

Prepared for: 4th EaP Panel on Rule of Law

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Recommendations from the Civil Society:

- Demonstrate real commitment in the implementation of the OECD recommendations for judiciary and prosecutors (Armenia, Azerbaijan, Ukraine);
- Ensure that prosecutors act independently, without unjustified interference from government, parliament and other external influences;
- Ensure that the internal independence of prosecutors is guaranteed in practice and that superior prosecutors do not influence in an improper manner the decisions of lower prosecutors;
- Secure meaningful participation of domestic stakeholders in key areas of judicial reforms, including prosecution;
- Ensure in practice proper financing of the judiciary; to provide sufficient support to judges through the appointment of qualified staff and to allocate adequate resources, facilities and equipment for courts to work efficiently;
- Improve legal grounds for disciplinary liability of judges by establishing clear and precise criteria in compliance with international standards and best practice. To ensure that disciplinary proceedings comply with fair trial guarantees, in particular by separating investigation, prosecution and decision-making in such proceedings (Armenia, Azerbaijan, Ukraine);
- Ensure in practice a merit-based system of selection and promotion of prosecutors;
- Establish accountability mechanisms for the judiciary and for the prosecution through periodic reports, including explanations about their decisions on cases of public interest;
- As a matter of priority, eradicate corruption in the prosecution office and courts, including through criminal investigations and dismissal of prosecutors and judges that cannot justify their assets;
- Exclude from the competence of the anticorruption prosecution office any cases that do not represent or are directly linked to grand corruption (for Moldova);
- To ensure that by the legislation the Prosecutorial Council presents annual reports of its activities to the Parliament, which is followed by parliamentary discussions (Georgia);
- To amend the legislation presenting that the Parliament arranges hearings and discussions over the information provided by the Prosecutorial Council or the Prosecutor General, upon the request of the Parliament or at the initiative of the Prosecutorial Council or the Prosecutor General (Georgia);
- To define the criteria for the reports, statements or requests for information, which should not be limited to the circumstances of a particular criminal case – except cases directly stipulated in the Georgian legislation, international treaties and agreements of Georgia (Georgia).

Background

The EaP countries are members and representatives in many international bodies working on establishing and improving independence of justice institutions, including prosecutor's offices and courts. However, the observations of local stakeholders about the functioning of these institutions in practice confirm there is a strong need for meaningful actions to ensure institutional and individual independence.

Despite number of recommendations¹ for the improvement, the Prosecutor General remains under the oversight of the President in **Azerbaijan**, and the presidential authority retains the faculty to influence significantly the (re-)organisation of the prosecutorial services in Azerbaijan. Such oversight and influence are determinant for the functioning of the prosecutors' office with regard to the cases of human rights violations and corruption. There are complains that the Azerbaijani prosecutors play a key role in de facto criminalisation of legitimate activities of journalists, human rights defenders and civil society in Azerbaijan². Furthermore, there are no objective and transparent criteria or procedure for the appointment of the Prosecutor's Office or other law enforcement staff and no effective actions were taken in this regard.

Politically motivated prosecutions of opponents on fabricated grounds demonstrates the lack of independence and improvement of the performance of the prosecution function in **Belarus** as well³. The society is still facing challenges for fair trials due to executive interference in the judiciary⁴. There are very limited achievements in judicial reform programs and courts are still open to significant executive influence⁵.

In **Ukraine**, some progress was observed in regards to the judiciary and the prosecution service⁶. However, practice will yet have to prove the effectiveness of measures initiated; the prosecution service is still a particularly powerful branch linked directly to the executive and headed by a political appointee who is a close ally of the President of the Republic⁷.

The situation did not change much after the Revolution of Dignity. According to 2015 polls, less than 1% of the population trusts courts completely, whereas only 8% trust courts somewhat. In 2016, the situation did not change either. The level of trust still does not exceed 10%, and the balance of trust

¹ GrecoRC4(2016)11, COMPLIANCE REPORT AZERBAIJAN Adopted by GRECO at its 74th Plenary Meeting (Strasbourg, 28 November – 2 December 2016), www.coe.int/greco

² Netherlands Helsinki Committee, Call to Suspend Azerbaijan's Membership to International Association of Prosecutors, 09 April, 2018, <https://www.nhc.nl/call-to-suspend-azerbaijans-membership-to-the-international-association-of-prosecutors/>

³ United Nations Human Rights office for High Commissioner, Belarus: Arbitrary detention and false prosecution of political opponents continue, UN expert says, <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22394&LangID=E>

⁴ BELARUS 2017 HUMAN RIGHTS REPORT, <https://www.state.gov/documents/organization/277387.pdf>

⁵ Freedom House, Freedom in the World 2017, <https://freedomhouse.org/report/freedom-world/2017/belarus>

⁶ Eastern Partnership Index, EASTERN PARTNERSHIP INDEX 2015-2016 Charting Progress in European Integration, Democratic Reforms, and Sustainable Development, http://www.eap-index.eu/sites/default/files/EaP_Index_2015-16_o.pdf

⁷ GrecoEval4Rep(2016)9, EVALUATION REPORT UKRAINE Adopted by GRECO at its 76th Plenary Meeting (Strasbourg, 19-23 June 2017), <https://rm.coe.int/grecoeval4rep-2016-9-fourth-evaluation-round-corruption-prevention-in-/1680737207>

is negative at -72,5%. Likewise, businesses do not trust the Ukrainian courts – the vast majority of surveyed entrepreneurs named present state of the judiciary as the main obstacle to investment and economic growth⁸. More than 94% of the population think corruption is a principal issue, while the vast majority also recognizes that political dependence and impunity are key problems of the system.

According to the results of public perception, about 4% of respondents fully trust courts in **Armenia**, whereas 31% of respondents have absolutely no trust, which is about 8 times less. There is almost double difference between 34% of the overall trust and 60% of the overall distrust⁹. According to the public opinion survey, 32% of respondents believe that the judicial system has not undergone any changes and has remained the same over the last five years. In terms of perception of 22% of respondents, the activity of the judicial system has undergone negative changes, i.e. deteriorated. Overall, only 20% of respondents perceived a positive change and an obvious improvement in the judicial system.

Despite the Constitutional reform in 2015, the political involvement in process of election and dismissal of the Prosecutor General was not sufficiently removed – and it did not adequately insulate the prosecution service from potential political pressure and influence¹⁰.

The 2016 reform of the prosecution office in **Moldova** led to considerable administrative changes in the prosecution office, increased the salaries of prosecutors and the powers of the self-management bodies of prosecutors, as well as introduced a merit-based system of selection and promotion of prosecutors. However, these changes did not lead to visible benefits for ordinary people. The contests for promotion of prosecutors are disguised appointments, where only one candidate welcomed by the leadership of the prosecution office apply. It appears that the Moldovan prosecution office operates under total hierarchical control of the Prosecutor General. The Council of Prosecutors, that has broad legal powers, does not act yet as a guarantor of independence of prosecutors.

The prosecution office is generally perceived as politically controlled and deeply corrupt. Despite several investigations opened against prosecutions for corruption or abuse, no cleaning of the system took place after the 2016. The public trust in the prosecution office is below 25%¹¹. There are plenty of facts of selective justice and politically motivated criminal cases against opposition, which are more and more frequent in the eve of February 2019 parliamentary elections. The Anti-corruption Prosecution is understaffed and has very broad competences, not allowing it to focus on big scale corruption¹².

⁸ JUDICIAL REFORM IN UKRAINE: MISSION POSSIBLE? POLICY REPORT, https://rpr.org.ua/wp-content/uploads/2017/02/Renaissance_A4_5JURIDICIAL-REFORM.pdf

⁹ Report “Peoples’ justice needs and expectations in Armenia”, <http://prwb.am/new/2018/03/31/justice-monitoring-project-report/>

¹⁰ OECD, Anti-Corruption Reforms in ARMENIA Fourth Round of Monitoring of the Istanbul Anti-Corruption Action Plan, <http://www.oecd.org/corruption/acn/OECD-ACN-Armenia-4th-Round-Monitoring-Report-July-2018-ENG.pdf>

¹¹ See the results of the Public Opinion Barometer, available at http://ipp.md/wp-content/uploads/2018/05/BOP_05.2018_anexa.pdf

¹² Policy Brief “Moldova: investigating high-level corruption – progress or illusion?”, <https://crjm.org/wp-content/uploads/2017/07/2017-01-27-Gribincea-corruption-machetate.pdf>

The changes in the legislation to align the Prosecutor's function with the Constitutional amendments is a welcomed step in **Georgia**. However, the draft law limits the authority of the Council to approval of the candidacy for the Prosecutor General, presented to the Parliament – to undertaking disciplinary lawsuit against deputy Prosecutor General and members of the Prosecutorial Council. Such regulations are against the new edition of Constitutional changes. The same is relevant in the composition of the Council, the structure of which allows the ruling majority make one-party decisions on every issue, without taking into account the opinions of the political opposition and the society. Also, the General Prosecutor's office should not be investigating the offences committed by its own staff, as it is a clear conflict of interest. Moreover, the draft law foresees a weak parliamentary oversight mechanism¹³.

More Information

The Eastern Partnership Civil Society Forum (EaP CSF) is a unique multi-layered regional civil society platform aimed at promoting European integration, facilitating reforms and democratic transformations in the six Eastern Partnership countries - Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine. Serving as the civil society and people-to-people dimension of the Eastern Partnership, the EaP CSF strives to strengthen civil society in the region, boost pluralism in public discourse and policy making by promoting participatory democracy and fundamental freedoms.

For more information, please visit the EaP CSF website at www.eap-csf.eu

¹³ The information was presented by the local civil society organizations in Georgia.