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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

DRAFT LAW
ON THE OMBUDSMAN
OF THE REPUBLIC OF ARMENIA

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

Chapter 1. General Provisions

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 a state official, who, acting pursuant to the Constitution and the Law of the Republic of Armenia, on behalf of the State protects the human rights violated by central and local government agencies or officials.
2. By using the means provided in the legal instruments defined in this Law, the Defender shall promote: the restitution of violated rights of physical and legal persons; the improvement of human rights legislation of the Republic of Armenia, and the compatibility of that legislation with the generally accepted principles and norms of International Law; the development of international cooperation in the domain of human rights; the public awareness of human rights and freedoms and the methods of protection of those rights and freedoms.
3. Activities of the Defender shall supplement the existing instruments for the protection of human rights and freedoms, and shall not alter or cancel the responsibilities of the Court and central or local government agencies for the protection and restitution of violated rights and freedoms.

Article 3. Regulations Governing the Activities of the Defender

1. In his activities the Defender shall be guided by the Constitution of the Republic of Armenia, the present Law, legislation of the Republic of Armenia, the international treaties of the Republic of Armenia, as well as the principles and norms of International Law.
2. Declaration of emergency situation or martial law in all or part of the territory of the Republic of Armenia shall not entail the termination or limitation of the Defender's powers, except for the cases provided in Article 45 of the Constitution of the Republic of Armenia.

Chapter 2. Procedure of Appointing and Dismissing the Defender

Article 4. Appointment of the Defender

1. A citizen of the Republic of Armenia, who is above 35 years of age, and has higher legal education and necessary knowledge in the field of protection of human rights, shall be a legitimate candidate for appointment to the office of Defender.

A person who has been a member of a party or has been actively engaged in political activity during the last 10 years preceding the appointment, shall not be legitimate for appointment to the office of Defender.

2. The Defender shall be appointed to and dismissed from office by the President of the Republic of Armenia.
3. The Defender shall be appointed to office for a term of 5 years.
4. The Defender's office shall be located in the city of Yerevan.

Article 5. 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 he/she be a candidate in any election or participate in any electoral campaign.
3. Within 14 days after assuming the Office, the Defender shall discontinue any activity that is inconsistent with the requirements of Articles 4 and 5 of this Law.

Article 6. Independence of the Defender

1. The Defender shall not be subject to any imperative mandate. In execution of his powers the Defender shall be independent and shall only obey the Constitution and the Law of the Republic of Armenia.

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

2. Except for the cases expressly defined by Law, the Defender shall not be bound to give any explanation or evidence about the nature of a letter of complaint or other document addressed to him.

Article 7. 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 before the end of the term if:
 - 1) the Defender violates the requirements of Article 5 of this Law;
 - 2) a verdict of the Court convicting the Defender enters into legal force;
 - 3) the Defender is deprived from the citizenship of the Republic of Armenia;
 - 4) the Defender submits a letter of resignation to the President of the Republic of Armenia;
 - 5) the Defender is declared disabled, partly disabled, missing or dead by an effective decision of the Court.
3. The President of the Republic may terminate the Defender's powers before the end of the term, if the Defender fails to perform his official responsibilities for more than 6 subsequent months due to his health conditions.
4. The Defender's powers shall also be terminated in case of his/her death.
5. The President of the Republic of Armenia shall have the responsibility to terminate the powers of the Defender.

6. In case of termination of the Defender's powers, the new Defender shall be appointed within 15 days after 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.

Chapter 3. Responsibilities of the Defender

Article 8. Complaints that are Subject to the Defender's Consideration

1. The Defender shall consider the complaints concerning violation by central and local government agencies or their officials of human rights and freedoms provided by the Constitution, laws, other legal acts and the international treaties of the Republic of Armenia, as well as by the principles and norms of International Law.

The Defender shall not be entitled to consider complaints concerning the actions of judicial institutions or judges.

2. The Defender shall not consider the complaints concerning the actions of non-governmental agencies and organizations or their officials.
3. The Defender shall have the right to attend Cabinet meetings, as well as meetings in other state agencies. The Defender shall also have the right to make speeches at those meetings and to propose for discussion issues related to violation of human rights and requirements of this Law by state agencies or their subordinate agencies or their officials.
4. The Defender shall have the right to make a speech at a session of the National Assembly of the Republic of Armenia in accordance with the procedure defined by the National Assembly Statute.

Article 9. The Right to Appeal to the Defender

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

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 representative shall have the right to visit, whenever they find it appropriate, jails, facilities for preliminary detention, penitentiaries, as well as other places of coercive detention with the purpose of collecting appeals from the detained persons.

The Defender shall be given the opportunity to have confidential communication with persons under arrest, in preliminary detention or serving their sentence in penitentiaries, as well as persons in other places of coercive detention.

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

2. Legal entities may also appeal to the Defender.

A complaint made on behalf of a legal entity shall be qualified as an appeal against violation of human rights, if the violation of the legal entity's rights entails violation of the human rights of or causes damage to or jeopardizes the interests of physical persons

(shareholders, partners, members, etc.) who have financial participation in that legal entity and the employees of the entity.

3. Only the representative of a person or a family member and a devisee of a person can appeal to the Defender on behalf of the third person.
4. Central and local government agencies, 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 individual citizen rights (human rights).

Article 10. 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 rights and freedoms.
2. The letter of complaint shall contain the name, surname, place of residence (address) of the physical person, or the name, organizational-legal structure and location of the legal entity submitting the complaint, as well as the indication of rights and freedoms violated or being violated.

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

3. The complaint may be delivered both in writing and orally. 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 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 addressed to the Defender within 24 hours by the administrative staff of those institutions.
5. The agency receiving the complaints addressed to the Defender shall be obligated to provide a certification (receipt) on receiving of the complaint to the complainant upon the request of the latter.
6. No stamp duty shall be collected for the complaints sent to the Defender.

Article 11. Complaints that are not Subject to the Defender's Consideration

1. The Defender shall not consider those complaints that must be solved only by the Court. Likewise, the Defender shall discontinue consideration of a complaint if after commencing the process of consideration the interested person has brought an action or an appeal to the Court.
2. The Defender shall not be entitled to intervene into judicial investigation or to put under suspicion the validity of the Court's decision, judgment or verdict, but shall be entitled to give the complainant recommendations or advice on appealing against them.
3. Complaints that are anonymous, do not contain any claims, as well as those intended to violate the rights and legal interests of third parties shall not be considered either.

4. If the issue raised in the complaint is of such nature that may be settled by other state agency or official, and if there was no prior discussion of the case by the said official, the Defender may assign the complaint to that official for consideration and follow up the process of discussion of the complaint.

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

Article 12. Receiving of Complaints

1. Upon receiving a complaint the Defender shall adopt a decision on:
 - 1) accepting the complaint for consideration;
 - 2) explaining those methods to the complainant that he is entitled to apply for the protection of his rights and freedoms;
 - 3) transferring the complaint to a central or local government agency or a state official who has the jurisdiction to settle the case;
 - 4) not considering the complaint.
2. The refusal to consider a complaint shall be grounded. According to the first part of Article 11 of this Law, the Defender's decision on declining a complaint shall explain to the complainant the statutory procedure for consideration of that complaint
3. Within 10 days after receiving the complaint the Defender shall send a copy of the adopted decision to the complainant.
4. In those cases when there is information on mass violations of human rights and freedoms, that have exceptional public significance or are connected with the necessity to protect the rights of such persons who are not able to use their legal remedies, the Defender shall be entitled to take a decision on his initiative on accepting the issue for consideration, and this decision shall be subject to publication.
5. After taking 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 13. Examination of Issues Raised in a Complaint

1. After taking a decision on accepting a complaint for consideration, the Defender shall be entitled to the following for examination of issues raised in the complaint:
 - 1) have free access to any state institution or organization, including military bases, 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 official;
 - 3) receive from central or local government agencies or officials, except from Courts and judges, information clarifying the issues that arise in the process of examination of the complaint;

- 4) instruct the relevant state agencies to carry out expert examinations of and work out conclusions on the issues subject to clarification during investigation of the complaint;
- 5) get acquainted with those criminal, civil, administrative, disciplinary, economic and other cases on which the respective Court verdicts and decisions have entered into legal force, and study materials related to such cases on which no proceedings have been instituted;
- 6) get acquainted 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. The Defender through the relevant statutory procedure can get acquainted 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 transferred within 15 days after the Defender's request, unless a later deadline is indicated in the request.
5. In exercising the powers of his office 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 14. Clarifications given by National and Local Government Agencies on the subject of the Complaint

1. On examining the complaints, the Defender shall give an opportunity to central and local government agencies or 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 of examinations, and to give the grounds for their approach in general.
2. In the light of the above, within 10 days after completing examination of the complaint, the results of the examination shall be transferred 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 and explanations to the Defender within 5 days after receiving the results of the examination. The mentioned deadline can be extended by the Defender.

Article 15. 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 acquired during examination of the complaint without their written consent.

Article 16. *The Defender's Decisions*

1. Based on the findings of the examination following a 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 ones violating human rights and freedoms, to eliminate the committed violations, indicating the possible measures necessary and subject to implementation for the rehabilitation of human and civil rights and freedoms;
 - 2) to invalidate the facts mentioned in the complaint, if during the examination no violation of human or civil rights or lawful interests by the central or local government agencies or officials has been revealed;
 - 3) 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 which violate human rights, freedoms and lawful interests and contradict to 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;
 - 4) to propose the authorized state agencies to execute disciplinary or administrative penalties or file criminal charges against the person, whose decisions or actions (inaction) violated human and civil rights and freedoms and (or) violated the requirements of this Law.
2. The Defender shall transfer a copy of his decision on the complaint, indicated in paragraph 1 of this Article, to the central or local government agencies or official whose decision or actions (inaction) have been appealed, within 5 days after that decision's adoption.
3. The central or local government agency or official, who received the Defender's proposal indicated in item 1 of this Article, within 10 days after its receipt shall inform the Defender in a written form about the measures taken.
4. The Defender shall transfer a copy of his decision on the complaint indicated in item 1 of this Article to the complainant within 5 days after adoption of the decision.
The Defender's decision cannot hinder the person to protect his/her rights, freedoms and legal interests by other means not prohibited by law.
5. The Defender shall publish in mass media special information on the central or local government agency or official who failed to respond to his proposal or did not comply or only partly complied with the requirements of the proposal, together with the answers of the central or local government agency or their official to the Defender's decision and proposal.

Article 17. *Clarifications Given by the Defender*

Based on the results of studies and analysis of information on human rights and freedoms and in connection to the summary of the results of studies, the Defender shall have the power to provide advisory clarifications and proposals to the central and local government agencies and officials.

Article 18. The Defender's Report

1. Each year, on the last Friday of January, the Defender shall deliver a public report on the human rights situation in the previous year before the President of the Republic of Armenia, the representatives of executive, legislative and judicial authorities, as well as the representatives of mass media.
2. In exceptional cases that produce wide 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 20. The Defender's Report

Intervention in 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 insulting the Defender shall carry penalty in the manner and scale stipulated for similar violations against the Court or the Judge.

Chapter 3. Compensation of the Defender, Factors that Guarantee the Performance of the Defender's Duties**Article 21. The Defender's Immunity**

1. The Defender shall have immunity over the whole period of the execution of his powers. No criminal prosecution shall be brought against him; he cannot be detained or arrested. The Defender and his apartment cannot be searched without the consent of the President of the Republic of Armenia. The immunity of the Defender is extended also on his luggage, correspondence, communication means used by the Defender, as well as documents belonging to him.
2. In case the Defender is caught in the act of crime, the official person executing the arrest shall immediately inform about that to the President of the Republic of Armenia, who shall take a decision on his consent for further implementation of the given procedural measure. 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 as he performed his responsibilities.

Article 22. Social Guarantees for the Defender

1. Salary of the Defender shall be defined by the Law.
2. The Defender shall have the right to an annual paid vacation of 30 working days.
3. Throughout the duration of his term the Defender shall be exempt from military service, drafting and military training.

Article 23. Security of the Defender

1. The Defender shall have the right to carry a registered weapon and maintain special means of defense.

2. The Defender and members of his family are 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.

Chapter 5. The Defender's Staff

Article 24. The Deputy Defender

1. The Defender shall have a deputy, who shall be appointed in the same manner and on the same conditions as this Law defines for the Defender.
2. The Deputy Defender shall perform the responsibilities of the Defender in the absence of the Defender.
3. Other responsibilities of the Deputy Defender shall be assigned by the Defender.

Article 25. The Status of the Defender's Staff

1. The Defender shall form a staff to support the execution of the functions of his office.
2. The Defender's staff shall provide legal, organizational, analytical, informational and other support of 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.

Local representative offices of the Defender may be established in marzes.

4. Members of the Defender's staff shall not be considered as civil servants and shall work by contract.
5. Members of the Defender's staff and the Expert Council may act on behalf of the Defender or perform any of the Defender's responsibilities only in the cases defined in Article 13 of this Law within the scope of powers specified by the relevant decision of the Defender.

Article 26. Financing of the Defender's Activities

1. The Defender and the Defender's staff shall be financed from a separate article of the state budget.

The budget request of the Defender and the Defender's staff shall be prepared and presented to the Government of the Republic of Armenia by the Defender, pursuant to the statutory procedure.

If the Government of the Republic of Armenia proposes to reduce the initial amount requested by the Defender in the draft budget, it shall present at the Cabinet discussion of the draft state budget of the Republic of Armenia both the initial budget request of the Defender and the reduced budget proposed by the Government.

2. The Defender shall independently prepare the expenditure estimates of his office.
3. The Defender shall submit a financial report in accordance with the procedure stipulated in Article 18 of this Law.

Article 27. 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 size and payroll list of the Defender's staff.
3. The Defender shall issue orders on the matters related to management of the staff.

Article 28. The Expert Council

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

Chapter 6. Final Provisions

Article 29. Final Provisions

The present Law shall enter into force from the moment of formal promulgation.

The first Human Rights Defender shall be appointed within one month after enactment of this Law.