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for Eastern Europe and Central Asia**

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# **The Istanbul Anti-Corruption Action Plan**

## **Second Round of Monitoring**

### **Republic of Armenia**

Report on key anti-corruption measures and investigation, prosecution and adjudication of corruption cases

Report presented by the Republic of Armenia at the 8<sup>th</sup> Monitoring Meeting on 29-31 March 2010.

## 1) Key anti-corruption measures

See Annex 1 below.

## 2) Investigation, prosecution and adjudication of corruption cases

### A counselor to the RA Minister of Culture has been prosecuted for abuse of office

The Department for protection of public interests of the RA Attorney General's office instituted criminal proceedings against the counselor to the RA Minister of Culture for his abuse of office, as well as stealing under false pretense of a large amount of money by the head of the legal and supervisory department of the Ministry as a result of his abuse of office.

While examining materials on Inorient Ltd., which were received from the RA Accounting Chamber, it was found out that, pursuant to Minister's order # 233-A of May 8, 2007, Mr. Ayrapetyan, the former counselor to the RA Minister of Culture and Youth and the incumbent head of the Ministry's legal and supervisory department, was co-opted to a commission that exercised the technical supervision of the process of procurement of services from a sole legal entity. The services were worth a total of AMD 19,010,000 (a. USD 50,000). The funds were earmarked to the Ministry in compliance with the RA act "On the 2007 state budget". Capitalizing on his official capacity and contrary to interests of office, Mr. Ayrapetyan arranged on 11 May 2007 the signing of a contract between the Ministry and Inorient Ltd. (which he founded back in 2004) on procurement of services on drafting of legal acts. In an effort to steal under false pretense the aforementioned amount of funds, in his capacity of member of the supervisory commission exercising technical control over fulfillment of contracts concluded by the Ministry, Mr. Ayrapetyan certified with his signature 4 fictitious conclusions on technical characteristics of the works that had not been *de facto* completed. Mr. N. Ter-Vardanyan, counselor to the RA Minister of Culture and Chairman of the commission in question, who was mandated to exercise the Public Orderer's powers, signed the fictitious protocols on acceptance of the provided for by the agreement, but *de facto* incomplete, works, so that, as a consequence of the scheme, to enable Mr. Ayrapetyan to appropriate to himself the amount of AMD 12,010,000 (a. USD 32,000), thus having caused a considerable material damage to the state, which engendered grave consequences due to lack of due attention.

Basing on the fact, on January 29, 2010, the staff of the Department for protection of public interests under the RA Attorney General's office instituted criminal proceedings by signs of Art. 178 part 3, p.1., Art. 38-178, part 3, p.1., and Art. 308, part 2 of the Criminal Code of RA, and the case was assigned to the Main Investigations Directorate of the RA police for pretrial investigation.

### Two officials of the RA Ministry of Environment are accused of corruption

The special investigation service of the RA has completed a pretrial investigation on initiating a criminal case against two staffers of the national Ministry of Environment on charges of accepting a bribe.

The pretrial investigation has found out that they had accepted a bribe worth a total of AMD 54,000.00 from director of Delta-Fragment Ltd and counselor to the Chairman of the Board of Akhtaly mining plant.

On the basis of the evidence a charge was brought against the said staffers on several points of Art. 311 of the Criminal Code of RA. The case has already been assigned to the court of general jurisdiction of Nork-March and Erevan downtown communities.

### Police captain arrested

In the framework of a criminal case filed by the special investigations service of the RA, on January 11, 2010, capt. G. Simonyan, the chief inspector of the investigations department of the Arabakyrk branch of the RA police, was arrested on suspicion of his abuse of office.

According to the respective evidence, clearly violating his immediate duties, capt. Simonyan deliberately committed explicitly illegal acts in connection with criminal files in progress, which were developed by Mr. Atoyán, an investigator of the Arabakyrk branch of the RA police.

The pretrial investigation continues on the criminal case opened by the special investigations service.

The investigator has been arrested, and the prosecutor has been suspended from service.

On November 18, on suspicion of acceptance of bribe on a large scale, Mr. L. Saakyan, investigator of the 5<sup>th</sup> garrison investigation department of the investigation services of the RA Defense Ministry was arrested.

According to evidence collected in the course of the pretrial investigation, on November 4, 2009, Mr. Saakyan demanded for a bribe a total of USD 2,000 from the apprehended Mr. A. Tovmasyan, whose criminal file he was investigating into. The bribe was demanded in exchange for vary the preventive measure - it was envisaged that it would be completed via a prosecutor who exercised the procedural control, as well as for using Mr Saakyan's legal powers to close the records on the case. On the same day, while in his office, Mr. Saakyan accepted from Mr. Tovmasyan a fraction (USD 600) of the demanded bribe. The rest of the bribe – that is, USD 1,400 – he received at 12:30 pm on November 18, 2009. On the same date, due to the police operation, the amount was found and confiscated.

The criminal case was opened by Art. 311 part 3, p.3 of the Criminal Code of RA. The pretrial investigation is conducted by the special investigations service of RA.

By the RA Prosecutor General's fiat, the mandate of Mr. G. Manukyan, the chief prosecutor of the military prosecution office of the Sevan garrison of the military procuracy of RA, was suspended, as Mr. Manukyan had been exercising control over the justness of the pretrial investigation into the criminal case in question.

## Annex 1

### **Progress in measures taken to implement recommendations since the previous round of monitoring and in developing a legal and institutional basis for the fight against corruption in Armenia**

#### **Recommendation 1. *Largely implemented***

***Continue with the activities to make the Anti-corruption Council and the Monitoring Group operational and ensure their proper functioning.***

With its Resolution of October 8, 2009, the RA Government approved the anti-corruption strategy (hereinafter referred to as “AS”) and the program of its implementation for the period of 2009-2012. The AS consists of five chapters. The document is aimed at fulfillment of obligations the AR has assumed in the framework of international anti-corruption agreements and treaties. Contributions to the development of the AS were made by experts of the OECD office in Armenia, those of the USAID office, the EC consulting group, the Council of Europe, and representatives of the civil society and public organizations.

In a move to increase efficiency of the combat corruption, it is envisaged to set a servicing structure under the Commission for Monitoring, whose members should become, in particular, representatives of the NGO community.

According to the AS, NGOs have been engaged in a string of anti-corruption measures. More specifically, they contribute to the respective activities in the educational area, evaluation of the judicial system, interaction with the police and legislature; they also contribute to the electoral process, ensuring of the regions’ financial independence, and help raise awareness of challenges engendered by corruption, etc.

#### **Recommendation 3. *Partly implemented***

***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.***

The law On Operational - Investigative Activities was adopted on 22 October 2007. The law establishes objectives, mission and powers of individual law enforcement agencies. Besides, it provides for specific operational - investigative measures the said agencies may undertake as per their respective mandate (Art. 14). The act also regulates matters of interaction between the law enforcement agencies with the Parliament, Cabinet of Ministers, judges and with law enforcement agencies in the course of operational-investigative activities.

*An excerpt from the previous report on monitoring of Armenia:* “The number of criminal cases opened with regard to corruption on a large scale remains very low”.

According to statistical data of the office of the RA Attorney General, in 2007 as many as 120 criminal cases were opened, 78 individuals were convicted of a crime, of whom 51 were officials; in 2008, as many as 370 criminal cases were opened, 178 individuals were convicted of a crime, with the number of officials making up 102.

More specifically, the following officials were convicted of corruption acts:

- heads of investigations departments of the RA police;
- investigators of the RA police;
- staff of the RA Internal Revenue Committee;
- directors of organizations;
- heads of local self-governance bodies;

- staff of the office for social services delivery to the population;
- founders and directors of organizations engaged in economic activities;
- executives of educational and healthcare organizations;
- staff of the office of public registration of deeds;
- staff of the service for enforcement of judicial verdicts.

**Recommendation 5. *Partly implemented***

***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.***

In compliance with the RA act “On the Office of Attorney General”, the Prosecutor School was established, with its legal form being the public non-for-profit organization.

The statute of the Prosecutor School was approved by the order of the Attorney General of July 19, 2007. The School’s curriculum comprises special anti-corruption courses.

As well, on March 30, 2009, the Attorney General issued an order on approval of a periodical anti-corruption training program for prosecutors.

The RA prosecutors took part in a series of workshops on corruption acts. More specifically:

- on December 9, 2008, May 23, 2009 and June 4, 2009, the CRRC and the USAID conducted such workshops under the auspices of the “Mobilizing Actions against Corruption Activities in Armenia” program.
- On December 15, 2008, a workshop was sponsored by the Eurasia Foundation;
- The US Department of Justice held a workshop between 13 and 17 April 2009.

**Recommendation 6. *Partly implemented***

***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.***

A series of events and measures have been completed to date:

- The USAID/“Mobilizing Action against Corruption Activities in Armenia”: in 2008-09 in cooperation with the RA Government, NGOs and donors 6 anti-corruption forums were held. The events were attended by international experts, civil servants, representatives of the community at large and individuals concerned of corruption. The forums have established the platform for a broad discussion of corruption challenges facing Armenia, updating the participants on specific tasks related to anti-corruption mechanisms and instruments.
- MAAC founded Protection and Assistance Centers in the national capital and in the regions. The Centers’ mission is to enable the citizenry to put inquiries and have free assistance with regard to corruption activities they have faced. The Centers also provides legal counseling on corruption acts upon citizens’ claims.
- MAAC has completed a number of grant-based projects for the community at large and private sector organizations. The ultimate objective of the exercises was to raise the level of public awareness of corruption and its adverse impact.
- The cooperation between the MAAC and the RA Internal Revenue Committee has resulted in a guidebook on identification of corruption acts and reporting on them. As many as 418 staff members of the IRC have completed a training course with the use of the guidebook.
- The MAAC organized training for 22 NGOs on matters of anti-corruption reforms in the taxation area.
- In 2008, the MAAC has organized a study tour to Bulgaria for the Control Chamber staff. The purpose of the tour was to develop a progressive stance with regard to the institution of independent audit. The participants in the tour familiarized themselves with information and analytical system the Bulgarian auditors employ to expose fraudulence and prevent corruption.

**Recommendation 8. *Partly implemented***

***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 2008, in the framework of cooperation between the UNDP and the RA Government, the parties have implemented a program “Improving awareness and counteraction in the process of exposing corruption in Armenia”. A group of local experts with a technical back-up from the UN Directorate for Drugs and Crime published findings of their research “On existing distinctions between the UN Anti-Corruption Convention and the legal and institutional system in RA”.

The authors of the report propose to amend an array of legislative acts, including the Criminal Code of RA and the Code of Criminal Procedure of RA. The bulk of amendments have already been introduced, while some still are being developed.

The above is evidenced by the RA law On Introducing Amendments to the Criminal Code of the RA enacted on April 30, 2008, by which the Criminal Code was complemented by Art. 311-2 criminalizing the trading in influence.

Art. 311-2. The use of real or alleged influence to gain a benefit.

1. The use of a real or alleged influence to gain a benefit, i.e. acceptance by any official or a civil servant who does not hold an official office, in person or through an intermediate, of money, property, property rights, securities or any assets for assistance in exercise or for failure to exercise, within his mandate, an action in favor of legal entities or private individuals, or for protection, or connivance,- is penalized by the fine ranging between 200-fold and 400-fold size of the minimum wages or incarceration for the term not more than three years.
2. The same act committed for the purpose of a designedly illicit action or connivance,- is penalized by incarceration for the term between three and five years.
3. The same act committed:
  - 1) with extortion;
  - 2) on a large scale;
  - 3) by a group of individuals by conspiracy;
  - 4) repeatedly,-is penalized by incarceration for the term between four and seven years.
4. Acts provided for by parts one or two, or three of the present Article, if committed:
  - 1) by an organized group;
  - 2) on a particularly large scale,-are penalized by incarceration for the term between five and ten years with forfeiture for offence or without that”.

**Recommendation 9. *Partly implemented***

***Review the existing levels of 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.***

On 10 June 2009, the RA law On Introducing Amendments to the Criminal Code of RA was adopted. The law provides for more severe sanctions for a series of economic crimes, including corruption acts, in particular, Art. 190 on legalization of illegal incomes, Art. 195 on unlawful anti-competition practice, Art. 205 on evasion from payments of taxes, levies and other mandatory payments, and, accordingly, revision of limitation.

**Recommendation 12. *Partly implemented***

***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).***

*An excerpt from previous monitoring report:* Confiscation is not a frequently practiced mechanism.

According to the statistical data of the Office of the Attorney General, corruption acts have caused a material damage to the state amounting to:

- in 2007- AMD 516,879.053 (about USD 1,4 million), with AMD 380,070.292 (about USD 1 mln) recovered;
- in 2008 - AMD 2,143.272.000 (about USD 5,6 mln), with AMD 380,070.292 (about USD 1,4 mln) recovered;
- in 2009 – AMD 5,320.582.753 (about USD 13,8 mln), with AMD 1,159.572.617 (about USD 3 mln) recovered.

**Recommendation 13. Largely implemented**

On 28 November 2006, the RA law On Introducing Amendments to the Criminal Code of RA was adopted. This law provides for a larger definition of public official.

In compliance with Part 3 point 1 Art. 308 of the Criminal Code of RA, persons who permanently, temporarily or by a special authority exercise functions of a representative of state power are recognized as public officials; consequently, whereas members of the national Assembly of RA are representatives of the legislative branch of power of Armenia, accordingly, the aforementioned definition embraces the legislators of the Armenian Parliament.

**Recommendation 16. Largely implemented**

***Introduce a unified system for recruitment in the civil service, which would, to the extent practicable, limit discretionary decisions.***

The bill On the Public Service has been developed and submitted to the respective commission of the National Assembly of RA.

The delay with enactment of the bill is caused by discussions related to the comprehensive nature of the document, namely the scope of the proposed regulation encompassing matters that are critical to all types and levels of legal relations within the civil service, but also more broadly touching national and municipal governance.

The overwhelming majority of experts in the civil service area believe that once passed, the law On the public service would enable the country to solve numerous problems in the respective sphere or to establish prerequisites for tackling a great number of challenges linked to each other with cause and effect relationship.

The bill provides for introduction of the following new institutions: extend the scope of civil servants' ethics code; an institution of reporting; the concept of conflict of interests; gifts to public officials in the course of their exercise of public duties or in connection with those (more specifically, it is envisaged to regulate types and value of acceptable gifts for public officials, define the circle of mutually affiliated persons, etc.).

A separate chapter of the bill related to a new code of ethics for all the civil servants.

*The above also concerns Recommendations 17 and 18.*

**Recommendation 19. Partly implemented**

***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.***

On 19 August 2006, the RA law “On declarations of assets and income by private individuals” was adopted. This law has extended the scope of information to be declared by private persons relating to their assets and incomes. The first property and income declarations for 2008 were filed in 2009.

Besides, the law provides for more efficient mechanisms of examination of data on assets and incomes. Specifically, Article 17 of the law states that it is the tax service that exercises control over compliance with this law. Following a legally established procedure, the tax service may examine accuracy of the submitted statements.

The act provides for responsibility in the form of penalty for failure to file the statement in the event of receipt of income, for concealment of income or diminishing its amount, inclusion in the filed statement of a non-received income or an income greater than the one actually received, and for failure to submit the required by the law information.

**Recommendation 22. *Partly implemented***

***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.***

The RA act “On combat money laundering and financing of terrorism” was promulgated as amended on August 31, 2008.

On 12 January, the MONEYVAL published its report on Armenia. The report was prepared in the frame of the third round of monitoring.

The report evaluates Armenia’s progress in complying with the international and European standards of combating money laundering and financing of terrorism, estimates the nation’s following the FATF’s “40+9” recommendations, and puts forward an action plan on improvement of the system of countering money laundering (CML) and financing of terrorism (FT) in Armenia.

According to main conclusions of the report, the country had displayed a significant progress, as far as CML and FT activities are concerned. More specifically, the first version of the respective act on CML and FT was adopted in 2005 and replaced by a more comprehensive act in 2008.

The report also lauds the high competence and pro-active performance by the Center for Financial Monitoring under the Central Bank of RA in its capacity of the financial intelligence agency.

Preventive measures in the CML and FT areas with regard to financial institutions operating in the national financial system are comprehensive, embrace elements of risk and appear fairly consistent with the FTF recommendations.

Meanwhile, provisions of the Criminal Code of RA with regard to combat money laundering are basically rational and take into account numerous criteria of the FATF standards.

The report also emphasizes a notable progress in the national system and practice of cooperation over recent years, which became possible due to the establishment of the national agency with a broad authority to combat financial crimes.

The national normative base on matters of mutual legal assistance and extradition likewise appears efficient. Clauses regarding mutual legal assistance do not comprise any unjustified or overly restricting conditions.

**Recommendation 24. *Not implemented***

***Ensure fluent and permanent contacts and coordination among financial control/auditing institutions in order to facilitate revealing of corruption offences.***

On December 26, 2006 the RA act “On Control Chamber” (CC) was passed. The act was subsequently promulgated on June 17, 2007.

Thanks to amendments to the Constitution, the CC was granted an independent status (it was taken out of the National Assembly’s aegis). In compliance with Art. 83.4 of the Constitution of RA, the Control Chamber of the Republic of Armenia is an independent body that exercises control over the use of budget funds, public and municipal property. The pillars of the Control Chamber’s operations are independence, collegiality, and openness.

Following the CC investigations, abuses and malpractices were exposed in different spheres, and the respective evidence was submitted to the RA Prosecutor General’s office.

As concerns recommendations 2, 4 (chiefly implemented), 10 (not implemented), 11 (partly implemented), 5 (chiefly implemented), 20 (not implemented), 21 (chiefly implemented) and 23 (partly implemented), there has been no substantial progress in the respective areas.