

Recommendations and Observations of the Armenian Lawyers' Association, the CSO Anti-Corruption Coalition of Armenia and the "Europe in Law Association" NGO regarding the Draft Law "On Making Amendments and Additions to the Constitutional Law "Judicial Code of the Republic of Armenia"

The Draft Law “On Making Amendments and Additions to the Constitutional Law “Judicial Code of the Republic of Armenia” (hereinafter referred to as the Draft),¹ has been published on the website of the RA National Assembly, in the section “Issues officially put into circulation, not yet included in the agenda of the session”, where, among others, it is planned to establish two separate commissions of the General Assembly of Judges: Commission on Disciplinary Matters and Advisory Commission on Ethics and Code of Conduct.

Recommendation 1.

Article 14 “Final and Transitional Provisions” of the Draft provides: *"3. Within one month after the entry into force of this law, non-judge members of the Commissions of the General Assembly, who are lawyers and have a license to act as advocates, shall submit to the chairman of the relevant commission of the General Assembly the decision of the Board of the Chamber of Advocates on suspension of the attorney's license. The Chairman of the relevant commission of the General Assembly shall record in writing the circumstance of receiving the above-mentioned decision. In case of failure to submit the decision of the Board of the Chamber of Advocates on the suspension of the attorney's license to the Chairman of the relevant Commission of the General Assembly within the period specified by this part, the powers of the non-judge member of the Commissions of the General Assembly shall be deemed terminated by law."*

Presumably, the basis of this change was the fact that the non-judge members of the Ethics and Disciplinary Commission are attorneys, and it is possible that the attorney's activity may hinder the objective activity of the non-judge member of the Disciplinary Commission. However, at the same time, it should be noted that parallel to this there was a practice when two of the former non-judge members were attorneys, but there are no known cases when they identified the status of "non-judge member" and "attorney" and used both in the course of legal activity and acting as a non-judge member. In fact, there is a situation where the identification of these two statuses depends only on the person's

¹ <http://www.parliament.am/drafts.php?sel=showdraft&DraftID=72446>

integrity and ethical behavior. Sharing the concerns of the Ministry of Justice, however, this approach is not fully justified, for example, to those lawyers who carry out legal activities that do not involve legal representation (for example, corporate service of a company) or carry out legal representation quite rarely. Therefore, taking into account the concerns of both the Ministry and the judiciary, as well as among lawyers, **we offer the following approach** as a balanced option: the non-judge members of the disciplinary commission, who have a license to act as attorneys, undertake obligation to provide judicial representation as advocates in 1-3 cases per year. At the same time, in the case of being elected as a non-judge member, the attorney should not be deprived of engaging in legal activities that do not involve judicial representation.

Recommendation 2.

Article 14 of the same draft stipulates the following: *"4. Within one month after the entry into force of this law, the Supreme Judicial Council shall approve the requirements regarding to the foundations nominating the non-judge member of the Ethics and Disciplinary Commission, the order and details of conducting the competition and selection of the candidates nominated by them."* Despite the fact that Article 3 of the Draft states: *"In the entire text of the Law, after the words "public organizations" and their corresponding grammatical forms (case), add the words "or foundations" in their corresponding grammatical forms (case)"*, **we recommend** the following: "In Part 4 of Article 14 of the Draft, the words *"public organizations and"* should be added before the word *"foundations"*, since only by mentioning the term *"foundations"* the regulation is incomplete and may require interpretation in the future during application.

Recommendation 3.

Article 14 of the same draft stipulates the following: *"4. Within one month after the entry into force of this law, the Supreme Judicial Council shall approves the requirements regarding to the foundations nominating the non-judge member of the Ethics and Disciplinary Commission, the order and details of conducting the competition and selection of the candidates nominated by them."* Although the submitted requirements will be developed and approved by the Supreme Judicial Council, nevertheless, as **the main criteria, we propose to provide the following listed below**, which will ensure the effectiveness and independence of the Commission, in terms of non-judge members:

1. Establish clear criteria for NGOs and foundations that will nominate candidates. For example, at least 5 years of experience in judicial, legal and anti-corruption fields, which is confirmed by documents or other means.
2. Candidates nominated by NGOs and foundations must not be affiliated with the bodies of the judicial authority during the nomination and the two years preceding it, including being an employee, servant, expert of the judicial authority or any other body operating in that field (for example, the Academy of Justice).
3. Candidates for non-judge members who are nominated by eligible NGOs or foundations must have a clear previous experience of cooperation with those NGOs and foundations.

Recommendation 4.

Part 2 of Article 2 of the Draft envisages the following amendment: *"In part 4 of Article 77 of the Law: a) replace the word "eight" with the word "eleven"; (...)"*. As you know, since 2020 ALA and partners have been raising the issue that the participation of non-judge members in Ethics and Disciplinary as well as in Evaluation Commissions is low and the balance between judge and non-judge members is not ensured. This disproportionate approach and the factor of the absolute majority of judge members contributed, for example, to ineffective work of non-judge members in Ethics and Disciplinary Commission and to make their participation formal. As early as on 09.10.2017, in the opinion given on the Draft RA Judicial Code² the Venice Commission expressed the same concerns, according to which the Disciplinary Commission is composed exclusively of judges, which may cause the risk of adopting a corporate approach. As one of the possible options for neutralizing this risk, the Venice Commission proposed to have a balanced approach to the composition of the Commission in terms of the involvement of judge and non-judge members in the Disciplinary Commission.

Therefore, as in the past, **we believe** that for the effective functioning of the Disciplinary Commission, it is important to have a balanced composition of the Commission and to ensure the equality of judge and non-judge members, as for example, is in the case of the members of the Supreme

² ԵՄ Վեներտիկի հանձնաժողովի կարծիք թիվ CDL-AD(2017)019, կետ 135, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2017\)019-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)019-e)

Judicial Council. 5 judges and 5 non-judges. Therefore, **we propose** to increase the number of members of the Commission to 10, of which 5 will be judges, and the other 5 will be non-judge members.

If this proposal is not accepted, **we propose** to revise the decision-making quota in the Commission, in particular, to provide that the decisions of the Commission, for example, the decision to initiate or reject a proceeding or the decision to submit a petition to the SJC, are considered adopted if four out of five of the non-judge members have voted for them.