Strasbourg, 23 September 2019 **CDL-REF(2019)023**

Opinion No. 963 / 2019 Engl. only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

ARMENIA

THE DRAFT AMENDMENTS TO THE JUDICIAL CODE AND SOME OTHER LAWS (THE JUDICIAL REFORM PACKAGE)*

*Translation provided by the authorities

LAW

OF THE REPUBLIC OF ARMENIA
ON MAKING AMENDMENTS AND SUPPLEMENTS TO THE CONSTITUTIONAL LAW
"ON THE JUDICIAL CODE OF THE REPUBLIC OF ARMENIA"

Article 1. In Article 21 of the Constitutional Law "On the Judicial Code of the Republic of Armenia" of 7 February 2018 (hereinafter referred to as "the Law"):

(1) in part 2, the words "the conduct of operational intelligence measures," shall be added after the words "judicial oversight over the pre-trial criminal proceedings";

(2) in part 3, the words ", motions on carrying out operational intelligence measures" shall be deleted.

Article 2. In part 2 of Article 32, part 2 of Article 33, part 2 of Article 34, part 1 of Article 45, part 5 of Article 58, part 4 of Article 66, parts 5 and 6 of Article 73, parts 1 and 4 of Article 77, part 2 of Article 78, part 1 of Article 145, part 1 of Article 151, part 1 of Article 158 and part 4 of Article 159, the words "Disciplinary Commission" and the case forms thereof shall be replaced with the words "Ethics and Disciplinary Commission" and the case forms thereof.

Article 3. In part 1 of Article 35 of the Law, the words "application of a disciplinary penalty prescribed by point 3.2 of part 1 of Article 149 of this Code against him or her" shall be added after the words "being elected as a member of the Supreme Judicial Council,".

Article 4. The second sentence of part 1 of Article 40 of the Law shall be deleted.

Article 5. In Article 45 of the Law:

(1) in the title, the words "and to the judges examining motions on carrying out operational intelligence measures" shall be deleted;

(2) part 3 shall be repealed.

Article 6. Article 68 of the Law shall be supplemented with new part 4:

"4. The Ethics and Disciplinary Commission shall, based on a written application of a judge, give advisory interpretations on the rules of ethics of a judge.".

Article 7. Part 1 of Article 69 of the Law shall be supplemented with new — points 15 and 16:

"(15) to submit a declaration on the property, income and interests in observance of the requirements provided for by the Law "On public service";

(16) to submit to the Commission for the Prevention of Corruption (hereinafter referred to as "Commission for the Prevention of Corruption) relevant materials justifying any changes in the property, as prescribed by the Law "On the Commission for the Prevention of Corruption.".

Article 8. In part 2 of Article 70 of the Law:

(1) points 4, 10 and 12 shall be repealed;

(2) point 14 shall be restated as follows:

"(14) to refrain from taking actions that are aimed at establishment of the grounds for self-recusal;".

(3) new point 18 shall be added:

"(18) to disclose the grounds for self-recusal, if available, to the parties, as well as to recuse himself or herself in the cases and under the procedure provided for by this Code.".

Article 9. In part 1 of Article 73 of the Law, the words ", where it may be reasonably perceived as related to the performance of his or her official duties" shall be deleted.

Article 10. In point 2 of part 5 of Article 74 of the Law, the words "performance evaluation of judges (hereinafter referred to as "the Commission for Performance Evaluation of Judges")" shall be added after the word "Training".

Article 11. In Article 77 of the Law:

(1) part 1 shall be restated as follows:

"1. The General Assembly shall establish the Ethics and Disciplinary Commission, the Commission for Performance Evaluation of Judges and the Training Commission

(2) part 4 shall be restated as follows:

"4. The Ethics and Disciplinary Commission shall be composed of eight members, two out of which shall be selected from among the judges of specialised courts — one judge from each specialised court, one — from among the judges of the Court of First Instance of General Jurisdiction of the City of Yerevan, one — from among the judges of the courts of first instance of general jurisdiction of marzes, and one — from among the judges of the courts of appeal. In addition to judges, the Ethics and Disciplinary Commission shall involve one representative from the Staff of the Human Rights Defender and two representatives from non-governmental organisations engaged in the activities specified in part 7 of this Article.".

(3) new — points 5.1 and 5.2 — shall be added:

"5.1. The Commission for Performance Evaluation of Judges shall comprise 5 members, including two academic lawyers, one judge from the Court of Cassation of the Republic of Armenia, one judge from a court of appeal and one judge from a court of first instance.

5.2. The judge with at least five years of work experience in the position of judge and, with a high or good evaluation based on the latest results of evaluation, in case the performance is evaluated, may be elected as a candidate for member of the Commission for Performance Evaluation of Judges, and the reputable lawyer endowed with high professional qualities and an academic degree and with at least five years of experience of professional work in the field of law may be elected as a candidate for academic lawyer member.";

(4) part 6 shall be restated as follows:

"6. The acting judge and academic lawyer may be elected as members of the Commission through self-nomination or by being nominated, upon his or her consent, by any judge of the General Assembly.";

(5) part 7 shall be restated as follows:

"7. The members of the Commissions shall be elected through a secret ballot, by the General Assembly, for a period of four years. The peculiarities of election of the members of the Ethics

and Disciplinary Commission are prescribed by part 7.1 of this Article.";

(6) new part 7.1 shall be added:

7.1. The judge members of the Ethics and Disciplinary Commission shall be elected through a secret ballot, by the General Assembly, for a period of two years. Non-judge members of the Ethics and Disciplinary Commission shall be nominated by the Human Rights Defender and relevant non-governmental organisations, respectively, for a period of two years. In order to engage them the Supreme Judicial Council shall, at least thirty days prior to the election of the judge members of the Commission, announce a competition, wherein the representatives of non-governmental organisations may participate whose statutory objectives include human rights protection or the activities aimed at increasing the public accountability of the judicial power and who have been engaged in such activities in the past five years. Biographies of the candidates and information regarding the organisations represented thereby shall be published on the official website of the judiciary. The selection of candidates shall be carried out by the Supreme Judicial Council, taking into account the education of the candidate, his or her experience, results of activities, achievements as well as those of the organisation represented thereby in the field in question and other noteworthy circumstances. The reasoned decision on the selection of candidates shall be adopted by majority of votes of the members of the Supreme Judicial Council, through open ballot, for a period of two years. The procedure for the competition shall be established by the Supreme Judicial Council.".

Article 12. In Article 78:

(1) in part 1, the words ", whereas the Ethics and Disciplinary Commission — from among its judge members" shall be added after the words "from its composition".

(2) new part 4 shall be added:

"4. The Commission for Performance Evaluation of Judges shall:

(1) conduct performance evaluation of judges;

(2) in case of detecting a violation of material or procedural law or violation of the rules of judicial conduct (including essential disciplinary violation), apply to the Ethics and

Disciplinary Commission to consider the issue of instituting disciplinary proceedings against the judge.".

Article 13. In Article 84 of the Law:

(1) in part 9, the words "without the right to be re-elected, for a period of one year, but not more than" shall be added after the words "shall be elected";

(2) in part 10, the words "the vacant position of a member of the Supreme Judicial Council is filled" shall be replaced with the words "the position of the Chairperson becomes vacant."

Article 14. Part 2 of Article 85 of the Law shall be supplemented with a new sentence:

"The Commission for the Prevention of Corruption shall apply to the Supreme Judicial Council with a motion of subjecting the member of the Supreme Judicial Council to disciplinary liability with respect to violation of the rules of conduct provided for by points 15 and 16 of part 1 of Article 69 of this Code.".

Article 15. In Article 86 of the Law, in point 3 of part 1, the words "or termination of criminal prosecution on non-acquitting grounds" shall be added after the words "entry into legal force of a criminal judgment of conviction rendered against him or her;".

Article 16. In part 6 of Article 90 of the Law:

(1) the words "based on the motion of a member of the Supreme Judicial Council or a judge," shall be added after the words "when they,", the word "reasoned" shall be added after the second word "Council", and the words ", or when such motion has been filed by the judge" shall be deleted.

Article 17. In Article 94 of the Law:

(1) in part 4, the words "through open ballot" shall be added after the words "shall be adopted";

(2) part 5 shall be repealed;

(3) part 6 shall be restated as follows:

"6. The decisions of the Supreme Judicial Council on subjecting a judge and a member of the Supreme Judicial Council to disciplinary liability shall be adopted in the deliberation room by

majority of votes of the total number of Council members — through open ballot, whereas the decisions on terminating the powers of a judge or a member of the Supreme Judicial Council, as well as on giving consent to instituting criminal prosecution against a judge or a member of the Supreme Judicial Council or depriving them of liberty with respect to exercise of their powers — by at least two-thirds of votes of total number of Council members. Where the Supreme Judicial Council fails to adopt a decision due to insufficient number of votes in favour of any decision upon voting results, the decision on rejecting the relevant motion shall be deemed as adopted, and the decision shall be drawn up and signed by the members of the Supreme Judicial Council having voted in favour of rejecting the motion.".

Article 18. In part 1 of Article 97 of the Law:

(1) the number "28" shall be replaced with the number "25";

(2) in point 2 of part 1, the words "or Master's qualification degree in law" shall be deleted;

(3) in point 5, the word "five" shall be replaced with the word "three".

Article 19. Part 3 of Article 103 of the Law shall be supplemented with a new sentence: "The complexity of the written task must be proportionate to the time provided for solution thereof.".

Article 20. In Article 104 of the Law:

(1) in part 3, the words "of 10 judges" shall be replaced with the words "of 10 judges, who have received a high or good evaluation based on the last results of evaluation, in case the performance has been evaluated";

(2) part 6 shall be supplemented with a new sentence:

"The names of members of the evaluation commission shall not be subject to publication prior to publication of the results of the examination".

Article 21. Part 3 of Article 105 of the Law shall be restated as follows:

"3. The written tasks of contenders shall be provided to the evaluation commission anonymously, coded (depersonalised). The members of the evaluation commission must be provided with the evaluation scale complying with the criteria for evaluation

and guiding sample answers. Each member of the evaluation commission shall complete the rationale for his or her evaluation which shall be attached to the written task and the copy whereof must, based on the application of the person having taken the examination, be provided to him or her, along with the copy of the written task. The general evaluation shall be determined by the average of the final evaluations designated to the contender by all members of the commission.".

Article 22. The Law shall be supplemented with new Article 105.1:

"**Article 105.1. Appealing the results of the written examination**

1. The results of the written examination may be appealed to the Appeals Commission within a 15-day time period upon publication thereof.

2. The appeals commission for the relevant specialisation shall be formed within a 5-day period upon receipt of the first appeal against the results of the examination for the specialisation concerned, composed of two judges and one academic lawyer who are, by a drawing, elected by the composition of 5 academic lawyer candidates for the given specialisation nominated by the Training Commission and at least 3 academic lawyer candidates in the relevant field of law nominated by the Authorised Body, upon their consent. Members of the evaluation commission may not be included in the composition of the Appeals Commission.

3. The provisions prescribed by Article 104 of this Code shall apply for the procedure for being included in the composition of the Appeals Commission, carrying out the activities of the Commission, remuneration of the members of the Commission, termination of the powers thereof, as well as termination of the activities of the Commission, and for review of the results of appeal — the provisions prescribed by Article 105.

4. The Appeals Commission shall examine the appeal and render a decision thereon within a 5-day period upon expiry of the time limit prescribed for appeal. The Appeals

Commission may reject the appeal filed against the results of the examination or satisfy the appeal, partially or in full.

5. The results of the written examination may not be appealed through judicial procedure, where they have not been appealed to the Appeals Commission.".

Article 23. In part 1 of Article 106 of the Law, the word "five" shall be replaced with the word "three", and the word "eight" — with the word "six".

Article 24. In part 1 of Article 107 of the Law, the words "Upon publication of the results of the appeal, and in case there are no appeals —" shall be added before the word "written".

Article 25. Article 108 of the Law shall be supplemented with new part 1.1:

"1.1. Contenders shall undergo psychological testing in the course of five days prior to the interview. The psychological test shall be composed for the purpose of evaluating the qualities provided for in part 1 of this Article, and the result thereof shall be obtained according to a previously developed electronic system. The required software for psychological testing shall be provided by the Authorised Body through the involvement of relevant specialists. The results of the test shall be consultative and shall be provided to the contender and the Supreme Judicial Council.".

Article 26. In Article 109 of the Law:

(1) in part 1, the word "secret" shall be replaced with the word "open";

(2) part 2 shall be repealed;

(3) in part 3, the last sentence shall be deleted;

(4) in part 7, the last sentence shall be deleted.

Article 27. Chapter 18 of the Law shall be restated as follows:

"CHAPTER 18

PERFORMANCE EVALUATION OF JUDGES

Article 136. Aim of the performance evaluation of judges

1. The performance of a judge shall be evaluated.

2. The aim of the performance evaluation of judges shall be to:

(1) contribute to the selection of the best candidates when compiling the promotion lists of judge candidates;

(2) contribute to the selection of the areas of training of judges;

(3) reveal ways of improving the effectiveness of the work of the judge;

(4) contribute to the self-improvement of the judge;

(5) contribute to the improvement of the effectiveness of activities of the court.

3. Results of the performance evaluation of a judge shall be provided to the following bodies:

(1) the Training Commission, to select the areas of training of judges;

(2) the judge being evaluated, to improve the effectiveness of his or her work and for the latter to self-improve;

(3) the Ethics and Disciplinary Commission, to consider the issue of instituting disciplinary proceedings against the judge;

(4) the chairperson of the court, for the purpose of improving the effectiveness of the activities of the given court.

4. Results of performance evaluation of judges, as well as data and information obtained with that regard shall be confidential, except for cases provided for by this Code.

Article 137. Types of performance evaluation of judges

1. The performance of a judge shall be regularly evaluated once every four years, and in an extraordinary manner — upon the initiative of the judge or in the cases prescribed by this Code.

2. Extraordinary evaluation shall not be carried out upon the initiative of the judge, where the performance of the judge has been evaluated during the last two years.

3. Extraordinary evaluation shall be carried out under the procedure and within time limits prescribed by the Supreme Judicial Council.

Article 138. Criteria for performance evaluation of judges

1. Performance evaluation of judges shall be based on the criteria prescribed by this Article that characterise the quality and effectiveness of the work of a judge, as well as the professionalism and ethics of the judge.

2. Criteria for evaluation of the quality and professionalism of the work of a judge shall be:

(1) availability of skills and qualities required for implementation of justice and of other powers as a court and provided for by law;

(2) ability to justify the judicial act;

(3) ability to preside over the court session and conduct the court session as prescribed by law.

3. Criteria for evaluation of the effectiveness of the work of a judge shall be:

(1) effective workload management skill and work planning;

(2) examination of cases and delivery of judicial acts within reasonable time limits;

(3) observance by a judge of time limits prescribed by law for the performance of individual procedural actions;

(4) ability to ensure an efficient working environment.

4. Criteria for evaluation of the ethics of a judge shall be:

(1) observance of the rules of ethics;

(2) contribution to the public perception of the court and to the confidence therein, attitude towards other judges and the staff of the court.

5. For evaluation based on the criteria for evaluation prescribed by this Article, the commission must take into consideration the audio recordings of at least 10 court sessions for cases examined by the judge (in case of absence — simple paper records) and at least 10 judicial acts resolving the case on the merits (by random selection).

Article 139. Procedure for performance evaluation of judges

1. Performance evaluation of judges shall be carried out by the Commission for Performance Evaluation of Judges on the basis of the criteria prescribed by this Code.

2. The Supreme Judicial Council shall prescribe the methodology of the performance evaluation of judges, the procedure for collecting data necessary for the evaluation and other details necessary for the performance evaluation of judges.

3. When prescribing the methodology of the performance evaluation of judges, priority shall be given to the criteria prescribed by parts 2 and 3 of Article 138 of this Code for performance evaluation of the judge which are decisive for formation of the evaluation given to the judge.

4. The Supreme Judicial Council shall prescribe the regular timetable of the performance evaluation of judges according to relevant years and judges.

Article 140. Summarising the results of performance evaluation of judges

1. A draft decision on the evaluation results shall be drawn up and shall include a summary of the evaluation results.

2. Draft decision on the evaluation results shall be forwarded to the judge, who shall have the right to submit, within a period of seven days following receipt of the draft, his or her considerations thereon.

3. The Commission for Performance Evaluation of Judges shall review the considerations of the judge on the evaluation results and shall render a decision on the evaluation results.

4. The Commission for Performance Evaluation of Judges shall evaluate the performance evaluation of judges as high, good, average, or low, based on the overall evaluation results, taking as a basis the evaluation scales prescribed by the Supreme Judicial Council which, among others, include the indicators for performance evaluation of the judge based on each criterion, the method of determining the unit based on each indicator, the maximum amount of units, as well as the scope of data documented and serving as a ground for performance evaluation of the judge based on the given indicator and the procedure for gathering those data.

5. The performance evaluation of a judge shall be formed by the average of the evaluations designated for a judge by each member of the Commission based on all the evaluation criteria.

6. The judge member of the Commission for Performance Evaluation of Judges shall not participate in the evaluation and summarisation of the results of his or her performance.

Article 140.1. Consequences of performance evaluation of judges

1. Where the performance of a judge is evaluated as low or average based on the overall evaluation results, the Commission for Performance Evaluation of Judges shall render a decision on sending the judge to additional training, prescribing the criteria by which he or she needs to improve his or her skills.

2. An extraordinary evaluation shall be organised within a three-month period after the judge with a low or average evaluation based on the overall evaluation results completes additional training prescribed by part 1 of this Article.

3. In case of extraordinary evaluation prescribed by part 2 of this Article, evaluation of the criteria prescribed by Article 138 of this Code shall be carried out as prescribed by

the Supreme Judicial Council.

4. Where, as a result of performance evaluation of a judge by the Commission for Performance Evaluation of Judges, prima facie grounds for subjecting a judge to disciplinary liability are detected as provided for by Article 142 of this Code, the Commission shall apply to the Ethics and Disciplinary Commission to consider the issue of instituting disciplinary proceedings against the judge.".

Article 28. In Article 142 of the Law:

(1) in part 1:

(a) in point 1, the words "obvious and gross" shall be deleted, and the words ", which has been committed deliberately or with gross negligence;" shall be added after the words "violation of the provisions of substantive or procedural law while administering justice or exercising, as a court, other powers provided for by law,";

(b) in part 2, the word "gross" shall be deleted before the words "violation by the judge of the rules";

(c) points 3 and 4 shall be repealed.

(2) parts 2 and 3 shall be repealed;

(3) in part 5, "could and ought to have reasonably done it" shall be added before the words "in the situation".

(4) part 6 shall be restated as follows:

"6. The essential disciplinary violation shall be considered as:

(1) violation provided for by point 1 of part 1 of this Article, which has resulted in the fundamental violation of human rights and/or freedoms stipulated by the Constitution or international treaties ratified by the Republic of Armenia, or dishonours the judiciary;

(2) violation provided for by point 2 of part 1 of this Article, which has been committed in violation of the obligations of a judge provided for by points 1-4, 8-9, 11-12, 15-16 of part 1 of Article 69 and points 1-3, 7-8, 11, 13-14 and 18 of part 2 of Article 70 and which is not compatible with the status of a judge conditioned by the

circumstances of committal [of violation] and/or the consequences it gave rise to;

(3) violation committed on a regular basis and provided for by part 1 of this Article, which, taken individually, may not be considered as essential, whereas in combination with the violations previously committed it dishonours the judiciary;"".

Article 29. In Article 144 of the Law:

(1) in part 1:

(a) in point 1, the words "obvious and gross" shall be deleted, and the words ", which has been committed deliberately or with gross negligence" shall be added after the words "on the grounds of violation of the provisions of substantive or procedural law while administering justice or exercising, as a court, other powers provided for by law,";

(b) in point 2, the word "gross" shall be deleted, and the words "which has been committed deliberately or with gross negligence" shall be added after the words "on the ground of violation by a judge of the rules of conduct of a judge, provided for by this Code,", as well as the words "one month" shall be replaced with the words "three months", and the words "six months" shall be replaced with the words "one year";

(c) point 3 shall be repealed.

Article 30. In Article 145 of the Law:

(a) part 1 shall be supplemented with new point 3:

"(3) the Commission for the Prevention of Corruption — in the cases provided for by point 1.1 of this Article.";

(b) new part 1.1 shall be added:

""1.1. Only the Commission for the Prevention of Corruption may institute disciplinary proceedings in respect of the violation of the rules of conduct provided for by points 15 and 16 of part 1 of Article 69 of this Code in the cases prescribed by the Law "On Commission for the Prevention of Corruption".".

Article 31. In Article 146 of the Law:

(a) part 1 shall be supplemented with new point 4:

"(4) detection by the body instituting proceedings of an act containing *prima facie* elements of disciplinary violation, as a result of examination of an act rendered by an international court to which the Republic of Armenia is a party or by other international instance that establishes a violation of international obligations assumed by the Republic of Armenia in the field of human rights protection.";

(2) part 5 shall be restated as follows:

"5. Based on the communication of the person provided for by point 1 of part 1 of this Article the body instituting disciplinary proceedings shall take a reasoned decision on instituting disciplinary proceedings or not instituting disciplinary proceedings, the copy of which shall be forwarded to the person having submitted a communication.";

(3) in point 1 of part 6, the words "disciplinary" shall be added before the words "proceedings against the same judge, instituted".

Article 32. In point 4 of part 3 of Article 147 of the Law, the words ", natural and legal persons" shall be added after the words "person having reported [on violation]", and the word "information" shall be replaced with the words "information and materials".

Article 33. In Article 149 of the Law:

(1) part 1 shall be supplemented with new points 3.1 and 3.2:

"(3.1) prohibition on being included in the list at the time of regular and extraordinary completion of the promotion list of judge candidates, for a period of two years;

(3.2) dismissal from the position of the chairperson of a court and Chairperson of the Court of Cassation;";

(2) in part 2, the words "deliberateness or gross negligence" shall be added after the words "consequences of the violation,".

(3) In part 3, the words "within two years after imposition of a prohibition on being included in the list at the time of regular or extraordinary completion of the promotion list of judge candidates, after being dismissed from the position of the chairperson of a court or Chairperson of the Court of Cassation or" shall be added after the words "Where a judge has not been subjected to liability".

Article 34. In Article 150 of the Law:

(1) in part 1, the words “one month” shall be replaced with the words “three months”.

new parts 3 and 4 shall be added:

"3. Examination of the issue of subjecting a judge to disciplinary liability shall be suspended where a criminal case has been instituted based on the same facts, and it shall resume after the completion of criminal proceedings.

4. The Supreme Judicial Council shall dismiss the consideration of the issue of subjecting a judge to disciplinary liability where there are grounds for discontinuation of the powers of a judge provided for by Article 160 of this Code after resuming the consideration of the issue of subjecting to disciplinary liability. In the course of consideration of the issue of subjecting to disciplinary liability, the criminal judgment, under the criminal case, having entered into legal force shall be binding for the Supreme Judicial Council only in respect of the facts establishing the committal of certain actions and the persons having committed them.”.

Article 35. Article 151 of the Law shall be restated as follows:

"Article 151. The course of consideration of the issue of subjecting a judge to disciplinary liability at the Supreme Judicial Council

1. The consideration of the issue concerned at the Supreme Judicial Council shall start with reporting by the person having instituted proceedings on the nature of the issue and on the motion of subjecting to disciplinary liability. Where disciplinary proceedings has been instituted against a judge by the Authorised Body, the latter, whereas in case of impossibility — the respective deputy thereof, shall be obliged to be present at the session of the Supreme Judicial Council Where the disciplinary proceedings has been instituted by the Ethics and Disciplinary Commission, the motion on disciplinary violation shall be reported at the session of the Supreme Judicial Council by the Chairperson of the Ethics and Disciplinary Commission, or one of the members thereof — upon assignment of the Ethics and Disciplinary Commission. Where the disciplinary proceedings has been instituted by the Commission for the Prevention of Corruption, the motion on disciplinary violation shall be reported at the session of the Supreme Judicial Council by the Chairperson of the Commission for the Prevention of Corruption, or one of the members thereof — upon assignment of the

Commission for the Prevention of Corruption.

2. In the case where, after forwarding the materials of disciplinary proceedings to the Supreme Judicial Council, the body having instituted proceedings has become known of the circumstances that put the judge in an advantaged situation or exclude the possibility of subjecting him or her to disciplinary liability, the body having instituted proceedings shall be obliged to inform the Supreme Judicial Council thereon.

3. After reporting by the body having instituted proceedings, the Supreme Judicial Council shall hear the judge against whom the disciplinary proceedings was instituted. The members of the Supreme Judicial Council and the representative of the body having instituted the proceedings may address questions to the judge and he or she may answer or refuse to answer them. After hearing the judge the Supreme Judicial Council shall decide on the scope of facts significant for the disposition of the case, and proceed with the examination of materials of the proceedings.

4. After determining the scope of facts significant for the disposition of the case, the Supreme Judicial Council shall be entitled to:

1) to require, upon the motion of the judge, body having instituted disciplinary proceedings or upon its own initiative, from a judge, body having instituted disciplinary proceedings, state and local self-government bodies (their officials), as well as natural and legal persons to submit evidence which is significant for the consideration of the issue and falls within the scope of the influence of the given persons, by setting a time limit for submitting them to the Supreme Judicial Council, whereas in case of failure to voluntary comply with the decision it shall be submitted for enforcement as prescribed by the Law “On compulsory enforcement of judicial acts”;

2) to summon witnesses upon the motion of the judge, body having instituted disciplinary proceedings or upon its own initiative;

3) to call for an expert examination upon the motion of the judge, body having instituted disciplinary proceedings or upon its own initiative in order to clarify the issues significant for consideration.

5. In the case where a witness fails to appear, the Supreme Judicial Council shall be entitled to render a decision on compulsory appearance of the witness. The decision on compulsory appearance shall be executed as prescribed by the Law “On compulsory enforcement of judicial

acts".

6. The Supreme Judicial Council shall warn the persons giving testimony under the case, about the liability prescribed for refusing to give testimony or giving false testimony, whereas the experts — about the liability prescribed for rendering an obviously false opinion.

7. The witness summoned for consideration of the issue shall be addressed questions first by the party upon the motion whereof the witness has been summoned, then — by the other party, and in the end — by the Supreme Judicial Council. Where the witness has been summoned upon the initiative of the Supreme judicial Council, questions shall be addressed first by the Supreme Judicial Council, then by the parties — as of the order prescribed by the Supreme Judicial Council.

8. The witness shall have the right to refuse to give testimony with regard to specific questions where he or she reasonably assumes that it may later be used against him or her or his or her close relative.

9. After examining the materials of the proceedings, the Supreme Judicial Council shall hear final speeches of the persons participating in the session, following which the consideration of the issue shall be declared as completed. After declaring the consideration of the issue as completed, the Supreme Judicial Council shall announce the date, venue and time of delivery in public of the decision.

10. After declaring the consideration of the issue as completed, the Supreme Judicial Council shall leave to render a decision.".

Article 36. In Article 155 of the Law:

1) in part 7, the words "decision of the Supreme Judicial Council on the issue of subjecting a judge to disciplinary liability shall enter into force upon its delivery in public and shall be final" shall be replaced with the words "decision of the Supreme Judicial Council on the issue of subjecting a judge to disciplinary liability shall be subject to appeal within a period of one month upon its delivery in public as prescribed by this Code".

2) part 8 shall be repealed.

Article 37. The Law shall be supplemented with new Article 156.1:

"Article 156.1. Appealing against the decision on subjecting a judge to disciplinary liability

1. The appeal brought by a judge against the decision on subjecting him or her to disciplinary liability shall be examined by the Supreme Judicial Council where an essential evidence or circumstance has emerged which the judge did not previously introduce due to circumstances beyond his or her control and which may reasonably affect the decision.

2. After having received the appeal the Supreme Judicial Council shall immediately forward it to the body having instituted disciplinary proceedings. The body having instituted disciplinary proceedings may submit to the Supreme Judicial Council a response to the appeal within 10 days following the receipt thereof.

3. The Supreme Judicial Council shall examine the appeals against the decision on subjecting a judge to disciplinary liability and shall render respective decisions thereon in writing except for the cases where it comes to a conclusion that it is necessary to examine the appeal at the session. A decision shall be rendered in respect of examining the appeal at the court session.

4. In case a decision on examining at the court session the appeal against the decision on subjecting a judge to disciplinary liability is rendered, the judge having lodged the appeal and the body having instituted disciplinary proceedings shall be notified of the time and venue of the session. Failure to appear shall not preclude the examination of the appeal. The examination of the appeal at the court session shall start with reporting by the person presiding at the session. The person presiding at the session shall introduce the appeal and arguments in the response to the appeal. The members of the Supreme Judicial Council shall have the right to address questions to the rapporteur and the parties having appeared at the session, whereafter the examination of the appeal shall be declared as completed.

5. During the examination of the appeal the Supreme Judicial Council shall revise the decision on subjecting a judge to disciplinary liability only to the extent of the grounds and justifications of the appeal.

6. The appeal shall be examined and the decision shall be rendered within a period of one month following the receipt of the appeal.

7. Upon the results of examination of the appeal the Supreme Judicial Council shall render a

decision on upholding the decision or on revoking, in part or in full, the decision. The decision shall enter into force upon its delivery in public and shall be final.”.

Article 38. In Article 159 of the Law:

(1) in part 1, the words "of Chapter 18" shall be replaced with the words "of Chapter 19";

(2) part 2 shall be supplemented with new point 5:

"(5) has committed an essential disciplinary violation.”.

Article 39. Article 160 of the Law shall be supplemented with new part 10:

"10. Where the powers of a judge discontinue on the grounds of entry into legal force of the criminal judgment of conviction rendered for committing an intentional criminal offence, he or she shall be deprived of the pension and other social guarantees provided for by the legislation of the Republic of Armenia for a judge. And where the powers of a judge terminate on the ground prescribed by point 5 of part 2 of Article 159 of this Code, the Supreme Judicial Council shall decide on the issue of depriving the judge of the pension and other social guarantees provided for by point 5 of part 2 of Article 159 of this Code, concurrently with rendering a decision on terminating the powers.".

Article 40. Article 165 of the Law shall be supplemented with new part 1.1:

"1.1. In case criminal prosecution is instituted against a judge with regard to executing powers other than those vested thereto, the Prosecutor General shall promptly inform the Supreme Judicial Council thereon.”.

Article 41. Part 27 of Article 166 of the Law shall be repealed.

Article 42. Final part and transitional provisions

1. This Law shall enter into force on the tenth day following the day of its official promulgation, except for the case provided for by point 2 of Article 12, Articles 23 and 28 of this Code, as well as part 4 of this Article.

2. Point 2 of Article 12 and Article 28 of this Law shall enter into force after the Commission for Performance Evaluation of Judges is established.

3. Article 23 of this Law shall enter into force upon receiving the first appeal against the results of

the written examination for qualification after the entry into force of this Law.

4. With regard to psychological testing, Article 25 of this Law shall enter into force upon creating conditions specified in the Article and necessary for the psychological testing. The authorised body shall ensure the conditions prescribed by Article 25 of this Law within a period of five days following the official promulgation of this Law.

5. The General Assembly of Judges shall, within a period of three months following the entry into force of this Law, select the members of the Ethics and Disciplinary Commission and on the same day the powers of the Disciplinary Commission shall discontinue. The Human Rights Defender shall, within the same time period, nominate his or her candidate for the member of the Ethics and Disciplinary Commission and the Supreme Judicial Council shall select the representatives of non-governmental organisations.

6. The Supreme Judicial Council shall, within a period of one month following the entry into force of this Law, approve the procedure for holding a competition for selection of candidates for the Ethics and Disciplinary Commission nominated by non-governmental organisations.

7. The Commission for Performance Evaluation of Judges shall be established, the methodology of the performance evaluation of judges, the procedure for collecting data necessary for the evaluation and other details necessary for the performance evaluation of judges, as well as the regular timetable of performance evaluation of judges according to relevant years and judges shall be prescribed by the Supreme Judicial Council within a period of three months after the entry into force of this Law.

8. The first regular evaluation of judges shall be carried out during the period between 1 January 2020 to 1 January 2024.

LAW

OF THE REPUBLIC OF ARMENIA
ON MAKING SUPPLEMENTS AND AMENDMENTS TO THE LAW
"ON COMMISSION FOR THE PREVENTION OF CORRUPTION"

Article 1. **Article 10 of the** Law "On Commission for the Prevention of Corruption" HO-96-N of 9 June 2017 (hereinafter referred to as "the Law") shall be restated as follows:

"Article 10. Requirements for a member of the Commission

1. Everyone who is a citizen of only the Republic of Armenia, has higher education, at least five years length of service (at least three years of which in managerial positions — service in a position of head of state body or staff thereof or head of organisation or deputies thereof or head of internal unit of a state body or organisation or member of a state body operating collegially or auditor having international ACCA qualification or service in positions carrying out functions of organisation, management, supervision or coordination of activities) and is fluent in Armenian may be appointed as a member of the Commission.

2. At least one of the members of the Commission must have higher education in law and at least one — in economics.

3. The Commission shall elect from among its members the Chairperson of the Commission by the majority of votes of the total number of members.

4. A person who has been convicted for committing a crime irrespective of whether the conviction has been expired or cancelled, whose criminal prosecution has been terminated on non-acquittal grounds, who is currently subject to criminal prosecution, has an illness preventing a person from being appointed as a judge, provided for by the list established by the Government, may not be appointed as a member of the Commission.

5. The same person may be appointed, for the whole term of powers, as a member of the Commission, for not more than two consecutive terms.

6. A member of the Commission shall serve in office until the age of 65.

7. The position of a member of the Commission shall be considered as an autonomous position.".

Article 2. **In Article 11 of the Law**:

(1) part 2 shall be restated as follows:

"2. The Board shall comprise members, each appointed by the Government, the ruling and opposition factions of the National Assembly, the Supreme Judicial Council.";

(2) new point 2.1 shall be added:

"2.1. A new Board shall be established for the selection of candidates for each member of the Commission, except for the cases when the competition is organised to fill more than one vacant position of the Commission, in which case the competition is held by the same Board;

(3) part 3 shall be restated as follows: "3. The Chairperson of the National Assembly shall apply to the Government, the Supreme Judicial Council, the ruling and opposition factions of the National Assembly each to nominate one candidate with a view to including them in the composition of the Board.".

Article 3. Points 1, 2, 3 and 4 of part 1 of Article 12 of the Law shall be restated as follows:

"(1) ensure publication of information regarding the conditions and terms for holding the competition;

(2) review the compliance of candidates with the requirements provided for by this Law (stage of evaluation of documents);

(3) select the candidates having passed to the interview stage, based on the results of the evaluation of documents. Involvement of these candidates in corruption-related transactions and observance of integrity thereby shall also be examined while selecting them;

(4) select, through an open ballot during the interview stage, five candidates complying with

the requirements to a maximum extent.”.

Article 4. In Article 13 of the Law:

1) in point 3 of part 3, the words "including the sample of the test," shall be deleted;

2) part 10 shall be restated as follows:

"10. The competition shall be held in two stages, the first of which is the verification of completeness and relevance of documents (hereinafter referred to as “the document verification”), the second — interview.";

3) part 13 shall be restated as follows:

"13. Based on the results of the actions referred to in part 11 of this Article, the Board shall make a list of persons having passed to the interview stage. The Board shall publish on the official website of the National Assembly the list of participants of the interview, as well as the date, hour and venue for conducting the interview.

4) Parts 14-26 shall be repealed.

Article 5. In Article 18 of the Law:

1) in part 1, the words "members of the first composition of the Commission appointed for a term of four years, the term of powers whereof shall expire on the same day of the fourth year following the day of their appointment" shall be replaced with the words "members of the first composition of the Commission appointed for a term of three and four years, the term of powers whereof shall expire on the same day of the third and fourth year following the day of their appointment, respectively".

2) point 1 of part 2 shall read as follows:

"(1) his or her term of powers has expired;";

3) part 2 shall be supplemented with new points 1.1, 1.2 and 1.3:

"(1.1) he or she has attained the age of holding office;

(1.2) he or she has submitted a letter of resignation as prescribed by the Constitutional Law

"Rules of Procedure of the National Assembly";

(1.3) he or she has been deprived of the right to hold a certain position as prescribed by law;";

4) part 3 shall be deleted.

(5) in part 4, the words "shall be early terminated by the Commission" shall be replaced with the words "shall be early terminated by the National Assembly, upon consent of the Commission".

Article 6. In part 1 of Article 23 of the Law:

(1) new points 5 and 6 shall be added:

"(5) conducting monitoring over implementation of anti-corruption programmes developed thereby and actions and submitting recommendations thereon to the competent bodies;

(6) submitting advisory opinions not subject to publication, on the integrity of persons to be appointed to state positions in the cases and as prescribed by the Law "On public service.".

(2) in point 1.1, the words "unless otherwise provided for by law" shall be added after the words "investigator".".

Article 7. In Article 24 of the Law:

(1) part 1 shall be supplemented with new points 2.1, 23 and 24:

"(2.1.)"in cases prescribed by the Constitutional Law "Judicial Code of the Republic of Armenia", institute disciplinary proceedings against a judge and a member of the Supreme Judicial Council, as well as apply to the factions of the National Assembly with a recommendation to consider the issue of applying to the Constitutional Court for terminating the powers of a judge of the Constitutional Court on the ground of essential disciplinary violation, as provided for by part 4 of Article 109 of the Constitutional Law "Rules of Procedure of the National Assembly.".

"(23) prepare reports on the monitoring over implementation of anti-corruption programmes and their action plans (including sector-specific action plans), submit recommendations thereon to the competent bodies;

(24) conduct studies with respect to the integrity of persons subject to appointment to state positions, their involvement in corruption-related transactions and, by the results thereof, submit advisory opinions to persons competent to appoint in the cases and as prescribed by the Law “On public service".".

(3) new part 4 shall be added:

"4. The procedure for conducting studies with respect to the integrity and involvement in corruption-related transactions and for submitting advisory opinions by the results of those studies, provided for by points 20 and 21 of part 1 of this Article, shall be established by the Commission for the Prevention of Corruption.”.

Article 8. In Article 25 of the Law:

(b) new part 1.1 shall be added:

"1.1. The Commission shall be obliged to carry out additional analysis of declarations, based on publications in the media containing new circumstances of significance for analysis of declarations or on written applications of persons.”;

(2) part 2 shall be restated as follows:

"In the process of analysing declarations, the Commission shall be competent to require and receive (including through electronic inquiry) from state and local self-government bodies and other persons information and documents relating to the declarant persons, including those containing bank, commercial or insurance secret.”;

(3) new part 2.1 shall be added:

"2.1. In the process of analysing declarations, the Commission shall be competent to require persons affiliated with the declarant official to submit a situational declaration of property and income.”;

(4) the words “official and the person in the composition of his or her family” shall be deleted from part 3;

(5) the words “official and the person in the composition of his or her family” shall be deleted

from part 7;

(6) new part 9.1 shall be added:

"9.1. Where the declarant provided for by part 9 of this Article is a judge, the Commission shall institute disciplinary proceedings simultaneously with forwarding the materials to the Prosecutor General's Office. The materials obtained during proceedings shall be submitted to the Supreme Judicial Council along with the motion for subjecting the judge to disciplinary liability.";

(b) new part 9.2 shall be added:

"9.2. Where the declarant provided for by part 9 of this Article is a judge of the Constitutional Court, the Commission shall — simultaneously with forwarding to Prosecutor General's Office — forward the materials to the factions of the National Assembly, with a recommendation to consider the issue of applying to the Constitutional Court for terminating the powers of a judge of the Constitutional Court on the ground of essential disciplinary violation as provided for by part 4 of Article 109 of the Constitutional Law "Rules of Procedure of the National Assembly".

Article 9. **In part 4 of Article 31 of the Law:**

(1) the second word “organisations” shall be replaced with the word “persons”;

(2) the words "except for the information containing bank secret" shall be deleted.

Article 10. In Article 42 of the Law:

(1) in part 2, the words "9-15" shall be replaced with the words "9, 11-15" and the words "on 10 April 2018" — with the words "on 30 October 2020";

(2) part 4 shall be restated as follows:

"4. Prior to establishment of the Competition Board as prescribed by this Law, the first composition of the Commission shall be formed under the procedure prescribed by the Constitutional Law “Rules of Procedure of the National Assembly”, no later than before 30

October 2019 following the day of entry into force of this Law. The first composition of the Commission shall be formed by the National Assembly, from the candidates nominated by the Government, the factions of the National Assembly (ruling and opposition) and the Supreme Judicial Council, with terms of office for six years, four years each and three years, respectively.";

1) new part 4.1 shall be added:

"4.1. One year after the day of entry into force of this Law — on the same day, the Competition Board shall be established as prescribed by Article 11 of this Law, which shall, based on the studies with respect to the involvement of the members of the Commission in corruption-related transactions and observance of integrity thereby, submit to the National Assembly a recommendation on appropriateness of holding by the members of the Commission an office in the future. In case of a negative opinion of the Board, the National Assembly shall put to vote the issue of terminating the powers of the member of the Commission.".

Article 11. This Law shall enter into force on the tenth day following the day of its official promulgation, except for Articles 6 and 7 of this Law, which shall enter into force upon the establishment of the Commission for the Prevention of Corruption.

LAW

OF THE REPUBLIC OF ARMENIA

ON MAKING AMENDMENTS AND SUPPLEMENTS TO THE LAW

"ON PUBLIC SERVICE"

Article 1. In Article 29 of Law "On public service"

HO-206-N of 23 March 2018 (hereinafter referred to as "the Law"):

(1) the words "**in connection with the performance of one's ex officio (official) duties" shall be deleted from the title;**

(2) the words ", where it may be reasonably perceived as being connected with the performance of their **ex officio (official)** duties" shall be deleted from part 1;

(3) in part 2, the word "of the Article" shall be replaced with the word "of the Law";

(4) the words "in connection with the performance of their **ex officio (official)** duties" shall be deleted from part 3.

Article 2. The words "**in connection with the performance of their ex officio (official) duties**" shall be deleted from the title of Article 30 of the Law.

Article 3. Article 34 of the Law:

(1) shall be supplemented with new part 2.1:

"2.1. In the case prescribed by the Constitutional Law "Judicial Code of the Republic of Armenia", contenders for a judge candidate shall submit a declaration of property, income and interests to the Commission for the Prevention of Corruption. The general rules provided by this Law for the content and procedure for submission of the declarant official's declaration upon assumption of his or her office shall extend to the declaration submitted by contenders for a judge candidate. If contenders for a judge candidate fail to submit, within the time limit prescribed by this Law, a declaration, they shall be deemed to be persons having failed to submit declarations or persons having submitted declarations in violation of the time limit.".

(2) **shall be supplemented with new parts 5.1 and 5.2:**

"5.1. Upon request of the Commission for the Prevention of Corruption, persons affiliated with the declarant official shall, within a one-month period, submit a situational declaration of property and income to the Commission for the Prevention of Corruption. Where persons affiliated with the declarant official fail to submit a situational declaration of property and income within the time limit prescribed by this Law, they shall be deemed to be persons having failed to submit declarations or persons having submitted declarations in violation of the time limit.

5.2. The general rules provided by this Law for the content and procedure for submission of the declarant official's declaration upon assumption of his or her office shall extend to the situational declaration.";

(3) part 9 shall be restated as follows:

"9. Family members (persons within the composition of the family) of a declarant official shall mean his or her spouse, children (including adopted children), persons under the declarant official's guardianship or curatorship, parent, sister or brother of the declarant official, being residents of the Republic of Armenia, any adult person jointly residing with the declarant official.";

(4) part 10 shall be supplemented with a new sentence: "Within the meaning of this Law, residents of the Republic of Armenia shall mean the persons whose actual presence in the Republic of Armenia extends for 183 and more days during a tax year.";

(5) part 11 shall be restated as follows:

"11. Failure by a declarant official, his or her family member, as well as a person affiliated with the declarant official in the cases prescribed by point 5.1 of this Article, to submit the declarations to the Commission for the Prevention of Corruption in compliance with the requirements, procedure and time limits defined by this Law and by the Commission for the Prevention of Corruption shall entail liability as provided for by law.".

Article 4. This Law shall enter into force on the tenth day following the day of its official promulgation, except for points 2-5 of Article 3, which shall enter into force on 1 January 2020.

LAW

OF THE REPUBLIC OF ARMENIA
ON MAKING AMENDMENTS AND SUPPLEMENTS
TO THE CONSTITUTIONAL LAW
"ON THE CONSTITUTIONAL COURT"

Article 1. Article 10 of Constitutional Law "On the Constitutional Court" HO-42-N of 17 January 2018 (hereinafter referred to as "the Law"):

shall be supplemented with new part 2.1:

"2.1. Where the powers of a judge of the Constitutional Court automatically terminate on the ground of entry into force of the criminal judgment of conviction rendered for committing an intentional criminal offence, he or she shall be deprived of the pension and other social guarantees provided for judges by the legislation of the Republic of Armenia. And where the powers of a judge of the Constitutional Court are terminated on the ground prescribed by point 5 of part 2 of Article 12 of this Code, the Constitutional Court shall, along with rendering a decision on terminating the powers, decide on the issue of depriving the judge of the pension and other social guarantees provided for by the legislation of the Republic of Armenia.".

Article 2. In Article 12 of the Law:

(1) in part 3:

(a) point 2 shall be restated as follows:

"(2) the violation of the rules provided for by Article 14 of this Law, which, separately, may not be considered as essential, but dishonours the judiciary by its frequency;";

(b) point 3 shall be restated as follows:

"(3) violation with intent or gross negligence of the rules of conduct provided for by points 1-4, 8-9, 11-12 and 15-16 of part 1 of Article 14, as well as by points 1-3 and 5-10 of part 2 of the same Article of this Law, which is incompatible with the status of the judge, conditioned by the circumstances of commission and/or the consequences it caused;".

(2) new parts 3.1 and 3.2 shall be added:

"3.1. Within the meaning of this Article, an act shall be deemed to be committed with gross negligence, where the judge did not realise the unlawfulness of his or her conduct, though he or she could reasonably have and ought to have done it in that situation.

3.2. Within the meaning of this Article, an act shall be deemed to be committed with intent, where the judge realised the unlawfulness of his or her conduct.".

Article 3. Parts 1 and 2 of Article 14 of the Law shall be restated as follows:

"1. When engaging in any activity and in all circumstances, a judge of the Constitutional Court shall be obliged:

(1) to refrain from practising any conduct undermining the judiciary, as well as decreasing the public confidence in the independence and impartiality of the judiciary;

(2) not to use or not to authorise other persons to use his or her high reputation of the position of the judge for his or her benefit or for the benefit of another person;

(3) to demonstrate political restraint and neutrality;

(4) to refrain from interfering in the administration of justice by another judge;

(5) to refrain from publicly casting doubt on professional and personal qualities of the judge;

(6) to refrain from publicly casting doubt on actions of the court and judicial acts, except for cases provided for by law or of a professional activity carried out within the scope of the scientific freedom;

(7) to refrain from expressing an opinion on any ongoing case examined or anticipated in any court, except for cases where the judge acts as a party to or as a legal representative of a party to proceedings;

(8) to refrain from making an announcement or practising any conduct which threatens or casts doubt on the independence and impartiality of the judge or court;

(9) to immediately inform the Constitutional Court about interference in his or her activities in connection with administration of justice or exercising — as a court — other powers provided for by law, as well as rights arising from the status of a judge;

(10) not to act as a representative or provide counselling, including without compensation, except

for cases when he or she acts as a legal representative or provides legal counselling to his or her close relatives or persons under his or her guardianship or curatorship without any compensation;

(11) to abstain from accepting from anyone a gift or other property advantage or from giving consent to accept it later, where it may reasonably be perceived as having the aim of influencing the judge, observe the restrictions on accepting gifts by judges, provided for by this Law;

(12) not to initiate, authorise and take into account communications with the other party to proceedings or a representative thereof without the participation of the adverse party to the proceedings or the representative thereof (hereinafter referred to as "ex parte communications"), and to communicate at first chance the content of the ex parte communications to the party which has not participated in those communications, if such have taken place in circumstances beyond the judge's control, giving an opportunity to respond. Exceptions from this rule shall be permissible only in the following cases:

a. when circumstances make ex parte communications necessary for logistical purposes, such as reaching agreement on the date and time of the court session, for instance, or in other cases of organising the procedure, and provided that the communications do not concern the merits of the case, do not place one party at a procedural or other advantage over another, and provided that the judge communicates at first chance the content of such communications to the other party, giving the latter an opportunity to respond;

b. where such unilateral communication by the judge is directly provided for by law;

(13) not to initiate and authorise consultation with a judge, in respect whereof the Constitutional Court has rendered a decision on the impossibility of participation in the case examination;

(14) when applying to a specialist not interested in the outcome of the case, with regard to issues on the applicable law (except for another judge, as well as the employees of the staff of the court, the function whereof is to assist the judge in administering justice), to inform the parties of the identity of that specialist and the opinion received on the issue presented, and give them an opportunity to present their position with regard thereto;

(15) to submit a declaration in observance of the requirements provided for by the Law "On public

service";

(16) to submit to the Commission for the Prevention of Corruption relevant materials substantiating the change in the property, as provided for by the Law "On Commission for the Prevention of Corruption".

2. Duties of a judge, related to administration of justice or to exercising, as a court, other powers provided for by law, shall prevail over other activities carried out by him or her. When acting ex officio, a judge shall be obliged:

(1) to examine and resolve matters reserved to his or her authority, except for cases prescribed by Article 16 of this Law;

(2) to render decisions on his or her own;

(3) to be impartial and refrain from displaying bias or discrimination through his or her words or conduct, or from creating such impression on a reasonable and impartial observer;

(4) to treat with respect and politeness the participants of the proceedings, judges, the staff of the court and all persons with whom he or she communicates *ex officio*;

(5) to avoid any conflict of interests, exclude any influence that family, social or other relationships may have on the exercise of his or her official powers;

(6) not to use, disclose or otherwise make accessible — for purposes other than the administration of justice and exercising, as a court, of other powers provided for by law — non-public information that he or she has become aware of in the course of exercising his or her official duties, unless otherwise provided for by law;

(7) to avoid practising favouritism when participating in the process of appointing judicial servants;

(8) not to interfere with the operation of the system of recording court sessions;

(9) to refrain from taking actions which are aimed at creating grounds for impossibility of participation in the case examination;

(10) to disclose the grounds prescribed by Article 16 of this Law in case those grounds exist;

(11) to observe the requirements of the Constitutional Law of the Republic of Armenia "On the

Constitutional Court.".

Article 4. The words ", where it may be reasonably perceived as being connected with the performance of their **ex officio (official)** duties" shall be deleted from part 1 of Article 15 of the Law.

Article 5. In part 11 of Article 82 of the Law, the words "the intent or gross negligence," shall be added after the words "the personal characteristics of the judge,".

Article 6. The Law shall be supplemented with new Article 84.1:

"Article 84.1. Examination of cases related to subjecting a judge of the Constitutional Court to disciplinary liability, depending on the criminal proceedings

1. Examination of the case related to subjecting a judge of the Constitutional Court to disciplinary liability shall be suspended where a criminal case has been instituted with regard to the same facts and it will resume after the completion of the criminal proceedings.

2. The Constitutional Court shall dismiss the examination of the case related to subjecting a judge to disciplinary liability where there are grounds for automatic termination of the powers of the judge of the Constitutional Court, provided for by Article 12 of this Law after resumption of the examination of the case of subjecting to disciplinary liability. When examining the case of subjecting to disciplinary liability, the judicial act having entered into legal force shall be binding for the Constitutional Court only with regard to the facts which confirm the commission of certain actions and the persons having committed them.".

Article 7. Article 88 of the Law shall be supplemented with new parts 4.1, 4.2 and 4.3:

"4.1. In case of submission of a letter of resignation by a member of the Constitutional Court, appointed prior to the entry into force of Chapter 7 of the Constitution, provided for by Article 213 of the Constitution, he or she shall — upon automatic termination of powers until attainment of the age limit to serve in office prescribed for him or her by the Constitution — receive pension in the amount of the official pay rate and increments received at the moment of resignation. Judges of the Constitutional Court, elected after the entry into force of this Law shall not enjoy the right provided for by this part.

4.2. The member of the Constitutional Court, appointed prior to the entry into force of Chapter 7 of the Constitution, provided for by Article 213 of the Constitution, and having submitted a letter of resignation within a two-month period following the day of entry into force of part

4.1 of this Article, may enjoy the right provided for by part 4.1 of this Article.

Meanwhile, in case of being entitled to receive pension prescribed by parts 4 and 4.1 of this Article, the member of the Constitutional Court shall — in the letter of resignation — indicate the relevant part prescribing the entitlement to pension. In case of failure to make that indication, the member of the Constitutional Court shall enjoy the right provided for by part 4.1 of this Article.

4.3. After enjoyment of the right provided for by part 4.1 of this Article, the member of the Constitutional Court shall receive his or her pension provided by law for judges after attaining the age limit to serve in office provided by the Constitution.

Article 8. Final part and transitional provisions

1. This Law shall enter into force on the tenth day following the day of its official promulgation.

LAW

OF THE REPUBLIC OF ARMENIA
ON MAKING SUPPLEMENTS TO THE CONSTITUTIONAL LAW
"RULES OF PROCEDURE OF THE NATIONAL ASSEMBLY"

Article 1. Article 109 of the Constitutional Law "Rules of Procedure of the National Assembly" No HO-9-N of 16 December 2016 (hereinafter referred to as “the Law”) shall be supplemented with new part 4.1:

"4.1. The application for terminating the powers of a judge of the Constitutional Court on the grounds of committing an essential disciplinary violation may be based on the materials provided by the Commission for the Prevention of Corruption.".

Article 2. Part 1 of Article 153.1 of the Law shall be supplemented with a new sentence:

"The draft decision of the National Assembly on terminating the powers of a member of the Commission for Prevention of Corruption upon existence of grounds prescribed by law shall be submitted by the faction on the basis of the recommendation by the Commission for the Prevention of Corruption.

Article 3. This Law shall enter into force on the tenth day following the day of its official promulgation.

LAW

OF THE REPUBLIC OF ARMENIA
ON MAKING AN AMENDMENT TO THE LAW
"ON BANK SECRECY"

Article 1. Article 13.4 of Law "On bank secrecy" HO-80 of 7 October 1996 shall be restated as follows:

"Article 13.4. Provision of bank secrecy to the Commission for the Prevention of Corruption

1. Provision of information constituting bank secrecy to the Commission for the Prevention of Corruption in connection with the performance of the functions thereof in accordance with the Law of the Republic of Armenia "On Commission for the Prevention of Corruption" shall not be considered as disclosure of bank secrecy.".

Article 2. This Law shall enter into force upon formation of the Commission for the Prevention of Corruption.

LAW

OF THE REPUBLIC OF ARMENIA
ON MAKING A SUPPLEMENT TO THE LAW
"ON INSURANCE AND INSURANCE ACTIVITIES"

Article 1. Law "On insurance and insurance activities" HO-177-N of 9 April 2007 (hereinafter referred to as "the Law") shall be supplemented with new Article 115.1:

"Article 115.1 Provision of insurance secrecy to the Commission for the Prevention of Corruption

1. Provision of information to the Commission for the Prevention of Corruption in connection with the performance of the functions thereof in accordance with the Law of the Republic of Armenia "On Commission for the Prevention of Corruption" shall not be considered as disclosure of insurance secrecy.".

Article 2. In part 1 of Article 118 of the Law, the number "115" shall be replaced with the number "115.1".

Article 3. This Law shall enter into force upon formation of the Commission for the Prevention of Corruption.

LAW

OF THE REPUBLIC OF ARMENIA

ON MAKING AN AMENDMENT TO THE LAW

"ON SECURITIES MARKET"

Article 1. Point 11 of part 2 of Article 98 of Law "On securities market" HO-195-N of 11 October 2007 shall be restated as follows:

"(11) provision of information to the Commission for the Prevention of Corruption in connection with the performance of the functions thereof in accordance with the Law of the Republic of Armenia "On Commission for the Prevention of Corruption".".

Article 2. This Law shall enter into force upon formulation of the Commission for the Prevention of Corruption.

LAW

OF THE REPUBLIC OF ARMENIA
ON MAKING AMENDMENTS TO THE LAW
"ON REMUNERATION FOR PERSONS HOLDING STATE POSITIONS AND STATE SERVICE POSITIONS"

Article 1. Line 5 entitled "Chairperson of the Supreme Judicial Council" of Annex 1 of Law "On remuneration for persons holding state positions and state service positions" HO-157-N of 12 December 2013 shall be repealed, and line 24 shall be restated as follows: "Chairperson of the Supreme Judicial Council, member of the Supreme Judicial Council".

Article 2. This Law shall enter into force on the tenth day following the day of its official promulgation.

LAW

OF THE REPUBLIC OF ARMENIA

ON MAKING A SUPPLEMENT TO THE LAW

"ON COMPULSORY ENFORCEMENT OF JUDICIAL ACTS"

Article 1. Article 2 of Law "On compulsory enforcement of judicial acts" HO-221 of 5 May 1998 shall be supplemented with new point 9:

"(9) decisions of the Supreme Judicial Council, in the cases prescribed by point 1 of part 4 and part 5 of Article 151 of the Constitutional Law "Judicial Code".".

Article 2. This Law shall enter into force on the tenth day following the day of its official promulgation.

LAW

OF THE REPUBLIC OF ARMENIA
ON MAKING AMENDMENTS AND A SUPPLIMENT TO THE
ADMINISTRATIVE OFFENCES CODE OF THE REPUBLIC OF ARMENIA

Article 1. The words “within two months following the day of revealing the offence, but no later than” shall be deleted from part 7 of Article 37 of the Code of the Republic of Armenia on Administrative Offences of 6 December 1985 (hereinafter referred to as “the Code”).

Article 2. In Article 169.28 of the Code:

(1) part 1 shall be restated as follows:

“(1) Failure by the person having the obligation to submit a declaration, prescribed by the Law "On public service" (hereinafter referred to in this Article as “the declarants”) to submit — on the basis of a written notification of the Commission for the Prevention of Corruption — declarations provided for by the Law “On public service” (hereinafter referred to in this Article as “the declarations”) within 30 days after the expiry of the time limits prescribed by the Law "On public service":

“shall entail imposition of a fine in the amount of two hundred-fold of the fixed minimum salary.”

Part 2 shall be repealed.

Article 3. The Code shall be supplemented with new Article 206.17. "**Article 206.17. Disclosure of information on disciplinary proceedings against a judge**

1. Disclosure of information on proceedings by the person having submitted a report to institute disciplinary proceedings against a judge before applying to the Supreme Judicial Council by the body having instituted disciplinary proceedings with a motion to subject the judge to a disciplinary liability shall:

entail imposition of a fine in the amount of two hundred-fold of the fixed minimum salary.

2. The act provided for by part 1 of this Article that has been committed by a non-judge member of the Ethics and Disciplinary Commission shall:

entail imposition of a fine in the amount of two hundred-fold of the fixed minimum salary.”.

Article 4. In Article 244.17 of the Code, the words "for Ethics of High-Ranking Officials" shall be replaced by "for the Prevention of Corruption".

Article 5. This Law shall enter into force upon formation of the Commission for the Prevention of Corruption.

LAW

OF THE REPUBLIC OF ARMENIA
ON MAKING AMENDMENTS AND A SUPPLEMENT TO THE CRIMINAL CODE OF THE REPUBLIC OF ARMENIA

Article 1. In Article 314.2 of the Criminal Code of the Republic of Armenia of 18 April 2003 (hereinafter referred to as "the Code"):

(1) in the title, the words "for Ethics of High-Ranking Officials" shall be replaced with the words " for the Prevention of Corruption";

(2) in part 1, the words "by the declarant official, as well as a person within the composition of his or her family, provided for by the Law of the Republic of Armenia "On public service"" shall be replaced with the words "by a person having the obligation to submit a declaration, prescribed by the Law of the Republic of Armenia "On public service"";

(3) the word "2" shall be replaced with the word "1".

Article 2. In part 1 of Article 314.3 of the Code, the words "by the declarant official, as well as a person within the composition of his or her family, provided for by the Law of the Republic of Armenia "On public service"" shall be replaced with the words "by a person having the obligation to submit a declaration, prescribed by the Law of the Republic of Armenia "On public service"".

Article 3. The Code shall be supplemented with Annex No 6:

"Annex No 6

to the Criminal Code

of the Republic of Armenia

LIST

OF CORRUPTION CRIMES

Article 154.2.	Giving bribes to electors, receiving bribes, violating the prohibition on charity during elections or obstructing the free realisation of the elector's will;
Article 154.9.	Mediation in electoral bribery;
Article 178.	(point 1.1 of part 2) Fraud by use of official position;
	part 3, if committed by use of official position;
Article 179.	(point 1 of part 2) Embezzlement or peculation by use of official position;
	part 3, if committed by use of official position;
Article 190.	Legalisation of proceeds from crime (money laundering);
Article 195.	part 2, point (3), Anti-competitive practices by using the official position;
Article 200.	Commercial bribe;
Article 201.	Bribing of participants and organisers of professional sporting events and commercial competition shows;
Article 214.	Abuse of powers by officers of commercial or other organisations;
Article 308.	Abuse of official powers;
Article 309.	Excess of official powers;
Article 310.1.	Illicit enrichment;
Article 311.	Receiving bribe;
Article 311.1.	Receiving unlawful remuneration by a public servant not considered as an official;
Article 311.2.	Use of real or alleged influence;
Article 312.	Giving bribe;
Article 312.1	Giving unlawful remuneration to a public servant not considered as an official;
Article 312.2.	Giving unlawful remuneration for making use of real or alleged influence;
Article 313	Mediation in bribery;
Article 314	Official forgery;
Article 314.2.	Intentional failure to submit declarations to the Commission for Prevention of Corruption;
Article 314.3.	Submitting a false datum in declarations or concealing the datum subject to declaration;
Article 332.	part 3. Obstruction of administration of justice and investigation by using the official position;

Article 352. Delivering an obviously unjust criminal or civil judgment or another judicial act;

Article 375. Abuse of power, excess of power, or inaction of power;

Article 4. This Law shall enter into force on the tenth day following the day of its official promulgation, except for Article 1, which shall enter into force upon formulation of the Commission for the Prevention of Corruption.

LAW

OF THE REPUBLIC OF ARMENIA

ON MAKING SUPPLIMENTS TO THE LAW "ON STATE DUTY"

Article 1. Article 20 of the Law "On state duty" HO-186 of 27 December 1997 shall be supplemented with new points 38.2, 38.3 and 38.4:

"38.2. For checking the application and the attached documents having been submitted by an ex-judge for being included in the list of judge candidates	in the amount of twenty-fold of the base duty;
38.3. For checking the application and the attached documents having been submitted for replenishment of the promotion list of judge candidates to be appointed to the position of a judge at the courts of appeal	in the amount of twenty-fold of the base duty;
38.4. For checking the application and the attached documents having been submitted for replenishment of the promotion list of judge candidates to be appointed to the position of a judge at the Court of Cassation	in the amount of twenty-fold of the base duty.".

Article 2. This Law shall enter into force on the tenth day following the day of its official promulgation.

LAW

OF THE REPUBLIC OF ARMENIA
ON MAKING A SUPPLIMENT AND AMENDMENT TO THE LAW
"ON ENSURING, SERVICING THE ACTIVITIES OF OFFICIALS AND THE SOCIAL GUARANTEES THEREFOR"

Article 1. In subpoint (c) of point 2 of part 1 of Article 2 of the Law "On ensuring, servicing the activities of officials and the social guarantees therefor" HO-1-N of 4 February 2014, the words "and 4.1" shall be added after "4", the word "part" shall be replaced by word "parts", and the word "in case" shall be replaced with the word "in cases".

Article 2. This Law shall enter into force on the tenth day following the day of its official promulgation.

RATIONALE

FOR THE ADOPTION OF DRAFT LAWS "ON MAKING AMENDMENTS AND SUPPLEMENTS TO THE CONSTITUTIONAL LAW "ON JUDICIAL CODE OF THE REPUBLIC OF ARMENIA"", "ON MAKING AMENDMENTS AND SUPPLEMENTS TO THE CONSTITUTIONAL LAW OF THE REPUBLIC OF ARMENIA "ON THE CONSTITUTIONAL COURT"" AND RELATED DRAFT LAWS

1. Current situation and the need to adopt legal acts

A truly independent judiciary free from corruption and patronage is an absolute priority for the political authorities established after the velvet, non-violent revolution that took place in the Republic of Armenia in 2018. This priority has been underlined on a number of occasions; paragraph 4.1. of the Programme of the Government for 2019 expresses concern that previously the independence of the judiciary was overshadowed by the unlawful intervention of the executive power and emphasises that: "The Government must also be able to rule out the opportunity of judges to be guided by personal and mercenary motives — bribery.".

In addition, the commitment for judicial reforms was underlined in the speech on the judiciary delivered by the Prime Minister of the Republic of Armenia on 20 May of current year and during the parliamentary hearings convened by the National Assembly on 24 May of current year, entitled as "Prospects for the Application of Tools for Transitional Justice in Armenia".

The political will aimed at formation of a truly independent judiciary free from corruption and patronage was reaffirmed during the meeting of Prime Minister of the Republic of Armenia Nikol Pashinyan with the Secretary-General of the Council of Europe Thorbjørn Jagland held in Strasbourg and during meetings with the representatives of high-ranking delegation of the Council of Europe having arrived in Armenia after the meeting. The willingness of implementing all processes of legislative reforms in co-operation with the Council of Europe, based on the best international practice and in line with international commitments assumed by the Republic of Armenia, was reaffirmed.

Due to the aforementioned priority of formation of a truly independent judiciary free from corruption and patronage, a need has arisen to develop a legislative toolkit required for the

assessment of integrity of judges and of members of the Supreme Judicial Council.

In the existing Code, both the grounds and procedure for the disciplinary liability of judges[1] are problematic. **The recorded problems mainly lead to the following:**

(1) the Law of the Republic of Armenia "On public service", adopted on 23 March 2018, contains certain mechanisms for prevention of corruption, however in the context of development of relevant field, these mechanisms need to undergo changes continuously, taking into consideration the problems arising in practice after enforcement of the Law. In particular, the Law is restricted by the scope of gifts that may be reasonably related with the performance of *ex officio* (official) duties of persons holding public positions and those of public servants;

(2) the Law of 2018 "On public service" provides for the obligation of declaration of income, property and interests only for persons provided for by parts 1, 2, 3 of Article 34 of the Law and their family members. Persons holding public positions and public servants may conceal the property, income obtained as a result of unlawful activities via not only their family members, but also close relatives or relatives-in-law. At the same time, the definition of the concept of a family member of a declarant official is rather restricted under the Law. Taking into consideration the fact that the legislative mechanism for receipt of data regarding the property and income of the close relatives or relatives-in-law of a declarant official are missing in the existing legal regulations, there is a need to make relevant supplements to the Law in order to solve the problem;

(3) in order to ensure the effectiveness of implementation of the amendments made to the Law of the Republic of Armenia "On public service" adopted on 23 March 2018, there is a need to make amendments to the related legal acts as well. Due to this, amendments have been also made to the Criminal Code of the Republic of Armenia, to the Code of Administrative Offences of the Republic of Armenia and to the Law of the Republic of Armenia "**On the Commission for the Prevention of Corruption"**, respectively. In particular, the existing regulations in the Law of the Republic of Armenia "**On the Commission for the Prevention of Corruption"** do not provide the Commission for the Prevention of Corruption with the opportunity of obtaining information containing bank secrecy and relating to declarants. However, receipt and verification of such information without permission of the court makes

[1] Notice: The grounds for subjecting judges to disciplinary liability also concern the members of the Supreme Judicial Council.

the activities of the Commission for the Prevention of Corruption more accessible and effective. Taking this into consideration, in the Third Round Monitoring Report of Armenia on Istanbul Anti-Corruption Action Plan for Eastern Europe and Central Asia[2], the Organisation for Economic Co-operation and Development has recommended Armenia to review and examine, during investigation, the regulations for eliminating bank, financial and commercial secrecy and the methods of application thereof and to assure that this process is simple and effective and does not impede the disclosure of corruption cases. The model for making available the information containing bank secrecy to the bodies for the prevention of corruption operates in different countries. In particular, in Bulgaria, the Anti-Corruption Commission may require and receive credit information and information containing bank secrecy in order to verify the declarations and the status of property. The National Bank of Bulgaria creates and maintains a system of information regarding the pecuniary obligations of clients, that is available, *inter alia*, to the Anti-Corruption and Forfeiture of Illegally Acquired Assets Commission, with certain exceptions.[3] In Estonia, in response to written requests, banks and credit organisations must provide the Depository for Declarations of Economic Interests with information containing bank secrecy, about the person specified in the Law "On combating corruption", in order to clarify the information specified in the declaration of economic interests, if corruption is suspected.[4] Such regulations are also provided for in Spain and Portugal, if officials are suspected of corruption.[5]

(4) the existing regulations in the Law of the Republic of Armenia "**On the Commission for the Prevention of Corruption"** regarding the formation of the Commission are rather complicated and, in practice, they have served as a hindrance to the process of formation of the Commission. As referring to the response of international organisations with regard to the process of formation of the Commission, it is necessary to mention that the Fourth Round of Monitoring Report on the Anti-Corruption Network for Eastern Europe and Central Asia[6] (hereinafter referred to as "the Report") of the Organisation for Economic Co-operation and Development (hereinafter referred to as "the OECD"), entitled as "Anti-Corruption Reforms in

[2] https://www.oecd.org/daf/anti-bribery/Armenia-Round-3-Monitoring-Report-ENG.pdf
[3] https://rm.coe.int/bulgaria-anti-corruption-act-2018-/16808b2c86
[4] http://www.ebf-fbe.eu/uploads/documents/publications/Reports/Bank%20Secrecy/Bk_secrecy_Report04-2004-02083-01-E.pdf
[5] Ibid.
[6] https://www.oecd.org/corruption/acn/OECD-ACN-Armenia-4th-Round-Monitoring-Report-July-2018-ENG.pdf

Armenia" states that the Monitoring Team was concerned to learn about the controversies going on around the establishment of the agency and the process of selection of the members of the Competition Board. In particular, during the on-site visit of the Monitoring Team, a group of non-governmental organisations expressed concerns with regard to the process of nomination and selection of the members of the Competition Board, as well as with regard to their professional abilities. Taking into consideration the aforementioned, a need has arisen to change the procedure for formation of the Commission, by simultaneously strengthening the toolkit of the Commission.

(5) at the same time, importance is attached to clear legislative definition of corruption-related crimes in terms of consistent implementation of concept-related postulates and principles proclaimed by the Government of the Republic of Armenia in the anti-corruption field. Currently, the list of corruption-related crimes is approved upon the Order of the Prosecutor General of the Republic of Armenia No 3 of 19 January 2017. The list of corruption-related crimes approved by the Prosecutor General incorporates a rather wide range of crimes. The mentioned issue has been repeatedly raised also by international organisations; in particular, the Third Round Monitoring Report of Armenia on Istanbul Anti-Corruption Action Plan of Anti-Corruption Network of the Organisation for Economic Co-operation and Development (OECD) for Eastern Europe and Central Asia[7] also refers to undue extensive nature of the list of corruption-related crimes in the Republic of Armenia. Moreover, the Fourth Round Monitoring Report[8] exhaustively distinguishes the list of corruption-related crimes. An exhaustive definition, by law, of the list is aimed at predetermining the volume and scope of activities of the Anti-Corruption Committee to be established;

(6) the grounds for disciplinary liability are formulated in a general, complicated and multi-layered manner so as to violate the constitutional principle of legal certainty, and the discretion of the Supreme Judicial Council with regard to interpretation of the law is extremely broad and may lead to subjectivism. Thus, Article 142 of the existing Constitutional Law "On judicial code" of the Republic of Armenia (hereinafter referred to as "the Code") stipulates 4 grounds for disciplinary liability:

[7] https://www.oecd.org/daf/anti-bribery/Armenia-Round-3-Monitoring-Report-ENG.pdf

[8] https://www.oecd.org/corruption/acn/OECD-ACN-Armenia-4th-Round-Monitoring-Report-July-2018-ENG.pdf

- obvious and gross violation of the norm of substantive or procedural law;
- gross violation by the judge of the rules of conduct, committed deliberately or with gross negligence;
- failure to fulfil the obligation of undergoing mandatory training;
- failure to inform the Supreme Judicial Council of the interference in the exercise of powers.

Gross violation (in case of existence of the 1st and 2nd grounds) shall be deemed to be a violation that dishonours the judiciary:

- by nature (gravity) of violation, or
- by regular nature of violation.

In its turn, essential disciplinary violations shall be deemed as:

- committal of a disciplinary violation by a judge having two reprimands or one strict reprimand, or
- committal by a judge of an act which is incompatible with the position of a judge.

As the analysis of the cited legal norms shows, the legislature has provided for liability only for gross and essential violations. It turns out that the non-gross violations of the rules of conduct referred to in Articles 69 and 70 of the Code (except for failure to fulfil the obligation of undergoing mandatory training and failure to inform the Supreme Judicial Council of the interference in the exercise of powers) shall not entail liability. In addition, an essential disciplinary violation, which serves as an unconditional ground for termination of powers by virtue of the Constitution, is automatically related with the existence of disciplinary penalties of a judge, without the opportunity of additional assessment, whereas under point 2 — with the violation of incompatibility requirements, which itself, pursuant to part 9 of Article 164 of the Constitution, serves as a separate ground for termination of powers. No other ground for termination of powers is provided for in the context of essential disciplinary violation.

In addition, the form of guilt is referred to only in the context of violation of the rules of conduct provided for by point 2, which makes the issue of manifestation of guilt uncertain in case of all other grounds. Thus, the description of these grounds does not include *mens rea* and is only restricted by

actus reus, which has not only been criticised in international practice, but also creates problems in practice.[9]

In general, the grounds for disciplinary liability give rise to ambiguity and misinterpretation, whereas Venice Commission has repeatedly emphasised that regulations need to be more precise in the case where disciplinary liability is to be imposed on judges.[10]

For instance, what has been criticised for ambiguity is the legislation of **Ukraine**, which provided for liability for "regular or gross" violations of the rules of ethics.[11]

Based on the results of assessment of the legislation of **Serbia** wherein more ambiguous formulations (violation of the provisions of the code of ethics to a great extent; grave disciplinary offences) were also used, the delegation of the OSCE has recommended to define more precisely the essence of corresponding terms on legislative level and in practice.[12]

(7) the grounds for disciplinary liability do not include institution of disciplinary proceedings based on the problems detected as a result of analysis of the declaration on property, income and interests of judges, which does not enable to assess in a comprehensive manner the integrity of a judge, if necessary. However, in international practice, violations related to declaration of property are often indicated as graver disciplinary violations that may even lead to termination of the powers of a judge.

With regard to the legislation of Macedonia, the Venice Commission has stated that:

"[I]t is, however, not normal that such behaviour is characterised as a medium-gravity disciplinary violation. The Venice Commission recalls that "full asset disclosure has proved a valuable weapon in combating corruption in other countries". In the opinion of the Venice Commission the requirement to disclose assets and revenues should be associated with a sanction which is serious enough to serve the purpose of deterrence. While an exception may be made for minor or unintended omissions in

[9] See European Commission for Democracy through Law (The Venice Commission), Opinion On The Draft Judicial Code of Armenia, 09.10.2017, Strasbourg, paragraph 130, International Association of Judges. The Universal Charter of the Judge, approved on 17 November 1999 and updated on 14 November 2017, Article 7-1, OSCE/ODIHR, Note on International Standards and Good Practices of Disciplinary Proceedings against Judges, Warsaw, 27 December 2018, (OSCE 2018) paragraph 35.

[10] See The Venice Commission, 23.03.2015, Strasbourg, Opinion no. 801 / 2015, paragraph 50.

[11] Ibid.

12 See Mission to Serbia, Legal Framework and Overview of Case Law on Disciplinary Responsibility of Judges, Tatjana Papić, PhD, May 2016, paragraphs 46-48.

the declarations, in principle the failure to declare assets is a sufficiently serious violation to give rise to a dismissal."[13]

(8) the system of disciplinary penalties provided for by the existing Code is strictly restricted; the system makes a direct transition from the penalties of warning, reprimand and strict warning to termination of powers, wherefor, in its turn, only two grounds are provided for. It turns out that the system lacks the types of alternative, active and effective disciplinary penalties. The OSCE Office for Democratic Institutions and Human Rights has referred to this issue by stating that the law must envisage a wide array of disciplinary penalties applied against a judge, starting from minor penalties to the strictest ones;[14]

(9) in the existing Code, the Supreme Judicial Council has rather restricted toolkit for ensuring effective and comprehensive examination during the examination of the issue on subjecting a judge to disciplinary liability. Even witnesses may be summoned, expert examinations may be assigned and evidence may be required only upon the motion of a judge;

(10) the issue of formation of Disciplinary Commission of the General Assembly of Judges, which is a body instituting disciplinary proceedings against judges along with the Minister of Justice, is problematic. In particular, the Commission is composed solely of judges elected for a term of five years. The Venice Commission emphasises that given this regulation there is a risk that this body will adopt a "corporatist stance". As one of the measures of overcoming such danger, the Venice Commission has suggested the option of involving in the Commission other law specialists either;[15]

(11) the procedure does not provide for an opportunity of appealing against a decision on subjecting a judge to disciplinary liability, which leads to a violation of the right of a person to appeal against a judicial act rendered against him or her. As far as the opportunity of appealing against to the Constitutional Court is concerned, this shall not be deemed as proper appealing [procedure], since the Constitutional Court may examine only the issue of constitutionality of a legal norm applied against a person as in case of any other person. In addition, examination of such issue is not the main function of the Constitutional Court. Thus, a judge must have an

[13] See The Venice Commission, 21.12.2015, Strasbourg, Opinion no. 825 / 2015, paragraph 39.
[14] See OSCE/ODIHR, NOTE ON INTERNATIONAL STANDARDS AND GOOD PRACTICES OF DISCIPLINARY PROCEEDINGS AGAINST JUDGES, 27.12.2018, paragraph 48.
[15] See The Venice Commission, Opinion On The Draft Judicial Code of Armenia, 09.10.2017, Strasbourg, paragraph 135.

effective mechanism for appealing against in the proceedings on subjecting him or her to disciplinary liability;[16]

(12) Performance evaluation of judges: one of the priority issues of a rule-of-law state is to have an efficient and professional judiciary. People deserve to have judges who are competent, and knowing that judges are held accountable to professional standards may contribute to increasing public trust in the judiciary in general.[17]

The need to introduce the system of evaluation of judges is defined in numerous international documents.

Hence, paragraph 42 of the Recommendation (2010)12 of the Committee of Ministers of the Council of Europe "On Judges: Independence, Efficiency and Responsibilities" indicates that "With a view to contributing to the efficiency of the administration of justice and continuing improvement of its quality, member states may introduce systems for the assessment of judges by judicial authorities".

Accordingly, as a result of the amendments made to the Judicial Code of the Republic of Armenia in 2014, the system for evaluation of judges was introduced for the first time.

Moreover, performance evaluation of a judge was also envisaged by the Code adopted on 7 February 2018, reserving it to the Supreme Judicial Council.

However, it should be noted that performance evaluation of judges has not been carried out since 2014, which negatively affects the effectiveness of the judiciary, since it is impossible to reveal ways of improving the effectiveness of the work of the judge, contribute to the self-improvement of the judge and to the improvement of the effectiveness of activities of the court without regular performance evaluation of a judge. Meanwhile, from the perspective of ensuring the effectiveness and transparency of the performance evaluation of judges, the power of its implementation should be reserved exclusively to the body responsible for the performance evaluation of judges, which will be comprised not only of judges, but of legal scholars as well.

[16] See Recommendation CM/Rec(2010)12, paragraph 69, The Venice Commission, Opinion On The Draft Judicial Code of Armenia, 09.10.2017, Strasbourg, paragraphs 143-450.

[17] See OSCE/ODHIR, Assessment of the performance evaluation of judges in Moldova, page 50, https://www.osce.org/odihr/120213?download=true

2. Nature of the proposed regulation

The package of submitted drafts is called for ensuring effective and complex legal grounds for the assessment of integrity of judges in the following directions: **property status (verification of lawfulness of property), professionalism and respect for human rights, impartiality (making a decision free from certain ties, influences).** The proposed mechanism for the assessment of integrity of judges has adopted the following principles:

(a) integrity must not be assessed through an *ad hoc* toolkit and must not have temporary nature. Instead, the process will be ongoing, and judges will permanently undergo this assessment upon adoption of the package of drafts. At the same time, the Supreme Judicial Council will examine the issue only if there are doubts. In other words, the Supreme Judicial Council will not automatically examine proceedings regarding all judges;

(b) a new, *ad hoc* body will not be set up in order to carry out assessment of integrity of judges; a body vested with the constitutional mission of ensuring independence of the judiciary— the Supreme Judicial Council will be in charge of settling this issue.

The following legislative amendments are recommended for the implementation of the proposed goal:

(1) The words "related with the performance of one's *ex officio* (official) duties" shall be deleted from the title of Article 29, parts 1 and 3 thereof and from Article 30 of Law of the Republic of Armenia HO-206-N of 23 March 2018 "On public service", that is, **a prohibition on accepting a larger scope of gifts must be envisaged.**

(2) From the perspective of effectiveness of the process of analysis of declarations, importance is attached to the enlargement of the family of a declarant official; at the same time, it is also proposed to envisage an obligation of submitting a situational declaration for the persons affiliated with the official, by prescribing also liability for failure to fulfil this obligation. The study of international practice also shows that in different countries, such as Albania and Slovenia, if comparison of the data provided by an official with the actual situation of the official serves as a ground to assume that the person reserved with the obligation of submitting a declaration has transferred his or her income and assets to his or her family members in order to avoid liability provided for by law, the Commission for the Prevention of Corruption may require to submit a situational declaration of the income and assets of the affiliated

persons.

(3) **At the same time, it is proposed to provide the Commission with the opportunity of requesting and obtaining information about bank, commercial and insurance secrecy.** In parallel, it is also proposed to amend the procedure for the formation of the Commission. In addition, taking into consideration the role of the Commission in the prevention of corruption, as well as the need for introducing new mechanisms enshrined by the Programme of the Government and forming an element for the prevention of corruption, it is proposed to expand the scope of the functions and powers of the Commission.

(4) **The rules of conduct of judges and the grounds for subjecting a judge to disciplinary liability have been clarified.** Thus, the rules deemed as rules of ethics rather than disciplinary rules, for which subjecting a judge to disciplinary liability is either unjustified or impossible due to the ambiguous, extremely broad formulation of a norm, have been removed from the rules of conduct of a judge. International specialised bodies urge to distinguish the rules of conduct from disciplinary rules, since the former are adopted for the purpose of guiding judges and must be precisely distinguished from the list of disciplinary violations that are envisaged for the purpose of applying relevant sanction against a judge.[18] Since, according to the proposed concept, any violation of a rule of conduct will entail disciplinary liability, it is important for these rules to be precise to a possible extent and, in case of being violated — to cause significant damage to the interests protected by law, as well as for this violation to be proven as having been committed. Nevertheless, the rules of conduct having been removed in order to ensure preciseness may be included in the rules of ethics of judges, which have correctional nature for them and the violation whereof does not entail liability.

At the same time, respective rules of conduct have been added, the violation whereof casts doubt as to the independence, impartiality and incorruptness of a judge, i.e. (1) to submit a complete declaration of property, income and interests in observance of the requirements provided for by the Law "On public service", (2) to submit to the Commission proper materials justifying the change of property as prescribed by the Law "On the Commission for the Prevention of Corruption", (3) in case of existence of grounds for self-recusal, to disclose these grounds to the parties, as well as to declare self-recusal in the cases and under the procedure provided for by law. **Besides, with a view to**

[18] See OSCE/ODIHR, Note on International Standards and Good Practices of Disciplinary Proceedings against Judges, paragraph 15.

ensuring transparency and accountability, the obligation to declare the contenders for judge candidates has also been envisaged.

In addition:

- all points emphasised that disciplinary violation may be considered a ground for liability only when committed intentionally or by gross negligence;
- the institution of gross disciplinary violation, that may give rise to confusion, has been removed;
- with regard to essential disciplinary violation: (a) point on violation of the norms of substantive or procedural law emphasised that such a violation is essential if resulted in violation of fundamental human rights enshrined in the Constitution or international treaties ratified by the Republic of Armenia or if it dishonours the judiciary. Such an approach has been adopted to avoid imposing an action against a judge merely for his or her assessment of facts and evidence, on the other hand to assess a judge's attitude to human rights as an important indicator of integrity. With the same logic, the list of reasons (not grounds) for instituting disciplinary proceedings has incorporated discovery of an act that gives rise to disciplinary action following the examination of an act rendered by an international court to which the Republic of Armenia is a party or by another international institution that establishes a violation of international obligations, the final decision thereon will be made by the Supreme Judicial Council;

(b) a clear list of rules of conduct has been issued the (single) violation of which, based on the circumstance and/or consequences of violation, is incompatible with the status of the judge or dishonours the judiciary (regularly). In this sense, the draft covers evaluative term which, within the current legal framework, is necessary for assessment of proportionality. The matter is the fact that by the virtue of part 9 of Article 164 of the Constitution, essential disciplinary violation is an unconditional ground for termination of powers, thus, to avoid extremism, the Supreme Judicial Council is provided with a tool necessary for ensuring proportionality and fairness

between the act and the sanction therefor.

(5) **Types of disciplinary penalties have been extended.** In particular, moderate disciplinary penalties have been added to only the mildest and most severe types of disciplinary penalty with a view to introducing appropriate and proportionate liability tools. The new types of penalty are the following: ban on being included in the promotion list of judge candidates during regular completion of the list and dismissal from the position of the chairperson of a court or Chairperson of the Court of Cassation.

(6) **The procedure for imposing disciplinary action against a judge has been improved.**

Thus, (a) the Commission for the Prevention of Corruption has been included among the bodies entitled to institute disciplinary proceedings in case of discovering problems in the declarations of property, income and interests. The functional characteristics vested in the Commission by law enable the latter to receive efficient and complete information on the property and financial condition of the member of the Supreme Judicial Council and, in case of detecting violations and corruption risks, initiate disciplinary proceedings and apply to the Supreme Judicial Council with the motion on imposing disciplinary action against a judge; (b) the Disciplinary Commission comprised for the period of 5 years and of judges alone, is envisaged to replace by the Ethics and Disciplinary Commission elected for the period of 2 years, members of which comprise not only judges but also representatives of the staff of the Human Rights Defender and representatives of the non-governmental organisations, the statuary objectives of which include human rights protection or activities aimed at increasing the public accountability of the judicial system and which have been engaged in such activities for the past five years;

(c) the Supreme Judicial Council has been given additional tools to effectively consider the issue of imposing disciplinary action against a judge. In particular, according to the draft, the Council may, on its own initiative, invite witnesses, assign an expert examination and request evidence, something that under the current settlement can only be done with the motion of a judge;

(d) the judge has been provided with a mechanism for appealing the decision on imposing disciplinary action against him or her, however, there are constitutional impediments to make it effective. In particular, the following options have been considered when developing an appeal mechanism:

- to vest consideration of the issue on imposing a disciplinary action against a judge in the group of three members of the Supreme Judicial Council, and the appealing — in the group of seven members, which would not include the three members who examined the issue for the first time. The concern with regard to this option is that the Constitution, by vesting the issue on imposing disciplinary action against a judge in the Supreme Judicial Council, means the composition of the Council as a whole, and consideration of the issue with the composition of three or seven members may lead to the anti-constitutionality of the chosen model.

- to vest examination of the appeal against the decision on imposing disciplinary action against a judge in Civil and Administrative Chamber of the Court of Cassation. This option also has a constitutional impediment, as the Constitution has provided very limited scope of power for the Court of Cassation, i.e. uniform application of laws or other regulatory legal acts and elimination of fundamental violations of human rights and freedoms. Examination of the appeal against the decision on imposing disciplinary action against a judge does not always fall within the scope of the above mentioned powers;

- examination of the appeal against the decision on imposing disciplinary action against a judge has been vested in Civil and Administrative Chamber of the Court of Cassation. In this case, the required and reasonable balance of distribution of the roles and ranking between the designated courts and the Supreme Judicial Council as a guarantor of the independence of courts would be violated.

Taking into consideration the above mentioned obstacles, the following model of appeal has been envisaged: examination of the appeal against the decision on imposing disciplinary action against a judge shall also be carried out by the Supreme Judicial Council where such essential evidence or circumstance has emerged which the judge has not previously presented due to the circumstances beyond his or her control and which may reasonably affect the decision. The provided model is not evidently the most efficient, however a more efficient and reasonable settlement will be possible to establish only after constitutional amendments.

(e) the issue on informing the Supreme Judicial Council in case of institution of criminal

prosecution against a judge not related to the exercise of his or her powers has also been clarified for suspension of the powers of a judge.

(7) **Equivalent amendments have also been made in the constitutional law "On the Constitutional Court".** In particular, the Law has been brought in compliance with the Code regarding relevance to the rules of conduct, including proper submission of declarations and provision of necessary information and documents to the Commission for the Prevention of Corruption.

(8) **Constitutional amendments of 2015 marked the vision of the enactor on having a new Constitutional Court.** In particular, the Constitution provides for a completely new procedure for formulation of the Constitutional Court, i.e. nine judges of the Constitutional Court must be elected by the National Assembly, three — by the President of Republic, three — by the Government, three — upon the recommendation of the General Assembly of Judges. However, by the time the constitution was adopted, the Constitutional Court had already been largely formulated. There is a situation that the will of the enactor regarding formulation of the Constitutional Court, has not yet fully been brought to life. Whereas, taking into consideration the fact that constitutional amendments in the Republic of Armenia are made about once every ten years, and due to the velvet, non-violent revolution of 2018, new constitutional reforms are possible in the near future, the will of the enactor (part 1 of Article 166 of the Constitution), most probably, will not be implemented. Taking into consideration the above mentioned, and guided by the aim of establishing legislative grounds for implementation of the will of the people of the Republic of Armenia on formulation of the Constitutional Court, the recommended package enables the judges of the Constitutional Court to receive pension after the automatic termination of powers — in case of submitting resignation by a member of the Constitutional Court, appointed prior to the entry into force of Chapter 7 of the Constitution, provided for by Article 213 of the Constitution, within a period of two months from the moment of entry into force of the draft Law "On making amendments and supplements to the Law 'On the Constitutional Court'" — in the amount of the official pay rate and increments received at the moment of resignation, until attaining the age limit to serve in office, prescribed for him or her by the Constitution. Judges of the Constitutional Court elected after the entry into force of Constitutional Law No HO-42-N of 17 January 2017"On the Constitutional Court" may not enjoy that right.

In this respect, it should be noted that the mechanisms for early retirement of judges are divided into

two groups: voluntary and compulsory. Different formats of the indicated mechanisms function in different countries; compulsory mechanisms are related, as a rule, to the changes in the judicial system (for example, Hungary, Poland) or contraction of such disease as a result whereof he or she is not able to exercise his or her powers, and the voluntary mechanisms are related to the changes of the pension system (for example, the change made in Ireland in 2012, which enabled judges having attained the age of 65 to early retire), introduction of the mechanism of integrity of judges (for example, the regulation in effect in Ukraine since 2014), etc. It should be noted that the practice of a number of foreign countries attests that the opportunity to early retire is provided not only to judges but to various public servants, in relation to the change of the social, pension policy of the state and the need to engage new personnel (for example, pursuant to the regulation in effect in Ireland in 2009, public servants could early retire since the age of 50, in the USA, social security workers and other federal servants have the opportunity to early retire in case of having attained the age of 50 and having 20 years of experience in the relevant filed[19]).

Mechanisms for voluntary early retirement of the judge in Armenia Pursuant to part 4 of Article 88 of the Constitutional Law "On the Constitutional Court", *"4. A pension shall be assigned in the manner and in the amount prescribed by the Law of the Republic of Armenia "On social guarantees for persons having held state offices", in case of automatic termination — through filling a letter of resignation — of powers of a person having been appointed to the position of a member of the Constitutional Court prior to the entry into force of Chapter 7 of the Constitution, as provided for by Article 213 of the Constitution, and having held the position of a judge of the Constitutional Court for at least twelve years after the entry into force of this Law, irrespective of the fact of his or her attaining the retirement age provided for by Law, where the requirements provided for by part 2 of Article 10 of this Law have been observed, and upon the grounds provided for by point 4 of part 2 of Article 12, as well as in case of automatic termination or termination of powers on the ground of being recognised as having no legal capacity upon a civil judgement of the court, having entered into legal force.".* And the relevant regulation of part 2 of Article 10 of the same Law envisages that the right of a judge of the Constitutional Court to pension may not be terminated imposingly in case of performance of other work, except for the cases when he or she has entered into public service. In

[19] https://www.opm.gov/policy-data-oversight/workforce-restructuring/voluntary-early-retirement-authority/

other words, the difference of the regulation recommended under the draft Law "On making amendments and supplements to the Constitutional Law of the Republic of Armenia 'On the Constitutional Court'" from the regulation already existing is mainly that the Draft does not provide for a requirement on the time limit for holding the position of a judge of the Constitutional Court, which is conditioned by the need to resolve the created constitutional and legal issue presented in the substantiation of the package of Drafts.

In Georgia, a regulation was provided for in the context of the changes in the judicial system, which gave an opportunity to the judges of the Supreme Court and the judges of the Constitutional Court to receive a life-long monetary insurance in the amount of the salary having at the moment of their resignation, irrespective of age, in case of having worked in that position for 3 years and 5 years, respectively.

Pursuant to part 2 of Article 15 of the Law **of the Russian Federation** "On the status of judges in the Russian Federation"[20], each judge shall have the right to resign irrespective of age. Within the meaning of that Law, resignation is deemed to be honourably resigning or being removed from office. Pursuant to part 5 of the same Article, a judge having resigned shall be paid a pension on a general basis, and to a person having 20 years of work experience as a judge — a pension on a general basis or a life-long monthly non-taxable monetary insurance, upon his or her choice Depending on the work experience and age, the amount of the monetary insurance changes. This status may be repealed where a judge having resigned has committed disciplinary violations during his or her work, violates the prohibitions and restrictions prescribed by law, a criminal judgment of conviction against him or her enters into force, and upon other grounds prescribed by law.

Pursuant to part 2 of Article 142 of the Law of Ukraine "On the judiciary and status of judges"[21], a retired judge that has not reached the age specified in part one of the same Article shall receive a monthly lifetime allowance. Upon reaching the retirement age specified by law for a judge, he or she shall have the right to choose between receiving monthly allowance or a pension under the conditions provided for by the Law of Ukraine "On mandatory state pension insurance". Part 3 of the same Article envisages that monthly lifetime allowance shall be in the amount of 50 percent of the remuneration of a judge holding the respective position. For each full year of service as a judge for

[20] The Law is available at the following link: http://docs.cntd.ru/document/9004453
[21] The Law is available at the following link: https://vkksu.gov.ua/userfiles/doc/Law_on_Judiciary_and_Status_of_Judges_16%2007%202016_ENG.pdf

over 20 years, the amount of monthly lifetime allowance shall be increased by two percent of the allowance of a judge. Moreover, pursuant to point 25 of the Final and Transitional Provisions of the referred Law, a judge who based on results of qualification evaluation confirmed that he or she is eligible for the position held or was appointed to judicial office based on results of competition conducted after the entry into force of the Law and has worked in judicial position for at least three years shall have the right to receive monthly lifetime allowance in the amount determined by the Law. And, in other cases, a judge having retired after the entry into force of the Law, the amount of monthly lifetime allowance shall equal 80 per cent of judicial remuneration. For each full year of service in a judicial position for over 20 years the amount of monthly lifetime allowance shall increase by two percent of judicial allowance but may not exceed 90 percent of judicial remuneration. After the adoption of this regulation, 3000 judges (who constituted 30 per cent of the judges of Ukraine) submitted a letter of resignation, without waiting for the qualification evaluation. It should be noted that the Venice Commission did not criticise the presented mechanism in its opinion on the indicated Law.[22]

In Denmark, the term of office of judges completes at the age of 70, but, pursuant to the Constitutional Act of Denmark, they gain the right to retire starting from the age of 65 and receive a monetary insurance in the amount of the salary to be received at the moment of their resignation until attaining the age of 70, after which they receive pension.[23]

In Australia, judges reach the age limit to serve in office at the age of 70, but pursuant to the Judges' Pension Act, a judge may retire at the age of 60 after having worked as a judge for 10 years, and judges of separate regions — at the age of 55 on the same condition, by receiving a pension prescribed by law.[24]

Mechanisms for compulsory early retirement of the judge

The relevant legislative processes of Hungary of 2012 and of Poland of 2018 are of such initiatives discussed the most during the recent years. In particular, in Hungary, pursuant to the Fundamental Law of Hungary having entered into force on 1 January 2012, the retirement age of judges and

[22] https://www.osce.org/odihr/335406?download=true

[23] See The Constitutional Act of Denmark, § 64; the Law is available at the following link: https://www.thedanishparliament.dk/~/media/pdf/publikationer/english/my_constitutional_act_with_explanations.ashx.

[24] The Law is available at the following link: http://www7.austlii.edu.au/cgi-bin/viewdb/au/legis/cth/consol_act/jpa1968184/

prosecutors was changed from 70 to 62 (by gradually increasing to 65), obliging them to retire at the age of 62 (65) instead of 70. The change led to the compulsory retirement of 274 judges and prosecutors, but the country changed the regulation later on, recommending reinstating the indicated persons to their positions or providing compensation thereto. In Poland, the amendment made to the Law "On the Supreme Court", having entered into force on 3 April 2018, provided for the compulsory early retirement of 40 per cent of the judges of the Supreme Court of the country. The above-stated models of early retirement of judges were qualified as problematic from the point of view of violation of the principle of independence of courts, irremovability of judges, and age discrimination (European Commission), by the EU and CoE institutions, including the ECtHR. But it is noteworthy that the whole criticism related to the condition of **compulsory** early retirement of judges. Although the ECtHR has criticized the model of Hungary, noted, *inter alia*, in the legal position expressed in J.B. and others v. Hungary when addressing the application of the judges having early retired on the basis of own application, that: *"The above-mentioned additional factual element, notably the applicants' release from service following their own application for retirement, prompts the question whether or not that outcome is in some way imputable to the respondent State; in other words, whether or not the State's responsibility may be engaged under the Convention as a result of the applicants' own decision."*[25] *"(…) the applicants [referred to in paragraph 15 above] did not contest that their resignation had corresponded, at least at the time it had been tendered, to their genuine wishes which they had formulated having taken all the circumstances and various possible scenarios into consideration. Nor did the State play an active and unlawful role in bringing about the applicants' retirement against their will."*[26].

The Committee of Ministers of the European Council was guided by the same logic, underlining in its analysis on irremovability as the guarantees for independence of courts that: "The term of office of judges should be established by law. A permanent appointment should only be terminated in cases of serious breaches of disciplinary or criminal provisions established by law, or where the judge can no longer perform judicial functions. *Early retirement should be possible only at the request of the judge concerned or on medical grounds*.".[27] That is to say, only the compulsory early retirement model has been criticized by the international institutions.

A mechanism for early retirement of the judge functions in Austria, one of the grounds whereof may

[25] See *J.B. and others v. Hungary*, Application no. 45434/12, 45438/12, 375/13, 27.11/2018, § 75.
[26] *Ibid.*, §§ 77-78
[27] https://rm.coe.int/16807096c1, § 50.

be the failure to comply with the prescribed requirements of performance appraisal of the judges for two consecutive years, or other circumstances which confirm that the judge no longer fulfils the admission requirements for the judge. In that case, he or she shall be given a written notice to apply for early retirement within one month after receipt of such notice.[28]

(9) **Importance is also attached to lowering the age limit of** contenders for **the judge candidates from 28 to 25.** This change will allow to engage in the judicial system young people not having suspected or discrediting links, not dependant from or linked to other representatives of the system. In addition, professionalism is not directly dependent upon age; it is conditioned by the continuous improvement of professional knowledge and skills, acquisition of the modern developments and advanced international practice in the field of law. For that reason, not only a minimum age limit is not defined by specialised international institutions, but such age limit is not prescribed by law at all. A low age limit for appointment as judge or undergoing study for that purpose is provided for in a number of countries, and such limit is not prescribed at all in some countries, putting the stress on the professional skills and experience. Such a reform has, for example, been made in Estonia, where there is no minimum age limit provided for becoming a judge; requirements for educational level as well as relevant professional and personal qualities are provided instead.[29] This reform has resulted in positive outcomes, by — in line with other components of the reforms — making the judicial system of Estonia one of the most efficient and independent judicial systems in Europe.[30] A minimum age limit for judges is not provided for in Austria, Denmark and Romania as well. A low age limit for judges is provided in a number of countries. In particular, the minimum age limit for judges of the regional court and court of appeal in Norway is 25.[31] The same age is also set in Thailand, Russian Federation[32], Belarus.[33]

(10) **The performance evaluation of judges has received detailed regulation,** reserving it to the Commission for Performance Evaluation of Judges, formed by the General Assembly; the procedure for formation and functioning of that Commission has been prescribed; an

[28] UNIFIED PATENT COURT, Recruitment of judges, Qualifications required1 for and age limit of appointment to judicial offices in the Contracting Member States, p. 10.
[29] https://www.riigiteataja.ee/en/eli/ee/Riigikogu/act/515072016002/consolide
[30] ttps://www.riigikohus.ee/en/news-archive/estonian-judicial-system-continues-be-among-most-efficient-europe, International Monetary Fund, “Regional Economic Output. Europe Hitting its Stride”, 2017.
[31] https://www.domstol.no/en/The-criminal-court-proceedings/who-is-involved/The-judges/
[32]http://www.consultant.ru/document/cons_doc_LAW_648/efa6329a5506a579e3b9d2c9280b7b8f093922a9/
[33] http://pravo.newsby.org/belarus/kodeks/k009/page2.htm

obligation for judges, having received low or average mark, to undergo additional training has been provided for.

(11) **The rate of the state duty paid for the application submitted for the replenishment of the promotion list of judge candidates, as well as by a former judge to be included in the list of judge candidates, and verification of the documents attached has been prescribed under the Draft.** Pursuant to the Code, the receipt of state duty payment made in the amount prescribed by law shall be submitted attached to the application submitted for inclusion in the promotion list of judges to be appointed to the position of a judge at the courts of appeal and the Court of Cassation, as well as by a former judges to be included in the list of judge candidates, whereas the Law "On state duty" does not provide for the amount of the state duty subject to payment for the indicated applications and the verification of the documents attached. Hence, the Draft has given a solution to the matter.

(12) **The package of the drafts also recommends to stipulate the exhaustive list of corruption-related crimes under an annex to the Criminal Code of the Republic of Armenia in accordance with the OECD recommendations.**

The study of international practice shows that in a number of countries the list of corruption-related crimes is stipulated by criminal codes. Regulations on the corruption-related crimes of a number of countries are presented below.

N/N	STATE	RELEVANT CHAPTER OF THE CRIMINAL CODE
1.	Kingdom of Spain	Chapter 5. On Corruption *(Articles 419-423.* Receiving bribe *Articles 424-425.* Giving bribe *Article 427.* Committing acts provided for by the above-mentioned articles with the participation of officials or civil servants considered citizens of another member state of the European Union)[34].
2.	French Republic	Part 3. Paragraph 2. Passive corruption and use of alleged influence by a public servant *(Article 432-11.* Passive corruption and use of alleged influence by a

[34] The Code is available at: ttps://www.legislationline.org/documents/section/criminal-codes/country/2/Spain/show.

		public servant); Chapter 3. Section 1. Active corruption and use of alleged influence by private individuals (Articles 433-1-433-2. Passive corruption and use of alleged influence by private individuals); Chapter 5. Crimes directed against public governance of the European Communities, member states of the European Union, foreign states and public international organisations Section 1. Passive Corruption *(Article 435-1.* Passive Corruption) Section 2. Active Corruption *(Article 435-2.* Active corruption by civil servants of the European Communities, civil servants of member states of the European Union, members of the institutions of the European Communities; *Articles 435-3-435-4.* Active corruption of persons acting under the authority of a foreign state, except for member states of the European Union, public international organisations and institutions of the European Communities); Part 4. Chapter 5. Corruption-related crimes committed by persons not performing public service (Articles 445-1-445-4. Passive and active corruption of persons not performing public service)[35].
3.	Republic of Romania	Section 5. Chapter 1. Corruption and official crimes (*Article 289.* Receiving a bribe; *Article 290.* Giving a bribe; *Article 291.* Use of alleged influence *Article 292.* "Purchase of influence" *Article 293.* Committing a crime by members of courts or arbitration; *Article 294.* Committing a crime by foreign officials)[36].

[35] The Code is available at: https://www.legislationline.org/documents/section/criminal-codes/country/30/France/show.

[36] The Code is available at: https://www.legislationline.org/documents/section/criminal-codes/country/8/Romania/show.

4.	Republic of Kazakhstan	Chapter 13. Corruption and other crimes directed against state service interests and government (*Article 307.* Abuse of power; *Articles 307-1.* Illegal disclosure of information operations on money or other assets; *Article 308.* Abuse of office and power; *Article 309.* Appropriation of powers of an official *Article 310.* Unlawful participation in entrepreneurial activity; *Articles 310-1.* Impeding legitimate entrepreneurial activity, *Article 311.* Receiving a bribe; *Article 312.* Giving a bribe; *Article 313.* Mediation in bribery *Article 314.* Official forgery *Article 315.* Official negligence *Article 316.* Official negligence)[37].
5.	Commonwealth of Australia (Western Australia)	Chapter 13. Corruption and abuse of office (*Article 82.* Corruption by an official; *Article 83.* Corruption; *Article 85.* Falsification of records by public officer *Article 86.* Administering extra judicial oaths *Article 87.* Impersonating a public officer *Article 88.* Bargaining for public office)[38].
6.	Kingdom of Fiji	Chapter 11. Corruption and the abuse of office (*Article 106.* Official corruption *Article 107.* Extortion by public officers *Article 108.* Public officers receiving property to show favour; *Article 109.* Officers charged with administration of property of a special character or with special duties; *Article 110.* False claims by officials; *Article 111.* Abuse of office; *Article 112.* False certificates by public officers *Article 113.* Unauthorised administration of oaths;

[37] The Code is available at: http://online.zakon.kz/Document/?doc_id=1008032#pos=407;-245.

[38]The Code is available at: https://www.slp.wa.gov.au/statutes/swans.nsf/(DownloadFiles)/Criminal+Code.pdf/$file/Criminal+Code.pdf.

		Article 114. False assumption of authority; *Article 115.* Personating public officers; *Article 116.* Threats of injury to persons employed in public service)[39].
7.	United States of America (Idaho State)	Chapter 13. Bribery and corruption *(Article 18-1301.* Bribery of judicial officers *Article 18-1302.* Receipt of bribe by officer; *Articles 18-1303.* Acceptance of rewards; *Articles 18-1304.* Attempt to influence jurors and arbitrators; *Articles 18-1305.* Misconduct of jurors and arbitrators; *Articles 18-1308.* Offenses relating to bribery; *Articles 18-1309.* Bribery of municipal or county officers; *Articles 18-1351.* Bribery and corrupt practices; *Articles 18-1352.* Bribery in official and political matters; *Articles 18-1353.* Threats and other improper influence in official and political matters; Articles 18-1353A. Threats against state officials of the executive, legislative or judicial branch or elected officials of a county or city; *Articles 18-1355.* Retaliation for past official action; *Articles 18-1356.* Gifts to public servants by persons subject to their jurisdiction; *Articles 18-1359.* Using public position for personal gain; *Articles 18-1361A.* Non-compensation of appointed public servant who is a relative of a public servant)[40].

3. Expected outcome

As a result of the adoption of the package of the drafts, introduction of a balanced mechanism for evaluation of the integrity of judges is foreseen, which, on one hand, will enable to effectively combat corruption, patronage, delivery of a judicial act guided by personal links, concealing fundamental violations of human rights, and, on the other hand, will enable not to undermine the independence and stability of the judicial system, as the main body responsible for the whole process is going to be the Supreme Judicial Council endowed with the constitutional mission to ensure independence of the judiciary, and, in case of judges of the Constitutional Court — the

[39] The Code is available at: http://www.paclii.org/fj/legis/consol_act_OK/pc66/.
[40] The Code is available at: https://legislature.idaho.gov/idstat/Title18/T18CH13.htm.

Constitutional Court. In addition, as a result of the adoption of the drafts, complete fulfilment of the goals of the institution of declaration, completeness and efficiency of control over income and property obtained through unlawful activities of persons and public servants holding public positions will be ensured, necessary mechanisms for complete implementation of functions by the Commission for Prevention of Corruption will be established, exhaustive list of corruption-related crimes will be prescribed by the Code.

4. ***Institutions involved in the process of elaboration of the draft***

The package of the drafts has been elaborated by the Ministry of Justice of the Republic of Armenia.

STATEMENT OF INFORMATION

ON THE ESSENTIAL INCREASE OR DECREASE IN THE EXPENDITURES AND REVENUES IN THE BUDGET OF THE STATE OR A LOCAL SELF-GOVERNMENT BODY IN REGARD TO THE ADOPTION OF THE DRAFT LAWS
"ON MAKING AMENDMENTS AND SUPPLEMENTS TO THE CONSTITUTIONAL LAW "JUDICIAL CODE OF THE REPUBLIC OF ARMENIA"",
"ON MAKING AMENDMENTS AND SUPPLEMENTS TO THE CONSTITUTIONAL LAW "ON THE CONSTITUTIONAL COURT"" AND RELATED DRAFT LAWS

Adoption of the draft Laws "On making amendments and supplements to the Constitutional Law "Judicial Code of the Republic of Armenia"", "On making amendments and supplements to the Constitutional Law "On the Constitutional Court"" and of the related laws does not lead to essential increase or decrease in the expenditures and revenues in the budget of the state or a local self-governing body