



Anti-Corruption Network for Transition Economies
OECD Directorate for Financial and Enterprise Affairs
2, rue André Pascal
F-75775 Paris Cedex 16 (France)
phone: (+33-1) 45249106, fax: (+33-1) 44306307
e-mail: Anti-Corruption.Network@oecd.org
URL: <http://www.anticorruptionnet.org>

**Istanbul Anti-Corruption Action Plan
for
Armenia, Azerbaijan, Georgia, the Kyrgyz Republic, the Russian
Federation, Tajikistan and Ukraine**

**Review of Legal and Institutional Framework for Fighting Corruption
ARMENIA**

Summary Assessment and Recommendations

Endorsed on 18 June 2004

I) NATIONAL ANTI-CORRUPTION POLICY AND INSTITUTIONS

General assessment and recommendations

Republic of Armenia recognizes that corruption is an important problem in the country. Transparency International's Corruption Perception Index placed Armenia at the 78th place (in the list of 133) in 2003. In the recent years the Government has been stepping up efforts to address corruption. A Steering Committee to coordinate the Anti-Corruption Program has been established under the Prime Minister Decree #4 of January 22, 2001. Under this initiative an Anti-Corruption Strategy and Action Program were produced and adopted in November 2003.

Armenia is a party to several relevant bilateral and multilateral international agreements, including the European Convention on Human Rights with its Protocols, the Council of Europe Convention on Mutual Assistance in Criminal Matters, the Council of Europe Convention on Extradition and Council of Europe Laundering, Search, Seizure and Confiscation of the Proceeds from Crime. The country has also signed the Council of Europe Criminal Law Convention on Corruption and joined the Council of Europe's Group of States against Corruption (GRECO) in 2004; its evaluated within the framework of GRECO is planned for 2005.

The 2003 Anti-Corruption Strategy and Action Program generally focus at fighting corruption in economic sector. It proposes measures to streamline anti-corruption preventive actions in the shadow economy, in tax and customs administration. It further addresses the business environment and proposes to protect property rights and to differentiate the public and private sectors, to create competitive policies and to ensure free competitive environment.

The Program furthermore proposes measures aiming at reforms of the legislative framework and its harmonization with international anti-corruption standards. Ensuring judicial independence, repression of corruption occurrences in law enforcement and public management systems, as well as political corruption and civil society participation in the fight against corruption are also emphasized by the Program. Proposed reforms of judicial system aim to improve the independence of judicial powers. The program emphasizes the importance of further improvements in the civil service, launching a mechanisms a public appeal system, strengthening and protecting the institutions of the human rights protector's. Measures are on their way to diminish corruption risks in electoral, self-governance, education and health systems.

It is envisaged that the fight against corruption under the Program will be coordinated by an Anti-Corruption Council which is reporting to the President. Under the auspices of the mentioned Council, there will be an Anti-corruption Monitoring Group (ACMG) which will be composed of different Governmental bodies and civil society representatives. The Council and the Group shall be responsible for monitoring the Program implementation, particularly for the coordination of anti-corruption measures. Both, the Council and the Group, are currently in final stages of establishment.

While the anti-corruption coordinative and monitoring functions are in the process of consolidation and strengthening (establishment of the ACMG) the country still lacks an independent law enforcement and/or prosecution focal agency for the fight against corruption. Currently, detection, investigation of corruption offences is performed by regular law enforcement agencies within their respective competences (National Security Service, and Police) and operating pursuant to laws on these services (Armenian Law on Agencies of National Security, Armenian Law on Service at Agencies of National Security, Armenian Law on the Police, Armenian Law on Service at the Police). It should be noted that recently a specialized Department has been created within the Prosecutor General's office, which will deal primarily with prosecution of corruption cases. Specialized anti-corruption units also exist within the systems of the above law enforcement agencies. There is, for example, a Unit for Fighting Economic Crime and Corruption in the Organized Crime Department of the Police. According to the report, there is no undue duplication of authority or functions of these bodies. The

cooperation between them is carried out according to common principles adopted among law enforcement agencies. Nevertheless, it appears that the level of coordination between different institutions remains a subject of concern. Overall positive achievements can be seriously affected and undermined if law enforcement agencies lack efficiency in prosecuting and adjudicating corruption related offences. It is well known that every initiative against corruption loses its credibility if policies are not supported by visible and efficient law enforcement actions and concrete results.

In this context, evident discrepancy between the reported level of corruption in the country and the actual prosecution and conviction rates for bribery and corruption-related offences is a matter of serious concern. In such environment it is difficult to tackle corruption in all public agencies at the same time, even more so in a country with limited financial resources. Focusing preventive and in particular law enforcement efforts at a few selected, corruption-risk areas, demonstrates the possibility of positive changes. However, even such focused measures require coordinated approach of law enforcement and prosecution bodies – with properly specialized, trained and committed personnel, free of undue political or other interference.

Consequently, it should be a priority task of the Government of Armenia to actually implement its Anticorruption Strategy and Program as well as to undertake imminent and concrete measures for consolidating efforts on the repressive side of in the fight against corruption. Finally, Armenian authorities should recognize the importance of the consolidated action of the Government and the Civil Society in controlling corruption and involve private sector and civil society in the fight against corruption to a largest extent possible.

Specific recommendations

1. *Continue with the activities to make the Anti-corruption Council and the Monitoring Group operational and ensure their proper functioning. Special attention should be given to ensuring high moral and ethical standards of the members of both bodies, including representatives of relevant executive bodies (administrative, financial, law enforcement, prosecution), as well as from the Parliament and Civil Society (e.g. NGOs, academia, respected professionals etc.) in the Monitoring Group.*
2. *Upgrade statistical monitoring and reporting of corruption and corruption-related offences by introducing strict reporting mechanisms on the basis of a harmonised methodology. Ensure regular reporting to the Anti-corruption Coordination Monitoring Group, covering all spheres of the Civil Service, the Police, the Public Prosecutor's Offices, and the Courts, which would enable comparisons among institutions.*
3. *Consolidate law enforcement efforts in the fight against corruption and ensure better cooperation, in particular with the newly established specialized department within the Prosecution Service. Further specialize anticorruption units within the Police and ensure functional links between specialised law enforcement bodies and the specialised prosecution department. Undertake steps to minimize possible improper influence of or interference into the work of law enforcement officials investigating corruption offences. Exchange of knowledge and information should be direct and confidential, the number of administrative decision makers (heads of different departments for example) should be minimized.*
4. *Armenia should study examples of countries where specialized independent anticorruption bodies with a combination of repressive (investigative, prosecutorial), preventive and educational tasks and powers have been established (Hong Kong's Independent Commission Against Corruption (ICAC) might serve as the most well known example of such body).*
5. *Continue with efforts in the area of corruption-specific joint trainings for police, prosecutors, judges and other law enforcement officials; provide adequate resources for the enforcement of anti-corruption legislation.*

6. *Conduct awareness raising campaigns and organise training for the relevant public associations, state officials and the private sector about the sources and the impact of corruption, about the tools to fight against and prevent corruption, and on the rights of citizens in their interaction with public institutions.*
7. *Ratify Council of Europe Criminal and Civil Law Conventions on Corruption; sign and ratify the UN Convention against Corruption.*

II) LEGISLATION AND CRIMINALISATION OF CORRUPTION

General assessment and recommendations

The criminal code of Armenia has a number of provisions criminalizing corruption and corruption-related offences. However, the scope of the criminalized acts does not fully meet the requirements of international anti-corruption standards (as enshrined in the United Nation's Convention on Corruption, the Council of Europe's Criminal Law Convention on Corruption and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions).

For example, criminalized passive bribery and active bribery should cover offering or soliciting a bribe. The provision which legalises a payment of a considerable amount of money to a public official for an action or non-action within his competences, provided there is no preliminary agreement, appears as an odd anachronism. This provision seems construed to make de facto corruption legal and would thus serve to foster corruption.

Armenian legislation does not explicitly cover bribery of foreign or international public officials or bribery in international financial transaction.

The transfer of non-material advantages to public officials is not considered corruption, even if all the elements of corruption are present. This is a loophole that should be closed. Other advantages, apart from a "pecuniary bribe", should qualify for corruption.

Furthermore, Armenia should introduce the criminalization of trading in influence in its legislation, as required by international anti-corruption standards.

Effective, dissuasive and proportionate sanctions are important elements in the fight against corruption. They largely depend upon actual sentencing rather than on the scope of the law, and have not been covered by this review process. However, the legal provisions of the maximum sentence, as well as certain aggravating circumstances, need to be clarified in Armenian legislation to ensure adequate statute of limitations.

According to the draft report it appears that certain important ranks of public officials in Armenia at national and district level enjoy an extensive degree of immunity in cases involving corruption. They are subject to criminal liability only when certain representative bodies consent. The report does not elaborate on the actual practice on lifting immunity. While it is difficult to judge if the system hinders criminal liability for the public officials in practice, it is recommended that prosecuting bodies should not depend on the discretionary consent of political bodies. Exemptions from criminal liability should be granted to public officials on the basis of transparent and reasonable criteria.

It appears that Armenian legislation does not contain any kind of liability for legal persons in corruption or corruption-related cases, which is required by most international standards on corruption. The lack of liability of legal persons creates a risk that the bribing side cannot be held responsible, when no individual briber can be clearly identified. Besides, it can lead to unbalanced decisions when an individual is the only responsible for actions that are carried out in the interest of the employer; punishing only an individual will not encourage companies to fight corruption within their ranks.

The Armenian report states that proceeds from corruption are subject to confiscation. It does not elaborate on specific provisions and problems which might arise in connection with confiscating proceeds. Confiscation is one of the important tools for ensuring effectiveness of anti-corruption efforts and should meet the international standards (e.g. as prescribed in the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 1990). Confiscation of proceeds from corruption and corruption related offences should be made mandatory. The law should enable to confiscate proceeds of crime in monetary form, or, if not possible, in other form with equal value; any additional yields from proceeds should be confiscated as well. Proceeds should be confiscated from third person, i.e. when the bribetaker has hidden them to relatives or other trustworthy persons. The report does not elaborate on the interim measures available at the stage of investigation for the purpose of confiscation at a later stage. In addition, Armenia could explore possibilities to check unexplained wealth/illicit enrichments, under proper checks and balances in accordance with international practices, and to seize or confiscate such wealth if it is determined to have been acquired as a result of illicit income.

Concerning the investigative capacities, the report mentions the possibility of getting access to bank files. Certain investigative capacities are important to strengthen the possibilities of detecting corruption, e.g. interceptions of communications and protection of witnesses. Armenia should consider providing the legal basis for those capacities considered necessary in corruption cases.

Specific recommendations

8. *Amend the incriminations of corruption offences to meet the requirements of international standards as enshrined in the United Nation's Convention against Corruption, the Council of Europe's Criminal Law Convention on Corruption and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. In order to make the provisions criminalising bribery offences more transparent and foreseeable consider replacing existing complex fragmented provisions by a lesser number of general provisions addressing passive and active bribery. The provision which legalises the receipt by a public official of a gift not exceeding five times minimum salary under certain circumstances, should be repealed. Furthermore, criminalise trading in influence.*
9. *Review the existing levels of the statute of limitations for corruption offences to ensure that current relatively low time limits for basic bribery offences do not hinder effective detection, investigation and prosecution.*
10. *Adopt clear, simple and transparent rules for the lifting of immunity and review the categories of persons benefiting from immunity and the scope of such immunities to ensure that they comply with international standards and cannot be abused for shielding persons from criminal liability for corruption offences.*
11. *Recognising that the responsibility of legal persons for corruption offences is an international standard included in all international legal instruments on corruption Armenia should with the assistance of organisations that have experience in implementing the concept of liability of legal persons (such as the OECD and the Council of Europe) consider how to introduce into its legal system efficient and effective liability of legal persons for corruption.*
12. *Amend the legislation on confiscation of proceeds from crime to comply with international standards (such as the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime). Ensure that the confiscation of proceeds applies mandatory to all corruption and corruption-related offences. Ensure that the confiscation regime allowed for confiscation of proceeds of corruption, or property the value of which corresponds to that of such proceeds or monetary sanctions of comparable effect, and that confiscation from third persons is possible. Review the provisional measures to make the procedure for identification and seizure of proceeds from corruption in the criminal investigation and prosecution phases efficient and operational.*

13. *Ensure that the concept of an "official" encompasses all public officials or persons performing official duties in all bodies of the executive, legislative and judicial branch of the State, including local self-government and officials representing the state interests in commercial joint ventures or on board of companies.*
14. *Ensure the criminalisation of bribery of foreign and international public officials, either through expanding the definition of an "official" or by introducing separate criminal offences in the Criminal Code.*
15. *Contribute to ensuring effective international mutual legal assistance in investigation and prosecution of corruption cases.*

III) TRANSPARENCY OF THE CIVIL SERVICE AND FINANCIAL CONTROL ISSUES

General assessment and recommendations

According to the report, Armenia has key institutional mechanisms, which are necessary for the operation of a merit-based civil service. Armenian law stipulates competition as a means to recruit personnel for the civil service. However, certain stages of the recruitment allow for excessive discretion. For example, the competition commission submits several rather than one winner to the official responsible for appointments. The latter then makes a discretionary decision to appoint one of the winners. A seven-member Civil Service Board, appointed by the president, is tasked with selecting staff for government agencies and monitoring the performance of government officials. However, critics of the council argue that because it is appointed by the president, it lacks objectivity and independence.

According to the report, codes of conducts are not part of Armenian tradition. There have been only a few adopted in recent years in specific organizations, such as Armenian Bar Association or Prosecutor's Office. The Anticorruption Coordination Monitoring Group may play a crucial role in developing codes of ethics in all areas of public sector and business activities in Armenia.

Armenia does not have uniform conflict of interest regulations for all civil servants. Regulations against conflict of interests, which could be used as an example, are found in Armenia's "Law on Service in Police", which provides relevant restrictions for police officers. It is particularly important that these restrictions include mechanisms such as fiduciary management of company shares owned by police officers and statements of income.

In addition to police officers, some 3,000 senior government officials, including the president and government ministers, have to declare annually revenue and property belonging to themselves and their families. The law neither requires the verification of the financial statements nor provides for strict punishment for providing false information. Gaps in the legislation enable officials to register property in the name of relatives, thereby providing another means of tax evasion.

Armenian laws envisage a criminal liability clause for those who fail to report to the enforcement authorities about the facts definitely known to them on planned offences, those in process and committed. This requirement should be tightened up at least with regard to specific groups of public officials who, by virtue of their service, are likely to detect signs of corrupt transactions. Moreover whistle-blower protection measures are needed.

Armenia's tax and customs systems have both their strengths and weaknesses in addressing the issues of corruption. Apparently there are no standard procedures in the tax and customs systems for the detection and reporting of corrupt transaction. However, a number of measures are aimed against internal corruption within these systems. Here of special importance is the Supervision Department of the State Tax Administration.

Meantime according to a recent World Bank sponsored report, which overall ranks Armenia rather positively, bribes to tax officials are the most widespread form of administrative corruption in Armenia.

There are several different institutions in the area of financial control, namely Chamber of Control of the National assembly, Financial Supervision Department (Ministry of Finance) and a number of internal audit agencies in state and local institutions, not to mention the Central Bank of Armenia. It is important that financial control is harmonized and strategically planned and complemented. Support has to be given to new law, bringing maximum independence to Chamber of Control.

According to the status report, the draft law on "Combating Legalization of Criminal Proceeds and Terrorism Finance" will cover the major anti-money-laundering aspects. This important piece of legislation should enter into force as soon as possible. Upon enactment of this anti-money-laundering law, a financial intelligence unit needs to be established.

While overall guarantees for access to information appear adequate, certain aspects of the existing regulatory framework seem vulnerable to abuse. It is highly commendable that, under the Law on Freedom of Information, government bodies are obliged to release information within 5 to 30 days. They are permitted to refuse the release of information in only a few cases, and failure to comply with the law is a criminal offense. However, according to the status report the information holder shall draft and publish its own procedures for providing information. Therefore it is worth considering that the procedure for providing information is determined in a centralized and uniform manner.

Armenia's Law on Parties appears to be a potent tool for the tackling of political corruption. The law imposes prohibitions on donations from a number of sources to the parties, provides for state financing of political parties, and obliges parties to submit financial and accounting reports. Moreover the financial reports are to be published in the media.

Specific recommendations

16. *Introduce a unified system for recruitment in the civil service, which would, to the extent practicable, limit discretionary decisions.*
17. *Adopt a uniformed Code of Ethic / Code of Conduct for Public Officials modelled on international standards (e.g. such as Council of Europe Model Code of Conduct for Public Officials) as well as specific codes of conduct for professions particularly exposed to corruption, such as police officers, judges, tax officials, accountants, etc. In addition, prepare, and widely disseminate, comprehensive and practical guidelines for public officials on corruption, conflict of interests, ethical standards, sanctions and reporting of corruption. Consider introducing disciplinary liability for the breach of codes of conduct. Consider the introduction of an ethics supervision body/commissioner.*
18. *Ensure that there is constant monitoring of the observance of rules on gift acceptance and the avoidance of conflicts of interest and that sufficient sanctions are in place in cases of non-compliance.*
19. *Screen the system for the control of assets of public officials to detect any possible loopholes and develop proposals to eliminate such loopholes. Consider increasing responsibility for public officials for failure to comply with requirements to declare income, assets and liabilities.*
20. *Enhance the obligation to report suspicions of corruption. Adopt measures for the protection of employees in state institutions against disciplinary action and harassment when they report suspicious practices within the institutions to law enforcement authorities or prosecutors, and launch an internal campaign to raise awareness of those measures among civil servants.*
21. *In order to ensure the publicity and transparency of public procurement, introduce an electronic contracting and bidding system. In the electronic system, publish inter alia all the cases of complaints*

- to the authorized agency and reactions to such appeals. All procurement information, which is not published, should be disclosed upon request save for commercial and state secrets.*
- 22. Adopt the full set of anti-money-laundering legislation, which brings Armenia in compliance with the international standard, and ensure that a financial intelligence unit is set-up as soon as possible.*
 - 23. Rigorously follow the Anti-corruption Strategy in improving the rules governing the relationship between public officials and citizens and the procedures associated with access to information. Describe the specific measures that will be undertaken if an applicant does not receive a timely and thorough response.*
 - 24. Ensure fluent and permanent contacts and coordination among financial control/auditing institutions in order to facilitate revealing of corruption offences.*