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*for the U.S. Department of State, Bureau of International Narcotics  
and Law Enforcement Affairs*

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***Anti-Corruption and Human Rights Law Training  
for Investigators, Prosecutors, and Judges in the  
Republic of Armenia***

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## ABOUT THE ACADEMY

The National Academy of Public Administration is an independent, non-profit, and non-partisan organization established in 1967 and chartered by Congress in 1984. It provides expert advice to government leaders in building more effective, efficient, accountable, and transparent organizations. To carry out this mission, the Academy draws on the knowledge and experience of its over 900 Fellows—including former cabinet officers, Members of Congress, governors, mayors, and state legislators, as well as prominent scholars, career public administrators, and nonprofit and business executives. The Academy helps public institutions address their most critical governance and management challenges through in-depth studies and analyses, advisory services and technical assistance, congressional testimony, forums and conferences, and online stakeholder engagement. Learn more about the Academy and its work at [www.NAPAwash.org](http://www.NAPAwash.org).

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## ACRONYMS AND ABBREVIATIONS

Acronym or Abbreviation	Definition
ABA	American Bar Association
CAE	Chief Audit Executive
Academy	National Academy of Public Administration
Anti-Monopoly Commission	State Commission for the Protection of Economic Competition
CCJE	Consultative Council of European Judges
CDD	Customer Due Diligence
COE	Council of Europe
COSO	Committee of the Sponsoring Organisations of the Treadway Commission
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CSC	Republic of Armenia Civil Service Council
DNFPB	Designated Non-Financial Businesses and Professions
ECHR	European Court of Human Rights
ENCJ	European Networks of Councils for the Judiciary
FATF	Financial Action Task Force
FMC	Financial Monitoring Center
GRECO	Group of States against Corruption
IACA	International Anti-Corruption Academy
IIPCAG	Interpol Intellectual Property Crime Action Group
Inspectorate	Financial-Budgetary Inspectorate of the Ministry of Finance
IP	Intellectual Property
Istanbul Convention	Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence
JA	Justice Academy of the Republic of Armenia
Justice Academy	Justice Academy of the Republic of Armenia
KYC	Know Your Customer
LGBTI	Lesbian, Gay, Bisexual, Transgender, Intersex
NGO	Non-governmental organization
OECD	Organisation for Economic Co-operation and Development
Palermo Convention	UN Convention against Transnational Organized Crime
PCT	Patent Cooperation Treaty
PMG	Prison Monitoring Group
RA	Republic of Armenia
SIS	Special Investigative Service
TRIPS Agreement	Trade Related aspects of IP Rights Agreement
UN	United Nations
UNODC	United Nations Office on Drugs and Crime

Warsaw Convention	Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism
WIPO	World International Property Organization
WTO	World Trade Organization
YSU	Yerevan State University

## SECTION 1: INTRODUCTION

This report includes the major written work products delivered for the cooperative agreement between the National Academy of Public Administration (the Academy) and the U.S. Department of State, Bureau of International Narcotics and Law Enforcement Affairs. The cooperative agreement, entitled “Justice Academy Anti-Corruption and Human Rights Curriculum Development in Armenia,” was designed to improve the training of investigators, prosecutors, and judges in the Republic of Armenia on anti-corruption and human rights law as well as judicial independence. The Academy developed a subcontract with Yerevan State University’s (YSU’s) Faculty of Law to provide expertise in Armenian law and practice as well as the required language skills needed to deliver training and support materials in Armenian. Any opinions, findings, and conclusions stated in this report are those of the authors and do not necessarily reflect opinions, findings, or conclusions of the U.S. Department of State.

This report is organized into five sections.

[Section 1](#) serves as an introduction to the report.

[Section 2](#) contains the nine course modules outlined in the cooperative agreement:

- Prosecuting Official Corruption Cases
- Investigating and Prosecuting Official Corruption Cases
- Internal Investigations
- Pre-Trial Detention Alternatives
- Investigating and Prosecuting Gender-Based Violence Crimes
- Protection of Human Rights of Juvenile and Minority Offenders
- Financial Crime and Transnational Organized Crime Related to Combating Corruption
- Investigating and Prosecuting Intellectual Property Crimes
- Judicial Independence and Transparency

These nine modules were delivered to potential future trainers at the Justice Academy of the Republic of Armenia in three rounds. The first round of nine modules was delivered by YSU faculty to investigators, prosecutors, and their trainers. YSU faculty delivered the second round to judges and their trainers. The third round was delivered by Justice Academy trainers who received training in the first round. In December 2018, the Justice Academy formally adopted the course coverage of these modules into its curriculum for 2019. The modules presented in Section 2 were translated from the Armenian language versions by the YSU faculty team, with input from the National Academy of Public Administration’s Expert Advisory Group and professional staff. The Armenian language versions have been provided to the Justice Academy for its use and are anticipated to be available through the Justice Academy’s website.

[Section 3](#) summarizes the discussions from two workshops on anti-corruption law (one for investigators and prosecutors, and the other for judges) and two workshops on human rights law (again with one for investigators and prosecutors and the other for judges). These workshops were

delivered by YSU faculty. As with the modules, the summaries were originally developed in Armenian, and Armenian language versions are anticipated to be available through the Justice Academy's website.

[Section 4](#) provides a summary of the evaluations provided by attendees of the training sessions and workshops.

[Section 5](#) provides recommendations from the project team for future efforts that build upon the work summarized here.



## **SECTION 2: TRAINING MODULES ON ANTI-CORRUPTION AND HUMAN RIGHTS LAW AND PRACTICE**

### **Module 1: Prosecuting Official Corruption Cases<sup>1</sup>**

This module is aimed at providing deeper knowledge to investigators, prosecutors and judges on the identification and causes of corruption cases, the challenges in combating corruption, and possible ways to overcome these challenges.

#### **Part 1. The concept of corruption; corruption crimes; classification, characteristics, causes, and consequences**

##### **1. Definition of corruption.**

- a. The following definition of corruption is reflected in the anti-corruption strategy of the Republic of Armenia and its implementation plan: Corruption is the abuse of official power in various (active and inactive) ways in pursuit of a personal interest or other pecuniary ends. Corruption, as abuse of entrusted power, can be expressed in various forms and degrees, among which are bribery or the receipt of bribes, mediation of a bribe, extortion of a bribe, patronage, abuse of official position or ties, abuse or excess of official powers, official fraud, the abuse of official position to extract and waste public assets, and other acts of official abuse.
- b. Generally, no single definition has been widely accepted, though efforts have been undertaken to establish such a formulation (United Nations (UN), Council of Europe (COE), World Bank, International Monetary Fund, Interpol).

##### **2. Characteristics and classification of corruption (political and administrative, public-sector and private-sector, high-level and petty corruption, etc.). Differentiation of corrupt acts from other offenses by public-sector or private-sector officials that are not considered to be corruption (certain types of conflicts of interest, negligence, non-professionalism, errors/mistakes).**

- a. High-level official corruption (abuse of political or public authority) takes place when politicians or senior officials abuse the political authority vested in them in the enactment of political decisions in pursuit of a personal gain or interest; and petty official corruption (administrative corruption) is typical of middle and lower-level officials, who deal with citizens on a daily basis.
- b. Corruption can be found both in the public sector (for example, bribing a governmental official) or in the private sector (for example, a commercial bribe).

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<sup>1</sup> This Module was prepared by experts from the Faculty of Law of Yerevan State University (YSU) in partnership with the National Academy of Public Administration (the Academy). The preparation of this Module was funded by the United States Department of State through a cooperative agreement with the Academy. Any opinions, findings, and conclusions stated in this Module are those of the authors and do not necessarily reflect opinions, findings, or conclusions of the U.S. Department of State.

**3. Corruption offenses according to the Republic of Armenia (RA) Criminal Code and international documents; formulation of offenses that are included in the RA Criminal Code based on international agreements; existing shortcomings, gaps.**

- a. The scope of corrupt acts that are criminalized under the RA Criminal Code is largely consistent with international standards.
- b. Abuse of official powers; abuse of office.
  - i. Article 308 of the RA Criminal Code establishes criminal liability for abuse of official powers when a government official exercises or fails to exercise official duties for mercenary or other personal or group interests and thereby causes substantial or grave harm.
    - The penalty, without aggravating circumstances, is a fine, or deprivation of the right to hold certain positions or practice certain activities for up to 5 years, or arrest for 2 to 3 months, or imprisonment for up to 4 years. The more severe penalty, applicable if the unlawful act negligently causes grave harm, is imprisonment for 2 to 6 years with deprivation of the right to hold certain positions or to practice certain activities for up to 3 years.
  - ii. Article 309 of the RA Criminal Code establishes criminal liability for abuse of office when a government official intentionally takes actions that obviously exceed the scope of authority and thereby causes substantial or grave harm.
    - The penalty, without aggravating circumstances, is a fine, or deprivation of the right to hold certain positions or practice certain activities for up to 5 years, or arrest for 2 to 3 months, or imprisonment for up to 4 years. An increased penalty is warranted if the crime is committed with violence or arms; and the most severe penalty, if the unlawful act negligently causes grave harm, is imprisonment for 6 to 10 years with the loss of the right to hold certain positions or practice certain activities for up to 3 years.
  - iii. These provisions comply with Article 19 of the UN Convention against Corruption, which requires each State Party to consider adopting legislative and other measures to criminalize the abuse of functions or position.
- c. Official bribery.
  - i. Criminal liability for official bribery under the RA Criminal Code applies both to the governmental official who takes or requests a bribe and to the other person who offers or gives the bribe.
  - ii. Article 311 of the RA Criminal Code establishes responsibility for a governmental official who takes or requests a bribe to perform or not to perform actions within his or her authority.

- The penalty, without aggravating circumstances, is a fine, or imprisonment for up to 5 years with deprivation of the right to hold certain positions or practice certain activities for up to 3 years. An increased penalty is warranted if the bribe is for an act or failure to act that is obviously wrong, or as part of extortion or with a group of people; and the most severe penalty – applicable in the case of an organized group, an especially large bribe, or bribery committed by a judge – is imprisonment for 7 to 12 years, with or without property confiscation.
- iii. Article 312 of the RA Criminal Code establishes criminal liability for giving, offering, or promising a bribe to a governmental official to perform or not perform actions within his or her authority.
  - The penalty for giving a bribe to an official is lower than the penalty for the official receiving a bribe. The penalty for giving a bribe, without aggravating circumstances, is a fine, or arrest for 1 to 2 months, or imprisonment for up to 3 years. An increased penalty is warranted if the bribery is in a large amount; and the most severe penalty – if the bribery is in especially large amounts or is by an organized group – is imprisonment for 3 to 7 years.
- iv. Criminal liability is also established for public servants, who are not officials, who receive illegal remuneration, and for persons who give illegal remuneration to public servants. (Article 311.1 and Article 312.1 of the RA Criminal Code).
- v. In addition, criminal liability is established for bribery mediation (contributing to reaching an agreement or implementing an already-reached agreement between the briber and bribe taker) (Article 313 of the RA Criminal Code).
- vi. These definitions are fully consistent with the requirements of both the UN Convention against Corruption and the Criminal Law Convention on Corruption.
- d. Certain ambiguities in the RA legislation on corruption make enforcement more difficult.
  - i. Several provisions on corruption apply different standards and impose different penalties for corrupt practices involving officials than for practices involving other public servants, and Parts 3 and 4 of Article 308 give a detailed definition of the term “official” (as persons performing various functions of representatives of governmental authorities). However, problems can arise in determining whether the person is an official or public servant, as job functions are sometimes not clearly defined.
  - ii. The issue of criminal liability for doctors, teachers, and lecturers who work for governmental entities is also problematic as they are not public servants or officials according to current RA legislation.
  - iii. The RA Criminal Code provides that an individual who gives a bribe is immune from criminal liability, if the individual was subjected to extortion and

voluntarily informed the law enforcement bodies about the bribe within 3 days. This formulation is viewed as insufficient by some international organizations, as it can enable bribe-givers to escape liability unduly.

e. Illicit enrichment.

- i. Article 20 of UN Convention against Corruption requires that illicit enrichment be criminalized, and, in line with this requirement, Article 310.1 of the RA Criminal Code establishes criminal liability for a significant increase in the assets of a public official that exceeds his/her legitimate income and that the official cannot reasonably explain. The provision also applies to any other person required to submit a declaration of revenues under the RA Law on Public Service.

- Under the provision, if a person's declaration shows an increase in property or reduction in debt that significantly exceeds legal income and that is not reasonably justified by the person, the penalty is imprisonment for 3 to 6 years, with loss of rights to hold certain positions or engage in certain activities, and with confiscation of property.

- ii. Unfortunately, the application of this formulation in the RA Criminal Code has turned out to be quite problematic, for several reasons.

- Only limited numbers of officials are currently required to submit a declaration, and there are instances where a person obtained unexplained wealth, but criminal liability was not imposed at the time the act of enrichment occurred.
- Under the language of RA statutes, it is not clear who bears the burden of proof, whether the suspected or accused must prove the enrichment was justified, or whether the state must prove that it was not. However, in practice, prosecutors in RA assume the burden of proof in illicit-enrichment cases. This avoids violating Article 6 § 2 of the European Convention on Human Rights, which requires that "[e]veryone charged with a criminal offense shall be presumed innocent until proved guilty according to law."
- Investigation and prosecution of these cases require lawyers with financial background, and few of them work in law enforcement bodies or in the judiciary. Moreover, when some of the assets are located abroad, effective investigation faces additional obstacles.
- Although the RA Criminal Code establishes liability for declaring false information or for hiding the data subject to declaration, even these circumstances have not been effective in revealing instances of illicit enrichment.

- f. Money-laundering and embezzlement are criminalized under the RA Criminal Code in compliance with the UN Convention against Corruption. As to money laundering, Article 190 of the RA Criminal Code makes it a crime to convert or transfer the proceeds of a crime (knowing that the property is the proceeds of a crime) in order to conceal or distort the criminal origin of the property.
    - i. The penalty, without aggravating circumstances, is imprisonment for 2 to 5 years. The penalty goes up to 6 to 12 years of imprisonment, with or without confiscation of property, if the offense is in an especially large amount, committed by an organized group, or committed using official capacity.
  - g. Private-sector bribery is also criminalized under the RA Criminal Code, which reflects the requirement of Article 21 of the UN Convention against Corruption. Article 200 of the RA Criminal Code covers bribery to any administrator or manager in the private sector.
    - i. A range of penalties is provided. Without aggravating circumstances, the penalty is a fine, or deprivation of the right to hold certain positions or to practice certain activities, or imprisonment for up to 3 years. Aggravating circumstances warranting higher penalties include receipt of a bribe by a business's administrative employee or by an arbitrator, auditor, or attorney. If one of them commits the crime through extortion, the penalty goes up to a fine, or deprivation of the right to hold certain positions or practice certain activities for up to 5 years, or imprisonment for up to 5 years.
  - h. The issue of criminal liability for legal entities.
    - i. At present, the issue of criminal liability for legal entities in Armenia is a subject of ongoing discussions related to the fulfillment of international commitments. Under both the Criminal Law Convention on Corruption and the UN Convention against Corruption, Armenia is obligated to enact measures to hold legal persons liable for bribery, trading in influence, and money laundering committed on behalf of the legal person and for its benefit.
    - ii. Although the current Criminal Code does not impose criminal liability on legal entities for criminal behavior, such provisions are already envisaged in the new draft RA Criminal Code that is under consideration.
4. **The causes of corruption in Armenia: Socioeconomic factors, such as poverty, unemployment, and severe polarization of society between privileged and underprivileged are of primary importance, but they are combined with the lack of efficiency of the state bodies, lack of confidence in them and the bureaucracy and judiciary, and the establishment of an atmosphere of tolerance towards corruption.**
5. **The consequences of corruption, including from the perspective of the country's development, economy, society, security, human rights protection. International assessments.**

- a. At whatever level it occurs, corruption has long-term effects both for individuals and for the country. The spread of corruption impedes the development of the national economy, hinders investments, creates a threat to the state's territorial, political, and social security, promotes emigration, leads to human rights violations and the evading of responsibility by those responsible for it, the growth of crime, loss of confidence in the state governmental organizations, etc.
- b. For Armenia, international rankings and assessments illustrate the harmful impact of corruption on its reputation as a place for foreign trade and investment:

The U.S. State Department's *2018 Investment Climate Statement* for Armenia reports that "Armenia is an increasingly welcoming place for U.S. and foreign investment," but "Corruption remains a significant obstacle to U.S. investment in Armenia, particularly for SMEs [small and medium sized enterprises]."<sup>2</sup>

The OECD's recent report on its monitoring of anti-corruption reforms in Armenia (adopted July 4, 2018), found: "The lack of practical enforcement of anti-corruption laws, in the context of the monopolized economy and widespread conflict of interest among public officials remained a serious concern. The recent revolution brought about massive hope for a democratic change and placed the trust in the new regime, creating an important momentum for change. But this trust may be lost as easily as gained, unless the Government starts showing real action against corruption."<sup>3</sup>

#### **Possible topics for discussion:**

- Factors hindering criminal responsibility for certain types of corruption offences envisaged under the RA Criminal Code.

#### **Part 2. Domestic and international experience in the fight against corruption**

- 1. International best practices in combating corruption: Georgia (raising salaries; reforms of the police, other law enforcement agencies and the judiciary; criminal responsibility of corrupt officials; easy procedures for business administration), other countries in Europe (Romania, Slovenia, Germany, France), Singapore (political will, legislative reforms, effective administration and harsh punishments), Hong Kong (anti-corruption education, awareness raising and corruption prevention).**
- 2. Armenia's experience in combating corruption; recorded successes and failures.**
- 3. The main factors hindering the effectiveness of the fight against corruption.**

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<sup>2</sup> U.S. Department of State, Bureau of Economic and Business Affairs, *2018 Investment Climate Statements*, July 17, 2018, <https://www.state.gov/e/eb/rls/othr/ics/2018/eur/281555.htm>.

<sup>3</sup> OECD, *Fighting Corruption in Eastern Europe and Central Asia, Anti-corruption reforms in Armenia: 4<sup>th</sup> round of monitoring of the Istanbul Anti-Corruption Action Plan*, July 4, 2018, <http://www.oecd.org/corruption/acn/OECD-ACN-Armenia-4th-Round-Monitoring-Report-July-2018-ENG.pdf>.

#### **4. Lessons to be learned from countries that have succeeded in the fight against corruption.**

##### **Possible topics for discussion:**

- Instructive examples of successful and unsuccessful prosecutions and prosecutorial techniques.
- Ways to systematically apply best-practice techniques in investigating and prosecuting corruption cases.

#### **Part 3. Legal (domestic and international) authorities for fighting corruption: requirements intended to prevent corruption**

##### **1. International anti-corruption documents (UN Convention against Corruption, Council of Europe (COE) Criminal Law Convention on Corruption, COE Civil Law Convention on Corruption, Additional Protocol to the COE Criminal Law Convention on Corruption). What principles are widely accepted domestically and internationally (including transparency, accountability, independence, effectiveness)?**

- a. Activities that are criminalized under RA statutes in order to fight corruption (including gaps and shortcomings); Anti-Corruption Strategy of the Republic of Armenia.
- b. Restrictions and requirements intended to prevent corruption (including gaps and shortcomings):
  - i. Ethical norms (the issue of non-precise regulation of ethics norms and the responsibility for their violation);
  - ii. Transparent and merit-based hiring practices (practices and criteria for hiring, placements and promotion);
  - iii. Open and competitive procurement practices (e-platform, blacklist of unreliable bidders);
  - iv. Conflict of interest requirements (the concept of conflict of interests; possible conflict of interest situations arising for investigators, prosecutors, and judges; possible ways to overcome those situations);
  - v. Prohibition of gifts (What is gift? When is the gift evidence of corruption? What gifts can be accepted and from whom? Which gifts cannot be accepted?);
  - vi. Declarations of income, assets, debts, gifts, etc. (Who is obliged to submit the declarations? The requirements to submit declarations that also cover the official's family members, the requirements for the protection of the right to privacy under the ECHR article 8 (*Wytych v. Poland*));
  - vii. Prohibition of commercial activity, etc.; and
  - viii. Restrictions that remain after leaving the office.

#### **Part 4. Organizational framework and techniques for combating corruption**

##### **1. The bodies responsible for combating corruption in the Republic of Armenia, their principal powers and limitations.**

- a. There is no independent central body to fight against corruption in the Republic of Armenia. Though the formation of such a structure was intended, with authority to monitor and investigate, it has not yet been formed.
- b. Until now, the Anti-Corruption Council, which is headed by the Prime Minister, has been the established central body to fight corruption. In addition to the Prime Minister, the Council includes the Minister of Finance, the Minister of Justice, the Prosecutor General, the Chairperson of the Ethics Commission for High-Ranking Officials, one representative of the parliamentary opposition factions, the Chairman of the Public Council, one community representative, and two civil society representatives.
- c. Anti-corruption policies are implemented in separate areas (ministries, state bodies affiliated with the RA Government). Responsible authorities ensure the development and implementation of sectoral programs. A responsible person for the implementation of anti-corruption programs should be appointed in these bodies, at least at the level of the Chief of Staff or the Deputy Head of the Body.
- d. There are numerous state bodies in the Republic of Armenia which, in exercising their functions and powers, promote the prevention of corruption. Such bodies are the Commission on Ethics of High-Ranking Officials, the Ethics Committee of the National Assembly, the RA Control Chamber, the RA Economic Competition Protection Committee, the RA Civil Service Council (CSC), the RA Central Electoral Commission and others. Many state bodies and local self-governing bodies play a key role in effective anti-corruption policy in the Republic of Armenia.
- e. The investigation of corruption crimes is carried out by the RA Investigative Committee, the RA Special Investigation Service, the RA Police adjunct to the RA Government, and the State Security Service under the Government of the Republic of Armenia. The supervision over the legality of the pretrial investigation and investigation of corruption crimes, as well as the defense of the accusation of corruption offenses, is carried out by the RA Prosecutor's Office.

##### **2. International organizations involved in the fight against corruption (OECD, GRECO, UNODC, Interpol, Egmont Group). Monitoring carried out by the mentioned organizations and their consequences.**

- a. GRECO is a structure of the Council of Europe, Group of states against corruption, which is also monitoring the state of corruption in CE members and the states that want to become members.
- b. The United Nations Office on Drugs and Crime (UNODC) pays special attention to the monitoring of corruption in countries that have ratified the UN Convention against Corruption.



- c. INTERPOL, the international police organization, plays a major role in finding and prosecuting individuals involved in corrupt practices who have left for foreign countries.
  - d. The EGMONT group was formed to effectively investigate financial crimes, and especially money laundering and terrorism financing.
3. **The bodies in other countries that have successfully fought corruption there.**
  4. **Partnerships with the private sector, including banks and other financial institutions and with individual personnel within banks and other financial institutions, to ensure reporting (including informal reporting) of large and potentially suspicious transactions. These issues are regulated by the RA Law on Combating Money Laundering and Terrorism Financing.**
  5. **The main administrative mechanisms for combating corruption (including transparency, accountability, investigation of corruption crimes, effective cooperation between state organizations in Armenia and those in other countries in combating corruption, cooperation with institutions and individuals in the private sector).**
  6. **The use of internal controls within government agencies to deter and identify corruption and to assist in investigation and prosecution (including internal audit units; whistleblowers).**
    - a. The introduction of the status of whistleblower, which is regulated by the 2017 law on the System of Whistleblowing, should be highlighted.
    - b. Article 6 of that law establishes an internal control process, under which: investigatory authorities are authorized to receive whistleblower notifications; whistleblowers may then submit notifications to such authorities, either directly or through a supervisor, who must immediately forward the notification to the authority; and the authorities are required to undertake to verify the accuracy of the whistleblower transmission, to notify the Prosecutor's office in case of a crime, and to take measures to protect the whistleblower against retaliation.

## **REFERENCE MATERIALS**

### **INTERNATIONAL TREATIES**

1. UN Convention against Corruption, 2003
2. Council of Europe (COE) Criminal Law Convention on Corruption, 1999
3. COE Civil Law Convention on Corruption, 1999
4. Additional Protocol to the COE Criminal Law Convention on Corruption, 2003
5. The Bangalore Principles of Judicial Conduct

## LEGISLATION AND OTHER AUTHORITATIVE GUIDANCE

1. Constitution of the Republic of Armenia, 2015
2. Criminal Procedure Code of the Republic of Armenia, 1998
3. Criminal Code of the Republic of Armenia, 2003
4. Draft Criminal Code of the Republic of Armenia
5. Anti-Corruption Strategy of the Republic of Armenia for 2015-2018
6. RA Law on Operational Search Activity, 2007
7. RA Law on Prosecutor's Office, 2007
8. RA Law on Police, 2001

## OTHER SOURCES

1. OECD, Investigation and Prosecution of Corruption Offenses: Materials for the Training Course, 2012, <http://www.oecd.org/corruption/acn/lawenforcement/TrainingManualcorruptionoffences2012EN.pdf>
2. OECD, Anti-Corruption Reforms in Armenia: 4<sup>th</sup> round of monitoring of the Istanbul Anti-Corruption Action Plan, adopted 4 July 2018, <http://www.oecd.org/corruption/acn/OECD-ACN-Armenia-4th-Round-Monitoring-Report-July-2018-ENG.pdf>
3. OECD's Progress Update on Anti-Corruption for Armenia, adopted 15 September, 2016, <https://www.oecd.org/corruption/acn/Armenia-ACN-Progress-Update-Oct-2016-ENG.pdf>
4. US State Department's 2018 Investment Climate Statement for Armenia
5. RA Concept in the Fight against Corruption in Public Administration System, 2014
6. Recommendations of the Council of Europe's Group of States against Corruption (GRECO) to Armenia
5. Managing Conflict of Interest in the Public Service. OECD, 2007
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7. UN Handbook on Practical Anti-Corruption Measures for Prosecutors and Investigators, 2004
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11. Commission on the Prevention of Corruption. Slovenia A Review of the Effectiveness of Anti-Corruption Agencies. 1 August 2010
12. ECHR decision Wypych v. Poland

13. US v. Shamah decision

14. United States v. Elias Garza

**Module Compiler:**

Anna Margaryan

## Module 2: Investigating and Prosecuting Official Corruption Cases<sup>4</sup>

This training for investigators, prosecutors, and judges is intended to deepen their understanding of the peculiarities of prosecution and trying corruption crimes, the specific powers of prosecutors and the Prosecutor's Office to fight against this type of crime, and the main challenges existing in judicial practice. This training will give particular emphasis to practical discussions showing how prosecution and judicial trying of corruption crimes should be conducted efficiently and how the main challenges (including, for example, investigating and prosecuting difficult cases) may be addressed.

### **Part 1. The role of investigative and prosecutorial agencies in the fight against corruption**

#### **1. Initiation of criminal corruption proceedings; investigation.**

- a. Under the RA Criminal Procedure Code, a criminal proceeding has two main phases: the pre-trial inquiry and investigation, followed by the judicial proceedings.
- b. An inquiry and investigation may be initiated only by an inquiry body, investigator, or a prosecutor, and only on the basis of:
  - i. reports of crimes made by an individual or a legal entity to the inquiry body, investigator, or prosecutor;
  - ii. media reports of crimes; or
  - iii. revelation of evidence of the crime to the inquiry body, investigator, or prosecutor and court, while exercising their functions.
- c. Four RA agencies are authorized to conduct investigations of corruption:
  - i. The Special Investigative Service (SIS) exclusively authorized to investigate offenses by top officials and managers within all branches of government and to investigate any cases of illicit enrichment or of failure of high-ranking officials to file financial declarations, falsification of declarations, or concealment of information subject to declaration.
  - ii. The Investigative Committee has general investigative jurisdiction, including authority to investigate various types of corruption-related offenses, including commercial bribery, receipt of illegal remuneration by public servants, etc., not assigned for investigation by SIS.
  - iii. Investigators of the tax and customs services investigations related to tax and customs collections, which may include corruption.

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<sup>4</sup> This Module was prepared by experts from the Faculty of Law of Yerevan State University (YSU) in partnership with the National Academy of Public Administration (the Academy). The preparation of this Module was funded by the United States Department of State through a cooperative agreement with the Academy. Any opinions, findings, and conclusions stated in this Module are those of the authors and do not necessarily reflect opinions, findings, or conclusions of the U.S. Department of State.

- iv. The National Security Service's Investigation Department investigates offenses committed by employees of the Special Investigative Service.
- d. Other governmental bodies have additional specialized fact-finding authority in this area, including:
  - i. Police of the Republic of Armenia – its Department on Combating Corruption and Economic Crimes, within its Organized Crime Department, has pre-investigation inquest power in relation to corruption offenses;
  - ii. The Commission on Ethics of High-Ranking Officials – the commission initiates investigations into false asset declarations and can make referrals to criminal investigators; and
  - iii. Internal investigative units – such units in the Police, the Prosecutor's office, the National Security Service, and the State Revenue Committee conduct internal audit, official examination, and internal investigation of employees within the office.

**2. The governmental structure, authorities, and responsibilities of prosecutors and the Prosecutor's Office.**

- a. The Prosecutor's Office is a unified, centralized body, headed by the Prosecutor General, and comprised of the Prosecutor General's Office, Prosecutor's Offices for various cities and other regions, and the Central Military Prosecutor's Office and the military prosecutor's offices for various garrisons of the armed forces.
- b. The general authorities of prosecutors in the Prosecutor's Office are:
  - i. Exclusive power to instigate a criminal prosecution;
  - ii. Overseeing the lawfulness of inquests and preliminary investigations (including responsibility for the completeness, effectiveness, and impartiality);
  - iii. Pursuing criminal charges in court;
  - iv. Appealing judgments and decisions of the courts; and
  - v. Overseeing the lawfulness of applying criminal punishments, as well as any other coercive measures and physical force by the government.
- c. The authority to bring actions with regard to protection of state interests. This means protecting the property or non-property interests of state or local authorities, through civil, administrative, criminal, or international proceedings.

**3. Peculiarities of prosecutorial supervision over the legality of investigation and preliminary investigation of corruption crimes.**

- a. Prosecutorial oversight over legality of pre-trial criminal proceedings as a safeguard against corruption.
- b. Implementing procedural management of pre-trial criminal proceedings.

- c. Prosecutor's supervision over the legality of operative-investigative measures.
  - d. Other anti-corruption activities of prosecutors and the Prosecutor's Office, particularly by bringing actions in court to protect state interests.
- 4. Coordinating with the activities of other law enforcement agencies and boards in the fight against corruption.**
- a. The peculiarities of coordinating by the Prosecutor's Office of the activities of all other responsible agencies.
  - b. In addition to investigative bodies (presented above), several key governmental boards have been established to fight corruption, including:
    - i. The Anti-Corruption Council, a broadly representative high-level body;
    - ii. The Commission on Ethics of High-Ranking Officials, an independent commission that receives and analyzes asset declarations and otherwise detects and reports on ethics violations and conflicts of interest. The commission also initiates investigations into false asset declarations and can make referrals to criminal investigators; and
    - iii. The State Commission for the Protection of Economic Competition (the "Anti-Monopoly Commission"), which, among other things, makes decisions on disaggregation of economic entities that abuse their dominant economic position, and on penalizing economic entities and private-sector or governmental officials for violating the law on economic competition.
- 5. Requirements of independence and impartiality applicable to the Prosecutor's Office and to individual prosecutors; the importance of such independence and impartiality particularly in corruption cases.**
- a. Adherence by the Prosecutor's Office and individual prosecutors to standards of independence and impartiality is essential in the fight against corruption.
    - i. The prosecutors' office and prosecutors must be able to perform their functions without political pressure and without intimidation from commercial interests, advocacy groups, or the media.
    - ii. In cases of criminal offenses by public officials, including corruption, the prosecutors' office and prosecutors must be in a position to prosecute without obstruction.
    - iii. Prosecutors need to be aware of the dangers of corruption and should never ask for, accept, or receive any benefit in the exercise of their functions.
  - b. International bodies have developed and expressed principles and guidelines on the independence and impartiality prosecutors over a number of years. Recent

statements by European organizations,<sup>5</sup> recognizing that European countries employ a variety of prosecution systems, emphasize certain points:

- i. The manner in which the Prosecutor General is appointed and recalled should be such as to gain public confidence and avoid politicization;
  - ii. The prosecution office should be independent of the executive and the legislature with respect to whether to prosecute or not;
  - iii. Prosecutors' employment should be subject to fair and impartial methods of appointment, promotion, discipline, transfer, dismissal, and job tenure;
  - iv. Prosecutors' work should be protected by procedural guarantees against improper instructions or pressures from within the prosecution system; and
  - v. Prosecutors should strive to be, and to be seen as, independent and impartial. Strict codes of ethical and professional conduct should apply.
- c. The guarantees of prosecutors' independence and impartiality as established in the new RA Law on the Prosecutor's Office.
- 6. The Republic of Armenia has also entered into several international compacts and groups, and thereby assumed obligations and gained access to cooperative efforts in fighting corruption. These include:**
- a. The UN Convention against Corruption, signed by RA 2005 and ratified in 2006;
  - b. GRECO (Group of States against Corruption), the Criminal Law Convention on Corruption and the Civil Law Convention on Corruption, which Armenia joined in 2004; and
  - c. Open Government Partnership, a partnership of governments and civil society organizations, which Armenia joined in 2012.

## **Part 2. Investigatory and trial practice in specific kinds of criminal and civil anti-corruption cases**

### **1. Limitations on the use of anonymous reports of criminal activity.**

- a. When the reasons and grounds as specified in the RA Code of Criminal Procedure are known, the prosecutor, investigator, and inquiry body having jurisdiction are obligated to initiate a criminal prosecution. However, under the Code, anonymous reports are not considered proper grounds to initiate a criminal prosecution. Therefore, if a report of a corruption offense has been received anonymously, that

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<sup>5</sup> Conference of Prosecutors General of Europe, European guidelines on ethics and conduct for public prosecutors ("Budapest Guidelines"), CPGE(2005)05; European Commission for Democracy through Law ("Venice Commission"), Report on European standards as regards the independence of the judicial system: Part II – the prosecution service, CDL-AD(2010)040; Bureau of the Consultative Council of European Prosecutors, Report on the independence and impartiality on the prosecution services in the Council of Europe member States in 2017, CCPE-BU(2017)6; European Network of Councils of the Judiciary, Independence and accountability of the prosecution, Report 2014-2015.

report is not sufficient for initiating a criminal case. However, anonymous reports can serve as a reason for the police or other inquiry bodies to check the facts alleged in the anonymous report, and, if the features of a crime are then detected, a criminal prosecution may be initiated.

By comparison, in some other European countries, anonymous reports can be sufficient grounds for opening a criminal case (e.g., Germany, Belgium, Switzerland).

- b. Also, a whistleblower system that encourages reports that are not anonymous, but where the informant is appropriately protected, can be an important basis for corruption enforcement.
- c. Also, a whistleblower system that encourages reports that are not anonymous, but where the informant is appropriately protected, can be an important basis for corruption enforcement.

## **2. Operative-intelligence activity as an adjunct to criminal investigation and prosecution.**

- a. Although proof of crime is mainly carried out through ordinary investigative and procedural action in pre-trial proceedings, the investigator or prosecutor may decide it is necessary to instruct the investigate body to perform operative-intelligence operations. (Operative intelligence refers to any of a variety of undercover and secretive intelligence activities.)
- b. Because of the secretive and sophisticated nature of much corruption crime, operative-intelligence activities are often found to be necessary.
- c. Operative-intelligence activities are regulated by the RA statute on “Operative-intelligence activity,” which establishes special procedural and substantive requirements. Operative-intelligence activities in the fight against corruption or other crime may be conducted before the initiation of a criminal case or after the filing of such a case.
- d. Operative-intelligence activities may be carried out not only to obtain information about crime, but also to prevent crime. However, insofar as data obtained through operative-intelligence activities are not obtained according to the RA Criminal Procedure Code, such data may not be used as evidence in a criminal case. Accordingly, if a criminal conviction is the goal, investigation under the RA Criminal Procedure Code is needed to obtain proof to support for conviction.

## **3. Illicit enrichment: the presumption of innocence and the burden of proof, domestic legislative rules and foreign experience, and comparative-legal analysis.**

- a. Armenia criminalized illicit enrichment by legislative amendment in 2016 that entered into effect on 1 July 2017. RA Criminal Code Art. 310.1. The wording is seen as generally reflecting the concept advocated by the UN Compact against Corruption.



- b. Appropriate burdens of proof for the legitimacy of a significant increase in the assets of a public official. Under language of RA statutes (Article 310.1 of the RA Criminal Code), it is not clear who bears the burden of proof, whether the suspected or accused must prove the enrichment was justified, or whether the state must prove that it was not.
  - c. The legitimacy of a retreat from the presumption of innocence from the point of view of the pressing social need to fight against corruption; burden of proof as an instrument to curb corruption and deprive corruptors from the proceeds of crimes rather than the of exaggeration the presumption of innocence.
  - d. The consistency of the legislative rules on shifting the burden of proof on the alleged perpetrator in cases of illicit enrichment with the right to silence and the privilege against self-incrimination.
  - e. The example and experience of the UK's use of its new Unexplained Wealth Order authority.<sup>6</sup>
  - f. Some have advocated that unexplained wealth can be combatted by means that do not impinge upon human rights by shifting the burden of proof, such as by examining financial-disclosure obligations for government officials, in combination with rigorous enforcement of tax-evasion laws.<sup>7</sup> Also, expert advisors have recommended: "Consideration could also be given to following other countries in adopting legislation that would allow the confiscation of assets as a civil matter where the source of those assets cannot be adequately explained."<sup>8</sup>
- 4. Trying corruption cases; application of international legal provisions in the fight against corruption by the courts. Emerging issues, obstacles, and ways of overcoming them.**
- a. Direct application of the provisions of international treaties (Civil Law Convention on Corruption, Criminal Law Convention on Corruption, United Nations Convention against Corruption) in the RA judicial practice.

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<sup>6</sup> Michael Potts, "What you need to know about unexplained wealth orders," *FT Advisor (Financial Times)*, October 15, 2018, <https://www.ftadviser.com/investments/2018/10/15/what-you-need-to-know-about-unexplained-wealth-orders/>.

<sup>7</sup> Jeffrey R. Boles, "Criminalizing the Problem of Unexplained Wealth: Illicit Enrichment Offenses and Human Rights Violations," *N.Y.U. Journal of Legislation and Public Policy* 17, no. 4 (2015): 835-880, <http://www.nyujlpp.org/wp-content/uploads/2015/03/Boles-Criminalizing-the-Problem-of-Unexplained-Wealth-17nyujlpp836.pdf>.

<sup>8</sup> Partnership for Good Governance, Council of Europe, Expert Opinion of the Directorate General Human Rights and Rule of Law of the Council of Europe on the Draft Criminal Code of Armenia, September 2017, p. 35, <https://rm.coe.int/coe-opinion-on-draft-criminal-code/168075f918>. This opinion further explained, but with a caveat: "This generally avoids problems arising with respect to the presumption of innocence. However, it should be noted that the presumption of innocence can be breached even in civil proceedings and the European Court has found violations in three cases (two of them involving relatives)." *Ibid.*, footnotes omitted.

- b. The absence of a clear framework and a common international definition of corruption.

**5. “Imitation of receiving or giving a bribe”: the legal positions of the Cassation Court.**

- a. The scope of the use of “imitation of receiving or giving a bribe” as an operative-investigative measure.
- b. The possibility of applying this operative-investigative measure not only in cases of giving or receiving a bribe but other kinds of corruption crimes as well (for example, receiving unlawful remuneration).

**6. Prosecuting officials who have immunity.**

- a. RA national law provides immunity against criminal proceedings for certain high-level officials, including the RA President, National Assembly Deputies, Judges of the Constitutional Court, and judges of both courts of general jurisdiction and specialized courts.
- b. RA legislation provides a procedure by which immunity can be removed from such officials when appropriate, but it is essential to thoroughly analyze and carefully apply the procedures to avoid investigatory or adjudicatory actions being subsequently adjudged as unlawful.
- c. In conducting this planning and carrying it out, it is essential to be mindful that the procedures and processes for removing immunity have not been interpreted consistently in prior cases.
- d. Notwithstanding the existence of immunity, some methods of criminal inquiry may be applied by obtaining the authority to intercept telephone conversations and correspondence. These forms of investigative and operational intelligence actions may be carried out in general, by a court decision, without further consent of other authorities.

**7. The challenges for judicial practice regarding certain corruption crimes prescribed in the RA Criminal Code (e.g., bribery, improper interference) and the ways of overcoming them; the RA and the foreign experience.**

- a. The importance of proper reasoning of the legal nature and causes of the accusation; exclusion of general accusations.
- b. Proper knowledge of public sector law.
- c. How to handle high-profile corruption cases when pressure is being exerted by the government, the public, or the media to decide a case one way or the other, especially if proof of guilt is ambiguous or taking a long time to obtain.

**Possible topics for discussion:**

- Legal and political obstacles for trying official corruption-related offenses and the possible ways to overcome them.

- Deviation from the principle of presumption of innocence in cases of illicit enrichment and shifting the burden of proof of the lawfulness of income onto the alleged perpetrator; advanced international experience in this regard.

### **Main methods of training:**

- Discussion of these issues will be organized in an interactive manner, that is, the legislative requirements, as well as the international experience will be presented, and then hypothetical situations or real situations from practice will become the subject to general discussion. The practitioners, including judges, will be invited to present examples from their own practice, which will become the subject of general discussion.

## **REFERENCE MATERIALS**

### **INTERNATIONAL TREATIES**

1. Civil Law Convention on Corruption, 1999
2. Criminal Law Convention on Corruption, 1999
3. United Nations Convention against Corruption, 2003

### **LEGISLATION**

1. The RA Criminal Code, 2003
2. The RA Civil Code
3. The RA Law on the Prosecution, 2007

### **REFERENCES ON ETHICAL PRINCIPLES AND REQUIREMENTS APPLICABLE TO PROSECUTORS**

1. Relevant provisions of RA Law, including on the Prosecutor's Office
2. European Union regulation on the establishment of a European Public Prosecutor's Office, <http://eur-lex.europa.eu/eli/reg/2017/1939/oj>.
3. US Department of Justice, Government Ethics Outline, <https://www.justice.gov/jmd/government-ethics-outline>
4. American Bar Association (ABA) standards for prosecution, [https://www.americanbar.org/groups/criminal\\_justice/standards/ProsecutionFunctionFourthEdition-TableofContents.html](https://www.americanbar.org/groups/criminal_justice/standards/ProsecutionFunctionFourthEdition-TableofContents.html)
5. ABA publication "The Role of Codes of Conduct for Legal Professionals in the Effort to Eliminate the Culture of Corruption," [https://www.americanbar.org/content/dam/aba/directories/roli/raca/asia\\_raca\\_role\\_of\\_codes.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/directories/roli/raca/asia_raca_role_of_codes.authcheckdam.pdf)

### **OTHER SOURCES**

1. OECD, Anti-corruption reforms in Armenia: 4<sup>th</sup> round of monitoring of the Istanbul Anti-Corruption Action Plan, adopted 4 July 2018.

2. OECD, Investigation and Prosecution of Corruption Offenses: Materials for the Training Course, 2012,  
<http://www.oecd.org/corruption/acn/lawenforcement/TrainingManualcorruptionoffences2012EN.pdf>.
3. United Nations Guide on Anti-Corruption Policy,  
[https://www.unodc.org/pdf/crime/corruption/UN\\_Guide.pdf](https://www.unodc.org/pdf/crime/corruption/UN_Guide.pdf).
4. ADB-OECD Anti-Corruption Initiative, ADB-OECD Anti-Corruption Initiative for Asia-Pacific Combating Corruption in the New Millennium/Report,  
<https://www.oecd.org/site/adboecdanti-corruptioninitiative/regionalseminars/35023374.pdf>
5. International Anti-Corruption Academy (IACA), Preventing and combatting corruption in the Eurasian Region, 2-4 October 2017.
6. Jeffrey R. Boles, Criminalizing the problem of unexplained wealth: illicit enrichment offenses and human rights violations, <http://www.nyujlpp.org/wp-content/uploads/2015/03/Boles-Criminalizing-the-Problem-of-Unexplained-Wealth-17nyujlpp836.pdf>
7. Michael J. Hunter, “Prosecuting Public Officials/Figures for Corruption: The Approach in the United States”,  
[https://www.americanbar.org/content/dam/aba/directories/roli/raca/asia\\_raca\\_prof\\_hunter\\_prosecuting.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/directories/roli/raca/asia_raca_prof_hunter_prosecuting.authcheckdam.pdf).
8. William J. Dreyer. “Defending a Public Official Against Charges of Public Corruption in the United States and the Model Case of United States of America v. McDonough”,  
[https://www.americanbar.org/content/dam/aba/directories/roli/raca/asia\\_raca\\_mr\\_dreyer\\_defending\\_official.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/directories/roli/raca/asia_raca_mr_dreyer_defending_official.authcheckdam.pdf).

## **KEY COURT DECISIONS**

1. ECHR, Case of Pham Hoang v. France, application no. 13191/87, 25 September 1992
2. Case no. EADD/0117/01/16
3. Case no. EED/0040/01/16
4. Case no. SHD2/0008/01/16
5. Case no. EKD/0004/01/16
6. Case no. EAKD/0151/01/15
7. Case no. EKD/0156/01/15
8. Case no. LD/0042/01/15
9. Case no. EKD/0123/01/14
10. The decision of the RA Cassation Court no. SHD2/0004/01/14

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## Module 3: Internal Investigations<sup>9</sup>

This training for investigators, prosecutors, and judges is intended to deepen their understanding of the use of internal investigations, including audits and responses to whistleblowing, to promote a culture of compliance and detect wrongdoing that should be prosecuted or handled administratively.

### **Part 1. Conducting investigations in the workplace**

#### **1. The procedures and responsibilities for conducting investigations in government entities (overview and main challenges).**

- a. The RA Labour Code regulates the reporting of corruption cases in both private and public employment. The Labour Code states an obligation for an employee to inform the employer about any hazard to public life, health or protection of the property of the employer (Article 216).
  - i. It needs to be clarified whether fraud and corruption qualify as hazards to the property of the employer and public life and health, as well as whether each employee has an obligation to inform the employer about such hazards and what actions are required from the employer.
    - The above-mentioned obligation for the employee is stated in the Labour Code in a quite vague and ambiguous manner. Therefore, for the whistleblower provision to apply to corruption, it is necessary to assume that corruption may ultimately cause hazard to the property of the employer and public life and health (such as corruption in a construction company causing immediate danger to the public, or corruption in a mining company causing environmental harm). Following this logic, international organizations keep bribery and corruption cases in spotlight.
    - Hence, the RA Labour Code envisages an obligation of support for an employee to reveal corruption. By contrast, the Labour Code establishes no obligation for an employer to adopt regulations or to follow procedures with an aim to investigate corruption cases. This casts doubts on the efficacy of the whistleblower provisions in the business sector.
  - ii. The idea of internal investigations is widespread in the public sector, such as internal investigations for misconduct of public servants (civil servants, community servants, tax and customs employees, etc.).

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- Armenian law stipulates procedures for investigation in relation to public servants. For instance, the procedure of investigation involving a municipality servant is contemplated in Government resolution 1003-N of 13.07.2006; the procedure of investigation over a penitentiary servant is prescribed in the Justice Minister's decree KH-46-N of 19.08.2006; the procedure of investigation over a military servant is envisaged in the Defence Minister's decree 991-N of 20.09.2012; the procedure of investigation over servants in tax and customs authorities is regulated by Government resolution 896-N of 28.08.2014 (Acts).
  - In general terms, these by-laws state that an investigation is required before imposing disciplinary punishment on a public servant for not performing or not duly performing his or her duties. In some cases, a public servant may request that an investigation be conducted if he or she believes that false accusations and doubts will be ruled out (e.g. RA Law on Tax Service, article 40(5)).
- iii. In general, the regulations regarding internal investigations in the public sector and the objectives of such investigations, their procedures, and the objectives for such procedures are well defined.
- None of the above-mentioned Acts uses the terms “corruption” or “corruption cases.” However, as the RA Law on Whistleblowing System defines “corruption cases” as illegal offenses through abuse of one’s position in office, it can be inferred that an investigation of whether a public servant underperforms or ignores his or her duties will also include examination of possible corruption.
- iv. Some circumstances, such as withdrawal of an application which had been used to start an investigation, as well as the conclusion of such an investigation are worth mentioning. The conclusion of the investigation should include the proposals and legal reasoning as to whether there was a need to impose a disciplinary sanction or not, the facts regarding the nature of the disciplinary action, as well as any proposal to impose a disciplinary sanction in the aftermath of the investigation.
- The wording in the final documents (conclusions) where the results of investigation are wrapped up is very important, as it might fail to explicitly state anything regarding a corruption case. Nevertheless, scrutinizing such wording and examining it in connection with other evidence and documents may help reveal corruption cases.
- v. The person who has the authority to impose sanctions following an internal investigation can decide whether a disciplinary sanction needs to be imposed and which type of disciplinary sanction needs to be applied.

- vi. The person or body who has the authority to make a decision based on internal investigations should be able to assess whether the behavior of the employee qualifies as a potential crime and, thus, to decide whether to send the matter to the law enforcement bodies for further investigation.
  - These Acts do not expressly set forth any requirement of reporting to law enforcement bodies as an aftermath of investigations. This may be linked to the fact that investigations can be conducted for any kind of breach by a public servant which do not have the elements to qualify as a corruption case. In such cases, reporting to the law enforcement bodies is largely within the discretion of the head of the relevant authority or the Investigation Committee. However, they may be inclined to report to the law enforcement institutions in order to avoid criminal charges themselves for concealing a crime. On the other hand, a lawyer is not always required in an Investigation Committee, so the Committee members may not be able to identify elements of corruption or other crime in a public servant's behavior.
- vii. It is not clear who bears the responsibility to make an application to the law enforcement bodies. Should they be the employees who are aware of a behavior of potentially criminal activity, or the ones who have the responsibility to make a decision on behalf of the legal entity or organization or state institution? Do the employees have the responsibility to act on their own to inform such bodies about others' activity?

## **2. Examination of misconduct by non-governmental employees.**

The procedures for imposing disciplinary sanctions or penalties (required documentation, and authorities and responsibilities for conducting examinations) for employees of businesses or other non-government entities: Different types of sanctions and penalties include reprimands, demotions, removal from employment, criminal charges, civil actions to recover funds, etc.

- a. Internal disciplinary procedures will be applied in the event an employee is accused of an abuse or a violation in the private sector.
  - i. The Labour Code, Articles 215-230, sets forth the disciplinary procedures and disciplinary sanctions for an employee.
    - Disciplinary sanctions are imposed for being in breach of working discipline. According to the Labour Code, Article 220, any underperformance or non-performance of an employee's duties qualifies as a violation of working discipline in case there is employee fault. This means that disciplinary sanctions may be imposed only in the event there is an underperformance or non-performance of an employee's duties, and these may not necessarily

include cases when an employee abuses the powers vested in him or her.

- ii. The RA Law on Whistleblowing System does not stipulate private employment, except for the organizations of public importance. These organizations are defined by the law as entities that operate in the field of public services and that have more than 50 employees.
- iii. Consequently, conducting internal investigations in both the business sector and private organizations lies with the discretion of such entities.
- b. The disciplinary proceedings and documentation required to impose a disciplinary sanction on an employee.
  - i. Under the Labour Code, an employer is obliged to ask for written explanations. Moreover, an employee has the right, but is not required, to submit such an explanation.
  - ii. Any disciplinary sanction will presumably be in writing, although the Labour Code does not expressly require that. The Labour Code also states that, in imposing a sanction, the employer must consider a set of circumstances (fault, former behavior, etc.). However, the Labour Code does not force the employer to have a detailed explanation of such circumstances in its decision. On the other hand, if the police are involved, a large amount of work is required to support the facts behind the imposed sanction.
- c. The categories of disciplinary sanctions that may be imposed in the private sector are a warning, strict warning, and termination of the employment agreement in the manner and grounds envisaged in the law. (No other type of disciplinary sanction is permitted by the Labour Code.)

### **3. Documentation required to show the results of an investigation of misconduct, and the process for deciding on sanctions or penalties, in public or private employment.**

- a. The results of an internal investigation in the public sector are to be memorialized in written minutes or a conclusion. The resolutions of the Government lay down the structure of such a conclusion, which should include the final thoughts, proposals, and legal reasoning, among other requirements.
  - For example, according to the Justice Minister's decree KH-46-N of 19.08.2006 (clause 27), the conclusion made as an outcome of internal investigations over a penitentiary servant includes substantiation containing data received upon investigation, the reasoning behind it, fault or innocence of the servant accused of a disciplinary violation, other characteristics of the servant, as well as the servant's employment record (sanctions and encouragement) for the previous year.



- b. The identification of the person who has the right to impose a disciplinary action.
    - The purpose is to identify who has the authority to report to law enforcement agencies regarding offences that may have elements of a corruption case based on the conclusion. This should also reveal instances when a failure to reporting may have involved nepotism or may indicate whether that person is also involved corruption.
- 4. Steps to be undertaken to seek disciplinary action or penalty through a referral to law enforcement authorities.**
- a. The type of the disciplinary action to be imposed both in private and public employment will be decided as an outcome of the internal investigations or disciplinary proceedings.
  - b. Following the logic of the legislation, it is assumed that a person makes an application to law enforcement bodies if the person encounters a potential criminal activity. The law enforcement body will decide whether such a behavior qualifies as a crime, as well as whether a liability should follow. However, law enforcement bodies do not have a responsibility to start investigations unless they are informed about such a criminal activity.
  - c. Circumstances in which the person in charge of making decisions on behalf of private companies, organizations or state bodies will make an application to law enforcement bodies should also be discussed within the course. What is expected from the law enforcement bodies to undertake on their own to reveal corruption cases; the potential need to amend Armenian law.

## **Part 2. Internal and external audit investigations**

### **1. Systems of internal control.**

- a. Definition and purposes internationally.
 

Under international standards, the internal audit is defined as follows: generally, internal control is a process, effected by an *entity's board of directors, management, and other personnel*, designed to provide *reasonable* (not an absolute) assurance regarding the achievement of objectives relating to *operations* (effectiveness and efficiency), *reporting* (credibility), and *compliance* (laws and regulations) (COSO or Committee of the Sponsoring Organisations of the Treadway Commission [www.coso.org](http://www.coso.org)).
- b. Main definitions in internal control and internal audit, including internal audit, control system, effectiveness, efficiency and others, which are defined in the RA Law on Internal Audit (Article 2).
  - According this provision, internal audit is independent, objective assurance and advisory function which is intended to increase the result of activity of an organization. It assists the organization to accomplish its goals through risk management, inspection, as well as

assessing and improving systemized and regulated management procedures.

- c. Internal Audit is conducted based on strategic and annual plans to assure and advise management. Internal control is mandatory in public entities and financial organizations. Government resolution 176-N of 13.02.2014 stipulates the procedure for qualification of internal auditors, as well as main requirements for carrying out internal audits in public organizations.
- d. A number of financial organizations operating under the supervision of the Central Bank of the RA are also required to have Internal Audit units or internal auditors. The qualification is organized and administered by the RA Central Bank.

**2. Role and function of internal audit (in both the public and private sectors) and external auditors. The function of the government regarding financial supervision, as well as its procedures for implementation and ensuring accountability (routine and follow-up actions).**

- a. The traditional role of the internal audit is to assure that the risk management of the organization and governance, as well as the internal control system, are effective. Unlike an external audit, the internal audit aims to go beyond the management of financial risks and examine the reputation of the entity, impacts on growth, and treatment of employees.
- b. The Ministry of Finance administers qualification for internal auditors in the public sector. Public sector organizations are:
  - State and municipal bodies laid down in the RA Constitution and laws;
  - Public and municipal institutions;
  - Public and municipal non-commercial organizations; and
  - Organizations with more than a 50% public and municipal share of capital.

Government resolution 176-N of 2014 also accepts internationally recognized qualifications. The information regarding the process of qualification by the Ministry of Finance, accountability, and trainings can be accessed at its official web page.<sup>10</sup>

- c. Private-sector entities where internal control is mandatory.
  - i. Only financial institutions (banks, insurance companies, credit organizations, investment funds, etc.) operating in Armenia are required to have an Internal Audit unit or internal auditors. There is no mandatory requirement for other business companies to have an internal auditor. In open joint stock companies,

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<sup>10</sup> [http://www.minfin.am/hy/page/nerqin\\_audit/](http://www.minfin.am/hy/page/nerqin_audit/)

an inspector or an inspection committee is appointed. The last two categories of bodies are different from internal auditors by their nature, which will be discussed later in this material.

- ii. The regulations passed by the Central Bank also urge internal auditors and their changes in financial institutions to be registered with the Central Bank.
- d. Based upon the package of recent Constitutional changes in Armenia, the function of the Government with regard to financial supervision is currently being implemented by the RA State Supervision Service, according to the Law on State Supervision Service passed on March 23, 2018. In its aftermath, the Supervision Service under the Staff of the President was eliminated.
  - At the same time, instead of the former Supervising Chamber there is an Accounts Chamber. The law regulating the operation of the latter became effective on April 9, 2018.
- e. The Financial-Budgetary Inspectorate of the Ministry of Finance is presently being reorganized. It will operate as a department under the Staff of the Ministry and its powers will be established by the charter of the Ministry of Finance (approved by the Prime Minister's decree 743-L of 11.07.2018).

The State Supervision Service aims to ensure the implementation of supervising power of the RA Prime Minister. It operates based on the principle of efficiency, which is defined by the RA Law on State Supervision Service as the proportion of material and nonmaterial means used for the achievement against the result.

This means that if a corruption case has little value, the State Supervision may not chase after these cases. However, small, but widespread cases may cumulatively provoke huge financial loss for the state.

Nor does this Law clarify the obligation of reporting to the police, which may have an adverse effect on revealing corruption cases in spite of the existing general presumption under the legislation that the State Supervision Service may report to law enforcement bodies when it comes across such cases or its employees blow a whistle (can also be anonymously).

At present, the aim of the Financial-Budgetary Inspectorate of the Ministry of Finance (the Inspectorate) is to increase financial discipline. The Inspectorate also provides inspection (review) upon receiving resolutions from the investigation bodies according to the Criminal Procedure code, as well as resolutions of the court as stipulated in the Civil Procedure code of the Republic of Armenia (Decree 612-N of the Government of RA, 12.01.2014).

- f. If a law enforcement body has revealed any violation regarding an abuse of public funds, it must make an application to the Inspectorate to start inspection of that entity with an aim to find out the actual situation at that entity. This needs to be implemented according to the rules laid down in the Criminal Procedure Code, as well as the act regulating the activity of the Inspectorate.

g. External Audit.

- External Audit is conducted for the financial reports and/or other information contemplated in documents containing financial reporting (hereinafter referred to as financial reports) through audit and/or services adjacent to audit (examination, consented procedures, compilation (collecting information)) (Law on Auditing Activity, Article 6(1)).
- h. The examination of financial reports aims to reveal the facts, which may bring evidence that financial reports with major violations are not composed in compliance with the legislation of the Republic of Armenia.
- i. Audit standards and requirements for the auditor's behavior are stated by the Government of the Republic of Armenia in accordance to the Audit International Standards and Code of Ethics (Law on Audit Activity, Articles 6, 11(3)).
- The Conclusion is the final document contemplating the results of the audit conducted by an external auditor and its requirements.
  - The peculiarities of a Conclusion that includes commercial, state or other types of secrecy.
  - According to the Code of Ethics of an external auditor, confidentiality is a principle of audit and the external auditor must keep the secrets confidential in the case if he or she is aware of such information. What to do if an auditor is aware of information that may qualify as a crime.
  - Internal Audit Standards are approved by the Ministry of Finance (Decree 974-N, 08.12.2011). Among these standards, the below-mentioned ones are of paramount importance for law enforcement bodies.

**3. Standard 2330.H1.**

- a. Point 300. Registration of tasks is usually made based on a presumption that their content is confidential and may contain or contains both facts and conclusions. The people who are not directly familiar with the organization or its internal control system may perceive these facts and conclusions wrongly. External parties may submit an application with an intention to use the registration of tasks for various purposes, such as criminal investigation, civil court proceedings, tax inspections, as well as inspections and examinations of the relevant bodies. The registrations of the organization that are not protected as secret by law are accessible for criminal investigations. The manner or accessibility in other proceedings is regulated by the law.
- b. Point 370. In some scenarios, laws and other regulations stipulate that public servants must submit the information regarding both unlawful behavior and actions regarding noncompliance with the Code of Ethics to the competent authorities envisaged in the legislation. Law protects the rights of the person who discloses special types of improper activity. These actions include the following:

- i. Crimes and other violations of law;
- ii. Actions which are classified as unfair;
- iii. Actions which are harmful to the wealth and safety of an individual;
- iv. Actions which are harmful for the environment; and
- v. Actions that disguise or hide each of the above-mentioned actions.

**4. Ethical rules and conflicts of interest for internal and external auditors; avoiding conflicts of interests.**

a. Internal Audit Standard 1100 – Independence and Objectivity.

The director of the organization and the Internal Audit Committee must create conditions for assuring independence for the internal auditor. Independence allows an internal auditor to make unbiased judgements, which are essential for proper implementation of the assignments. A crucial pre-condition for this is defining a clear structural separate status of internal auditors from the rest of the activities of the organization. The objectivity of internal auditors assumes approaches that are unbiased, honest and free of conflicts of interest (Decree 974-N of the Minister of Finance, 08.12.2011, Clause 6).

b. Standard 1120 Individual Objectivity (Decree 974-N of the Minister of Finance, 08.12.2011, Section 6).

- i. Individual objectivity means the internal auditors perform engagements in such a manner that they have an honest belief in their work product and that no significant quality compromises are made. Internal auditors are not to be placed in situations that could impair their ability to make objective professional judgments.
- ii. Individual objectivity involves the chief audit executive (CAE) organizing staff assignments that prevent potential and actual conflict of interest and bias, periodically obtaining information from the internal audit staff concerning potential conflict of interest and bias, and, when practicable, periodically rotating internal audit staff assignments.

c. Review of internal audit work results before the related engagement communications are released assists in providing reasonable assurance that the work was performed objectively.

d. The internal auditor's objectivity is not adversely affected when the auditor recommends standards of control for systems or reviews procedures before they are implemented. The auditor's objectivity is considered to be impaired if the auditor designs, installs, drafts procedures for, or operates such systems.

e. Standard 1220 – Due Professional Care. Internal auditors must apply the care and skill expected of a reasonably prudent and competent internal auditor. Due professional care does not imply infallibility. Due professional care must match the

extent of the complexity of the assignment. Due professional care assumes that an internal auditor must consider errors, fraud, non-compliance and probability of conflict of interests. They must be prudent while considering facts and work where the probability of fraud is high. At the same time, they must reveal inadequate elements of internal control and submit proposals with an intention to provide compliance with existing procedures and rules and/or amend them, change them or adopt new ones.

- f. Due professional care assumes prudence and skills. However, it does not require complete avoidance of mistakes and making extraordinary efforts. Due professional care assumes that an auditor must do auditing and making assurances reasonably. Internal auditors are not able to provide absolute assurances that there are no cases of noncompliance or violations. Every single time when an internal auditor starts implementation of assignments, he or she must consider the probability of significant noncompliance cases and violations.
  - i. Prevention of conflict of interests of an external evaluator.
  - ii. External auditor must maintain independence if there is conflict of interests among the parties interested in the outcome of the audit.
  - iii. Do not use the data received while providing services linked to audit in personal favor or for personal purposes.

**5. Requirements to ensure the auditor's independence and full ability to make fair and trusted decisions.**

- a. Conflict of interest policy and internal disciplinary rules of an employer, as well as the Code of Ethics of internal and external auditors.
- b. Role and powers of state bodies in terms of imposing sanctions over an internal auditor.
- c. Role of organization in terms of imposing sanctions over an external auditor.
- d. Mechanisms of imposing sanctions over an internal and external auditor (administrative and disciplinary).

**6. Distinctions among an internal auditor, an external auditor, a supervising committee, and a competent oversight authority.**

- a. Comparison of internal and external auditors with other competent supervisory bodies.
- b. Internal audit and corporate culture. Internal auditors must follow the corporate culture during their activity within the organization.
- c. Risk management as a function of the Internal Audit. Risk management assumes identification of potential events and situations, as well as their evaluation, control and management aimed at reasonably assuring the accomplishment of the objectives of the organization.

- d. Powers of inspector and supervising bodies in certain categories of organizations, supervising authority in NGOs, where there is no internal audit unit.
    - i. If the internal audit is conducted in different fields, including financial supervision and IT, reviews operations, corporate culture and ethics, the inspector (inspecting committee) is limited to the powers vested in it by the law or charter of the organization. According to the RA Law on Joint Stock Companies, these powers are to follow the implementation of resolutions adopted by the shareholders. The internal auditor is not an inspector. Internal auditors collaborate with other departments of the organization and its employees with an aim to reveal gaps within the organization, they suggest solutions on how overcome the gaps and manage the gaps in a better manner.
    - ii. According to the RA Law on Non-Governmental Organisations, Article 25 an inspector is required at the NGO in some cases. His/her main functions are to provide conclusions regarding the activity of the organization and the consumption of its property before submitting reports for approval to collective governing bodies.
  - e. Role and power of the Board of Directors, general meeting of the shareholders, and other supervisory authorities.
- 7. Internal regulations governing internal and external audits and accountability to management and/or to the Internal Audit Committee.**
- Responsibilities to the general meeting of the shareholders, Board of Directors, management, and Internal Audit Committee; the procedure for completion and accountability.
- 8. Discussion of the reports and recommendations of the Internal Audit Unit and completion of follow-up tasks.**
- Internal Audit Committee, program of assignments and follow-up reporting.
- 9. Actions to be undertaken as a result of internal and external audit investigations.**
- Discussion of the Conclusion (Letter to Management) by the external Auditor and a program of assignments.

### **Part 3. Whistleblower Protections**

- 1. General scope and importance; definition of “whistleblower.”**
- a. The protection of whistleblowing is an element of rule of law, human rights mandate, and democracy in Council of Europe.
  - b. The Armenian legislation provides for whistleblowing only in:
    - State bodies;
    - Local community authorities;

- State institutions;
  - State organizations; and
  - Organizations of public importance.
- c. Thus, in the private sector (except organizations of public importance), whistleblowing is not required by legislation to be protected. Employers have discretion to provide this protection, but leaving it to the employer's discretion whether to implement a whistleblowing process leaves vulnerability. A whistleblowing system is of high importance, for example, in public companies. As examples, see the purposes and goals of the whistleblower protections in the US Sarbanes Oxley Act and Foreign Corrupt Practices Act.
  - d. Definition of "whistleblowing." Whistleblowing is submitting information, either verbally or in writing, to the competent body or person provided under the law that there is a corruption case, a violation of requirements regarding conflicts of interest or a Code of Ethics. or incompatibility, damage or threat to public interest in state bodies and local community authorities, state institutions and organizations, as well as organizations of public importance (RA Law on Whistleblowing System, Article 2).
  - e. According to the Recommendations by the Council of Europe, "whistleblower" means any person who reports or discloses information on a threat or harm to the public interest in the context of their work-based relationship, whether it be in the public or private sector.
  - f. For the purposes of understanding the gaps in the definition of whistleblowing in the Armenian legislation, a comparison is provided with the definitions used in Norway, Romania and the United Kingdom.
  - g. The Sarbanes-Oxley Act's "open door" and "no retaliation" policies for good governance are worth mentioning as well. Although that Act does not require a covered corporation to adopt a written policy on whistleblowing, adoption of such a policy is said to contribute to the organization's overcoming challenges related to legal compliance (Form 990 Policy Series, developed by California bar members and practicing nonprofit lawyers).
  - h. In some countries, monetary rewards are used as means of encouragement for whistleblowing. In some cases, whistleblowers are entitled to a reward of up to 15-25% of the money that was recovered as a consequence of whistleblowing (*qui tam* action).

## **2. Definition of "the public interest"**

- a. Damage to the public interest means damage to public health and environment; improper use of public funds, state money and property; as well as other damage to the public or state order.
- b. According to the Recommendations CM/Rec (2014)7 by the Council of Europe, public interest includes violations of laws and human rights.



**3. Overview of the RA Law on the Whistleblower System and existing legal gaps (comparison with recommendations by the Council of Europe and with international best practice). Rules and procedures for whistleblowers who are public servants, and rules and procedures for whistleblowers who are ordinary citizens.**

- a. The RA Law on Whistleblowing System defines the following major concepts:
  - Whistleblower
  - Parties affiliated with whistleblower
  - Harmful action
  - Other
- b. The same law also lays down the following types of whistleblowing:
  - Internal
  - External
- c. The RA Law on Whistleblowing System also envisages whistleblowing procedure:
  - Procedure of whistleblower protection by the Government of the Republic of Armenia
  - Keeping records of whistleblowing
  - Template whistleblowing
- d. The RA Law on Whistleblowing contemplates an electronic platform for whistleblowing and gives an opportunity to blow the whistle anonymously. (Protection of anonymous whistleblowers will be discussed later in this guidance.)
- e. It is crucial to fight false reporting that can be submitted anonymously.
  - i. Despite this concern, the Law on Whistleblowing System follows the logic that solely criminal charges (if the identity of a whistleblower is revealed) can stop the abusive whistleblower from false reporting and falsely accusing innocent people of committing crimes. Taking into account the fact that, in the event of anonymous reporting, the identity of a whistleblower must not be disclosed, the Law does not suggest any efficient mechanisms on how to combat false reporting.
  - ii. The RA Law on Whistleblowing System does not define any criteria for whistleblowing in bad faith.
  - iii. Nonprofit organizations in USA are encouraged by a national association of nonprofits to establish a whistleblower protection policy that requires employees and volunteers to act in good faith and have reasonable grounds for believing that the information shared in the report indicates that a violation has occurred. (Sample Whistleblowing Policy, issued by the National Council of Nonprofits.)

**4. Responsibilities and expected actions by those to whom the information is disclosed as a consequence of whistleblowing.**

**5. Mechanisms of whistleblower protection (and comparison with the better-developed mechanisms for whistleblower protection in some other countries).**

- a. Whistleblower protection is essential for the effective implementation of the Whistleblowing system as an instrument for preventing from retaliation. Furthermore, it is necessary to protect the affiliates of the whistleblower. Notwithstanding this, the RA Law on Whistleblowing System does not lay down any mechanism for the protection of a whistleblower. To make matters worse, a person can be subject to criminal charge for blowing a whistle in a bad faith. This is a huge impediment for the efficacy and efficiency of the whistleblowing system.
- b. However, it must be noted that the Law on Whistleblowing System demands maintenance of confidentiality of personal data and anonymous whistleblowing and state bodies are forbidden from revealing the identity of an anonymous whistleblower.
- c. Whistleblowers have the right to protection from harmful actions and their consequences, as well as right to Judicial Protection which, unfortunately, have not been stipulated in the Armenian legislation.
- d. From these perspectives, it is worth mentioning that a set of countries has provided whistleblowers with efficient mechanisms. For instance, the Netherlands has emphasized the role of trade unions in whistleblowing by including necessary provisions in its legislation. Sweden has stressed the free transfer of information to mass media for publishing, even if of confidential nature and imprisonment of public officials if they retaliate against the whistleblower. Common law countries accept the implied term of 'no confidence in iniquity.' In the USA retaliation against a whistleblower or a person collaborating with investigative bodies can be treated as a lawful ground for termination of employment (Sample Whistleblowing Policy as of 2009/12/01, USA). Also, the Labor Code of California, Section 1102,5 bans retaliation against an employee if the latter has reported information to state bodies or law enforcement bodies, and criminal and administrative liability may be applied for retaliation.

**6. Criminal and civil suits for slander arising from whistleblowing.**

- a. US Federal False Claims Act, for instance, excludes imposition of any negative impact on an employee, including firing, demotion, termination, etc.
- b. Possibility of slander in whistleblowing and non-material damage.
- c. According to the Armenian Civil Code, slander is a statement in public. As compared to slander, a whistleblower cannot be subjected to any liability for offensive statement or slander, for in case of whistleblowing the statement is not made in public.

- d. It must be remembered that there can be cases that a person may illegally blame another person of committing a crime in vain. The Law on Whistleblowing System provides that the relevant authority must apply to the Prosecutor's Office if whistleblowing entails a false accusation of a crime and it contains elements of a crime. Nevertheless, the Law does not define the criteria of bad faith whistleblowing. Furthermore, the Law on Whistleblowing System does not state that the relevant authority sends an application to the law enforcement bodies only in case the elements of a crime appear *prima facie*. This means that the relevant authority which has received the report must be convinced that the whistleblower is indeed abusive of his power.
- e. The Law on Whistleblowing System does not allow the state bodies to reveal the identity of the anonymous whistleblower. This is why it can be assumed that anonymous whistleblowers making false reports are less vulnerable as compared to the ones revealing their identity, which is not acceptable. As a consequence, an anonymous whistleblower will avoid criminal charges, whereas whistleblowers revealing their identity may be pursued by law enforcement bodies.

**7. Whistleblowing and false crime reporting and other kinds of abuse of the whistleblower privilege (distinctions and possible overlaps).**

- a. It must be remembered that there is always a risk of retaliation or imposition of negative impact on whistleblowers.
- b. A whistleblower must show the following in his or her retaliation action claim if he or she wants to succeed.
  - He or she has been engaged in "protective activity."
  - The employer was aware of him or her being engaged in "protective activity."
  - An employee was retaliated against as a consequence of being engaged in "protective activity."

**8. How and why individuals, including people who work in criminal justice institutions (such as the individuals receiving this instruction), can identify and fight against corruption that might exist or emerge within their own organizations.**

The Law does not specifically regulate the implementation of whistleblowing at law enforcement bodies. From this viewpoint, the Armenian law needs to be amended and improved based on international best practice.

**9. The legal and practical protections that individuals can expect as whistleblowers, the limits to those protections, and risks to the individual from whistleblowing.**

Ways in which investigators, prosecutors, and judges can act to help ensure appropriate legal and practical protections for whistleblowers can be as follows:

- a. Implementation of the "open door" policy culture (United Kingdom);
- b. Consultations with representatives of business sector, civil society;

- c. Increasing the role of trade unions;
- d. Regulations in Code of Ethics (unified list of actions regarding whistleblowing in one legal act); and
- e. Reporting by the competent state body with regard of the quantity and results of investigations undertaken for a certain period of time (Japan).

#### **Part 4. Referrals to External Investigators**

##### **1. Identification of persons authorized to report to external investigative bodies.**

These persons are determined according to the applicable law or the person's job description and based on the organization's charter or by-laws or its internal labor disciplinary rules.

##### **2. In general terms the RA Law on Whistleblowing System defines the scope of relevant bodies that are obliged to deal with whistleblowing.**

- a. The relevant bodies must immediately report to the Prosecutor's Office if, as a result of whistleblowing, *prima facie* a crime has been revealed (Articles 6(3)(5) and 7(3)(5)).
- b. Whistleblowing by internal audit unit members report to the Head of Internal Audit in public sector and the latter should do the reporting to the management by the Head of that body.
- c. In private organizations, whistleblowing is reported to the Board of Directors by the internal audit members, if the latter are appointed by the former, and the rest of the employees report to their immediate supervisor. They may also report to the Human Resources Manager.
- d. Upon internal consultation, the competent body that has received the report and is entitled to deal with it must report to the investigative bodies if elements of a crime have been revealed.
- e. While the law does not regulate any issues related to the cooperation with and among the law enforcement bodies and supervisors after a report was received, such cooperation is very important. The actions arising from such cooperation are subject to regulation by the RA Criminal Procedure Code.
- f. Revealing a bribery case committed by a public foreign officer within the territory of RA, jurisdiction over that person and collaboration with relevant foreign bodies are regulated by the "Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions."

#### **Main methods of training:**

- Discussion of these issues will be organized in an interactive manner, that is, the legislative requirements, as well as the international experience will be presented, and then hypothetical situations or real situations from practice will be subject to general discussion.

The practitioners, including judges, will also be invited to present examples from their own practice, which will become the subject of general discussion.

## **REFERENCE MATERIALS**

### **LEGISLATION AND OTHER AUTHORITATIVE GUIDANCE**

1. RA Labour Code
2. RA Law on Whistleblowing System
3. RA Law on the Committee Preventing Corruption
4. RA Law on Internal Audit
5. RA Law on Supervising Chamber
6. RA Law on Banks and Banking Activity
7. RA Government resolutions with regard to regulation of the Financial Supervision Inspectorate under the Ministry of Finance
8. RA Government decrees in respect with regulation of activity of an internal auditor
9. RA Government resolution in relation to regulation of carrying out investigations in numerous institutions acting in public sector

### **INTERNATIONAL TREATIES AND OTHER GUIDANCE**

1. Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions (1997)
2. Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions by OECD (2009)
3. Good Practice Guidance on Internal Controls, Ethics, and Compliance by OECD (2010)
4. Internal Control and Internal Audit: Ensuring Public Sector Integrity and Accountability: Report by OECD (2011)
5. Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999)
6. Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters
7. OECD Recommendation on Improving Ethical Conduct in the Public Service (1998)
8. OECD Recommendation on Guidelines for Managing Conflict of Interest in the Public Service
9. Council of Europe Recommendation CM/Rec(2014)7 and explanatory memorandum

10. G20/OECD Principles of Corporate Governance
11. Protection of Whistleblowers: A Brief Guide for Implementing a National Framework (Council of Europe, 2016)
12. Lessons learned from the three Evaluation Rounds (2000-2010): Thematic Articles (Group of States against Corruption) (Greco)RK

#### **OTHER SOURCES**

1. (US) National Council of Nonprofits, “Whistleblower Protections for Nonprofits,” <https://www.councilofnonprofits.org/tools-resources/whistleblower-protections-nonprofits>
2. Stacey Campbell and Taylor Seibel (attorneys who represent employers), “Managing Whistleblower Employees,” 2017, available on the website of the American Bar Association (ABA), [https://www.americanbar.org/content/dam/aba/events/labor\\_law/2017/03/err/papers/managing\\_paper.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/events/labor_law/2017/03/err/papers/managing_paper.authcheckdam.pdf)
3. Public Company Accounting Oversight Board, “Auditing Standards of the Public Company Accounting Oversight Board, December 2017. (See especially AS 2401, Consideration of Fraud in a Financial Statement Audit, and AS 2405, Illegal Acts by Clients) [https://pcaobus.org/Standards/Auditing/Documents/PCAOB\\_Auditing\\_Standards\\_as\\_of\\_December\\_15\\_2017.pdf](https://pcaobus.org/Standards/Auditing/Documents/PCAOB_Auditing_Standards_as_of_December_15_2017.pdf)

#### **Module Compiler:**

Tirayr Vardazaryan

## Module 4: Pre-Trial Detention Alternatives<sup>11</sup>

This training for investigators, prosecutors, and judges is intended to deepen the understanding of the fundamental right to liberty, the specific powers of certain governmental entities to lawfully restrict that liberty, and the limits on those powers. The training gives emphasis to practical discussions showing how relevant principles can be applied consistently and fairly even in challenging situations, and how alternatives to detention (such as bail, house arrest, release on one's own recognizance, etc.) can and should be employed pre-trial instead of detention when feasible.

### **Part 1. The right to liberty; grounds for restriction of right to liberty**

- 1. The right to liberty under the RA domestic law and under Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (Convention), to which RA is a party.**
  - a. Physical liberty of the person as a matter of Conventional protection. Article 5 of the Convention:
    - i. states that everyone “has the right to liberty and security of person”;
    - ii. specifies the several particular circumstances under which a deprivation of liberty may be allowed; and
    - iii. identifies certain rights to which any arrested or detained person detained is entitled.
  - b. Under the Convention, the European Court of Human Rights (ECHR) is established to make decisions concerning the interpretation and application of the Convention.
    - i. Cases are brought before the ECHR by contracting Parties that allege a breach by another contracting Party and by individual persons who claim to be victims of a violation. The ECHR examines such cases and renders binding judgements.
    - ii. The ECHR issues a Guide on Article 5, updated periodically, to inform legal practitioners about the ECHR’s decisions interpreting and applying the provisions of that Article (ECHR Guide on Art. 5).<sup>12</sup>
    - iii. The summaries in this Module of ECHR case-law are based largely on the ECHR Guide on Art. 5.

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<sup>11</sup> This Module was prepared by experts from the Faculty of Law of Yerevan State University (YSU) in partnership with the National Academy of Public Administration (the Academy). The preparation of this Module was funded by the United States Department of State through a cooperative agreement with the Academy. Any opinions, findings, and conclusions stated in this Module are those of the authors and do not necessarily reflect opinions, findings, or conclusions of the U.S. Department of State.

<sup>12</sup> ECHR *Guide on Article 5 of the European Convention on Human Rights: Right to liberty and security*, updated as of 31 December 2018 (ECHR Guide on Art. 5 (31 Dec. 2018)). The latest ECHR Guide on Art 5 in English is at: [https://www.echr.coe.int/Documents/Guide\\_Art\\_5\\_ENG.pdf](https://www.echr.coe.int/Documents/Guide_Art_5_ENG.pdf). The latest ECHR Guide on Art 5 in Armenian is at: [https://www.echr.coe.int/Documents/Guide\\_Art\\_5\\_HYE.pdf](https://www.echr.coe.int/Documents/Guide_Art_5_HYE.pdf).

- c. The relationship between the right to liberty protected by Article 5 of the Convention and freedom of movement enshrined in Article 2 of Protocol No. 4 of the Convention. Article 5 ensures that no one is deprived of the right to liberty arbitrarily and is not concerned with lesser “restrictions on liberty of movement” under Article 2 of Protocol No. 4.<sup>13</sup>
  - d. The standards to determine whether someone has been “deprived of his liberty” within the meaning of Article 5.
    - i. In making the determination of whether a person has been “deprived of liberty,” the whole a range of factual aspects must be considered, “such as the type, duration, effects and manner of implementation of the measure.”<sup>14</sup>
    - ii. Specific relevant factors may include “the possibility to leave the restricted area, the degree of supervision and control over the person’s movements, the extent of isolation and the availability of social contacts.”<sup>15</sup>
    - iii. The objective and subjective elements of deprivation of liberty: confinement in a restricted space for a non-negligible period of time, and the absence of valid consent to the confinement.<sup>16</sup>
  - e. The lawfulness of deprivation of liberty in Conventional and domestic meaning.
- 2. The elements of the deprivation of liberty (prisoner status, the nature and extent of the restriction of liberty) and determination of the beginning, and calculation of the duration, of the deprivation of liberty: RA judicial practice and international standards; and ECHR case-law (*De Wilde, Ooms and Versyp v. Belgium*; *Guzzardi v. Italy*; *Engel v. The Netherlands*).**
- a. The criteria for determining the initial moment of the deprivation of liberty and the minimal rights reserved for the deprivation of liberty.
    - i. When personal integrity is restricted and the individual is forced to obey the will of the state body (Report of UN Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment to Commission of Human Rights of 23 December 2005  
<http://www.un.org/Docs/journal/asp/ws.asp?m=E/CN.4/2006/6>);
    - ii. When the police officers propose that the individual accompany them to the police station even if that person is not officially detained (Legal Safeguards to Prevent Torture. The Right of Access to Lawyers for Persons Deprived of Liberty. Association for the Prevention of Torture. 2010);

<sup>13</sup> See ECHR Guide on Art. 5 (31 Dec. 2018), part I.A., ¶¶ 1-2.

<sup>14</sup> *Ibid.*, part I.B, ¶ 5 (citing *De Tommaso v. Italy* [GC], § 80; *Guzzardi v. Italy*, § 92; *Medvedyev and Others v. France* [GC], § 73; *Creangă v. Romania* [GC], § 91).

<sup>15</sup> *Ibid.*, part I.B, ¶ 10 (citing contacts *Guzzardi v. Italy*, § 95; *H.M. v. Switzerland*, § 45; *H.L. v. the United Kingdom*, § 91; *Storck v. Germany*, § 73).

<sup>16</sup> *Ibid.* part I.B, ¶ 9 (citing *Storck v. Germany*, § 74; *Stanev v. Bulgaria* [GC], § 117).



- iii. When the person is obliged to remain with the police officers (9th General Report on the activities of the CPT<sup>17</sup> covering the period 1 January to 31 December 1998 // CPT/Inf (99) 12, <http://www.cpt.coe.int/en/annual/rep09.htm>); or
  - iv. When a person can reasonably think that his/her liberty is restricted or he/she is deprived of liberty, and at the same time he/she is suspected in the crime (the legal position of the RA Court of Cassation in the case of G. Mikaelyan).
- b. The importance of the introduction of the procedural status of “apprehended person,” as a mechanism to overcome the shortcomings of existing legislative regulation regarding the timing of when a person acquires the status of a “suspect,” in terms of guaranteeing the minimum rights of a person deprived of liberty.
  - c. The initial moment of deprivation of liberty and the procedural status of the suspect in the RA Draft New Code of Criminal Procedure (referred to hereinafter as “Draft”).
3. **“[T]he lawful arrest or detention of a person for noncompliance with the lawful order of a court or to secure the fulfillment of any obligation prescribed by law” (Convention Art. 5 § 1 (b)): RA legislation, domestic judicial practice, international standards, ECHR case-law.**
- a. The arrest or detention of a person for noncompliance with the lawful order of a court may be permissible only if, among other things:
    - i. the person has “had an opportunity to comply with a court order and has failed to do so,” and
    - ii. the person has “been informed” of such order.<sup>18</sup>
  - b. The authorities in such cases “must strike a fair balance between the importance in a democratic society of securing compliance with a lawful order of a court, and the importance of the right to liberty,” fairly balancing “the purpose of the order, the feasibility of compliance with the order, and the duration of the detention.”<sup>19</sup>
  - c. The rule allowing arrest or detention for noncompliance with a court order has been found applicable to, for example, “a failure to pay a court fine,” “a refusal to undergo a medical examination concerning mental health” “or a blood test ordered by a court,” “a failure to observe residence restrictions,” “a failure to comply with a

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<sup>17</sup> “CPT” refers to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which is an independent body of the Council of Europe.

<sup>18</sup> ECHR Guide on Art. 5 (31 Dec. 2018), part III.B.1, ¶¶ 64-65 (citing *Beiere v. Latvia*, §§ 49-50).

<sup>19</sup> *Ibid.*, part III.B.1, ¶ 67 (citing *Gatt v. Malta*, § 40).

decision to hand over children to a parent,” “a failure to observe binding-over orders [i.e., restraining orders],” and “a breach of bail conditions.”<sup>20</sup>

- d. In a case of arrest or detention to secure the fulfillment of an obligation prescribed by law, several conditions must be satisfied for the arrest or detention to be permissible, including:
  - i. “The obligation must be of a specific and concrete nature”;<sup>21</sup>
  - ii. It is necessary that the person “was made aware of the specific act” and “showed himself or herself unwilling to refrain from so doing”;<sup>22</sup>
  - iii. The arrest or detention will be acceptable only if it is “for the purpose of securing” the unfulfilled legal obligation “and not punitive in character” and if the unfulfilled legal obligation “cannot be fulfilled by milder means”; and<sup>23</sup>
  - iv. The detention becomes impermissible “[a]s soon as the relevant obligation has been fulfilled.”<sup>24</sup>
- e. For an arrest to be permissible, “a balance must be struck between the importance in a democratic society of securing the immediate fulfilment of the obligation in question, and the importance of the right to liberty.” These kinds of factors are relevant: “the nature of the obligation arising from the relevant legislation including its underlying object and purpose; the person being detained and the particular circumstances leading to the detention; and the length of the detention.”<sup>25</sup>
- f. The kinds of unfulfilled legal obligations that could serve as grounds for deprivation of liberty “include, for example, an obligation to submit to a security check when entering a country,” “to disclose details of one’s personal identity,” “to undergo a psychiatric examination,” “to leave a certain area,” “to appear for questioning at a police station,” and “to reveal the whereabouts of attached property to secure payment of tax debts.”<sup>26</sup>

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<sup>20</sup> *Ibid.*, part III.B.2, ¶ 68 (citing *Velinov v. the former Yugoslav Republic of Macedonia*; *Airey v. Ireland*, Commission decision; *X. v. Germany*, Commission decision of 10 December 1975); *X. v. Austria*, Commission decision); *Freda v. Italy*, Commission decision; *Paradis v. Germany* (dec.); *Steel and Others v. the United Kingdom*; *Gatt v. Malta*).

<sup>21</sup> *Ibid.*, part III.B.2, ¶ 71 (citing *Ciulla v. Italy*, § 36; *S., V. and A. v. Denmark* [GC], § 83; *Engel and Others v. the Netherlands*, § 69; *Iliya Stefanov v. Bulgaria*, § 72).

<sup>22</sup> *Ibid.*, part III.B.2, ¶ 72 (citing *Ostendorf v. Germany*, §§ 93-94).

<sup>23</sup> *Ibid.*, part III.B.2, ¶ 69 (citing *Vasileva v. Denmark*, § 36; *S., V. and A. v. Denmark* [GC], §§ 80-81); ¶ 73 (citing *Khodorkovskiy v. Russia*, § 136).

<sup>24</sup> *Ibid.*, part III.B.2, ¶ 69 (citing *Vasileva v. Denmark*, § 36; *S., V. and A. v. Denmark* [GC], §§ 80-81).

<sup>25</sup> *Ibid.*, part III.B.2, ¶ 73 (citing *Saadi v. the United Kingdom* [GC], § 70); ¶ 74 (citing *S., V. and A. v. Denmark* [GC], § 75; *Vasileva v. Denmark*, § 38; *Eppele v. Germany*, § 37).

<sup>26</sup> *Ibid.*, part III.B.2, ¶ 74 (citing *McVeigh and Others v. the United Kingdom*, Commission report; *Vasileva v. Denmark*; *Novotka v. Slovakia* (dec.); *Sarigiannis v. Italy*; *Nowicka v. Poland*, *Eppele v. Germany*; *Iliya Stefanov v. Bulgaria*; *Osyenko v. Ukraine*; *Khodorkovskiy v. Russia*; *Göthlin v. Sweden*).

- g. The apprehension prescribed by the RA Current Code of Criminal Procedure and the short-term apprehension prescribed in the Draft as a mechanism to secure the proper fulfillment of procedural duties.
4. **“[T]he lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offense or when it is reasonably considered necessary to prevent his committing a crime or fleeing after having done so” (Convention Art. 5 § 1 (c)): RA legislation, domestic judicial practice, international standards, ECHR case-law.**
- a. Criminal-procedural essence of deprivation of liberty on these grounds and its purpose.<sup>27</sup>
  - b. Proportionality required between the deprivation of liberty and the stated aim. The legal definition of “competent legal authority” as a “judge or other officer authorized by law to exercise judicial power.” The definition of “reasonable suspicion” and the requirement of justification.<sup>28</sup>
  - c. The autonomous meaning of the term “offense”, having the same meaning as “criminal offense”. “The classification of the offense under national law is one factor,” but “the nature of the proceedings and the severity of the penalty at stake” are also relevant.<sup>29</sup>
  - d. Delimitation of when the preventive detention of individuals presenting a danger on account of continuing propensity to commit crime is permissible.<sup>30</sup>
5. **“[T]he detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority” (Convention Art. 5 § 1 (d)): RA legislation, domestic judicial practice, international standards, ECHR case-law (*Boumar v. Belgium*).**
- a. The meaning of the term “educational supervision” in the ECHR case-law. The requirement that “an interim custody measure” may be permissible if “speedily followed by actual application of such a regime in a setting of (open or closed) design and with sufficient resources for the purpose” of supervised education, and the requirement that a system of educational supervision involving a deprivation of

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<sup>27</sup> See *Lawless v. Ireland* (no. 3), §§ 13-14; *Ireland v. the United Kingdom*, § 196; *Jecius v. Lithuania*, § 50; *Schwabe and M.G. v. Germany*, § 72; *Ostendorf v. Germany*, § 82.

<sup>28</sup> See ECHR Guide on Art. 5 (31 Dec. 2018), part III.C.1, ¶ 82 (citing *Ladent v. Poland*, §§ 55-56); ¶ 84 (citing *Schiesser v. Switzerland*, § 29); ¶ 86 (citing *Selahattin Demirtaş v. Turkey* (no.2), § 161; *Ilgar Mammadov v. Azerbaijan*, § 88; *Erdagöz v. Turkey*, § 51; *Fox, Campbell and Hartley v. the United Kingdom*, § 32; *Stepuleac v. Moldova*, § 73; *Elçi and Others v. Turkey*, § 674). See also *O'Hara v. the United Kingdom*, § 35; *Labita v. Italy* [GC], § 156).

<sup>29</sup> ECHR Guide on Art. 5 (31 Dec. 2018), part III.C.3, ¶ 91 (citing *Benham v. the United Kingdom*, § 56; *S., V. and A. v. Denmark* [GC], § 90).

<sup>30</sup> See *Guzzardi v. Italy*, § 102; *Ciulla v. Italy*, § 40; *M. v. Germany*, § 89; *Shimovolos v. Russia*, § 54.

liberty must include “appropriate institutional facilities which meet the security and educational demands of that system.”<sup>31</sup>

- b. This provision was not intended to apply to criminal proceedings, which are covered by Convention Art. 5 § 1 (c).<sup>32</sup>

**6. “[T]he lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants” (Convention Art. 5 § 1 (e)): RA legislation, domestic judicial practice, international guidelines, ECHR case-law (*Guzzardi v. Italy*).**

- a. The lawfulness of deprivation of liberty of persons to prevent spreading infectious diseases, persons of unsound mind, alcoholics, drug addicts and vagrants to ensure public safety and to protect their own interests generally. For the detention of persons to prevent the spreading infectious diseases to be lawful:
  - i. “the spreading of the infectious disease is dangerous to public health or safety”; and
  - ii. “detention of the person infected is the last resort in order to prevent the spreading of the disease, because less severe measures have been considered and found to be insufficient to safeguard the public interest.”<sup>33</sup>
- b. For the detention of persons of unsound mind to be permissible:
  - i. “the individual must be reliably shown, by objective medical expertise, to be of unsound mind, unless emergency detention is required”; and
  - ii. “the individual’s mental disorder must be of a kind that warrants compulsory confinement. The deprivation of liberty must be shown to have been necessary in the circumstances”; and
  - iii. “the mental disorder, verified by objective medical evidence, must persist throughout the period of detention.”

As to whether compulsory confinement is warranted, “the detention of a mentally disordered person may be necessary not only where the person needs therapy, medication or other clinical treatment to cure or alleviate his condition, but also where the person needs control and supervision to prevent him, for example, causing harm to himself or other persons.”<sup>34</sup>

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<sup>31</sup> ECHR Guide on Art. 5 (31 Dec. 2018), part III.D.2, ¶ 95 (citing *P. and S. v. Poland*, § 147; *Ichin and Others v. Ukraine*, § 39; *D.G. v. Ireland*, § 80; *Blokhin v. Russia* [GC], § 170); ¶ 97 (citing *Bouamar v. Belgium*, § 50); ¶ 99, citing *A. and Others v. Bulgaria*, § 69; *D.G. v. Ireland*, § 79).

<sup>32</sup> See *Ibid*, part III.D.2, ¶ 101.

<sup>33</sup> *Ibid*, part III.E.1, 2, ¶¶ 104-105 (citing *Enhorn v. Sweden*, §§ 43-44; *Guzzardi v. Italy*, § 98 in fine).

<sup>34</sup> *Ibid*, part III.E.3, ¶ 107 (citing *Ilmseher v. Germany* [GC], § 127; *Stanev v. Bulgaria* [GC], § 145; *D.D. v. Lithuania*, § 156; *Kallweit v. Germany*, § 45; *Shtukaturv v. Russia*, § 114; *Varbanov v. Bulgaria*, § 45; *Winterwerp v. the Netherlands*, § 39); ¶ 109 (citing *Ilmseher v. Germany* [GC], § 133; *Hutchison Reid v. the United Kingdom*, § 52).

- c. It may be permissible to detain persons “abusing alcohol,” or persons whose conduct under the influence of alcohol poses a “threat to public order or themselves,” even in the absence of medically diagnosed “alcoholism.”<sup>35</sup>
7. **“[T]he lawful arrest or detention of a person to prevent his affecting an unauthorized entry into the country [including, of course, the Republic of Armenia] or of a person against whom action is being taken with a view to deportation or extradition” (Convention Art. 5 § 1 (f)): RA legislation, domestic judicial practice, international standards, ECHR case-law.**
- a. In the case of an asylum seeker or other immigrant not yet granted authorization to enter, detention to prevent the person from illegally entering is permissible, but must not be arbitrary.
    - i. Detention must be “carried out in good faith; it must be closely connected to the purpose of preventing unauthorized entry of the person to the country”;
    - ii. “The place and conditions of detention should be appropriate, bearing in mind that the measure is applicable not to those who have committed criminal offenses but to aliens who, often fearing for their lives, have fled from their own country”; and
    - iii. “The length of the detention should not exceed that reasonably required for the purpose pursued.”<sup>36</sup>
  - b. In the case of a person detained for deportation or extradition, the detention need not meet the same high standard that applies in the case of a person reasonably suspected of having committed a crime. However, the detention may extend “only for as long as deportation or extradition proceedings are in progress” and must not be arbitrary.
    - i. The detention “must be carried out in good faith”;
    - ii. The detention “must be closely connected to the ground of detention relied on by the Government”;
    - iii. The “place and conditions of detention should be appropriate”; and
    - iv. The “length of the detention should not exceed that reasonably required for the purpose pursued.”<sup>37</sup>

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<sup>35</sup> See *ibid*, part III.E.4, ¶¶ 121-122 (citing *Kharin v. Russia*, § 34; *Hilda Hafsteinsdóttir v. Iceland*, § 42; *Petschulies v. Germany*, § 65; *Witold Litwa v. Poland*, §§ 61-62).

<sup>36</sup> *Ibid*, part III.F.1, ¶¶ 124, 127 (citing *Khlaifia and Others v. Italy* [GC], § 89; *Saadi v. the United Kingdom* [GC], §§ 64-66, 73-74).

<sup>37</sup> *Ibid*, part III.F.2, ¶¶ 130, 133-134 (citing *Chahal v. the United Kingdom*, § 112; *Čonka v. Belgium*, § 38; *Nasrulloev v. Russia*, § 69; *Soldatenko v. Ukraine*, § 109; *A. and Others v. the United Kingdom*, § 164; *Yoh-Ekale Mwanje v. Belgium*, §§ 117-19 with further references).

- c. The right of the person concerned to be heard. The lawfulness of the detention and the lawfulness of the extradition.

**Possible topics for discussion:**

- Whether the grounds for deprivation of liberty conform with the standards in the RA Constitution and the ECHR case-law.

**Part 2. Case-law of the ECHR and the RA Cassation Court related to the lawfulness of detention**

**1. Reasonable suspicion as a condition for lawful detention: RA judicial practice and ECHR case-law (*K.-F. v. Germany*; *Lukanov v. Bulgaria*).**

- a. Reasonable suspicion as the existence of facts or information that would satisfy an objective observer that the person concerned may have committed an offense.<sup>38</sup>
- b. The strength of the suspicion and the reasonableness of the court decision; impermissibility of establishing suspicion based on confidential information; the reliability and honesty of suspicion.<sup>39</sup>
- c. Legal assessment of the act as a constituent element of a reasonable suspicion.<sup>40</sup>
- d. The unlawful practice of substantiating the reasonable suspicion of having committed grave or particularly grave offense by artificially aggravated charges. The jurisdiction of the court to examine and evaluate the content and frames of the reasonable suspicion.

**2. Other conditions for the lawfulness of detention: RA judicial practice and ECHR case-law.**

- a. The existence of an initiated criminal case.
- b. Having acquired the procedural status of defendant.
- c. Punishment in the form of at least 1 year of imprisonment for the crime the defendant is charged with.

**3. Grounds for prolonging detention: RA judicial practice and ECHR case-law (*Stögmüller v. Austria*; *Letellier v. France*; *W. v. Switzerland*; *Assenov v. Bulgaria*).**

- a. The permissible grounds for prolonging the period of detention.

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<sup>38</sup> See *K.-F. v. Germany*, no. 144/1996/765/962, § 57; the RA Cassation Court decision in the case of *V.Gevorgyan*.

<sup>39</sup> See *Brogan and others v. The United Kingdom*, no. 11209/84, 11234/84, 11266/84, 11386/85, § 53; *Murray v. The United Kingdom*, no. 14310/88, § 55; *Fox, Campbell and Hartley v. The United Kingdom*, no. 12244/86, 12245/86, 12383/86, § 32.

<sup>40</sup> See *Khachatryan and other v. Armenia*, no. 23978/06, *Kandzhov v. Bulgaria*, No. 68294/01, § 57; the RA Cassation Court decision in the case of *Khachatryan*.

- i. The grounds for prolonging detention under Art. 135 of the RA Criminal Code. At least two of those grounds – i.e., hindering the pre-trial investigatory process or court proceedings by means of illegal influence on the persons involved in the proceedings, concealment and falsification of the materials relevant to the case, or non-compliance with a subpoena without reasonable explanation; or hindering the execution of judgement – are inconsistent with constitutional and Conventional grounds for deprivation of liberty.
    - ii. Most recent amendments to the legislative regulations of the grounds for deprivation of liberty.
  - b. Justification of detention with standard formulations and simple listing of the grounds for choosing detention as a preventive measure, with no reference to the facts deriving from the case file. Violations of the right to liberty and systemic shortcomings recorded by the ECHR in cases against Armenia.
  - c. The improper identification of grounds for initial detention and prolongation of the term of detention in the RA Criminal Procedure Code. The grounds for lawfulness of continuing a person's pre-trial detention where there is still a reasonable suspicion of his or her having committed an offense include:
    - i. the risk of flight;
    - ii. the risk of an interference with the course of justice;
    - iii. the need to prevent crime; and
    - iv. the need to preserve public order.
  - d. The grounds for justifying the prolongation of a person's pre-trial detention where there is still a reasonable suspicion of his or her having committed an offense, formed in the RA judicial practice in accordance with Conventional standards.
    - i. All the possible procedural actions necessary to reveal the circumstances of the relevant case were carried out by the investigative body on time, without unnecessary delays; and
    - ii. The custody of a defendant is necessary to continue criminal prosecution against her/him, and deprivation of liberty is objectively conditioned by the necessity of performing further investigative actions with his/her participation.
  - e. The legislative regulation of the grounds and the conditions of detention in the RA Draft New Code of Criminal Procedure. New legal solutions aimed to increase the cases of applying detention.
- 4. The duration of the detention: RA Judicial Practice and ECHR case-law (*Jėčius v. Lithuania*; *Punzelt v. the Czech Republic*).**
- a. The maximum duration of detention in pre-trial proceedings.

- b. The procedural rules for calculating the term of detention.

**5. The right to challenge the lawfulness of detention: RA judicial practice and ECHR case-law.**

- a. The constitutional right to challenge the lawfulness of deprivation of liberty and the new procedural mechanisms prescribed in the RA Current Code of Criminal Procedure to provide its fulfillment; the parallel examination of the claim against the lawfulness of the apprehension and the motion on detention; the legal consequences of a determination that the deprivation of liberty is unlawful: immediate release of a person and clarification of the right to compensation.
- b. The procedure of examination of the motion on choosing detention as a preventive measure and the obligatory rule of the presence of the defendant and/or his/her counsel.
- c. The lawfulness of the legislative regulation in the Draft to examine the motion for detention in the open court session.
- d. The right of the arrested or detained person to a review of the “lawfulness” of his detention in light not only of the requirements of domestic law, but also of the Convention; review of the lawfulness of detention by a court at “reasonable intervals” in compliance with such procedural safeguards as adversarial proceedings and equality of arms;<sup>41</sup> a speedy judicial decision concerning the lawfulness of detention.
- e. The lawfulness of the decision to detain, or the decision to prolong the detention while the case is being prepared for court hearings, in the absence of adversarial proceedings.

**6. The right to compensation for damages: RA judicial practice and ECHR case-law.**

- a. Availability of compensation.
- b. Existence of damage.
- c. Amount and the type of compensation.
- d. The problem of compensation of non-material damage.

**Possible topics for discussion:**

- Whether the legal severity of the crime is a component of reasonable suspicion; the danger of artificially inflated charges; whether reasonable suspicion is enough for applying detention in cases of grave or especially grave crimes.
- The legal and practical obstacles to avoiding the practice of excessive employment of detention.

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<sup>41</sup> “Equality of arms” is the principle that no party may be put at a disadvantage compared to the other parties, in terms of their opportunities to present their cases.



- Whether the rules for compensation for damages for unlawful detention conform with the standards provided in ECHR case-law.
- The main shortcoming of the Armenian legislation and practice revealed in the ECHR cases against Armenia.

### **Part 3. Guarantees for persons deprived of liberty**

- 1. The right to be informed of the grounds for deprivation of liberty. The obligation of the governmental authorities to promptly inform the person who is deprived of liberty of the grounds for the deprivation of liberty, and the required contents of the notification: RA legislation, domestic judicial practice, international standards, ECHR case-law.**
  - a. The right of the arrested person to be informed promptly, in a language which he/she understands, of the reasons for his/her arrest as a guarantee to effectively challenge the lawfulness of deprivation of liberty. Its relationship with the right to be informed promptly, in a language which he/she understands, of any charge against him/her.
  - b. The positive obligation of the investigative body to give concrete information to the person deprived of liberty on the legal and factual grounds of his/her arrest.<sup>42</sup>

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), a committee established by the Council of Europe, has developed several standards in respect of police custody. In this connection, the CPT particularly advocates for “a trinity of rights for persons detained by the police: **the rights of access to a lawyer and to a doctor and the right to have the fact of one’s detention notified to a relative or another third party of one’s choice.**” The CPT discusses these and other standards in its publication “Developments concerning CPT standards in respect of police custody,” which is available here: <https://rm.coe.int/16806cd1ed>

- 2. The right of the person deprived of liberty to be promptly brought before a judge, permissible grounds for deviating from the set period: RA legislation, domestic judicial practice, international standards, ECHR case-law.**
  - a. ECHR's requirement to bring detained persons promptly before a judicial officer, the frame of possible procedural actions that should be carried out while bringing a person before a judicial officer as a criterion to assess the requirement of promptness; the legitimacy of deviation from the requirement to bring detained

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<sup>42</sup> See the RA Cassation Court decision in the case of *Mikayelyan*; ECHR decision in the case of *X. v. the United Kingdom*.

persons promptly before a judicial officer in certain categories of cases (for example, terrorist acts).

**3. The right to make a telephone call: RA legislation, domestic judicial practice, international standards, ECHR case-law.**

- a. The detainee's constitutional right to have the person of his or her choice be immediately informed of his/her detention, the origin of that right and the means of application; the legitimacy of delaying the exercise of this right for a certain period of time by a reasoned decision of the investigative body.

**4. The right to remain silent: RA legislation, domestic judicial practice, international standards, ECHR case-law.**

- a. The relationship between the right to silence and the right not to give testimony.

**5. The right to have a lawyer: RA legislation, domestic judicial practice, international standards, ECHR case-law.**

- a. The access to a lawyer from the initial moment of deprivation of liberty and the right to have a lawyer four hours after the arrest (six hours in the Draft).
- b. The obligation of the State not to hinder the access to lawyer in the initial moment of the deprivation of liberty.
- c. The right to give a testimony in the presence of lawyer.
- d. The right of the investigative body to interrogate the detainee in urgent cases even in the absence of a lawyer (who may not have the opportunity to be present immediately) and to substitute an attorney who hinders the proper conduct of the interrogation.
- e. Inadmissibility of written withdrawal of the right to have a lawyer; its legitimacy only in a case where evidence indicates that a suggestion was made to the accused that the accused have a lawyer, and that the accused voluntarily and consciously rejected the offer.

**6. The right to have a medical examination: RA legislation, domestic judicial practice, international standards, ECHR case-law.**

- a. The State's obligation to provide medical examination of the detainee at his/her request without any delay, as a guarantee against torture and ill-treatment.
- b. The right of the detainee to invite the physician he/she prefers (even when already examined by a physician invited by the police). The need for the right to access to a doctor at the very moment of deprivation of liberty. The requirement to conduct medical examination out of the hearing and the sight of police officers, unless the physician does not insist; the requirement that the physician report the results of the medical examination, any declarations of the detainee, and the medical conclusions, and that they be provided to the detainee and his/her counsel at his/her request; the doctor's determination of injuries, which may be the result of

ill-treatment; and the need to periodically report the relevant records to the prosecutor, to report the injuries revealed by a doctor which may be the result of ill-treatment. The requirement to periodically submit the relevant protocols to the prosecutor.

- c. In case of lodging a claim on injury or ill-treatment by the detainee, the requirement to subject the person to proper medical examination by an independent physician with medical qualification or education and confidentiality of medical records.

**Possible topics for discussion:**

- The lawfulness of the legislative provision to postpone the fulfillment of the right to make a telephone call.
- Whether the right to have a lawyer assumes the obligation of the state body to provide a lawyer appointed by the state's means.

**Part 4. Alternatives to detention**

**1. Bail as an alternative to detention, the grounds for its use and the amount: RA legislation, domestic judicial practice, international standards, ECHR case-law (*Caballero v. The United Kingdom*; *Neumeister v. Austria*; *Punzelt v. The Czech Republic*).**

- a. Bail as an alternative guarantee to appear for trial in the meaning of Article 5 § 3 of the Convention and the RA domestic legislation.
- b. Bail not as a measure of compensation of damage, but as the alternative guarantee to appear for trial. The criteria to determine the amount of bail: the personal peculiarities of the detainee, his/her assets, the relationship with the person providing the security, the amount of bail which is more than sufficient to reach the purpose of ensuring a "sufficient deterrent to dispel any wish on his part to abscond."<sup>43</sup>
- c. The grounds to reject the use of bail includes:
  - i. the risk of flight;
  - ii. the risk of an interference with the course of justice;
  - iii. the need to prevent crime;
  - iv. the need to preserve public order.
- d. Under Article 143 of the RA Code of Criminal Procedure, the judge may deny the release on bail upon finding sufficient cause where:
  - i. the identity of the accused is not known;
  - ii. he/she has no permanent place of residence; or

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<sup>43</sup> The RA Cassation Court decision in the case of *D. Vardanyan*; see ECHR *Mangouras v. Spain* [GC], § 78; *Neumeister v. Austria*, § 14.

- iii. he/she has tried to hide from the body conducting the criminal proceedings.
  - e. The compliance of the grounds of rejection of bail with Conventional standards.
  - f. Legislated prohibition of applying bail in certain types of crimes without court decision, as anti-Conventional regulation.<sup>44</sup>
  - g. Legislated opportunity to challenge the legitimacy of bail in Criminal Procedures of the Republic of Armenia.
  - h. New legislative regulations of bail in the RA Draft New Code of Criminal Procedure.
- 2. House arrest as an alternative to detention, the grounds for its application and its duration, the limitations imposed on the use of house arrest arising from the need to protect the rights and freedoms of another person living with the person being detained: RA legislation, domestic judicial practice, international standards, ECHR case-law (*Caballero v. The United Kingdom*; *Neumeister v. Austria*; *Punzelt v. The Czech Republic*).**
- a. The duty to remain in the residential area mentioned in the court decision.
  - b. Restrictions which may be imposed on the defendant by the court decision including:
    - i. Prohibition to have telephone communication, send or receive correspondence, postal, telegraphic and other programs,
    - ii. Prohibition to use other means of communication, interact with certain persons or host other persons at their place of residence;
  - c. Control of the accused by the competent authority through special electronic means; the obligation of the accused to always carry the electronic devices, not to damage them, and to respond to the signals of the competent authority. Practical issues of electronic monitoring.
  - d. House arrest in the criminal procedure of post-Soviet and European countries.
- 3. Electronic monitoring (administrative surveillance) as an alternative to detention, the grounds for its application and its duration: RA legislation, domestic judicial practice, international standards, ECHR case-law (*Caballero v. The United Kingdom*; *Neumeister v. Austria*; *Punzelt v. The Czech Republic*).**
- a. Administrative surveillance as a means of limiting the freedom of movement and actions of the defendant, under which he/she is required to register at least three times per week at the competent authority stated in the court decision.
  - b. Restrictions which may be imposed on the defendant by the court decision include:
    - i. prohibiting leaving the permanent or temporary place of residence without the consent of the body conducting the proceedings;

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<sup>44</sup> See *Piruzyan v. Armenia*, §105; *S.B.C. v. the United Kingdom*, § 23-24.

- ii. prohibiting visiting certain places mentioned in the decision,
  - iii. prohibiting communication with certain persons; and
  - iv. prohibiting leaving the area of his/her residence for a certain period of the day, but not more than for 12 hours.
- c. The obligation of the court to consider the health condition of the accused, as well as the conditions of work and study, when imposing restrictions on the defendant.
- d. Control of the accused by the competent authority through special electronic means; the obligation of the accused to always carry the electronic devices, not to damage them, and to respond to the signals of the competent authority. Practical issues of electronic monitoring.
- e. Electronic monitoring in the criminal procedure of post-Soviet and European countries.

### **Main methods of training**

Discussion of these issues will be organized in an interactive manner; that is, the legislative requirements, as well as the international experience, will be presented, and then hypothetical situations or real situations from practice will be the subject of general discussion. The relevant material having been presented, the practitioners will be invited to present examples from their own practice, which will become the subject to general discussion.

### **REFERENCE MATERIALS**

#### **LEGISLATIVE ACTS (AND DECISIONS OF THE CONSTITUTIONAL COURT)**

1. Constitution of the Republic of Armenia (as amended on December 6, 2015)
2. Criminal Procedure Code of the Republic of Armenia
3. The draft of the new Criminal Procedure Code of the Republic of Armenia
4. Decision DCC-1295 of the RA Constitutional Court of 2 September 2016
5. Decision DCC-1373 of the Constitutional Court of the Republic of Armenia of June 13, 2017

#### **APPLICABLE COURT DECISIONS**

1. ECHR, Badalyan v. Armenia, app.no 44286/12
2. ECHR, Hovhannisyan v. Armenia, app.no 50520/08
3. ECHR, Ara Harutyunyan v. Armenia, app.no 629/11
4. ECHR, Zalyan and others v. Armenia, app.no 36894/04
5. ECHR, Sahakyan v. Armenia, app.no 23978/06
6. ECHR, Minasyan v. Armenia, app.no 44837/08

7. ECHR, Khachatryan and others v. Armenia, app.no 44837/08
8. ECHR, Sefilyan v. Armenia, app.no 22491/08
9. ECHR, Grigoryan v. Armenia, app.no 3627/06
10. ECHR, Piruzyan v. Armenia, app.no 33376/07
11. ECHR, Muradkhanyan v. Armenia, app.no 12895/06
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13. ECHR, Poghosyan v. Armenia, app.no 44068/07
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15. Decisions of the RA Cassation Court: 18.12.2009 no. EADD/0085/06/09, 24.02.2011 no. EKD/0678/06/10, 22.12.2011 no. TD2/0009/06/11, 22.12.2011 no. EKD/0503/06/10, 18.04.13 no. EAKD/0218/06/12, 01.11.2012 LD/0078/06/12, 31.10.2008 no. AVD/0022/06/08, 31.05.2014 no. VB-07/13, 15.08.2014 no. ARAD/0021/06/14, 31.10.2014 no. EAQD/0056/06/14, 23.07.2010 no. EKD/0580/06/09, 10.04.2009 HYQRD3/0106/01/08

#### **OTHER SOURCES (INTERNET WEBSITES, PRACTICAL GUIDELINE MATERIALS, ETC.)**

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2. Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), "Developments concerning CPT standards in respect of police custody," <https://rm.coe.int/16806cd1ed>
3. American Bar Association (ABA), Rule of Law Initiative, "Handbook of International Standards on Pretrial Detention Procedure," 2010,  
[https://www.americanbar.org/content/dam/aba/directories/roli/misc/handbook\\_of\\_international\\_standards\\_on\\_sentencing\\_procedure\\_2010\\_eng.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/directories/roli/misc/handbook_of_international_standards_on_sentencing_procedure_2010_eng.authcheckdam.pdf)
4. Criminal Code of France
5. Criminal Code of Germany
6. Criminal Code of Switzerland
7. Criminal Code of the United States, Title 18, § 3142, of the United States Code (18 U.S.C. § 3142), Release or detention of a defendant,  
[http://uscode.house.gov/view.xhtml?req=\(title:18%20section:3142%20edition:prelim\)%20OR%20\(granuleid:USC-prelim-title18-section3142\)&f=treesort&edition=prelim&num=0&jumpTo=true](http://uscode.house.gov/view.xhtml?req=(title:18%20section:3142%20edition:prelim)%20OR%20(granuleid:USC-prelim-title18-section3142)&f=treesort&edition=prelim&num=0&jumpTo=true)
8. (US) Federal Judicial Center, Probation and Pretrial Services,  
<https://www.fjc.gov/subject/probation-pretrial-services>
9. US Conference of State Court Administrators, "2012-2013 Policy Paper: Evidence-Based Pretrial Release,"  
<http://cosca.ncsc.org/~media/Microsites/Files/COSCA/Policy%20Papers/Evidence%20Based%20Pre-Trial%20Release%20-Final.ashx>

10. Pretrial Justice Center for Courts, a Project of the (US) National Center for State Courts,  
<http://www.ncsc.org/Microsites/PJCC/Home.aspx>

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## Module 5: Investigating and Prosecuting Gender-Based Violence Crimes<sup>45</sup>

This training for investigators, prosecutors, and judges is intended to deepen their understanding of the scope of gender-based crimes, the issues of proper investigation and prosecution of these crimes, and the specific powers of certain governmental entities to fight gender-based crimes. The training will give emphasis to practical discussions showing how investigations should be conducted efficiently, how different types of gender-based violence should be properly addressed, and how the main difficulties in prosecutions of private accusation crimes can be addressed. The training also will consider why gender-based violence crimes may sometimes not be reported, investigated, and prosecuted, and ways to overcome those challenges.

### **Part I. Criminal liability for sexual harassment and sexual exploitation under the Criminal Code of the Republic of Armenia as a type of protection against gender-based violence crime**

#### **1. The concept of gender-based violence. Which actions constitute gender-based violence?**

- a. Although there is no universal definition of gender-based violence, widely accepted characterizations have been expressed in international documents addressing such violence, including:
  - i. The UN Declaration on the Elimination of Violence against Women (1993);
  - ii. The Council of Europe Committee of Ministers, Recommendation Rec(2002)5 on the protection of women against violence (2002); and
  - iii. The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul, 2011) (“Istanbul Convention”).
- b. As generally understood:
  - i. Gender-based violence is violence directed against a person because of the person’s gender (i.e., role in society as woman or man);
  - ii. Violence against women is any act of gender-based violence resulting or likely to result in harm or suffering to women. Gender-based violence, including violence against women, is a form of violation of human rights and fundamental freedoms; and
  - iii. The vast majority of gender-based violence is directed against women by men, and therefore the terms gender-based violence and violence against women are often used interchangeably.

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- iv. Such violence can be understood to encompass, but not be limited to, the following kinds of violence, whether physical, sexual, or psychological:
  - Violence occurring in the family or domestic unit, including physical, sexual and psychological violence, including battering, sexual abuse, dowry-related violence, rape and sexual abuse of spouses or others, female genital mutilation, other traditional practices harmful to women, such as forced marriage, and other reproduction-related violence, such as forced abortion, forced sterilization, forced contraception, and sex-preferential infanticide or abortion;
  - Violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution; and
  - Violence perpetrated or condoned by the State or its officials.

**2. What forms of gender-based violence are criminalized in the RA Criminal Code and criminal enforcement practices? What are the gaps or shortcomings?**

- a. Several provisions of the RA Criminal Code impose criminal liability specifically for certain kinds of gender-based violence, including:
  - i. Human trafficking for sexual exploitation (among other specified purposes) (Art. 132);
  - ii. Rape (Art. 138);
  - iii. Other kinds of forced sexual acts (Art. 139);
  - iv. Sexual acts forced by blackmail or other threats (Art. 140);
  - v. Sexual acts with a person obviously under 16 (Art. 141);
  - vi. Acts showing sexual desire with a person obviously under 16 (Art. 142);
  - vii. Unlawful discrimination against a citizen based on sex (among other specified bases) that damages the citizen's legal interests (Art. 143); and
  - viii. Imposing pressure to engage in prostitution (Art. 261).
- b. In addition, many general criminal offenses under the RA Criminal Code can be committed based on gender.
  - i. These include murder, assault, battery, causing severe physical pain or physiological suffering.
  - ii. Several of these general provisions establish certain gender-based motives or consequences as warranting higher penalties, such as:
    - murder or infliction of serious bodily harm in connection with a rape or other sexual violence (Art. 104, Art. 112); or

- infliction of serious bodily harm or mental suffering involving a pregnant woman (Art. 112, Art. 119).

c. As will be further examined below, a number of gender-based offenses are not explicitly defined in the RA Criminal Code.

### **3. The Council of Europe Convention on preventing and combating violence against women and domestic violence (“Istanbul Convention”). Armenia signed the Istanbul Convention on January 18, 2018.**

**State parties to the Convention agree to take steps to prevent gender-based violence and to provide support to its victims, including taking the necessary legislative or other measures to criminalize offenses specified in the Convention. The following several topics examine key kinds of offenses and ways in which Armenia might better criminalize them.**

#### **4. Psychological violence.**

- a. The Istanbul Convention requires that intentionally “seriously impairing a person’s psychological integrity through coercion or threats” be criminalized. (Art. 33.)
- b. The RA Criminal Code seems at least as protective against psychological violence as the Istanbul Convention. Article 119 criminalizes intentionally causing severe mental suffering, and the draft Criminal Code would establish as a separate crime the infliction of psychological suffering by hitting, beating, or other violent acts, and regularly committing such acts would warrant a higher penalty.

#### **5. Stalking.**

- a. The Convention requires the criminalization of intentionally “repeatedly engaging in threatening conduct directed at another person, causing her or him to fear for her or his safety.” (Art. 34.)
- b. The RA Criminal code does not specifically criminalize stalking and has only a general provision criminalizing the violation of public order. Some European countries have enacted statutes that address stalking specifically, but no uniform approach has emerged. For example, Germany defines criminal stalking as seeking proximity with the target, trying to establish contact, or making serious threats, which seriously disrupt the target’s lifestyle. Belgium criminalizes knowing conduct that seriously disrupts the target’s peace.

#### **6. Rape and other sexual violence.**

- a. The Convention requires that non-consensual acts of a sexual nature, including bodily penetration and other kinds of sexual acts, be criminalized. (Art. 36.)

This provision also makes two important clarifications:

- i. “Consent must be given voluntarily as the result of the person’s free will assessment in the context of the surrounding circumstances,” and

- ii. The criminalization must include acts “committed against former or current spouses or partners.”
- b. The RA Criminal Code generally criminalizes rape and other sexual violence, but adjustments would be appropriate with respect to consent and with respect to spouses.
  - i. With respect to consent, the RA Criminal Code criminalizes intercourse or other sexual acts if committed by using force, or the threat of force, or by taking advantage of a person’s helplessness. Also criminalized is intercourse or other sexual acts forced by means of blackmail, threats to property, or taking advantage of financial or other dependence. In effect, these are the only circumstances under which the act is deemed to be nonconsensual.

In Armenian law enforcement practice, rape and other sexual violence has always been seen as criminal only if forced by actual violence, the threat of violence, or the victim’s helplessness. However, this limitation is the subject of debate. Also, the crime of using non-violent force applies only in cases of blackmail, threats to property, or financial or other dependence.

- ii. With respect to criminal liability for marital rape or other sexual violence, the Armenian law-enforcement community agrees that such conduct perpetrated against a spouse or partner is a violation under the RA Criminal Code. However, the victim frequently does not want the incident known and will not report it to law enforcement bodies. (This issue will be examined further in the discussion about domestic violence.)

## **7. Forced marriage.**

- a. The Convention requires that the intentional “forcing an adult or a child to enter into a marriage” be criminalized. (Art. 37.)
- b. The RA Criminal Code does not establish criminal liability for forced marriage. An example of criminal code that does so is Norway’s, which imposes criminal liability upon “anyone who forces another person to conclude a marriage through recourse to violence, deprivation of liberty, undue pressure or other unlawful behavior or through the threat of such behavior.”

## **8. Female genital mutilation.**

- a. The Convention requires that intentionally performing any mutilation of a woman’s external genitalia be criminalized; and it further requires that coercing or procuring a woman to undergo such an act, or inciting, coercing, or procuring a girl to undergo such an act, also be criminalized. (Art. 38.)
- b. No provision of the RA Criminal Code would clearly cover this conduct. An existing provision does criminalize intentionally causing harm to the health of a person, but, if this provision were applied to an instance of female genital mutilation, significant

questions could be raised about whether the intent (and sometimes whether the result) was harm to health, and whether inciting, coercing, or procuring is covered.

#### **9. Forced abortion and forced sterilization.**

- a. The Convention provides that intentionally performing an abortion without the woman's prior and informed consent be criminalized, and that intentionally surgically sterilizing a woman without her prior and informed consent be criminalized. (Art. 39.)
- b. No provision of the RA Criminal Code would clearly cover this conduct. An existing provision does criminalize intentionally causing harm to the health of a person, but, if this provision were applied to an instance of forced abortion or forced sterilization, significant questions could be raised about whether the intent (and often whether the result) was harm to health, and whether a lack of prior informed consent is covered.

Forced abortion is widespread in Armenia, especially for gender selection when the fetus is female.

#### **10. Unacceptable justifications, including crimes in the name of "honor."**

- a. The Convention specifies that "culture, custom, religion, tradition or so-called "honour" shall not be regarded as justification," and that "[t]his covers, in particular, claims that the victim has transgressed cultural, religious, social or traditional norms or customs of appropriate behavior." (Art. 42.1.)
- b. Under the RA Criminal Code, the victim's "immoral" behavior is considered to be a cause of the perpetrator's state-of-mind as a mitigating factor. This contradicts the Convention. The draft Criminal Code, however, would resolve the issue by eliminating consideration of the victim's "immoral" behavior as a mitigating circumstance.
- c. Issues involving whether any evidence about the alleged victim's sexual history may be introduced at trial ("rape-shield").

#### **11. Sexual harassment.**

- a. The Convention requires that "any form of unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment, is subject to criminal – or non-criminal – legal sanction. (Art. 40.)
- b. The RA Criminal Code does not provide criminal liability for these acts. For insults, the perpetrator may be required to pay civil compensation, and for the other parts of the offense, no criminal, civil, or administrative liability is now provided.

## **12. Domestic violence.**

- a. How to address domestic violence against women is a very controversial and divisive issue for Armenia. Many people, including many law enforcement officials, believe that domestic violence is a personal, private, family matter, and that it is not desirable for law enforcement to intervene. In many cases the victim thinks this same way and does not want to undermine her family or further spoil her relationship with the abuser.
- b. In fact, a national debate has been taking place about domestic violence. NGOs that promote women's rights have been criticized for undermining Armenian traditional families and for spreading Western values. Legislation to prevent domestic violence and protect victims was a topic of substantial public controversy in 2017 along similar lines, and it was enacted in December 2017 only after it was amended to, among other things, include among its purposes "the restoration of family cohesion."
- c. The US State Department's "Armenia 2017 Human Rights Report" reported: "Domestic violence was prosecuted under general statutes dealing with violence, although Authorities did not effectively investigate or prosecute allegations of domestic violence. Domestic violence against women was widespread." Moreover, it was reported that "police, especially outside of Yerevan, were reluctant to act in such cases and discouraged women from filing complaints. A majority of domestic violence cases were considered under the law as offenses of low or medium seriousness and the government has not hired female police officers and investigators to address these crimes."
- d. In terms of prosecution, domestic violence has only been pursued based on the victim's complaint for, e.g., assault, battery, etc. However, recent amendments to the RA Criminal Procedure Code authorize the prosecutor to initiate proceedings in cases of domestic violence even when the victim does not lodge a complaint, if that person is unable to protect her interests due to vulnerability or dependence. Likewise, even reconciliation between the victim and the accused does not cause the prosecution to be terminated.

## **13. Promoting gender-based violence prevention, reducing its size, and methods to effectively combat it (overcoming stereotypes; organizing discussions on gender issues in schools; introducing the requirements, contents, essence and goals of international conventions to law enforcement officials; discussing and implementing international good practices; etc.).**

### **Part 2. Types of investigative measures**

1. **The tactical features of the examination of the crime scene in gender-based violence crimes, the issues arising in this regard (e.g., means of protecting the traces of the crime; availability of rape kits; dissemination of instructions to hospital emergency rooms, health clinics, universities and other institutions, and first responders), the**

**main difficulties, and the ways of overcoming them. The RA criminal procedural regulations. Leading international standards and best practices. The experience of foreign countries in this field.**

- a. Issues of obtaining and maintaining the traces of the crime in order to send them to forensic medical examinations and to ensure the availability of necessary medical evidence.
- b. The problem of rapid response by the hospital facilities that victims have gone or have been transferred to; cooperation with law enforcement; and the support for the preservation of traces of the crime.
- c. The issue of preparedness of the staff of clinics, universities and other institutions; the special training of first responders.

**2. The procedural features of interrogating witnesses in gender-based violence crimes, the issues rising in this regard, the main difficulties and the ways of overcoming them. The issues and challenges involved in having the participation of a psychologist. The experience of foreign countries in this field.**

- a. The main requirements of preparing and conducting interrogation include:
  - i. Acquisition of necessary information on the personal security situation, psychological and physical health of the witness, appointing and making use of experts where relevant;
  - ii. Need for any prior consent to be interviewed from parents or guardians, where relevant;
  - iii. Assessment of interview location needs (i.e., identifying the most suitable interview location based primarily on security, privacy, and confidentiality, and where possible, providing for comfort, convenience, and familiarity as well as any special needs);
  - iv. Assessment of the psychological and physical well-being of the witness, as well as the security of his/her situation to determine if an interview is appropriate;
  - v. Ensuring the option of having a support person or psychologist present during the interview if the witness so wishes;
  - vi. Need to establish rapport with the witness at the beginning of the interview; and
  - vii. Ensuring the opportunity of free narrative from the witness before following up with open-ended and specific, non-leading questions.

**3. Taking samples for examination in gender-based violence crimes, and the challenges in respecting the physical and mental privacy and sensitivity of the person, the issues rising in this regard, the main obstacles, the ways of overcoming them. The issue of reconciling the need to take samples for examination with the need to respect the**

**individual's human rights (ECHR case-law). The experience of foreign countries in this field.**

- a. Giving samples for examination as a mandatory requirement to obey a legal order of the body in charge of criminal proceedings.
  - b. The danger of mental suffering of the victim while giving samples for examination; the ways to overcome it.
  - c. Reconciling the obligation of the accused to give samples for examination and the right against self-incrimination.
- 4. Appointing and making use of experts, the issues arising in this regard (e.g., timeliness and delay, the difficulty in obtaining certain types of the expertise), the main obstacles and the ways of overcoming them. The experience of foreign countries in this field.**
- a. Ineffectiveness or impossibility of appointing and making use of experts because of lack of traces of crime or long time delays.
  - b. Avoiding double or additional expertise as far as possible to avoid causing additional mental suffering to the victim.

**Possible topics for discussion:**

- Refusal to give samples for examination in the context of the right to keep silent, reconciling the right to privacy and the procedural obligatory rule to carry out a comprehensive, objective and full investigation of the circumstances of the case.

**Part 3. Tactics of investigation, including protection of potential victims**

- 1. Development of investigative hypotheses, planning the investigation of gender-based violence crimes.**
  - a. Peculiarities of investigation of gender-based violence crimes and its complexity conditioned by such circumstances, as:
    - i. the under- or non-reporting of sexual violence due to societal, cultural, or religious factors; stigma for victims of sexual and gender-based crimes;
    - ii. the associated lack of readily available evidence; lack of forensic or other documentary evidence owing, inter alia, to the passage of time; or
    - iii. lack of cooperation between law enforcement agencies and public institutions.

The International Commission of Jurists (ICJ) has published a briefing paper “intended to assist the efforts of judges, prosecutors, legislators, lawyers, law enforcement officers, human rights defenders and other actors to ensure effective criminal justice responses to sexual violence against women.”

This paper focuses on harmful gender stereotypes and false assumptions that interfere with effective enforcement of laws prohibiting sexual violence. Among other stereotypes and assumptions, the paper examines the belief that women frequently fabricate claims of sexual violence to hide their actual consent, that unchaste women are generally not credible, that a man can subjectively believe he was granted “consent” without relying on what is explicitly communicated, and that issues of “honor” or “immorality” can justify sexual violence.

The ICJ’s paper, entitled “Sexual Violence Against Women: Eradicating Harmful Gender Stereotypes and Assumptions in Laws and Practice” was published in April 2015 and is available here:

<https://www.icj.org/wp-content/uploads/2015/04/Universal-GenderStereotypes-Publications-Thematic-report-2015-ENG.pdf>

**2. Applying criminal procedural measures to protect witnesses and victims of gender-based violence crimes, providing medical and psychological assistance to the victims.**

- a. Protection of personal identity data, replacement of the personal identification documents of the protected person, or the change of the appearance, the removal of individuals from the courtroom or conducting a closed-door trial, interrogating the defendant in the court without the publication of information on his/her identity, placement of victims in shelters. Ensuring the victim's safety in the courtroom, as well as the possible exclusion of contacts between the victim and the accused.
- b. Cooperation of law enforcement agencies with social assistance centers; placement of victims in shelters.
- c. Use of protective orders that prohibit further contact by potential abusers.

**3. The right of the victim to have a lawyer.**

- a. Attorney's participation in the victim's interrogation and providing legal assistance.
- b. Ensuring legal procedures for providing free legal aid to the victim.

**4. The right to fair trial, in particular reconciling the right to cross-examine with the protection of the victim of gender-based violence crimes, within the framework of current legislation and practice of the RA and foreign countries. The international leading standards.**



- a. An adequate and proper opportunity for the accused to challenge and question a witness against him, either when that witness makes his statement or at a later stage of proceedings.
- b. The conditions for legitimacy of using the testimony of the witness whom the accused has had no opportunity to cross-examine or to have cross-examined, whether during the investigation or at the trial.
  - i. A good reason for the non-attendance of a witness.
  - ii. The conviction is not based solely or to a decisive degree on depositions that have been made by a person whom the accused has had no opportunity to cross-examine or to have cross-examined, whether during the investigation or at the trial.
- c. The main methods to cross-examine the protected person in the context of the latter's security, such as recording the testimony of the victim and its reproduction to avoid face-to-face or double interrogation and not to cause mental suffering to the victim, the use of audio equipment during the court hearing to ensure the interrogation of the victim outside the visual perception of the accused.

**Possible topics for discussion.**

- The prohibitive rule of using the testimony of the victim if the accused has not been given an opportunity of cross-examination, the main measures to balance the right of the accused to a fair trial and the respect for privacy of the victim.

**Part 4. The features of bringing charges**

1. **How to bring criminal charges regarding gender-based violence crimes, the value of establishing private accusation, issues related to the rules on initiating criminal proceedings on certain gender-based crimes based solely on the victim's complaint (for example, the need to conduct public investigation of private accusation of crimes in the interest of juvenile victims). Comparative analysis of the rules currently existing in foreign countries' legislation.**
  - a. Peculiarities of procedural order of initiation of a criminal case and termination of criminal proceedings (criminal prosecution) related to private accusation crimes.
  - b. Procedural terms and timing of the victim's consent (casual, reciprocal) with the suspect or the accused.
  - c. The decision to initiate a criminal case regarding a private accusation crime in a general manner, if the person whose rights are violated cannot protect himself/herself due to his/her helplessness or other objective reasons if there is legitimate reason and sufficient basis for initiating a criminal case.
  - d. Legislative ban for juvenile with dispositive capacity to express his view of consent with the suspect or the accused.

- e. Legislative ban for the legal representative of a person with dispositive capacity to consent with the suspect or the accused.
  - f. The responsibility of the body in charge of the proceedings to assess the necessity of protecting the juvenile's interests when one of his/her parents has committed a crime against him/her and the other is acting as a legal representative.
- 2. The features of investigating domestic violence cases in the RA and in foreign countries, the legislative grounds for prevention of domestic violence in the RA, the main issues and the shortcomings (e.g., the problem of reconciling the use of special protective measures authorized under the RA Law "On Prevention of Domestic Violence, Protection of Victims of Domestic Violence and Recovery of Solidarity in the Family" with the application of restraint measures provided by the RA Criminal Procedure Code).**
- a. Types of domestic violence.
  - b. The mechanisms prescribed by the RA Law "On Prevention of Domestic Violence, Protection of Victims of Domestic Violence and Recovery of Solidarity in the Family" to redress the domestic violence, such as decisions on urgent intervention and defense; limitations prescribed therein.
  - c. The role of social assistance centers and shelters.
  - d. Statutory procedure for the application of a decision on urgent intervention for protection of a victim under circumstances that justify an arrest, as well as other preventive measures that are not linked to a deprivation of liberty, within the framework of the criminal proceedings initiated in cases of domestic violence.
- 3. Mutual legal assistance with other countries in cases of gender-based crimes (trafficking, forced labor), the evidentiary value of the results of foreign investigation.**
- e. Cooperation between countries in the implementation of joint programs for the protection of witnesses and victims.
  - f. The use of modern means of telecommunication, such as a videoconferencing, to organize the interrogation of witnesses whose presence in the requesting country cannot be otherwise secured.
  - g. Transfer of materials of the criminal case within the framework of international legal cooperation.

**Possible topics for discussion.**

- Absence of complaint in private accusation cases: the issues arising because of the mandatory rule to bring a complaint when the victim is a restricted person or a person who is personally or materially dependent from the accused.

**Main methods of training:**

Discussion of these issues will be organized in an interactive manner. That is, the statutes, regulations, and international experience will be presented, and then hypothetical or real situations from practice will be discussed. The practitioners, including the judges, will also be asked to present examples from their own experience for general discussion.

**REFERENCE MATERIALS****INTERNATIONAL TREATIES**

1. Council of Europe Convention on preventing and combating violence against women and domestic violence
2. Convention on Action against Trafficking in Human Beings
3. The Convention on the Elimination of All Forms of Discrimination against Women

**LEGISLATION AND OTHER AUTHORITATIVE GUIDANCE**

1. The RA Criminal Code, 2003
2. The draft New Criminal Code of the RA
3. The RA Criminal Procedure Code, 1998
4. The draft New Code of Criminal Procedure of the RA
5. RA Law "On Prevention of Domestic Violence, Protection of Victims of Domestic Violence and Recovery of Solidarity in the Family"
6. The decision of the RA Constitutional Court of the RA on December 20, 2016, SDO-1333

**COURT DECISIONS**

1. ECHR, M.C. v. Bulgaria, App. No 71127/01
2. ECHR, Messegue and Jabardo v. Spain
3. ECHR, Sadak v. Turkey
4. ECHR, Unterpertinger v. Austria
5. ECHR, Bricmont v. Belgium
6. ECHR, Kostovski v. the Netherlands
7. ECHR, Van Mechelen and Others v. Lithuania
8. ECHR, Birutis and Others v. Lithuania
9. Criminal Cases` ESHD/003/01/09, ARD/0013/01/2010, HYQRD1/0061/01/08, HJQRD2/0143/01/08
10. Decision of the RA Cassation of the Court no. VB-73/08
11. Decision of the RA Cassation of the Court no SHD/0012/11/13

## **OTHER SOURCES (INTERNET WEBSITES, PRACTICAL GUIDELINE MATERIALS, ETC.)**

1. Sexual and Gender Based Violence, Fair Trial Rights and the Rights of Victims Challenges in Using Law and Justice Systems Faced by Women Human Rights Defenders ICJ Reflection Paper November 2015 <http://www.refworld.org/pdfid/57ee7f724.pdf>
2. Recommendation of the Committee of Ministers to Member States concerning intimidation of witnesses and the rights of the defense No. R (97) 13  
[http://www.barobirlik.org.tr/dosyalar/duyurular/hsykanunteklifi/recR\(97\)13e.pdf](http://www.barobirlik.org.tr/dosyalar/duyurular/hsykanunteklifi/recR(97)13e.pdf)
3. Department of Economic and Social Affairs Division for the Advancement of Women, UN Handbook for Legislation on Violence against Women
4. UN Handbook for Legislation on Violence against Women,  
<http://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf>
5. Investigation and Prosecution of Sexual and Gender-Based Crimes before the International Criminal Court Journal of Gender, Social Policy & the Law Article 6, Volume 17, Issue 2, 2009.  
<http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1030&context=jgspl>
6. Policy Paper on Sexual and Gender-Based Crime, 2014, June <https://www.icc-cpi.int/iccdocs/otp/OTP-Policy-Paper-on-Sexual-and-Gender-Based-Crimes--June-2014.pdf>
7. Committee on the Elimination of Discrimination against Women General Recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women  
<http://www.refworld.org/docid/4d467ea72.html>
8. US Department of State, Armenia 2017 Human Rights Report
9. The Criminal Code of Denmark
10. The Criminal Code of Belgium
11. The Criminal Code of Norway
12. The Criminal Code of Switzerland
13. The Criminal Code of Sweden
14. The Criminal Code of Spain
15. The Criminal Code of France
16. The Criminal Code of Germany

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## Module 6: Protection of Human Rights of Juvenile and Minority Offenders<sup>46</sup>

This training for investigators, prosecutors, and judges is intended to deepen their understanding of the human rights issues associated with crimes involving juvenile and minority offenders (including ethnic, religious, racial, and language minorities). This training will give emphasis to practical discussions in conducting investigations and prosecutions in such cases. It also considers why juvenile and minority offenders' rights may sometimes not be well protected and ways to overcome those challenges.

### **Part 1. Special rules on criminal responsibility and appropriate punishment of juveniles**

#### **1. Age of criminal responsibility: Statutory treatment in RA and foreign countries. Factors underlying the definition of age of criminal liability. The absence of an internationally defined universal age threshold.**

- a. Article 24 of the RA Criminal Code specifies:
  - i. Generally, an individual who reached the age of 16 before commission of a crime is subject to criminal liability;
  - ii. An individual who reached the age of 14 before commission of a crime is subject to criminal liability for any of a list of severe crimes, including murder, kidnapping, rape, theft of weapons, and several others; and
  - iii. An individual is not subject to criminal liability, notwithstanding having reached the age specified for criminal liability, if retarded mental development made the individual unable to understand the nature and significance of his or her actions or to control his or her actions.
- b. The minimum age for criminal responsibility varies widely among different countries. The minimum age for criminal responsibility is 7 in Egypt, and ranges in Europe, for example, from 8 in Scotland to 18 in Belgium and Luxembourg.

#### **2. International instruments on juvenile criminal liability.**

- a. Documents containing universal principles both for adults and minors (European Convention on Protection of Human Rights and Fundamental Freedoms, The United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules), Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, Council of Europe Recommendation No. R (99) 19 of the Committee of Ministers to Member States concerning mediation in penal matters, Recommendation R (89) 12 of the

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*Committee of Ministers to Member States. On Education in Prison, Recommendation CM/Rec (2010)1 of the Committee of Ministers to Member States on the Council of Europe Probation Rules, Council of Europe Committee of Ministers, Recommendation Rec (2003)22 on conditional release (parole), etc.).*

- b. International Documents mainly on Criminal Responsibility of Juveniles (Convention on the Rights of the Child, Minimum Age Convention, United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The *Beijing Rules*”), United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines), United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules), Guidelines for Action on Children in the Criminal Justice System (Vienna Guidelines), UN Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules), Recommendation Rec (2005)5 of the Committee of Ministers to Member States on the Rights of Children Living in Residential Institutions, etc.).
  - i. The system of punishment foreseen for the juvenile: Criminal legislation of RA and foreign countries.
  - ii. Opportunities to respond to criminal acts of minors outside the criminal justice system (diversion). Experience of RA and foreign countries.
  - iii. Compulsory educational measures foreseen for the juveniles in the Criminal Code of the Republic of Armenia, factors impeding the effectiveness of their application, possible ways of overcoming these obstacles.
  - iv. Goals of Juvenile Justice and Sentencing (principles of proportionality, child welfare).
  - v. Factors to be looked for when sentencing a juvenile (Aramais Nunushyan’s case, RA Cassation Court decision of 28 August 2015, No. 28/0094/01/13). The role of the Probation Service in providing information to clarify those factors. Experience of RA and foreign countries.
  - vi. Requirements for juvenile detention; use of deprivation of liberty as a means of last resort, requirements set for criminal acts committed. Compliance of rules provided by RA Criminal Code with the internationally accepted standards.
  - vii. Non-custodial sanctions provided for juvenile offenders by RA criminal legislation, the factors hindering the effectiveness of their application, possible ways for addressing these obstacles. Non-custodial sanctions provided for juveniles in the criminal legislation of foreign countries.
- c. Some of the listed documents establish so-called “hard” law, which has a mandatory force for the state (international treaties ratified by the Republic of Armenia, such as the Convention on the Rights of the Child), and others establish so-called “soft” law, which are the declarations, guidelines, rules, recommendations and other documents adopted by international organizations. However, even though they do

not impose a mandate on Armenia by their terms, they can obtain such binding nature when are reflected, for instance, in the decisions of the European Court of Human Rights (ECHR).

**Possible topics for discussion:**

- Measures available in RA for responding to the criminal behavior of juveniles, problems arising during their application.
- Alternative measures to be applied to juveniles, factors hindering the application of those measures and possible ways to overcome these obstacles.
- Goals of the juvenile justice system, the punishments imposed upon juveniles, the factors considered to ensure the achievement of these goals (e.g., proportionality, child welfare, rehabilitation rather than punishment).

**Part 2. Principal characteristics of proceedings involving juvenile and minority offenders: domestic rules and international practice**

**1. The role and functions of juvenile justice in the field of criminal justice.**

- a. The goals and the meaning of juvenile justice.
- b. The historical formation and development of juvenile justice.

**2. Creation of the basis for juvenile justice and treatment of minorities by the international community.**

- a. International agreements regulating the basis of juvenile justice and treatment of minorities.
- b. Ideas prescribed in the international agreements, such as:
  - i. Objectives of justice in criminal cases against juveniles;
  - ii. Speed of investigation of criminal cases against juveniles;
  - iii. Definition of a juvenile;
  - iv. Rules for treating juveniles under arrest or detention;
  - v. Requirements to the authorized bodies;
  - vi. Termination of criminal proceedings or termination of criminal prosecution in pre-trial criminal proceedings against juveniles;
  - vii. Clarification of the conditions of life and upbringing of a juvenile;
  - viii. Ensuring the principle of equality before the law as an important safeguard for the protection of minority rights and legitimate interests; and
  - ix. Peculiarities of proceedings involving minorities.

**3. Distinctive obligations of the government to protect the interests of juvenile and minority offenders under Chapter 50 of the Criminal Procedure Code of the Republic of Armenia.**

- a. The peculiarities of legal regulation prescribed by the Criminal Procedure Code of the Republic of Armenia and relevant judicial practice.
- b. The peculiarities of legal regulation prescribed by the draft new Criminal Procedure Code of the Republic of Armenia.
- c. The age-specific characteristics of juveniles and additional safeguards for juveniles' rights and freedoms.
- d. The definition of "the child's best interest", the factors that must be taken into account when assessing it, needs assessment of a child, the requirements of assessment of the child's best interest in Armenian criminal procedural legislation and international treaties: The RA judicial practice and the case-law of the ECHR.

### **Part 3. Applying coercive measures to juvenile and minority offenders**

- 1. Applying coercive measures to juvenile and minority offenders: RA rules, international guidelines, compliance of RA legislation with international standards. The issues concerning the application of coercive measures: RA judicial practice and the case-law of the ECHR.**
  - a. Any decision on the restriction of freedom of juveniles should be made after a detailed discussion of all the circumstances of the proceedings in order to minimize the restriction as much as possible.
  - b. The goal of juvenile justice is not to apply procedural coercive measures against a juvenile but to apply alternative measures that can have an educational effect.
- 2. Special requirements for deprivation of liberty of a juvenile, informing the legal representative: RA rules, international guidelines, compliance of RA legislation with international standards. The issues concerning the application of coercive measures: RA Judicial practice and the case-law of the ECHR.**
  - a. Any decision on the restriction of freedom of juveniles should be made after a detailed discussion of all the circumstances of the proceedings in order to minimize the limitation as much as possible.
  - b. The grounds and conditions for depriving a person of liberty are common to all, however, there are some reservations that take into account the age-specific characteristics of juveniles.
  - c. When conducting criminal proceedings involving a juvenile, the body conducting the proceedings should consider whether there is any reasonable alternative to arrest; if there is, then we believe that the deprivation of the juvenile's freedom is not justified, even for a short period of time.
  - d. Study of the juvenile detention rules, illustration of minimal rights of juveniles during the arrest, the appeal of the lawfulness of deprivation of the juvenile's liberty.



- e. Special considerations: severity of the offense, existence of prior offenses, related behavior (truant from school, not working, use of drugs, etc.), and mitigating circumstances.
- 3. Peculiarities of detention of juveniles and minority offenders. RA rules, international guidelines, compliance of RA legislation with international standards. The issues concerning the application of coercive measures: RA judicial practice and the case-law of the ECHR (*Grabowski v. Poland*).**
- a. Detention in the case of minor or medium-gravity offense shall be imposed only if the juvenile violates the conditions of an alternative remedy against him or her. In any case, detention of a juvenile accused should be used only as a last resort and for the shortest timeframe.
  - b. Informing the legal representative in case of deprivation of liberty of the juvenile.
- 4. Specification of juvenile detention periods: RA rules, international guidelines, compliance of RA legislation with international standards. The issues concerning the application of coercive measures: RA judicial practice and the case-law of the ECHR (*Asimov v. Bulgaria, Selçuk v. Turkey*).**
- a. Depriving a juvenile of liberty for a long time can lead to serious mental illnesses. Detention as a preventive measure shall be used only as a last resort and for the shortest timeframe. The duration of detention for juvenile and adult accused persons should not generally be the same.
  - b. When imprisoning a juvenile, the court must consider the conditions of his or her upbringing and the relationships with the parents.
  - c. Provisions of the RA Criminal Code (Art. 88-90) establish separate maximum prison terms for juveniles, depending on the gravity of the crime.
- 5. Opportunities for applying procedural enforcement measures that are an alternative to deprivation of liberty for juveniles. RA legislation and international guidelines, experience of RA and foreign countries.**
- a. Detention of a juvenile may be implemented only in exceptional cases: This means that the offender should be subject to other forms of preventive measures as prescribed by law, which are also meant to ensure the implementation of the objectives of criminal procedure. The more these alternative remedies are available, the more unlikely the juvenile will be subject to detention.
  - b. Article 86 of RA Criminal Code sets the system of punishments foreseen for the juveniles. As alternatives to arrest or imprisonment, the provision authorizes punishment by fine or community work. (A juvenile may be sentenced to community work only if the individual is age 16 or more at the time of sentencing.)
  - c. The use of supervision as a preventive measure for a juvenile suspect or accused is of particular importance.

- d. Article 91 of RA Criminal Code states that a minor who committed for the first time a crime that is not grave or of medium-gravity may be exempted from criminal liability by the court, if the court finds that his correction is possible by application of enforced disciplinary measures. Such measures may include: warning, remand to the supervision of parents or other competent authority for up to 6 months, the obligation to mitigate the damage inflicted, or restrictions on leisure time or imposition of similar requirements for up to 6 months.
  - e. Under Article 93 of the RA Criminal Code, a minor who committed a crime that is not grave or of medium-gravity may be exempted from punishment if the court finds that the purpose of the punishment can be achieved by placing the minor in a specialized educational and disciplinary or medical and disciplinary institution.
- 6. Members of minority groups held in detention may be particularly susceptible to abuse or other deprivation of their human rights, and efforts should be made to protect their rights.**
- a. According to human rights organizations including a report by the Prison Monitoring Group (PMG), an NGO that operates under the RA Ministry of Justice, the most vulnerable group in penitentiaries in Armenia are LGBTI individuals (lesbian, gay, bisexual, transgender, intersex). They are frequent targets of discrimination, violence, and abuse by other inmates, and prison administrators reinforced and condoned such treatment. (See the PMG's annual report 2017; the US State Department's "Armenia 2017 Human Rights Report.")
  - b. Members of minority religious groups may experience constraints on their religious freedom while in detention.
    - i. The PMG has reported that no special diet is prescribed to accommodate religious and cultural peculiarities of inmates, though the Ministry of Justice has ruled that religious and cultural peculiarities of inmates shall be taken into account insofar as possible.
    - ii. As reported by the US State Department, the Armenian Apostolic Church has free access to places of detention under law, whereas other religious groups may have representatives in such places only with permission from the head of the institution. Generally, minority religious groups and nongovernmental organizations have found governmental and societal discrimination against minority religious organizations. (US State Department, Armenia 2017 International Religious Freedom Report.)

#### **Part 4. The distinctive features of the evidentiary process**

- 1. The need to ascertain the circumstances that characterize the juvenile suspect or defendant, in addition to the general circumstances that must be proven during the criminal proceedings involving a juvenile.**
  - a. The age of the juvenile (date of birth).

- b. The social, family situation of a juvenile, conditions of education and upbringing, the level of mental development and other features of his or her personality.
  - c. The influence of older persons on the juvenile.
  - d. The reasons for the alleged offense and the favorable conditions for committing it.
- 2. Evidence of such circumstances involving the juvenile should be developed and presented in the course of the investigation or trial, in case it is relevant to prove whether the juvenile is criminally liable, and in case it is helpful in determining an appropriate form of mandatory education or punishment.**

**Part 5. Participation of juvenile and minority offenders in investigative and judicial proceedings**

- 1. Interrogation of juvenile accused, victim, or witness as a common investigative measure.**
- a. Peculiarities of an interrogation involving a juvenile suspect, accused, victim, or witness, creating a psychological contact with juveniles, participation of legal representative or a psychologist while conducting the interrogation.
  - b. Peculiarities of a cross examination with a juvenile.
- 2. Peculiarities of juveniles' and minorities' participation in other investigative proceedings.**
- a. Namely, presenting for recognition, assigning and conducting a forensic examination, taking samples for examination.
  - b. Peculiarities of trial proceedings conducted with participation of juveniles, particularly, the cross-examination of a juvenile during the trial.
  - c. Peculiarities of ensuring the right of a juvenile to cross-examination.
  - d. Providing a free translator in cases involving a linguistic minority.

**Part 6. Participation of the legal representative and defense counsel in the proceedings involving juvenile and minority offenders**

- 1. Ensuring the protection of juvenile suspects and juveniles accused by means of the participation of defense lawyers.**
- a. The participation of a defense lawyer is mandatory in a case involving a juvenile. Because of a juvenile's immaturity, a statement by the juvenile refusing counsel is not admissible, and to proceed without a defense lawyer would be a significant violation of the juvenile's rights.
  - b. Of course, a change in defense lawyer must be allowed, if the attorney does not provide adequate legal assistance, or if the relationship between the attorney and the juvenile lacks mutual trust.

- c. Ensuring that the juvenile and the defense counsel have sufficient time and opportunity to organize the defense.
  - d. The development of a defense tactic between a juvenile and a defense counsel; how disagreements between the juvenile and the defense counsel may be resolved.
- 2. The legal status of a legal representative of a juvenile.**
- a. The rights and obligations of a legal representative of a juvenile, the guarantees for their implementation.
  - b. The participation of a legal representative in the evidentiary process at different stages of criminal proceedings.
  - c. The Beijing Rules (para. 15.2) state: “The parents or guardian shall be entitled to participate in the proceedings and may be required by the competent authority to attend them in the interest of the juvenile. They may, however, be denied participation by the competent authority if there are reasons to assume that such exclusion is necessary in the interest of the juvenile.”
  - d. The function of the legal representative is to have a special trusting relationship with the juvenile and thereby help promote the juvenile’s interests. However, the legal representative does not act instead of the juvenile, and the juvenile does not obtain consent from the legal representative when exercising procedural rights.
- 3. The participation of a psychologist or pedagogue in the proceedings involving a juvenile and his or her procedural status. Some legal scholars and advocates believe that the role of a pedagogue with appropriate training in child psychology should be better defined in RA criminal procedure.**
- 4. For a linguistic minority defendant who is not fluent in the language of trial, the mandatory participation of a defense lawyer in criminal proceedings should be ensured.**

## **REFERENCE MATERIALS**

### **INTERNATIONAL TREATIES AND RULES**

1. International Covenant on Civil and Political Rights, 1966
2. UN Convention on the Rights of the Child, 1989
3. UN Standard Minimum Rules for the Administration of Juvenile Justice (the “Beijing Rules”) adopted by General Assembly resolution 40/33 of 29 November 1985
4. UN Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), 1990
5. UN Rules for the Protection of Juveniles Deprived of their Liberty adopted by General Assembly resolution 45/113 of 14 December 1990
6. Minimum Age Convention, 1973
7. Guidelines for Action on Children in the Criminal Justice System (Vienna Guidelines)
8. UN Standard Minimum Rules for non-custodial Measures (The Tokyo Rules)

## **LEGISLATION**

1. RA Law on the Child's Rights, 1996
2. RA Criminal Procedure Code, 1998
3. Draft new Criminal Procedure Code of RA

## **COURT DECISIONS**

1. The decision of the RA Court of Cassation N. EADD/0014/11/09 of 23 July 2010
2. The decision of the RA Court of Cassation N. END/0086/01/10 of 23 December 2010
3. The decision of the RA Court of Cassation N. EQRD/0436/01/08 of 9 June 2010
4. The decision of the RA Court of Cassation N. EAND/0094/01/13 of 28 August 2015 (Aramais Nunushyan)
5. Judicial acts of the First Instance Courts of General Jurisdiction
6. Case-law of ECHR (Bayatyan v RA, Adyan and others v RA)

## **OTHER SOURCES**

1. The RA Human Rights Defender's report to the UN Committee on the Rights of the Child, 2012
2. The results of the report on "Monitoring of Juvenile Trials" by public organizations
3. Dilbandyan S. A., Protection of the rights and legitimate interests of the person in the pre-trial proceedings of the Criminal Procedure Code of the Republic of Armenia, Yerevan, YSU, 2011p. 453
4. Criminal Procedure of the Republic of Armenia, Special Part, Yerevan, 2010
5. Aipert G.P., The American System of Criminal Justice, Beverly Hills: Sage Publ.1984, p. 149
6. Wood E.G., Coordinating Council of Juvenile Justice and Delinquency Prevention //OJJDP Fact Sheet. November 1995, p. 25
7. Annual Report of the Group of Public Observers Conducting Public Monitoring in Penitentiary Institutions and Bodies of the RA Ministry of Justice ("Public Monitoring Group", or "PMG"), 2017.
8. US Department of State, "Armenia 2017 Human Rights Report" and "Armenia 2017 International Religious Freedom Report"
9. Criminal Procedure Code of Germany
10. Criminal Procedure Code of Switzerland

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## **Module 7: Financial Crime and Transnational Organized Crime Related to Combating Corruption<sup>47</sup>**

This training for investigators, prosecutors, and judges is intended to deepen their understanding of strategies for combating financial and transnational organized crimes. The training will give emphasis to discussing practical aspects of conducting investigations and prosecutions in such cases.

### **Part 1. Definition and characterization of financial crimes related to corruption.**

- 1. The concept of financial crimes: financial crimes are crimes that are related to the formulation, distribution, redistribution, and use of financial resources. Financial offenses include tax offenses, offenses related to credit, abuse and fraud in the securities market, abuse related to goods and services, fraud and other crime in banking, and money laundering.**
- 2. Provisions of the RA Criminal Code that define financial crimes implicated in corruption.**
  - a. Money laundering, which includes the conversion or transfer of the proceeds of crime, if it is known that the property was obtained by criminal activity and intending to conceal the criminal origin or to assist any person in evading criminal liability (Art.190).
  - b. Asset declaration violations including:
    - i. deliberate failure to submit an asset declaration to the Ethics Committee by a person obligated to submit it under the Law on Public Service (Art. 314.2); and
    - ii. falsification of information subject to asset declaration under the Law on Public Service or concealment of such information (Art. 314.3).
  - c. Tax evasion, which includes providing obviously false information in a statutory report or other mandatory taxation document, and failure to submit such a mandatory document required for tax purposes (Art. 205).
  - d. Securities-market violations including:
    - i. buying or selling of securities by an insider or other person on the basis of insider information (insider trading) (Art. 190.1), and
    - ii. making trades or spreading information that misleads about the price of securities (market manipulation) (Art. 190.2).

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**3. Several international treaties are aimed at combating money laundering and terrorism financing, which regulate the norms of international behavior, as well as the norms of behavior in Armenia. The latter ones include:**

- a. The Strasbourg Convention on the Elimination, Detection, Seizure and Confiscation of the Proceeds from Crime, which has been in force for the Republic of Armenia since March 1, 2014. The principal objective of the Convention is to bring EU members and other Signatory parties to the establishment of an effective international cooperation system and, through the use of modern techniques, to protect public security from the possible risks of criminal behavior, including money laundering and fear financing of terrorism;
- b. The UN Convention for the Suppression of Terrorism Financing, adopted by the Republic of Armenia in 2004, which again aims to join the efforts of Member States to combat criminality;
- c. United Nations Convention against Transnational Organized Crime, which was ratified by the Republic of Armenia on September 29, 2003. This instrument has the aim of ensuring more effective prevention of transnational organized crime and effective cooperation between the parties; and
- d. In 2008, the Republic of Armenia also acceded to the Council of Europe Convention on the Intelligence, Seizure and Confiscation of the Proceeds of Crime, which is aimed at preventing grave crimes at the international and national level.

**4. Further examination of the crime of money laundering.**

- a. Money laundering is particularly linked to organized crime. By hiding the proceeds of crime, money laundering makes it harder to fight the underlying crime. By making the proceeds of crime available to the perpetrator, money laundering helps foster the growth and spread of organized crime. Fighting money laundering is therefore key to fighting organized crime.
- b. The National Risk Assessment that Armenia undertook in 2014 in connection with the COE's MONEYVAL process identified swindling, theft, tax evasion, contraband, and squandering/embezzlement as posing the highest money laundering threats. The Prosecutor General's Office cited, from its perspective, that the highest money-laundering risk arose from fraud (including cybercrime), falsifying payment cards, theft through information and communication technology, embezzlement, theft, smuggling, and drug trafficking.<sup>48</sup>
- c. Money-laundering is a compound offense, requiring both a predicate crime, which generates proceeds, and the money-laundering crime, which is intended to legalize those proceeds.

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<sup>48</sup> See COE Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL), Anti-money laundering and counter-terrorist financing measures, Armenia, Fifth Round Mutual Evaluation Report, December 2015, MONEYVAL (2015)34, page 5.

- i. The RA Criminal Code (Art. 190) criminalizes laundering proceeds of any kind of crime. The provision thus has no list of predicate offenses, and instead applies “an all-crime regime,” so all bribery and other corruption-related offenses can be predicate offenses.
- ii. Under the Armenian legislation, money laundering is committed only where the perpetrator’s knowledge and direct intention are ascertained. Therefore, proof of suspicion or negligence may not be sufficient.
- iii. In criminalizing money laundering only if it is known that the assets resulted from criminal activities, the Armenian legislation may be seen as unclear whether a conviction in the predicate offense is a prerequisite for a conviction for money laundering. However, based on case law, investigators and prosecutors treat money laundering as a stand-alone crime that does not require a prior conviction for the predicate offense. The OECD team monitoring Armenia’s anti-corruption program reported that they welcome this approach.<sup>49</sup>

Although a valid verdict in the predicate crime is necessary, the court in a money laundering case must first establish that a predicate crime was committed and must verify that the laundered assets derived from the predicate offense.

- d. The formulation of the crime of money laundering in the RA Criminal Code leaves some ambiguities of which investigators and prosecutors should be aware.
  - i. Armenian case law (decision of the Cassation court, ECC/0090/01/09) identified an uncertainty that arises in some instances about whether an offense qualifies as money laundering or constitutes the lesser offence of trading in property clearly obtained through criminal activity (“hot” property), under Art. 216. Under this view of the legislation, a money laundering case may be seen as requiring proof of the specific purpose to hide the illicit source of the funds and enter them into legal circulation, rather than to use the proceeds for one’s own personal needs.
  - ii. Differentiating between money laundering and trading in “hot” property is a challenge both under Armenian law and internationally.
    - Article 216 deals with the acquisition or sale of property acquired through explicit criminal proceedings if it has “not been promised in advance.” But in money laundering, acquisition and sale of property acquired in a criminal way may also not be “promised in advance.” Therefore, there is a need to develop clear criteria for distinguishing these offenses. It should be noted that the necessity of delimitation is

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<sup>49</sup> OECD, Anti-corruption reforms in Armenia, 4<sup>th</sup> round of monitoring of the Istanbul Anti-Corruption Action Plan, adopted July 4, 2018.



available only in cases of money laundering, when money laundering is carried out by someone else who wants to support the main perpetrator.

- In the legal literature, various criteria for delimiting these offenses are proposed. One writer suggests that money laundering occurs if a person's intention was to legitimize the property and put it into legal circulation, but not if the person simply wants to use the property.<sup>50</sup> Another writer argues that the decisive criterion is that in a crime envisaged in Article 216, the owner is changed, and in the case of the case of Article 190, the same ownership remains.<sup>51</sup>
  - Another criterion, in some cases, may be the subject of crime. The preparation, recycling, acquisition or sale of property or objects if they are inherently illegal cannot be considered as the offense provided in Article 216. For example, the preparation, recycling, acquisition or sale of drugs, psychotropic or toxic substances cannot be regarded as crimes provided in Article 216, whereas buying products fabricated from stolen goods cannot be considered as money laundering, as it is a qualitatively new property.
- e. A wide diversity of transactions can be used for money laundering, to obscure the criminal origins of assets. The following are common money-laundering methods.
- i. Smuggling cash out of the country, hidden in freight or carried personally, and depositing it in foreign financial institutions that are less susceptible to money-laundering enforcement.
  - ii. Breaking cash into smaller deposits to avoid money-laundering reporting requirements. For example, making many deposits by many people and by depositing in multiple bank accounts.
  - iii. Fraudulent contracts for lease or supply of non-existent or over- or underpriced goods or services to disguise the movement of money.
  - iv. The purchase of gold or other precious metals, jewels, antiques, or art.
  - v. Use of a legal cash-intensive business, in which legitimate income can be combined with the proceeds from crime.
  - vi. Non-profit organizations are now frequently used as conduits for money-laundering.
  - vii. Informal non-bank international funds-transfer networks.

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<sup>50</sup> Волженкин Б. В. Отмывание денег., СПб., 1998 (Voljenkin B.V. Money laundering, Spb, 1998).

<sup>51</sup> Колб Б., Отмывание денег // Законность, 2004, N 1, (Kolb B. Money laundering/ Zakonnost, 2004, N 1, p. 43).

- viii. The securities market. For example, stocks might be purchased improperly with cash through a corrupt broker.

**5. A principal tool for countering money laundering is the requirement to report various kinds of financial and other transactions. The RA Law on Combatting Money Laundering and Terrorism Financing provides an extensive regime of reporting requirements.**

- a. The recipient of reporting is the Central Bank of the Republic of Armenia (referred to in the Law as the “Authorized Body”).
- b. Various categories of “reporting entities” are required to report transactions that satisfy certain criteria specific to each category of reporting entities. Representative examples include:
  - i. Financial institutions (banks, insurers, securities service companies), realtors, and certain others must report all transactions over a specified size, plus transactions that meet criteria for being deemed “suspicious”;
  - ii. Dealers in precious metals, jewelry, art, and auctioneers must report such transactions if in cash;
  - iii. Notaries must report certain kinds of transactions performed for their clients; and
  - iv. Attorneys, independent auditors, and independent accountants must report certain kinds of transactions performed for clients if those transactions meet certain criteria as “suspicious.”

**6. Other countries also apply various regimes for requiring that certain transactions be recorded or reported to help fight money laundering.**

**Possible topics for discussion:**

- The scope of financial offenses in RA, the issues of criminalization or non-criminalization of various kinds of financial activities, the statutory distinctions among various kinds of financial crimes (money laundering, credit-related crimes, banking secrecy offenses, offenses related to the securities markets).
- The legal formulation of money-laundering offenses, the distinction of these offenses from the crime of acquiring or selling the proceeds of crime, statutory gaps in the criminalization of money-laundering offenses.
- Various situations would be presented for discussion. For legalization of illicit proceeds (“money-laundering”), the issue of the criminal liability of the person whose money is laundered, and the criminal liability of other people involved. Issues involved in distinguishing certain financial crimes from non-criminal administrative offenses. Criminalization or non-criminalization of a number of offenses, improving the legal definitions of offenses.

## **Part 2. Transnational organized crime: definitions, typology, characteristics, causes and consequences.**

### **1. The concept and characteristics of transnational organized crime.**

- a. The fight against transnational organized crime is increasingly important in recent decades. Organized crime groups exploit open borders, the developments in information and communications technology, and the corruption in certain countries to carry out their criminal activities in several countries in order to occupy new markets and to increase the spheres of their influence. At the same time, criminal activity taking place in more than one state is frequently harder for law-enforcement bodies to identify.
- b. As criminal activity moves from being centered in individual countries to being carried out in large-scale and stable international enterprises, the international community's joint efforts to fight organized crime becomes increasingly essential.
  - i. The international community has adopted a number of documents aimed at combating transnational crime, the most important of which is the UN Convention against Transnational Organized Crime (Palermo Convention).
    - In addition, many countries that entered into Palermo Convention also entered into additional Protocols to the convention: The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children; the Protocol against the Smuggling of Migrants by Land, Sea and Air; and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition.
    - Armenia is a party to the Convention and to the Protocols.
  - ii. Other international documents are also aimed at combating various aspects of transnational crime (trafficking in human beings, forced labor, drug trafficking, corruption, money laundering, etc.).
- c. Currently transnational organized crime is characterized by: high, increasing profit; global, sustainable nature of criminal activities; functional similarity with legally operating structures; rapid adaptation to activities undertaken by law enforcement agencies; and availability of large financial resources.
- d. However, the definition of transnational organized crime is provided under the UN Convention against Transnational Organized Crime (Palermo Convention), Articles 1-3, which states that transnational organized crime assumes the criminal activity of organized criminal groups, if:
  - i. It is committed in more than one state;
  - ii. It is committed in one state but a substantial part of its preparation, planning, direction or control takes place in another state;

- iii. It is committed in one state but involves an organized criminal group that engages in criminal activities in more than one state; or
- iv. It is committed in one state but has substantial effects in another state.

**2. Major types of transnational organized crime, including cybercrime, human exploitation, smuggling, illegal trade in contraband, including counterfeit medicines and goods, money laundering. Over time, transnational organized crime types have changed.**

- a. Formerly such types as the Sicilian, Russian mafia, Japanese Yakudza, the Chinese Triad were known.
- b. Now, in the conditions of information technology development, cybercrime has been widely spread, trafficking in people (labor trafficking, trafficking in human organs) has dramatically increased, as well as transfer of prohibited objects such as weapons, radioactive substances, drugs and psychotropic substances, counterfeited medicine, smuggling of goods, cultural property (operation ULIS), fauna (Operation Nautilus), as well as money laundering (Operation Kyurasao).<sup>52</sup>

**3. Social, economic, legal, organizational, cultural factors that enable and encourage transnational organized crime, and possible ways to counteract them.**

- a. In this regard, it is also necessary to address the factors that are the causes for transnational organized crime. They are diverse and include social, economic, legal, organizational, cultural factors.
- b. Several factors contribute to the formation and development of organized crime.
  - i. The deterioration of the economic situation, the economic crisis, low wages, lack of social guarantees, and unemployment (to overcome these factors, people get involved in criminal activities and contribute to the development of the shadow economy).
  - ii. At the same time, contributing factors to organized crime include corruption, inefficient operation of the state apparatus and lack of confidence in it, unclear legal regulations, legislative gaps and shortcomings, lack of training of law enforcement officials and a low level of professionalism, demoralization of legal and moral consciousness of the population, instability and endless reforms, etc.
  - iii. Many of these factors are present in Armenia, and their neutralization will enable more effective efforts against organized crime.

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<sup>52</sup> [https://www.unodc.org/documents/organized-crime/Digest\\_Organized\\_Crime.pdf](https://www.unodc.org/documents/organized-crime/Digest_Organized_Crime.pdf).

#### **4. Harmful consequences of transnational organized crime.**

- a. Threats to the country's economy, to the public, and to state security; fostering the spread of corruption; discouraging international investment in Armenia; arousing fear in the population; undermining public confidence in state institutions.
- b. The fight against transnational organized crime is of great importance as the consequences of such crime are devastating not only for individuals, but also for the state. In particular, they endanger the country's economic, public and state security, making the country more vulnerable, contributing to the spread of corruption, with all the negative consequences resulting from it, resulting in fears among the population and the lack of confidence in state structures.

#### **Possible topics for discussion:**

- Factors that impede the investigation or prosecution of transnational organized crime cases and possible ways of overcoming those factors.

### **Part 3. Domestic and international investigative and prosecutorial strategies to address financial and transnational organized crimes.**

#### **1. Social-economic measures to combat transnational organized crime and financial crime**

- a. Social-economic risks of financial and transnational organized crimes and the existing approaches.
- b. Identification of risks and elaboration of policies to combat them.
- c. Implementation of simplified measures in relation to the Recommendations based on the assessment of the actual level of the risks.

#### **2. Organizational measures to counter transnational organized crime and financial crime**

- a. Domestic cooperation and coordination.
- b. The responsibilities of the competent authorities (in particular operative-search, investigative, prosecutorial bodies) in fight financial and transnational organized crimes.
- c. Implementation of Know Your Customer (KYC) and Customer Due Diligence (CDD) measures.

#### **3. An important governmental body in the fight against money laundering is the Financial Monitoring Center (FMC) established as a separate unit in the Central Bank of Armenia.**

- a. The FMC describes itself as “an administrative-type intelligence unit, which acts as an intermediary between reporting entities and law enforcement authorities.”<sup>53</sup>
  - b. The main law-enforcement function of the FMC is “to collect, analyze and exchange information” for purposes of combating money laundering and terrorism financing.<sup>54</sup>
- 4. Legal remedies for combating transnational organized crime and financial crime; RA and international statutes, treaties, and regulations. Consistency of RA legislation with international requirements, existing gaps, emerging problems and possible ways of overcoming them. Comparison with the legislation of foreign countries.**
- a. Criminal-organization legislation: provisions of the RA Criminal Code; requirements of the Palermo Convention.
    - i. As part of its effort to target organized crime, the RA Criminal Code criminalizes the creation of, management of, or participation in a criminal organization.
    - ii. Art. 41 of the Criminal Code (in paragraph 4) defines a crime committed by a criminal organization to include:
      - any crime “committed by a consolidated organized group created to commit grave or particularly grave crimes”
      - any crime committed “by uniting an organized group [i.e., a stable group of persons previously united to commit crime] for such purposes” of committing grave or particularly grave crimes.
      - a crime committed by a member of the organization or by another person by instruction of the organization.
- Art. 223 then establishes:
- Creation or management of a criminal organization is punishable by imprisonment from 8 to 12 years, with or without confiscation of property.
  - Participation in a criminal organization is punishable by imprisonment from 6 to 10 years, with or without confiscation of property.
  - More severe punishment is provided for committing those criminal acts by abuse of office.

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<sup>53</sup> Central Bank of Armenia website, Financial Monitoring Centre, About FMC, <https://www.cba.am/en/sitepages/fmcabout.aspx>.

<sup>54</sup> *Ibid.*

- A person who voluntarily informs state authorities and thereby suppresses the organization's activities is relieved of criminal liability if that is the individual's only criminal act.
- iii. Article 5 of the Palermo Convention requires state parties to adopt legislation criminalizing the intentional creation of certain forms of criminal organization.
- iv. Although the Armenian legislation generally criminalizes the establishment of criminal organizations as required under the Palermo Convention, the definition of a criminal organization under the Armenian provision is somewhat narrower than the definition required under the Palermo Convention.

Specifically, the latter defines a criminal organization in terms of its purpose of committing a category of offense punishable by imprisonment for at least four years, whereas the Armenian provision stipulates that a criminal association is formed for the purpose of committing a category of crime punishable by imprisonment for over 5 years.

- b. Need for other amendments to the RA legislation related to the fight against financial and transnational organized crimes.
- c. Compliance of the legislation to recommendations provided for in international treaties on fight against financial and transnational organized crimes.
- d. Examination of international treaties on fight against financial and transnational organized crimes, in particular Financial Action Task Force (FATF) recommendations; international standards on the fight against money laundering, terrorism financing and the financing of proliferation of weapons of mass destruction; Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (Warsaw Convention); and the United Nations Convention against Transnational Organized Crime (Palermo Convention).

## **5. The burden of proof. RA legislation and judicial practice. The experiences of foreign countries.**

- a. Constitutional and procedural regulation of the principle of presumption of innocence.
- b. Sharing burden of proof related to financial and transnational organized crimes. In particular, the need of amendments to the current legislation providing the opportunity to demand to submit information on the origin of income or property subject to confiscation in cases where one is charged with one or more serious crimes.
- c. Examination of international experience.

- 6. Operational-search measures (the term “operational search” refers to investigation relying primarily on undercover operations); undercover investigative means in the Draft RA New Code of Criminal Procedure. RA legislation and practice, current challenges and how to overcome them. Best practices from foreign countries.**
  - a. Actions envisaged by the Code of Criminal Procedure and Law on Operative-search means that enable the freezing and confiscation of property subject to confiscation
  - b. The regulations on possibility of using the information received by Operative-search means as evidence.
- 7. Mutual legal assistance in cases of financial crimes and transnational organized crimes, the challenges arising in this field and the ways of overcoming them. The evidentiary value of the results of foreign investigation in the RA.**
  - a. International tools of fight against financial and transnational organized crime.
  - b. The need for possible extended mutual legal assistance in quick, constructive and effective manner in cases of investigation and criminal prosecution of money laundering, terrorism financing and related cases. Countries should have adequate legal basis and, where appropriate, treaties, agreements or other arrangements to assist in improving cooperation. Particularly, the study of international treaties or bilateral agreements that provide mutual legal assistance.
  - c. Confidentiality within mutual legal assistance.
- 8. Special tools needed for investigators, prosecutors, and judges to investigate and try financial crime and other white-collar crime cases, transnational organized crime.**
  - a. Acquaintance with all relevant documents and information by the competent authorities in charge of investigating money laundering and terrorist financing cases to use in pre-trial investigation, criminal prosecution process and related activities. In particular, enforcement of compulsory measures such as obliging financial institutions, Designated Non-Financial Businesses and Professions (DNFBPs), and other natural or legal persons to provide financial data, searches of persons or facilities, interrogation of witnesses and seizure of evidence.
  - b. Use of the following tools in the fight against financial and transnational organized crime: operative investigation (use of secret agents), surveillance of communications, access to computer data and controlled delivery. Providing effective mechanisms that enable the practitioner to determine the individuals or legal entities to have accounts or to control accounts, as well as to ensure that the competent authorities have opportunity to detect assets without a prior identification to the owner. The investigative bodies in charge of proceedings in case of money laundering terrorist financing must be able to obtain all required information stored in Financial Control Authorities upon request.
  - c. Specialized technical expertise is critical to successful investigation and prosecution of international organized criminal activity.



- i. Corruption offenses of financial nature are distinguished by their complexity, and a key asset in investigation and prosecution is forensic accounting expertise. In this regard, the following information is particularly valuable:
  - An analysis of accounting and other records, electronic data bases, bank and other accounts, taxes and other statements, and other priority documents;
  - Employee surveys (management, financial department and accounting, sales and marketing staff, operational staff, security personnel, etc.), including former employees;
  - Interrogations of interlocutors, subcontractors, distributors and other contractors;
  - Review of contracts and agreements;
  - Review of annual reports and other reports and publications;
  - Examination of commercial records (either directly or through corporate databases);
  - Review of IT system use; and
  - Other procedures (e.g. comparison of employee life-style with earnings).
- ii. Armenian law enforcement officials have significant financial experience, and they can also use financial professionals in specific cases and may seek assistance from other government agencies with similar experience, such as from a financial department or audit division.

**9. Domestic and international organizations charged with the responsibility for fighting financial crimes. For example, resources available from the OECD, Interpol, Egmont Group.**

- a. Cooperation with above mentioned bodies in fight against financial and transnational organized crime.
  - i. The Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime is intended to promote international cooperation. Without such support, the investigation and disclosure of financial corruption and transnational crimes would be very difficult. It is drafted in order to help states, even in the absence of legal remedies.
  - ii. In particular, the parties are obliged to:
    - Criminalize money laundering; and

- Confiscate certain means that have been used for committing the crimes of the mentioned nature.
- iii. In addition, for purposes of international cooperation, the Convention calls for assistance to the investigation, obtaining evidence and providing relevant information to other States, disclosure of bank secrecy, freezing of bank accounts, and confiscation of property.

**10. Effective cooperation with banks and other private financial institutions to track large and potentially suspicious transactions.**

- a. Cooperation of financial and law-enforcement bodies, in particular providing the necessary information to the law enforcement bodies by the financial authorities.
- b. The following methods are used for the investigation of money laundering and transnational crimes: electronic surveillance, confidential operations, and use of agents.
- c. Modern white-collar criminals are, generally, individuals with higher education and with some knowledge in business-related fields such as economics, finance, and information technology (IT). They have broad access to technologies and specialized information. Such knowledge and resources can be used to commit financial crimes and to cover them up at the same time. Therefore, to combat this crime, it is necessary to use specific methods that are consistent with the methods by which the crime is committed; that is, special attention should be paid to electronic surveillance, the possibilities of which are several times more than those of other means. The electronic means allow the preliminary investigation bodies to obtain reliable evidence of the preparation and execution of financial crimes. It also provides with pre-emptive information about organizers and helps to prevent their activities.
- d. For the purposes of investigating financial corruption crimes, it is also important to conduct covered actions such as verification, internal and external audits.
- e. According to the FATF Recommendations, within the fight against financial crimes it is also important to conduct Know Your Customer (KYC) and customer due diligence (CDD) measures. This means that financial authorities should collect identification and other basic information from their customers and clients before opening an account and certain times thereafter and should verify the submitted data and conduct other due diligence.
- f. Financial institutions should be required to conduct customer due diligence (CDD) activities when: (1) business relationships are established; (2) one-off transactions are made that (a) exceed the applicable threshold (15,000 US dollars), or (b) are money transfers under the circumstances provided for in the Explanatory Commentary of Recommendation 16; (3) there is a suspicion of money laundering or terrorist financing; or (4) the institution has doubts about the authenticity or adequacy of the data obtained previously for the customer's identification.

- g. Financial institutions and other entities that engage in large cash transactions should also be required to apply Know Your Customer/Client (KYC) measures, by collecting proof of identity and other basic information about their customers that can be cross-checked against.

**Possible topics for discussion:**

- Procedural guarantees for operational-search measures. The evidentiary value of the data obtained as a result of operational-search means.
- The main issues arising in the field of mutual legal assistance.

**Main methods of training:**

Discussion of these issues will be organized in an interactive manner, that is, the statutory, regulatory, and international experience will be presented, and then hypothetical or real situations from practice will be discussed. The class participants will also be asked to present examples from their own experience for discussion.

**REFERENCE MATERIALS**

**INTERNATIONAL TREATIES**

1. FATF Recommendations
2. Strasbourg Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime
3. Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism
4. United Nations Convention against Transnational Organized Crime

**LEGISLATION**

1. The RA Criminal Code, 2003
2. The RA Criminal Code of the Procedure, 1998
3. The draft New Code of the Criminal Procedure of the RA

**DOMESTIC RESOURCES**

1. National Assessment of Money Laundering and Terrorism Financing Risks RA (2014)
2. Sectorial Analyses of ML and TF Risks RA (2013)

**OTHER SOURCES (INTERNET WEBSITES, MATERIALS OF THE JUDICIAL PRACTICE, ETC.)**

1. The decision of the RA Cassation Court no. EKD/0090/01/09
2. European court of Human Rights: Ismailov v. RF, App. No N 30352/03

3. Prosecuting Financial Crime Guidelines for Judges and Prosecutors, United Nations Development Programme (UNDP SCG)  
[http://www.undp.org/content/dam/serbia/Publications%20and%20reports/UNDP\\_SRB\\_Prosecuting\\_Financial\\_Crimes - Guidelines for Judges and Prosecutors.pdf](http://www.undp.org/content/dam/serbia/Publications%20and%20reports/UNDP_SRB_Prosecuting_Financial_Crimes_-_Guidelines_for_Judges_and_Prosecutors.pdf)
4. OECD, Anti-corruption Reforms in Armenia, 4<sup>th</sup> round of monitoring of the Istanbul Anti-Corruption Action Plan, adopted July 4, 2018.
5. COE, Conference of the Parties, Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS no°198), First Assessment Report of the Conference of the Parties to CETS no°198 on Armenia, C198-COP(2016)RASS9-AM.
6. COE, Anti-money laundering and counter-terrorist financing measures, Armenia, Fifth Round Mutual Evaluation Report, December 2015, MONEYVAL(2015)34, MONEYVAL(2015)34SUMM.
7. Swartz, TRANSNATIONAL CRIME & CORRUPTION CTR., TRANSNATIONAL CRIME, CORRUPTION, AND INFORMATION TECHNOLOGY (2000), available at <http://www.american.edu/traccc/events/reports/tcit2000.pdf> (discussing various studies, initiatives, and directives to utilize information technology as a solution method to transnational crime)
8. The Criminal Code of Germany
9. The Criminal Code of Switzerland
10. The Criminal Code of Sweden
11. The Criminal Code of Spain
12. The Criminal Code of France

**Module Compiler:**

Ara Gabuzyan

## **Module 8: Investigating and Prosecuting Intellectual Property Crimes<sup>55</sup>**

This training for investigators, prosecutors, and judges is intended to deepen their understanding of the scope of intellectual property (IP) crimes, the issues of proper investigation and prosecution of IP crimes, and the specific powers of certain governmental entities to combat these crimes. The training will give emphasis to practical discussions showing how investigations and prosecutions can be conducted efficiently and properly, and how effective cooperation among governmental entities can be achieved.

### **Part 1. Intellectual property crimes: definitions, typology, characteristics, causes, and consequences**

- 1. The concept and scope of intellectual property crimes.**
  - a. Objects that are subject to IP protection and objects that are not subject to IP protection.
  - b. Differentiation of intellectual property crimes from civil offenses.
- 2. Criminalization and types of intellectual property crimes under RA criminal statutes (criminal liability for copyrights and related rights, breach of patent law). Intellectual property crimes in the legislation of foreign countries.**
- 3. International legal documents aimed at combating the crimes against intellectual property (the Berne Convention, Madrid Protocol and Agreements, European Patent Convention, Hague Agreement, Paris Convention on Intellectual Property Rights, Patent Cooperation Treaty (PCT), European Patent Convention, TRIPS Agreement (Trade Related aspects of IP Rights Agreement), Budapest convention on Cybercrime), consistency of RA legislation with international requirements, existing gaps (definition of IP and uncertainty of the coverage of IP statutes).**
- 4. Social, economic, legal, organizational, cultural causes and enabling conditions of intellectual property crimes.**
  - a. Territoriality of Intellectual Property Rights.
  - b. Registered and non-registered rights.
- 5. Harmful consequences of intellectual property crimes (e.g., threats to the country's economy, to its economic development, to public health, to access within the country to certain foreign products).**
- 6. Relationship between organized crime and intellectual property crimes (Silver Axe, Opson V operations).**

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<sup>55</sup> This Module was prepared by experts from the Faculty of Law of Yerevan State University (YSU) in partnership with the National Academy of Public Administration (the Academy). The preparation of this Module was funded by the United States Department of State through a cooperative agreement with the Academy. Any opinions, findings, and conclusions stated in this Module are those of the authors and do not necessarily reflect opinions, findings, or conclusions of the U.S. Department of State.

**7. Ways of perpetrating IP crimes (including the use of modern technology, such as the Internet), and the possible ways to counter them (IP crime on the DARKNET).**

**Possible topics for discussion:**

- Criminalization of intellectual property offenses under the RA Criminal Code. Consistency with the requirements of international agreements and standards.
- Differentiation of IP crimes from civil and other offenses. Experience of RA and foreign countries.

**Part 2. Investigating and prosecuting intellectual property crimes**

**1. Investigative jurisdiction of IP crimes and especially those of a transnational nature.**

- a. Investigative jurisdiction for IP crimes, as defined by the Criminal Procedure Code of the Republic of Armenia.
- b. Specifics of investigative jurisdiction of transferred proceedings related to IP crimes involving mutual legal assistance.

**2. The methods of investigating and prosecuting transnational organized crime. The RA legislation, comparative legal analysis with the legislation of the foreign countries. The issues arising within the context of the fight against transnational organized crime and IP crime in the RA, and the ways to overcome them. RA and foreign judicial practice.**

- a. Preservation and confiscation of computer data as a contemporary method of combating crimes committed by use of modern information technologies (cybercrime); the conditions of its legality.
- b. Legislative regulation of covered investigative measures provided by the RA Draft New Code of Criminal Procedure on surveillance of digital and non-digital communication.
- c. The issues of using electronic evidence.
- d. The issue of ensuring cooperation between victims and law-enforcement agencies.

**3. Mutual legal assistance, the main challenges and the ways to overcome them. The evidentiary value of the results of the foreign investigation in the RA. Innovative and effective international cooperation strategies and partners to effectively address transnational criminal networks.**

- a. The role of the Interpol in the fight against IP crimes (The Interpol IP Crime Action Group (IIPCAG)).
- b. Coordinated sharing of information, evidence, and education by law enforcement, intelligence agencies, and international organizations.
- c. Cooperation with agencies that have substantive experience and knowledge in intellectual property, including the World Intellectual Property Organization (WIPO) and World Trade Organization (WTO).

- d. The commitments signatory countries should undertake under the United Nations Convention against Transnational Organized Crime.
    - i. To accelerate and extend the scope of extradition.
    - ii. To protect witnesses testifying against criminal groups.
  - e. The issues of transfer of proceedings related to intellectual property crimes involving mutual legal assistance.
4. **Cooperation with private-sector bodies to reveal and effectively examine IP crimes.**
- a. Specific obligations of service-providers who offer telecommunication services to the public, either through public or private networks, to provide information to identify the user, when so ordered by the competent investigating authority.
  - b. Specific obligations of operators of public and private networks that offer telecommunication services to the public to avail themselves of all necessary technical measures that enable the interception of telecommunications by the investigating authorities.

**Possible topics for discussion:**

- Problems arising in the process of investigating intellectual property crimes, as well as in the process of obtaining evidence and possible ways of overcoming them. Experience of RA and foreign Countries.

**Main methods of training:**

Discussion of these issues will be organized in an interactive manner, that is, statutory and regulatory strategies and international experience will be presented, and then hypothetical or real situations will be discussed. Participants will also be asked to discuss the main obstacles they encounter and strategies they use in their practice.

**REFERENCE MATERIALS**

**INTERNATIONAL TREATIES**

1. Budapest Convention of the Cybercrime, 2001
2. Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)
3. Paris Convention for the Protection of Industrial Property,
4. Berne Convention for the Protection of Literary and Artistic Works,
5. Universal Copyright Convention
6. Anti-Counterfeiting Trade Agreement (ACTA):
7. Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters 1968
8. Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters
9. Doha Declaration on the TRIPS Agreement and Public Health

## LEGISLATION

1. The RA Criminal Code of the Procedure, 1998
2. The draft New Code of the Criminal Procedure of the RA
3. The RA Law on Copyright and Related Rights
4. Criminal Code of Germany
5. Criminal Code of Switzerland
6. Criminal Code of France

## OTHER SOURCES (INTERNET WEBSITES, PRACTICAL GUIDELINE MATERIALS, ETC.)

1. Prosecuting Intellectual Property Crimes, January 2016 Volume 64 Number 1 United States Department of Justice Executive Office for United States Attorneys Washington, DC 20530. <https://www.justice.gov/usao/file/813026/download>
2. Prosecuting Intellectual Property Crimes, Third Edition, Published by the Office of Legal Education Executive Office for United States Attorneys,
3. M. Walterbach - Florida State University Law Review 591 (2006-2007)  
International Illicit Convergence: The Growing Problems of Transnational Organized Crime Groups' Involvement in Intellectual Property Rights Violations
4. EU Guidebook on Enforcement of Intellectual Property Rights.  
[http://trade.ec.europa.eu/doclib/docs/2005/april/tradoc\\_122641.pdf](http://trade.ec.europa.eu/doclib/docs/2005/april/tradoc_122641.pdf)
5. International Trademark Association, Criminal Prosecution of Counterfeiting and Piracy in Member States of The European Union, 2008-2009-2010 (NOTE: this is by a business group, not a governmental organization, and it might be somewhat dated.)  
<http://www.inta.org/Advocacy/Documents/INTAEUCriminalSanctions20082009.pdf>
6. "Prosecuting Intellectual Property Crimes - Department of Justice, Jan 2, 2016
7. Intellectual Property Crime <https://www.europol.europa.eu/socta/2017/intellectual-property-crime.html>
8. Intellectual Property Crime Coordinated Coalition - IPC3 About:  
<https://www.europol.europa.eu/about-europol/intellectual-property-crime-coordinated-coalition-ipc3#fndtn-tabs-0-bottom-1>
9. Counterfeiting And Product Piracy: <https://www.europol.europa.eu/crime-areas-and-trends/crime-areas/intellectual-property-crime/counterfeiting-and-product-piracy>
10. European Parliament, Study, Data Protection Review: Impact on EU Innovation and Competitiveness  
[http://www.europarl.europa.eu/RegData/etudes/etudes/join/2012/492463/IPOL-ITRE\\_ET\(2012\)492463\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2012/492463/IPOL-ITRE_ET(2012)492463_EN.pdf)
11. International Chamber of Commerce (ICC), an organization comprised of businesses, not government, but offers resources and services to fight IP crimes: <https://www.icc-ccs.org/index.php/icc/cib>
12. "Reporting Intellectual Property Crime: A Guide for Victims of Copyright Infringement, Trademark Counterfeiting, and Trade Secret Theft, Second Edition, (U.S. Department of Justice | Computer Crime and Intellectual Property Section | June 2016)  
<https://www.justice.gov/criminal-ccips/file/891011/download>



13. Prosecuting Intellectual Property Crimes, Published by Office of Legal Education, Executive Office for United States Attorneys, Fourth Edition  
[https://www.justice.gov/sites/default/files/criminal-ccips/legacy/2015/03/26/prosecuting\\_ip\\_crimes\\_manual\\_2013.pdf](https://www.justice.gov/sites/default/files/criminal-ccips/legacy/2015/03/26/prosecuting_ip_crimes_manual_2013.pdf):
14. US Federal Bureau of Investigation (FBI) , Intellectual Property Theft/Piracy, New Strategy, Initiatives and Operations <https://www.fbi.gov/investigate/white-collar-crime/piracy-ip-theft>
15. What Intellectual Property Misappropriation Constitutes a Crime? (US International Trade Administration) <https://www.stopfakes.gov/article?id=What-Intellectual-Property-Misappropriation-Constitutes-a-Crime>
16. <https://www.iprcenter.gov/about-us>
17. <https://www.iprcenter.gov/ip-theft>
18. <https://www.iprcenter.gov/trade-crimes>
19. <https://www.iprcenter.gov/news-releases>
20. Armenia's Experience with Coordinating Intellectual Property Enforcement  
[http://www.wipo.int/edocs/mdocs/enforcement/en/wipo\\_ace\\_12/wipo\\_ace\\_12\\_5.pdf](http://www.wipo.int/edocs/mdocs/enforcement/en/wipo_ace_12/wipo_ace_12_5.pdf)
21. US Department of State, 2014 Investment Climate Statement – Armenia.  
(<https://www.state.gov/documents/organization/225883.pdf>
22. US International Trade Administration, Armenia - 5-Protection of Property Rights,  
<https://www.export.gov/article?id=Armenia-protection-of-property-rights>
23. US Department of State, 2015 Investment Climate Statement – Armenia,  
<https://www.state.gov/e/eb/rls/othr/ics/2015/241463.htm>
24. Intellectual Property Agency, Ministry of Economic Development and Investments of the Republic of Armenia, website, <http://aipa.am/en/> ; <http://aipa.am/hy/>

### **Module Compilers:**

Anna Margaryan

Tatevik Sujyan

## Module 9: Judicial Independence and Transparency<sup>56</sup>

This training for investigators, prosecutors, and judges is intended to deepen their understanding of the issues of judicial independence and to examine related regulations provided in the RA New Judicial Code. The training will give emphasis to practical discussions showing how new mechanisms of ensuring judicial independence could work and how challenges in this regard may be addressed.

### **Part 1. Internal and external aspects of judicial independence and respective legal grounds**

#### **1. The principle of separation of powers and the role of the judiciary.**

- a. The principle of separation of powers in democratic States governed by the rule of law.
- b. The principle of separation of powers as mutual supervision and cooperation of State supreme bodies through the system of checks and balances.
- c. Separation of the judiciary from the other branches of the State and the need for its constitutional establishment in the modern democratic systems which adopted the principle of separation of powers.
- d. The principle of separation of powers in the Constitution of the Republic of Armenia.

#### **2. The internal aspect of judicial independence (judicial hierarchy, the role of court presidents, transfer of a judge to another court, the procedure for disciplinary proceedings against a judge, jurisdiction of the Supreme Judicial Council, conflicts of interest and the ways to overcome them). The practices of RA and other countries, international guidelines, existing problems in Armenia and ways to overcome them.**

- a. The internal components of the independence of the judiciary, namely:
  - i. The independence of the judiciary implies not only the exclusion of external undue influence, but also the exclusion of undue influence by other judges on the activities of judges;
  - ii. Judges are accountable exclusively to the law; and
  - iii. The hierarchical structure of the judiciary should not hinder the individual independence of each particular judge.
- b. Court presidents protect the independence and impartiality of courts and of individual judges, and they should act at every moment as guardians of these values and principles. According to the Opinion of Consultative Council of European Judges (CCJE) of 2016, the role of court presidents is:

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<sup>56</sup> This Module was prepared by experts from the Faculty of Law of Yerevan State University (YSU) in partnership with the National Academy of Public Administration (the Academy). The preparation of this Module was funded by the United States Department of State through a cooperative agreement with the Academy. Any opinions, findings, and conclusions stated in this Module are those of the authors and do not necessarily reflect opinions, findings, or conclusions of the U.S. Department of State.

- i. To represent the court and fellow judges;
    - ii. To ensure the effective functioning of the court and thus to enhance its service to society; and
    - iii. To perform jurisdictional functions.
  - c. International standards on the procedure for transferring a judge to another court.
  - d. Respect for the principles of lawfulness; non-interference in judicial proceedings; respect for the principles of independence of the judge and the court, and maintaining their high reputation; respect for the principles of proportionality, non-arbitrariness and non-discrimination while imposing disciplinary proceedings against a judge.
  - e. Conflicts of interest and the ways to overcome them while imposing disciplinary proceedings against a judge.
- 3. **The external aspect of judicial independence (appointment of judges, termination of power, economic independence of the judiciary). The practices of RA and other countries, international guidelines, existing problems in Armenia and ways to overcome them.**
  - a. Four main models for appointing (electing) judges: appointment of judges by political bodies, appointment of judges by the judiciary, appointment of judges by the Judicial Council and appointment of judges through elections.
  - b. The international legal requirement for the selection of judges by an independent body.
  - c. The procedure for initiating and conducting proceedings for the termination of powers of the judge and the grounds for terminating powers of the judge.
  - d. Economic independence of the judiciary as an important guarantee of the independence and impartiality of judges (According to the Council of Europe Committee of Ministers Recommendation CM/Rec(2010)12 to member states on judges' independence, efficiency and responsibilities, judges' remuneration should be commensurate with their profession and responsibilities, and be sufficient to help shield them from inducements aimed at influencing their decisions and corruption risks).
- 4. **The position of the European Court of Human Rights (hereinafter referred as ECHR) on the criteria for independence of the judiciary.**
  - a. The requirement for a case review *by an independent and impartial tribunal* established under Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
  - b. To establish whether a body can be considered "independent," regard must be had, inter alia:
    - i. To the manner of appointment of its members and their term of office;

- ii. To the existence of guarantees against outside pressure; and
  - iii. To the question whether the body presents an appearance of independence.
- c. The manner of appointment and the term of office, namely:
  - i. The mere appointment of judges by Parliament cannot be seen to cast doubt on their independence (*Filippini v. San Marino* (dec.); *Ninn-Hansen v. Denmark* (dec.));
  - ii. Similarly, appointment of judges by the executive is permissible, provided that appointees are free from influence or pressure when carrying out their adjudicatory role (*Campbell and Fell v. the United Kingdom*, § 79); and
  - iii. As for the duration of appointment, the Court is of opinion that no particular term of office has been specified as a necessary minimum. Non-removability of judges during their term of office must in general be considered a corollary of their independence. However, the absence of formal recognition of this irrevocability in the law does not in itself imply lack of independence provided that it is recognized in fact and that other necessary guarantees are present (*Campbell and Fell v. the United Kingdom*, § 80).
- d. The existence of guarantees against outside pressure, namely:
  - i. In fact, the Court examines the vulnerability of a judge not only against outside, but also inside pressure;
  - ii. The absence of sufficient safeguards securing the independence of judges within the judiciary, in particular vis-à-vis their judicial superiors, may lead the Court to conclude that an applicant's doubts as to the independence and impartiality of a court may be said to have been objectively justified (*Parlov-Tkalcic v. Croatia*, § 86; *Daktaras v. Lithuania*, § 36; *Moiseyev v. Russia*, § 184); and
  - iii. The power to give a binding determination which may not be altered by a non-judicial authority is an essential and fundamental component of the "independence" required by Article 6 § 1 (*Van de Hurk v. the Netherlands*, § 45).
- e. The appearance of independence, namely:
  - i. What is at stake is the confidence which the courts in a democratic society must inspire in the public (*Şahiner v. Turkey*, § 44);
  - ii. While deciding whether there is a legitimate reason to fear that a particular court lacks independence or impartiality, the standpoint of the accused is important but not decisive (*Incal v. Turkey*, § 71); and
  - iii. Where a judge has previously acted as counsel in a case against one of the parties, his or her adjudication of a dispute concerning that party could give rise to an appearance of partiality depending on the circumstances of any

given case. Such circumstances would include the degree of connection between the two cases both in terms of time and substance (*Puolitaival and Pirttiaho v. Finland*, § 44).

**5. The issues concerning civil liability for a mistake made by a judge in the exercise of the judge's functions. RA and international legal provisions:**

- a. Domestic regulations on civil liability for a mistake made by a judge in the exercise of the judge's functions.
- b. International regulations on civil liability of judges. The provisions of the European Charter on the Statute of Judges, namely:
  - i. Compensation for harm wrongfully suffered as a result of the decision or the behavior of a judge in the exercise of his or her duties is guaranteed by the State; and
  - ii. The State has the possibility of applying, within a fixed limit, for reimbursement from the judge by way of legal proceedings in the case of a gross and inexcusable breach of the rules governing the performance of judicial duties.
- c. Immunity of judges with respect to civil liability (USA, Great Britain, Germany etc.).

**Topics to be discussed:**

- Can the judiciary serve as a counterbalance to the legislative and executive powers?
- The concept of an independent and impartial court based on the law; objective and subjective criteria for the independence of judiciary.

**Part 2. Guarantees for judicial independence**

**1. Independence of the judge, the obligation to be bound by only the Constitution and the law. RA and international regulations, existing problems in Armenia and ways to overcome them.**

- a. Principle of lawfulness as a basis for the organization and functioning of the judiciary, namely:
  - i. Fundamental requirement of being bound only by the law while administering justice; and
  - ii. Administration of justice solely by the courts prescribed by Constitution (prohibition of establishing ad hoc courts).

**2. Inadmissibility of interfering with the activities of a judge. RA and international regulations, existing problems in Armenia and ways to overcome them.**

- a. International regulations on the Inadmissibility of interfering with the activities of a judge (1985 UN Basic Principles on the Independence of the Judiciary).
- b. The liability prescribed by law for any interference in the activities of the court or the judge while administering justice and exercising other powers provided for

by law, as well as for other disrespectful attitudes toward the judge or the court (Article 7 of the Judicial Code). How the prohibition is enforced and how the liability is imposed.

**3. Immunity of a judge. RA and international regulations, existing problems in Armenia and ways to overcome them.**

- a. International regulations on the immunity of a judge. The position of the European Commission for Democracy through Law (Venice Commission).
- b. Domestic regulations on the immunity of a judge, namely:
  - i. Prohibition of liability of a judge for the opinion expressed or judicial act rendered during administration of justice, except where there are elements of crime or disciplinary violation;
  - ii. Initiation of criminal prosecution of a judge with respect to the exercise of his or her powers only upon the consent of the Supreme Judicial Council;
  - iii. Prohibition of depriving the liberty of a judge, with respect to the exercise of his or her powers, without the consent of the Supreme Judicial Council except where he or she has been caught at the time of or immediately after committing a criminal offence; and
  - iv. Prosecution of a judge and the prosecutorial control of the pre-trial proceedings by the Prosecutor General of the Republic of Armenia.

**4. Tenure of a judge. RA and international regulations, existing problems in Armenia and ways to overcome them.**

- a. Main components of the tenure of a judge as a fundamental requirement. International regulations (Point 11 of 1985 UN Basic Principles on the Independence of the Judiciary, Point 3 of Principle 1 of Recommendation No. R (94)12 of the Committee of Ministers on the independence, efficiency and role of judges, etc.).
- b. Domestic regulations on the tenure of a judge, namely:
  - i. The requirement for a judge to serve until the age of 65;
  - ii. The status of a reserve judge; and
  - iii. The rules on the transfer of a judge; the mandatory requirement of the judge's consent.

**5. Formation of the judicial corps. RA and international requirements.**

- a. Formation of the judicial corps as a guarantee of independence.
- b. Main models of the formation of the judicial corps. The procedure for selection and appointment of judges.

**6. Salary and benefits of a judge. RA and international requirements.**

- a. The requirement of proper remuneration of a judge.
- b. The right of a pension for a judge.
- c. The right of health insurance at state expense.
- d. A judge appointed to his position beyond his or her permanent place of residence shall have the right to receive adequate remuneration for the rent based on his or her application.
- e. The judge also enjoys social guarantees prescribed for public servants.

**7. Guarantees of security of a judge. RA and international regulations, existing problems in Armenia and ways to overcome them.**

- a. The right of a judge to keep and carry registered arms and special protection means.
- b. The special protection of the State for a judge and his or her family members.
- c. The legal arrangement for ensuring protection against unlawful influence or a threat of unlawful influence on the immunity of a judge, his or her family members, the residential and office premises occupied by him or her, or his or her vehicles.

**8. Transparency and accountability of the judiciary.**

- a. Transparency and accountability are a necessary corollary for achieving and maintaining independence. (Analysis by European Networks of Councils for the Judiciary (ENCJ).)
- b. Transparency and accountability about the judiciary as a whole.
  - i. Allocation of cases within a court according to objective, pre-established criteria.
  - ii. Procedures for raising complaints about judiciary behavior.
  - iii. Periodic reporting by the judiciary of its activities.
  - iv. Open and effective relations with the public media.
  - v. External review, such as audit and inspection.
- c. Transparency and accountability of individual judges.
  - i. Code of ethics.
  - ii. Withdrawal and recusal in instances of valid reasons defined by law.
  - iii. Disclosure and delimitation of outside interests to avoid actual or perceived conflicts.
  - iv. Public reporting of, and access to, trials, hearings, and judicial decisions (see European Convention on Human Rights, Articles 6.1 and 10).

- v. Reasoned, clear, and comprehensible judgements that are pronounced publicly.

The European Network of Councils of the Judiciary (ENCJ), with the support of the European Union and the collaboration with the European Commission, has analyzed European and international standards for the independence and accountability of the Judiciary, together with the varied experiences of the ENCJ's membership, and developed a vision of the independence and accountability of the Judiciary with indicators for such independence and accountability.

The ENCJ issued the results of this work in *Independence and Accountability of the Judiciary*, ENCJ Report 2013-2014, which is available here:

[https://www.encj.eu/images/stories/pdf/workinggroups/independence/encj\\_report\\_independence\\_accountability\\_adapted\\_version\\_sept\\_2014.pdf](https://www.encj.eu/images/stories/pdf/workinggroups/independence/encj_report_independence_accountability_adapted_version_sept_2014.pdf)

**Topics to be discussed:**

- Types of judicial immunity; whether the judge should have an absolute immunity; immunity from criminal prosecution; relevant international regulations.
- The right to a pension; recent legislative amendments on the calculation of pension in the context of ensuring the financial independence of judges.

**Part 3. Judicial independence in light of the recent constitutional (judicial) reforms. The new procedure for the selection (appointment) of judges.**

1. **The procedure for soliciting applications and conducting qualification checks to replenish the list of judicial candidates eligible for appointment. (Regular replenishment of the list is conducted on an annual schedule, and the Supreme Judicial Council may determine to undertake an extraordinary replenishment of the list if necessary, off the regular annual schedule, on the basis of the numbers of vacancies and the numbers of judges already on the list.)**
  - a. Stages of qualification checks.
  - b. The legality of the appointment of the President of the Court of Cassation and its judges by the National Assembly of the Republic of Armenia, in terms of the power of the legislative body to interference in the formation of the judicial corps.



**2. The constitutional legal status, composition and formation of the Supreme Judicial Council as the new guarantor of the independence of the judiciary.<sup>57</sup>**

- a. Constitutional functions of the Supreme Judicial Council. The Supreme Judicial Council is charged with guaranteeing the independence of courts and judges. The Council is an independent state body comprised of ten members, five of whom are elected by the General Assembly of Judges, and five of whom are elected by the National Assembly.
- b. The functions of the Supreme Judicial Council described by the Judicial Code aiming to ensure not only the independence of the judiciary, but also the normal functioning of the courts and other judicial authorities.
- c. Equal representation of judges and non-judges in the Supreme Judicial Council; Issues raised concerning the prevalence in the number of judges in the Council of Justice – the predecessor of the Supreme Judicial Council; the threat of judicial corporatism in the functioning of the Council; international regulations, especially the position of the Venice Commission.
- d. Procedure for the formation of the Supreme Judicial Council; advantages of the new legal regulations in comparison to the procedure for forming the Council of Justice; the risk of possible politicization of the process as a result of prescribing a weighty role for the National Assembly in the formation of the Supreme Judicial in the same regulations.

**3. The obligation of the Supreme Judicial Council to respond to interference with judicial independence. The powers of this body regarding the independence of the judiciary.**

- a. Compilation and approval of the list of judge candidates, including the list of promotion of judges.
- b. Decision on the issue of transfer of judges to another court.
- c. Decision on the issue of giving consent to initiating criminal prosecution against a judge or depriving him or her of liberty in connection with the exercise of his or her powers.
- d. Decision on the issue of imposing disciplinary action against a judge.
- e. Decision on the issue of terminating the powers of judges.
- f. Approval of the Council's estimates of expenses and those of the courts.

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<sup>57</sup> See, generally, Hovhannisyan, Arpine A. "Constitutional Grounds for Judicial Independence as a Guarantee for Proper Administration of Justice (Comparative Legal Analysis. The Armenian Experience" *International Journal for Court Administration*, 9(2), July 2018, pp.12-18, <https://www.iacajournal.org/articles/abstract/10.18352/ijca.254/> (examining the constitutional grounds of judicial independence in the context of recent constitutional reforms).

- g. Examination of each issue related to or endangering the independence of courts and judges, and submission of recommendations to the competent bodies with regard to the solution thereof at its own initiative or on the proposal of other persons; the obligation of competent bodies to immediately report to the Supreme Judicial Council on the measures taken.

**4. New role of the court presidents.**

- a. The election of the court presidents by the principle of rotation.
- b. Granting court presidents solely organizational powers.

**5. New legislative regulation of the Institute of Judicial Evaluation.**

- a. The aim of Judicial Evaluation. Prohibition of deterioration of judges' position based on the results of evaluation.
- b. Types and criteria of Judicial Evaluation.
- c. The procedure of evaluation and summarizing the results of performance evaluation of judges.

**6. Special rules for conducting investigative actions with the participation of a judge.**

- a. The legislative requirement to inform the Supreme Judicial Council about any investigative action with the participation of a judge who is not involved in the criminal prosecution, and the procedure for implementing the participation of the judge in that circumstance.

**7. New legislative regulation of the imposition of disciplinary sanctions against a judge.**

- a. Grounds for imposing disciplinary sanctions against a judge are:
  - i. Violation of the provisions of substantive or procedural law with intent or gross negligence during the administration of justice;
  - ii. Violation of the rules of conduct by a judge with intent or gross negligence;
  - iii. Failure by the judge to fulfil his or her duties to participate in mandatory trainings; and
  - iv. Failure to notify the Supreme Judicial Council about the undue influence on his activities during the administration of justice and exercise of other rights arising from the status of a judge.
- b. Gross disciplinary violation as a ground for terminating the power of a judge. The criteria for assessing the grossness of the violation.
- c. Bodies entitled to institute disciplinary proceedings against a judge. Elimination of the powers of the President of the Court of Cassation to institute disciplinary proceedings.
- d. Process of discussing the motion and instituting disciplinary proceedings against a judge.

- e. The decision of the Supreme Judicial Council on instituting disciplinary proceedings against a judge as a way to review a judicial action previously taken by the judge, to ensure the judge's compliance with legislative regulation.

**Topics to be discussed:**

- The efficiency of the new methods on influencing the independence of judiciary defined by the new Judicial Code; possible legal outcomes; the obligation of the state bodies to react in case of unlawful influence on a judge; the types of liability for unlawful influence on the independence of judiciary.
- The limits of the immunity of judges; special regulations concerning investigative action with the involvement of a judge; whether these regulations apply during all types of investigative actions.
- The grounds for instituting disciplinary proceeding against a judge; whether those grounds have to include violation of the provisions of substantive or procedural law; definition of gross disciplinary violation; whether the judges of the highest court should be subject to disciplinary proceeding taking into account the fact in this situation the cases are examined in a collegiate court; whether the judgment of the ECHR against Armenia, which stipulates violation of the Convention, can serve as a ground for instituting disciplinary proceeding against a judge.

**Main method of training:**

These topics will be discussed in an interactive manner. That is, the statutes, regulations, and international experience will be presented, and then hypothetical or real situations from practice will be discussed. The practitioners will also be asked to present examples from their own experience for general discussion.

**REFERENCE MATERIALS**

**INTERNATIONAL AGREEMENTS**

1. European Convention for Protection of Human Rights and Fundamental Freedoms, 1953
2. UN Basic Principles on the Independence of the Judiciary, 1985
3. Kyiv Recommendations on Judicial Independence
4. Recommendation N 10 of the Consultative Council of European Judges
5. Recommendation N R (94) 12 of the Consultative Council of European Judges
6. COE Committee of Ministers Recommendation N CM/Rec(2010)12,  
[https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016805afb78](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805afb78)
7. The Bangalore Principles of Judicial Conduct
8. Universal Declaration on the Independence of Justice, Montreal, 1983

## LEGAL ACTS

1. RA Constitution (with the amendments of 6 December 2015)
2. RA Judicial Code
3. RA Code of Criminal Procedure
4. Draft new Criminal Procedure Code of RA
5. RA Criminal Code

## OTHER SOURCES

1. ECHR, Baka v. Hungary, 23 June 2016.
2. ECHR, Campbell and Fell v. United Kingdom, 28 June 1984.
3. ECHR, Terra Woningen B.V. v. the Netherlands, 17 December 1996.
4. ECHR, Findlay v. the United Kingdom, 25 February 1997.
5. ECHR, AB Kurt Kellermann v. Sweden, 26 October 2004.
6. ECHR, Van de Hurk v. the Netherlands, 19 April 1994
7. European Commission for Democracy Through Law (Venice Commission) 'Opinion on the Draft Law on introducing amendments and addenda to the judicial code of Armenia', Strasbourg, France
8. European Commission for Democracy Through Law (Venice Commission) 'Report on the Independence of the Judicial System Part I: The Independence of Judges', CDL-AD(2010)004, Strasbourg, France
9. European Commission for Democracy Through Law (Venice Commission) European Standards on the Independence of the Judiciary a systematic overview CDL-JD(2008)002
10. European Commission for Democracy through Law (Venice Commission) European Standards on the Independence of the Judicial System CDL-AD(2010)004
11. Autheman V., Elena S., 'Global Best Practices: Judicial Councils, Lessons Learned From Europe and Latin America', IFES Rule of Law White Paper Series, <http://www.ifes.org/publications/global-best-practices-judicial-councils-lessons-learned-europe-and-latin-america>
12. Comparative analysis on the High Councils for Judiciary in the EU member states and judicial immunity, [http://www.justicereformukraine.eu/wp-content/uploads/2014/09/Report\\_Councils\\_eng.pdf](http://www.justicereformukraine.eu/wp-content/uploads/2014/09/Report_Councils_eng.pdf)
13. Ann Power, Judicial Independence and the Democratic Process: Some Case Law of the European Court of Human Rights, Conference paper.

14. Judge Grzegorz Borkowski, Judicial independence in the light of art. 6 of the European Convention of the Human Rights – Selected Aspects, <http://www.pan-ol.lublin.pl/wydawnictwa/TPraw7/Borkowski.pdf>

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### **SECTION 3: WORKSHOPS ON PROTECTING HUMAN RIGHTS, INVESTIGATING AND TRYING CORRUPTION CASES, AND JUDICIAL INDEPENDENCE<sup>58</sup>**

On June 12-15 and July 10-13 of 2018, the Republic of Armenia Academy of Justice hosted a series of four workshops for judges, prosecutors, and investigators on three broad areas of critical importance for the criminal justice system of Armenia: Protecting Human Rights, Investigating and Trying Corruption Cases, and Judicial Independence.

The following sections provide summaries of the topics that were discussed at these workshops:

1. Workshops for Judges (June 12-13, 2018) on Protecting Human Rights and on Judicial Independence and for Prosecutors and Investigators (June 14-15, 2018) on Protecting Human Rights; and
2. Workshop for Judges (July 10-11, 2018) and for Prosecutors and Investigators (July 12-13, 2018) on Investigating and Trying Corruption Cases

The workshops were led by experts from the Faculty of Law of YSU, and the contents of the workshops were developed by YSU in partnership with the Academy. Experts from the Academy also attended and participated in the workshops. These summaries were prepared by YSU and the Academy.

#### **3.1 Workshops on Protecting Human Rights and on Judicial Independence**

##### **Workshop Format**

Workshops were held for Judges (June 12-13, 2018) on Protecting Human Rights and on Judicial Independence and for Prosecutors and Investigators (June 14-15, 2018) on Protecting Human Rights. Both workshops consisted of an informal combination of brief presentations by instructors, question-and-answer sessions involving both instructors and participants, and roundtable-style discussions. The instructors examined the importance of human rights protections, presented key legal issues, and offered specific case examples for discussion, with particular reference to practical issues and challenges facing judges, prosecutors and investigators in the Republic of Armenia (RA). The participating judges, prosecutors and investigators asked questions during and after each presentation, described their own experiences and offered their own opinions and suggestions, and engaged in lively roundtable-style discussions with the instructors and among themselves.

The workshop for judges also covered the issue of judicial independence. As indicated in the summary below, both workshops otherwise covered similar topics. However, the discussions in both workshops were independent, and where areas of discussion differed, they are noted below.

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<sup>58</sup> The workshops and the preparation of these summaries were funded by the United States Department of State through a cooperative agreement with the Academy. Any opinions, findings, and conclusions stated at the workshops or in these summaries are those of the speakers or authors and do not necessarily reflect opinions, findings, or conclusions of the U.S. Department of State.

## **Protecting Human Rights**

### **The Rights of Juveniles**

Protecting the human rights of juveniles who are involved in criminal investigations or other proceedings – whether as suspects, defendants, victims, or witnesses – was the subject of substantial discussion at the workshops. The following were several of the topics discussed.

- The policy goal of criminal justice for a juvenile defendant: “the best interest of the child.”
- Provisions of the RA Criminal Code and Criminal Procedure Code that govern key aspects of juvenile justice.
- Applicable international standards – the “Beijing Rules” (UN Standard Minimum Rules for the Administration of Juvenile Justice); UN Convention on the Rights of the Child – and instances of compliance and shortcomings of RA statutory provisions relative to those standards.
- The kinds of punishment applicable to juveniles at various ages under RA legislation, as well as certain shortcomings in RA legislative provisions.
- Distinctive challenges in interrogating and obtaining testimony from juvenile suspects, witnesses, or victims of crime.
- Topics and concerns of particular interest, some raised by instructors and some raised by judges, prosecutors, or investigators, included the following:
  - Judges discussed the importance of helping ensure that a child can understand a criminal proceeding in which the child is involved and has adequate representation, whether from defense counsel or from a fully informed parent or guardian.
  - Judges also discussed the challenge of providing adequate social and emotional support for a child while in custody and ways to help the child feel comfortable and safe in the courtroom. Participants noted that support by specially trained psychologists could help, and that it should not fall to the judge to provide such support.
  - Judges also considered the value of understanding the social and psychological circumstances of the child – family, economic, social group, etc. Greater professional resources could help inform the court. Participants noted that social workers could be useful, but generally are unavailable in the RA court system, and that forensic psychologists are also useful, but few are available.
  - Judges must deal with many difficult issues in obtaining testimony in juvenile cases. For example, what if the parent or guardian must testify? What if the child must testify against a parent? What if the child’s presence during testimony might be psychologically harmful? Might a teacher be able to help question a child without undue bias?
  - Participants observed that having specialized juvenile courts could enable the judges themselves to be more specialized in working with juvenile defendants and might enable better access to support services. Such cases might be private, to avoid harmful media attention.

- Prosecutors and investigators discussed whether the government should punish or offer help when a juvenile offender is clearly subject to harmful influence.
  - Several examples were discussed – for example, a child whose family encourages the child to deal drugs; a child whose living situation is unstable.
  - Investigators and prosecutors discussed how relevant information could best be obtained in such situations about the influences on the juvenile.
- Prosecutors and investigators also discussed the difficulties in obtaining the testimony of a young child, especially against an older relative, such as a parent.
  - The investigator or prosecutor needs to build trust, which takes time.
  - A trained psychologist can help.

### **The Rights of Minorities**

Several ways to protect the human rights of minorities as suspects, defendants, witnesses, or victims of crimes were discussed, including:

- Providing free language interpretation for linguistic minorities involved in criminal investigations or proceedings;
- RA legislation on protecting minorities, as well as certain shortcomings found in European Court of Human Rights (ECHR) decisions identified. (For example, the religious objection of a Jehovah's Witness to mandatory military service was not respected); and
- Emerging issues in Armenia, such as protection of minorities in terms of sexual orientation or gender identity.

### **Gender-Based Violence**

Issues were discussed related to the criminalization, investigation, and prosecution of gender-based violent acts in Armenia, including:

- The RA Criminal Code criminalizes some, but not all, of the gender-based violent acts as called for under the "Istanbul Convention" (Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (signed on behalf of Armenia with reservations January 18, 2018));
- Acts not clearly criminalized in RA Criminal Code, notwithstanding the Istanbul Convention: forced abortion, forced sterilization, female genital mutilation, sexual harassment/stalking. Lack of clear criminalization may cause difficulties in law-enforcement practice;
- The issue of psychological violence: under RA law, an individual may be arrested for psychological violence only if it results in danger to life or health; and
- The issue of implied consent: defendant may argue that forced sex is not a crime in the context of marriage, or even a date. However, under RA law, actual consent is required even within marriage.



- Discussion of specific case examples, some presented by instructors, some presented by judges, prosecutors, or investigators, including:
  - A man who killed his wife, claiming that her immoral behavior caused his “psychological confusion,” and was sentenced to six years’ imprisonment;
  - A case where a husband and wife beat each other; the wife claimed self-defense, and only the husband was detained;
  - Difficulties investigating gender-based domestic violence, especially in cases where the victim is intimidated; and
  - Difficulties investigating or prosecuting cases where consent was ambiguous, or where violence was psychological, not physical.

### **Deprivation of Liberty**

The right to liberty and the legal grounds for deprivation of liberty were discussed:

- The issues of depriving a person of liberty were examined, both at the pre-trial stage and after sentencing, and in terms of obtaining information about the defendant relevant to making appropriate sentencing decisions;
- Attention was given to alternatives to incarceration of defendants before conviction, such as bail and forms of release-with-monitoring;
- It was noted that problems can occur at the sentencing stage in regard to obtaining full information about juveniles, as this information is not always fully collected during the pre-trial investigation; and
- Particular limits apply regarding the incarceration of juveniles.
  - Incarceration of juveniles should be a measure of last resort, for the shortest time possible, and limited to the commission of serious violent offenses or multiple serious offenses.
  - The inadequate regulation or scarcity of penalties that can be applied for juvenile punishment was discussed, and special emphasis was put on the interim solutions provided by the courts, in particular the application of Article 70 of the RA Criminal Code.
- The instructors, prosecutors, and investigators engaged in vigorous discussion about:
  - How investigators and prosecutors might best deal with a situation where the media and the public are pressing for the release or exoneration of someone in custody who may be guilty, or are pressing for the arrest and prosecution of someone against whom evidence of crime is insufficient;
  - Emphasis on the need for actual proof of guilt in order to hold a prisoner. Mere suspicion is no longer enough, and political pressure is certainly insufficient;
  - Prosecutors should control the investigation to make sure it is fair; and

- In order for alternatives to arrest to be sufficient, better border control is necessary to reduce the flight risk.

## **Judicial Independence**

### **The Supreme Judicial Council**

- Established under constitutional amendment in 2015 as the guarantor of independence of the judiciary in Armenia.
- The Council has important roles in proposing judges for selection by the National Assembly and proposing court chairpersons for selection by the President and in governing other aspects of judicial functioning.
- Participants discussed the importance of preserving the independence of the Supreme Judicial Council from government pressure and discussed the effectiveness of its activities.

### **Other Issues Discussed**

- Adequacy of judges' salary, to limit the risk of corruption.
- The public's lack of confidence in judges' fairness and in their being beholden to only the law. How to raise public confidence.
- Whether judges should be penalized for erroneous decisions. Limitation of penalization to ethical violations.
- How to balance judicial independence and judicial accountability.
- Appointment process for judges to minimize the risk of politicization.

## **3.2 Workshops on Investigating and Trying Corruption Cases**

### **Workshop Format**

Workshops were held for Judges (July 10-11, 2018) and for Prosecutors and Investigators (July 12-13, 2018) on Investigating and Trying Corruption Cases. Both workshops consisted of an informal combination of brief presentations by instructors, question-and-answer sessions involving both instructors and participants, and roundtable-style discussions. The instructors considered the impact of corruption and the importance of efforts to fight it, presented key legal issues, and offered specific case examples for discussion, with particular reference to practical issues and challenges facing judges, prosecutors and investigators in the Republic of Armenia (RA). The participating judges, prosecutors and investigators asked questions during and after each presentation, described their own experiences and offered their own opinions and suggestions, and engaged in lively roundtable-style discussions with the instructors and among themselves. As indicated in the summary below, both workshops otherwise covered similar topics. However, the discussions in both workshops were independent, and where areas of discussion differed, they are noted below.

In addition, a professor from the John Jay College of Criminal Justice in New York City participated in the workshop by describing approaches used in the United States, by offering suggestions about their possible application in Armenia, and by otherwise joining in the discussions.

### **Kinds of Corruption, Contributing Factors, and Consequences**

The forms of corruption and their impact in Armenia were presented.

- Contributing factors were emphasized, including gaps in applicable legislation, and the social, legal, and institutional factors underlying corruption.
- Such social, legal, and institutional factors include: inadequate pay and benefits of judges, prosecutors, and investigators and other public servants; an overburdening of the judiciary, prosecutors, and investigators that results in errors and delays in handling corruption cases; problems of admissibility and relevance of evidence; inadequate rules on the use of electronic evidence; and lack of effective cooperation between law enforcement agencies and other institutions.
- Consequences of corruption include damage to economic development and to trust in government and other institutions.

### **Personal Declarations of Income and Expenditures**

The system under which officials declare income and expenditure was the subject of particular discussion. Although such a system is well established in the RA, it was stated that the collected information is not always effectively monitored, principally because of insufficient resources available to the Ethics Committee. Also discussed was the principle under European Court of Human Rights (ECHR) Article 8 that a loss of personal privacy from the declaration obligation be proportionate to the need, and ECHR practice in this area was mentioned.

### **Cooperation and Assistance from Public-Sector and Private-Sector Personnel and the Public**

Special attention was paid to the importance of law enforcement bodies gaining the cooperation of public-sector and private-sector personnel and members of the public to obtain disclosure of corruption.

- To foster such cooperation requires the protection of victims and whistleblowers who may be the source of such disclosure, and ways to provide such protection were discussed.
- Also discussed was a possible institutional mechanism, analogous to an approach used in the United States, where one or more independent investigatory bodies would be established to monitor the lawfulness of the activities of personnel in government agencies.

### **Types of Organized Crime and Ways to Investigate It**

Kinds of organized crime, especially the ones widespread in Armenia, were also the topic of discussion.

- Organized crime in Armenia includes criminal structures involved in institutional corruption, financial crimes, and participation in drug trafficking, in weapons trafficking, and in intellectual property crimes.

- There was debate about the circumstances under which undercover agents may permissibly be used in the detection of corruption and organized crime, and the circumstances under which the evidence so obtained is admissible.
- Further discussion took place on the issue of whether it is legitimate for such undercover agents to actually participate in criminal behavior.

### **Intellectual Property Crimes**

Offenses related to intellectual property were also discussed.

- In recent years, intellectual property cases particularly appear when dealing with the protection of the rights of foreign investors.
- One of the main problems in this area is that law practitioners frequently do not grasp the seriousness of the problem when the harm is only economic, and without a clear public-health impact (for example, in the case of falsification of clothing labels), whereas far less tolerance exists when dealing with the falsification of baby food or medication.

### **Human Rights Protection in Corruption Investigations**

The importance of protecting human rights during the investigation of corruption cases was also highlighted.

- Particular examples from practice on illicit enrichment were pointed out, which showed that problems often arose when the blanket norms are applied to the specific offenses stipulated in the RA Criminal Code.
- Substantial discussion was addressed to the question of whether and when the burden of the proof may be placed on the suspect / accused person rather than on the state.
- This issue arises in particular in the way the crime of illicit enrichment is defined in the Criminal Code, raising questions in regard to the presumption of innocence.

### **Discussion of Selected Provisions of the RA Criminal Code**

Copies of selected provisions from the Criminal Code of Armenia on public corruption and on economic crimes were distributed to the participants at the workshops, and issues in the application of these provisions were discussed.

### **Challenges Faced by Judges, Prosecutors, and Investigators in the Handling of Corruption Cases**

Several types of challenges that judges, prosecutors, and investigators face in handling cases involving corruption, organized crime, or intellectual-property crime, and some possible ways to address those challenges, were raised and discussed. For example, judges discussed the following issues:

- The overburdened court system and individual judges; the desirability of having more judges and other personnel; means for increasing court efficiency (such as improved information technology systems);

- The need for specialized assistance, such as experts in international finance, forensic accounting, science, and technical expertise relevant to possible intellectual-property violations;
- Reluctance of some witnesses to appear, based in part on their fear that they might receive inadequate protection against mistreatment or retaliation;
- The perception among some members of the public that certain investigations or prosecutions may be affected by politicization;
- Investigations that rely on confidential informants who cannot be effectively interrogated.
- Difficulties in gaining needed international cooperation;
- The crucial role of the judiciary in maintaining the rule of law in corruption cases; and
- The importance of strengthening and maintaining public trust in the fairness, competence, and integrity of the judiciary, and what judges can do to further this goal.

Prosecutors and investigators discussed similar issues:

- The need for greater access to specialists who can aid in investigations, in areas such as forensic accounting, international finance, cyber security, antiquities, pharmaceuticals, information technology, etc.;
- Difficulties in gaining needed international cooperation;
- The critical importance of prosecutors and investigators always respecting the presumption of innocence and of using only legal methods to investigate and potentially prove suspected criminal activity;
- The perception among some members of the public that certain investigations or prosecutions may be affected by politicization;
- Consequently, the importance of enhancing the public's confidence in the integrity and honesty of prosecutions and investigations;
- The balance between the desirability of transparency to enhance public understanding a trust, and the need to keep certain information secret in order to protect ongoing criminal investigations and to avoid improperly disclosing confidential information; and
- The public's frequently unrealistic expectations about what investigation and prosecution can accomplish in confronting public corruption, and ways in which prosecutors and investigators might be able to help educate the public about this.

### **Techniques for Detecting and Investigating Corruption**

Several techniques that may be useful in detecting and investigating corruption, including some used effectively in other countries, were discussed. For example:

- How to effectively and appropriately use statutes on illicit enrichment, which require individuals to justify discrepancies between their apparent income and their wealth;

- The effective use of undercover investigators in appropriate circumstances, and the need to avoid “entrapment” of the suspect that may uncut proof of guilt;
- A requirement in the United States to report large international financial transactions as a way to help detect money laundering; and
- Various mechanisms to help detect insider trading and other unlawful financial activity.

### **Issues in the Current Transitional Period in Armenia**

Instructors and participants discussed several aspects of the current transitional period in Armenia, and areas of particular relevance to prosecutors and investigators, including:

- the vigorous anti-corruption efforts by the government;
- the focus on certain allegations of corruption by elements of the media and the public; and
- the reconsideration or reversal of some past prosecutions and convictions.

## **SECTION 4: PARTICIPANTS' EVALUATIONS OF TRAINING MODULES AND WORKSHOPS**

The Academy, Yerevan State University (YSU), and the Academy of Justice collaborated on training modules and workshops designed to improve the anti-corruption and human rights performance of Armenia's investigators, prosecutors and judges. After each training module and workshop the participants were provided an evaluation form in order to assess the training module or workshop that they participated in. This report provides the questions posed to the participants on the evaluation forms and a summary of the participants' feedback.

### **Questions Presented to Participants**

Participants were asked ten questions on each training module and workshop session. For the training modules, these questions addressed:

1. The objectives of the modules;
2. The degree to which the module met its training objectives;
3. The overall module quality;
4. The trainer's ability to sustain the participant's interest in the subject;
5. The quality of answers given by the trainer to participants' questions;
6. The respectful attitude of the trainer toward the participants;
7. The degree to which the module was a useful contribution to the participant's professional development;
8. The participant's wish to participate in another module with the same trainer;
9. The participant's wish to participate in another training on the issues considered in the module; and
10. The value of reasoning and references recommended by the modules.

A set of analogous questions was provided to workshop participants. Each question could be answered with one of four ratings: excellent (4 points), good (3 points), satisfactory (2 points), or poor (1 point).




### **Module Session Effectiveness**

Investigators and prosecutors participated in training modules in May, and judges participated in training modules in June. A third round of the training modules was presented in September by Justice Academy trainers who were trained in the first two sessions. The training modules were generally well received by the individuals participating in them. In addition, the training content included in the modules has been adopted by the Governing Board of the Justice Academy for inclusion in the 2019 curriculum of the Justice Academy. This will provide a means of sustaining and broadening the diffusion of knowledge and practice offered by the modules.

As shown in the Table 1, nearly all participants had favorable views of the modules. In round 1, about 96 percent of the answers to the ten questions provided by prosecutors and investigators in the sessions were either excellent (35 percent) or good (61 percent). In round 2, all answers

provided by participating judges were either excellent (42 percent) or good (58 percent). And, in round 3, about 90 percent of answers provided by participants were either excellent (31 percent) or good (59 percent).

**Table 1. Module Participant Feedback**

Module	Round 1 – Investigators and Prosecutors	Round 2 – Judges	Round 3 – Additional trainees
Average Score	 <p>Good 60.96% Excellent 34.62% Satisfactory 4.23% Poor 0.19%</p>	 <p>Good 58% Excellent 42% Satisfactory 0% Poor 0%</p>	 <p>Good 59.38% Excellent 31.25% Satisfactory 8.75% Poor 0.63%</p>
Total Participants	15	5	17

### **Workshop Sessions Effectiveness**

Investigators and prosecutors participated in the human rights workshop on June 14-15 and the anti-corruption workshop on July 12-13. Judges participated in the human rights workshop on June 12-13 and the anti-corruption workshop on July 10-11.

The workshops offered the participants an opportunity to explore critical challenges of law, practice, and professional judgment and discretion in an informal and collaborative setting. Each workshop session focused on a particular area of criminal justice and considered the features of criminal law and procedure in the Republic of Armenia, applicable international standards, and the experience of other countries. Through a combination of lecture, discussion, and debate, each session focused on specific legal subject matter. The investigators' and prosecutors' workshop explored the roles of investigators and prosecutors and the opportunities and challenges that they face in the current environment. Likewise, the judges' workshops, explored the roles of judges and the opportunities and challenges that judges face in the current environment.

### **Human Rights Workshops**

Session One – Juveniles and Minority-Group Members. This session addressed the protection of the human rights of juveniles and minority-group members in the criminal justice system. Professor Samvel Dilbandyan and Associate Professor Anna Margaryan conducted the session.

Session Two – Gender-Based Violence Crimes. This session addressed the various kinds of gender-based violence crimes; ways to investigate, prosecute and adjudicate such crimes; and how to take account of the psychological and cultural context that fosters these crimes. Professor Ara Gabuzyan and Associate Professor Tatev Sujyan conducted this session.

Session Three – Issues and Challenges in the Imposition of Detention. This session addressed the right to liberty and alternatives to pre-trial detention, the prerequisites and circumstances for



imposing detention, and the need to both enforce the criminal law and protect human rights. Professor Samvel Dilbandyan and Associate Professor Tatev Sujyan conducted this session.

Session Four – Problems of Judicial Independence. This session, which was presented only to judges, examined the nature and importance of judicial independence, including consideration of the methods of appointing judges, the institutions for governance and oversight of the judiciary, the protection of judges from improper pressure, and the importance of public confidence in the integrity of judicial decision-making. Professor Gagik S. Ghazinyan (Dean of the Faculty of Law) and Associate Professor Tatev Sujyan conducted this session.




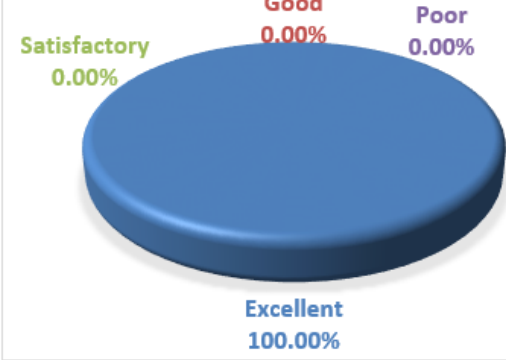
### **Anti-Corruption Workshops**

Session One – Defining, Investigating, and Prosecuting Corruption. This session addressed the various forms of corruption and organized crime; ways to investigate, prosecute, and adjudicate corruption; and methods for preventing corruption. Professor Samvel Dilbandyan and Associate Professor Anna Margaryan conducted this session.

Session Two – International and Financial Crimes; Intellectual Property Crimes. This session addressed ways to identify investigate, prosecute, and adjudicate international and financial crimes and intellectual property crimes. Professor Samvel Dilbandyan, Professor Ara Gabuzyan, Associate Professor Anna Margaryan, and Associate Professor Tatev Sujyan conducted this session.

The workshops were well received by the judges participating in them (See Table 2). For the Human Rights Workshop, 94 percent of the answers to the ten questions provided by investigators and prosecutors received either excellent (58 percent) or good (36 percent) ratings. Judges provided similar ratings, with all questions receiving either an excellent (56 percent) or good (44 percent) rating. For the first Anti-Corruption Workshop, 86 percent of the answers provided by investigators and prosecutors received either an excellent (32 percent) or good (54 percent) rating. Judges provided an excellent rating to all the questions for this workshop.

**Table 2. Workshop Participant Feedback**

Workshop Round #1	Investigators and Prosecutors	Judges
<b>Human Rights</b>	 <p> <b>Satisfactory</b> 6%  <b>Poor</b> 0%  <b>Good</b> 36%  <b>Excellent</b> 58%         </p>	 <p> <b>Satisfactory</b> 0%  <b>Poor</b> 0%  <b>Good</b> 44%  <b>Excellent</b> 56%         </p>
<b>Total Participants:</b>	8	5
<b>Anti-corruption</b>	 <p> <b>Satisfactory</b> 14%  <b>Poor</b> 0%  <b>Good</b> 54%  <b>Excellent</b> 32%         </p>	 <p> <b>Satisfactory</b> 0.00%  <b>Good</b> 0.00%  <b>Poor</b> 0.00%  <b>Excellent</b> 100.00%         </p>
<b>Total Participants:</b>	11	5

## **Conclusions**

Overall, the training module and workshop sessions were viewed favorably by participants. Moreover, the Justice Academy's adoption of the module content into its curriculum for 2019 is an important validation of the quality of the project. Ideally, the materials prepared for the workshops and the general structure developed can also be used in future years to reach additional participants.

## **SECTION 5: RECOMMENDATIONS FOR NEXT STEPS ON TRAINING AND WORKSHOPS**

### **Integration of modules into Justice Academy's training curriculum.**

The modules developed by this project are included in the approved annual curriculum of the Justice Academy (JA) for 2019. This makes it likely that the project results will be institutionally sustained for future cohorts of JA trainees. We encourage the continued integration of the course material developed here into the JA's training curriculum. We likewise encourage continued workshop offerings to benefit practicing investigators, prosecutors, and judges.

Over time, the content in the module areas should be updated to reflect new legislative, case-law, and institutional developments. It is also important that future lecturers have state-of-the-art understanding of current law and practice. The interaction between the JA and YSU seems quite valuable to the future training of investigators, prosecutors, and judges.

### **Additional courses.**

Going forward, additional courses could be developed that go deeper into the anti-corruption, human rights, and judicial independence issues considered in this project's modules. Armenia's dynamic constitutional, legislative, and political environment may result in changes, over time, in human rights, anticorruption, and judicial independence challenges, expectations, and conduct that should be reflected in training for investigators, prosecutors, and judges. For example, changes in governance may bring about new attitudes toward grants of amnesty, commuted sentences, and perhaps re-trials based on previously undisclosed evidence. A course module might focus specifically on the challenges of developing and maintaining objective and ethical standards during a period of significant governmental changes.

### **Training from leading practitioners.**

The success of, and challenges faced by, various emerging strategies used by investigators and prosecutors are also likely to evolve. Training sessions could include discussions with leading investigators, prosecutors, and judges as well as experienced practitioners from other fields (such as forensic accounting, medicine or information technology) and countries to share the benefit of their practical knowledge and experience. The discussions might also benefit from other well-informed observers, such as journalists, leaders of non-governmental organizations (NGOs), and the defense bar, who could contribute to exchanges of ideas, strategies, and visions for addressing human rights, corruption, and rule of law.

### **Public awareness campaigns.**

The original vision for this project included a public awareness campaign to help combat corruption. Given the recent developments in governance in Armenia, delivery of such a campaign may now be particularly timely and effective. In addition, efforts to combat counterfeiting, piracy, and other intellectual-property crime could be reinforced by efforts to raise public awareness. Such campaigns could consider traditional media (television, radio and newspapers) as well as social media. For example, roundtable talks or "town hall" discussions with compelling topics could be

developed for Public TV and Public Radio of Armenia aimed at raising awareness on anticorruption measures, policies, strategies, success stories, and international experience.

**Continued workshop events.**

We also encourage continued workshop events with varied topics to promote a community of practice and opportunities for continuing professional education for investigators, prosecutors and judges. Future workshops could use a variety of formats, in addition to the traditional roundtable discussion, to convey particular types of information and skills. For example, the use of case studies may also be particularly helpful in focusing on strategy and collaboration. Such exercises could consider real or hypothetical situations, and then teams of participants would be asked to tackle the problems posed and share their results in a seminar-type session. As in the case of training sessions, future workshops might benefit from participation on panels by leading investigators, prosecutors, and judges; members of professions that support investigative and trial work, such as forensic accountants, psychologists, or information technology experts; specialists from other countries; and representatives from other sectors, such as journalists and defense attorneys.

## APPENDIX: EXPERT ADVISORY GROUP AND STUDY TEAM BIOGRAPHIES

### EXPERT ADVISORY GROUP

**William Baity\*** - Assistant Professor, University College, University of Maryland. Former Deputy Director and Chief Operating Officer, Financial Crimes Enforcement Network, U.S. Department of Treasury the Treasury; Acting Director and Deputy Director, U.S. Bankruptcy Trustee Program, U.S. Department of Justice; U.S. Trustee, Federal Judicial Districts of Louisiana and Mississippi; Assistant U.S. Attorney, Eastern District of Louisiana; Assistant Director Legal Officer, U.S. Coast Guard; Economic Business Analyst, Exxon Company.

**Daniel Feldman\*** - Professor of Public Management, John Jay College of Criminal Justice, City University of New York. Former Positions with Office of the State Comptroller, New York: Senior Counsel, Special Counsel for Law and Policy; Executive Director and General Counsel, New York State Trial Lawyers Association; Assistant Deputy Attorney General, Office of the Attorney General of New York; Member of Assembly, New York State Legislature; Committee and Subcommittee Counsel, Investigations Committee, New York State Assembly; Adjunct and Visiting Teaching, American Law and Government, Ethics and Jurisprudence; Executive Assistant, U.S. Representative E. Holtzman; Associate, Olwine, Connelly, Chase, O'Donnell & Weyher.

**Jimmy Gurulé\*** - Professor of Law, Notre Dame Law School. Former Under Secretary for Enforcement, U.S. Department of the Treasury. Former positions with the U.S. Department of Justice: Assistant Attorney General; Trial Attorney, Criminal Division. Former Assistant United States Attorney, Central District of California, U.S. Attorney's Office; Deputy County Attorney, Salt Lake County Attorney's Office.

### STUDY TEAM

**Randolph Lyon\***, *Project Director* – Dr. Lyon is the Academy's Chief Financial Officer (CFO) and Director of Development. He previously helped establish the First Responder Network Authority, as FirstNet's first CFO. Prior to this, he served as Chief of the Commerce Branch at the Office of Management and Budget (OMB), Executive Office of the President, where he was responsible for budget, policy, and management matters involving the Department of Commerce, the Small Business Administration, and the Federal Communications Commission. He also was an Assistant Director in the Office of the Chief Economist at the Government Accountability Office (GAO) and taught in Georgetown University's Public Policy Program.

**Lawrence B. Novey**, *Senior Advisor* – Mr. Novey has served as a Senior Advisor on four major Academy studies. Prior to this he served as Chief Counsel to the Senate Committee on Homeland Security and Governmental Affairs. He has also practiced with federal agencies and leading international New York and Washington, DC law firms. He is an Honors graduate of Columbia Law School and holds an A.B., *cum laude*, from Harvard College.

**Kate Connor**, *Research Analyst* – Before joining the Academy, Ms. Connor taught high school social studies and served as an intern on the U.S. Senate Budget Committee. At the Academy, she has assisted on studies for the Agricultural Research Service, the Defense Nuclear Facilities Safety Board, and the International Life Sciences Institute. Ms. Connor graduated from Georgetown University with a Master’s in Public Policy. She also holds a Bachelor of Arts in History and Political Science and a Master’s in Teaching from the University of North Carolina at Chapel Hill.

**Alicia Kingston**, *Research Associate* – Ms. Kingston is a second year law student at George Washington University Law School. She has also interned at the Washington Legal Clinic for the Homeless, the International Centre for Missing and Exploited Children, and the National Association of Women Judges.

**\*Academy Fellow**