



COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 26 September 2003

CDL (2003) 62
English only

Opinion no. 232/2003

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

DRAFT LAW
ON THE HUMAN RIGHTS DEFENDER
OF THE REPUBLIC OF ARMENIA

DRAFT AS IT PASSED THE SECOND READING**UNOFFICIAL TRANSLATION****LAW OF THE REPUBLIC OF ARMENIA
ON THE HUMAN RIGHTS DEFENDER****Article 1. General Provisions**

The present Law defines the procedure of appointment and dismissal of the Human Rights Defender, as well as the powers, the terms of service and the guarantees for the performance of duties of the Human Rights Defender.

Article 2. Human Rights Defender

1. The Human Rights Defender (hereafter – the Defender) is an *autonomous and independent* official, who, acting pursuant to the Constitution and the Laws of the Republic of Armenia, *as well as the principles and norms of International Law*, protects human rights and fundamental freedoms violated by the central and local government agencies and their officials.

Article 3. Appointment of the Defender

1. Citizens of the Republic of Armenia having reached 35, having higher education, necessary knowledge and experience in the sphere of protection of human rights and fundamental freedoms as well as having high public respect within the society can be appointed for the position of the Defender.
2. The Defender shall be appointed by the National Assembly by a vote of more than 3/5 of the general number of deputies from candidates nominated by both the President of the Republic and at least 1/5 of the National Assembly deputies.
3. The Defender shall be appointed to office for a term of 6 years.
The same person shall not be appointed to the office of Defender for more than two consecutive terms.

Article 4. Restriction on Other Activities of the Defender

1. The Defender shall not hold any state or other office or perform other work for compensation, except for scientific, pedagogical or creative activities.
2. The Defender shall not be a member of any political party, nor shall nominate his/her candidacy for elections, participate in pre-election campaigns.
3. Within 14 days after assuming the Office, the Defender shall discontinue any activity that is inconsistent with this Law.

Article 5. Independence of the Defender

1. The Defender shall be independent in executing his/her powers and shall be guided only by the Constitution and the Laws of the Republic of Armenia, as well as *norms and principles of International Law*.

The Defender shall not be subordinated or accountable to any central or local government agency or official.

2. The Defender shall not be obligated to provide clarifications, not even as a witness, about the nature of a complaint or a document in his/her possession. S/he shall not make them accessible for familiarization in any other way, different from the cases and procedures stipulated by the Law.

Article 6. Termination of Defender's Powers

1. The Defender's powers shall terminate on the day following the date of expiry of his term.
2. The Defender's powers shall be terminated prior to the end of the term if:
 - 1) the requirements of the Article 4 of this Law have been violated;
 - 2) a verdict of the Court convicting the Defender enters into legal force;
 - 3) the Defender loses citizenship of the Republic of Armenia;
 - 4) the Defender submits a letter of resignation to *the National Assembly* of Armenia;
 - 5) the Defender is declared unable to perform his/her functions, missing or deceased by an effective decision of the Court;
 - 6) the Defender fails to perform his/her official responsibilities for more than 6 subsequent months due to his/her health conditions; and
 - 7) in case of the Defender's death.

In the case of early termination of the powers of the Defender, this issue can be put on the agenda of the NA by the people authorized to do so in accordance with the Article 3 of the present Law. The issue of early termination of the powers of the Defender is settled by a vote of more than half of the general number of deputies.

3. In case of termination of the Defender's powers, the new Defender shall be appointed within a month from the date of termination of the powers of the previous Defender. Before appointment of the new Defender, the responsibilities of the Defender shall be performed by the Deputy Defender.

Article 7. Complaints that are Subject to the Defender's Consideration

1. The Defender shall consider the complaints concerning violations by central and local government agencies and their officials of the human (including citizen's) rights and fundamental freedoms provided by the RoA Constitution, laws, other legal acts and international treaties of the Republic of Armenia, as well as by the principles and norms of International Law.

The defender cannot intervene into judicial processes. S/he may ask for information on any case that is on the stage of trial and forward recommendations/comments to the court, as to guarantee the rights of citizens to fair functioning of the court system as enshrined in the Constitution and norms of International Law. The defender has the right of providing advice to those that wish to appeal the decisions, judgments of the court.

2. The Defender shall not consider the complaints concerning the actions of non-governmental agencies and public organizations and their officials.
3. The Defender shall have the right to attend and speak at Cabinet meetings, as well as at meetings in other state agencies when issues related to *human rights and fundamental freedoms* are discussed. The Defender shall also have the right to propose for discussion at these sessions issues related to violation of human rights and fundamental freedoms as well as issues related to violation of this Law by state institutions, their subordinate bodies or their officials.
4. The Defender shall have the right to attend the sessions of the National Assembly of the Republic of Armenia and make a speech in accordance with the procedure defined by the

National Assembly Statute when issues related to human rights and fundamental freedoms are discussed.

Article 8. The Right to Appeal to the Defender

1. Any individual regardless of his/her nationality, citizenship, place of residence, sex, race, age, political and other views, and capabilities can appeal to the Defender.

The Defender has the right of a free access by his own initiative to *military units*, police detention centers, preliminary detention facilities or serving their sentence in penitentiaries, as well as persons in other places of coercive detention in order to get/receive complaints from the applicants.

Persons who are under arrest, preliminary detention facilities or serving their sentence in penitentiaries, as well as persons in other places of coercive detention shall also have the right to appeal to the Defender.

The Defender or his/her representative shall be provided the opportunity to have confidential, separate, unrestricted communication with persons in *military units*, preliminary detention facilities or serving their sentence in penitentiaries, as well as persons in other places of coercive detention.

Conversations of the Defender or his representatives with persons mentioned in this paragraph shall not be subject to any interference or eavesdropping.

Submission of claims or receiving assistance from the Defender shall not result in any criminal, administrative, or other liability, nor in any discrimination towards the applicant.

2. Legal entities can also present claims to the Defender.

A complaint made on behalf of a legal entity shall be qualified as an appeal against violation of human rights and *fundamental freedoms*, if violation of the legal entity's rights entails violation of the rights and *fundamental freedoms* of physical persons participants of the entity (shareholders, stockholders, members, etc.) as well as the officials of that entity; or those who suffered from the damage or can potentially suffer because of the violation of the rights of legal entity.

3. Representatives of the persons, as well as family members and devisees of the deceased persons can appeal to the Defender with the purpose of protecting of the other persons' rights.
4. Central and local government, except for the trusteeship and guardianship agencies, shall not have the right to appeal to the Defender.
5. State officials shall have the right to appeal to the Defender for protection of the human rights and fundamental freedoms only as a physical person, who's rights and freedoms have been violated.

Article 9. Appealing to the Defender

1. A complaint shall be submitted to the Defender one year from the day when the complainant became aware of or should have become aware of the violation of his/her human rights and fundamental freedoms.
2. Within the first year of the effectiveness of this Law, complaints about violation of human rights and fundamental freedoms regarding the past *three* years can be submitted to the Defender. There shall not be a special compliant form but the complaint shall contain the first name, last name, place of residence (address) of the physical person, or the name, legal form and location of legal entity submitting the complaint, as well as indication of human rights and *fundamental* freedoms violated or being violated.

If the complainant possesses documents necessary for clarification and settlement of the case, as well as acts adopted in judicial or administrative procedure, these documents may be attached to the complaint.

3. The complaint may be delivered both in writing and orally. The content of the oral complaints and the data discussed in the second part of this Article shall be recorded by the Defender or his staff.
4. The complaints and other documents sent to the Defender by persons under arrest, in pre-trial or serving their sentence in penitentiaries, as well as persons in other places of coercive detention, shall not be subject to investigation or censorship and shall be directed to the Defender within 24 hours by the administrative staff of those institutions.
5. Upon the request of the complainant the agency receiving complaints addressed to the Defender shall be obligated to provide a confirmation (receipt) on receiving the complaint.
6. No stamp duty shall be collected for the complaints sent to the Defender.

Article 10. Complaints that are not subject to the Defender's Consideration

1. The Defender shall not consider those complaints that must be settled only by Court. Likewise, the Defender shall discontinue consideration of a complaint if after commencing the process of consideration, the interested person files a claim or an appeal with the Court.
2. The Defender shall be entitled to not consider anonymous complaints, as well as those claims that do not contain, as he deems, violations of the *human rights and fundamental freedoms* and do not specify the request.
3. If the issue raised in the complaint is of such nature that may be settled by another state agency or official, and if there was no prior discussion of the case by the said official, upon the consent of the complainant the Defender may assign the complaint to that official for consideration and oversee the process of discussion.

In this case the complainant shall be notified about the assignment of the complaint to another state official.

Article 11. Receiving of Complaints

1. Upon receiving a complaint the Defender shall make a decision on:
 - 1) accepting the complaint for consideration;
 - 2) explaining those methods to the complainant that s/he is entitled to apply for the protection of his/her rights and freedoms;
 - 3) upon complainants' consent assigning the complaint to a central or local government agency or their officials who has the jurisdiction to settle the case;
 - 4) not considering the complaint.
2. The refusal to consider a complaint shall be substantiated in consistence with the first part of Article 10 of this Law. If the Defender decides to decline a complaint s/he shall explain to the complainant the statutory procedure for consideration of that complaint
3. Defender shall send a copy of the adopted decision to the complainant *as soon as possible, but no later than in 30 days time from the date s/he received the complaint.*
4. *The Defender shall by his own initiative commence an investigation of the issue, especially in cases when there is information on mass violations of human rights and freedoms, or if*

these violations have exceptional public significance or are connected with the necessity to protect the rights of such persons who are unable to use their legal remedies.

5. After making a decision on accepting a complaint for consideration, the Defender shall be entitled to apply to the relevant state agencies or their officials for assistance in the process of examining the circumstances subject to disclosure.
6. Examination of issues indicated in the complaint cannot be performed by a central or local government agency or official, whose decisions or actions (inaction) are being complained against.

Article 12. Examination of Issues Raised in a Complaint

1. After making a decision on accepting a complaint for consideration, the Defender shall be authorized to the following for examination of the issues raised in the complaint:
 - 1) have free access to any state institution or organization, including military units, prisons, inter alia preliminary detention facilities and penitentiaries;
 - 2) require and receive information and documentation related to the complaint from any central or local government agency or their officials;
 - 3) receive from central or local government agencies or their officials with the exception of Courts and judges, information clarifying the issues that arise in the process of examination of the complaint;
 - 4) instruct relevant state agencies to carry out expert examinations of and prepare findings on the issues subject to clarification during investigation of the complaint;
 - 5) familiarize with those criminal, civil, administrative, disciplinary, economic and other cases of violation of rights on which the respective Court verdicts and decisions have entered into legal force, as well as materials related to such cases on which no proceedings have been instituted;
 - 6) familiarize with any information and documentation related to the complaint.

By the written decision of the Defender the powers provided in items 1, 2, 5 and 6 of this paragraph can be exercised by members of the Defender's staff or by members of the Expert Council.

2. Through the relevant statutory procedure the Defender can be familiarized with information containing state and commercial secrets or other information qualified as confidential by the law.
3. Officials of central and local government agencies within the framework of their jurisdiction shall transfer to the Defender, free of charge and without hindrance, the required information and documentation which is necessary for the review of the complaint.
4. Materials, documents or information required by the Defender shall be delivered *as soon as possible*, but no later than within *30 days* after the Defender's request, unless a later deadline is indicated in the request.
5. In exercising his/her powers the Defender shall enjoy the right of urgent reception by state officials and top management staff of central and local government agencies and organizations and coercive detention facilities.

Article 13. Clarifications given by Central and Local Government Agencies on the subject of the Complaint

1. While examining the complaints, the Defender shall give an opportunity to central and local government agencies or their officials, against decisions or actions (inaction) of whom the

complaint has been filed, to give clarifications on the subject of the complaint and the results of examinations, and give grounds for their position in general.

2. For the above purpose, within 10 days after completing examination of the complaint, the results of the examination shall be provided to the central *or local government* agency or official, against decisions or actions (inaction) of whom the complaint has been filed. The agency shall send its position statement and explanations to the Defender *no later than within 15 days* after receiving the results of the examination. The mentioned deadline can be extended by the Defender.

Article 14. Publication of Complaints or their Content

1. The complaints under review or the content of those complaints shall not be subject to publication before the Defender makes a final decision on the complaint.
2. The Defender shall not have the right to publish any personal data about the complainant or any other person that were disclosed during examination of the complaint without their written consent.

Article 15. The Defender's Decisions

1. Based on the findings of the *examined* complaint, the Defender shall decide:
 - 1) to propose to the central or local government agency or official, the decisions or actions (inaction) of whom have been qualified by the Defender as violating human rights and freedoms, to eliminate the committed violations, indicating the possible measures necessary and subject to implementation for the restitution of human and fundamental freedoms;
 - 2) to *invalidate the facts mentioned in the complaint, if during the examination* no violation of human rights and fundamental freedoms by the central or local government agencies or officials has been revealed;
 - 3) to apply to the Constitutional Court on the issues of violation of human rights and fundamental freedoms;
 - 4) to bring an action before the court on invalidating in full or partially the normative legal acts of the central and local government agencies or officials that violate human rights and fundamental freedoms and contradict the law and other statutes, if the central or local government agencies or officials, who committed the named violation, do not invalidate in full or partially their corresponding legal act within the prescribed period;
 - 5) to recommend that the authorized state agencies execute disciplinary or administrative penalties or file criminal charges against the official whose decisions or actions (inaction) violated human rights and fundamental freedoms and (or) violated the provisions of this Law.
2. Within 5 days after adopting the decision The Defender shall transfer a copy of the decision on the complaint, indicated in paragraph 1 of this Article to the central or local government agencies or the officials whose decision or actions (inaction) have been appealed against.
3. Having received the Defender's motion indicated in item 1 of this Article the central or local government agency or official shall inform the Defender in writing about the measures taken within *20 days* after receiving the motion. If required, this deadline may be extended upon the Defender's consent.
4. The Defender shall transfer to the complainant a copy if his/her decision on the complaint indicated in item 1 of this Article, within 5 days after adoption of the decision.

The Defender's decision cannot hinder the person from protecting his/her rights, and fundamental freedoms by other means not prohibited by law.

5. Upon necessity the Defender can submit special reports to the President of the Republic and the National Assembly.
6. The Defender may publish in mass media special information about the central or local government agency or official who failed to respond to his/her motion or did not comply or only partly complied with the requirements of the motion, together with the responses of the central or local government agency or their officials to the Defender's decision and motion if all other means of resolving the issue through state authorities have been exhausted.

Article 16. Clarifications Given by the Defender

Based on the results of review and analysis of information on human rights and freedoms and in relation to finalizing the results of reviews, the Defender shall be authorized to provide advisory clarifications and recommendations to central and local government agencies and officials.

Article 17. The Defender's Report

1. Each year, *during the first quarter of the year*, the Defender shall deliver a report on *his/her activities and* on the human rights situation in the previous year to the President of the Republic of Armenia and the representatives of executive, legislative and judicial authorities. The reports shall be presented to the National Assembly during the first sitting of the National Assembly's spring session. *The Defender also presents his/her report to the mass media and relevant NGOs.*
2. In exceptional cases that produce widespread public response, or in case of flagrant violation of human rights or mass occurrence of non-elimination of the violations in due time, the Defender shall have the right to deliver unscheduled reports.

Article 18. Liability for Non Compliance With the Requirements of the Law

Intervention into activities of the Defender that is aimed at influencing the Defender's decisions, or hindering implementation of the Defender's statutory responsibilities, or failure to submit the required information or documentation in due time, or threatening or offending the Defender shall incur liability in the procedure and scope stipulated for similar violations against the Court or the Judge.

Article 19. The Defender's Immunity

1. The Defender shall have immunity over the whole period of execution of his/her powers. No criminal prosecution shall be brought against him/her; s/he cannot be detained or arrested. The Defender and his/her apartment cannot be searched without the consent of the National Assembly. The immunity of the Defender shall be extended also to his/her luggage, correspondence, communication means used by the Defender, as well as documents belonging to him/her.
2. In case the Defender is caught in the act of crime, the official person executing the arrest shall immediately inform the National Assembly about the fact so as a decision is made on granting consent that allows further enforcement. If such consent is not received within 24 hours, the Defender shall be released immediately.
3. The Defender shall have the right to refuse to testify as a witness in a criminal or civil case on circumstances which became known to him in the course of performing his/her responsibilities.

Article 20. Social Guarantees for the Defender

1. Salary of the Defender shall be equal to the salary of the Chairman of the Constitutional Court.
2. The Defender shall be entitled to an annual paid vacation of 30 working days.
3. Throughout the duration of his/her term the Defender shall be exempt from military service, drafting and military training.

Article 21. Security of the Defender

1. The Defender and members of his/her family shall be under the protection of the State. Based on the request of the Defender, the competent state agencies shall take all the necessary measures to ensure the security of the Defender and members of his family.

Article 22. The Deputy Defender

1. The Defender shall have a deputy, who shall be appointed upon suggestion of the Defender, in the same procedure and on the same conditions as this Law defines for the Defender, shall have the same guarantees for independence and actions.
2. The Deputy Defender shall perform the responsibilities of the *Defender in the absence of the Defender or at the Defender's instruction, or in case of early termination of the Defender's powers. In this cases the Deputy Defender shall enjoy all the rights of the Defender, social guarantees and personal immunity.*
3. Other responsibilities of the Deputy Defender shall be assigned by the Defender.

Article 23. The Status of the Defender's Staff

1. The Defender shall form a staff to ensure the fulfillment of his/her activities.
2. The Defender's staff shall provide legal, organizational, analytical, informational and other support to the Defender's activities.
3. The Defender's staff is a state institution with its own seal bearing the Coat of Arms of the Republic of Armenia and the name of the institution.

Regional representative offices of the Defender of human rights may be established in marzes.

4. Members of the Defender's staff shall not be considered civil servants and shall work by term contracts. *The Defender's staff retains the rights to return to civil service, providing they were involved in this field before. The work as a member of the Defender's staff is equaled to the work at civil service.*
5. Those persons that hold any position in the Defender's staff cannot be convicted, persecuted, detained, arrested or brought to court for any action performed, opinion expressed or decision made while performing their responsibilities under the Defender's instructions. In all these circumstances when any person holding a post in the staff is detained, arrested or brought to court, the enforcing agency shall inform the Defender of this occurrence in the defined procedure and due time.

Article 24. Financing of the Defender's Activities

1. The Defender and the Defender's staff shall be financed from the state budget through a separate line item.

The budget request of the Defender and the Defender's staff shall be prepared and submitted to the Government of the Republic of Armenia by the Defender, pursuant to the defined procedure. *The budget request shall be included into the total state draft budget without amendments. Should the Government deem that less money can be allocated from the State budget than stated in the budget request, then the Government should include its own*

proposal and grounds for decreasing the budget request during the discussions of the state budget at the National Assembly.

2. The Defender shall independently prepare the expenditure estimates of funds under his/her disposal.
3. The Defender shall submit a financial report in accordance with the procedure stipulated in the Article 17 of this Law.

Article 25. Structure of the Defender's Staff

1. The Defender shall approve the structure and the charter of the Defender's staff and shall directly supervise the activities of the staff.
2. Within the limits of expenditure estimates, the Defender shall determine the number and positions of the staff.
3. The Defender shall issue orders on matters related to the management of the staff.

Article 26. The Expert Council

1. To benefit from advisory assistance, the Defender may establish an Expert Council composed of individuals with respective background in human rights and fundamental freedoms.
2. Members of the Expert Council shall be invited by the Defender.
3. The Expert Council shall not exceed 20 members.
4. Members of the Expert Council shall be involved on voluntary basis and shall perform their activities without any compensation.

Article 27. Transitional Provisions

Paragraph 2 of Article 3; *Article 6, paragraph 1 point 4 and the last paragraph*; Article 15 paragraph 1, point 3 shall enter into force upon establishing by the Constitution of the Republic of Armenia provisions related to the appointment of the Defender and the right to apply to the Constitutional Court.

Until that time the President shall appoint the Defender after consulting with the groups and factions of the National Assembly and shall provide the consent required by paragraphs 1 and 2 of the Article 19 and the Article 6.

The powers of the first Defender shall expire on the 30th day upon the entry into force of the Constitutional amendments.

The first Human Rights Defender shall be appointed within two months after enactment of this Law.

The present law enters into force on 01/01/2004.

Members of the National Assembly of Armenia

Mr. T. Torosyan

Mr. V. Khachikyan

Mr. L. Aleksanyan