and enforcement drawbacks leading to travesty of accountability and performance. Along with the analysis possible curing mechanisms are also

[104] Public Service law, Article 38 (5).

[105] Articles 308, 309 of CC stipulate situations when an official exceeded or abused his authority. It states that violation can be established if there is essential damage to the legal interests of citizens, organizations, public or state rights. In case of property loss, the amount value exceeding 500 minimal salaries must be presented. This fact-intensive provision restricts the possibility to rely on whistleblowers and consequently initiate investigation. According to these articles it may be impossible to proceed with prosecution without proving threshold of damages. Armenian reality proves that COI violations can appear without economic losses, for instance by contracting with relatives for public procurement.

[106] OECD, *Fighting Corruption in Eastern Europe and Central Asia, Asset Declarations for Public Officials, A tool to prevent Corruption*, p 107-148, 2011. *Available at:* http://www.oecd.org/corruption/anti-bribery/47489446.pdf

[107] "Anti-corruption recommendations for visa dialogue and corruption risk mitigation procedures", p 17-18. Excerpt in Armenian is attached to the hard copy of this paper and officially published in this paper Available at: https://transparency.am/files/publications/1435321403-0-425779.pdf. Author Gabriel Balayan.

provided. Comparative analysis of provisions of Public Service law with relevant international standards[108] on asset declaration and management of COI identified the following issues:

1. The definition of COI in Public Service Law[109] do not straightforwardly provide scope of the situations to be eliminated by high-ranking officials[110]. It is restricted to the actual COI, i.e. when the public servant has already taken an action or decision, and does not cover potential COI, when there is a risk of conflict of private interests and the official duties[111]. Lack of prohibitory legal wording accompanied by requirement to establish rigorous factual background of COI occurrence fails to address potential or ad hoc COI. Officials use this deficiency when registering their assets under the names of their relatives. Embedding mandatory requirement on submission of interest declarations in domestic legislation can enhance investigative capacity towards estimation of official's impartiality in decision-making activities. In addition to the expansion of current articulation, prohibitive framework of actions should include incompatibilities set to comply with Constitutional prohibition on active public position and engagement in entrepreneurial or commercial activities[112]. It is important to note, that OECD asserts that the existence of a COI per se does not imply that the official in question is corrupt[113]. The UN CAC makes explicit reference to the possibility of a COI as a benchmark for what information

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[108] Tilman Hoppe, Legislative toolkit on Conflict of Interests, Development of model rules of conflict of interest, p 29. Council of Europe and European Union. Eastern Partnership Programmatic Co-operation Framework (PCF, December 2015).

[109] Public Service Law, Art. 5 (17). "Conflict of interests: a situation in which when exercising his/her powers a high-ranking public official must perform an action or adopt a decision which may reasonably be interpreted as being guided by his/her personal interests or those of a related person". "For a high-ranking public official, being guided by his/her interests or those of persons related to him/her means taking such action or adopting such a decision (including taking part in decision-making within a collegial body) within the scope of powers of a high-ranking public official, which, although lawful, results or contributes or may reasonably result or contribute, inter alia, to:

1) The increase of his/her financial resources or income or improvement of the property or other legal status of or those of the persons related to him/her or the non-commercial organization of which s/he is a member or the commercial organization of which s/he is a participant;

2) Discharge or reduction of his/her obligations, or those of persons related to him/her or the non-commercial organization of which s/he is a member or the commercial organization of which s/he is a participant;

3) Appointment of a person related to him/her to a position or assuming of the membership in an organization;

4) Winning in a competition by a person related to him/her, or the non-commercial organization of which s/he is a member or the commercial organization of which s/he is a participant."

[110] According to *Black's Law Dictionary* COI a situation that can undermine a person due to self-interest and public interest. *Available at:* http://thelawdictionary.org/conflict-of-interest/

[111] "It is common to distinguish **actual** COI from **apparent** COI where it only "appears that an official's private interests could improperly influence the performance of his duties but this is not in fact the case", as well as from potential COI "where a *public official holds a private interest which could constitute a COI* if the relevant circumstances were to change in the future"". OECD, *Fighting Corruption in Eastern Europe and Central Asia, Asset Declarations for Public Officials, A tool to prevent Corruption.* p 28, 2011. *Available at:* http://www.oecd.org/corruption/anti-bribery/47489446.pdf.

[112] Amendments to the Constitution of the Republic of Armenia Article 95 *available at: http://www.parliament.am/law_docs5/Constitution_06.12.2015.pdf.* Public Service Law, supra note Article 24.

[113] OECD*, Fighting Corruption in Eastern Europe and Central Asia, Asset Declarations for Public Officials, A tool to prevent Corruption*, p 28, 2011. *Available at:* http://www.oecd.org/corruption/anti-bribery/47489446.pdf

is to be declared[114]. This reflects the fact that COI detection is the most common purpose for the use of declarations. It may seem that the COI prevention[115] focuses somewhat narrowly on whether a particular interest can interfere with the discharge of official duties. However, there are broader concerns over public accountability, enhancing the more general possibility of evaluating the activities of a public official, including what personal motives he/she may have[116].

2. Article 21 (9) and Article 30 prescribe the responsibility to declare interests of the official since assignment to the position. If legal requirement set to declare all probable intervening interests the official holds prior to the appointment, it would provide legal predictability for elaborated supervisions. This approach may prevent public official to grant the companies public procurement contracts in case there is an evidence of intertwining interests[117]. Current conceptual determination and the requirement to declare only in case of occurrence of COI may successfully shield sponsorship business involvement by public officials[118]. Conversely, interest declaration could mitigate misappropriation risks triggered by COI in the framework of nepotism and sponsorship.

3. Absent statutory provision[119] to declare interests prior taking the office, in conjunction with the "narrow scope of related individuals"[120] is another restriction to cover genuine beneficiary owners of the sources of assets or businesses. For instance, this may promote unfair competition in public procurement and provide scope for transactions inducing COI arrangements.

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[114] UNCAC requires states to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, *their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.* Article 8 (5), 2004 *Available at:* https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf, p 12.

[115] COI is a corruption risk relevant for all countries. The 2013 Eurobarometr survey on corruption in EU member states reveals that 54% of companies perceive COI violations in procurement procedures to be widespread. Eurobarometr (2013) *Available at http*://ec.europa.eu.

[116] OECD, *Fighting Corruption in Eastern Europe and Central Asia, Asset Declarations for Public Officials, A tool to prevent Corruption*, p 28, 2011. *Available at:* http://www.oecd.org/corruption/anti-bribery/47489446.pdf

[117] *Fighting Corruption in Eastern Europe and Central Asia, Asset Declarations for Public Officials, A tool to prevent Corruption*. The report delineates the following principles while determining the scope of COI:
(a) The definition of a *COI in broad terms* and expecting public officials to recognize it and *abstain from action in particular situations;*
(b) *The definition of a range of particular situations that are incompatible with the discharge of one's official duties* (e.g. prohibition of certain outside employment or defining a range of persons vis-à-vis who a public official may not make decisions);
(c) **Disclosing of COI to the public and anticipating that the public supervision will force public officials to act in the public interest despite their private interests (the approach used more often with regard to MPs and other political office holders**). While particular countries rely more on one or the other of the approaches, **many employ elements of all of them**. OECD 2011. p 28 *Available at*: http://www.oecd.org/corruption/anti-bribery/47489446.pdf

[118] Precise definition of inefficiencies of current legislation on interest declaration are provided in this analysis, available at: https://transparency.am/files/publications/1481981448-0-846412.pdf

[119] Public Service Law, supra note 27, Art. 21 (9)

[120] Public Service Law, supra note 27, Art. 5 paragraph 1 (15) scope of related persons with high-ranking public officials is restricted to the blood relationship of up to the 2nd degree of kinship. Persons having blood relationship with a high-ranking public official of up to the 2nd degree of kinship are the persons within the 1st degree of kinship, as well as persons within the 1st degree of kinship with the latter.

Although the legal definition of related persons can be perceived as specified, the framework of related persons is restricted to the individuals having up to second degree of kinship[121]. List of persons related to the public officials for the purposes of the COI regulation is limited to the spouse, parents and children living in the same household (e.g. siblings, parents and children living separately, parents in law, cousins are not considered as related persons), which is not reflecting the actual kinship relationships within the traditional Armenian society, where most of the property is registered on the names of the relatives or "divorced" wife[122].

4. The definition of COI applies only to high-ranking officials determined by Article 5 (15) of Public Service law, primarily serving in the executive branch. While regulation of COI of members of parliament, prosecutors, judges, members of the constitutional court are with the discretion of these branches of power. As OECD notes[123] while formally ethics commissions are created in these bodies, they remain dysfunctional. This also has been proved in the previous chapter through the survey carried out as to assess efficiency and uniformity of application of Public Service law by these entities[124].

5. Ambiguous legal wording on the concept of conflicting interests e.g. "*although lawful*, results or contributes or *may reasonably result or contribute*, inter alia…" is another legal inefficiency[125]. As compared with OECD's definition "a COI involves a conflict between the public duty and private interests of a public official, in which the public official has private-capacity interests which could improperly influence the performance of their official duties and responsibilities"[126]. Domestic approach hardly aims to detect COI based on provided information. Conceptual definition on COI itself does not delineate legal restrictions on behavioral patterns of public officials. Instead, the law mandates establishment of four statutory circumstances as to prove there is a COI situation or namely, COI is established if an official while decision-making was "being guided by his/her or related parties' interests" which generated situations defined in Article 30.

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[121] Public Service Law, supra note 27, Art. 5, paragraph 1 (16) "Persons within the 1st degree of kinship are the children, parents, sisters and brothers."

[122] OECD, *Anti-corruption Reforms in Armenia, Round 3 Monitoring of the Istanbul Anti-Corruption Action Plan,* p 52, 2014. *Available at:* http://www.oecd.org/daf/anti-bribery/Armenia-Round-3-Monitoring-Report-ENG.pdf

[123] OECD, *Anti-corruption Reforms in Armenia, Round 3 Monitoring of the IAP* "The monitoring team concluded that *while formally ethics commissions were created in many state bodies*, **they remain dysfunctional**, and this part of the recommendation was not implemented" p 48-49, 2014. *Available at:* http://www.oecd.org/daf/anti-bribery/Armenia-Round-3-Monitoring-Report-ENG.pdf.

[124] "Anti-corruption recommendations for visa dialogue and corruption risk mitigation procedures", p 17. Excerpt in Armenian is attached to the hard copy of this paper and published in this paper Available at: https://transparency.am/files/publications/1435321403-0-425779.pdf. Author Gabriel Balayan. Non-official edition (2015). Details are available at: Analytic Centre for Globalization and Regional Cooperation (http://www.acgrc.am/bokeng.pdf).

[125] Public Service Law, supra note 27, Article 30.

[126] OECD *Fighting Corruption in Eastern Europe and Central Asia, Asset Declarations for Public Officials, A tool to prevent Corruption*. p 28, 2011. *Available at*: http://www.oecd.org/corruption/anti-bribery/47489446.pdf>

Rather the law by Article 28 paragraph 3 (7) prescribes an obligation to "endeavor to manage public official's investments in a way that reduces to minimum the situations of COI". Not only the lack of legal certainty in the wording, (e.g. to endeavor, to reduce instead of exclusion) and absence of legal consequences in case of "failed endeavors" but also the freedom of public official to declare about COI in case of occurrence[127] make the Commission's main function on early detection formalistic. The articulation "endeavor to reduce to minimum" the situations of COI "legitimately authorizes" public official not to eliminate possible cases of COI but it is encouraged by law to decrease the possibilities of such behavior. Hence, the examination of decisions demonstrates that the Commission instead of prevention and cooperation with investigative authorities as to ensure compliance with legal requirements, either confirms already existed COI and asks public official to abstain furthering, or rejects the possibility[128].

6. Public Service Law stipulates four additional statutory preconditions should be held altogether as to establish the fact of COI[129]. Otherwise no lenient approach is valid, such as whistleblowing[130] or public information. According to the decision "if four statutory preconditions present simultaneously a COI is established" [131]. These preconditions set advanced level of evidentiary requirements entailing high degree of certainty and convincing factual circumstances. By this Commission shifts the burden of proof to the party seeking to establish the possibility of dishonest behavior. This can be justified in cases when there is alternative corroborative mechanism for example on tax compliance procedures, affirmed by the disclosed reports, and no suspicious enrichment is proved through compliance of incomes and actual quality of life. Establishing the burden of proof normally requires comprehensive examination of bank accounts, tax reports, beneficiaries and financial statements as to confirm misappropriation entailed by the COI. In fact, party seeking to establish the fact of misappropriation may not have legal capacity to access to the appropriate databases.

7. Per expression "inter alia" demonstrates extended approach while exploring situations triggered by COI, the Commission on ECHRO interpreted this as a restriction and a legal requirement on simultaneous occurrence of four preconditions. Otherwise COI cannot be established. Absent

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[127] Public Service Law, supra note Art. 31 defines the responsibility of a public official to declare conflict of interests in case of COI.

[128] Case V.Hoktanyan and R. Nikoghosyan v. G. Khachatryan, Commission Decision 8-A 03.05.2013 p 13-14. *Available at*: http://www.ethics.am/files/legislation/222.pdf in Armenian.

[129] Case V.Hoktanyan and R. Nikoghosyan v. G. Khachatryan, Commission Decision 9-A 20.09.2013 p 6. Legal grounds, points 16-19. *Available at*: http://www.ethics.am/files/legislation/273.pdf

[130] Reporting by the Public Servant, Article 22 of Law on Public Service.

[131] This has been the guiding principle of Commission's decision N9-A, September 22, 2013, points 17 and 18.

consideration of wide margin of prescriptions in relation to the wording "inter alia" as a possibility of occurrence COI situations render any effective deterrence remedy futile and indirectly results in impunity. Possible four cases defined in law are not the exhaustive cases of COI appearance. However, the precedent of interpretation of this article[132] dictates that only in case of simultaneous occurrence of four "status improvement" cases, COI is established fact. Not only verification of practical occurrence of stipulated circumstances is cumbersome, but also interpretation of this provision by the Commission is misleading. The nature of preconditions is such that immediate impact of COI is difficult to claim. Moreover, improvement in legal, financial, business status triggered by occurred COI may not demonstrate immediate tangible results or it can be professionally concealed as to eliminate any suspicion. This in conjunction with the Commission interpretation as of COI is established if delineated stipulations occurred altogether provide high-level of protection for public officials. It become useless to institute proceedings as the law is designed in a way as to provide parties with unenforceable practices, instead of institutionalization of deterrence mechanisms.

Moreover, stipulated circumstances and the requirement on simultaneous occurrence of facts indicating improvement in financial, legal, business or other conditions makes interpretation of the COI establishment arbitrary. It becomes almost impossible to detect COI in a timely manner. It is a fact-based algorithm requiring necessary and sufficient factual background to be provided as to assert COI.

8. Current legal stipulation relies on the will of an official to estimate the necessity to report his/her supervisor about COI[133], but it does not regulate reporting of COI for public officials who do not have supervisors. Considering the law does not prescribe liability for non-compliance for accurate reporting and there is a reasonable estimation and insider knowledge an official may evade the requirement. This practice is widely acceptable. It not only weakens independence of supervision but also impairs public trust and makes it legal to engage in or support entrepreneurship for mutual "family" interest. The impunity of a public official simultaneously engaged in a decision-making of business activities perceives as a general behavioral pattern of preferential treatment, though the law defines precise definition of prohibited activities[134].

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[132] See Case V.Hoktanyan and R. Nikoghosyan v. G. Khachatryan, Commission Decision 9-A 20.09.2013. COI was not established because four preconditions stipulated by law were not provided. *Available at*: http://www.ethics.am/files/legislation/273.pdf

[133] Legislative articulation provided in Article 31 establishes that it is the responsibility of the official to make a decision to report a possible case of COI and receive further guidance as how to proceed with. In contrast to this by part 9 of article 21 the law on Public Service determines the submission of declaration on conflict of interests as a legal requirement.

[134] Pubic Service Law, supra note 27, Art. 24 prescribes list of restricted activities.

9. The limited scope of the information for asset declarations, which do not require declarations of interests including beneficiary ownership, business relationships and cover only a limited number of relatives. This has proven to be a legislative protection while "shielding" the beneficiary ownership of assets of the public officials under the names of public official's uncle's, aunt's son and daughter[135]. Absent examination over declaration of potential COI or absent monitoring over declared data in accordance with the procedures prescribed by the law may entail corruption risks as the origin of the sources to establish and develop a business or the sources of gifts[136] are not properly verified.

10. Legislation does not impose disciplinary, administrative or criminal measures both for Commission to fail to enforce procedures and for high-ranking officials for non-adherence to the requirements prescribed by the law on Public Service. This includes the absence of liabilities for high-ranking officials when there is:

1. Failure to submit a declaration on assets (Article 32).
2. Failure to submit a declaration on interests, which is a distinct legal stipulation established in Article 21 (9).

In respect of Commission non-compliance with legal requirements when there is:

1. Failure to conduct analysis of declarations, detection or elimination COI cases and violations of rules of ethics.[137] (Non-enforcement of Article 43, paragraph 1, (1)).
2. Failure to provide information on measures taken against prevented COI and violations of the rules of ethics. Each year Commission does not comply with the requirement to publish information on detected cases of COI and preventive measures. (Non-compliance with Article 43, paragraph 1 (5) and paragraph 5).
3. Failure to exercise the rights to conduct inspections, studies, expert analysis and submit results. (Non-enforcement of Article 43, paragraph 2(2)).
4. Failure to cooperate with state agencies as to verify the information provided in declarations, detect doubtful transactions and for further assistance refer to law-enforcement agencies (Non-enforcement of Article 43, paragraph 2 (1), paragraph 3, paragraph 4)

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[135] Case V.Hoktanyan, R. Nikoghosyan v. G. Khachatryan. Commission Decision N9-A September 20, 2013 p 6. Legal grounds, points 20, 26-29. *Available at:* http://www.ethics.am/files/legislation/273.pdf.

[136] See http://hetq.am/arm/news/76696/200-hazar-dolar-arzhoxutyan-nkaric-minchev-bnakaran-ispaniayum.html/

[137] OECD, *Anti-corruption Reforms in Armenia, Round 3 Monitoring of the Istanbul Anti-Corruption Action Plan*, 2014. p 47, 53. *Available at:* http://www.oecd.org/daf/anti-bribery/Armenia-Round-3-Monitoring-Report-ENG.pdf

5. Failure to set legal requirement on mandatory submission of declaration on interests (Non-enforcement of Article 21, (9))

6. Failure to develop and institutionalize legal enforcement mechanisms as to maintain the obligations prescribed by the law on Public Service. (Overall non-compliance between legal objectives of the Commission (in terms of general perceptions towards ethics intelligence mission) and the factual performance as the depository of declarations).

Since its foundation no case demonstrates evident willingness of the Commission to execute its investigative or reporting functions stated in article 43 and aimed at analysis of declarations and reporting on detected cases of violations[138]. Therefore, if a COI has already been established and as a sequence misappropriation has occurred, the legal objective of Commission on early detection and prevention becomes just a formal commitment. At the same time, general perceptions and official statements also highlight[139] the misconception between legal articulations and practical application of the law on Public Service. According to the respective officials Commission lacks legal supervisory capacity to exercise proactive prevention. Contrasting paradigm is that the review of the law on Public Service revealed that the Commission has the legal capacity to investigate, monitor and report[140] COI and violations of the rules of ethics in a timely manner and the rights of the Commission are not restricted only to the information gathering[141].

The other shortcoming the Commission currently faces is its impaired independency[142], lack of human resources and absence of autonomous compliance verification systems. Absent sanctioning mechanisms and outdated investigative methodology impair prescribed legal capacity and hinder the independent and effective functioning of the Commission. Moreover, it is obvious, only the law on Public Service cannot assure full and unbiased implementation of preventive provisions. Imposing non-compliance liabilities both for Commission and for high-ranking officials requires adoption of

[138] Review of the Commission decisions reveals "soft" disciplinary or interpretative role of the Commission in relation to the issues brought to the Commission through *submitted* applications. *Available at:* http://www.ethics.am/en/decisions

[139] RA Minister of Justice outlines the role of Ethics Commission and highlights the absence of legal capacity towards timely detection and prevention. *Available at:* https://blog.168.am/blog/49940.html#.WL1R1ghRx9I.facebook

[140] Public Service Law, supra note 27, Art. 43, 44 delineate the procedural framework of the Commission: The Commission is eligible to conduct inspections, studies, expert analysis as to detect conflict of interests, violations of the rules of ethic, publish information on violations of the rules of ethics, cases of conflict of interests as well as the measures taken in their regard.

[141] Public Service Law, supra note 27, Article 21 (9).

[142] Public Service Law, supra note 27, Article 42 (3) stipulates that the Staff of the President of RA provides organizational and logistical support of the Commission.

secondary legislation. Moreover, being a sole depositary of declarations make it unreasonable to finance this institution from the state budget[143].

Above given analysis and survey results outlined in the previous chapter to this paper proved domestic institutional anti-corruption structure and legislative framework are sound basis for further elaborations. However, as it was demonstrated legal stipulations mostly remain unexecuted. Thus, the main focus is to suggest enforceable solutions to both Commission on ECHRO and local state integrity units in order to make implementation of anti-corruption policies realistic. Main legal loopholes leading to non-adherence to the paper-based rules in current anti-corruption domestic system are briefly outlined here:

1. Although strategies, institutions, policies and laws are in place, OECD's report on anti-corruption progress achievements for 2013-2015[144] quite correctly notes that "the absence of solid evidentiary basis for anti-corruption strategies and action plans, including the failure to assess the feasibility of proposed anti-corruption measure, the absence of specific timelines and measurable indicators to assess the level and impact of implementation" make anti-corruption overall commitments impractical and immeasurable. Furthermore, there is no legislative requirement to provide quantitative measures on practicability of proposed anti-corruption policies, for instance assess their implementation through mandatory requirement of progress reporting. The implications of this is redundancy of corruption related problems, as no state entity or official is responsible for persistent monitoring, progress reporting and evaluation of previously determined problem areas. Consequently, public perception is that the Government is negligent towards emerging problems. For instance, it is quite common when previously addressed problems and mitigated corruption risks because of absent persistent control reoccur. These cases include problems addressed for example in 2011, and then because of absent monitoring and responsibility of progress reporting they again require solutions[145].

2. Lack independence, correlation and collaboration among anti-corruption policy development and coordination institutions, in conjunction with absent perpetual monitoring of activities and estimation of performance efficiencies obstruct to institutionalize international standards and practices

[143] This articles provide an analysis on Commission on ECHRO's non-substantiated existence. http://iravaban.net/en/153354.html http://iravaban.net/en/153416.html http://iravaban.net/en/81385.html http://iravaban.net/en/81385.html

[144] OECD, 2016 Progress and Challenges, Anti-Corruption Reforms in Eastern Europe and Central Asia (2013-2015) p 11. Available at: https://www.oecd.org/corruption/acn/Anti-Corruption-Reforms-Eastern-Europe-Central-Asia-2013-2015-ENG.pdf

[145] "Presentation of research on the quality and transparency of the services delivered by the Medical and Social Expertise Agency of the Ministry of Labor and Social Affairs" (in Armenian) highlights that once detected and addressed; because of absent monitoring corruption risks reoccur. Gyumri 2017. Available at: www.logosngo.org

for the whole public service. Absent unitary approaches as a common standard of anti-corruption policy implementation make it difficult to assess efficiency of performed functions on corruption prevention. This undermines the importance of multiple state and sectorial anti-corruption units existence[146]as no evidence can be established on their input towards overall anti-corruption policy compliance.

The examination of current international trends revealed that recent standard on anti-bribery management system ISO 37001: 2016 as a major step towards adoption of international anti-corruption legislation[147] may provide compliance essentials to domestic institutions in terms of practical solutions of enforcement of existing legislation. Namely, it is a framework establishing persistent adherence to the organization goals and objectives through ISO 37001: 2016 preliminary validation form which requires strict conformity with the pre-defined anti-corruption policy objectives. Adoption of mandatory compliance with ISO37001 may provide Armenian Government with the legislative framework as to make anti-corruption strategy enforceable. The Standard mandates to regularly check the compliance and further actions are based on the revealed necessities to adjust policies with the practical needs[148].

Part III ISO 37001:2016 International Standard on Anti-Corruption Management System as a State Standard to Prevent Corruption

Compliance is an outcome of an organization meeting its obligations, through embedding it in the culture of the organization and in the behavior and attitude of people working for it. Compliance management should be integrated into organization's financial, risk, quality management processes and its operational requirements and procedures[149]. Embedding compliance in the behavior of the people working for requires acknowledgement and implementation of measures to promote compliant behavior. If this is not the case at all levels of an organization, there is a risk of noncompliance[150].

[146] OECD, 2016 Progress and Challenges, Anti-Corruption Reforms in Eastern Europe and Central Asia (2013-2015) p 11. Available at: https://www.oecd.org/corruption/acn/Anti-Corruption-Reforms-Eastern-Europe-Central-Asia-2013-2015-ENG.pdf
[147] http://www.ethic-intelligence.com/experts/17181-iso-37001-needed/
[148] See http://www.ethic-intelligence.com/blog/12059-efficient-compliance-system-organized/
[149] See https://www.iso.org/obp/ui/#iso:std:iso:19600:ed-1:v1:en
[150] See http://www.ethic-intelligence.com/blog/12059-efficient-compliance-system-organized/

An effective compliance management system enables an organization to demonstrate its commitment to comply with relevant laws, including legislative requirements, codes of conduct as well as standards of good corporate governance, best practices, ethics and community expectations[151].

Organizations are increasingly convinced that by applying binding values and appropriate compliance management, they can safeguard their integrity and avoid or minimize noncompliance with the law. Integrity and effective compliance are therefore key elements of good, diligent governance. Compliance also contributes to the socially responsible behavior of organizations[152].

Recently published ISO 37001 standard on anti-bribery management is a significant development for entities seeking to better manage anti-corruption non-compliance risks. Combining corporate values with an appropriate anti-corruption management system is paramount to address the risks associated with corruption. The standard provides specifications for entities to establish, implement, maintain and continually improve their anti-corruption compliance management systems in order to address, prevent and detect corruption. The standard includes a program of measures and controls that represents global anticorruption good practice. It requires implementation of sufficient measures designed to prevent and detect corruption risks[153].

The idea to institutionalize this standard in Armenia can be substantiated by the following reasons:

Firstly, as it was established non-enforcement of legal stipulations is a major problem for all state entities. As the survey result demonstrate many of anti-corruption local entities could not explicitly deliver even their mission objectives, namely their goals stipulated in the relevant statutes. Many provisions of laws remain unimplemented and various “pardons” are provided for non-compliance. For instance, a Commission on ECHRO a body, which is responsible for overall compliance enforcement of Public Service law, suffers from various operational and legal deficiencies as to act in accordance to the defined stipulations. If mandatory standardization were a statutory obligation for state entities to undergo, such inefficiencies would be a subject of timely adjustment, as the standard mandates compliance assurance through annual surveillances. The examination of international trends revealed that the described non-adherence to the legal requirements, regular assessment of achievements, progress monitoring implementation, compliance with international recommendations and readjustment

[151] See https://www.iso.org/obp/ui/#iso:std:iso:19600:ed-1:v1:en
[152] see http://www.ethic-intelligence.com/experts/5321-airbus-strengthens-anti-corruption-program-certification/
[153] see https://www.iso.org/iso-37001-anti-bribery-management.html

of preliminary determined objectives of anti-corruption strategy can be achieved through ISO37001 standard, which is designed to help entities to persistently adhere to their statutory or anti-corruption objectives.

Besides, as it was noted earlier, adoption of Anti-corruption strategy and Conceptual Framework on Elimination of Corruption in Public Sector for 2015-2018[154] by the Government of RA cannot compel the anti-corruption laws to be executed on their own. Moreover, in the previous part of this paper it was highlighted that Anti-corruption strategy does not provide timeframes, precise action planes, responsible state entities, anticipated outcomes, progress reporting obligations and policy readjustment measures as to be considered as a workable strategy aimed at corruption elimination. Moreover, the absence of responsible authorities to implement certain reforms in conjunction with sanctions for non-compliance or failure makes the strategy formalistic in the meaning that it defines commitments without providing procedural framework of implementation[155]. Considering non-enforcement of legal stipulations as a threat for overall compliance with laws, I suggest mandatory standardization for state institutions as a tool to harmonize respective state entities objectives with the anti-corruption direction of a state. This in turn entails specified anti-corruption compliance policies, implementation, monitoring, and readjustment in accordance of the logic of ISO 37001 (Plan – Do – Check –Act)[156] for each state body. This type of detailed segregation of duties, roles and responsibilities can provide predictable framework for monitoring of anti-corruption strategy implementation progress.

Secondly, as international monitoring groups and citizens highlight even though there are statements towards corruption elimination and the issue is on political agenda, in fact no tangible reform turns theory into reality[157]. This diminishes trust towards Armenian investment and political environment and makes foreign cooperation perspectives highly sophisticated. Conversely, ISO37001 may act as a signal to assure third parties that corruption risks are under persistent, perpetual and reasonable control and there is explicit willingness by state to combat corruption.

In fact current legislative and institutional capacity can be redesigned in such a way as to provide

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[154] see http://gov.am/am/anti-corruption-strategy/

[155] "Anti-corruption recommendations for visa dialogue and corruption risk mitigation procedures", p 7. Excerpt in Armenian is attached to the hard copy of this paper and published in this paper Available at: https://transparency.am/files/publications/1435321403-0-425779.pdf. Author Gabriel Balayan. Non-official edition (2015). Details are available at: Analytic Centre for Globalization and Regional Cooperation (http://www.acgrc.am/bokeng.pdf).

[156] See https://pecb.com/whitepaper/iso-370012016---anti-bribery-management-systems-requirements-with-guidance-for-use

[157] Transparency International (2016) report on "People and Corruption: Europe and Central Asia" highlights that citizens think Government should introduce problem-driven, measurable anti-corruption programs. *Available at:* https://www.transparency.org/whatwedo/publication/7493. P 4-6;

basis for anti-corruption policy scattered implementation. However, without clear objectives, gradual monitoring of implementation, progress reporting and perpetual readjustment of necessities and planned objectives, it would remain unrealistic to adhere to the both international commitments and domestic stipulations. Besides, there is no guarantee that once addressed problems cannot arise again[158].

Efficient implementation of ISO 37001 in Armenia requires applying standard to the state entities that has an obligation to implement anti-corruption strategy. This would impose an obligation to harmonize and properly document their obligations stated in the strategy with the ISO 37001 requirements. Consequently, as progress achievement estimation is a constituent element of ISO37001 standardization[159], provision of data on implementation status of anti-corruption objectives would become a legal requirement. Otherwise, without implementing requirements of ISO37001 a state entity cannot be valid candidate for certification.

The ISO 37001 standard is designed to instill an ethical culture in organization and operates on the following logic: Plan – Do – Check –Act. It to assure compliance between predefined goals and anticipated results[160]:

• Plan: identify anti-corruption obligations and evaluate compliance risks in order to develop a strategy, including measures to address any issues.

• Do: implement measures and establish mechanisms to monitor their effectiveness. Mainly, execute anti-compliance policies, processes and controls. This makes compliance operational and imbedded into processes and procedures.

• Check: review the anti-corruption management program on the basis of the controls implemented.

• Act: review and improve anti-compliance policies continually, ensuring cases of noncompliance are monitored and examined.

Implementation of the Standard requires a candidate to:

• Conduct risk assessment as the foundation for the anti-corruption program and determination of risk areas requiring special treatment,

• Implementation of anti-corruption policies, procedures and controls based on the risk assessment. Obviously, implementation of this would provide different outcomes based on intrinsic operations and

[158] see https://www.navigant.com/-/media/www/site/insights/gic/.../whitepaperiso37001.pdf, p 3.
[159] see file:///Users/macintosh/Downloads/37-pecb-whitepaper-iso37001-2016-anti-bribery-management-systems(1)_AB22040BCB14F20A2B8710802A02719A%20(1).pdf, Clause 11, Improvement, p 10.
[160] see https://www.compliance.idoxgroup.com/en/compliance_consulting/iso37001.html

corruption risks.

• Fill in the gaps of standard requirements as to provide adequate documentation based on compliance auditing results[161].

In terms of endemic solutions, ISO 37001 ensures excellent documentation of anti-corruption program in terms of specified objectives and deadlines. Thus, ISO37001 provides benchmarking standard against which to measure anti-corruption program and consequently demonstrates progress of achievements.

Conclusions and Recommendations

Considering international monitoring observations on legal and institutional domestic arrangements along with findings from surveys and this analysis, current non-compliance with anti-corruption legal framework can be addressed if further existence of a state entity becomes dependent on its anti-corruption performance results. This in turn entails an obligation for a state institution to prove it has a certain role in anti-corruption compliance and financing from a state or donor's budget serves to a certain objective. If this notion becomes mandatory legal standard to follow the quantity of dysfunctional or non-compliant state institutions or non-enforceable stipulations would substantially diminish. Consequently, the activities, goals and performance results of a state entity under a question related to the anti-corruption compliance assurance would become practical, measurable and enforceable as well.

The examination of underlying reasons of non-compliance with anti-corruption regulations revealed various issues, but the main inefficiencies are the absence of legal consequences, such as sanctions or disciplinary measures towards state institution's inaction. If failure to provide anticipated and preliminary documented as well as measurable results from implementation of anti-corruption strategy entailed liability both for state entity, for example decreasing state or donor financing[162], or staff reduction or for public official, resignation from the office, or ban to take another public position for the upcoming years, with the reputation of "failed manager" these would compel to enforce legal

[161] See https://pecb.com/whitepaper/iso-370012016---anti-bribery-management-systems-requirements-with-guidance-for-use

[162] This was recently applied by US embassy in Armenia. Because of lack in progress of anti-corruption policies, less than 2.5% of the money allocated for Anti-Corruption Council's further support. See https://armenia.usembassy.gov/news020117.html

stipulations. Relating actual performance of a state institution or public official to the statutory predefined objectives would make current non-adherence feasible to address.

As it was demonstrated domestic institutional and legal framework could not provide an objective estimation of progress achievements of anti-corruption strategy and policies. The reasons were delineated in the respective parts of the paper: no precise action plans with implementation deadlines, segregated roles and responsibilities for both state anti-corruption body and respective official, no regular estimation of progress achievements and absent follow-up accountability on anti-corruption non-compliances as well as lack of feed-back based anti-corruption policy measures make Government's anti-corruption endeavors impractical. It can be inferred, that if overall anti-corruption system or its implementation status cannot be tracked and cannot be assessed, consequently it cannot be controlled. Sole adoption of various reforms without follow-up measurable enforcement, which in turn requires consideration of all implementation obstacles and feedbacks, could not sufficiently eliminate identified corruption problems. As it substantiated above, respective anti-corruption entities either are not in compliance with the legal framework because of technical, political and other "excuses", or absent controllable framework, for instance a system establishing certain requirements and deadlines towards achievement of anti-corruption goals, make it futile to require state entity to maintain compliant behavior, when no liability is envisaged for non-compliance, except for public mistrust.

To address aggravating non-compliance behavior, for example by Commission on ECHRO when the latter does not comply with Article 43 of Public Service law and does not analyze declarations and consequently fails to provide decisions for detected violations on a regular basis, it become clear that a management system of compliance and anti-corruption assurance, such as ISO 37001[163] may facilitate to deliver not only progress report of anti-corruption achievements, but also non-compliance with existing regulatory framework may entail legal consequences such as invalidation of international certification. In line with compliance assurance, bodies, other than Commission on ECHRO, which exercise corruption prone activities (investigation, examination, reporting) should undergo anti-corruption management standardization as to assure independence, impartiality as well as compliance with respective regulations[164].

[163] See http://www.ethic-intelligence.com/blog/15613-iso-37001/
[164] See http://www.ey.com/Publication/vwLUAssets/ey-iso-37001/$FILE/ey-iso-37001.pdf p. 2.

The ISO 37001, as it was already mentioned, is a set of guidelines. It is based on a four-step method: plan anti-corruption compliance program according to the risks and legal obligations, define measures to implement and monitor mechanisms, check the anti-corruption compliance management program and act to improve the program. Based on the principles of good governance and transparency, the ISO 37001 standard allows compliance officers to build or to benchmark their anti-corruption compliance strategies and maintain persistent monitoring over the performance[165].

Without adoption of ISO 37001 by state bodies holding an obligation to implement policies delineated in Anti-Corruption Strategy of RA for 2015-2018[166], the adherence to the anti-corruption commitments would not be enforced based on the deficiencies outlined in this paper. In these terms, ISO37001 mandate to adhere to the precise action plan as to implement and regularly estimate progress of anticipated results of anti-corruption policy.

In line with institutionalization of ISO37001, widespread nepotism and sponsorship arrangements described in this paper require public officials to declare their private interests prior appointment. As it was previously substantiated Public Service law does not straightforwardly address COI related issues[167] . Based on the legal stipulation outlined in Article 21 (9) of Public Service law further enforcement of interest declaration requires detailed procedures and enforceable sanctions in case of non-compliance. It should be noted that, once ISO37001 become mandatory standard, the enforcement of this article would become non-avoidable. Submission of interest declaration is a required tool to comply with ISO37001 standard's requirements[168]. For that reason,legislation should determine COI as a situation incompatible with public service, banning to take any actions or make decisions in COI situation, as well as stipulate clear mechanisms for regulation and management of COI[169].

As to domestically make it clear, what is COI and how it should be managed, a definition of COI should at least include the following features: "Conflict of interest is a situation in which public official has a private interest which is such as to influence, or appear to influence, the impartial and objective performance of his her official duties. Private interest includes, but is not limited to, any advantage of himself, to his or her family, persons or organizations, with which he or she has or had close personal, business or political relations. It

[165] See https://www.compliance.idoxgroup.com/en/compliance_consulting/iso37001.html
[166] See http://gov.am/u_files/file/xorhurdner/korupcia/1141_1k_voroshum.pdf p. 20-25
[167] See https://transparency.am/files/publications/1481981448-0-846412.pdf p.2 .
[168] Effective prevention involves risk identification and daily management. See http://www.ethic-intelligence.com/blog/12059-efficient-compliance-system-organized/
[169] Tilman Hoppe, Legislative toolkit on Conflict of Interests, Development of model rules of conflict of interest, p 29. Council of Europe and European Union. Eastern Partnership Programmatic Co-operation Framework (PCF, December 2015).

includes also any liability, whether financial or civil, relating thereto. “Close personal relations” include, but are not limited to, past and ongoing friendship or enmity. “Business relations” means a past or ongoing entrepreneurial trade relationship or common business under civil law. “Political relations” means the membership of a public official in a political party, or his/her relation to another member of that political party, if both have a formal function in party management or party campaigns.”[170] It is worth to note that expansion of the definition given here on family relationships should envisage up to fifth degree of kinship, considering current reality on nepotism[171]. Besides, the requirement for submission of asset and income declarations should be legally extended to the officials’ parents, underage and adult children, regardless of the fact of their being married and living together.

In order to enforce Constitutional prohibition[172] on business activities and public position, incompatible situations should have precise scope defined by law aimed to make entrusted management [173] arrangement transparent or at least under persistent control by tax authorities as to make sure no tax evasion can occur. This would make possible to automatically ban “public officials related” corporations from public tenders or put them under persistent control. For that reason, names of the organizations should be disclosed in declarations of interest, in which a public official may have a private interest or appear to have an undue influence in accordance to the above provided COI stipulation.

Provision on incompatibility should envisage a standard of transparent behavior aimed to persistently control public official’s activities. These includes and is not limited to: all agreements and payments done by the entrusted management or organization where public official’s related persons are engaged should be placed on record and information should be disclosed to the public. Tax authorities should review all sponsorship, donation agreements and payments done by a corporation as to ensure tax compliance.

For efficient implementation of COI prevention all officials’ from state and local self-government bodies, as well as the top officials of state funded and/or community budget funded organizations

[170] Tilman Hoppe, Legislative toolkit on Conflict of Interests, Development of model rules of conflict of interest, p 6. Council of Europe and European Union. Eastern Partnership Programmatic Co-operation Framework (PCF, December 2015).
[171] See apparent COI example provided in this article. Available at: http://iravaban.net/en/112791.html
[172] Article 95 of Constitution of RA stipulates that A Deputy may not hold any position, not related to his or her status, within state or local self-governmnnent bodies, or any position within commercial organizations, engage in entrepreneurial activities or perform other paid work, except for scientific, educational and creative work.
[173] Article 23 (2) of Public Service Law stipulates an option to prevent possible COI situations, by requiring officials to transfer a 10 or more percent share of his interest in a business to an entrusted management. The entrusted management is regulated under Article 954 (1), Civil Code of RA (1998).

should declare their interests[174]. This can be achieved if already existing local commissions become operational and have a mandatory obligation (prescribed by Commission on ECHRO) to report findings and violations regularly[175]. As make these bodies operational, a legal stipulation should link their further existence to the performance results in terms of progress achievement of anti-corruption commitment implementation. Progress achievement is a criterion precisely delineating measurable results of anti-corruption policy implementation.

My examination of ISO 37001 revealed, that mentioned objectives can be achieved through adoption of required policies and procedures of this standard[176].

As to ensure rigorous control over public official's transfers and appropriate detection of COI situation in case there is a possibility of illicit enrichment or undue influence on public decisions (especially in high corruption risk sectors) Public Service law should be amended as to set mandatory requirement to submit interest declarations prior receiving an appointment order. This would provide respective state institutions with preliminary databases of official's interests as to prevent possible misappropriations or conflict of interests in future. Besides, a legal requirement should be set as to disclose names of the originators, names of the beneficiaries as well as the source (origination) of the transfer should be appropriately declared unless there is a suspicion of illicit enrichment after appointment to the office. For that reason, the examination of publications and reports of media and non-governmental organizations on luxurious lives of high-ranking officials with the involvement of press and civil society organizations should be also considered as a source for further investigations of illicit enrichment cases. As to make it enforceable law should prescribe an obligation for monitoring (investigative) body to report about these publications with the special focus on results of the investigations.

The law should state an obligation for investigative bodies to detect non-compliant transfers, transactions and incompatibilities through interconnected databases of respective institutions. This includes and not limited to the requirements as to disclose: identity of transfer originators as well as the sources of their creation[177]. This requirement is related to the current tendency to declare cash inputs as

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[174] https://transparency.am/files/publications/1435321403-0-425779.pdf, p.10-18.

[175] Tilman Hoppe, Legislative toolkit on Conflict of Interests, Development of model rules of conflict of interest, p 29. Council of Europe and European Union. Eastern Partnership Programmatic Co-operation Framework (PCF, December 2015).

[176] See http://www.ethic-intelligence.com/blog/11179-iso-37001-will-implications/

[177] For example, Albanian law stipulates the obligation to declare assets and "the sources of their creation". See OECD, *Fighting Corruption in Eastern Europe and Central Asia, Asset Declarations for Public Officials, A tool to prevent Corruption*, p 15, 2011. *Available at:* http://www.oecd.org/corruption/anti-bribery/47489446.pdf

a donation, or interest payments as a source of wealth accumulation[178]. Moreover, disclosure of public official possessions at a preliminary stage prior appointment is a database for tax authorities to hold names of declared corporations under persistent control after appointment. This would assure tax compliance as well as impossibility of tax evasion and would diminish risk of COI occurence. Besides, a system will automatically ban this corporation to submit applications for public tenders, when there is a risk of COI[179]. This are the minimum measures making "sponsorship arrangements" reckless.

The law should further delineate the options of assignment to the office. Appointment decision should be made if there is a clear indication (in terms of written agreement with official) that in case of possible COI situations a public official is willing to manage such cases in accordance to the further prescriptions stated by law or resign and restitute in case of failure to eliminate COI situations. Here, willingness is a concept requiring a clear definition by law: it supposes at least transparency of actions in terms of regular reporting by the public official concerning possible cases of COI. Declaration of interests shall be presented "upon commencement within a deadline stipulated by law"[180], namely upon appointment as to make it clear that public official's private interests will not intervene with his/ her public duties and undue influence can be timely determined based on the declared information. For all described actions to become practical and become enforceable by respective state institutions, state institution further existence should be related to the delivered results in terms of adherence to the Anti-corruption commitment's factual implementation.

In order to ensure operational independence of Members of Commission on ECHRO and members of other ethic commissions the appointment should be in accordance to the legal concepts on morality values and public recognition as it stated in Article 38(5) of Public Service law. Although it is paper based obligation, no further instruction is provided as to check compliance of appointments with legal prescription.

As to assure impartiality and willingness to make workable reforms Anti-corruption council Members shall be appointed through process that ensures of their apolitical stance, impartiality, neutrality, integrity and competence. The requirement towards selection should be stipulated in the same decree[181] delineating the rules of establishment of the Council. As to assure efficiency of membership,

[178] See http://www.lragir.am/index/eng/0/country/view/35328
[179] http://hetq.am/eng/news/61343/company-owned-by-brother-of-aragatzotn-governor-gets-millions-in-construction-contracts.html
[180] Tilman Hoppe, Legislative toolkit on Conflict of Interests, Development of model rules of conflict of interest, p 29. Council of Europe and European Union. Eastern Partnership Programmatic Co-operation Framework (PCF, December 2015).
[181] See http://www.gov.am/u_files/file/xorhurdner/korupcia/165-N_ENG.pdf

the validation process of candidacy should consider moral values and public recognition as a guiding force in selection process. Besides, the performance of a Council should be related to the measurable outcome of Anti-corruption strategy implementation. This should entail establishment of rigorous and effective legal mechanisms[182] for the monitoring of the implementation of the 2015-2018 anti-corruption strategy action plan, with special focus on performance indicators and use of inputs from non-governmental organizations. As it was established, these features can be provided if ISO37001 standardization becomes mandatory legal framework for state entities.

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