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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**DRAFT AMENDMENTS  
TO ARTICLE 23(5) OF THE LAW  
ON THE HUMAN RIGHTS DEFENDER  
OF ARMENIA**

**on the basis of comments by**

**Mr Marek Antoni NOWICKI (Expert, Poland)**

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*\*This document has been classified restricted on the date of issue. Unless the Venice Commission decides otherwise, it will be declassified a year after its issue according to the rules set up in Resolution CM/Res(2001)6 on access to Council of Europe documents.*

Counteracting corruption in a democratic society is a task that should be treated by such societies with due attention and concern, especially in these countries which face major and widely known problems in this area. It requires various actions to be taken by the legislators and the political class. Relevant recommendations for Armenia were given in the "Evaluation Report on Armenia" adopted by GRECO in March 2006. As regards the sphere which is material in respect of this opinion, they concern primarily limiting the categories of persons enjoying immunities. GRECO recommended in their report to consider reducing the categories of persons enjoying immunity from prosecution and to abolish, in particular, the immunity provided to parliamentary candidates, members of the central electoral commission, members of the regional electoral commissions, candidates mayors and local councils candidates. GRECO emphasised in its report that such officials cannot be considered as included into the justiciable range of holders of public office who in every democratic society must have at least some extent of an immunity resulting from the nature of the functions performed. Immunities granted to the categories of persons mentioned in the report – according to GRECO – constitute a privilege and are not related to the status and activities of the holders of the public office concerned.

However, the criticism relating to the issue of immunities and recommendations for authorities which have been expressed in the "Evaluation Report on Armenia" cannot be interpreted in a manner that entails the possibility to limit the immunity of the Human Rights Defender or his/her staff. Undoubtedly, the institution in question falls within the "justiciable range of holders of public office" who should enjoy an immunity according to the distinctive characteristics of the office and the functions performed. Conclusions presented in the GRECO report and the recommendations given therein, together with the conclusions of the "Compliance Report on Armenia" adopted by GRECO on 13 June 2008, cannot be treated as an opportunity or an excuse for interfering in the immunity which not only for the Human Rights Defender but also for his/her staff is the one of the key guarantees of independence of this office, giving it a capability to play its special role in a democratic society governed by rule of law. If in such a society any institution is to enjoy the immunity, the Human Rights Defender is certainly the one. Everywhere it operates – owing to its tasks of conducting special kind of scrutiny and (often very strong) criticism of the authorities – the institution becomes a convenient target of attacks motivated by political interests and other reasons.

Without a doubt, the Human Rights Defender, as every other ombudsman, performs most of his/her duties assisted by and through his/her staff. Each member of the staff acts within their official authority on behalf of the Human Rights Defender under the latter's authorisation. In consequence, the aforementioned guarantees and protection, including the immunity, must be obviously granted to such persons as well. Revoking their immunity would result in significant impairment of the essence of the immunity of the Human Rights Defender himself/herself, all the more so because in its operational sense the immunity in question is an immunity granted to the institution of the Human Rights Defender as such and therefore always should be understood as the immunity of the "Human Rights Defender and his/her staff", even if the limits of the immunity of the staff and conditions of its revocation can differ or be more limited from those relating to the immunity of the Human Rights Defender himself/herself.

It must be reminded and strongly emphasised that the mentioned immunity is one of the substantial tools protecting the institution of the Human Rights Defender from loosing its independence and against being placed under the de facto control of the political forces currently in power. Regardless of the real intentions behind such a decision, any action by the legislators which is aimed at limiting or abolishing such an immunity, even if it concerns only the staff of the office of the Human Rights Defender, can be legitimately considered as a politically motivated move against the very essence of the independence of this institution.

Having said that, it would be of utmost importance simply to remind the Armenian legislators the relevant excerpts of an opinion which was prepared also with certain my

contribution, namely the Opinion no. 397/2006 CDL -AD (2006)038 of the Venice Commission on Amendments to the Law on the Human Rights Defender of Armenia adopted 15 – 16 2006 : 74. *In general terms, both the Human Rights Defender and his or her staff should have immunity from legal process in respect of words spoken or written and acts performed by them in their official capacity. Such immunity should continue to be accorded even after the end of the Human Rights Defender's mandate or after the staff cease their employment with the Human Rights Defender institution. (...) One could consider a different scope of immunity with regard to the staff (e.g. waiving by the Defender for his or her staff)".*

All those remarks remain entirely relevant – at least from my point of view as one of the authors of this opinion. It's worth underlining that a similar comments and opinion concerning the issue of immunity of the ombudsman and his/her staff can be found also in the opinion no. 434/2007 (CDL – AD(2007)024 on the draft Law on the People's Advocate of Kosovo adopted by the Venice Commission on 1-2 June 2007 as well as before, in the joint opinion no. 318/2004 (CDL – AD(2004) 041 on the draft Law on the Ombudsman of Serbia adopted by the Venice Commission, the Commissioner for Human Rights and the Directorate General of Human Rights of the Council of Europe on 3 – 4 December 2004.