

## **Misuse of anti-corruption institutions to weaken the independence of the judiciary in Armenia**

**Statement by Siranush Sahakyan  
Director, International and Comparative Law Center-Armenia NGO  
Co-Founder, Path of Law Human Rights NGO**

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I would like to address the importance of respecting the independence of judiciary in the context of Executive's anti-corruption policy and efforts. We do believe that fight against corruption and respect for the independence of judiciary go hand in hand without any conflict or negation.

However, there is a trend to meticulously misuse the anti-corruption institutions and procedures, originally intended to protect and preserve the rule of law, to accumulate power in the hands of the Executive against the Judiciary. This is now happening in Armenia. Though new anti-corruption regulations are being advertised as more democratic, directed to a public interest, in fact they disguise attacks against "defiant" judges.

The Ministry of Justice has recently prepared a draft on making amendments to the Law on the Corruption Prevention Commission.

The Draft vests the Corruption Prevention Commission with two additional forceful powers influencing the judiciary:

1. The power to issue a confidential report on suspicious corrupt conduct of judges, without any specification of the Commissions authorities, procedures and guarantees against abuses;
2. The power to initiate disciplinary proceedings against judges for asset declaration violations.

While expanding the powers of the Corruption Prevention Commission the draft remarkably weakens the level of independence of the Corruption Prevention Commission. Thus,

1. Though the Law on the Commission on Prevention of Corruption (currently in force) establishes a procedure of nominations of the candidates on the basis of a public and competitive procedure in order to avoid excessive political influence, the Government "reserves" the implementation of the advanced provisions for future nominations and appointments, for now relying on "direct and controlled appointments". Draft suggests that the first composition of the Commission shall be composed of the candidates nominated by the Government, the factions, the Supreme Judicial Council for a term of office of six years, four years and three years respectively. Meantime, the candidates are presented to the Parliament, which elects the members by a majority of votes. In this political configuration in the Parliament, the opposition does not have any say. On the other hand, the ruling political party is not dependent on the opposition to reach the required majority votes. It is worth mentioning that after mass resignations in the Supreme Judicial Council and new appointments by the Parliament, the Supreme Judicial Council is under the influence of the ruling political party.

2. The Draft lowers the requirements for the members of the Corruption Prevention Commission. This concerns age and work experience requirements in particular. The foregoing provision strengthens the current practice of filling key public positions with individuals without any professional record and

recognition, weakens the professionalism of a Commission as a whole, thereby making it more vulnerable to political pressures.

3. The power of the Corruption Prevention Commission to institute disciplinary proceedings against judges is void of any logic and legitimacy. The Commission institutes disciplinary proceedings and administrative proceedings against a judge based on the same alleged violation. This is applicable only in respect of judges, but not to other public officials or servants who have the declaration obligations on an equal footing with judges. The asset declaration duty is universal and stems from the general duties of a public official/servant (not from a judge's professional activity) and hence cannot be linked to disciplinary proceedings of judges. Such regulation amounts to a discrimination against judges (in fact, if the Minister fails to discharge his duty to submit the declaration, he is liable to administrative sanction, while for a judge it will also entail a disciplinary sanction). Remarkably, any violation in respect to declarations is considered as a serious disciplinary breach (which is the sole ground of termination of the powers of a judge), whereas according to the Code of Administrative Offenses, late submission, improper submission and wrong submission entail only warning or in small fines.

We urge all the Parties to condemn the practices of misusing anti-corruption institutions and debasing the relevance of fight against corruption for the purposes of enslaving judges to politicians.

We call on the OSCE Office for Democratic Institutions and Human Rights to closely follow the developments and review the draft in light of Armenia's OSCE human dimension commitments, specifically, the OSCE-ODIHR Kyiv Recommendation on Judicial Independence.