EUROPEAN NEIGHBOURHOOD POLICY AND ARMENIA'S REFORM AGENDA

2008

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Preface

Objectives of the Partnership for Open Society

The Partnership for Open Society (POS), a coalition of civil society representatives, has acknowledged the European Neighbourhood Policy (ENP) as an exceptional opportunity for implementation of democratic, political, economic, and social reforms in Armenia. In addition to these key development objectives, the nature of the ENP – with equal emphasis on political as well as economic reforms – also provides an opportunity to enhance debate and build capacity among the Armenian civil society and general public around issues concerning Armenia's development

Our role in the ENP process

Since the early stages of the ENP in Armenia, i.e. development of the Country Report, the POS has been active as a body interested in promoting and supporting the ENP process. First the POS organized a public discussion of the Country Report and the outlined priorities; later we attempted to assume an active role in conceptualizing and developing the Action Plan. Despite the fact that efficient and direct engagement of civil society via direct bilateral cooperation of civil society with the responsible government agencies did not happen, POS members, with the support of the Open Society Institute Assistance Foundation – Armenia, embarked on analysis of certain priority areas and development of suggestions for the Action Plan. As a result, a package of suggestions in the areas of rule of law, judiciary, local government, human rights and fundamental freedoms, freedom of information, media and expression, information society, minorities and regional cooperation was prepared and distributed to the government of Armenia, the European Commission and Armenian public. It was encouraging to see that some of the suggestions did get included in the final Action Plan that was countersigned in 2006.

Over the course of the past two years POS has reflected on each step of the ENP Action Plan development, reinforcing its initial position that the ENP process must be inclusive and open to all stakeholders, and must be transparent to the Armenian people. Thus, the Implementation Tools for 2007 that were prepared by the Armenian government and made public in September of 2007 were analyzed in comparison with the Action Plan and concrete recommendations were made on making the process of planning and implementation efficient, thorough and accountable to the stakeholders.

In this latest exercise, one year into the implementation of the Action Plan, a number of civil society experts have reviewed the substantive progress in implementation of actions in certain priority areas. This was done with several purposes in mind. First, following the mission of POS to educate the Armenian public on the state of the reforms, we wanted to provide the general public and all stakeholders with an expert analysis of the first year implementation of the reforms. Secondly, as stated at numerous POS round-tables on the ENP, the Partnership planned close monitoring of the AP implementation progress. Lastly, we tried to summarize the results of our continuous monitoring of the process and of the achievements in order to develop for both the Armenian government and their counterparts in the European Commission a set of recommendations regarding certain area priorities, concrete activities to be implemented as well as the respective deliverables to be achieved and benchmarks to be met.

Below we present the analyses of experts on the following sections: rule of law and human rights, judiciary, mass media, corruption, environment and economics.
Along with the sectoral review and development of recommendations, we also want to reflect on the process of the ENP. Despite the fact that our engagement is only with some areas, we believe that it still is sufficient to be able to form a view on the process as a whole.

1. We believe that the process is in general not sufficiently open and accountable to the civil society and to the Armenian public. Exclusion of non-governmental stakeholders from the design and planning process is against the values and practices of participatory democracy. It is through bringing wider layers of society to the process that the ENP can make European values and practices better understood and accepted in the Armenian society, politics and economy.
2. The timetables of the process for the 2007 and 2008 do not provide for quality and thorough reforms: adopting and enforcing the Implementation Tools in the 9th month of the year does not provide enough time for real work. At their best they can lead to quick and superficial half-measures. For successful continuation of the process planning for 2008 should start immediately and be open and inclusive.
3. While we have conducted analysis of only several priorities, it is clear that the planning of the implementation was done in the most inefficient way. Namely the yearly implementation plan for 2007 did not elaborate on activities to be implemented or provide timetable for implementation, nor did it provide any deliverables resulting from implementation or any benchmarks against which the implementation shall be measured. To incur real systemic change, we believe the government needs a more dynamic and concrete document that speaks of clear deliverables and benchmarks and most importantly has clear vision for each action. Up to now the yearly Plan for 2008 has not been made public and there is little information on the stage of preparation of this document. We look forward to such a document being publicly available as soon as possible in 2008 to allow substantive work to begin – both on the part of the government agencies, but also on the part of the monitoring bodies and other stakeholders who aim to contribute constructively to the process of reforms

The analyses and recommendations compiled in this document have been prepared with support of the OSI AF Armenia by the following civil society actors:

Hrayr Ghukasyan, Armenian Institute for Development
Amalia Kostanyan, Center for Regional Development/Transparency International – Armenia
Boris Navasardian, Yerevan Press Club
Avetik Ishkhanyan, Helsinki Committee of Armenia
Andranik Tevanyan, Russian – Armenian University
Sona Ayvazyan, Center for Regional Development/Transparency International – Armenia
Larisa Minasyan, Open Society Institute Assistance Foundation – Armenia
Maria Aghajanyan, Open Society Institute Assistance Foundation – Armenia
Tatevik Melikyan, Open Society Institute Assistance Foundation – Armenia

EU/Armenia Action Plan

Priority Area 1:

Strengthening of democratic structures, of the rule of law, including reform of the judiciary and combat of fraud and corruption

RULE OF LAW AND REFORM OF JUDICIARY

Specific Actions:[1]

- Following the reform of the Constitution (concerning separation of powers, independence of the judiciary), develop/adapt laws for the status of judges, the judiciary and the Council of Justice accordingly;
- Following the reform of the Constitution (concerning separation of powers, independence of the judiciary) develop/adapt laws for the Prosecutor's Office in order to enhance procedures aimed at independence, impartiality, appointment and promotion of prosecutors, as well as the scope of their powers;
- Ensure that the status of the Council of Justice is independent from the legislative and the executive branches and that the Council can guarantee the independence of the judiciary and is the only and final instance with regard to issues related to the activities of judges and magistrates;
- Improve the legal and particularly free legal aid system by improving and strengthening the system of advocates and develop a school of professional practice for young graduates in law;
- Establish administrative courts.

Under Article 3.1 of the Government's Decision on List of Priorities and Measures to Be Implemented During 2007 within the ENP Armenia-EU Action Plan it is envisaged to improve transparency of judicial system in Armenia through regular publication of judicial decisions. Thus, despite the fact that most of the RA commitments undertaken under ENP are related to judicial reforms, the Government's actions for 2007 contain only one activity.

The Government Decision does not mention the judicial reforms envisaged by the Action Plan that stem from the Constitutional amendments. One can assume that the Government thinks it has fulfilled its commitments in the sector by adopting a new Judicial Code and amending the Law on Prosecutor's Office.

Description of the Current Situation

Constitutional amendments of November 27, 2005 started the second phase of judicial reforms in the Republic of Armenia. Constitutional reforms were aimed at improving the judiciary while preserving its basic concept based on the principle of separation of powers set out in the Constitution of 1995.

[1] Description of situation and recommendations for each specific action are presented below

A general analysis of the 2005 constitutional amendments in the area of the judiciary produces the following observations about their results:

- The institute of Constitutional Court is now more democratically and thoroughly regulated;
- The status of the Court of Cassation has changed;
- Additional safeguards for independence of judges have been introduced;
- The scope of constitutional foundations of justice has been expanded, while some of the foundations have become more thoroughly regulated;
- Regulations and procedures of the Council of Justice have been reviewed, etc.

Main Problems

Even though many new laws were passed and existed laws were amended following the constitutional amendments, one question remained unanswered: How much are these legal reforms in tune with the spirit of the commitments under ENP Armenia-EU Action Plan?

The Judiciary

Description of the Current Situation

The main priority of the reforms was to establish a uniform, competent and independent judiciary. This goal determined the whole philosophy behind the judicial reforms. This philosophy materialized in the RA Judicial Code adopted by the RA National Assembly on February 21, 2007.

The adoption of the Judicial Code resulted in the following:

- For the first time, issues related to the composition of the judiciary and its activities were regulated in a systemic way. Prior to that, they used to be regulated by separate laws (Laws on Council of Justice, on Composition of Courts, on Status of Judges),
- Specialized courts were created: criminal courts, civil courts and an administrative court,
- The role and significance of the Court of Cassation changed dramatically. One of the main current functions of the Court of Cassation is to ensure uniform application of laws and to promote the development of laws,
- Self-governance bodies for the judiciary were provided for, such as General Meeting of Republic of Armenia Judges and Council of Court Chairpersons,
- The status and structure of judicial school were defined.

Main Problems

The Judicial Code did not address some existing issues, or created a number of other problems:

- In addition to norms related to composition of courts, the Judicial Code also contains a number of procedural norms that are predetermined in the new judicial code,
- Even though the Council of Justice is not a continuously operating body, its members serve on the Council free of charge and their authority is not terminated throughout their membership in the Council,
- In such conditions, it is very difficult for Council members to be independent and unbiased, considering the fact that the Council of Justice is responsible for taking disciplinary action against judges, making recommendations to the President about

- Even though lists of candidates for judges' positions and judges' promotion lists are compiled by the Council of Justice, the final approval is granted by the President, who chooses candidates acceptable to him (Articles 117(4), 137(9), 138(8) of the Judicial Code). The same mechanisms applies for filling vacancies among judges of first instance courts (Articles 123(10), 131(5) and 133 of the Judicial Code),
- There is no principle of rotation for court chairmanship,
- While first instance courts and courts of appeal are specialized, the same principle of specialization does not apply to Court of Cassation, which makes it significantly more difficult to ensure uniform judicial practice through passing decisions that would serve as precedents.

Recommended Solutions

Comprehensive and consistent amendments to the RA Judicial Code and other related legislation.

Prosecutor's Office

Description of the Current Situation

Constitutional reforms were aimed at creating not only an independent judiciary, but also a prosecutor's office that would be independent from all the other branches of power. This required changes in the structure of the prosecutor's office, which were set out in the new Law on Prosecutor's Office, adopted on February 22, 2007.

The new Law on Prosecutor's Office covers the following:

- Main principles of composition of the Prosecutor's Office and its activities,
- New procedure for appointing the RA Prosecutor General. The RA Prosecutor General is nominated by the President and appointed by the National Assembly for a six-year term. In cases stipulated by law, the National Assembly can recall the Prosecutor General by the majority of the total number of parliament members, at the President's recommendation,
- The system of the Prosecutor's Office, its structure, chain of command, procedures for appointing and dismissing the prosecutors,
- Prosecutors' immunity, material and social safeguards for their activities,
- The Prosecutor's office is no longer responsible for investigating individual criminal cases; instead, it will be limited to overseeing the legality of investigation and pre-trial investigation.

Main Problems

Some new changes in legislation cast a serious doubt over the desire to relieve the Prosecutor's Office from its investigative functions. The Law on Special Investigative Service and recent amendments to the RA Criminal Proceedings Code passed at the end of 2007 created a new investigative body, which:

- is formally independent, but its head is nominated by the RA Prosecutor General and appointed by the President,

- is responsible for investigating conspiracy or crimes committed by top officials in the legislative, executive or judicial branch and officials in special services, as well as cases related to some election-related crimes,
- if necessary, may investigate those criminal cases taken by the Prosecutor General from other prosecutors and referred to the special investigative service prosecutors that are related to conspiracy or crimes committed by the aforementioned officials, or cases in which the aforementioned officials are victims,
- continues to occupy the fifth and sixth floors in the Prosecutor General's Office building, where the former investigative department of the Prosecutor General's Office used to be located.

Recommended Solutions

Immediate changes in the RA Criminal Proceedings Code and the Law on Special Investigative Service in order to prevent the Prosecutor's Office from de facto investigating criminal cases and to prevent the total control of the service by the Prosecutor General's Office.

Access to Justice

Description of the Current Situation

Addressing the issues of access to justice, including the creation of effective mechanisms for free legal assistance, is an important and logical part of judicial reforms. The experience of institutions created in the first phase of judicial reforms and its comparison with the international experience and practice show that this component of access to justice can be implemented only as a result of systemic reforms, which is the aim of the currently discussed draft Law on Legal Assistance by State Means, developed by the RA Union of Advocates.

Main Problems

Nevertheless, in the course of judicial reforms, it was decided to address the issue by other means. In particular, an attempt is made by the Union of Advocates to regulate this previously unregulated entire sector by amending one single article in the Law on Advocacy. The future of this approach is characterized by the following negative aspects:

- clear standards for determining a person's inability to pay and effective mechanisms for providing the required assistance are missing, which will have serious, negative long-term consequences for those who are supposed to benefit from the system;
- the current number of public defenders in the public defender's office (45 defense lawyers) is objectively not enough for providing free legal assistance to people from vulnerable groups, especially in the regions,
- despite the fact that this initiative is faulty and absolutely inefficient, it can possibly be cited as an example of fulfilling the state's obligations under ENP.

Recommended Solutions

It is necessary to take practical measures to make sure that the draft Law on Legal Assistance by State Means is submitted to the National Assembly and passed; also, it is necessary to make appropriate changes in other related pieces of legislation.

The two issues mentioned below are not directly included in the specific actions of the EU/Armenia Action Plan but have significant impact on development of democratic structures and situation with the rule of law, thus nicely fitting within the concept of Priority Area 1 of the Action Plan. Therefore, it is important to address these issues as well and to include them within the specific actions for EU/Armenia Action plan.

Criminal Proceedings Legislation and Practice

Description of the Current Situation

A new Criminal Proceedings Code is being developed currently. Many changes were made to the Code since the constitutional reform, with the aim of bringing the Code in compliance with the amended Constitution and the European Convention requirements. The practice of implementation of criminal proceedings legislation is extremely varied and it lacks any uniform standards.

Main Problems

Criminal proceedings legislation is currently characterized by a number of shortcomings of both systemic and local nature. In particular,

- hasty and incomplete changes and amendments, not backed by scientific arguments, have created contradictions between various articles of the Code and between the Code and other pieces of legislation,
- some provisions of the Code significantly limit fundamental human rights (rights to liberty, legal defense, fair trial, etc.) during investigation of criminal cases, which is a direct violation of the European Convention requirements,
- the amendments of November 28, 2007 were, essentially, an attempt to restore the institute of sending criminal cases back to additional pre-trial investigation – a norm that Constitutional Court had ruled to be unconstitutional in the summer of 2007,
- artificial obstacles are being created in order not to allow an increase in the number of acquittals,
- monitoring in various courts has revealed numerous violations of criminal proceedings norms in practice, including numerous cases of non-compliance with ECHR standards.

Recommended Solutions

A new Criminal Proceedings Code must be developed and adopted, appropriate changes must be made in other pieces of legislation, and continuous measures must be taken to increase the level of legal awareness and professionalism of judges ad other officials in the system.

Operative-Investigative Activities

Description of the Current Situation

The reforms also touched another area of state activities known as operative-investigative activities. The Law on Operative-Investigative Activities, passed on October 22, 2007, marked a significant progress in the regulation of this type of state activity because in the past operative-

investigative activities were not regulated by any law at all; moreover, acts limiting rights and responsibilities in this area were never made public in any way prescribed by law, but were rather considered as a state secret and were never registered.

Main Problems

An analysis of the law leads to a conclusion that the law contains some provisions that clearly cast a shadow over its positive aspects and merits. In particular:

- the law lacks several important provisions about the rights, freedoms and legal interests of people, who have found themselves in the midst of operative-investigative activities, that would clearly define safeguards for their protection, prohibit the limitation of some rights, provide opportunities to appeal against actions by operative-investigative bodies, etc.,
- the law unjustifiably narrowed the limits of prosecutorial oversight over this type of state activity, according to which prosecutors oversee the legality of operative-investigative activities only during procedural management of pre-trial investigation and investigation, whereas operative-investigative activities can be conducted not only during investigation and pre-trial investigation, but also before criminal cases are launched,
- According to the law, "control over telephone conversations" can be done by an appropriate service within the Republic of Armenia National Security agency, which is placed under direct control of the President. In particular, the President not only appoints or dismisses the head of the service, who is nominated by the head of the national security agency, but also approves the bylaws of the service, its structure and the number of its service personnel and officers,
- According to the law, results of a number of operative-investigative measures may be accepted as evidence, which directly contradicts the relevant provisions of the RA Criminal Proceedings Code that do not accept the results of operative-investigative measures as evidence.

Recommended Solutions

It is necessary to amend the Law on Operative-Investigative Activities to make it more in tune with international standards.

Conclusion

The road since independence, the lessons learned, the experience of institutions created in the first stage of judicial reforms and its comparison with international experience lead to a conclusion that any reform in this area, including legal reform, is doomed for failure unless a complete, complex, scientifically and practically corroborated concept is developed. Failure is more likely if reforms are not backed by positive trends in the general situation, such as the country's political and economic situation, public morale and qualities, as well as social and external conditions.

Any reform, which does not take into consideration the general situation in the country, its political and economic situation, morale and qualities of the public and officials, level of legal awareness of judges and other circumstances, is doomed for failure. Therefore, first of all, it is necessary to improve the aforementioned factors, and only then to develop a comprehensive concept of reforms and start implementing it.

The solution of this very important and complex issue requires a long time, and it depends on a number of objective and subjective factors, starting from the country's political, social-economic and moral-psychological situation all the way to the existence of stable safeguards for real independence of members of the judiciary, who have high professional and human qualities, which in turn depends on the development of legislation related to the composition of the judiciary and its activities.

Hrayr Ghukasyan
Lawyer
Armenian Institute for Development

FIGHT AGAINST CORRUPTION

Specific actions:

- Review progress made in the implementation of the national Anti-Corruption Strategy through the implementation of the corresponding Action Plan and ensure active participation of civil society and business representatives in monitoring implementation

- Evaluate the process of introduction and formation of the civil service system and ensure continuous improvement of the civil service system in accordance with European norms and standards

There is no comprehensive report on evaluation of introduction and formation of the civil service system in Armenia according to the following sources:
http://www.gov.am/enversion/reform_12/reform_bar.htm
http://www.gov.am/pwc-apsrep/html/civil_service.html

The Armenian Civil Service Council website (http://www.csc.am/) is not accessible to check if there is any relevant report.

"Armenian Union of Government Employees NGO" carried out monitoring of practice of attestation and examination of civil servants, but no evaluation report was posted on their website (see www.civilservice.am).

GENERAL OBJECTIVES AND ACTIONS

4.1 Political dialogue and reform
4.1.1 Democracy and the rule of law, human rights and fundamental freedoms
Strengthening the stability and effectiveness of institutions guaranteeing democracy and the rule of law

Fight against corruption

- Ensure an adequate prosecution and conviction of bribery and corruption-related offences by improving procedures on appeals to courts against administrative decisions, taking into account the establishment of administrative courts in 2006 following the signature of the UN Convention against corruption in May 2005;

No progress has been made on this point, as administrative courts started to function only on January 1, 2008 (see Article 4, Law on Promulgation of the Judicial Code, enforced on April 7, 2007).

- Ensure that the Criminal Code, in particular the definition of bribery and corruption-related offences, is in line with international standards such as the UN Convention on Corruption, the Council of Europe Criminal Law Convention on Corruption and Civil Law Convention on Corruption and once ratified, the OECD Convention on combating bribery of foreign officials in international business transactions, in order to ensure adequate prosecution and conviction;

While in the Criminal Code the definition of bribery is practically in line with mentioned standards (see Articles 311 and 312), yet there is no definition of what is a corruption-related offence. In the meantime, the provided definition does not ensure adequate prosecution and conviction.

- Implement and enforce specific anti-corruption measures within the law enforcement agencies (police, state border services and judiciary), including the development of Codes of Ethics for prosecutors and judges and the implementation of the European Code of Police Ethics as adopted by the Council of Europe Committee of Ministers on 19 September 2001;

The Code of Ethics exists for judges (see Chapter 12, Criminal Code) and prosecutors (Order #17 of the Prosecutor General, May 30, 2007), and for police officers (Law on Disciplinary Regulations of the Police, enforced on May 28, 2005). As for the European Code of Police Ethics, we did not find any information from the relevant Armenian or international web-sites about its adoption and implementation by the Armenian Government.

- Ensure the effective monitoring of the declaration of assets and income by officials through amendment to the law on Declaration of Assets and Income by High Level State Officials to establish sanctions in case of wrong doing;

The Law on the Declaration of Assets and Income of High Level State Officials became invalid from January 1, 2008. It is replaced by the Law on Declaration of Assets and Income by Physical Persons. Article 5 of the new Law requires submission of such declarations by all officials working in state and local self-administration bodies regardless of the size of their salaries. The deadline for the submission of declarations for 2007 based on this Law is April 15, 2008. Chapter 8 of the Law established more severe sanctions for submitting wrong declarations, than the previous one. Evidently, the efficiency of their enforcement will become clear after April 15 deadline of the submission of declarations.

- Ensure progress in implementing the recommendations of the Council of Europe Group of States against Corruption (GRECO);

As of January 7, 2008, there is no official report of the Government (open to the public) on country's implementation of GRECO recommendations for Armenia (see http://www.coe.int/t/dg1/greco/evaluations/round2/reports(round2)_en.asp.)

- Ensure the possibility of court appeals against all levels of administrative acts, including through establishment of administrative courts in 2006;

As mentioned above, no administrative courts were established in 2006, and no reports are available to assess a progress with such court appeals.

- Increase salary of judges to a level which ensures service with dignity in order to reduce corruption;

Salaries of judges of the courts of first instance, courts of cassation and courts of appeal were increased by the Judicial Code (see Chapter 11, Article 75) enforced on April 7, 2007, but only by 15-30%, which cannot guarantee service with dignity.

- Ensure the implementation of procedures to implement the Codes of Ethics for judges and prosecutors including the introduction of effective oversight systems to monitor the compliance of judges and prosecutors with the Code of Ethics.

No information is available.

Comments on the Attachment to the RA Government Decision N 927-N
from July 19, 2007
List of priorities and measures to be implemented during 2007 within the ENP Armenia-EU Action Plan

The Armenian Government puts in the 2007 list of priorities and measures only two following points:

4.1. To study a progress of the implementation of the National Anti-Corruption Strategy in 2006 and based on that to develop new measures (responsible institutions - Ministry of Justice and Tax Service under the RA Government);

4.2. To draft and adopt special anti-corruption measures for law enforcement institutions (no responsible institutions mentioned).

The mentioned points are very general (see comments below), while the reasons for which some other points are not included are not clear. Taking into account the fact that deadlines for some of the measures are dated by 2006, e.g. the one related to the UN Convention against Corruption, one may assume that there must be at least some explanation for the delayed actions/measures However, no explanation is provided.

Point 4.1 is copied from the ENP Action Plan (see Chapter 3. Priorities for Action, priority area 1, specific actions, paragraph 9), though the part "…and ensure active participation of civil society and business representatives in monitoring implementation" is deleted for unknown reasons. Neither any reports or public statements are available to prove that responsible institutions are working on the mentioned study, nor Anti-corruption bodies (ACC and MC) had regular meetings in 2007 (only two each) to prove their effective functioning to coordinating the process.

As to civil society and business involvement, though some NGOs are currently implementing donor supported anti-corruption programs (UNDP, OSCE, OSI) to target various sectors such as traffic police, consumer rights, education, health, elections, etc., it is not a monitoring of the measures envisaged in the Strategy Action Plan, most of which refer to legal drafting. Thus, it is

more relevant to monitor law enforcement, which is a much more challenging task requiring adequate resources and sufficient time, as well as easy access to official information.

***Point 4.2** is a shortened form of another part of the ENP Action Plan (see Chapter 4. General objectives and Actions, 4.1.1 Democracy and the rule of law, human rights and fundamental freedoms, sub-section "Fight against corruption", paragraph 3), with no mentioning what concrete measures and for what institutions should be adopted.*

Recommendations

1. To demand from authorities high level of professionalism, transparency and participation in the process of drafting of the new anti-corruption policy documents (particularly, by having public debates and consultations with government officials, MPs, experts, NGOs, journalists specialized in the field).
2. To start with a serious systemic (institutional) analysis of the previous years of "fighting corruption in Armenia" with reference to all achievements and all failures, as well as objective and subjective reasons for not being effective.
3. To make sure that the new ACS includes all three approaches – detection, prevention and public support, and that all correspondent measures are reflected in the ACS.
4. To apply a National Integrity System approach to drafting the ACS not to miss any of the key institutions (executive, legislature, judiciary, elections, political parties, oversight agencies, law enforcement institutions, business, civil society, media, international organizations, etc.).
5. To strengthen capacity and power of anti-corruption bodies (ensuring external and internal oversight) and guarantee effective communication and coordination between them and other state institutions.
6. To ensure measurable indicators for monitoring the implementation of the ACS and its AC and identify concrete mechanisms to guarantee effective government and public monitoring processes.
7. To include in the new policy documents all international obligations of Armenia in fighting corruption and adequate measures for their implementation.
8. To draft a concrete mechanism for regular reporting on the implementation of the ACS in general, and that of international obligations, in particular.
9. To call to international institutions to increase control over implementation of the country's international obligations and to apply relevant sanctions in case of not meeting the obligations on a repetitive basis and with no reasonable explanations, as well as to coordinate international assistance (programs) aimed at reducing corruption in Armenia.
10. To pay a special attention to upcoming Presidential elections and pre-election period in Armenia so that in case of reported evidences of vote-bribery, use of administrative resource in favor of some candidates, non-transparent campaign funding and other manifestations of political corruption to be able to make a realistic assessment of the situation, bearing in mind a negative implications of the mentioned violations on the process of reforms in general and on anti-corruption activities, in particular.

Amalia Kostanyan
Chairwoman
CRD/TI Armenia

Priority Area 2:

Strengthening of respect for human rights and fundamental freedoms, in compliance with international commitments of Armenia (PCA, CoE, OSCE, UN);

INDEPENDENCE OF MEDIA

Priority area 2 of Section 3 of the Action Plan ("Priorities for Action") contains the following wording: "Ensure the independence of media by strengthening the independent regulatory body for public and private broadcasters, being responsible for awarding broadcasting licenses and supervision". Section 4.6.3 of General Objectives and Actions ("Information Society and Media") reads:

"Progress in the development and use of Information Society Applications:

- Elaborate a national policy on the development of the sector including regulatory, economic, technological and social aspects, including advanced services and promote the use and exchange of views on new technologies and electronic means of communications by businesses, government and citizens in areas such as e-Business (including standards for e-signatures), e-Government, e-Health, e-Learning, e-Culture;
- Work towards adopting a comprehensive regulatory framework including licensing, access and interconnection, cost-orientation of tariffs, numbering, Universal Service and user rights, privacy protection and data security;
- Work towards adoption audiovisual legislation in full compliance with European standards with a view to future participation in international instruments of the Council of Europe in the field of media. Promote an exchange of view on audiovisual policy, including co-operation in the fight against racism and xenophobia;
- Switch from an analog to a digital system in the field of radio and television and approximate digital television and audio broadcasting to European standards."

The Armenian legislation on the freedom of speech, media and information complies with international standards, for the most part. However, obstacles for progress in this area still exist.

a) Freedom of speech, information and media is guaranteed by Article 27 of the Constitution, which further stipulates that "the state shall ensure the existence and operation of independent radio and television offering a range of diverse informational, educational, cultural and entertainment programs."

b) The Law on Mass Media (passed in 2003) complies with international standards, for the most part. The law did away with preliminary state registration and licensing of print media, strengthened the protection of information sources, outlined clear standards for responses or retractions, and addressed a number of other issues.

c) The Law on Freedom of Information (passed in 2003) has been highly praised by international experts and is considered one of the best in Eastern Europe. However, the problem is that the government still has not adopted any procedures for registration, classification and maintenance of information (as required by Article 5), as well as for providing information or its duplicate (copy) by national or local authorities, state agencies and organizations (as required by Article 10. Sometimes, this lack of procedures creates obstacles when information is sought from state agencies. The most recent example occurred in December 2007, when Helsinki Civil Assembly's Vanadzor office's lawsuit against the Police was rejected by the Nork-Marash court

of the first instance on the basis of the Police's argument that the government has not adopted any procedures for providing information.

d) The Law on Television and Radio remains problematic. This is especially true of its provisions about the composition of the regulatory body (National Television and Radio Commission) and the governing body of Public Television and Radio Company (Public Television and Radio Council). The Law was amended on February 26, 2007, to bring it into compliance with Article 83.2 of the amended Constitution approved at the 2005 referendum, which states: "In order to ensure freedom, independence and diversity of broadcast media, an independent regulatory body shall be created by law. Half of its members shall be elected by the National Assembly for six-year terms. The other half shall be appointed by the President of the Republic for six-year terms. The National Assembly shall elect its members of the regulatory body by the majority of the total number of parliamentarians. The Amended Law on Television and Radio only states that "the National Commission is an independent state regulatory body; half of its members are elected by the National Assembly for six-year terms, the other half is appointed by the President of the Republic for six-year terms, with the exception of its first composition." The Law also states that the "the election of the National Assembly's members of the regulatory commission shall be carried out by a decision of the National Assembly, in accordance with procedures established by the Law on National Assembly Regulations." The National Assembly Regulations do not provide for sufficient public participation in the appointing of any members of any body by the National Assembly. The amendments also resulted in the scrapping of the provision that required the President to appoint commission members on the basis of competition, which ensured some degree of transparency.

The appointment of members of Public Television and Radio Council remains an absolute prerogative of the President of the Republic, which makes the Council (therefore, the entire public broadcasting) fully dependent on the President.

Obstacles for the development of independent broadcasting remain after the Law was amended. These include:

- Dependence of the regulatory body (National Television and Radio Commission) and the governing body of Public Television and Radio Company (Public Television and Radio Council) on the authorities (more specifically, on the President, in the case of the latter);
- This causes them to adapt their activities to the current political situation;
- Prevalence of subjectivism and political expediency in deciding on the winners of broadcast license competitions;
- Lack of clear standards for deciding on the winners of competitions and lack of proper justification for decisions to issue or deny a broadcast license;
- Lack of oversight over adherence to laws and licensing requirements,
- Discriminatory application of penalties for violations.

e) The punishments for libel (Criminal Code, Article 135) and offence (Criminal Code, Article 136) have become less severe and only Article 135, part 2 allows for a maximum of a year of imprisonment. However, keeping these articles in the Criminal Code is still considered to be an obstacle. Article 318 of the Criminal Code ("Offending a Representative of the Authorities") is of even greater concern. Moreover, its Part 2 also allows imprisonment of up to a year. Also, its Part 1 was amended in December 2005 to include a provision allowing a detention of up to one month.

When comparing the aforementioned analysis with the Action Plan, one can see that, essentially, nothing has changed, particularly in the area of broadcasting, since its adoption. Independence of the regulatory body is not ensured. Moreover, the developments in 2007 indicate that things like covert censorship and pressure on television stations by the regulatory

body and other high authorities have become more commonplace, bringing the level of pluralism on Armenian television airwaves to a minimum during the 2007 parliamentary elections and on the eve of the 2008 presidential election.

In Annex 9 ("Ensuring Freedom of the Media"), Paragraph 9.1 of the Government Decision of July 19, 2007 ("List of Priorities and Measures to Be Implemented During 2007 within the ENP Armenia-EU Action Plan"), the RA Government pledged to "develop and adopt transparent procedures for the appointment of members of the regulatory body for private and public broadcasters for further strengthening the independence of the regulatory body responsible for awarding broadcasting licenses and supervision." However, as was mentioned in the first part of this analysis, the amended laws do not ensure the regulatory body's independence.

Priority Paragraph 9.2 ("take steps to ensure independence and pluralism of public and private media") is purely declarative in nature, because it fails to mention any specific steps, such as ending the cover censorship, monitoring and prevention of its manifestations.

The paragraph on decriminalizing of libel and offense (Paragraph 9.3) only talks about "discussing the possibility of decriminalizing of libel and offense," but there is no mention of scrapping Article 318 of the Criminal Code ("Offending a Representative of the Authorities).

Finally, the ENP Armenia-EU Action Plan, which served as a basis for the Government Decision, envisaged more concrete actions. In particular, it talked about "switching from an analog to a digital system in the field of radio and television and approximating digital television and audio broadcasting to European standards." The Government Decision does not contain any specific steps on this issue.

Recommendations

1. Procedures should be developed and adopted by the RA Government for recording, classifying and storing information, as stipulated by Article 5 of the RA Law "On Freedom of Information", and for provision of information or its copies by the state and local self-government bodies, state institutions and organizations, as stipulated by Article 10 of the same Law.

2. It is necessary to develop and adopt New laws (or amend the existing laws), regulating broadcasting that would ensure:

a) strong public involvement in the formation of the broadcasting regulator, the National Commission on Television and Radio. This necessitates the amendment of procedures for the appointment of NCTR members by both the RA President and the RA National Assembly;

b) maximum transparency of broadcast licensing competitions, distinct criteria of selection of license holders;

c) independence of the Council of Public TV and Radio Company from the authorities;

d) oversight of National Commission on Television and Radio on the activities of the Public TV and Radio company.

3. It is necessary to abolish Article 318 of the RA Criminal Code that endows state officials with a greater degree of protection than other citizens.

Boris Navasardian
President
Yerevan Press Club

HUMAN RIGHTS

Specific actions:

- Install freedom of assembly in line with international commitments and recommendations of the Council of Europe and OSCE by further improving the law on rallies and demonstrations;

Part 10 of the Government's Decision[2] talks about application of the law rather than its improvement. In fact, improvement of the law is not mentioned in the Government's Decision at all.

The Law was amended in 2005, which resulted in some improvements but the amendments did not have an effect on the concept of the Law. Currently, the nature of the law is such that instead of strengthening the guarantees for freedom of assembly, the law limits organization and conduct of public events. The 2005 Amendments to the Law was the only time an attempt was made to improve the Law.

After the amendments, the law stipulates a list of sites where mass public events are prohibited. Among state agencies, only the President's Office is included in the list. Mass public events may be forbidden within a certain distance from the President's Office, as deemed necessary for security reasons by the police.

Before the law was amended mass public events were forbidden within 150 meters of cultural and sports venues when other events were taking place in these venues. According to the amended law, such mass public events can only be limited and only in the territory of cultural or sports venues. However, the term "limited" is not clarified in the law, and the ways of limiting are left to the discretion of the competent authority.

After the Amendments to the Administrative Offenses Code (2004) and Criminal Code (2005) organization and conduct of public events in violation of procedures defined by law, as well as calls to ignore the decisions to stop public events held in violation of procedures defined by law, have been criminalized.

Since the law went info effect (22.05.04), the Mayor of Yerevan can accept a notice of a planned rally or prohibit the rally on grounds specified in the law. However, the old practice of prohibiting or hindering of public events continued throughout 2007.

In many cases, the Yerevan Municipality prohibited mass public events instead of accepting the notices about these events. In most cases, the Municipality explained its decisions to forbid the various events by citing Article 13 (1) of the Law on Meetings, Demonstrations and Rallies, which prohibits two mutually exclusive public events at the same site, at the same time.

The amended Law on Meetings, Demonstrations and Rallies requires the Police and the competent authority (in the case of Yerevan – the Yerevan Municipality) to follow the principles of proportionality and good administrative practices (Article 8, Paragraphs 4 and 6). Nevertheless, up to date the Municipality does not employ these principles in their actions.

[2] RA Government Decision N927 – N on List of priorities and measures to be implemented during 2007 within the ENP Armenia – EU Action Plan

Recommendations:

The following needs to be done in order to ensure freedom of assembly:

1. Prosecute the people who create obstacles for freedom of assembly in violation of the current legislation;
2. Stop the persecution of organizers and participants of demonstrations;
3. Post notices of mass public events and the related Municipality decisions on Municipality's website (especially in the case of the Yerevan Municipality), in order to make the process of prohibiting mass public events because of concurrent events more transparent and to prevent abuses of power to prohibit mass public events;
4. To amend the Law on Meetings, Demonstrations and Rallies in line with international standards, in particular:
   - first of all, the law needs to be amended conceptually, turning it into a law that strengthens the guarantees for freedom of assembly,
   - the Law on Meetings, Demonstrations and Rallies must adapt the principles of international law related to proportionality,
   - limitations on organizing and holding of public events must be removed; limitations may apply only in special cases (emergencies and martial law),
   - all procedures related to rallies must be specified in the law, in order to prevent arbitrary interpretation on the part of the competent state authority,
   - the prohibition on meetings, rallies and demonstrations near the President's Office must be lifted.

Specific Actions:

- Further reform of the penitentiary system in line with the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in order to improve detention conditions

Paragraph 11 of RA Government Decision stipulates:

- further reform of the penitentiary system (steps to facilitate public supervision of conditions in prisons and places for temporary detention),

According to Article 47 of the RA Law on Keeping Detainees and Arrested Persons, a public monitoring group for detainees in the Justice Ministry's penitentiary service was set up on May 14, 2004. The group consists of 15 members, representing several NGOs, including human-rights NGOs.

However, the attitude towards detainees and convicted prisoners is still not satisfactory. Both the monitoring group (see the 2005 report) and the CPT (2006 report) have noted that prisoners are subjected to physical abuse by prison staff (beating by hands and feet while in handcuffs, beating by batons).

The level of healthcare services in the penitentiary system is unsatisfactory. Prisoners' requests to be examined by court physicians from the outside are rejected; the prosecutor's office is generally not notified about the use of physical force or special measures.

Specific Actions:

- Closely cooperate with OSCE and CoE to reform the police, in order to eliminate torture, other mistreatments and corruption and to set up more trust between police and society.

Paragraph 12 of RA Government Decision stipulates

- reform the police in cooperation with OSCE and CoE, in order to eliminate torture, other mistreatments and corruption:

There are numerous complaints about people being held illegally, terrorized and subjected to violence in police stations.

A survey of detainees in the penitentiary system, conducted by the Helsinki Committee of Armenia, revealed that about 60% of the surveyed detainees had been subjected to inhuman treatment in police stations. The public learns about cruel treatment in police stations only during political tensions, when opposition activists are taken to police stations, as well as when a person dies in police custody (on May 12, 2007, Levon Gulyan, who was taken to the police, allegedly threw himself out of the window (this is the official version) and died;

During the 2006 visit, the CPT delegation received a number of confirmed statements about inhuman physical treatment of people in police custody. This treatment included such actions as using plastic bags on the detained persons. Nearly most of the statements were in relation with actions from operative agents during the preliminary investigation to receive confessions, evidence or other information.

No official has been prosecuted in Armenia for violence or for torture. This fact has been noted in the CPT report.

At the same time, the Armenian Police was unable to provide the delegation with any information on complaints about inhuman treatment by the police, citing the obvious reason that there is no specific statistics on the issue.

4. GENERAL OBJECTIVES AND ACTIONS

4.1.1 Strengthening of respect for human rights and fundamental freedoms

- Ensure ratification and implementation of the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment:

Republic of Armenia ratified the OPCAT in 2006, taking on the responsibility to install the National Preventive Mechanism (NPM) in 2007. The debate on how the NPM should be designed is on going between civil society representatives and the Ombudsman's office.

Recommendations:

1. Change the judicial practice
   - Apply the appropriate legal provisions, according to which a court must immediately order investigation of any allegations of torture brought by the accused,

- Eliminate the practice of using testimony containing a confession as the main evidence.

2. Apply the punishment specified in the criminal law to police officers responsible for torture.
3. Following Article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, make a proper statement that Armenia recognizes CPT's authority to collect and examine applications from individuals who believe that Convention has been violated.
4. Reform the criminal law

- amend the provisions regarding the questioning of suspects, defendants and witnesses by including comprehensive procedures for questioning by the police.

5. Conduct training for police officers, and include professionalism and knowledge of international norms in recruitment requirements.
6. Implement the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, create a public monitoring group, based on the following principles:

- The establishment of a National Prevention Mechanism (NPM) must be a result of an open and transparent process; preliminary consultations must involve representatives of human rights organizations, international organizations, national human rights institutions and mechanisms who visit places of detention.
- The processes and standards for the establishment of NPM, the scope of its authority and independence guarantees must be defined by law, in keeping with the requirements of the Optional Protocol to the Convention Against Torture (OPCAT). The NPM must be created in such a way as to ensure its real and not only formal independence from the executive branch of power. The law must enumerate all places of detention to be visited by NPM, including all the possible "informal" places of detention.
- Existing resources and experience of civil society must be involved in NPM's activities. Its creation must not eliminate the possibility for NGOs to conduct human rights monitoring of places of detention. Such a possibility must be enshrined in the law.
- NPM must be comprised of appropriate experts, as well as people who have experience in human rights monitoring of places of detention. The composition must be gender-balanced and must reflect the interests of other vulnerable groups in the society.
- The legislation on the creation of NPM must include at lest the authorities provided for in Article 20 of OPCAT. According to Article 21 of OPCAT, it must ensure the protection of all persons, including the detainees, staff members and third persons, who provide information to NPM.
- Local and national government agencies must consider NPM's recommendations. NPM must be able to publish any report, statement or recommendations freely and by its own initiative. It must be able to use any means of intervention in order to fulfill its goals.

Avetik Ishkhanyan
Chairman
Helsinki Committee of Armenia

Priority Area 3:

Encourage further economic development, enhance poverty reduction efforts and social cohesion, thereby contributing to the long term objective of sustainable development, including the protection of the environment

MACRO ECONOMIC STABILITY

Specific action:

- Maintain macro-economic stability by implementing prudent monetary and fiscal policies in co-operation with IFIs

Whereas

a) The projected inflation rate of 4 % + -1.5 % set in Government Decision's Paragraph 15.3 has not been met (preliminary data indicate that inflation reached 7%);

b) Despite the tax reforms described in Paragraphs 15.4 and 15.5 of the Government Decision, the practice of collecting advance tax payments continues to exist de facto, which is not stipulated in any legislation and Government decisions;

c) There is a trend toward the criminalization of punishment for RA tax law violations.

Recommendations

1. Implement consistent policy to ensure free competition, aimed at adoption of anti-monopoly legislation. It is assumed that within the framework of that legislation an appropriate independent body will be created, the main function of which will be prevention of emerging artificial monopolies. The phenomenon of rising prices in Armenia is a result of economic monopolization. Central Bank is unable to curb the pace of rising of prices through its tools and uses a simple tool such as increasing Armenian dram value against international currency (particularly US Dollars). According to preliminary data two billion of US Dollars entered into the country within last year, which is equivalent to the state budget expenditure section. From this it becomes clear that the drum appreciation will provide only a short-term remedy for curtailing inflation, while in the long-run it will hamper economic development and will be particularly damaging for export oriented sectors.
2. Simplify the tax system by defining a clear schedule for inspections (1-2 times annually based on the extent of activities). It is necessary to legislatively exclude the existence of over-payments in the tax accounts of private entrepreneurs.
3. Liberalize tax legislation emphasizing the practice of enforcement of economic punishments.

Andranik Tevanyan
Candidate of Science in Economics

PROTECTION OF ENVIRONMENT

One of the long-term objectives of the EU Armenia Action Plan is to promote sustainable development of the country, including the protection of the environment, through economic development, poverty reduction and social cohesion **(Priority area 3).** More specific actions planned towards this end include development of agriculture and promotion of sustainable development (4.3) as well as cooperation in the field of environment to ensure that conditions for good environmental governance are set and being implemented, to prevent deterioration of the environment, protect human health and achieve rational use of natural resources, to enhance cooperation on environmental issues (4.6.4).

Observation of implementation of proposed actions indicates poor compliance with the country's obligations. Though there are certain development processes going on in these fields, they are mainly related to establishment of legal grounds, while actual enforcement is not adequate.

Below comments are provided on the compliance of selected actions included in the EU-Armenia Action Plan aimed at sustainable development and environmental protection in Armenia.

Economic and social reform, poverty reduction and sustainable development (4.3)
Development of the forest industry (forest management, protection, maintenance, rehabilitation, balanced and sustainable use of forest resources)
In spite of the adoption of the new Forestry Code, establishment of the Forest Monitoring Center, implementation of certain reforestation works, many hectares of forests are being lost to illegal logging as well as sacrificed for construction and mining purposes.[3]

Development of a National Strategy on Sustainable Development
Though in the country report from 2005 it was mentioned that a National Sustainable Development Concept Paper and a Strategy are under elaboration, such documents are not adopted yet. There is no strategy, which has been developed and shared with stakeholders. A concept paper has been prepared by an NGO and discussed with stakeholders in Yerevan and regions, however, there is no process on adoption of such a document.

Establishment of administrative structures and procedures to ensure strategic planning of sustainable development and co-ordination between relevant actors
The report refers to the National Council for Sustainable Development, established in 2002 and including various stakeholder groups. Nevertheless, this body has never functioned or even met. UNDP provided certain assistance in 2006-2007 to prepare for the first meeting of the Council, however this has not happened yet.

Taking steps to improve integration of environmental considerations into other policy sectors
There is no determined course of action to integrate environmental considerations into other policy sectors. There are some discrete initiatives within a few fields, such as energy or national security, however, there is no systemic approach to consider environmental impact as a part of sectoral policies. Neither there are any steps to adopt the Strategy for Implementation of the

[3] Government Action Plan adopted by the Government Decision N695-A from June 21, 2007 states mining industry to be one of its priorities for the upcoming years.

Strategic Environmental Assessment Protocol, developed with assistance of UNDP and REC in early 2006.

Cooperation in specific sectors, including transport, energy, environment (4.6): Environment (4.6.4)

Establishment of procedures regarding access to environmental information and public participation, including implementation of the Aarhus Convention

Upon recording the failure of Armenia to meet the requirements of the Aarhus Convention, the Compliance Committee presented a set of recommendations to improve the implementation practices to ensure adequate access to information, public participation and access to justice. The adopted measures should have been reported by the Government of Armenia in December 2007, six months before the Meeting of Parties in Riga in June 2008, however, it should be noted that, in fact, no actions have been done by the government to implement recommendations.

Preparation of regular reports on the state-of-the-environment

Regular reports on the state of the environment have not become a regular practice yet. After two reports of 1993 and 2003 there have not been general state-of-the-environmental reports prepared for the country's government. Ministerial reports have been developed for 2003 and 2005.

Reinforcement of structures and procedures to carry out environmental impact assessments

No steps are being taken to develop and strengthen the institutes of environmental impact assessment. In cooperation with an NGO the Ministry of Nature Protection has developed a new draft Law on Environmental Review to comply with respective international conventions and protocols as well as the related EU Directives. Since 2004 the adoption of this draft has been reported as being high on the agenda of the government, however, it has not been adopted yet. As other activities to strengthen the environmental impact assessment process are largely tied to the passage of the mentioned law, those have not been implemented either.

Development of legislation and basic procedures and ensuring planning for key environmental sectors, including in particular as specified in the national environmental action plan

In spite of ongoing improvement of legal acts and a new legislation on environmental oversight, the enforcement practices do not indicate any progress and are dependent on the political will and discretionary use of decision-making officials.

Recommendations

1. National Council for Sustainable Development shall become an operating structure and be allocated adequate resources for effective accomplishment of its mission and goals. Council shall perform in a competent and transparent manner and ensure regular reporting on its activities and progress in implementation of sustainable development agenda.
2. Strategy for Sustainable Development shall be formulated with a wide engagement of stakeholders and adopted shortly. This document shall form the basis of the country's macroeconomic policy and guide other major policy documents of the country, such as the Poverty Reduction Strategy Program, National Environmental Action Plan, etc. An action plan for the implementation of this strategy shall be adopted and implemented. Effective control mechanisms, including civil society monitoring, shall be introduced to ensure adequate implementation process.
3. Natural resources shall be adequately valuated and development alternatives elaborated before decisions are made on allocation of those for any type of exploitation, provision of licenses or privatization. Decisions shall be taken with active engagement of the public

4. Country's commitment for sustainable development shall be reflected in national budgets and those shall allocate increasing share of resources for environmental protection. Actions included in the Implementation Plan of the Sustainable Development Strategy shall be prioritized with participation of stakeholders. Funding of the actions from budgetary sources shall be based on identified priorities, while for others there shall be a fundraising strategy adopted. Priorities shall include development of inventories of natural resources, including forests, natural monuments, in order to ensure benchmarks for adequate monitoring and oversight.
5. National Environmental Action Plan 2 shall be adopted, adequate resources allocated, effectively implemented and regularly reported. Public monitoring mechanisms shall be developed and facilitated to ensure adequate quality of control and accountability. State-of-the-environment reports shall become a regular practice for the national as well as local level and allocated adequate resources.
6. New legislation on environmental assessment shall be adopted to ensure integration of the related international norms, including those of the UNECE Convention on Environmental Impact Assessment in Trans-boundary Context (Espoo Convention), its Protocol on Strategic Environmental Assessment (SEA Protocol), UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) and respective EU Directives (85/337/EEC, amended by 97/11/EC and 2001/42/EC/SEA). The National Strategy on Implementation of the SEA Protocol shall be adopted to guide incorporation of environmental concerns into sectoral plans and programs as well as ensure early assessment of likely environmental impacts.
7. Strategy and implementation plan for implementation of the Aarhus Convention as well as for addressing of specific recommendations of the Compliance Committee shall be put in practice. Plans and programs related to the environment shall be adopted in a transparent manner through ensuring adequate access to information, stakeholder consultations and public participation in decision-making process.
8. Effective oversight and liability measures shall be established to ensure proper enforcement of legislation. Public monitoring tools shall be provided to ensure adequate civil society oversight of plans, programs and policies, including the compliance with international obligations.

Sona Ayvazyan
Executive Director
CRD/TI Armenia

Priority Area 4:

Further improvement of investment climate and strengthening of private sector-led growth

1. The ENP Armenia-EU Action Plan's Priority Area 4 reads, in particular: **"develop and implement a comprehensive program to improve the business climate",** whereas Paragraph 23.1 of the Government Decision only talks about developing a program to improve the business climate and doesn't say anything about implementing it, which will make it impossible to evaluate the effectiveness of the program in the future.

Moreover, specific actions include **programs related to concrete areas of business climate**, whereas the program to be developed in accordance with Paragraph 23.1 of the Government Decision does not include steps aimed at improving the conditions for hiring and firing workers, getting credits, protecting investors, enforcing contracts and closing a business.

2. One of the specific actions under Priority Area 4 (**"Continue the modernization and simplification of the tax administration in order to simplify the tax system, to improve coherence and reliability of the system and to reduce corruption risks and shadow economy"**) is in contradiction with the recent amendments to the Law on Simplified Tax, approved by the newly elected National Assembly, which resulted in a significant reduction of the types of businesses eligible for simplified tax, which create pre-conditions for an increase in the shadow economy. Also, this step does not encourage the development of small and medium businesses, which, in turn, contradicts the whole philosophy of the Action Plan.
3. Priority Area 4 also reads: **"Define the necessary administrative structures and procedures, including a fiscal control strategy, audit and investigation methods, co-operation with the tax payers in order to increase tax compliance and effectiveness of tax collection. Identify all needs in terms of financial, human, logistic and IT resources."** This commitment is completely lacking in the Government Decision.
4. Another priority mentioned in the same area is to **"continue efforts to develop the network of bilateral agreements between Armenia and EU Member States on avoidance of double taxation…"** The Government Decision does not contain any mention of implementing this particular obligation.
5. The Government Decision lacks another specific action from the same priority area, namely to **"provide the customs administration with sufficient internal or external laboratory expertise."**
6. The objective set in Paragraph 24 of the Government Decision and measures to reach that objective described in Paragraph 24.1 are largely of declarative nature, since concrete actions are missing and there is no possibility to evaluate its qualitative and quantitative indicators in the future. Improving SME access to financial resources, which is mentioned in Paragraph 24.1, is still just a wish because of high interest rates and insufficient degree of integration between the banking system and the real sector of the economy.
7. The **General Objectives and Actions** section of the ENP Armenia-EU Action Plan emphasizes the importance of **improving the public procurement system,** whereas the Government Decision does not contain any provisions related to this subject.

Recommendations

1. Fully implement the steps envisioned within specific actions. In parallel, legislative reforms should be implemented basically related to protection of employees' rights within the framework of to-be-adopted law on "Activities of Workers' Unions". As for elaboration and implementation of a comprehensive project with special activities targeted towards improvement of business climate, it should also include the virtual or electronic version of business registration, liquidation, submission of documents

2. Review the content of the law adopted on July 3, 2007 on "Amendments and additions to the RA law on "Simplified tax" by the National Parliament. In the new version of RA law on "Simplified tax" a progressive taxation scale should be included, according to which the entrepreneurs having an annual circulation of up to 50 million AMD will pay 5% of the circulation, those with 50 to 75 million AMD annual monetary circulation will be bound to pay 7% and the ones having from 75 to 100 million are to pay 10%, while those entrepreneurs having an annual monetary circulation of over 100 million AMD will work in the domain of VAT and profit tax.
3. It must be noted that the area of public procurement is considered to have a corruption risk; therefore, reforming it both by improving the legislation and procurement procedures is a pressing issue. The following are some of the most important issues facing the public procurement system:

   Insufficient level of supervision over the procurement process,

   - Insufficient level of transparency,
   - Lack of public supervision mechanisms and insufficient openness of procurement processes.

   There is a need for continuous monitoring of the procurement process; also, the practice of procuring the same product from the same supplier for many years must be eliminated (there have been precedents in Armenia already; in particular, the state has been purchasing petrol from the same organization for many years already).

Andranik Tevanyan
Candidate of Science in Economics