# ARMENIA'S ENP IMPLEMENTATION IN 2009

# PARTNERSHIP FOR OPEN SOCIETY PERSPECTIVE

**November, 2009**


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# Preface

**Partnership for Open Society and its Engagement in ENP Process**

The Partnership for Open Society (POS), a coalition of civil society representatives, has acknowledged the European Neighborhood Policy (ENP) as an exceptional opportunity for implementation of democratic, political, economic, and social reforms in Armenia. Introduction of the Eastern Partnership format promises to give a further impetus to the ENP in general and to its political component in particular. We believe that this differentiated approach towards the ENP countries that brings together a group of the Council of Europe members pledges a more consistent approach to the democratization agenda of the Action Plans in conformity with the CoE standards and obligations.

The POS has had a systemic engagement with the ENP process in Armenia. Since the early stages of the ENP in Armenia, i.e. development of the Country Report, the POS has been keen to promote and support the ENP process. Since the launch of the ENP, the POS members have monitored the Action Plan implementation in certain areas and reported on the progress made by the country in annual reports. This is the third Annual Report on the Country Action Plan implementation by the POS members and experts with the support of the Open Society Assistance Foundation – Armenia[1].

In 2009 the POS members decided to add more areas for the Action Plan implementation monitoring. Separate contributions on developments in the areas of tax administration, customs and public procurement were added. Accordingly, this Report summarizes monitoring results in the following areas: human rights (freedom of assembly, penitentiary, armed forces, and police), judiciary, media, corruption, environment, economic development, tax, customs and public procurement. The methodology of the monitoring was the same as during the previous years. The progress in the above-mentioned areas was evaluated against the Action Plan and the benchmarks in the List of Actions for 2009-2011 to Ensure Implementation of ENP Republic of Armenia - EU Action Plan (last year we analyzed the areas against the Action Plan benchmarks, since there were no Implementation Tools for 2009).

However, as in the previous year, this year as well we would like to flag some issues that we believe contradict the very nature of democracy. Unprecedented phenomena in the Armenian political life as political prisoners, extreme police brutality and suppressed freedoms of assembly and demonstrations continued into 2009, and remain being detrimental to democratic development of the country. The year 2009 marked the first elections of the Yerevan Council and Mayor, the first large-scale elections after the troubled presidential elections in February 2008. This was a serious test for genuineness of the government's commitment to the democratic path of the country and its determination and capacity to ensure progress along this path.

Unfortunately, much of what was initiated by the government in 2009 in the way of democratic reform does not inspire the civil society with optimism, since we saw it as largely aimed at further restraint of civil liberties and public participation. In particular, we would like to point out the developments that we believe to be incompatible with democratic standards and pose real threats to democracy, making democratic institutions even more dysfunctional. Namely:

- The municipal elections were a failure as the first real democracy test for the authorities after the presidential elections and the political and social crisis that followed the elections. The results of the election were predetermined, widespread intimidation and obvious cases of vote rigging were registered by national and international observers.
- Amendments to the Law on TV and Radio passed in May 2009 did not solve the fundamental problems in the field, and were developed without any consideration of PACE resolutions or even the Constitutional Amendments in 2005.

[1] Previous reports are available on the POS website www.partnership.am

- The draft Concept on Switching to Digital Broadcasting only released in November 2009 (moratorium on tenders until 2010, made possible through amendments introduced in 2008, was justified by the digitalization process), does not address key issues such as social and regulatory aspects, focusing instead on technical and economic aspects.
- Amendments were developed to the Law on NGOs that served no other purpose but imposing controlling mechanisms over civil society organizations. The amendments were developed without due consultations with the civil society. Due to pressure by civil society and international community, the amendments have been temporarily brought to a halt.
- Amendments were developed to the Law on religious organizations, which were even passed by the National Assembly in the first reading that contradicted COE standards on freedom of thought, conscience. The amendments contained provisions that restricted the activities of religious organizations by providing definitions of "Christianity" and "soul hunting."
- The way the cases of "political prisoners" were tried raised much disconcert and explicitly showed both dependence of the judiciary and attempts to use courts in old Soviet tradition of control and intimidation.
- The continuous illicit ban on hall rental for civil society forums continued in2009 and became even more comprehensive.
- The right to freedom of assembly continued to be restrained. Implementation of the law on freedom of assembly demonstrated persistent practice of curbing the right to rally through selective and arbitrary bans on demonstrations and wide-spread harassment of demonstrators.

We continue to urge the Armenian government to re-evaluate the situation and the impact that such undemocratic steps have on the country. These practices have already cost the country a large portion of the MCA support and are prone to result in further alienation of people from participation and having their voice heard.

We do believe that urgent reforms that would allow the change to be systemic and not purely superficial and will improve the quality and functioning of the democratic institutions, judiciary and the governance are needed and are the only way forward. We also believe that the Armenian civil society and the public at large will appreciate and support such reforms.

The analyses and recommendations compiled in this document have been prepared with support of the OSI AF Armenia by the following experts:
Maria Aghajanyan, Open Society Institute Assistance Foundation – Armenia
Sona Ayvazyan, Transparency International Anti-Corruption Center
Vahagn Ghazaryan, independent expert
Hrayr Ghukasyan, Armenian Institute for Development
Avetik Ishkhanyan, Helsinki Committee of Armenia
Amalia Kostanyan, Transparency International Anti-Corruption Center
Boris Navasardian, Yerevan Press Club
Artak Manukyan, Armenian State University of Economics
Tatevik Melikyan, Open Society Institute Assistance Foundation – Armenia
Larisa Minasyan, Open Society Institute Assistance Foundation – Armenia
Andranik Tevanyan, Russian – Armenian University

**ENP AP Priority Area 1:** *Strengthening of democratic structures, of the rule of law, including reform of the judiciary and combat of fraud and corruption.*

The expert found that the activities suggested in the Government's implementation plan for 2009-2011 are irrelevant hence the expert used the EU-Armenia ENP Action plan as the benchmark.

# Reform of the Judiciary

**Overview of the Situation**

- The activities aimed at establishing an independent judiciary have not been able to ensure real independence of judges. *De-facto* non-independent judges remained within a *de-jure* independent judiciary, which is reflected in both the legislation and practice. Analysis of the legislation shows that the Council of Justice is not the only and final instance with regard to matters of judges' activities.

- In effect, the former powers of the Prosecutor's Office were restored in full, failing to match them with any duties or accountability.

- The initiative to amend just one article of the Republic of Armenia Law on Advocacy, being incomplete and absolutely ineffective, has been presented as an example of the state's implementation of its commitments assumed under the ENP in this field.

**Priority Area 1: Specific Actions**

- *Following the reform of the Constitution (concerning separation of powers, independence of the judiciary), develop/modernize the relevant laws on the status of judges, the judiciary and the Council of Justice*

A new legal act on the status of judges, the judiciary, and the new Council of Justice was adopted (the Judicial Code of the Republic of Armenia), but genuine safeguards of the independence of judges were not created, and their practical application was not ensured.

- *Following the reform of the Constitution (concerning separation of powers, independence of the judiciary) develop/modernize laws on 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*

A new Law on the Prosecution of the Republic of Armenia was adopted, which reduced some powers of the Prosecutor's Office, but later, through further legislative amendments, not only the former position of the Prosecutor's Office was restored, but also this structure was given further privileges in the sphere of criminal justice. In effect, the former powers of the Prosecutor's Office were restored in the absence of serious responsibilities and accountability.

- *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*

The Council of Justice, which acquired a new status under the amended Constitution, is effectively unable to guarantee the independence of the judiciary and to act as the final instance with regard to issues related to the

activities of judges, because its decisions are either subject to approval by the President of the Republic or may be changed by the President's initiative.

*- 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*

The free legal aid system has not been improved, because, instead of making the necessary conceptual changes, only episodic and cosmetic changes are being made to the legislation, which are presented as examples of the state's compliance with its commitments assumed under the ENP in this field.

*- Establish administrative courts*

An administrative court has been established, but further in-depth monitoring and review are needed to assess the performance of this crucial institution administering justice.

## Reform of the Judiciary

*Overview of the Present Situation*
The amendments to the Constitution adopted on November 27, 2005 marked the beginning of the second phase of the judicial reform in the Republic of Armenia. While maintaining the general framework of the judiciary enshrined in the 1995 Constitution, which is built around the principle of the separation of powers, the constitutional reform aimed at improving the existing system.
The 2005 constitutional amendments in the judicial sphere generally encompass the following:
• Prescribing more democratic and thorough rules on the Constitutional Court;
• Changing the status of the Cassation Court;
• Introducing additional safeguards of the independence of judges;
• Expanding the scope of the constitutional foundations of justice and providing more detailed regulation of some of the existing foundations; and
• Revising the composition and operational procedures of the Council of Justice, etc.

***Main Issues***

Though the constitutional amendments were followed by the adoption of a number of new laws and amendments to various existing laws, it has still not been determined to what extent the recent amendments are in line with the spirit and substance of Armenia's commitments under the EU-Armenia ENP Action Plan.

## Judiciary

*Overview of the Present Situation*
The primary objective of the reform was to create a comprehensive, independent, and impartial judiciary. This was reflected in the Judicial Code of Armenia adopted by the National Assembly of Armenia on February 21, 2007.

The newly adopted Judicial Code addressed a number of key issues. For the first time ever, the Code systematically regulated various issues related to the organization and performance of the judiciary, which were previously regulated by separate laws (the Law on the Council of Justice, the Law on the Judiciary, and the Law on the Status of Judges). Moreover, specialized courts (criminal and civil courts, as well as an administrative court) were created. The role and significance of the Cassation Court have changed completely: presently, the main function of the Cassation Court is to ensure the consistent application of law and to facilitate the development of law. Self-governing bodies of the judiciary (the General Assembly of Judges of Armenia and

the Council of Court Chairmen) have been contemplated by the Code. A school for the training of judge candidates (the Judicial School) has been created to ensure the supply of qualified professionals to the judiciary.

***Main Issues***

Nevertheless, the judicial reform in general and the Judicial Code in particular have failed to address the main problem, which is to create safeguards for the true independence of judges and to ensure their implementation in practice. The measures aimed at the independence of the judiciary could not secure the genuine independence of individual judges. As a result, *de-facto* non-independent judges remained within a *de-jure* independent judiciary, as illustrated by many examples in both the legislation and practice.

The Council of Justice, which gained a new status under the Amended Constitution, was designed to be one of the main safeguards of the independence of both the judiciary and independent judges. However, an analysis of the legislation shows that this body is not the only and the final instance with regard to issues related to judges' activities. Below are some telling examples:

• By law, the Council of Justice has the right to compile the List of Judge Candidates, but the President of the Republic issues a decree to approve the List compiled by the Council of Justice, with the names of the candidates that are acceptable to him (Article 117(4) of the Judicial Code);

• The Official Promotion Lists of judges of first instance specialized courts and appellate courts, too, are compiled by the Council of Justice through a secret vote, but the President of the Republic leaves in the List the names of candidates that are acceptable to him and issues a decree within a 10-day period supplementing the Official Promotion List. If the List is not supplemented during such period, it is deemed rejected (Articles 137(9) and 138(8) of the Judicial Code);

• The procedure is effectively the same for the appointment of candidates nominated for the vacant position of judges of the universal jurisdiction court. If the candidate agrees, the Chairman of the Cassation Court proposes the candidacy to the Council of Justice. Through an open vote, the latter issues a positive opinion on the proposed candidacy, if the procedures stipulated by the Code have not been violated. If the Council of Justice issues its positive opinion, the candidacy is presented to the President of the Republic. If the President does not appoint the judge within two weeks of receiving the proposal, the candidacy is deemed rejected, the person's name is removed from the List of Judge Candidates, and the nomination for the vacant position starts anew (Paragraphs 9 and 10 of Article 123 of the Judicial Code).

• Same issues arise in the process of applying disciplinary sanctions to judges. According to Article 157 (1) of the RA Judicial Code, the Council of Justice, having completed disciplinary proceedings against a judge, may decide to apply a disciplinary sanction against the judge by asking the President of the Republic to terminate the judge. However, Article 166 of the RA Judicial Code stipulates that "if the President of the Republic does not terminate a judge within two weeks of receiving the Council of Justice's request to terminate the judge, then the request is considered denied." In this case, the judge is automatically considered to have been subjected to another disciplinary sanction – a strong reprimand, plus a 25% reduction of salary for a one-year period.

## Prosecutor's Office

*Overview of the Present Situation*

The constitutional reform was aimed at creating not only an independent judiciary, but also a Prosecutor's Office independent from all the branches of the power. It also implied a structural change of the prosecution system, which was reflected in the new Law on the Prosecution of the Republic of Armenia, adopted on February 22, 2007.

The Law enshrined the main principles of the organization and functioning of the Prosecutor's Office, the new procedure for the appointment of the Prosecutor General of Armenia (upon nomination by the President of the

Republic, the Prosecutor General is now appointed by the National Assembly for a term of 6 years; in cases prescribed by law, the National Assembly may, upon recommendation by the President of the Republic, remove the Prosecutor General by a simple majority vote of the members of the National Assembly), the prosecution system, structure, the terms and procedure of the subordination, appointment, and dismissal of prosecutors, as well as guarantees of immunity and material and social safeguards for the prosecutor. Undoubtedly, the main achievement of the Law was the removal of the criminal case investigation function from the Prosecutor's Office, as a result of which the Prosecutor's Office is now expected to focus mainly on supervising the lawfulness of the pre-trial investigation of criminal cases.

***Main Issues***

The subsequent events showed that there was no real intent to remove the investigation function from the Prosecutor's Office. Persistent legal amendments not only restored the former position of the Prosecutor's Office, but also delegated further privileges to this organization in the sphere of criminal justice.

The first step was the adoption on November 28, 2007 of a Law on the Special Investigative Service, which created a new, formally independent body to investigate criminal cases (the Head of the Investigative Service is appointed by the President of Armenia upon nomination by the Prosecutor General).

In line with this Law, amendments were also made to the Criminal Procedure Code of Armenia to provide that investigators of the Special Investigative Service shall conduct the pre-trial investigation of cases related to crimes committed by or with the participation of senior officials of the legislative, executive, and judicial authorities of Armenia or persons performing special state service in connection with their official position, as well as of criminal cases related to the electoral process (Articles 149, 150, 154.1, and 154.2 of the Criminal Code of the Republic of Armenia).

Besides, another provision stipulated that, if necessary, the Prosecutor General may take from the investigators of other investigative bodies and transfer to investigators of the Special Investigative Service criminal cases related to crimes committed by or with the participation of the aforementioned persons, or cases in which such persons were recognized as victims (Article 190(6) of the Criminal Procedure Code of Armenia).

In effect, the former powers of the Prosecutor's Office were restored in full, failing to match them with any duties or accountability.

## Operative Investigative Activities

*Overview of the Present Situation*

The reform process affected the sphere of operative investigative activities performed by the state. The Law on Operative Investigative Activities adopted on October 22, 2007 was a significant step towards regulating this type of state activity, because previously, criminal intelligence and special operations were not regulated at all: the acts prescribing rights and responsibilities in this sphere were not only not published in accordance with the procedure stipulated by law, but were also treated mainly as state secrets, on which there was no record-keeping.

***Main Issues***

The analysis of the Law shows that it contains provisions that clearly overshadow the upsides and advantages of this legal act. The Law does not prescribe clear safeguards to protect the rights, freedoms, and lawful interests of persons subjected to operative investigative actions. Moreover, the Law does not prohibit restrictions of certain rights. There is no possibility to appeal against the acts of bodies performing operative investigation and so on.

Besides, the Law has unfairly reduced the scope of prosecutorial supervision of this type of state activity: under the Law, the prosecutor may supervise the lawfulness of operative investigative activities only in the context of

the prosecutorial guidance of pre-trial investigation activities, even though operative investigative activities may be performed also prior to the instigation of a criminal case.
Under the Law, operative investigative activities called "surveillance of telephone conversations" may be performed only by an agency that functions within the auspices of the National Security Service Headquarters, which is placed completely under the direct control of the President of the Republic: the President may appoint and dismiss the head of this agency upon nomination by the Head of the National Security Service Headquarters, and approve the by-laws, structure, and staffing of this agency.
It is noteworthy that Article 9 of the Law, which regulates the aforementioned issues, was amended on April 8, 2009, but this amendment was, essentially, a formality, because the key issues remained unchanged (only the term "service" was replaced with the term "chief department").

Finally, the Law provides that the findings of a number of operative investigative activities may be treated as evidence, which directly contradicts the relevant provisions of the Criminal Procedure Code of Armenia, whereby the findings of operative investigative activities may not be admitted as evidence.

## Access to Justice

*Overview of the Present Situation*
An integral component of judicial reform is the provision of effective access to justice, especially the expansion of the scope of free legal assistance and establishment of effective mechanisms to ensure the availability of such assistance. The experience of the structures created in the first phase of the judicial reform, compared to the international practice, has shown that this component of access to justice can only be achieved through systemic reform, which would have been addressed by the draft Law on Free Legal Aid Provided by the State, drafted with the support of the OSI Assistance Foundation-Armenia and circulated for a public discussion.

***Main Issues***
Nonetheless, a different solution was preferred in the judicial reform process, namely, amending just one article of the Republic of Armenia Law on Advocacy, through the Chamber of Advocates, to regulate a sphere that previously was not regulated at all.
This prospect is negative for a number of reasons. Firstly, there are no clear criteria for determining who is insolvent. Secondly, there are no mechanisms for providing the needed aid, which can have far-reaching negative consequences of the relevant stakeholders.
Besides, the current number of public defenders employed by the Office of the Public Defender (a total of 34) simply cannot ensure the provision of free legal aid to the indigent groups of society, especially in the regions.

This initiative, being incomplete and absolutely ineffective, has been presented as an example of the state's compliance with its commitments assumed under the ENP in this field.

**RECOMMENDATIONS**

The overview of these problems leads to the conclusion that the reforms in the judiciary have not addressed the majority of the existing problems; rather, new problems have been created, which require a comprehensive and persistent solution. In this respect, it is necessary:

1. To amend the Judicial Code of Armenia comprehensively to introduce safeguards of the genuine independence of judges;
2. To amend the Criminal Procedure Code of Armenia and the Law on Operative Investigative
3. Activities to preclude the *de-facto* performance of criminal investigation functions by the
4. Prosecutor's Office and to abolish total control of the Prosecutor General over the investigation
5. agency; and

6. To amend the Law on Operative Investigative Activities with a view to maximize its conformity to the international standards.
7. To implement effective measures to submit to the National Assembly the circulated draft Law on Free Legal Aid Provided by the State, to have it adopted, and to amend other legal acts in connection therewith

*Hrayr Ghukasyan*
*Lawyer, Armenian Institute for Development*

**ENP AP Priority Area 1:** *Strengthening of democratic structures, of the rule of law, including reform of the judiciary and combat of fraud and corruption*.

# Corruption

**Specific actions:**

- *Establish administrative courts*

  See below.

- *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*

  The previous Anti-corruption Strategy was completed in 2007, but a new Strategy and its Action Plan were finalized and approved by the Anti-corruption Council only in October 2009, with a delay of almost 2 years. As of November 2009, those documents have not yet been approved by the Government.

- *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*

  This report does not cover the civil service system.

**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;*

  Administrative courts started functioning in Armenia from January 2008, with a two-year delay. There is no statistical or analytical information on to what extent the functioning of administrative courts ensures an adequate prosecution and conviction of bribery and corruption-related offences. Moreover, several requests for an interview with the Head of Administrative Court remained unanswered. Interestingly, last year getting an interview was not a problem.

- *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*;

  The Order of the Prosecutor General issued on November 19, 2008 provided with the list of 31 types of corruption crimes (see http://www.genproc.am/main/am/185). No changes have been made since 2008 in

this respect. The Criminal Code has a definition of bribery practically in line with mentioned standards bit it still lacks a definition of what is a corruption-related offence.

There is a tendency to increase the total number of investigated corruption cases. Thus, according to the Prosecutor General Office, if last year 188 cases were investigated and 178 persons were convicted by the court decision, during 9 months of 2009 the number of cases reached 307, out of which 141 were already sent to the court.

Today, http://www.genproc.am provides with statistical data for a 6 month period, with information on types of corruption crimes and a number of state officials convicted among others. Meanwhile, according to the website and media references, not a single high level official was in the list of those condemned.

- *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 Codes of Ethics for judges (see Chapter 12 of the Criminal Code), prosecutors (see Decree 17 dated May 30, 2007 of the Prosecutor General of Armenia), and police officers (see the Law on Approving the Disciplinary Code of the Police) are in place in Armenia. As to border services, no information is available, as the National Security Service of Armenia (which is in charge of the border service) again did not respond to the interview request.

  According to official information, as of November 2009, the Judicial Ethics Committee of the Council of Court Chairmen in 2009 discussed 3 cases and submitted 3 cases to the Disciplinary Committee. The Prosecution Ethics Committee considered 3 ethics-related cases, as a result of which 2 prosecutors were dismissed and one went through a disciplinary sanction. Unlike last year, no statistics was provided on a number of cases in 2009 with regard to police officers under consideration of the Police Collegium dealing with those issues.

- *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*;

  On January 1, 2008, the Law on the Declaration of Assets and Income of High Level State Officials was 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. As provided by the Administrative Code, penalties for state officials for not submitting declarations during 30 days after the first warning from respective authorities are equal to 200,000 AMD or about 516USD as of November 18, 2009.

  One of negative developments in this field was that less and less information is available to the public. The Government Decision N1065-N dated from September 4, 2008, significantly limited the list of types of data submitted through declarations by state officials which are open to media. As State Revenue Committee rejected the request for interview, no statistics is provided from the official source, and thus media references are used below.

  According to the official letter of State Revenue Committee to "Hetq" weekly (see issue #8, November 12-18, 2009), as of October 2009, 216 physical persons were fined for not submitting declarations in a timely manner. However, no information was available on how many of them were state officials.

Likewise, there is no information provided on if there were any sanctions against submission of wrong information on assets and income.

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

  In 2008, the First and Second Round Evaluation by the GRECO experts indicated that Armenia has implemented satisfactorily 7 recommendations, dealt in a satisfactory manner with 5 recommendations, partly implemented 9, and has not implemented 3. In December 2009, the Government shall submit another update on the status implementation of 24 GRECO recommendations.

  Based on information provided by the Deputy Head of Police and the Head of Armenian Delegation in GRECO, certain progress has been made, with a varying degree of completion, on partially implemented recommendations (most visibly on recommendations 4, 16 and 23), as well as those considered by experts as not implemented (specifically on recommendations 15). Some issues are still subjected to legal debates with European experts.

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

  See above.

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

  Starting from January 1, 2009, salaries of judges were increased twice as much compared to the previous year - up to 400,000AMD or about 1,032USD, as of November 18, 2009 (see the Law on Amendments and Changes to the Law on Rates for High Level Legislative, Executive and Judiciary Positions adopted in 2008). Though the new salary rate still cannot be seen as the one ensuring service with dignity, it is definitely a positive development.

- *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, in addition to what is mentioned with regard to the third action.

As to the list of **measures to implement the ENP Action Plan for Armenia in 2009-2011**, there are four measures related to the fight against corruption:

1. *Development and approval of the Anti-corruption Strategy and its Action Plan.*
   Developed but not officially approved yet.

2. *Submission of the draft the Government Decision on establishing procedures to assess consequences of implementation of evaluation of impact anti-corruption regulations and enforcement of normative act to the Government.*

   According to the Ministry of Justice, such a draft was submitted to the Government in June 2009. No information is available on further developments.

3. *Submission of the draft law on the amendments to the Law on State Registration of Legal Persons to the Government.*

The Ministry of Justice informed that such a draft was disseminated among interested parties and is currently being changed based on the received comments.

***4.*** *Development and approval of the draft law on organization and implementation of control over physical persons declaring their assets and income and the Government Decision on approval of procedures on justification of availability of assets subject to disclosure and property right on them, as well as procedures on justification of source and size of income by the declaring physical persons.*

No official information is available, since the responsible institution – State Revenue Committee of Armenia - did not agree to give an interview to update on this and other relevant issues.

**RECOMMENDATIONS**

1. To ensure availability of detailed information on progress on ENP Action Plan provided by state institutions. Such information is not posted on any relevant website. State institutions often ignored or rejected requests for an update or interview. This time, among those who rejected such requests were the National Security Service, the State Revenue Committee and the Administrative Court, while the Ministry of Justice, Police, Prosecution, and Judicial Department provided with the requested information and/or agreed to be interviewed.
2. To demand more effective functioning of existing anti-corruption bodies for better coordination of implementation of the ENP anti-corruption measures and other international obligations of Armenia in the field.
3. To maintain regular communication between the anti-corruption bodies, other state institutions, donors and all interested non-state parties.
4. To better coordinate international assistance (programs) aimed at reducing corruption in Armenia by making the existing donor working group much more effective or adopting a new format for coordination.
5. To ensure adequate and impartial monitoring of implementation of anti-corruption measures within ENP, taking into consideration not only what is done on paper but also what goes on in practice and using alternative sources of information other than the official ones.
6. To take appropriate measures in case Armenia does not meet the ENP and other obligations in the field of anti-corruption, on a repetitive basis and with no reasonable explanations.
7. To demand stronger control over disclosure of assets and income of high level officials, more availability of the content of submitted declarations for the public, better scrutiny on the disclosed information and stricter punishment for false declarations.
8. To pay a special attention to the failure of the Armenian authorities to address political corruption and detect corruption cases with involvement of high level officials.

*Amalia Kostanyan*
*Chairwoman of the Transparency International Anti-Corruption Center*

**ENP AP Priority Area 2**: *Strengthening of respect for human rights and fundamental freedoms, in compliance with international commitments of Armenia (PCA, CoE, OSCE, UN)*

# Human Rights and Fundamental Freedoms

## Freedom of Assembly

The EU-Armenia Action Plan Priority Area 2 Specific Action reads:

*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*

While paragraph 10 of the July 19, 2007 Government Decision envisaged measures to ensure freedom of assembly, there is nothing about freedom of assembly in the List of Actions for 2009-2011 to Ensure Implementation of ENP RA-EU Action Plan approved by the RA President's Instruction No. 68-A of May 6, 2009.

Restrictions of the freedom of assembly in Armenia are caused both by the legislation and the way this legislation is applied in practice.

The main legislative obstacle is paragraph 4(3) of Article 9 of the RA Law on Conducting Meetings, Assemblies, Rallies and Demonstrations, according to which the competent authority may prohibit a public event, if there is credible information that the holding of the event creates an immediate threat of violence or poses a real threat to state security, public order, public health and morals, etc. Such information may be considered credible, if the police or the national security service have issued an official, grounded opinion on this. The same bodies provide an opinion on the removal of these grounds, in accordance with the same procedure.

The main obstacle with the application of this law is the fact that the Yerevan municipality, as a rule, prohibits rallies and assemblies in central Yerevan. During large assemblies, the police restrict the freedom of movement, while the accumulation of police forces and equipment in various parts of the city for security reasons during large events are excessive.

The Armenian Helsinki Committee monitored 88 meetings in the period of October 1, 2008 to March 31, 2009 (these included assemblies for which the local authorities had received notifications, assemblies prohibited by the local authorities, as well as spontaneous assemblies for which no notification had been provided). According to the results of this monitoring, in 33 cases, the police had interfered with the meetings in one way or another, either by creating obstacles for a march, dispersing the participants from a specific location, not allowing the participants to be at a specific location, or by other means. In 6 cases, the police used force against the participants. This took the form of beating, skirmishes, detentions and other similar actions. The right to freedom of movement is restricted during large meetings in Yerevan. During the scheduled meetings the movement/operation of public transport from regions to the capital is checked and often restricted by the police.

An incident occurred between the members of "Hatuk Gund" youth organization and the police on February 19, 2009, when the organization planned to organize a march. The police restricted their movement by blocking the street, violently pushed the demonstrators back and forced them back to the organization's premises. During this operation, the police took away and damaged the posters of the demonstrators. An incident occurred between one of the demonstrators and a police representatives, as a result of which the police entered the building where the premises of "Hatuk Gund" were and a clash occurred. However, there is no information whether anyone was seriously hurt in this clash, which ended due to intervention of high rank police officers.

Another issue is notification on the rallies by organizers and NGOs. As a rule, the TVs refuse these organizations even paid airtime thus notification of the public on upcoming rallies is done through oppositional media (newspapers and online resources) as well as through distribution of leaflets. At the same time, distribution of leaflets to notify on upcoming meetings is restricted by authorities and violence is used against those distributing the leaflets. A group of individuals attacked representatives of Armenian National Congress (ANC) distributing leaflets on May 10 and 11, 2009 in Avan district. Three women members of the Congress were taken to the hospital with various injuries. On July 1, 2009 a group of youth activists of ANC were attacked by policemen dressed in civilian clothes and were beaten for distribution of leaflets on the upcoming meeting. Three of the activists – Tigran Arakelyan, Sahak Muradyan and Herbert Gevorgyan – were taken to the hospital. Subsequently, Tigran Arakelyan was detained and charged with hooliganism (Article 258(3) of RA Criminal Code), which was later changed to "offering resistance to a representative of the authorities" (Article 316(2) of RA Criminal Code). He remained in detention for nearly 3 months after which the measure of restraint was changed to written undertaking not to leave the country.

Needless to say that none of the police officers carrying out unjustified violence against civilians were punished.

Since May 2008 there have been increasing instances of bans illicitly imposed on hotels and public spaces for renting out halls to certain civil society organizations for public discussions, roundtables and debates. The hotels confide in private that they have been ordered by "authorities" not to rent out to certain organizations and hotel employees come forward in private talks and tell that they have to get approval for each request for a hall rent if the requests are from certain organizations. As a very recent example, Marriott Armenia refused to rent out a hall in early 2009 for a conference on human rights in Armenia organized by OSIAF-Armenia and supported by UNDP Armenia Country Office, OSCE/ODIHR, the Council of Europe and the U.S. Embassy in Yerevan; Best Western Congress Hotel refused a hall for a roundtable on ENP and EaP implementation in the country and Ani and Congress hotels refused a hall for discussion on strategic litigation. Currently, virtually the only venue left for similar discussions and roundtables is the hall of the American University Business Center. Currently, there is a case in the Administrative court against the government on the ban for the political parties to hold meetings in public halls. There has been an explicit order from the Ministry of Culture not to rent out any of the public spaces to political parties for discussions.

**RECOMMENDATIONS**

1. Include provisions on ensuring the freedom of assembly in the List of Actions for 2009-2011
2. Revoke paragraph 4(3) of Article 9 of the RA Law on Conducting Meetings, Assemblies, Rallies and Demonstrations.
3. Require the Yerevan municipality to post all notifications about public events on its website.
4. Stop prohibiting rallies and meetings in central Yerevan.
5. Stop restricting the right to the freedom of movement during large events and stop blocking the work of public transportation from marzes to Yerevan.
6. Stop creating obstacles for political and public events in indoor facilities.
7. Organize seminars for the police to inform them about principles of assembly and proportionality of security measures.
8. Require members of police providing security at public events to wear identification numbers in order to be able to identify them in the future, if necessary.

## Penitentiary System

Priority Area 2 of the EU-Armenia Action Plan reads:

- *Continue to reform the prison system in line with recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), in order to improve the conditions in places of detention*.

As for the upcoming reforms in the next years, point 35 of the List of Actions to ensure implementation of the EU-Armenia Action Plan in 2009-2011 includes:

- further reform of the penitentiary system

The Criminal Executive Institutions in RA in general do not meet international standards for such institutions. With the exception of some (Artik, Vanadzor), in all institutions the detainees are kept in cells of 50 and without proper sanitary conditions.

Overcrowding is a serious issue for some of the institutions. For example in "Nubarashen" institution, which is designed for 840 inmates, 1022 inmates were kept in 2009 (up to 13 inmates were kept in cells designed for 8). Instead of 154 inmates, 174 were kept in "Vardashen" and 515 inmates were kept instead of 391 in "Erebuni." The construction work of the new criminal-executive institution for about 1000 inmates was stopped due to the financial-economic crisis.

The work of the independent committee on Early Release of Inmates established by the RA President is not effective. The majority of members of the Committee are from the executive branch of power and the committee rejects most of the appeals for early release of an inmate coming from the Administration of Criminal-executive institution without giving any reasoning. The inmates have no right for an appeal of this decision in court.

**RECOMMENDATIONS**

1. Make the work of the Committee on Early Release of Inmates effective through revision of the Committee's membership
2. Apply alternative measures of punishment.
3. Keep records of special measures applied in penitentiaries.
4. Require the medical personnel to record all injuries after special measures are applied.:
5. Prevent the administration from putting pressure on detainees/prisoners who had filed complaints.
6. Increase the effectiveness of prosecutorial oversight over cases of ill-treatment.
7. Refrain from involving the rapid reaction team in searches conducted in cells.

## Police

Priority Area 2 of the EU-Armenia Action Plan reads:

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

Point 51 of the List of Actions for 2009-2011 mentions that in this area the Government will:

- *Ensure investigation of cases of ill treatment and torture, criminal prosecution of perpetrators, including in the armed forced, as well as provide practical legal remedies, compensation and redress of the violated rights for victims of ill treatment and torture.*

Criminal prosecution of perpetrators of ill-treatment and torture in police departments is still not ensured. In 2009, the RA prosecutor's office decided once again to close the criminal case in connection with L. Gulyan's

death (according to official reports, Levon Gulyan tried to escape from the police building by jumping out of the 2nd floor window and died on May 12, 2007). The legal remedies, as well as compensation and redress of the violated rights for torture victims are not ensured, since facts of torture are not proven in courts and perpetrators remain unpunished. According to non-governmental organizations and public observers, the police continue the practice of using torture to obtain testimony.

Often, a person may be held in the police without a detention protocol. The 72 hours of detention begin from the moment a detention protocol is prepared. Apprehended persons are kept in police stations in most cases, which are off limits for the group of observers monitoring institutions within the RA police.
When a defendant makes an allegation during the trial that he/she had been subjected to torture in the investigation phase, judges usually fail to react properly to these allegations and often base their decisions on pre-trial testimony.

As a rule, ill-treatment of citizens by the police in the RA does not result in criminal cases. An exception is the criminal case against policemen Gegham Grigoryan and Andranik Manukyan from the state security regiment, who were charged under Article 309 of the Criminal Code (abuse of power) in 2009, in connection with the March 2008 events on the basis of video materials. In the morning of March 2, 2008, they beat up citizens with their feet and hands near the market on Mashtots avenue. However, the defendants have pleaded not guilty and think that they acted within their authority.

Abuses among servicemen in the RA armed forces continue. Also, there are still cases of deaths of servicemen in peace time, caused by inappropriate treatment by commanders. There are also cases of death among servicemen drafted to the armed forces despite being unfit for military service. Following are just a few of the cases reported by public observers' groups.

*Abuse among servicemen.* On January 24, 2009, the 20-years-old Vazgen Hunanyan from the village of Meghrashen (Shirak marz) was killed in Tazapost, in the village of Paravakar (Tavush marz). Investigators considered suicide as one of the versions, even though the body contained signs of violence (bruises on the arms and on the neck). The investigation also found out that from December 26, 2008 till January 9, 2009, private Teymur Muraz Teymurazyan and private Artur Zorik Khudoyan, together with Vazgen Hunanyan and others, were sent by their commander to serve in the Tazapost military outpost by the border in Tavush marz. While serving in the outpost without their superiors, they violated regulations for servicemen and humiliated Hunanyan by mocking and cursing him, and forced him to perform various services for them.

*Abuse of power and brutality by commanders.* On August 28, 2009, private Aram Mkrtchyan, who was carrying out his mandatory military service in the Vayk military unit, was transferred to the central clinical hospital of the Ministry of Defense. He had started his military service three months ago. The same day, Aram Mkrtchyan underwent a surgery and was moved to the hospital's intensive care unit, where he died without regaining consciousness in the morning of September 1. He had been brutally beaten by his commander, captain Andok Galstyan. He had received blows to his head and legs (evidence of these injuries could be seen), as well as to his stomach.

Death of military serviceman who was not fit for military service. The 22-year-old Areg Malkhasyan died in his military unit only 7 days after being drafted. He was drafted despite his medical problems, which were made known to the military commissariat by his parents. His weight was also not suitable for military service. In the draft station, Areg's medical documents were not in the "file," while the doctors in the draft station ignored the documents submitted by Areg's parents. Areg was taken to Kharabakh, from where he was moved to Goris one week later. In Goris, the health condition of the young man deteriorated, since he required special diet due to problems with his pancreas. He died unexpectedly in his military unit.

Civil society's involvement in the OPCAT National Preventive Mechanism still remains within the good-will of the RA Human Rights Defender. There is no institutionalized mechanism for civil society's involvement in the

mechanism. The RA Ombudsman's office is currently working on preparation of the first report on OPCAT implementation in Armenia.

**RECOMMENDATIONS**

1. Investigate effectively cases of alleged torture.
2. Ensure that courts order investigation of any allegations of torture brought by defendants and refrain from using testimony obtained through alleged torture until the end of such investigation.
3. Organize seminars for police officers to inform them about principles of assembly and proportionality of security measures.
4. Require members of police providing security at public events to wear identification numbers in order to be able to identify them in the future, if necessary.
5. Establish a civilian oversight mechanism in the RA Ministry of Defense to monitor the process of military draft and military units.
6. Ensure practical legal remedies, compensation and redress of the violated rights for all victims of ill-treatment and torture.
7. Provide legislative basis for the NPM of the OPCAT and ensure institutionalized civil society participation

*Avetik Ishkhanyan*
*Chairman, Helsinki Committee of Armenia*

**ENP AP Priority Area 2:** *Strengthening of respect for human rights and fundamental freedoms, in compliance with international commitments of Armenia (PCA, CoE, OSCE, UN).*

# Media

**Priority Area 2 Specific Actions**

*Ensure the independence of media by strengthening the independent regulatory body for public and private broadcasters, being responsible for awarding broadcasting licenses and supervision*

**GENERAL OBJECTIVES AND ACTIONS**

*4.6.3 Information Society and Media*

- *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 users rights, privacy protection and data security*

- *Work towards adopting 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 views 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 Concept on the development of Information System in Armenia was released in 2008. Nevertheless, the existence of such a Concept has not contributed to the sizeable enhancement of the sector. While some sluggish steps are being taken towards broadening the Internet and broadcasting geographic coverage, securing telecommunication and broadcasting services in remote settlements, the issue of internet security and consumers' rights protection remains unresolved. The process of switching from analog to digital broadcasting in Armenia is considered by the RA Government as an integral part of the national policy on the development of information sector. In November 2009 the Draft Concept on Switching to Digital Broadcasting was released by the Government. It was under the pretext of the digitalization process that Amendments to RA Law "On Television and Radio," prescribing a two-year moratorium on broadcast licensing competitions, were passed in September 2008, cutting off any potential applicant broadcasters from entering the market until 2010 and diminishing limited pluralism in Armenia's broadcasting sector.

It is noteworthy that the work on the Draft Concept on Switching to Digital Broadcasting started in 2006 and was conducted in an extremely close process. Although on the eve of the draft release, parliamentary discussions involving experts and representatives of the public sector were arranged, they were rather formal and had no influence on the content of the document. The Draft Concept makes it obvious that 3 years were wasted, during which the process could have already been started and some steps could have already been taken

– 3 years of inaction. The Concept does not give answers to the principle questions. While prescribing some general provisions on economic and technological aspects, it refers to regulatory and social aspects only by a number of declarative and vague provisions.

In May, 2009 RA Law "On Introducing Amendments and Supplements to the RA Law on Television and Radio" was signed by the President. Nevertheless, the amendments did not reflect on the fundamental problems that should have been solved after making amendments to the RA Constitution in 2005. The proposals made by the journalist community and the civil society as well as the obligations undertaken by Armenia towards international organizations were not taken into consideration.

In particular, the Law does not provide for balance and diversity in membership of the broadcasting regulatory bodies - the National Commission on Television and Radio (NCTR) and the Council of Public TV and Radio Company (CPTR). Such a requirement is specified in Clause 8.3 of PACE Resolution 1609 "Functioning of Democratic Institutions in Armenia" (April 17, 2008). As defined by the Law the members of the CPTR are to be appointed by the RA President, something that obviously cannot ensure any diversity. Meanwhile, the members of the NCTR are to be appointed on a half-parliamentary, half-presidential basis. Given the current composition of the RA National Assembly, where the majority if not all members will represent the interests of the ruling coalition, it is hardly possible to have an independent regulatory body. Moreover, the RA National Assembly has not yet made use of its right of designation of NCTR members. Thus at the moment the Commission encounters only 4 members and the appointment process of the other 4 is still pending, paralyzing the normal functioning of NCTR. The formal provisions introduced to that law, such as the oath for the NCTR members, formation of Competition Commissions are still useless. A positive step was the abolishment of the subdivision into the paid and the unpaid members, according to which the NCTR members should have relevant professional background and are full-time workers. Yet, even in this case, given the existing procedure for selecting members chances are high that the political affiliation of the candidate will prevail over his/her professional background. Another unsettled issue by the law is the correlation of the Public broadcaster and the NCTR. Further to Constitutional Amendments expanding NCTR competence and including the public broadcaster into it, the Law did not entail description of the mechanisms of regulating the activities of the Public TV and Radio Company by the National Commission on Television and Radio. The Law did not take into account the recommendations of international and local organizations as to create two regulatory bodies – for private and public broadcaster.

**RECOMMENDATIONS**

1. To organize and conduct intensive public discussions involving representatives of civil society, local, national experts in order to bring the Concept on Digitalization into compliance with international standards and public need.
2. To revise thoroughly the broadcast legislation in view of the abovementioned issues and in view of the ongoing digitalization processes. To adopt appropriate legislation to make the suspended broadcast licensing competitions possible in July, 2010.

*Boris Navasardian*
*President, Yerevan Press Club*

**ENP AP 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.*

**ENP AP Priority Area 4:** Further *improvement of investment climate and strengthening of private sector-led growth*

# Economic Development

*Priority Areas 3 and 4 of the EU-Armenian ENP Action Plan and Paragraphs 15 ("Maintain macro-economic stability by implementing prudent monetary and fiscal policies in co-operation with IFIs") and 17 ("Reduce rural poverty and implement a sustainable rural development strategy") of the Appendix to the Government Decree dated 19 July 2007 (""Priorities and Measures to be Implemented under the EU-Armenia European Neighbourhood Policy Action Plan)*

1. Specific action in Priority Area 3 of the EU-Armenia ENP Action Plan reads, in particular: "maintain macro-economic stability by implementing prudent monetary and fiscal policies." In addition, the List of Actions for 2009-2011 to Ensure Implementation of ENP RA-EU Action Plan (approved by the RA President's Instruction No. 68-A of May 6, 2009), reads: "improvement of the market economy operation mechanisms and boosting the economic growth and sustainable development through structural reforms; ensuring the macroeconomic stability."

Whereas:
a) The inflation rate of 4% +/-1.5%, projected in paragraph 15.3 of the Government decree, has not been met in the first 9 months of 2009. According to official data, the GDP index-deflator was 0.2%, while the consumer price index during the reporting month was 2% compared to last December.
Despite the fact that the RA Government already involved 1.5 billion USD worth of credit resources during the year, GDP decreased by 18.4% in the first 9 months of 2009. There has been a decline in almost all sectors of the economy, which the exception of retail, which grew by a modest 0.3%. There has been a dramatic decline in construction (especially construction) and services (52.6% and 1.4%, respectively), which have been the driving force of the Armenian economy in the last years. Foreign trade decreased by 30.7%. Exports decreased by 51.5% and imports by 18.9%. Foreign trade deficit stood at 1771 million dram, or increased 4.7 times. Foreign trade with European countries decreased by 70%. Unemployment rose by 10.8%. The 2009 state budget had projected a 9.2% economic growth, whereas in reality the economy decreased by more than twice that amount.

The low rate of inflation has to do with a decrease in the population's solvent demand. Private remittances from abroad occupy a strong place within the structure of household incomes (remittances from abroad amounted to about 25% of GDP in 2008). In 2009, the volume of remittances decreased by about 30%, mostly due to the economic decline in the Russian Federation, where most of the private remittances come from.

The RA macroeconomic indicators have been affected negatively by both the situation in the world economy (drop in global copper and molybdenum prices, decrease in the volume of private remittances from abroad, etc.) and the RA economic policy. The thing is that the state budget for both 2008 and 2009 was rather risky, and its implementation resulted in serious pressure, especially on small and medium businesses. Unable to withstand the government's tax policy, many businesses either closed or reduced the size of their operation. At the same time, in the beginning of 2009, Armenian producers and manufacturers suffered significant losses as a result of the Central Bank's fixed foreign exchange policy and lost many foreign markets. Economic decline trends remain negative.

The interest rate for business loans remains high. This does not encourage business development. The Central Bank gradually reduces the refinancing rate (currently, REPO stands at 5%). Nevertheless, money supply from private banks is still rather expensive.

b) The tax authorities collected 285949.1 million drams in tax revenues in the first 9 months of 2009, which is 89.5% of the amount collected in the same period last year. Despite tax administration reforms envisaged in paragraphs 15.4 and 15.5 of the government decree, the practice of collecting advance tax payments or tax credits continues to exist de facto (the amount of tax credits increased by 11.6% compared with the same period last year and stood at 100440.7 million drams), which is not prescribed by any legal acts of the Republic of Armenia. In addition, the current measures towards modernization of tax administration (introduction of cash registers, documentation requirements, etc.) have so far affected only small and medium businesses, while large businesses are still not fully covered by state administration. It is worth noting that the reporting system has been improved and bureaucratic red-tape has been minimized. An electronic tax reporting system is also being introduced, but it is impossible to implement because of the lack of electronic signature procedures. The taxes/VAT ratio has also been improved, and is now more than 20%. However, this has not changed the business environment very much, because the pressure of tax collection offsets the expected positive effects of the implemented reforms:
The process of introducing a system of audit based on risk analysis, as described in paragraph 15.5 of the Decree, has started already. However, it is still too early to evaluate its effectiveness. In practice, the Government is not seen to take practical steps to enforce mandatory audits of large businesses in line with the international standards.

2. Paragraphs 17.1 to 17.7 of the Government Decree on the 4th part of specific actions in relation to priority area 3 of the EU-Armenia ENP Action Plan are largely declarative, and it is difficult to evaluate their effectiveness. They state that it is necessary to ensure sustainable development of the sector, but the questions of how, when and by what means are left open.
In terms of numbers, the year 2009 was not very good for agriculture. According to official sources, the sector declined by 1.5% in the first 9 months of the year.
It is the commitment of the Government of RA to eliminate the tax privileges and introduce a system of targeted subsidies for agriculture, in line with World Trade Organization's rules, and to develop and introduce affordable credit mechanisms for agriculture, and encourage local producers who buy and process agricultural produce.

**Priority Area 4. Further Improvement of Investment Climate and Strengthening of Private Sector-Led Growth**

*Specific Actions 1, 2, 4, 5 and 6*

Under Decree N 775-N of June 26, 2008, the RA Government approved an action plan to improve the business environment in Armenia. The action plan clearly outlines the timetable and objectives of all activities, as well as who is responsible for them.
The current status of these activities is presented in the following table:

| Activity | Current Status |
|---|---|
| Combine tax payments | Tax payments are still not combined |
| Use risk-based inspections/audits | The State Revenues Committee informs that inspections are based on risk assessment, but these procedures are not transparent and may contain corruption risks |
| Develop and adopt laws on unified real estate tax and on property tax on means of transportation, and a package of legal acts necessary to ensure the enforcement of these laws, as well as introduce an | The laws have not been passed |

| | |
|---|---|
| online system for paying these taxes | |
| Foreign trade<br>Reduce the number of documents required for export and import | The RA Government Decree 1779-N of 2003 was amended by Decree 636-N of 2009. The new decree revoked the clear requirement to have certain documents for customs clearance, and the right to demand these documents was moved to another paragraph of the same decree (paragraph 8) |
| Adopt transparent methodology and approach to the evaluation of goods in the customs, publish information about customs value of goods based on the unit price in the RA domestic market | The determination of customs values on the basis of unit price information taken from Armenia's domestic market in essence amounts to reference pricing and "minimum" customs value, which is followed by Armenian customs authorities in the customs valuation of goods moved across the Armenian customs border: this practice violates international treaties, namely the WTO GATT Article 7 on Customs Valuation, as well as Article 93(f) of the Customs Code of the Republic of Armenia |
| Introduce a system of differentiated customs control of the activities of importers and exporters | ASICUDA system is introduced in the RA customs to work on customs clearance, which provides differentiated customs control of the activities of importers and exporters. |

*In Chapter 4, Action 3 on promoting agricultural development and production,* instead of introducing an agricultural support system in tune with WTO rules, the RA legislation established an unjustified threshold for VAT exemption.

In 2008, the RA President issued Instruction NK-68-A to approve a List of Actions to implement the ENP Action Plan. These actions were combined with the RA Government's development plan and their implementation was distributed by years. However, not all the actions stem from the RA-EU ENP Action Plan. The majority of actions to be implemented in 2009 are declarative and have no measurable impact on the RA economy.

In October 2008, the RA Government adopted decree 1207-N to define the Sustainable Development Program. The program was developed on the basis of the double-digit economic growth in the previous few years and was not amended in any way in light of the developments of the current year. At the same time, the PRSP and Sustainable Development Program actions were supposed to be implemented also by means of the mid-term expenditure program. However, mid-term expenditure programs for 2009 were delayed and will not be implemented during the year.

**RECOMMENDATIONS**

1. Implement consistent policy to ensure macroeconomic stability and to promote solvent demand by softening tax/budget policy and adopting a policy of "cheap money", as well as making social policy more targeted.

2. Introduce a system of tax breaks for small businesses (Andranik Tevanyan's recommendation) or develop and implement a subsidy system to foster SME development (Vahagn Ghazaryan's recommendation).
3. Have a budget policy that would be encouraging rather than just fiscal. Towards that end, it is necessary to establish an atmosphere of fair competition, develop and implement a real SME development policy, as well as introduce an objective system for resolving disputes between businesses and the state, thus developing a middle class in the Republic of Armenia.
4. Take steps towards implementation of an anti-monopoly policy (in particular, towards adoption of a relevant law). A draft RA Law on Anti-Monopoly Regulation has already been developed by Politeconomia NGO, and its passage could be useful for addressing the aforementioned problems to a certain extent (see www.7or/hy/news /2009-10-15/7496/ for the draft law) (Andranik Tevanyan's recommendation). Or enforce and ensure the implementation of RA legislation on protection of economic competition creating a competitive environment in the country (Vahagn Ghazaryan's recommendation).
5. Lighten the tax burden by introducing a progressive taxation system and using differentiated Value-Added Tax rate (the current VAT is 20%). Introduce a system of financial bonuses to encourage transparency of operation on the part of large businesses.
6. Ensure the transparency of the RA Government's measures to improve the business environment, and involve representatives of the business community in the development of these measures;
7. Clarify the system of complaints against unlawful actions on the part of tax and customs authorities by means of amending the existing legislation;
8. Suspicious documents submitted for determining the customs value of imported goods should be questioned by the customs authorities in a court of law. The alleged falsifications can be identified by means of tax administration. Legislation can be amended to introduce severe penalties in the form of profit tax for such falsification.
9. Introduce an institutional approach to public discussion of draft decrees in the RA Government, ministries and agencies that develop and implement economic policy, ensuring the transparency of materials discussed with businesses and results.

*Vahagn Ghazaryan*
*Independent Expert*

*Andranik Tevanyan*
*Director of the "Politekonomia" Research Institute*

# Tax Administration[2]

***Priority Area 4 Specific Actions:***
*Continue the modernisation 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. 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.*

The measures under the priority areas identified in the Government 2009-2011 Activity Plan to Support the Implementation of the Armenia-EU ENP Action Plan were mostly incorporated in the 2008-2011 Strategic Programs of Tax Administration of the Republic of Armenia approved under Government Decree 941-N dated 07.08.2008.[3] The Strategic Program has a rather far-reaching timetable, but most of the contemplated activities end in 2009. With this fact in mind, the comments below address the key areas of focus and activities.

1. *Large Business:* to target the large taxpayers (LTPs) that account for a considerable share of state revenue, a large taxpayer inspectorate was created in early 2009 by merging the former LTP, banking sector, mining sector, and excise taxpayer specialized inspectorates. Though this measure was expected to increase the share of LTPs in collected state revenue, their share in total tax revenue remains rather low. In the first eight months of 2009,[4] the share of LTPs did not exceed half of the total tax revenue, while the inspectorate was to collect most of the tax revenues. In the context of large business tax administration reform, the Armenian legislation stipulated requirements on mandatory audit in line with international standards and on accounting and financial reporting to state authorities in line with the international standards and guidelines.

*Existing Problems: the process of introducing international standards has still not reached its final stage, and the professional training of staff (of large businesses and entities providing services to large businesses) on its future application is not carried out.*

*Recommendations:*

- Revise the existing standards for the selection of LTPs; and
- Revise the administration in respect of LTPs.

2. *Large Business:* for the purpose of large business administration reform and transaction documentation regulation, it is planned that, effective from 2010,[5] a tax representative will be appointed in large businesses that meet certain criteria established by law (turnover of 4.0 billion drams, imports of 500 million drams, etc.). From January 1, 2010, the "excise warehouse" regime, implying regulated control of the movement of goods, will become effective for beer, spirit, vodka, and tobacco produced in or imported into Armenia. The law requires the presence of a tax inspector in order for goods in the "excise warehouse" regime to be released. The "excise warehouse" regime will be subject to a specific accounting and reporting system and sanctions for circumventing the tax inspector's control. For some goods (spirit and vodka), a minimum release price has been defined, which is atypical of market relations. Furthermore, any sale of the goods at a price below the minimum sale price will result in an administrative sanction in the amount of 300,000 drams. The impact of these amendments will become visible over time, but some *problems* can already be noted in terms of the laws:

- The main problem related to the presence of tax representatives and the creation of the excise warehouse is that long-term presence in the premises of any taxpayer creates corruption risks;

[2] The sections on Tax Administration and Customs were developed by a group of independent experts.
[3] Available on http://www.taxservice.am
[4] Available on http://www.taxservice.am
[5] Available on http://www.parliament.am

- There are concerns over the appointment and targeting of the tax representatives;
- The appointment of tax representatives and the excise warehouse regime, both move away from the implementation of a comprehensive system of self-assessment, can be justified only if they solve the transaction documentation problems (which is essential for small business) and are coupled with additional efforts to curb corruption in the relationship between taxpayers and tax inspectors. Otherwise, the proposed mechanisms would amount to inefficient use of the resources of the tax authority.

*Recommendations:*

- Define maximum periods for the control performed by tax representatives; and
- Introduce a mechanism of mandatory rotation of tax representatives.

3. Perhaps the only measure to introduce a system of risk-based audits is Government Decree 23 dated 04.06.2009[6] approving the concept of the system of taxpayer selection based on risk criteria. The concept implies a new policy of tax audits, so that audits can be based on analysis and risk criteria, channelling tax resources primarily to the risky areas. The taxpayers to be audited will be selected on the basis of risk criteria, through random sampling and, in some cases, at the instruction of the head of the tax authority. Taxpayers that, as a result of the sampling, appear in the low-risk zone will not be audited, while high-risk zone taxpayers will be mandatorily audited. The performance indicators of taxpayers in the medium-risk zone will be additionally assessed in order to move them to the low- or high-risk zones. Though the system has to be launched before its performance can be assessed, there are already some *problems*:

- The legislative amendments stipulated by the concept as preconditions for its implementation have not been enacted as of 1 November 2009;
- Regardless of the risk-based assessment, instructions by the head of the tax authority may create deviations from the risk criteria in some cases, which may run contrary to the new policy of audits;
- The new system of risk-based assessment requires serious analytical work, for which staff will need to be trained;
- Due to the foregoing, there are still frequent, uncoordinated, and irrelevant audits; transparency in inspections is lacking, while the appeal mechanisms are ineffective, and there is still administrative corruption.

*Recommendations:*

- Enact legislation to limit deviations from the system of risk-based selection of taxpayers for audits; and
- Make sure that the audit findings feed into the assessment of risk criteria and their possible revision.

*4.* An action plan developed to reduce the stock of tax arrears and to identify new arrears was expected during 2009-2011, as a specific outcome, to lower the stock of tax arrears by 20 percentage points. According to statistics published by the tax authority,[7] tax arrears grew relative to 2008: tax arrears grew by 111.6% in September 2009, in comparison with 101.8% in 2008. This increase was in part due to the economic crisis and lower solvency, as further illustrated by the increase, according to the same source, in the number of cases in which a lien was put on property for non-payment of obligations. On a different note, the statistics do not contain any information on the total amount of excess tax credits and their refund pace. This information is only available in the large taxpayer monitoring indicators: as of 01.09.2009, large taxpayers had excess tax credits of 61.3 billion drams, of which 40.8 billion was for VAT. During the first eight months of 2009, VAT refunds were documented for a total amount of 10.1 billion drams. *The resolution of the problem of excess tax credits can perhaps benefit from the legislative amendments presented to the National Assembly of Armenia during 2009,[8] which provide that, effective from 2011, in case the tax authority delays the tax refund by more than 90 days, it will have to be penalty*

[6] Available on http://www.gov.am
[7] Available on http://www.taxservice.am
[8] Available on http://www.parliament.am

*to the taxpayer.*

5. The cash register receipt lottery and the bonus system for receipts pursued the aim of encouraging buyers to demand receipts, so that the actual turnover can be revealed. Alongside the positive results (higher reported turnover), the bonus system encountered some *problems*:
   - Before the purchases and expenses of businesses using cash registers were documented, with complete self-declaration of the actual turnover leading to grave tax consequences, it was dangerous by creating conflicts between consumers and sellers (implementation should have been incremental);
   - The receipts became tradable, and in areas subject to presumptive taxes (in which, given the current legislation, tax revenues are not expected to grow as the sale turnover grows), they became a tool for receiving tax refunds; for this reason, the Government decided in October[9] to review the bonus system and to introduce restrictions on receipts issued in certain sectors;
   - The difficulties have deep-rooted causes: during the ten years of introducing cash registers, virtually no measures have been implemented but the tightening of administration in relation to entities: consumers still do not realize that a receipt is a document that is needed primarily for the protection of consumer interests;
   - The lottery or the granting of bonuses cannot last forever: if consumers only demand receipts for potential economic gain, and it does not become culture, the tax administration impact will disappear immediately after the Government discontinues this measure

   *Recommendations:*

   - Engage the non-governmental organizations created specifically to protect the interests of consumers;
   - To enact legislation finally to resolve the administrative problems related to the documentation of expenses and incomes of consumers and entities using tax registers; if necessary, consider the declaration of consumer expenses.

**6.** Armenia abolished the simplified tax effective from 1 January 2009. Taxpayers were allowed to do business without paying VAT, if their turnover did not exceed 58.35 million drams. In this context, simplified assessment (including expense reporting) mechanisms, tax advance payment and tax register filing privileges, and simplified accounting standards were introduced. As novelty, a system of licensing fees was introduced for self-employed natural persons. However, transactions are still not documented, and many of the related issues persist. Effective from 1 January 2009, both parties will be penalized, if a transaction document is not issued; the buyers of the relevant goods will have to pay income tax at the rate of 11%. Under the amendments, entities and persons that reported undocumented transactions to the tax authority would not be penalized. As these amendments inherently seemed unrealistic, the Government repealed them by further amendments enacted in October 2009.[10]

Abolishing an ineffective institution does not solve the problem of documentation. So long as the entity failing to issue a document "transfers" an additional tax burden (including the 11% income tax) to the buyer of goods, the sale turnover that would otherwise compensate will not be declared. Besides, simplified accounting for small business remains a declarative mechanism; no standards have been defined yet.

7**.** Back in 2008, the draft general part of the tax code was submitted to the National Assembly of Armenia for debate. The draft special part of the unified tax code was submitted for public debate. The plan is to enact the tax code from 2011. According to initial observations, no major changes have been made (the changes are mainly concerned with rates, thresholds, and some privileges): simply, provisions of extant government decrees and other sub-legislation have been mechanically transferred into the draft code. The general part of the code,

[9] Available on http://www.gov.am
[10] Available on http://www.parliament.am

too, needs to be revised and edited for bringing it into line with a number of fundamental amendments made in the tax legislation.

**8.** The year 2009 is the last year during which the profit tax exemption for companies with foreign investments will expire, and there is no plan to prolong the validity term of the exemption. The amendment made to the Republic of Armenia Law on Profit Tax by the National Assembly of Armenia in 2009 (stipulating 0% tax rate on dividends received by foreign companies from Armenian sources)[11] will be repealed.

***II. The specific actions under Priority Area 4 also provide:***

*Continue efforts to develop the network of bilateral agreements between Armenia and EU Member States on avoidance of double taxation, including the improvement of transparency and the exchange of information in accordance with international standards.*

The efforts to conclude bilateral agreements between Armenia and EU Member States on avoidance of double taxation are continuing. In addition to a number of agreements concluded earlier, a bilateral agreement was signed in 2009 with Italy, and another one with the Czech Republic will be signed after 1 January 2010.

**RECOMMENDATIONS**

1. The tax administration reforms should be completed as soon as possible; however, risks associated with the implementation of too many actions should be born in mind.
2. During a period of reform programs, it is more reasonable to have equally-distributed manageable stages and changes in line with them.
3. It would be more productive to successfully implement a small number of carefully-selected priority-based reforms that would have a strong impact, rather than too many reforms that can hardly even be considered reforms.
4. Challenges posed to state revenue collection by the global economic crisis may slow down the reform process, because the administration focuses on the daily task of collection, yet the reforms should not be allowed to stop. The business community will support the reforms, if the latter are perceived as genuine efforts to reform the administration.

[11] Available on http://www.parliament.am

# Customs

Prior to addressing the customs priorities, it should be noted that the success of the customs system and the role of customs authorities in a nation's foreign trade hinge on certain essential procedures of customs clearance. Customs authorities can support or obstruct trade. Hence, this analysis focuses on the implementation of measures under the action plan in relation to the most essential procedures.

**(EU-Armenia ENP Action Plan 2009-2011 Implementation Measures Program, para. 175)**
*Reform the customs system, improve customs administration in line with EU standards, and streamline the customs legislation; reduce the number of documents filled out by customs authorities in the customs clearance process; reduce the number of documents required for customs control.*

Similar to almost all the provisions of the Action Plan, the aforementioned provision is declarative due to the following reasons.

Under Article 141 of the Customs Code of the Republic of Armenia, entities moving goods and vehicles across the customs border of Armenia and entities that carry out activities subject to control by customs authorities must present to customs authorities for purposes of customs control documents and information as per the list and submission procedure defined by the Republic of Armenia Government Decree 1779-N dated 21 November 2003 "On Lists and Procedures of Submission to Customs Authorities of Documents and Information Necessary for Customs Control." This Decree requires, in particular, the following documents for purposes of customs control:

(i) For customs control of imported goods, the following documents:
   a) A customs declaration and, in cases prescribed by the Republic of Armenia customs legislation, form "MH 1" of the detailed customs value declaration;
   b) A commercial invoice or commercial contract on the acquisition of goods, or a document showing the instruction of payment over the Internet or its equivalent document; and
   c) A transportation document.

Clearly, the aforementioned Government Decree clearly stipulates a list of documents. However, for certain procedures, additional action and the submission of additional documents are required without any justification and legal grounds, which draws out, rather than reduces the time required for customs clearance. The following practices have the worst effect:

1. To date, in spite of Article 87 of the Customs Code of the Republic of Armenia, importers of goods are required to produce the application to the State Revenue Committee of Armenia, as well as various other documents, including payment instructions confirming the payment of funds for supplied goods, export customs declarations from the exporting state, and documents justifying the transportation and insurance of goods. This process can take one to three days of an importer's time.
2. In the same manner, despite the absence of any legislative requirements, exporters are still generally required to show special permissions for exports of goods, which are issued by the State Revenue Committee of Armenia. To issue such permission, further documents neither stipulated nor required by law are demanded, including, for instance, documents showing the origin of the goods up to their "initial" purchase.
3. For the imports of a rather large variety of goods, despite the existence of any legal grounds, customs authorities add three digits in the classification of goods under the foreign trade nomenclature, allegedly for the "better identification and thorough description" of goods; consequently, the assigned classification number is entered into the automated declaration system to generate a "minimum" customs value without any regard for the customs value submitted by the importer.
4. For a large number of goods, there are to date "minimum reference prices," and the goods cannot be declared at a price that is lower than the "minimum reference price." In a number of cases, these "reference" prices are the actual sale prices in the Armenian domestic market, i.e. they are much higher. Considering that

the use of such prices contradicts the Armenian Customs Code, namely Article 93, which prohibits the use of minimum or maximum customs values in the determination of the customs value of goods, they are used secretly, without being officially published anywhere, and create ample opportunities for abuse.

All of the aforementioned processes require between one and several additional days, creating queues and delays. None of them are either transparent or justified by the legislation. In effect, there is ample potential for abuse, which rather dangerously not only delays the customs clearance, but also involves the application of unregulated and non-transparent procedures that are completely different from those defined by the legislation.

**(EU-Armenia ENP Action Plan 2009-2011 Implementation Measures Program, para. 176)**
*Correctly apply the customs valuation rules, and more effectively perform risk-based customs audits and post-clearance audits; develop and improve the post-clearance control system; expand and develop the database for managing customs control risks.*

In addition to streamlining the customs legislation for reduce the time and shorten the list of documents required for customs clearance, customs clearance-related risk analysis and management-based selectivity are essential. These activities are vital for increasing the effectiveness of both examination and post-clearance control. Risk-based selectivity examination was first introduced in 2000. Nevertheless, selectivity still remains a formality, not having changed much since its initial introduction.

Furthermore, the risk analysis and management system is in the inception stage; the selectivity examination of cleared goods is deficient. There are particular problems in relation to goods released through the green channel. The percentage share of goods released without documentary checks and customs inspection remains rather low, which is in large part due to the customs authorities' refusal to accept the customs value stated by the trader and the customs authorities' struggle to retain influence over businesses.

To date, there are no lists of compliant and non-compliant businesses. National risk profiles do not exist. Risks are neither assessed nor analyzed.

It is essential to realize that, in such an environment, a ***consistent system*** of customs clearance procedures aimed at foreign trade facilitation begins to fail. A number of institutions, such as self-assessment, customs brokers, risk management, selectivity, sampling of goods for inspection, and post-clearance control become ineffective, redundant, and meaningless. The whole customs system becomes ineffective and does not develop, failing in its primary mission of foreign trade facilitation, rather acting as a serious obstacle in the business environment.

These issues can be addressed rather easily. It is simply necessary to display strong political will to eliminate the flawed practices and to follow the internationally-accepted procedures without fearing that customs revenues will be undermined. In essence, the requirements of the Armenian customs legislation simply need to be directly and rigorously enforced. If the legislative requirements are strictly followed, it will become easier to make a transition to the gradual and incremental introduction of advanced practices based on the experience of the world leaders in this sphere. In some cases, amendments to the relevant legal acts will be required.

**EU-Armenia ENP Action Plan, 4.4.1, Customs, first bullet**
*- Continue harmonization and simplification of customs legislation, including secondary legislation in the customs area.*

While further improvement of the customs legislation is essential, it is worth mentioning that strict compliance with existing legislative provisions by foreign trade participants and especially customs authorities can be of greater importance. Despite the existence of clear-cut legislation on the customs valuation or sampling of goods for inspection, the provisions of the law are often not followed, especially by the customs authorities. Under Article 82 of the Customs Code of the Republic of Armenia, the customs value of goods moved across the

customs border of the Republic of Armenia is determined by the declaring entity, with the exception of cases stipulated by the Code, in which it is done by the customs authorities. As was mentioned above, this Article is completely not respected in practice.

**EU-Armenia ENP Action Plan, 4.4.1, Customs, second bullet**

- *Reinforce customs controls on imports and exports of pirated or counterfeit goods*

The legislation and practice are far from being adequate in fighting counterfeit goods and, more generally, protecting intellectual property rights. To date, this issue is not considered a national priority, as the dominant objective of the customs authorities is to safeguard the collection of state revenues. Consequently, the Armenian customs authorities have not even once in practice supported the protection of the intellectual property rights of any person.

To achieve tangible progress in this field, it is necessary to focus on not only the important objective of collecting fiscal revenues, but also respecting intellectual property rights. Under the extant legislation, too, specific measures can be implemented to fight against counterfeit goods.

**RECOMMENDATIONS**

1. Streamline the customs legislation.
2. Reduce the number of documents filled out by customs authorities in the customs clearance process.
3. Reduce the number of documents required for customs control.
4. More effectively perform risk-based customs audits and post-clearance audits.
5. Develop and improve the post-clearance control system.
6. Expand and develop the database for managing customs control risks.
7. Implement genuine reforms in the customs system, and minimize corruption risks.

**ENP AP 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.*

# Environment

In 2009, the Armenian government continued its controversial initiatives in the environmental field. Positive steps were limited to a few legal initiatives, efforts of public engagement in discussion of hot issues and reaction to intensive NGO campaigns against illegal decisions of the government. There was no progress in public involvement in the decision-making process. Neither were there improvements in the essential environmental policies and practices, which would bring to a critical change in the protection of the environment or realization of environmental democracy.

- Government commitments for sustainable development were accompanied by institutional shortfalls, actual divergence of decision-making from the main principles of sustainable development and pursuit of short-term gains, leading to overexploitation of natural resources.

In October 2008, the Government adopted the Sustainable Development Program and established the Sustainable Development Council, in line with its international commitments. The adopted Sustainable Development Program, in fact, appeared to be the renamed Poverty Reduction Strategy Plan (PRSP) and fell short in proposing grounds for sustainable development. Thus, its implementation may not really move the country towards the declared end, while indicators for monitoring of its progress are not developed and adopted yet. The established The Sustainable Development Council failed to demonstrate any effectiveness. It has had only two gatherings, last one in winter 2009, which did not address the majority of critical challenges in the environmental field. Besides, parallel existence of the institutional arrangement of PRSP and the Sustainable Development Council create ambiguity of mandates and actors engaged in the process.

The particular focus of the Armenian government remained to be mineral resources, which is not envisaged within the ENP Action Plan, nevertheless appear as a priority area in the government action plan for 2008-2012. Despite the declared course of sustainable development, the actual practices are aimed at short-term growth, often accompanied by unlawful and corrupt decision-making, with little or no consideration of interests of future generations. One such example was the high-level support and unofficial promotion of an illegal initiative of a mining company to build and operate a gold refinery on the shores of Lake Sevan - the biggest freshwater reservoir in the region, which was suspended only as a result of intensive public opposition to the plan. Another case is the endorsement of uranium mining in the south of country, disregarding the interests of the public and particularly the affected communities. Information about this initiative was long veiled with secrecy from the Armenian side until the Russian government publicized information that soon Armenia was going to export uranium to Russia.

Public participation remains to be an imitation of democracy. Most of the created public councils provide a space for debates on the already decided topics and thus are not able to have an impact on the determined course of actions. Unlawful decisions usually get changed as a result of intensive and extensive public campaigns.

Corruption remains to be the major obstacle for the rational management of natural resources. The environmental violations reported by investigative journalists are connected with names of business oligarchs or high-level officials (including the present and previous Ministers of Nature Protection) and remain undetected.

**General Objectives and Actions Area 3: Economic and social reform, poverty reduction and sustainable development**

**Development of the forest industry (forest management, protection, maintenance, rehabilitation, balanced and sustainable use of forest resources)**

- Forest resources continue to remain under danger.

According to independent experts, the forest cover continues to decrease in the country. Though, according to official data, illegal logging has decreased, large volumes of trees are cut under the name of "sanitary cutting." The government fails to ensure adequate protection of forests. Forest enforcement legislation remains to be ambiguous, allocation of forests for various development activities continues, export of timber products is not banned.

*Despite the existing problems, the development of forest industry has been removed from the government ENP Action Plan for 2009-2011.*

**Taking steps to improve integration of environmental considerations into other policy sectors**

- There is no determined course of actions to integrate environmental considerations into other policy sectors.

There were no developments towards integration of environmental considerations into other policy areas. Decisions on developments, mainly mining or construction, continue to take place without proper assessment or with late consideration of environmental impact. Sectoral policies continue to develop independently, whereas there are even cases when those in different sectors contradict.

Ratification of the Strategic Environmental Assessment Protocol, signed by Armenia in 2003, which would obligate the sectoral authorities to integrate environmental considerations into sectoral decision-making, is postponed until 2010 (initially planned for 2007).

Another mechanism of balancing sectoral interests with environmental considerations at the government-level – participation of the Minister of Nature Protection within the government cabinet does not function as the Ministry fails to prevent adoption of environmentally unsound decisions, in some cases even defends certain business interests. Such behaviour of the mentioned institution is explained by the existing conflict of interests given that it possesses powers for the management as well as protection of some resources, particularly of the protected areas.

**General Objectives and Actions Area 6: Cooperation in specific sectors, including transport, energy and the environment**

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

- There is only a limited progress in dissemination of information, while no regulatory work has been done to improve free access to information and public participation

Though dissemination of information has experienced certain progress due to the website of the Ministry of Nature Protection, however the latter does not prove to be effective as it does not provide a user-friendly design, does not provide any information on the status of decision-making and on how and when the public can participate. Notification of hearings appear a few days before those take place and do not allow for preparation and effective participation of the public in the decision-making. Other bearers of environmental information, such as the Ministry of Agriculture, the Ministry of Energy and Natural Resources or Yerevan Municipalities fail to ensure active dissemination of information. Moreover, there are cases when the Ministry of Energy and Natural Resources did not provide information to the concerned public about the mineral deposits and licenses.

Armenia has not taken any steps to implement recommendations adopted in late March 2006 by the Aarhus Convention Compliance Committee[12] and the decision adopted in June 2008 by the Meeting of Parties[13] related to compliance by Armenia with its obligations under the Convention. Neither are there measures planned within the Government Action Plan for 2009-2011 for ENP implementation. Instead, there is merely a requirement to compile annual reports.

There were some efforts by the Ministry of Nature Protection to engage the environmental NGO community in discussions, however, most of those related to strategically non-significant issues, while the important decisions usually take place without prior consultation.

**Reinforcement of structures and procedures to carry out environmental impact assessments**

[12] See Report of the Eleventh Meeting of Compliance Committee at http://www.unece.org/env/pp/compliance/cc11reportadd1eng.doc
[13] See Report of the Third Meeting of Parties, Decision III/6b at http://www.unece.org/env/pp/mop3/ODS/ece_mp_pp_2008_2_add_10_e_Armenia.pdf

- There is no progress in the field of environmental impact assessment

The quality of the environmental impact assessments remains to be a critical issue, not getting due attention. The Government ENP Action Plan for 2009-2011 intends for development of sub-law regulations, however there is nothing mentioned about adoption of the new law, which was drafted in 2004 and keeps being postponed, though continuously reported to the international organization as an ongoing activity. Besides, the adoption of regulations is intended throughout three years, which means that even if the law is adopted earlier, it will not be properly enforced with justification that the by-laws are not in place.

EIA in a transboundary context is a serious issue, recorded also by the Fourth Meeting of the Parties to the Espoo Convention in May 2008.[14] Actions planned for implementation of this convention are to extended within time, while the actual implementation of the convention does not take place. E.g., the government actively promotes copper mining project in Teghut settlement in the north of the country, refuses to recognize its cross-border impacts for transboundary Debed River as insisted by experts, does not take steps to organize notification of the to-be-affected communities in Georgia and due environmental impact assessment.

**RECOMMENDATIONS**

1. Ensure prevention of conflict of interests and ambiguities in institutional arrangements in the field of environment and separate management from policy-making and protection functions, particularly in the field of forest management and protected areas.
2. Revise the Sustainable Development Program, develop the system for implementation and monitoring of the program, clarify participatory roles and processes and ensure effective operation of structures, particularly of the National Council for Sustainable Development.
3. Base exploitation of natural resources on long-term strategies and sustainable development principles. Suspend allocation of resources, particularly mine deposits, for exploitation until such strategies are in place. Cease the practice of changing land categories to facilitate the use resources (e.g. forests or public parks) for economic activities. Include forest management in the ENP Action Plan.
4. Ensure proper systems for the protection of the environment. Improve the environmental assessment legislation, including methodologies for impact assessment on forests, plants, animals and human health as well as cost-benefit analysis. Develop a system of environmental payments to impose the polluter-pays principle, particularly in the field of mining.
5. Take concrete steps to ensure implementation of Conclusions and Recommendations of the UNECE Aarhus Convention Compliance Committee with regard to improvement of public participation in decision-making.
6. Regulate the assessment of transboundary impacts to ensure implementation of the Espoo Convention. Ratify the Protocol on Strategic Environmental Assessment and establish an effective system for its enforcement. Conduct international assessment of the Teghut mining project to identify its transboundary impacts.
7. Strengthen the role and enforcement functions of the Ministry of Nature Protection. Ensure proper enforcement of the existing legislation and appropriate punishment/compensation for environmental violations/damage. Ensure due implementation of planned activities, avoiding postponing planned activities without proper justification.

*Sona Ayvazyan*
*Project Manager, Advocacy Assistance Center, Transparency International Anti-Corruption Center*

[14] See Report by the Implementation Committee at http://www.unece.org/env/documents/2008/eia/ece.mp.eia.2008.7.e.pdf

# Public Procurement

**Primary Objectives and Priority Measures 16:** *Reformation of the state procurement system, ensuring the adequate application of the state procurement regulations. To this end, preparation and adoption of the state procurement system reform package. Development and application of the mechanisms to raise awareness about the electronic procurement strategy and the corresponding tender for the staff; ratification of the international conventions regulating the sphere.*

**Description of the Situation**

The improvements in the public procurement field are contradictory in nature. Despite the tendency to improve the public procurement system and show public involvement in the decision making process, there is no considerable progress in the law implementation practice, which is demonstrated by the low trust level towards the procurement environment. Thus, the public procurement system in RA can be considered as a high risk area.

The Government of Armenia (GOA) conducted a diagnostic study, based on which the draft of the "Procurement system reform strategy" was prepared. Some public organizations have submitted suggestions concerning the document[15], which were mostly included in the final government decree[16]. It is worth mentioning, that based on this strategy a timeline for procedures was prepared, which has already been approved by RA Prime Minister[17].

In 2009, the second Country Procurement Assessment Report (CPAR) was published (the first was published in May 2004). Based on the CPAR recommendations, currently the option of complete decentralization of the public procurement system is being discussed.

Recently, the practice of periodic procurement has improved. In particular, before the contracts with selected bidders were signed for 2-3 year period and this bidder was becoming "secured" from competition during this period. After recent legislative amendments the periodic procurement has become more competitive, since it gives an opportunity to all registered and qualified bidders to submit their bids each 3 months (in case of products) or 12 months (in case of works and services). After bids submission the lowest price bidder is selected as a contractor for 3 and 12 months respectively.

Transparency International (TI) Anticorruption Center has been monitoring the procurement field since 2007. The monitoring activities this year revealed that:

- There were several occasions, when some contracts underwent changes, which can contain corruption risks.
- The number of bidders, accepting the invitation and not submitting the bids is on the increase (in 2008 4976 bidders took the invitation package, among which only 2192 bidders submitted their bids). This can be a result of:
  - unclear description of the technical specifications in the invitation[18];
  - complexity of the required documents (the documents require high transaction costs);
  - collusions.

The procuring entities have a biased approach towards "unpleasant" selected bidders. In particular, it is often mentioned, that due to unreasonable delays contracts are not signed, as a result of which companies incur

[15] See www.transparency.am/dbdata/Proc_strat_eng.doc
[16] Government decree No.17 dated 23.04.2009
[17] Prime Minister Decree No. 862-A, dated 10.12.2009:
[18] The technical specifications are unclear; this can be noticed while comparing the invitation packages of Project Implementation Unit (PIU) and SPA.

considerable losses. In some cases, contracts are signed, but the money is transferred to the bidders with delays. As a result, the bidders bear additional expenses as they are subject to pay taxes after signing the contract.

The public procurement prices are often higher than average market prices. Supervision over the pricing is very weak as the decision makers don't collect information about potential suppliers, and don't compare prices offered in B2B procurement[19].

*In conclusion, tenders are mostly not transparent, and the bid-rigging is common in the procurement system. Among bid-rigging schemes the symbolic bidding is one of the most widely used ones in Armenian public procurement. Moreover, there is almost zero innovation in the products and services, which increases the probability of collusion.*

**EU-Armenia Action Plan (p.24) priority direction:**
*Develop conditions for open and competitive award of contracts between the parties, in particular through calls for tenders, in line with Article 48 of the PCA and continue reforms in the public procurement system.*

*Ensure implementation of the (public) Procurement Law;*

Though the procurement legislation in RA generally complies with procurement practices (it was developed based on the UNCITRAL Model Law), the problems existing in law implementation do not stimulate public confidence towards the procurement system.

Public Procurement Law (PPL) implementation is still inadequate. Below are several examples:
✓ The communities do not have adequate procurement related skills and qualifications to completely follow procurement procedures, thus procurement processes in communities do not always comply with the PPL. The probability of collusions and non-competitive procurement volumes are higher in communities. According to the 2008 annual report of Chamber of Control the communities' procurement of products, works and services was mostly done with violation of the PPL provisions[20].

✓ According to the PPL[21] the tender is considered as a preferred method. Nevertheless, in 2008 there was a decline in the public procurement made by competitive methods (in 2008 the procurement was about 102 bln AMD, while in 2007 it was 117 bln AMD) and an increase in procurement made by non-competitive methods (in 2007 the single-source procurement was 11.7 bln AMD, while in 2008 it was 12.2 bln AMD[22]). It is noteworthy, that procurements of high value products are often made by single-source method[23].

✓ The practice of single-source procurement is also conditioned by the fact that the procuring entities often do not follow "value for money" principle. According to the budget legislation, the procuring entities must use the planned financial resources until the end of the year, otherwise they will lose them. Single-source procurement by procuring entities is usually made at the end of the year, which accompanied with inadequate capacity of technical audit make the reasonability and urgency of such procurement very doubtful.
✓ There are serious problems in procurement planning, as the difference between the planned values and factual prices is considerable; it can be explained either by the low product quality, by biased approaches or by inadequate planning skills. Inadequate procurement planning in conjunction with poor audit capacity and inefficient control seriously constrains the fair and transparent procurement process., For example, according to

[19] For example, although the practice of periodic tenders was improved, the prices for A4 format papers are higher than average market prices.
[20] Annual report of the RA Chamber of Control, 2008, p.59.
[21] See http://www.gnumner.am/admin/up/06.12.2004.pdf
[22] Procurement containing state or official secrets and monopolistic ones are not included.
[23] Although the number of single-source procurement contracts has declined in 2008 (496 contracts in 2008 compared with 638 contracts in 2007), there was an increase in value terms (the value of single-source procurement contract was on average 24.6 mln AMD, while in 2007 it was 38.7 mln AMD). The data are from Ministry of Finance. www.minfin.am

the data from the State Procurement Agency (SPA) savings accounted 1.3 bln AMD in 2008 (1.3% of all procurement contracts), while in the first semester of 2009 it already rocketed to 3.4 bln AMD (14% of all procurement contracts).

✓ According to the PPL article 7, point 4, the simultaneous participation in procurement process of the organizations founded by the same person(s) or the organizations where the same person(s) own more than 50% share is prohibited. In fact, no inspection is conducted by the members of the tender committee for controlling this provision and as a result such violations of the PPL are widely common especially during the car procurement tenders.

**Implementation Tool 16.1 "Synchronization of the RA laws on procurement with the EU requirements based on the SIGMA Project consultants' recommendation "**

- *Ensure compliance of the procurement system with EU procurement legislation and principles, in particular transparency, information provision, access to legal recourse, awareness and training among contracting authorities and business community as well as limited use of exceptions.*

GOA demonstrates its intention to comply with EU procurement legislation by continuously initiating reforms. At this end the adoption of a new PPL is being discussed, which will be fully harmonized with EU procurement standards. Unfortunately, there is still little progress in
a ) transparency
b) procurement specialists' capacity enhancement
c) vendor activation training programs.

In December 2008 the GOA initiated the assessment of the compliance of procurement legislation in RA with EC Public Procurement Directives and GPA (WTO General Procurement Agreement), for which the experts from OECD SIGMA program were invited.
OECD/SIGMA team concluded that GOA should consider the following recommendations in order to hormonize PPL with EC Public Procurement Directives and WTO GPA[24]:

- ✓ Extend PPL with regard the scope of entities, utilities and contracts covered;
- ✓ Establish independent review body;
- ✓ Strengthen the capacity of the SPA, which should focus more on assistance;
- ✓ Decentralize procurement by giving procuring entities the right to conduct their own procurement.

The existing appeal system does not comply with the best practices, as it is not independent. According to PPL, the Ministry of the Finance (MOF) is the authorized body (AB) and is responsible for solving the disputes in public procurement. Of course the bidders can submit appeals also to the court, but in practice it is both time consuming and expensive[25]. The AB is also responsible for the supervision over the public procurement, which can create conflict of interests.

A legal or procedural requirement for tender committee members to disclose conflicts of interest does not exist. The absence of such provisions can also hinder the competitive environment.

The current criteria for bidder selection cannot be considered as sufficient: it actually relies solely on the minimal price; the qualified bidder offering the lowest price is selected as a supplier. Moreover, the qualification criteria is usually set very low and the price offer, which practically is playing the role of the single criteria for bidders selection, doesn't support more qualified bidders to compete.

[24] "Public Procurement in Armenia-Overview," December 2008; and "Analysis of the Armenian Public Procurement Law and Implementing Decree vis-à-vis the EC public procurement Directives and the Agreement on Government Procurement (WTO).
[25] The AB discusses disputes free of charge and within 20 days.

The content of the announcements/notices under the PPL is less extensive than the content of the corresponding notices under the EC Directives and GPA. In particular the announcement for open tenders under the PPL does not include information on whether the contract is divided into lots and indication of the possibility of tendering for one, several or for all lots; time limits for completion of the works or delivery time for supplies and services; persons authorized to be present at the opening, and date, time and place for such opening; tender validity period; any guarantee required; the criteria for the award of the contract; name and address of the body responsible for appeal and the information on the dates for lodging appeals or contact details of the service from which such information may be obtained. Also the announcement of signed contract/contract award notice as described under the PPL, unlike the EC Directives, does not seem to include, in particular, information on the number of tenders received, on the name and address of the successful tenderer; on the price; on the proportion of the contract carried out by sub-contractors; on the name and address of the body responsible for appeals and on the dates for lodging appeals or on the contact details of the service from which such information may be obtained[26].

Whistle blowing mechanisms do not exist in the procurement system. The public procurement official website27 is maintained by MOF, but it is now available only in Armenian, which doesn't motivate the participation of non-residents (only 2 non-residents in 2008).

Some contracting authorities publish their annual procurement plans, but the content of the information lacks detail. The training programs by MOF for procurement officers are not sufficient. Despite some awareness raising and training activities, there is a growing need to ensure better dissemination of information on the public procurement system, to set up a reliable complaint mechanism and to increase contracting authorities' awareness of, and compliance with, relevant legislation.

The statistics on bidders' participation reveal that the procurement environment is not competitive. In particular, in 2008 there was only 1.9 bidder per one tender made by competitive methods (for the first semester of 2009 it is 1.8 bidder), which obviously can not be considered as a satisfactory indicator. Thus the business activation program should be considered by the GOA.

- *Review existing procedures and improve the administrative capacity of the State Procurement Agency*

Existing procurement procedures have a high probability of corruption. Ideally SPA should serve as a check and balance mechanism, but in practice the capacity of the SPA is inadequate to accomplish its tasks.

The practice of procurement guidelines development and their public dissemination is limited. In addition, there are no model tender documents and model technical specifications in the SPA. Both technical and human capacity in the SPA are inadequate. There are *no legal or procedural requirements for appointing the Head of SPA and other staff***.** The Head of SPA is appointed by the Prime Minister.

The members of the tender committee and procuring entities are the same persons, which increases the corruption probability. In 2008, 53 complaints (appeals) related to public procurement were submitted to the AB; 25 were approved (about 47% of all complaints). As of today 33 complaints have been submitted, 19 were approved (about 57% of all complaints)[28]. On one hand, it is definitely good that the weight of the approved complaints has increased, on another hand this incident can be the result of biased approaches/collusions from tender committee members.

**Implementation Tool 16.3- Introduction of the electronic tendering system**

[26] See OECD, SIGMA-"Analysis of the Armenian Public Procurement Law and Implementing Decree vis-à-vis the EC public procurement Directives and the Agreement on Government Procurement (WTO), December 2008
[27] www.procurement.am
[28] Based on data from MOF.

- *Ensure implementation of the "Strategy for Introduction of an Electronic Procurement System in Armenia"*

Due to financial-economic crisis the E-Procurement (EP) implementation faced some challenges. The GOA is currently in the negotiation process for selecting a consultant for the procurement software. The existing EP strategy should be redesigned.

The implementation of E-procurement (EP) usually decreases the transaction costs and mitigates the corruption risks, which impacts positively on procurement system efficiency[29].
The importance of EP is recognized also in RA. GOA has been seeking donor support and assistance for EP implementation. The World Bank has been assisting GOA on this path. However, there are some problems which hinder EP implementation in the RA:

- financial/political,
- lack of e-culture[30],
- inadequate capacity,
- legislative.

The last two problems are discussed in more details.

*Inadequate capacity*
Unfortunately, the universities in RA are not preparing procurement specialists, in result the capacity of persons involved in procurement processes cannot be considered sufficient. This fact, accompanied with lack of practice in EP, gives grounds to conclude that capacity enhancement is one of the most severe problems. At present the neither the SPA nor the GOA have started any initiative regarding identification and collaboration with potential partner institutions. It's worth mentioning that in parallel with the EP system steps should be taken to enhance the capacity of the bidder, which will make the synergic effect possible.

*Legislative problems*
Though several documents related to EP were already adopted in RA (EP roadmap, government decree on EP[31] and etc.), these documents need serious improvements. In particular, based on the GOA decree on EP system implementation strategy, the following stages and deadlines were declared:

- I Stage: Preparation of EP (March, 2006),
- II Stage: E-tender (January, 2008)
- III Stage: EP (January 2009)

As can be seen, the deadlines declared by the government were not kept. GOA need to craft a new strategy for EP. In addition, it is worth mentioning that EP only automatizes the existing business processes; thus it is more efficient first to eliminate the procedural risks, and after that start their automatization.

**Implementation tool 16.2: Holding negotiations for the membership to the WTO procurement agreement**
- *Accede to the WTO Agreement on Government Procurement.*

GOA is finalizing the process of transition from WTO GPA observer status to a full member status. Armenia is keen on its intention to join WTO Agreement on Government Procurement (GPA) and is already in the process of becoming a full member. Armenia made an Initial Offer and currently is on the bilateral negations with partner countries (Canada, etc.).

[29] As the best practice shows EP implementation initially gives an opportunity to increase procurement system efficiency on average by 15%.
[30] Based on WB data only 5.8% of the population uses Internet.
[31] Government Decree (No-137-N) "Strategy for Introducing the System of Electronic Procurement", approved in January 26, 2006

*Based on above-mentioned arguments, mostly due to the poor practices of the law implementation, the trust towards the procurement system is far from being fair and transparent.*

**RECOMMENDATIONS**

1. Develop and implement a methodology of non price criteria for bid evaluation, and/or in some cases to adopt legislation regarding the opportunity for implementation of "reduction auctions".
2. Enhance the internal, as well as the external (Chamber of Control) audit capacity, in particular conduct technical and performance audits.
3. Monitor on the periodic bases the SPA, communities, PIU prices and average market prices for a similar product category and publish the results.
4. Establish an independent body for procurement appeals and delegate to it the appeal review and decision making authority. Moreover, it is reasonable to include the representatives from various public organizations (ombudsman, consumer protection associations and etc.).
5. In case of the fully independent appeal body establishment, the single-source procurements should be also approved by this body.
6. Implement the practice of minutes recording in public procurement.
7. Develop and implement the practice of registering also the members of tender committees in the "black-list", as well as implement a rotation system for tender committee members.
8. Strengthen the SPA's internal audit capacity, which should control the process of committee members' interest declaration and prohibit the participation of the organizations established by the same person or the person owning more than 50% of stocks in the same procurement process.
9. Confirm a provision in the legislation according to which the simultaneous participation in procurement process of the organizations founded by the same person(s) or the organizations where the same person(s) own more than 50% share can become a base for including that bidder in the black-list.
10. Reduce the documentation burden for tender participation, and especially in those cases, when they can be formed through cooperation between government bodies32.
11. Clarify information regarding the invitation/technical specifications.
12. Adopt a provision according to which the contract prices can be changed but not more than inflation rates during the contract period.
13. Make the official procurement website available in English and Russian
14. Implement debriefing mechanisms in the SPA.
15. Initiate dialog with professional institutions, which can provide assistance in curricula and master courses development[33].
16. Implement whistle blowing mechanisms;
17. Develop a new strategy for EP.

*Artak Manukyan*
*Instructor, Armenian State University of Economics*

[32] For example, current procedures require from the bidders to submit documents from tax authorities, court and etc., while these documents can be easily acquired by the SPA. It should be mentioned that GOA is currently working on these issues.
[33] The assistance of the Australasian Production and Inventory Control Society can be useful in this regard. See http://www.apics.org.au/Default.asp?page=309