

THE COMMISSION ON ETHICS OF HIGH-RANKING OFFICIALS

DECISION

ON

INITIATING PROCEEDINGS ON THE BASIS OF THE APPLICATION
SUBMITTED BY SONYA TRUZYAN – DEPUTY DIRECTOR OF TRANSPARENCY INTERNATIONAL
ANTI-CORRUPTION CENTER

12-A

Yerevan city

April 25, 2014

The Commission on Ethics of High-Ranking Officials composed of A. Shushyan (Deputy Chairman), L. Petrosyan, A. Khudaverdyan, A. Sargsyan (members) (hereinafter referred to as: the Commission), in accordance with Article 44 of the RA Law on Public Service, has discussed application submitted by Sonya Truzyan – Deputy director of Transparency International Anti-Corruption Center (hereinafter referred to as: the Applicant) on violation of ethics rules by the RA Minister of Nature Protection – Aram Harutyunyan.

In the application it is, in particular, mentioned that on March 25-26, 2014 an international conference with the topic of “Accountable Mining Industry, Challenges and Opportunities” was organized, on the course of which an incident happened between the nature protection activists and RA Minister of Nature Protection – Aram Harutyunyan. One of the participants of demonstration – Apres Zohrabyan has cited the note of a former employee of the RA Ministry of Nature Protection, where the RA Ministry of Nature Protection was labeled as “cemetery”. In reply to this, the RA Minister of Nature Protection has threatened the activist by saying “Know your place! I will cut your ears and hand them to you”.

In Applicants opinion “...Insulting expressions and threatening by the RA Minister of Nature Protection – Aram Harutyunyan is not an appropriate behavior for a high-ranking public servant and is a grave violation of ethics rules, which endangers also the establishment of respect and trust towards the institution represented by him”.

At the same time, the Applicant has analyzed the provision of Article 44 of the RA Law on Public Service, which stipulates that the ethics commission can initiate proceedings on the basis of the application of any person and has come to conclusion that the term “any

person” refers to any legal entity or natural person, who knows or is aware of cases of violation of ethics rules by a high-ranking official. Thus, the Applicant has requested the Commission to initiate proceedings and examine the question of violation of ethics rules by the RA Minister of Nature Protection.

According to Article 44 of the RA Law on Public Service:

The Commission may initiate proceedings for violations of the rules of ethics:

- 1) on the basis of the application of any person;
- 2) on its own initiative.
- 3) with a view to checking the issue of violation of the rules of ethics on the basis of the application of a high-ranking public official.

The Commission has in its previous decisions clarified some peculiarities of initiation of proceedings in the Commission with respect to violation of ethics rules on the basis of the application of a person. In Particular, the Commission has already in its conclusion approved by “Decision 17-A of 03.05.2013 On the Questions Raised in the Application of Artur Sakunts – the Chairman of Helsinki Citizens’ Assembly Vanadzor Office NGO” expressed the following legal position:

“Taking into consideration the peculiarities and delicacies of the general system of ethics rules, for the consideration of matters of violation of ethics rules in relation to concrete person or group of persons the main instrument for the consideration of the violation of ethics rules must be the initiation of proceedings on the basis of the application submitted by that concrete person or group of persons.

Article 28 of the RA Law on Public Service defines ethics rules for a public servant and high-ranking official. The international experience and the accepted practice show that there is no comprehensive interpretation of ethics rules that would include all possible situations. Any concrete case of ethics rules is examined within the context of the facts that refer to only to that concrete case, and thus a decision may be adopted that might not be applicable even to such cases which are very close to that case with their factual circumstances.

It’s obvious that it would be impossible to make an objective opinion on such cases without taking into consideration all the factual circumstances of that episode, the context of the incident or expression, sometimes even the personal relations, age, gender of the persons involved in that situation etc. In order to qualify an expression or a gesture as a disrespectful attitude towards a concrete person or a group of persons, it is also necessary to take into account the own perception of that concrete person or group of persons, their

personal relations or other circumstances, in the existence or non-existence of which an expression or a gesture may be perceived not as a disrespectful attitude.

In cases referring to violation of ethics rules by a high-ranking official directed at a concrete person or group of persons, the Commission cannot initiate proceedings if the Commission has not received an application from a concrete person or group of persons with respect to a concrete case. In the application it should be mentioned the concrete case that served as ground of the application, the connection of the applicant to that case, the provision which in applicant's opinion was violated by a high-ranking official, as well as any existing material that would substantiate the application, should be attached to the application".

Consequently, in order to initiate proceedings on the basis of a person it is necessary to have the application of a person or a group of person, to whom the actions of a high-ranking official were directed.

The Applicant has substantiated the necessity of initiation of proceedings by citing decision № E-1/13 of 21.02.2013 of the RA National Assembly Ethics Commission on "Violation of Ethics Rule by Mher Sedrakyan – Member of the RA National Assembly, elected from constituency № 13 by majoritarian electoral system".

With this respect the Commission states that general right to perform defense of rights and lawful interests of another person or filing a claim in the light of a general or public interest (*actio popularis*) is widely known. The approval of a jurisdiction of different institutions in accordance with a scope of persons is an autonomous process, conditioned by peculiarities of regulations, and it is not mandatory that the approaches will be the same.

On the other hand, the Applicant didn't provide strong arguments and grounds that would substantiate the necessity to change the legal position of the Commission that was previously expressed with respect to initiating proceedings on the basis of the application of a person. In the light of absence of such arguments and grounds, the revision of the legal positions would have arbitrary nature and would endanger the principle of legal certainty.

Taking into consideration the above-written, the Commission finds the application submitted by Sonya Truzyan – Deputy Director of Transparency International Anti-Corruption Center does not comply with the above-mentioned conditions. In particular, the application refers to discussion of a question on violation of ethics rules by a concrete high-ranking official with respect to a concrete person, and there is no application by the person whose rights have been allegedly violated as a result of the given action, and the Deputy director of Transparency International Anti-Corruption Center - Sonya Truzyan doesn't act on behalf of that person.

At the same time, the RA Law on Public Service stipulates that the Commission can institute proceedings with respect to violation of ethics rules on its own initiative. With this respect the Commission finds that with this provision the legislator has defined clear

discretion for the Commission to institute proceedings with respect to violation of ethics rules on its own initiative.

The Commission has reflected on peculiarities of instituting proceedings on its own initiative in the 2nd part of the conclusion approved by decision 7-A of 03.05.2013 on “Questions raised in the application submitted by Artur Sakunts – the chairman of Helsinki Citizens’ Assembly Vanadzor Office NGO”, where it was noted that the Commission’s discretion to initiate proceedings on its own initiative should be seen as measure that is to be used in exceptional cases. Moreover, the Commission has noted that as exceptional cases can be seen the violations of ethics rules that have systematic nature or refer to a wide portion of society, have high public significance, cases of simultaneous violation of ethics rules towards big amount of persons, or the cases when a person cannot personally apply to the Commission because of objective reasons.

The Commission observes that in recent months there was an increase of the amount of publications in media on allegedly disrespectful attitude or inappropriate behavior by high-ranking officials. Moreover, in the given case we deal with an incident with many episodes that occurred in public place within the framework of discussions on a delicate question of public interest in which case the Commission finds it necessary to initiate proceedings on its own initiative.

Being guided by the above-written and on the basis of Sub-Paragraph 2 of Paragraph 2 of Article 44 of the RA Law on Public Service:

the Commission on Ethics of High-Ranking Officials

HAS HEREBY DECIDED

- 1. to initiate proceedings with the purpose to discuss the question of violation of ethics rules by the RA Acting Minister of Nature Protection – Aram Harutyunyan;**
- 2. to suggest to the RA Acting Minister of Nature Protection – Aram Harutyunyan to submit his objections and clarifications in ten days after receiving this decision.**

Deputy Chairperson of the Commission

A. Shushyan