

CY RULE OF LAW REPORT TARGETED QUESTIONS OFFICE OF THE ATTORNEY GENERAL

1.The Rule of Law Report contained a recommendation to CY to «continue to improve the effective investigation and adjudication of high-level corruption cases, including by strengthening the Office of the Attorney General and its budgetary independence.

(a)What is the status of negotiation or adoption of the legislation concerning the budgetary independence of the Attorney General (discussed between the Attorney General and the Ministry of Finance since 2021)?

Answer

(a)As far as the budgetary independence of the Office of the Attorney General of the Republic of Cyprus is concerned, you may be informed that the Council of Ministers has decided on the 22nd Feb. 2023 to authorise the Minister of Finance to submit the relevant legislation to the House of Representatives for voting. However, the Ministry of Finance has not yet proceeded with the required action.

As far as the ongoing procedures of personnel selection of the Law Office of the Republic is concerned, you may be informed that –

(i) on Dec.22, 2022, 14 positions of Lawyers of the Republic A' were fulfilled, starting their duties on Feb.1st 2023.

(ii) on March 17, 2023 specialised examinations took place for approximately 400 hundred candidates for fulfilling the positions of 10 Public Prosecutors. The positions are expected to be fulfilled in June and the successful candidates to start their duties on July 1st 2023.

(iii) For the process of fulfilment of the 5 vacant positions of Attorneys of the Republic, in March 2023 the list of the successful candidates were processed to the Public Sector Committee for the advancement of the required process.

(iv) 24 positions of Lawyers of the Republic are vacant, of which 15 were published and applications were received. For the rest of the positions (9) which became vacant after completing the process

(v) above, we expect to receive as soon as possible the approval of the Council of Ministers, and consequently the approval of House of Representatives in order to proceed with the planned examination phase.

(b) what is the extent of the reform?

Answer

(i) Reorganization of the legal departments of the law Office of the Republic

(ii) Satisfactory staffing of the legal departments and strengthening the specialization of Lawyers

(iii) Establishing procedures / Way of work for handling cases

(IV) Electronic and Digital Governance of the Law Office of the Republic

(V) Building upgrade of the Law Office of the Republic

(VI) Independency of the Law Office of the Republic

(c) Are there any plans to make a clearer distinction between the prosecution and the advisory role of the Attorney General as also suggested by GRECO?

Answer

Grecos recommendations for the 4th round evaluation was the following:

«As far as the Prosecutors are concerned, GRECO's pertinent Recommendation addressed to the Law Office of the Republic, notes that the pending Recommendation concerning the autonomy of prosecutors remains unfulfilled, and will be fully satisfied with the promotion and adoption of the relevant bill concerning the independence and autonomy of the Law Office of the Republic, which is pending in the Ministry of Finance.

In particular, GRECO notes that work on legislation relating to the Law Office of the Republic has not progressed further and the authorities are urged to accelerate this procedure with a view to strengthening the independence/autonomy of the prosecutorial functions».

The work on legislation has been progressed as mentioned above and the Law office of the Republic decided to promote the strengthening of the independence for lawyers of the Law Office through the new bill.

2. what is the status of resources (human, technical and financial) allocated to the office?

(a) Are there pending planned procedures for the selection of the personnel as to reach full capacity?

SEE OUR REPLY TO QUESTION N.1

3.What are the operations and results of the anti-corruption task force created under the competence of the Attorney General office, with specialized officers from relevant institutions?

Establishment of the Independent Authority against Corruption.

On March 4th 2022, an Independent Authority against Corruption was established according to the Establishment and Operation of the Independent Authority against Corruption Law, 2022 (Law 19(I)/2022). In accordance with the provisions of the Law,

on May 3, 2022, the names of the Members of the Authority were announced, while the assumption of duties of the Members took place on July 8, 2022.

The mission of the Authority, according to article 6, “is the undertaking of the necessary initiatives and actions for ensuring the coherence and effectiveness of the actions of the services of the public sector, the wider public sector and the private sector in matters of prevention and combating of acts of corruption, as well as for ensuring, in the best and most efficient manner, the implementation, progress, management and assessment of the National Strategy against Corruption from time to time”. Furthermore, the Authority investigates, “on its own motion, or upon submission of a complaint, any acts of corruption in the public sector, in the wider public sector and in the private sector”. It is clarified that, “with regard to persons of the private sector, complaints may be submitted to the Authority, solely in connection with acts of corruption by persons of the private sector in which persons of the public sector or of the wider public sector are directly involved and/or acts of corruption by persons of the public sector or of the wider public sector in which persons of the private sector are involved.”

Regarding evaluation/ assessment practices, of the administrative measures in order to determine their adequacy to prevent and fight corruption, as well as the submission of relevant evaluation reports, the following provisions of the Law are relevant:

The Authority has the following competences according to article 7 of the Law 19(I)/2022: The Authority has been defined as the competent authority for the coordination of actions of the services of the public sector, of the wider public sector and of the private sector for the prevention and combating of acts of corruption at a national level and has the following competences and powers:

- (a) to supervise the actions of the services of the public sector, the wider public sector and of the private sector in matters of prevention and combating of acts of corruption.
- (b) to assess whether the results of the actions of the services of the public sector, of the wider public sector and of the private sector in matters of prevention and combating of acts of corruption are compatible with the expected results and the prescribed objectives based on internationally recognized best practices and standards for the prevention and combating of acts of corruption and whether such actions are implemented as these were planned and, if deemed necessary, it shall take measures within its competences for the implementation of the actions as these were planned and for achieving the prescribed objectives;
- (c) to draw up, on its own motion, reports with opinions, recommendations and proposals for the prevention and combating of acts of corruption and for the observance of the fundamental principles against corruption, which it shall send to the competent services for update, opinions and/or any actions;

- (d) to contact and consult with non-governmental organizations and bodies, professional associations, organized groups and with corresponding authorities of the Republic and from abroad, for the purpose of exercising its powers provided for in paragraph (c);
- (e) to cooperate with the competent professional associations for the proper implementation of internal control mechanisms of the private sector for the prevention and combating of acts of corruption.
- (f) to inform the private sector of the internationally recognized best practices and standards for the prevention and combating of acts of corruption and to provide advice and guidance for their adoption and proper implementation;
- (g) to assess the risks related to acts of corruption, to determine the assessment indicators and, provided it is deemed necessary, to draw up reports with opinions, suggestions and recommendations for the prevention and combating of such acts, which it shall send to the competent authorities, as appropriate, for information purposes, opinions and/or any actions;
- (h) to prepare studies, issue circulars to the competent, in each case, authorities, take measures within its competences towards ensuring its mission and issue manuals for information and education purposes;
- (i) to deal with issues of overlapping of competences between services or organizations involved in the prevention and combating of acts of corruption, by submitting recommendations for their effective resolution;
- (j) to propose, process and plan actions of co-financed, interstate and other, programs, in which the competent services of the public sector, of the wider public sector and of the private sector, participate;
- (k) to collaborate with international organizations, institutions and services of the European Union or other states for the preparation, undertaking, use, implementation of programs or strategic plans, the exchange of best practices and the receiving of technical assistance for the prevention and combating of acts of corruption;
- (l) to attend meetings or other events organized within the scope of the United Nations Organization, the Council of Europe and the European Union in which the national anti-corruption organizations participate, to cooperate with other corresponding institutions of the United Nations Organization, the Council of Europe and the European Union, as well as with anti-corruption organizations of other states and to advise regarding any information or data requested, within the framework of cooperation and/or exchange of information and/or reply, in case of mutual legal assistance, pursuant to any relevant bilateral agreement between the Republic and another state, which shall be ratified by a Law of the Republic;
- (m) to receive complaints and receive information and personal data which relate to acts of corruption in the public sector, the wider public sector and the private sector;

- (n) to investigate and assess any complaint, information or personal data which come to its attention which relate to acts of corruption in the public sector, the wider public sector and the private sector;
- (o) to investigate on its own motion, within the scope of its mission, any matter related to acts of corruption of any service in the public sector, the wider public sector and the private sector and to submit a report to the competent authority, as appropriate;
- (p) subject to the provisions of the GDPR and the Protection of Natural Persons Against the Processing of Personal Data and on the Free Movement of such Data Law, to collect, record, process, assess, utilize and investigate information and personal data concerning the commission of acts of corruption in the public sector, the wider public sector and private sector;
- (q) subject to the provisions of paragraph (1) of section 89 of the GDPR and section 31 of the Protection of Natural Persons Against the Processing of Personal Data and on the Free Movement of such Data Law, to collect, record, process, assess and utilise information and personal data concerning acts of corruption in the public sector, the wider public sector and the private sector, with the aim, inter alia, to produce statistics and/or statistical analysis related to its mission:
- (r) subject to the provisions of the GDPR and the Protection of Natural Persons Against the Processing of Personal Data and on the Free Movement of such Data Law, to prepare, keep and manage files and/or registers with information and personal data which are necessary for carrying out its mission and its competences, including a central register with the special interest groups;
- (s) to perform the competences assigned to it pursuant to the provisions of this Law or any other Law and to take measures for the purpose of prevention and combating of acts of corruption which conflict with their provisions; and
- (t) to carry out any other work which falls within the framework of coordination, monitoring and assessment of the mechanisms for the prevention and combating of acts of corruption.

According to article 20

(1) The Authority shall draw up and submit, quarterly, to the competent authorities included in the National Action Plan against Corruption in force from time to time, to all the ministries and to every service connected with matters of prevention and combating of acts of corruption, summary reports with its comments and/or recommendations on matters which concern the coordination of actions, the undertaking of initiatives, the implementation of audit measures, the creation of staff planning, the setting of priorities, the formation and enhancement of the legislative framework in force and any other matter, relevant to the better coordination of matters, as well as the effective prevention and combating of acts of corruption.

(2) The Authority, after submitting the report provided for in subsection (1), may consult in any appropriate manner for the implementation of its recommendations and for the prevention and combating of acts of corruption:

Provided that, in the event where a competent authority shall not provide information within the period specified as to its actions relating to the implementation of the proposals, suggestions or recommendations of the Authority or shall not accept their implementation and, provided the Authority shall consider that the proposed reasoning on behalf of the competent authority for not accepting them is not sufficiently justified, it shall submit the result of its consultations to the competent minister

(3) The competent minister, after requesting the necessary clarifications, shall submit, within a reasonable period of time, a report to the Council of Ministers with his comments, for information purposes and for any instructions.

(4) The Commissioner for Transparency shall submit, quarterly, to the Council of Ministers and to the House of Representatives a memorandum, with a summary reference to the reports submitted to each competent authority, to its comments and/or recommendations and shall attach thereto the text of every report or circular which, in his opinion, concerns a serious case of corruption.

In addition to the above, according to article 21,

21.-(1) The Commissioner for Transparency shall submit to the President of the Republic an annual report on its work during the immediately preceding calendar year, the latest by the 31st January of each year, within the scope of the exercise of its mission and competences provided for in this Law, which shall include its comments and recommendations on the assessment of the risks from events of corruption.

(2) The annual report of the Authority shall be submitted to the Council of Ministers and the House of Representatives, immediately after its submission to the President of the Republic and shall be published in the Official Gazette of the Republic.

(3) Upon publication of the annual report provided for in subsection (2), the Authority, following an invitation, shall appear before the competent committee of the House of Representatives to discuss the contents of the report, the recommendations and the degree of response drawn from the competent authorities, as this shall emerge from the summary reports drawn up pursuant to the provisions of section 20.

It must be clarified that, the above competences, do not affect in any way the mission and the competences of ministries, deputy ministries, independent authorities, departments and services of the Republic. It is further clarified that the following shall not fall within the competences and powers of the Authority-

- (a) any matter concerning the relations between the Republic and any other state or international organization or the security of the Republic or which falls within the scope of defensive diplomacy or security policy or foreign policy of the Republic,

- (b) any act for which a criminal procedure is pending before a court or a criminal investigation or inquiry is being conducted.

Having outlined the above provisions of the Law in relation to the competences of the Authority, other than the investigative ones, the following must also be taken into consideration:

The total number of people working for the IAAC, including the 4 Members of the Authority, and the Commissioner for Transparency, amounts to 10.

Lack of Staff Recruitment Regulations hinder the timely and proper recruitment of permanent staff at the IAAC. Currently, the Authority, as a priority, is fully engaged in *preliminary examination* of complaints received so far. The Authority will start planning the initiation of specific actions regarding its preventative role, in the second quarter of the current year.

4. We understand that by Law the Attorney General office has discretion in bringing a criminal action to court, including for cases of corruption. If so, can you indicate the number and type (large, small, individual, group, low, high level, etc.) of prosecutions on corruption that, since July 2022, were:

i opened

ii examined

iii brought to trial

iv closed (including the reason for closing the case)

Answer

Under Article 113 paragraph 2 the Attorney-General of the Republic shall have power, exercisable at this direction in the public interest, to institute, conduct, take over and continue or discontinue any proceedings for an offence against any person in the Republic. Such power may be exercised by him in person or by officers subordinate to him acting under and in accordance with his instructions.

In 2022, 19 cases of corruption were opened by the Cyprus Police. Out of these 19 cases, 12 are still under investigation, 6 cases were brought to trial and one case was closed because it was established that no criminal offence was committed.

Out of these 6 cases that were brought to trial, one case was tried and one person was convicted. The remaining cases are still under or pending trial. One of the cases that is under trial is a very high level case with 4 defendants facing the charges of corruption and conspiracy to defraud the Republic of Cyprus.

5. According to the 2022 EU Justice Scoreboard (Figure 59), if the Attorney General decides not to prosecute a case, only the Attorney General can reserve such decision. Are there any legal remedies against a dismissal decision?

There are no legal remedies against a dismissal decision of the Attorney General.

Many times we discuss or criticize decisions, actions or omissions of the Attorney General (AG) in Cyprus. Many times the Supreme Court, with unanimous decisions referred to the constitutionally guaranteed powers of the Attorney General, and that no other power can interfere to his exclusive powers and affects the uncontrollability of his authority, as guaranteed by "Articles 112-114 of the Constitution."

"The institution of the Attorney General in the Republic of Cyprus is completely different from a similar institution in other countries. The Attorney General is an independent Official of the Republic, serves on the same terms as the Judges of the Supreme Court and cannot be dismissed, except only under the conditions and guarantees that a Judge of the Supreme Court is dismissed. His remuneration is not subject to the vote of the House of Representatives and is an automatic charge to the Permanent Fund of the Republic - (Article 112 of the Constitution).

The exercise of the power of the Attorney General is not subject to either parliamentary or judicial review – (see *The Republic and Charalambos Zacharia, Ypsonas* 2 RSCC Γ *Charilaos Xenophontos and The Republic (Minister of Interior)* 2 RSCC 89* *Police v. Athienitis* (1983) 2 CLR 194- *Yiannakis P. Ellinas v. The Republic* (1989) 1 CLR 17).

The Attorney General is the legal advisor of the Republic. It has exclusive jurisdiction over criminal prosecutions, without any constitutional limitation, except of course the criminal prosecution of the President or the Vice-President of the Republic for high treason, which can only be exercised after a relevant resolution of the House of Representatives, in accordance with Article 45.2 of the Constitution .

The Attorney General of the Republic exercises the powers granted to him by Article 113.2 of the Constitution, regarding criminal prosecutions, " at his discretion and in the public interest". Initiates, conducts, undertakes, continues or discontinues any proceeding or prosecution against any person for any offence .

He has a responsibility to supervise the observance of the Law. The Attorney General, assisted by the Assistant Attorney General is *paris patriam*. The application of Criminal Law and the protection of human rights are within the competences of the Attorney General of the Republic.

Matters relating to criminal offences, investigation of their commission and initiation of criminal proceedings are under his exclusive jurisdiction. His instructions on these matters cannot be considered as a simple legal opinion, which a public law organization can ignore by choosing a different opinion from another lawyer .

Certainly the AG as a matter of standard practice gives detailed reasons in the case file for the initiation of non-criminal prosecution and informs the complainant accordingly and to the extent that reasons of public interest or the protection of other persons rights permit it.

Additional to the above Cyprus Republic enacted in 2016 a supportive legislation for the crime victims support and protection rights, Law 51 (I) 2016 in order to increase the effectiveness on the application of legislation of victims.

This legislation provides among others the strengthening of the victims rights to receive information about their case.

6. Can you please provide information on the Academy of the Law Office?

a. Has it become operational?

b. Could you please provide more information regarding the curricula of the school of the judiciary how it is design, topics covered, etc.?

In 2022, the Law Office of the Republic of Cyprus established an in house training Academy.

The main tasks of the Academy are the following:

- (I) to promote and develop programs for the basic training of recruits of the Law Office,
- (II) to promote and develop programs for the continuing (lifelong) training of legal officers, and
- (III) to facilitate training for governmental officers on legal areas related to the mandate of the Law Office.

The training programs will not only cover areas of law, legal skills and practice, but they will also address a variety of subjects relevant to the work of the legal officers, such as computer skills, organization of work and management skills.

Furthermore, the Academy aims to promote and enhance a high level of expertise and professional culture within the Law Office of the Republic and ensure that the rules of ethics and the code of conduct are embedded in their daily work.

The establishment of the Academy is considered to be of great importance since it will institutionalize training for all legal officers according to their needs in a structured way which will certainly have a positive impact on the Law Office.