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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

DRAFT LAW

**ON MAKING AMENDMENTS AND ADDITIONS
TO THE LAW
ON THE HUMAN RIGHTS DEFENDER**

AND

**THE LAW
ON THE HUMAN RIGHTS DEFENDER**

OF THE REPUBLIC OF ARMENIA

LAW OF THE REPUBLIC OF ARMENIA

**ON MAKING AMENDMENTS AND ADDITIONS TO THE LAW OF THE REPUBLIC OF
ARMENIA
ON THE HUMAN RIGHTS DEFENDER**

Article 1. In Article 3 of the ՀՕ-23-Ն Law of the Republic of Armenia of October 21, 2003 (hereinafter the Law) on the Human Rights Defender

1) To replace the words “when assuming the position” with the words “when being elected” in the second paragraph of the second part.

2) In the first sentence of the 3-rd part to add the word “next” before the word “day”.

3) The 4-th part shall read as follows:

“4. Next elections of the Defender are held at least ninety days before the end of the term of the Defender’s powers”.

Article 2. The 2nd part of Article 5 of the Law shall read as follows:

“2. The Defender, his/her deputies, staff of the Defender and the members of the Expert Council of the National Mechanism for Violence Prevention 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 or to make them accessible for familiarization.

Article 3. In Article 6 of the Law

1) In the first part to replace the words “following the oath” with the words “following the date of taking office”.

2) To add a new sentence in the 4th part with the following content:

“Before the election of a new Defender, the duties of the Defender are performed by the eldest deputy.

Article 4. The Article 6.1. of the Law shall read as follows:

«Article 6.1. The Defender as an independent national preventive mechanism

1. The Defender is recognized as an Independent National Preventive Mechanism established by the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

2. In order to ensure the implementation of the functions of the National Preventive Mechanism, a separate unit of national mechanism for violence prevention is established by the Defender in the staff.

3. The Defender is authorized to:

- 1) Conduct regular visits, as well as, visits upon necessity, to places of restriction of liberty in order to prevent torture and other cruel, inhuman or degrading treatment or punishment. The Defender is not obliged to provide a notice beforehand on the time, date and aim of the visits.
- 2) Visit in a confidential, separate, unrestricted manner persons held in places of restriction of liberty, as well as have conversations with them, with the staff members or any other person present in the respective institution, upon necessity, to involve an interpreter, use technical equipment.
- 3) Make recommendations to competent bodies and organizations with the aim to improve detention conditions, as well as to prevent torture and other cruel, inhuman or degrading treatment or punishment.
- 4) Receive information on the number and location of places of restriction of liberty as stipulated in the 4th part of this Article, as well as information on the number of persons held there.
- 5) Request and receive information on treatment of persons held in places of restriction of liberty, detention conditions, as well as on any other issue necessary for the implementation of his/her powers.
- 6) To familiarize with all the documents necessary for carrying out his/her powers, to receive copies of those documents.
- 7) Perform other duties prescribed by legislation.

4. According to this Law, places of restriction of liberty are:

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- 1) The central apparatus of the Police, its direct subordinate units, Yerevan and Regional Police departments and their subordinate units
- 2) Structures of the National Security bodies
- 3) The Central body of the Investigative Committee and its units
- 4) Places of holding arrested and detained persons
- 5) Penitentiary institutions
- 6) State border crossing points and transit zones, including special centers for keeping citizens of the Republic of Armenia, foreigners and stateless persons
- 7) Psychiatric institutions
- 8) Special care institutions
- 9) Special educational institutions
- 10) Structures of armed forces, including military units and their subordinate departments
- 11) Transportation means for transferring persons deprived of liberty
- 12) Any other place, where an individual's freedom is restricted or can be restricted by the decision, order, consent, permission or at the instigation of a state and local self-governing body, as well as any other place where a person can not leave on his own will without the decision or permission of the court or other administrative or other body or an official person.

5. Based on the written decision of the Defender, the powers or part of them prescribed by the 3-rd part of this Article can be carried out by the Defender's deputies, staff members, as well as members of the Expert Council of the National Mechanism for Violence Prevention”.

Article 5. In Article 11 of the Law

- 1) In the 1st sentence of the 2nd part to replace the words “pursuant to the 1st part of the Article 10 of this Law” with the words “in accordance with the grounds envisaged by this Law.
- 2) To supplement the 4th part with a new sentence with the following content:
“The Defender while considering an issue on his/her own initiative, uses all the powers prescribed by this Law.

Article 6. In Article 12

- 1) To replace the words “The examination of the issues raised in the complaint” in the title with the words “The powers of the Defender”.
- 2) The 1st point of the 1st part shall read as follows:

- “1) to have an unimpeded access to any state and local self governance body, institution, place or organization, regardless of their organization and ownership types, including military units, detention facilities, including also pre trial detention facilities and places of imprisonment”.
- 3) The 2-nd point of the 1st part shall read as follows:
 “2) To request and receive from any state or local self-governing body, institution and organization, regardless of type of organization and ownership, from their officials and/or staff members, materials, documents, necessary information relevant to the complaint or pertaining to the issue being discussed by his own initiative, as well as to request and obtain support during the visits to those institutions.
- 4) In the 3-rd point of the 1-st part to add the words “or of the issue being examined on his/her own initiative” after the words “the complaint”.
- 5) In the 4-th point of the 1-st part to add the words “of the issue being examined by his/her own initiative” after the words “the complaint”.
- 6) The 5-th point of the 1-st part shall read as follows:
 “5) To familiarize and receive electronically or via other data storage devices materials of criminal, civil, administrative, disciplinary, economic and other offences on which the respective Court judgements and decisions have entered into legal force, as well as the materials related to which no proceedings have been initiated or the proceedings have been terminated”.
- 7) In the 1st sentence of the 6-th point of the 1-st part after the words “the complaint” to add the words “or the issue being examined on his/her own initiative”, as well as to add the words “, to receive copies of them” after the word “documentation”. In the 2-nd sentence of the 6-th point of the 1st part to replace the words “also the Defender’s Staff or members of the Expert Council” with the words “also his/her deputies, Defender’s staff members and the members of the Expert Council of the National Mechanism for Violence Prevention”.
- 8) In the 3-rd part to replace the words “information, which is necessary for the review of the complaint” with the words “any necessary clarification or information for performing the Defender’s powers”.
- 9) In the 4-th part to add the words “, clarifications” after the word “the documents”.
- 10) To supplement the Article with the 6-th part of the following content:
 “6. The Defender may perform other powers established by the legislation”.

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Article 7. In the 2-nd part of Article 14 of the Law to add the words “or his/her activity” after the words “examination of the complaint”.

Article 8. In the Article 15 of the Law

1) The 1-st paragraph of the 1-st part shall read as follows:

“Based on the results of the examined complaint or of the examination of the issue on his/her own initiative, the Defender adopts one of the following decisions”.

2) In the 2-nd part to replace the words “in the 1-st part” with the words “in the 1-st, 4-th and 5-th points of the 1-st part”.

Article 9. To supplement the Law with Article 16.1 with the following content:

“Article 16.1. Discussion of the drafts of legal acts

Draft laws and other legal acts pertaining to human rights and freedoms should be sent to the Human Rights Defender of Republic of Armenia for an opinion before presenting them to the Government”.

Article 10. To supplement Article 17 of the Law with a 3-rd part of the following content:

“3. The Defender, as an Independent National Preventive Mechanism, shall submit an annual report to the RA President, legislative, executive and judicial bodies, as well as to relevant non-governmental organizations and mass media during the first trimester of each year”.

Article 11. To supplement the Law with Article 22.1 of the following content:

“Article 22.1. Deputies to the Human Rights Defender

1. The Defender appoints his/her deputy/deputies.
2. The Defender distributes the work among his/her deputies.
3. One of the deputies shall, on the Defender’s instruction, conduct activities in the field of protection of human rights and freedoms in armed forces and shall annually, during the first trimester present a report to the Defender on the situation of human rights in armed forces which, in accordance with the procedure set out by this Law, will then be presented to the President of RA, bodies of legislative, executive and judicial branches, as well as to relevant non-governmental organizations and mass media”.

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4.

Article 12. The 5-th part of the Article 23 of this Law shall read as follows:

“5. The persons who hold any office in the Defender’s staff or are members of the Expert Council shall not be interrogated, shall not provide explanations (also including as a witness), shall not be arrested or be subjected to criminal prosecution for action, inaction, opinion or decision when exercising their powers by the instruction of the Defender. This provision shall remain in force—even after the termination of powers of the person holding office in the Defender’s office or of the Expert Council member. If any person holding office in the Defender’s staff or any Expert Council member is subjected to criminal prosecution, is arrested or a precautionary measure is executed against him or her on a ground not mentioned in this part, then the body executing the criminal proceedings shall immediately inform the Defender”.

Article 13. To supplement Article 24 of the Law with a 2.3 point of the following content:

“2.3. Financial expenses of the Defender’s activities in the capacity of the National Preventive Mechanism are covered by state budget from the budgetary means allocated for the Defender’s staff with a separate listing”.

Article 14. In Article 26

- 1) In the 1st part to add the words “, from representatives of non governmental organizations, international organizations and experts in other fields” after the words “of individuals with respective background in human rights and fundamental freedoms”.
- 2) In the 4-th part to add the words “excluding the members of the Expert Council of the National Mechanism for Violence Prevention, for whom remuneration may be envisaged in case if it is foreseen by the Law of the Republic of Armenia on State Budget” after the words “without compensation”.
- 3) To add 5th, 6th, 7th, 8th, 9th, 10th and 11th parts with the following content:

“5. The Defender establishes an Expert Council of the National Mechanism for Violence Prevention (hereinafter Preventive Council) with the aim to benefit from advisory assistance while performing his/her functions as an independent national preventive mechanism. The composition of the Council includes representatives from non-governmental organizations, as well as independent experts working in a sphere relevant to the activity of the independent national preventive mechanism. Representatives of international organizations may be included in the composition of the Council. The composition of the Council is confirmed by the Defender.

6. The members of the Expert Council of the National Mechanism for Violence Prevention are involved in the Council for four year term, with the possibility to get reappointed. When confirming the composition of the Expert Council, the Defender takes into consideration the necessity of ensuring gender balance, as well as “the principles related to the status of national institutions for protection and promotion of human rights”.

7. The formation and functioning of the Council, number of members, requirements, as well as the grounds of suspension and termination of membership are established in accordance with the order adopted by the Defender.

8. Representatives of non-governmental organizations are involved in the Council on the basis of applications presented by relevant organizations and independent experts - on the basis of their own application in accordance with procedure established by the Defender.

9. The Expert Council members, without the permission of the Defender, don't have the right to publicize information that became available to them as a result of the carried out activities, including information regarding the applicant or other persons. They also don't have the right to carry out such activities which would be in violation of the provisions of this Law.

10. A member of the Council can be a citizen of the Republic of Armenia who has attained the age of twenty-one, regardless of sex, race, colour, ethnic or social origin, genetic features, language, religion, mentality, political or other opinion, belonging to a national minority, property, birth, disability, age or personal or social or other circumstances and who complies with the requirements established by the order of the Defender.

11. Expenses of business trips for the Expert Council members of the National Mechanism for Violence Prevention are covered by the state budget through the budgetary means allocated to the Defender's staff.

Article 15. Transitional provisions

1. The order on formation and functioning of the Expert Council of the National Mechanism for Violence Prevention, as well as the composition of the Expert Council is confirmed by the Defender in 2 months after the Law enters into force.

2.

Article 16. This Law enters into force on the tenth day following its official publication.

SUBSTANTIATION

ON ADOPTING THE DRAFT LAWS ON MAKING AMENDMENTS AND ADDITIONS TO THE LAW OF THE REPUBLIC OF ARMENIA ON THE HUMAN RIGHTS DEFENDER, ON MAKING AN ADDITION TO THE LAW OF THE REPUBLIC OF ARMENIA ON PUBLIC SERVICE, ON MAKING AN ADDITION TO THE CODE OF REPUBLIC OF ARMENIA ON CRIMINAL PROCEDURES, ON MAKING AN ADDITION TO THE ELECTORAL CODE OF REPUBLIC OF ARMENIA, ON MAKING ADDITIONS TO THE PENITENTIARY CODE OF REPUBLIC OF ARMENIA, ON MAKING ADDITIONS TO THE LAW OF THE REPUBLIC OF ARMENIA ON TREATMENT OF ARRESTEES AND DETAINEES, ON MAKING AMENDMENTS TO THE CODE OF REPUBLIC OF ARMENIA ON ADMINISTRATIVE OFFENCES, ON MAKING AN ADDITION TO THE LAW OF THE REPUBLIC OF ARMENIA ON LEGAL ACTS, ON MAKING AMENDMENTS TO THE DECISION N- 1584-N OF THE RA GOVERNMENT OF 3 OCTOBER 2002, ON MAKING AMENDMENTS TO THE DECISION N 2335-N OF THE GOVERNMENT OF THE REPUBLIC OF ARMENIA OF DECEMBER 29, 2005

1. **Importance of the Legal act (Purpose).** The necessity of adopting the present drafts is due to the circumstance that since 2004 during the implementation of the Law of the Republic of Armenia on Human Rights Defender (hereinafter the Law) certain number of issues have been identified relating to ensuring sufficient mechanisms for the implementation of separate provisions of the Law, the need for envisaging adequate provisions in other legal acts, clarification of separate provisions, arising of unnecessary obstacles for the activity of the Ombudsman as a result of the various interpretations of some provisions of the Law. The effective solution of these issues is in making relevant amendments to the law of the Republic of Armenia on the Human Rights Defender and to other related legal acts which would also contribute to the execution of the Defender's powers more effectively. The necessity of the adoption of the drafts also stems from the National Strategic Action Plan for Protection of Human Rights, adopted by the Decision N 303-N of the Government of the Republic of Armenia of February 27, 2014.

Particularly, among others, the following is envisaged by the Action Plan: "Elimination of the existing contradictions in the Law of the Republic of Armenia and correction of ineffective regulations, clarification of the list of closed (semi closed) institutions in the meaning of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, publication of the thematic annual report on the human rights situation in the armed forces of the Republic of Armenia, establishment

of an Institute of Military Ombudsman in accordance with the current regulations of the Law on the Human Rights Defender, clarification of mechanisms on subjecting officials to administrative liability by the Defender for violating the established time frames, envisaging additional guarantees for the activity of persons holding any office in the Staff of the Defender. The recommended changes and amendments are greatly also due to the necessity of harmonizing the Law with the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. These recommendations have been prepared taking into consideration the recommendations of the UN Subcommittee on Prevention of Torture.

2. The current situation of regulated relations and existing problems: solutions offered to tackle the existing problems

The National Assembly of RA adopted the RA Law on the Human Rights Defender on 21 October, 2003. The Law particularly defines the procedure for electing and dismissing the Defender, his/her powers, forms and guarantees of his/her activity. During the operation of the Human Rights Defender's Institute, the Defender's post has been vacant twice for a certain period of time, which caused obstacles for the functioning of the institution. By envisaging a minimum period of 90 days in the Draft for holding elections, sufficient guarantees will be established to exclude the possibility that the Defender's post might remain vacant again. Besides, a certain regulation is foreseen for assuming the Defender's powers by the Deputy Defender in case of an early termination of the Defender's powers. By the Law on making amendments to the RA Law on the Human Rights Defender, Article 6.1 was added to the Law N ՀՕ-23-Ն of Republic of Armenia of October 21, 2003 on Human Rights Defender of RA with the following content:

“The Defender is recognized as an Independent National Preventive Mechanism provided by the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment”.

Except for the aforementioned legal regulation, the international obligation assumed by the Defender has not been subjected to any other legal regulation. The UN Sub-Committee on Prevention of Torture (hereinafter Sub-Committee) has also expressed its concern on the lack of legal regulation in the Report presented to the Republic of Armenia (Hereinafter the Report) on 15 October 2014, upon the visit conducted in September 2013 with the aim to provide advisory assistance to the National Preventive Mechanism of the RA.

Therefore, the Sub-Committee has addressed the institutional format of the Independent National Preventive Mechanism (Hereinafter, NPM), suggesting to clarify it, taking into account the Principles related to the status of the national human rights institutions for promotion and protection of human rights.

The Report also stressed the state's obligation to ensure visits by the NPM, in a format and frequency established by the latter. The Report also stressed the state's obligation to provide the NPM with necessary resources, which also implies providing the NPM with the opportunity to have a sufficient number of staff members and ensuring their independence.

It was also recommended that the Republic of Armenia ensures that the NPM with its current and future structure, is provided with a sufficient number of employees, with the aim to ensure its capacity is in line with the number of places envisaged by the mandate, as well as sufficient to fulfill all the other important functions pursuant to the Optional Protocol.

The Sub-Committee has also recommended that NPM experts possess the required skills and required professional knowledge, including medical, psychological and other relevant professional skills. The "Ombudsman plus" model has been established in the Draft through which it will be possible, upon necessity, to engage persons having relevant professional skills, including medical, psychological and other experts and specialists, as well as civil society representatives in the activities of the Human Rights Defender, who might be entrusted with a wide range of authorities by the Defender's decision. According to the recommended "Ombudsman plus" model, relevant experts and specialists can be engaged on both paid and non-paid basis.

The Draft has clarified those places of restriction of liberty where the NPM can conduct visits. However, the envisaged list is not exhaustive, the necessity of which stems also from the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The need for such a regulation stems both from the current international practice and unnecessary obstacles for the activities of the Defender as a National Preventive Mechanism due to the various interpretations by state bodies of several provisions of the Law.

The Sub-Committee has also addressed the issue, indicating that "during its meetings with representatives of public authorities some representatives of the Government questioned the mandate of the NPM with regard to the detention places under their competence".

The Sub-Committee has at the same time stressed that "all the relevant governmental bodies must permit and give the NPM the opportunity to fulfil its mandate in full compliance with the provisions stemming from the Optional Protocol to the Convention against Torture

and other Cruel, Inhuman or Degrading Treatment or Punishment. These requirements, particularly, include the state's obligation to allow the representatives of the NPM to conduct visits to any places under that state's authority and control, be it public or private, where individuals are deprived of or can be deprived of their liberty either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence pursuant to Article 4 of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

In order to fulfill this obligation, the Sub-Committee recommends that this condition be explicitly included in the legislative basis of the NPM.

The Draft provides the financial expenses of the NPM in the state budget, from the budgetary means allocated for the Defender's staff with a separate listing.

The given amendment is again stems from the recommendations delivered by the Sub-Committee: "It's important that the National Preventive Mechanism be financed with a separate budget line from the State Budget and that a full financial and operating independence be ensured for that".

Funding should be sufficient in order for the National Preventive Mechanism to be able to conduct its visits in all the regions of the country, as well as to conduct other visits taking into consideration that sufficient budget contributes to ensuring the independence and functioning of the National Preventive Mechanism.

The financial means must also be sufficient to cover other infrastructure and logistics needs, including publication of reports and relevant tools for distribution, which are necessary to fulfil its mandate.

The Draft also envisages the authority of the NPM to make recommendations addressed to competent bodies and organizations with the aim to improve the detention conditions of persons held in any detention place. The recommendations can also be directed at preventing torture and other cruel, inhuman or degrading treatment or punishment which can relate to the existing and draft legislation.

The aforementioned provision again stems from the recommendation made in the Report by the Sub-Committee: "The National Preventive Mechanism must at least have the authority to regularly examine the treatment of the persons deprived of their liberty in places of detention as defined in article 4 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as authority to make recommendations to the relevant authorities, and to submit proposals and observations concerning existing or draft legislation".

Taking into account potential human rights violations during the electoral processes in the Republic of Armenia and the need for ensuring the possibility of adequately addressing those violations by the Defender, a provision has been envisaged on the right of the Defender or his/her representative to be present in the electoral precincts.

Additional regulations regarding the authority to discuss human rights issues on the Defender's own initiative have been provided in the Draft.

There have been various interpretations over the implementation of the Defender's authority to discuss issues on his/her own initiative in the law enforcement practice. These interpretations have caused unnecessary obstacles for the execution of the Defender's powers. Taking into account the issues reported previously, regarding visiting various institutions unimpededly, the list of institutions has been clarified and relevant amendments have been foreseen for other legal acts. Taking also into consideration that in practice there have also been obstacles for the Defender to access necessary materials, respective clarifications have been envisaged, the list of subjects providing information and support to the Defender has been broadened, as well.

The Draft also provides for an amendment, taking into consideration the need for establishing a Military Ombudsman model within the existing legal regulations, in accordance with the Action Plan of the National Strategy of Human Rights Protection adopted by the Decision N 303-N of the RA Government of 27 February 2014. Particularly, the specialized institute of the Deputy Defender in the field of protection of human rights and freedoms in armed forces is foreseen in the Draft. A provision is also envisaged on publishing of an annual report on the situation of human rights in the armed forces. Taking into consideration the fact that according to the Constitution of the Republic of Armenia, the Defender implements the protection of human rights and freedoms violated by state and local government bodies and their officials, as well as the fact that the Constitution does not envisage any exclusion from the scope of Defender's competence, the following issues might arise in case of establishing a separate institution of a military ombudsman. If the newly established body is entrusted with the Defender's powers in a specific field of human rights protection by law, and if the relevant fields are withdrawn from the Defender's competence, this would cause a direct contradiction with Article 83.1 of the Constitution of the Republic of Armenia. And if the powers in relevant fields are also entrusted to the Military Ombudsman, the overlap of activities and functions of these two bodies is unavoidable. As an alternative, a specialized Deputy Defender in the field of protection of human rights and freedoms in armed forces is envisaged by the Draft. A requirement is also

envisaged for publishing of an annual report on the situation of human rights in the armed forces.

In practice, there have been several recorded cases, when various state institutions tried to question or receive explanations or documents on the information that became known to the Human Rights Defender's staff members in the result of discharging the obligations stipulated by the Law.

In order to rule out such instances, respective amendments have been foreseen. The Draft also provides for provisions aimed at clarifying several regulations of the Law that give rise to unclear or diverse interpretation.

3. Institutions and individuals involved in the development of the Draft:

The Drafts have been developed by the Staff of the Human Rights Defender. The Drafts were sent to a number of non-governmental organizations, the Office of the United Nations High Commissioner for Refugees, the UN Subcommittee on Prevention of Torture, as well as to other international organizations with the aim to receive feedback. The recommendations and observations received have been taken into consideration to the extent possible.

4. The Subject of Regulation of this Law. The Draft foresees additional mechanisms for guaranteeing adequate functioning of the RA Human Rights Defender, Defender's staff, and NPM Expert Council members. The RA Law on Human Rights Defender is brought into full compliance with the Optional Protocol to the Convention against Torture, Inhuman or Degrading Treatment or Punishment. The specialized institute of the Deputy Defender in the field of protection of human rights and freedoms in armed forces receives legislative regulation. A provision is also envisaged for publishing of an annual report on the situation of human rights in the armed forces.

5. The expected result of the implementation of the legal act: Through the adoption of the drafts, it is expected to raise effectiveness of the activities of the Human Rights Defender as an NPM, strengthening the guarantees of independence of the Defender and the Defender's staff, as well as to clarify some imprecise regulations giving rise to controversial interpretation.

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

Adopted: 21.10. 2003

Signed: 19.11. 2003

Entered into the force: 01.01.2004

Amendments and supplements to the law of: 01.06.06, 07.12.10

Unofficial translation

Article 1. GENERAL PROVISIONS

The present Law defines the procedure of election and dismissal of the Human Rights Defender, as well as the powers, forms and the guarantees of his/her activity.

(Amendment of article 1 in 01.06.06 ՀՕ-112-Ն law)

Article 2. HUMAN RIGHTS DEFENDER

The Human Rights Defender (hereinafter referred to as the Defender) is an independent and unaltered official, who, guided by the fundamental principles of lawfulness, social co-existence and social justice, protects the human rights and fundamental freedoms violated by the state and local self-governing bodies or their officials.

(Amendment of article 2 in 01.06.06 ՀՕ-112-Ն law and in 07.12.10 ՀՕ-200-Ն law)

Article 3. ELECTION OF THE DEFENDER

1. The post of the Defender shall be held by a person having attained the age of 25, who has high degree of prestige in the society, who the last five years lives in Republic of Armenia, who is a citizen of the Republic of Armenia and has right to vote.

2. The Defender shall be elected by the National Assembly by the votes of more than 3/5 of the total number of deputies from candidates for a term of 6 years, nominated by at least 1/5 of the National Assembly deputies.

The Defender should take the following oath when assuming the position:

“Having accepted the commitments of Human Rights Defender I swear hereby to be faithful to RA Constitution and laws, the principles of justice, social co-existence as to defend the human rights and fundamental freedoms of individuals and citizens.

I swear to act in impartial, honest and diligent manner”.

3. The Defender shall take office on the day when the term of office of the previous Defender expires. In the event the office of the Defender is vacant at the moment of the election, Defender shall take office on the next day following the election.

4. Next election of the Defender should be held in 40 days preceding the termination of Defender's powers.

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(Amendment of article 3 in 01.06.06 ՀՕ-112-Ն law)

Article 4. RESTRICTION ON OTHER ACTIVITIES OF THE DEFENDER

1. The Defender shall not engage in entrepreneurial activity, shall not hold any office in state or local self-governing bodies or commercial organizations and shall not 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 he/she nominate his/her candidacy for elections, participate in pre-election campaigns.

3. Within 14 days after assuming Office, the Defender shall discontinue any activity that is inconsistent with the requirements of this Law.

(Amendment of article 4 in 07.12.10 ՀՕ-200-Ն)

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 recognized norms and principles of International Law. The Defender shall not be subordinated to any state or local self-governing body 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. He/she shall not make them accessible for familiarization with the exception of the cases and procedure not stipulated by the Law.

3. Defender's decisions are not considered as administrative acts and not subjected to appeal.

(Amendment of article 5 in 01.06.06 ՀՕ-112-Ն law)

Article 6. TERMINATION OF DEFENDER'S POWERS

1. The Defender's powers shall terminate on the sixth year following the date of his/her oath.

2. The Defender's powers shall be terminated before the appointed time only if:

1) a verdict of the Court convicting the Defender has entered into legal force;

2) the Defender expatriates the Republic of Armenia or got citizenship of other country;

3) the Defender reiterates resignation no later than 10 days, since he/she submits a letter of resignation to the National Assembly of the Republic of Armenia;

4) the Defender is declared incapable, missing or deceased by an effective decision of the Court;

5) in case of Defender's death.

3. In case of existence of bases provided to the second part of the present article, the President of National Assembly informs the deputies about the early termination of Defender's powers.

4. In case of termination of the Defender's powers, new elections will be called within a month from the date when the post remains vacant.

(Amendment of article 6 in 01.06.06 ՀՕ-112-Ն law)

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Article 6.1 THE HUMAN RIGHTS DEFENDER IN THE SPHERE OF INTERNATIONAL LAW

The Defender is recognized as an Independent National Preventive Mechanism provided by the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

(The law is amended by Article 6.1 on 08.04.08 ՀՕ -14 Law)

Article 7. COMPLAINTS THAT ARE SUBJECT TO THE DEFENDER'S CONSIDERATION

1. The Defender shall consider the complaints of individuals (including citizens) regarding the violations of human rights and fundamental freedoms provided by the Constitution, laws and the international treaties of the Republic of Armenia, as well as by the principles and norms of International Law, caused by the state and local self-governing bodies and their officials.

The Defender cannot intervene into judicial processes. She/he may ask for information from the courts concerning with the guaranteeing the use of provisions of 1st paragraph of article 10, the 5th subparagraph of paragraph 1 of article 10 and paragraph 1 of article 17. The Defender has the right of providing advice to those that wish to appeal the decisions and judgments of the court.

2. The Defender shall not consider the complaints concerning the actions of non-governmental bodies and organizations or 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 violations of the requirements of this Law by state agencies or their subordinate agencies 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 law of the Republic of Armenia on the "Statute of RA National Assembly" when issues related to rights and fundamental freedoms are discussed.

(Amendment of article 7 in 01.06.06 ՀՕ-112-Ն law)

Article 8. THE RIGHT TO APPEAL TO THE DEFENDER

1. Any physical entity 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 or his/her representative has the right of a free access, by his/her own initiative, to military units, police detention centers, pre-trial or criminal punishment exercising agencies, as well as other places of coercive detention in order to receive complaints from the persons being there.

Persons who are under arrest, in preliminary detention 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 guaranteed to have confidential, separate, unrestricted communication with persons in military units, under in preliminary detention or serving their sentence in penitentiaries, as well as persons

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in other places of coercive detention.

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

Having appealed to the defender shall not result in any administrative, criminal or other liability, or in any discrimination towards the applicant.

2. Legal entities may also appeal to the Defender.

A complaint made on behalf of a legal entity shall relate to violation of human rights and fundamental freedoms, if the legal entity's rights entails violation of the rights and fundamental freedoms of participant physical persons of the entity (shareholders, stockholders, members, etc.) and its officials, or if the violation of the legal entity's rights has caused them damage or there exists the potential for damage.

3. With the purpose of protecting other persons' rights only the representatives of those persons as well as family members and devisees of deceased persons can appeal to the Defender.

4. State and local self-governing bodies, except for the agencies of trusteeship and guardianship, shall not have the right to appeal to the Defender.

5. State officials shall have the right to appeal to the Defender only for the protection of their violated human rights and fundamental freedoms as a physical entity.

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 rights and freedoms.

2. Within the first year of the effectiveness of this law, complaints about violations of human rights and fundamental freedoms of the past three years can be submitted to the Defender.

There shall not be a specific compliant form but it shall contain the first name, last name, place of residence (address) of the physical entity, or the name, organizational-legal structure and location of the legal entity submitting the complaint. Information on the human rights and fundamental freedoms that were or are being violated shall be contained in the complaint.

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

3. The complaint may be submitted either in written or in oral form. The content of an oral complaint and the data provided in the second part of this Article shall be recorded by the Defender or his/her staff.

4. The complaints and other documents sent to the Defender by persons under arrest, in preliminary detention or serving their sentence in penitentiaries, as well as persons in other places of coercive detention, shall not be subject to inspection 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 state duty shall be collected for the complaints directed 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 not to consider complaints that are anonymous, and that were received later the day when the complainant became aware of or should have become aware about the violation of his/her rights and freedoms, as well as those complaints that do not contain enough grounds of violation of human rights and fundamental freedoms and lack a claim.
3. If the issue raised in the complaint is of such a 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.
(Amendment of article 10 in 01.06.06 ZO-112-ŭ law)

Article 11. RECEPTION OF COMPLAINTS

1. Upon receiving a complaint the Defender shall make a decision on:
 - 1) accepting the complaint for consideration;
 - 2) presenting to the applicant possibilities of the protection of his/her human rights and fundamental freedoms;
 - 3) upon complainants' consent assigning the complaint to those state or local self-governing bodies or a their officials who have the jurisdiction to settle the case;
 - 4) not considering the complaint.
2. The refusal to consider a complaint shall be substantiated pursuant to 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. The 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 make a discretionary decision about accepting the issue for consideration, particularly 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 the state or local self-governing body or official, whose decisions or actions (inaction) are being complained against.

Article 12. EXAMINATION OF ISSUES RAISED IN A COMPLAINT

1. The Defender is authorized to:

- 1) have free access to any state institution or organization, including military units, prisons, preliminary detention facilities and penitentiaries;
- 2) require and receive information and documentation related to the complaint from any state or local self-governing body or their officials;
- 3) receive from the state or local self-governing bodies 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 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;
- 7) apply to the Council of Courts' Chairmen of the Republic of Armenia, with a view to receiving clarifications of consultative nature about the legal issues arising in judicial practice
- 8) make a statement about initiating a disciplinary procedure against a judge. The person receiving the statement who is authorized to initiate such a procedure shall inform the Defender about the results of the discussion of the statement within three days after making the decision.

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 law.

3. Officials of the state and local self-governing bodies 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 and local self-governing bodies and their officials as well as by top management of organizations and other officials and coercive detention facilities.

(Amendment of article 24 in 01.06.06 ՀՕ-112-Ն law and in 07.12.10 ՀՕ-200-Ն law)

Article 13. CLARIFICATIONS GIVEN BY THE STATE AND LOCAL SELF-GOVERNING BODIES ON THE SUBJECT OF THE COMPLAINT

1. While examining the complaints, the Defender shall give an opportunity to the state and local self-governing bodies or the official, against decisions or actions (inaction) of whom the complaint has been filed, to give clarifications on the subject of the complaint and the results

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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 state and local self-governing body or the 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 considered complaint, the Defender shall take one of the following decisions:
 - 1) to propose to the state or local self-governing body or the 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 civil rights and freedoms;
 - 2) on the absence of violations of human rights and freedoms, if during the examination of the complaint no violation of human rights and fundamental freedoms by the state and local self-governing bodies or officials has been revealed;
 - 3) pursuant to the defined procedure if there were discovered the bases concerning not considering the complaint, or concerning the cease of considering.
 - 4) to bring an action before the court on invalidating in full or partially the normative legal acts of the state and local self-governing bodies or officials that violate human rights and fundamental freedoms and contradict the law and other statutes, if the state and local self-governing bodies 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 requirements 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 state and local self-governing bodies 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 state and local self-governing body or the 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.

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4. The Defender shall transfer to the complainant a copy of 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, freedoms and legal interests by other means not prohibited by law.

5. Upon necessity the Defender can submit special reports to the President of the Republic of Armenia and the National Assembly.

6. The Defender shall publish in mass media special information about the state and local self-governing body 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 state and local self-governing body or their officials to the Defender's decision and motion if all other means of resolving the issue through state authorities have been exhausted.

(Amendment of article 15 in 01.06.06 ՀՕ-112-Ն law)

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 the state and local self-governing bodies 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 legislative, executive 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 NGO-s.

2. In cases that produce widespread public response, or in cases of flagrant violations of human rights or mass occurrence of non-elimination of the violations, the Defender shall have the right to deliver unscheduled public 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

No criminal prosecution or bringing to account shall be brought against the Defender over the whole period of execution of his/her powers and after that for the actions following from his/her status including for the opinion expressed at the National Assembly, if it does not contain slander or offence.

The Defender shall not be involved as a defendant, be detained or called to the

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administrative account without the consent of the national Assembly. The Defender shall not be arrested without the consent of National Assembly, except the cases when the Defender is caught in act of crime. In this case the President of the National Assembly shall be informed immediately.

(Amendment of article 19 in 01.06.06 ՀՕ-112-Ն law)

Article 20. SOCIAL GUARANTEES FOR THE DEFENDER

1. The relations regarding the Defender's remuneration are regulated by the RA law "On remuneration of state officials".

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.

(Amendment of article 20 in 07.12.10 ՀՕ-200-Ն law)

Article 21. SECURITY OF THE DEFENDER

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

(Article 22 is repealed)

(Amendment of article 22 in 01.06.06 ՀՕ-112-Ն law)

Article 23. THE STATUS OF THE DEFENDER'S STAFF

1. The Staff of the Human Rights Defender (hereinafter also referred to as the Staff of the Defender/Defender's Staff) is a state governance institution without legal status where state service, referred to as state service in the Staff of the Human Rights Defender (hereinafter also referred to as state service in the Staff of the Defender) is performed.

2. The state service in the Staff of the Human Rights Defender is the professional activity carried out in the Staff of the Human Rights Defender with a view to ensuring the exercise of the powers conferred upon the Defender with the Constitution of the Republic of Armenia and this Law.

3. Separate units of the Defender's Staff may be established in marzes.

4. The powers conferred upon the founder and the governing body of the Institution shall be exercised by the Defender.

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.

(Amendment of article 23 in 01.06.06 ՀՕ-112-Ն law and in . 07.12.10 ՀՕ-200-Ն law)

Article 23.1. LEGAL ACTS REGULATING STATE SERVICE IN THE STAFF OF THE DEFENDER

1. With the exception of the activity related to technical maintenance functions, professional activity in the Defender's Staff is state service, and the employees occupying the respective positions in the Staff are state servants.
 2. The provisions of the Law of the Republic of Armenia "On Judicial Service" shall apply to the relations concerning state service in the Defender's Staff insofar as these in themselves apply to the state service in the Defender's Staff and do not contradict this Law.
 3. In applying the provisions of the Law of the Republic of Armenia "On Judicial Service" to the relations concerning state service in the Defender's Staff:
 - 1) -judicial service shall imply state service in the Staff of the Defender;
 - 2) the powers conferred upon the head of the judicial department shall be exercised by the head of the Defender's Staff;
 - 3) the powers conferred upon the Council of Courts' Chairmen of the Republic of Armenia and the President of the Court of Cassation of the Republic of Armenia shall be exercised by the Defender;
 - 4) the powers which the President of the Court of Cassation of the Republic of Armenia exercises acting on the opinion of the Council of Courts' Chairmen of the Republic of Armenia, shall be exercised solely by the Defender.
- (Insertion of article 23.1 in 07.12.10 ՀՕ-200-Ն law)

Article 24. FINANCING OF THE DEFENDER'S ACTIVITIES

1. The Defender and his/her staff shall be financed from the State budget which shall provide their usual activity.
 2. The budget is the part of the State budget, through a separate line item.
 - 2.1. The salary of the Defender shall be calculated in the manner prescribed by part 1 of Article 20 of this Law.
 - 2.2. - The relations regarding the remuneration of the Defender's staff are regulated by the RA law "On remuneration of state officials".
 3. The Defender's and his/her staff's budget shall be submitted to the State authorized body, pursuant to the defined procedure and the law of RA about "Budget system", to be included into the total State draft budget.
 4. In case of the adoption of Defender and Defender's staff budget financing request of the forthcoming year, by the Government the budget request shall be included into the total State draft budget, and in case of objections, shall be submitted to the National Assembly with the State draft budget. The Government shall submit the objections to the National Assembly and the Defender concerning the budget financing.
 5. The Defender manages his/her financial resources himself/herself. The Defender shall submit financial and budget report in accordance with the procedure stipulated in Article 17 of this Law and legislation of State budget.
- (Amendment of article 24 in 01.06.06 ՀՕ-112-Ն law and in 07.12.10 ՀՕ-200-Ն law)

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Article 25. STRUCTURE OF THE DEFENDER'S STAFF

(Article 25 repealed in 07.12.10 ՀՕ-200-Ն law)

Article 26. THE EXPERT COUNCIL

To benefit from advisory assistance, the Defender may establish an Expert Councils composed of individuals with respective background in human rights and fundamental freedoms.

1. Members of the Expert Council shall be invited by the Defender.
2. The Expert Council shall not exceed 20 members.
3. Members of the Expert Council shall be involved on voluntary basis and shall perform their activities without any compensation.

(Amendment of article 26 in 01.06.06 ՀՕ-112-Ն law)

Article 27. TRANSITIONAL PROVISIONS

1. Paragraph 2 of Article 3, point 4 of the 2nd paragraph of Article 6 and paragraph 3, point 3 of the 1st paragraph of Article 15 of this Law 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 the apply to the Constitutional Court.

2. Until the constitutional amendments are adopted the President shall

- 1) appoint the Defender after consulting with the groups and fractions of the National Assembly
 - 2) provide by Article 6 the consent required by paragraphs 1 and 2 of Article 19.
- The powers of the first Defender shall expire according to the point 1 of the present article 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.