



Strasbourg, 14 November 2023

**CDL-REF(2023)053**

Engl. only

**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**ARMENIA**

**CONCEPT PAPER**  
**on potential directions of empowerment**  
**of the Ethics and Disciplinary Commission**  
**of the General Assembly of Judges of the Republic of Armenia**

## **CONCEPT PAPER**

### **on potential directions of empowerment of the Ethics and Disciplinary Commission of the General Assembly of Judges of the Republic of Armenia**

#### **Existing legal regulations**

Pursuant to the regulations of the Judicial Code of the Republic of Armenia currently in force, the following bodies are authorised to initiate disciplinary proceedings against judges:

- (1) the Ethics and Disciplinary Commission;
- (2) the Ministry of Justice;
- (3) the Commission for the Prevention of Corruption (in certain limited cases).

The Ethics and Disciplinary Commission is comprised of eight members, of which six are judge members, and two — non-judge members. Judge members are selected from among the judges of the specialised courts, and the two — from among the judges of the court of general jurisdiction of first instance with criminal and civil specialisation, respectively, one — from among the judges of the courts of appeal, and one — from among the judges of the Court of Cassation.

A lawyer who is endowed with high professional qualities, holds an academic degree in law or has professional work experience of at least five years, is not a member of any political party, and no restrictions prescribed by the Judicial Code are imposed on him or her, may be nominated as a candidate for a non-judge member of the Ethics and Disciplinary Commission.

A competition is announced to invite candidates, within the scope of which non-governmental organisations complying with the requirements prescribed by the Supreme Judicial Council may nominate one candidate each.

The General Assembly elects the non-judge members of the Ethics and Disciplinary Commission by the majority vote of judges participating in the voting, through an open ballot, for a term of four years. The education of the candidate, his or her compliance with the requirements prescribed by this Article and the compliance of the organisation that has nominated him or her with the requirements set forth by the Supreme Judicial Council and other noteworthy circumstances are taken into consideration during the election.

Both the Group of States against Corruption (GRECO) of the Council of Europe and the Venice Commission have indicated in their various documents<sup>1</sup> the need to review the disciplinary

---

<sup>1</sup> GRECO, Interim Compliance Report Armenia, Fourth Evaluation Round, adopted on 20-22 September 2021, paras. 41 and 43; Venice Commission, CDL-AD(2017)019, Armenia - Opinion

procedures against judges. The Venice Commission has, in particular, noted that in light of the reform of the Ethics and Disciplinary Commission it should be “possible to envisage that the powers of the Minister to initiate disciplinary proceedings could be phased out once the new system is up and running<sup>2</sup>. The Commission has also noted that even though the involvement of the Minister is currently seen as a tool helping to combat judicial corporatism, in a longer perspective it would be preferable to withdraw the power from the Minister, as soon as other mechanisms — namely the Ethics and Disciplinary Commission — prove their efficiency<sup>3</sup>. Moreover, in its latest opinion on Lebanon, the Venice Commission has emphasised that if only the Minister may trigger disciplinary proceedings, this may be problematic, and a balanced system must be sought where the exclusive power to bring disciplinary proceedings against judges does not belong either to the Ministry or to the judges<sup>4</sup>.

Committed to the performance of international obligations assumed by the Government of the Republic of Armenia and pursuing an objective to improve the legal regulations of the institute of the disciplinary liability of judges, the Government of the Republic of Armenia attaches utmost importance to the need to empower and enhance the efficiency of the Ethics and Disciplinary Commission as an alternative body to initiate disciplinary proceedings. However, this may be achieved where the activity of the Ethics and Disciplinary Commission is not aimed at serving the “corporate interests” of the judiciary.

In this regard, the Ministry of Justice has already drafted, put to public discussion and submitted to the Government the package of amendments to the Judicial Code, according to which the number of non-judge members of the Ethics and Disciplinary Commission of the General Assembly of Judges will be increased by 3. Following the adoption of the draft, the Commission will have 11 members instead of 8: 6 judge members and 5 non-judge members.

The adoption of the draft will be an important step towards enhancing the efficiency of the Commission, taking into consideration that many issues currently are not being addressed and put forward for disciplinary liability due to “internal corporatism” and small number of votes of non-judge members.

Nevertheless, this step seems to be insufficient to achieve the ultimate result and having a

---

on the draft Judicial Code, and CDLAD(2019)024; Venice Commission, CDL-AD(2019)024, Armenia — Joint Opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and Rule of Law (DGI), on the amendments to the Judicial Code and some other Laws.

<sup>2</sup> Venice Commission, CDL-AD(2022)044, Armenia — Joint Opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and Rule of Law (DGI), on the amendments to the Judicial Code, para 8.

<sup>3</sup> Venice Commission, CDL-AD(2022)044, Armenia — Joint Opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and Rule of Law (DGI), on the amendments to the Judicial Code, para 9.

<sup>4</sup> Venice Commission, CDL-AD(2022)020, Lebanon — Opinion on the draft law on the independence of judicial courts, para. 71.

balanced system and a real alternative for initiating disciplinary proceedings. In particular, recent developments apparently show that increasing the number of non-judge members of the Ethics and Disciplinary Commission does not seem to bring about quality changes in this system given the fact that the election of non-judge members falls exclusively within the powers of judges, represented by the General Assembly of Judges.

### **Existing issue**

An extraordinary session of the General Assembly of Judges of the Republic of Armenia was convened on 8 September 2023, and the agenda covered, inter alia, the issue of election of a non-judge member of the Ethics and Disciplinary Commission of the General Assembly of Judges due to the fact that the term of office (3 years) prescribed by law for a non-judge member elected previously had expired.

The Judicial Department announced a competition and 3 non-governmental organisations participated, namely “National Center for Legal Researches” NGO, “Centre of Democracy and Law” NGO and “Helsinki Citizens’ Assembly-Vanadzor”. The candidates nominated by the first two non-governmental organisations were rejected due to the fact that the submitted documents did not comply with the requirements prescribed.

It should be noted that in the private talks with the civil society members they stated that the nominations by the civil society in the elections scheduled on 8 September 2023 were few as they were convinced that the judges, knowing the principled, objective attitude of the said organisations in terms of “serving no interests”, would not elect the candidates nominated by them.

Moreover, there are concerns that the reason behind failure to elect the representative of the organisation might be the positions and opinions expressed by the Helsinki Citizens’ Assembly-Vanadzor Office, including the highly principled approaches to the need for the “vetting of judges”.

It follows that the General Assembly of Judges has the power not to elect such a candidate who may later have valuable input in enhancing the efficiency when initiating disciplinary proceedings against judges. This, in fact, cannot fully prevent the “corporatism”, for the elimination of which the increase in the number of non-judge members in the Commission has specifically been envisaged. This may lead to a situation where the Commission with increased number of non-judge members may not only deliver a positive result in the context of initiating effective disciplinary proceedings, but, on the contrary, contribute to the deepening of “corporatism” due to election by the judicial system of “loyal” candidates.

An ultimate solution to such issue might be establishing a new independent body outside the legislative, executive and judicial systems that would be endowed with the power to initiate disciplinary proceedings; however, provided the constitutional and legal regulations in force,

establishing such a body is unfeasible at this stage.

### **Possible solution**

Taking into consideration the foregoing, the following model can be considered:

- ✓ The regulations concerning election by the General Assembly of Judges of non-judge members of the Ethics and Disciplinary Commission should be retained, but candidates for non-judge members should be nominated by various interested bodies, as well as non-governmental organisations. For example, candidates for non-judge members may be nominated by the Human Rights Defender of the Republic of Armenia, the Commission for the Prevention of Corruption, the Minister of Justice and non-governmental organisations. The said candidates must comply with the same requirements as provided for by the Code in force. Moreover, it should be envisaged that these bodies select and nominate the candidates through a competition. A mechanism can be considered where 3 seats will be reserved only for the candidates nominated by Human Rights Defender of the Republic of Armenia, the Commission for the Prevention of Corruption, the Minister of Justice and the other seats will be reserved for NGO candidates.
- ✓ It should be defined that in case the General Assembly fails to elect any of the referred persons, the election from among the nominated persons must be made by the Supreme Judicial Council (which is in line with the current regulations<sup>5</sup>).
- ✓ It should be envisaged also that in case the Supreme Judicial Council fails to elect relevant candidates, the referred persons shall be considered as elected by virtue of law. Where the number of candidates exceeds the number of positions for non-judge members in the Commission to be filled, the candidates who have longer professional experience shall be considered as elected by virtue of law in sequential order, and in case of equivalent experience preference shall be given to more senior candidates.

---

<sup>5</sup> In particular, pursuant to Decision of the Supreme Judicial Council BDKh-32-N-7 of 3 June 2020, where the General Assembly fails to elect a member of the Commission of the General Assembly within a period of one month after the position of the non-judge member of the Commission remains vacant, the member shall be elected by the Supreme Judicial Council within a period of ten days, through the repeated competition.