

THE COMMISSION ON ETHICS OF HIGH-RANKING OFFICIALS

DECISION

ON THE ADOPTION OF THE CONCLUSION REGARDING THE VIOLATIONS OF ETHICS RULES BY A. HARUTYUNYAN, THE MINISTER OF NATURE PROTECTION OF RA DURING HIS OFFICE

13-A

Yerevan

May 23, 2014

The Commission on Ethics of High-Ranking Officials, composed of S. Sahakyan, A. Shushyan, L. Petrosyan, A. Khudaverdyan, A. Sargsyan (hereinafter the Commission), in accordance with Article 44 of RA Law on Public Service, having discussed the issue ethics rules' violation by Aram Harutyunyan, the RA Minister of Nature Protection, when being in the office,

DECIDES:

1. To adopt the conclusion regarding the issue of ethics rules' violation by A. Harutyunyan, the RA Minister of Nature Protection when being in the office, as per the attached Annex.

2. To propose to the Ministry of Nature Protection of RA, to publish the conclusion on the official website of the Ministry of Nature Protection of RA in pursuance of the requirements of the provision of section 4 of Article 44 of RA Law on Public Service. The present decree can be appealed by the high-ranking official in a judicial order, within a month after its making.

3. To send the conclusion of the Commission on Ethics of High-Ranking Officials regarding the ethics rules' violations to (1) the President of the Republic of Armenia, (2) the Prime Minister of RA, as the supervisor the Minister of Nature Protection of RA in terms of the Law of RA on Public Service.

The Chairperson of the Commission

S.Sahakyan

CONCLUSION

ON THE ETHICS RULES' VIOLATIONS BY A. HARUTYUNYAN, THE MINISTER OF NATURE PROTECTION OF RA¹ WHEN BEING IN THE OFFICE

The Commission on Ethics of High-Ranking Officials composed of S. Sahakyan, A. Shushyan, L. Petrosyan, A. Khudaverdyan, A. Sargsyan (hereinafter the Commission), in accordance with Article 44 of RA Law on Public Service, has discussed the issue of ethics rules' violations by Aram Harutyunyan, the Minister of Nature Protection of RA when being in the office,.

1. Initiating a proceeding

On April 4 of 2014, Sona Ayvazyan, the Deputy Director of Transparency International Anti-Corruption Center submitted an application to the Commission regarding the issue of ethics rules' violation by the Minister of Nature Protection of RA Aram Harutyunyan.

It is mentioned in the application: *"On March 25-26 of this year an international conference on "Responsible Mining, Challenges and Opportunities" was held, during which an incident between the environmental activists and the Minister of Nature Protection of RA Aram Harutyunyan took place. ... Apres Zohrabyan, a participant of the action, has cited from a Facebook post of the former employee of the Ministry of Nature Protection of RA, in which the Ministry of Nature Protection of RA was qualified as "a cemetery", in response to which the Minister of Nature Protection of RA said: "Know your limits, I will yank your ears and put them in your hands, brat".*

The applicant believes that "... use of expressions containing insults and threats by the Minister of Nature Protection of RA Aram Harutyunyan are not appropriate behavior for high-ranking public official and is considered a serious violation of ethics rules, in the

¹ Within the framework of present case, the Commission on Ethics of High-Ranking Officials discusses the behavior of Aram Harutyunyan, as the Minister of Nature Protection of RA, thus in present document, when mentioning the position, there will be used the formulation "Minister of Nature Protection of RA Aram Harutyunyan". At the same, it should be mentioned that by the Order N NH-96-A President Of the Republic of Armenia dated April 3, 2014 Aramayis Grigoryan was appointed as the Minister of Nature Protection of RA .

case of which building respect and trust towards the institution represented by him is also seriously threatened.”

By the Decree N 12-A dated April 25, 2014, the Commission has instituted a proceeding in its own initiative to discuss the issue of the ethics rules’ violation by Aram Harutyunyan.

By the Order N NH-48-A of the President of RA dated regarding the resignation of the Government of RA was adopted, while the members of the Government of RA continued performing their duties until the appointment of the new government.

By the Order N NH-96-A of the President of Armenia, dated April 30, 2014 a Minister of Nature Protection of Armenia was appointed and the authority of Aram Harutyunyan, the acting Minister of Nature Protection of Armenia was terminated.

By the Decree N 488-A of the Government of RA dated May 8, 2014 Aram Harutyunyan was appointed a Governor of Kotayk Marz of RA.

Prior to that, by the Letter E-273 dated April 29, 2014, the Commission had informed Aram Harutyunyan, the acting Minister of Nature Protection of RA, about the instituted proceeding and suggested to submit within ten days his objections and explanations regarding the issues raised in the application, as well as the individual episodes of the videos of the incident presented in published on the Internet.

A response letter 5/04.2/51177 dated May 8, 2014, from the Chief of Staff of the Ministry of Nature Protection of RA was received which informed that “in accordance with Order N NH-96-A of the President of RA dated April 30, 2014 Aram Grigoryan was appointed as the Minister of Nature Protection of RA”.

By the Letter E-292 dated 13.05.2014, the Commission resent the Commission Decree on instituting a proceeding and attached the respective documents to A. Harutyunyan, the Governor of Kotayk Province of RA asking to submit his objections and explanations regarding the discussed issue.

Aram Harutyunyan has not submitted any objections and explanations.

2. Subject and framework of the case

Within the framework of the proceeding the Commission is discussing whether expressions like “Know your limits, I will yank your ears and put them in your hands, brat”, “without understanding, without literacy, without having an idea... you should know what to talk and where, don’t talk nonsense”, “You should go to doctor, you are sick, a young sick” made by the Minister of Nature Protection of RA Aram Harutyunyan are violations of ethics rules of high-ranking officials or not.

3. Legal bases

The Article 28 of RA Law on Public Service establishes that the rules of ethics for public servants and high-ranking public officials are a system of norms aiming to ensure decent conduct of public servants and high-ranking public officials and to strengthen public trust in public institutions. According to the part 5 of paragraph 3 of the Article 28 of RA Law on Public Service, a high-ranking official is obliged to manifest respectful attitude to all the persons with whom s/he is in contact when exercising his/her powers;²

4. Explanations of the Minister of Nature Protection of RA Aram Harutyunyan

Aram Harutyunyan has not submitted objections and explanations to the Ethics Commission within statutory deadlines, as well as has not litigated facts presented by the applicant and posed by the Commission.

At the same, in the interview given to 1in.am electronic media on March 26, 2014³, Aram Harutyunyan, the Minister of Nature Protection made clarifications regarding the incident. Particularly, Aram Harutyunyan mentioned: “When the event was already about to begin, a group of environmentalists, representatives of environment protection, as well as ordinary people, approached and attempted to disturb the event... Under these circumstances, of course, I tried to ask and suggested to take that discussion out of the hall and without planning also suggested to answer to all questions outside. Of course, I also persuaded to use more professional approaches when talking... Unfortunately, I have to admit that, of course, during the event there was an impression that it was possible to raise certain issues by shouting, to create an impression that issues can be regulated by shouting. And groundless and accusations including of personal character, were made, as well as different expression with regards to employees of the Ministry... I also ask you to make conclusions yourself, when they stand on the chairs, when you try to interact with journalists, answer to the questions of journalists and cross questions are raised from different places... And I asked to all question, including the cross ones, I asked to pose professional questions... of course, questions dealing with personal field, we also tried to present such answers and make qualifications... There was no prepared, any intentional, any matter...

I could say that I simply had not prepared, planned interview, leave bowed, but I did not do that and answered to all questions... All expression, including also unpleasant ones, related to employees of the Ministry of Nature Protection, staff, me personally, including

² In accordance with clause 3 of Article 5 of Recommendation N 2000 (10) of the Committee of Ministers of Council of Europe on the Code of Conduct of Public Officials of May 11, 2000, public officials are obliged to treat citizens, as well as his/her supervisors, peers and subordinates respectfully while implementing their authorities.

³ <http://youtube.com/watch?v=Fv-nO5WHVno>

also unpleasant ones, that were not even raised, though I was talking, but I was listening and I had to react, including a hard reaction...”.

To a question whether Aram Harutyunyan is planning to apologize for harsh reaction, he answered: “Let people, who create that situation, let them think, that the benchmark related to us, politicians, members of the Government, public sector, let that benchmark never be lowered – I propose behaving like that from now on...”.

To a question, whether he thinks that he has behaved properly, Aram Harutyunyan has answered: “I believe that I acted in adequacy with given situation and gave an adequate answer, that was needed – when you are brought to personal field and they try to take you in different direction by cross questioning, confuse you and find another interest already in confusion. I am sorry, very sorry, that this discussion turned into such situation...”

I am not going to put anyone into a bad situation or abuse or not discuss. On the contrary, I ask, I propose all of you, including media representatives, it should be insulting for you too, for your colleagues too, if while I answer to your question, or I am in the process of answering to the question, they simply begin cursing from everywhere or shouting loudly, it should be insulting for you, first of all, you should be the first to rebuke... In my practice and from now on I also always know my limits, below which one should never lower and I urge everyone and ask to never lower into that benchmark, the benchmark that will relate to personal, never proceed to personal actions... I acted adequately with the circumstance... I tried to rebuke those, who were literally instigated disorder and hooliganism, I tried to rebuke and, unfortunately, while doing that, there was a hard reaction... I suggested everyone, please do not shout, do not insult, do not curse, do not give different names, do not say corpse, dead, etc. If there are professionals among you, who understand all of these, please let me know, let them approach and we talk... do not disturb the event, let's go out and I will answer to your question, and in this situation, when turn back and see that where you were sitting, someone is already standing, another talks from behind, another one from another side and using cross questioning... I answer to everyone's questions... Now, did act correctly or not, let the society judge and those, who are authorized for that; I think that I protected interest of one thousand and more employees and I will not allow calling one thousand employees of the Ministry of Nature Protection corpses and cemetery...”

5. Conclusions of the Commission

Reflecting on the issue of ethics rules' violation by the Minister of Nature Protection Aram Harutyunyan, the Commission states that public service is based on certain values and it has to enjoy public trust, in case of which citizens are assured that activities of public servants and high-ranking officials are aimed at rightful serving to public interest. In this

regards, importance is given to compliance with the principle of loyalty, professionalism and integrity while serving the society, ensuring of which is reflected in the rule provided by clause 5 of section 3 of Article 28 of RA Law on Public Service.

The above mentioned norm provides the responsibility of a high-ranking official to manifest respectful attitude to all persons with whom s/he is in contact with when exercising his/her powers.

According to the Commission, while discussing the fact of alleged violation of this rule, the following issues need covering:

A. Status, in which the official acts:

In this regard, the circumstance of performing of his/her authorities by the person has to be clarified, , since during the holding of office the officials can have relationship other than official, while implementing their authorities, but also act in private status, appearing in other legal relationship – personal, civil, family, etc. (for instance, controversy with a family member at home), within the framework of which protection mechanisms provided by respective legislation have to realised. It should be noted, that although actions conducted in private status are out of the framework of application of this rule, those can also result in violation of other ethics rules provided by RA Law on Public Service, especially if the behavior endangers the completeness of integrity system and public trust in it.

B. Characteristics and features of official's behavior:

While discussing the behavior of an official, the Commission pays attention to the nature of the action (inactivity) to find out whether an official acted improperly neglectful derogating a person or highlighting his/her advantages, whether one has used insulting expressions, whether the behavior of an official is a chain of actions or is a stand-alone episode, what were the conditions and circumstance in which the discussed behavior has been displayed, to what extent the behavior of an official disrupts the prestige of public administration and public institutions, the society, right and lawful interests of other parties.

C. Behavior of people, with whom the official interacts while performing his/her duties:

Under this indicator the Commission evaluates the actions of other persons, their purpose, motives and incentives.. It has to be highlighted to what extent the raised questions and viewpoints in public authority-citizen interactions are targeted to the discussion of public interest related issues and to their possible solutions. According to the Commission, in case of provocations or abuse of rights by individuals, the officials should

exercise more powers. The Commission highlights, that the Constitution of RA and international papers on human rights ratified by RA, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, , fix the right for respect towards the private life of a person. “Private life” also includes the framework of interaction with other parties, even in public interactions.⁴ On the other hand, the high-ranking officials, public actors, who have “lawful expectation” of respect and protection of their private life on equal bases with other person, are also lawful realizers of this right.⁵At the same time, while within official-citizen interactions citizens act as lawful realizers of right, requirements towards behavior and moderation of officials in such situations is stricter. Thus, in order to develop a constructive dialogue platform aiming to solve the current problems, it is important to enhance citizen-high-ranking official interaction culture based on mutual respect, and in this regard the Commission highlights also the role of civil society organizations.

D. The equability and adequacy of high-ranking official’s behavior/conduct

By assessing the adequacy of high-ranking official’s conduct, the Commission identifies whether the official displays moderation/restrain, tolerance, patience, tolerance and prudence⁶, whether one takes into consideration the importance of the discussed issue, public interests towards it.

E. Assessment of his/her behavior by the official:

The Commission takes into consideration the actions and explanations of high-ranking official both during the incident, and immediately afterwards. Importance is given to the circumstance, whether high-ranking official considers the action acceptable, whether steps aimed at changing the behavior (for instance, paving of the situation, provision of public clarifications regarding the circumstances immediately after the incident, and if necessary, apologizing) have been taken. Thus, the Commission also assesses the chain impact of actions.

By discussing the issue in the light of above-mentioned criteria, studying the materials of the case, including the video of incident between the Minister of Nature Protection of RA Aram Harutyunyan and activists, posted on the Internet, the Commission notes that:

The debate between the Minister of Nature Protection Aram Harutyunyan and activists took place during the conference on “Development of Responsible Mining in

⁴ European Court of Human Rights, Pack against the United Kingdom, case N 44647/98, paragraph 57.

⁵ European Court of Human Rights, Van Hannover against Germany, case N 59320/00, paragraph 51.

⁶ European Court of Human Rights, Skalka against Poland, case N 43425/98, paragraph 34.

Armenia, opportunities and challenges”, to which Aram Harutyunyan was invited to participate in an official status. That is, when the incident took place, Aram Harutyunyan was implementing his official authorities According to videos posted on the Internet⁷ the incident between Aram Harutyunyan and activists had several episodes. First, the activities suggested the Minister of Nature Protection of RA and the Minister of Economy of RA drinking the water from river polluted by mining waste, according to activists.

During this Aram Harutyunyan applied to activists with the following expression: “Without understanding, without literacy, without having an idea... you should know what to talk and where, don’t talk nonsense”⁸.

Afterwards, one of the activists cited a Facebook post of former employee of the Ministry of Nature Protection of RA, where the Ministry of Nature Protection of RA was qualified as “cemetery”, in response to which the Minister of Nature Protection of RA said: “Know your limits, I will yank your ears and put them in your hands, brat”⁹.

Finally, in response to the notion of environmental activist Anna Shahnazaryan, saying “You are the Minister of Nature Destruction; you are a construction workers, just an asphalt paver. Let the nature protection for professionals, you have no right to talk about the nature protection. You can only demolish”, Aram Harutyunyan responded: “You should go to doctor, you are sick, a young sick”¹⁰.

According to the Commission, expressions like “without understanding, without literacy”, “don’t talk nonsense”, “you are sick, a young sick”, “I will yank your ears and put them in your hands, brat” express insult even in private interactions between citizens, the nature of these indicates negative appraisal and disdain towards the behavior, personal characteristics of an individual, that can derogate the person and dignity. Open use of these expressions by the officials in interactions with representatives of public institutions obviously does not express respect towards a citizen.

The Commission believes that use of such expressions is not appropriate with the status and image of high-ranking official, since it does not promote development of public notion of civility, respectability of the official, which is a necessary precondition for development of trust towards public administration.

As for the conduct and motives of activists’ actions participating in the incident, the Commission wants to mention, first of all, that the Commission discusses these in the context of assessing the adequacy of high-ranking official’s actions. . The Commission does not make an independent assessment of these actions with regards to compliance with accepted ethics or other rules, considering the latter out of the framework of its

⁷ <http://www.youtube.com/watch?v=7a9xKTArh0s>.

⁸ www.youtube.com/watch?v=6iOxrvnlnpo, 2:21 minute of the video.

⁹ Same place, 2:50 minute of the video.

¹⁰ Same place, 4:24 minute of the video.

authorities. At the same time, the Commission notes, that certain expressions used while giving negative or critical assessment of high-ranking official's work, such as "construction worker", "asphalt paver", can itself disrupt (insult) individual social groups, resulting in development and strengthening of inappropriate public perception of the role and work of these groups, as well as exclusion of potential participation of the latter in public politics (based on the fact of belonging to a specific group), which contradicts the declared universal democratic values.

The Commission notes that the Conference was dedicated to an important issue of high public interest, discussion of mining, within the framework of which the negative consequences of mining and the priority issue of environmental protection were raised. The Commission believes that active participation of activists and general public, representatives of civil society organizations in important issues that are a matter of concern for the society (such as environmental protection, decisions related to which impact the quality of life of people), mixed with emotional discussion, exaggerated and resenting word, sharp criticism, as well as implementation of other activities by civil initiatives, groups, activists, drawing attention to the issue, has been reasonably predictable.

The Commission finds it necessary to mention that resenting, exaggerated word and sharp criticism within the allowed limits are protected within the framework of right for freedom of speech¹¹, and the officials have to be more tolerant towards criticism is questions related to public interests, that are a matter of concern of the public¹², which is an important element of democratic political system.

While highlighting the need for "exporting" of exemplary behavior of public servants and its spreading in the society for the development of "ethical" society, the Commission believes that in case of abuse of rights by other persons in official-citizen interactions, violations of their ethics or other rules the officials have to use legal mechanisms of protection of their rights and interests, without encouraging the option of answering to unlawful behavior with display of unlawful behavior.

On the other hand, although many circumstances can be problematic and difficult to manage, still the responsible status of high-ranking official requires certain personal qualitative characteristics and continuous enhancing of emotional management abilities, which will enable reversing and managing the situation with high level of professionalism.

In this context, the Commission believes that the measures chosen by Aram Harutyunyan to reverse the actions of activists have not been symmetrical and adequate; these could not have helped mitigate the situation, protect the prestige of public

¹¹ European Court of Human Rights, Nielsen and Jonsenn against Norway, Major Hall, case N 23118/93, paragraphs 52 and 53.

¹² European Court of Human Rights, Castels against Spain, case N 11798/85, paragraph 42.

administration or institutions, as well as prevention of potential further abuses or instigating activities.

Taking into consideration the above-mentioned **the Commission concludes**, that:

1. Minister of Nature Protection Aram Harutyunyan violated the ethics rule provided by clause 5 of section 3 of Article 28 of RA Law on Public Service, that is, he has not treated respectfully the persons, with whom he has interacted while implementing his authorities.
2. The present conclusion can be appealed by high-ranking official in judicial order, within a month.