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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

ARMENIA

DRAFT CONSTITUTIONAL LAW
ON THE HUMAN RIGHTS DEFENDER

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

CHAPTER 1. GENERAL PROVISIONS

Article 1. Subject matter of the Law

This Constitutional Law shall prescribe the powers, procedure and guarantees for the activities of the Human Rights Defender of the Republic of Armenia (hereinafter referred to as "the Defender"), the procedure for election and termination of powers of the Defender, peculiarities of the legal status of persons holding state service positions within the Staff of the Defender (hereinafter referred to as "the state servant"), of appointing them to and dismissing from position, conferring class ranks, organising and managing the state service, as well as other relations pertaining thereto.

Article 2. Human Rights Defender

1. The Defender shall be the official provided for by Article 191 of the Constitution.
2. The Defender shall be the national preventive mechanism prescribed by the Optional Protocol — adopted on 18 December 2002 — to the 1984 UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as "the National Preventive Mechanism").
3. The Defender shall conduct monitoring of the application of the provisions of the UN Convention on the Rights of the Child adopted on 20 November 1989, as well as carry out the prevention of violations of the rights of the child and the protection thereof.

Article 3. Principles of the activities of the Defender

In the course of exercising his or her powers, the Defender shall be guided by the principles of lawfulness, legal equality, impartiality, publicity, democracy, humanism and social justice.

Article 4. Restriction on the Defender to engage in other activities

1. The Defender may not hold any position not related to his or her status in other state or local self-government bodies, any position in commercial organisations, engage in entrepreneurial activities, perform other paid work except for scientific, educational and creative work.
2. The Defender may join or otherwise engage in activities of international organisations for human rights where it does not contradict the functions reserved to the Defender by the Constitution and this Law, as well as where it does not affect his or her impartiality.
3. The Human Rights Defender may not, during his or her term of powers, hold membership in any political party or otherwise engage in political activities. The Defender shall be obliged to show political restraint in public speeches.

CHAPTER 2. GUARANTEES FOR THE ACTIVITIES OF THE DEFENDER

Article 5. Independence of the Defender

1. In the course of exercising his or her powers, the Defender shall be independent, be guided only by the Constitution of the Republic of Armenia, this Law and international treaties of the Republic of Armenia.
2. The Defender shall not be subordinate to any state or local self-government body, organisation or official.

Article 6. Immunity of the Defender

1. The Defender may not, during his or her term of powers and thereafter, be prosecuted or held liable for an opinion expressed or voting within the framework of activities deriving from his or her status, including at the National Assembly.
2. Criminal prosecution against the Defender may be instituted, as well as the issue of subjecting him or her to administrative liability through judicial procedure may be raised only upon the consent of the National Assembly of the Republic of Armenia.
3. The Defender may not be deprived of liberty without the consent of the National Assembly, except for the case of having been caught at the time of committing a criminal offence or immediately thereafter. In this case, deprivation of liberty may not last more than seventy-two hours. The Chairperson of the National Assembly shall be immediately notified of the deprivation of liberty of the Defender.
4. The Defender may not, during his or her term of powers and thereafter, furnish explanation or be questioned as a witness with regard to applications or complaints addressed thereto during his or her term of office, the essence of documents obtained during the examination or consideration thereof or the decisions rendered by him or her.

Article 7. Security of the Defender

The Defender and the members of his or her family shall be under special protection of the State. Upon the application of the Defender, competent state bodies shall be obliged to undertake necessary measures to ensure the security of the Defender and his or her family.

Article 8. Financing of and social guarantees for the activities of the Defender

1. Due financing shall be ensured at the expense of the funds of the State Budget for smooth operation of the Defender and the Staff thereto.
2. The budget of the Defender and the Staff thereto shall constitute a part of the State Budget, which is financed in a separate line. The activities of the Defender as the National Preventive Mechanism shall also be specifically financed.
3. The Defender shall — as prescribed by the legislation and within the time limit prescribed by the Law of the Republic of Armenia “On the budgetary system of the Republic of Armenia” — submit the budget request (estimate) for the upcoming year to the authorised state body so as to include it in the draft State Budget.
4. Where the budget request (estimate) of the Defender and the Staff thereto for the upcoming year is approved by the Government, it shall be included in the draft State Budget, and where there is an objection it shall be submitted to the National Assembly of the Republic

of Armenia along with the draft State Budget. The Government shall present to the National Assembly and the Defender the justification for objection on the budget financing.

5. The Defender shall have the right to annual paid leave for the duration of 30 working days.

6. During the term of powers, the Defender shall be released from mandatory military service, mobilisation and drill meetings.

Article 9. Obligation of state and local self-government bodies and organisations to assist in the activities of the Defender

1. State and local self-government bodies, organisations, officials or representatives thereof shall be obliged to provide the Defender, as prescribed by law, with the necessary materials, documents, information and clarifications — free of charge and in an unimpeded manner — as well as otherwise assist in the activities thereof.

2. The materials, documents, information and clarifications requested by the Defender must be sent to the Defender within the shortest possible time, but no later than within 30 days after receiving the request if a shorter time limit is not specified in the request. Where a longer time period is objectively required for responding to the request of the Defender, a relevant justification therefor must be submitted within the time limit defined by the Defender, or within 30 days after receiving the request if the Defender has not specified any time limit for the response.

3. Within the scope of his or her powers, the Defender shall enjoy the right to priority reception at state and local self-government bodies, organisations, officials and representatives thereof. In case of prompt response by the Defender to the complaints, the bodies referred to in this part and the officials and representatives thereof shall be obliged to immediately render assistance to the Defender or the representatives thereof.

4. State and local self-government bodies, organisations, officials or representatives thereof shall be obliged to guarantee the possibility of unimpeded and confidential communication of the Defender or the representative thereof with a person held in a place of confinement or deprivation of liberty. Private conversations of the Defender or the representatives thereof with such persons shall not be subject to intervention or wiretapping.

5. Complaints and other documents addressed to the Defender shall not be subject to verification or censorship. These must be sent to the Defender immediately upon receipt by competent bodies or organisations, but no later than within 24 hours thereafter.

Article 10. Liability for obstructing the activities of the Defender

1. Any interference, not provided for by law, with the activities of the Defender shall be prohibited.

2. Obstructing in any way the exercise of powers reserved to the Defender by the Constitution of the Republic of Armenia and this Law, as well as threatening the Defender or insulting or displaying obviously disrespectful attitude towards him or her shall entail liability prescribed by law.

3. Failure to provide the materials, documents, information or clarifications requested by the Defender within the time limits prescribed by this Law shall entail liability as prescribed by law.

4. The official having failed to provide the Defender with the materials, documents, information or clarifications referred to in part 3 of this Article shall be subjected to disciplinary liability. Upon the recommendation of the Defender, the competent state or local self-government body or official shall be obliged to consider and subject the official referred to in this part to disciplinary liability, as well as immediately inform the Defender thereon.

Article 11. Guarantees for the activities of persons holding positions within the Staff to the Defender and of experts of the National Preventive Mechanism

1. Where criminal prosecution is instituted on any ground against a person holding a position within the Staff to the Defender or an expert of the National Preventive Mechanism, or where he or she is in any way deprived of liberty, the body conducting the proceedings shall be obliged to promptly inform the Defender thereon, immediately after obtaining data about the relevant person.

2. Persons holding positions within the Staff to the Defender and experts of the National Preventive Mechanism may furnish explanation or be questioned as witnesses with regard to the essence of applications or complaints addressed to the Defender or the decisions rendered by the Defender based on the examination thereof, as well as provide them to other persons for familiarisation only upon the written consent of the Defender.

CHAPTER 3. PROCEDURE FOR ELECTION OF THE DEFENDER AND TERMINATION OF THE POWERS THEREOF

Article 12. Election of the Defender

1. Everyone having attained the age of 25, enjoying high reputation among the public, having higher education, having been a citizen of only the Republic of Armenia for the preceding four years, permanently residing in the Republic of Armenia for the preceding four years, and having the right of suffrage, as well as having command of the Armenian language may be elected to the position of the Defender.

2. The Defender shall be elected by the National Assembly of the Republic of Armenia, upon recommendation of the competent standing committee of the National Assembly of the Republic of Armenia, by at least three fifths of votes of the total number of Deputies, for a term of six years.

3. The Defender shall assume office immediately after having been elected by the National Assembly of the Republic of Armenia, by taking the following oath at the National Assembly of the Republic of Armenia in the presence of the Deputies:

"Assuming the office of the Defender, I hereby swear to defend the rights and freedoms of the human being and the citizen, remaining faithful to the Constitution and the laws of the Republic of Armenia and the principles of justice. I swear to exercise my powers impartially, in good faith and with due diligence."

4. The Defender shall assume his or her duties after the oath-taking ceremony at the National Assembly of the Republic of Armenia, on the day following the expiry of the term of powers of the previous Defender. Where the office of the Defender is vacant at the moment of electing the Defender, the Defender shall assume his or her duties on the day following the oath-taking ceremony at the National Assembly of the Republic of Armenia.

5. Regular elections of the Defender shall be held within 50 days preceding the expiry of powers of the Defender.

Article 13. Termination of powers of the Defender

1. The powers of the Defender shall terminate upon expiry of the term of his or her powers, in cases of loss of citizenship of the Republic of Armenia or acquisition of citizenship of another state, entry into force of a criminal judgment of conviction rendered against him or her, entry into force of a civil judgment on declaring him or her as having no active legal capacity, as missing or dead, in case of his or her death or resignation.
2. In case of resignation, the powers of the Defender shall terminate if no later than 7 days after submitting the resignation letter the Defender submits a second resignation letter.
3. The term of powers of the Defender shall be considered as expired on the same day of the sixth year after assuming the office thereby.
4. The Chairperson of the National Assembly of the Republic of Armenia shall — immediately upon receiving the respective information prescribed by part 1 of this Article, but no later than on the following day — publish an official communication on early termination of powers of the Defender. In case of resignation, the communication referred to in this part shall be published following the submission of the second resignation letter by the Defender.
5. Where the powers of the Defender terminate in accordance with parts 1 or 2 of this Article, except when the powers of the Defender terminate on the ground of expiry of the term, the election of the Defender shall be held within a one-month period following the day of publishing the communication as prescribed by part 4 of this Article.

Article 15. Substitution of the Defender

1. During the temporary absence of the Defender, including when he or she is on a leave, official trip or when his or her powers have terminated, one of the department heads of the Staff to the Defender shall substitute the Defender upon his or her decision.
2. In case of impossibility of rendering a decision on substituting the Defender or in case of his or her resignation, the Defender shall be temporarily substituted by the department head of the Staff to the Defender who is senior by age.
3. During the absence of the Defender, the head of department substituting the Defender shall exercise the powers of the Defender reserved thereto by this Law, except for powers prescribed by Article 27, parts 4-6 of Article 29, Articles 30-31 and 33, part 4 of Article 35, part 3 of Article 36, part 4 of Article 37, parts 4-5 of Article 38, points 3-7 and 9 of part 1 of Article 39 of this Law.

**CHAPTER 4. PROCEDURE FOR CONSIDERATION OF ISSUES WITHIN THE
COMPETENCE OF THE DEFENDER****Article 16. Complaints subject to consideration by the Defender**

1. The Defender shall, in case of a complaint or upon own initiative, consider:
 - (1) violations of human rights and freedoms enshrined in the Constitution and the laws of the Republic of Armenia by state and local self-government bodies and officials, as well as by organisations exercising the powers delegated thereto by state and local self-government bodies;
 - (2) issues concerning violations of human rights and freedoms by organisations operating in the field of public service where there is information about mass violations of human rights or

freedoms or it is of exceptional public importance or it is connected with the protection of interests of persons who cannot make use of legal remedies for protection of their rights and freedoms on their own.

2. When carrying out consideration upon own initiative, the Defender shall enjoy all the powers reserved thereto by this Law, which he or she exercises with regard to the consideration of the complaint.

Article 17. Applying to the Defender

1. Every natural and legal person shall have the right to apply to the Defender if his or her rights and freedoms enshrined in the Constitution and the laws of the Republic of Armenia are violated by state and local self-government bodies and officials, as well as by organisations in cases prescribed by this Law.

2. Natural and legal persons may apply to the Defender by submitting a complaint either by post or personally to the Defender or the representative thereof. It is also possible to apply to the Defender with an oral complaint, which shall be reduced to writing by the Defender or the representative thereof.

3. Natural and legal persons may apply to the Defender both personally and through their representatives.

4. For the purpose of protecting the rights and freedoms of another person, the representative, legal representative, legal successor, heir of that person may apply to the Defender. Persons authorised as prescribed by law, including advocates may act as a representative. Upon the request of the Defender or the representative thereof, the representative of the person shall be obliged to submit the power of attorney, the advocate's licence, whereas the legal successor and the heir shall be obliged to submit a document attesting to the fact of being the legal successor or the heir, respectively.

5. With a written consent of the person, non-governmental organisations may also apply to the Defender for the purpose of protecting his or her rights.

6. For the purpose of protecting the rights of other persons, no power of attorney or written consent is required for applying to the Defender if it is connected with the necessity of protecting the interests of such persons who cannot make use of legal remedies for their protection on their own.

7. State and local self-government bodies, except for curatorship and guardianship bodies, may not submit complaints to the Defender. Officials of state and local self-government bodies shall have the right to apply to the Defender only for the purpose of protecting their violated rights and freedoms as natural persons.

8. Applying to the Defender or intervention by the Defender may not result in any adverse consequences for the person having submitted the complaint.

Article 18. Terms and requirements for submission of a complaint

1. A complaint must be submitted to the Defender within a year following the day the applicant has learnt or should have learnt about the alleged violation of his or her rights and freedoms.

2. The complaint shall be submitted in writing or orally.

3. No state duty shall be charged for the complaints being submitted to the Defender. When accepting the complaints submitted to the Defender, except for oral complaints, the applicant shall be provided with a document certifying the receipt of the complaint.
4. The complaint must be signed, indicating the surname, name, place of residence (address) of the person submitting the complaint or the name, registered office of the legal person and contact information. No other specific form is prescribed for the complaint. A complaint shall not be considered in case it becomes known that the data concerning the identity of the author of the complaint are false.
5. The procedure for submitting an online complaint shall be approved by the Defender.
6. Contents of oral complaints and data provided for by part 4 of this Article shall be recorded in writing by the Defender or the competent representative thereof.
7. A complaint submitted to the Defender shall be deemed as the consent of the person having submitted the complaint and shall warrant the Defender to receive personal data, necessary for the consideration of the complaint, from state and local self-government bodies, other organisations. The respective written consent of the given person shall be considered as basis for providing the Defender with information constituting personal biometric data and personal data of special category.

Article 19. Making complaints or contents thereof public

1. Prior to rendering by the Defender a final decision on the complaint, complaints subject to consideration or the contents thereof shall not be made public, except for cases where these have already been made public by the person having submitted the complaint or other persons.
2. Data on the applicant or any other person, which has become known to the Defender in the course of his or her activities, may be made public only upon the written consent of these persons.

Article 20. Decisions being rendered with regard to a complaint

1. Immediately after receiving and registering a complaint, examination of the complaint shall be carried out as prescribed by the Defender, based on which the Defender shall render one of the following decisions:
 - (1) on accepting the complaint for consideration;
 - (2) on not considering the complaint;
 - (3) on presenting to the person having submitted the complaint the possible means for the protection of his or her rights and freedoms;
 - (4) on forwarding the complaint for consideration by another body.
2. The Defender shall send a copy of the decision prescribed by part 1 of this Article to the person having submitted the complaint within a short time period but no later than within 30 days upon receipt of the complaint.
3. In cases prescribed by part 1 of Article 13 of this Law, the Defender may render a decision on beginning the consideration upon own initiative.

4. Decisions rendered by the Defender on the complaint or on considering it upon own initiative shall not be deemed administrative acts and shall not be subject to appeal.

Article 21. Accepting the complaint for consideration

1. The Defender shall render a decision on accepting the complaint for consideration where the information contained in the complaint attest to the alleged violation of human rights or freedoms and where the conditions prescribed by this Law for a complaint to be subject to consideration by the Defender are present.

2. Examination of issues referred to in a complaint must not be carried out by the state or local self-government body or the official of this body or organisation whose decision or action (omission) is being appealed.

Article 22. Not considering the complaint

1. The Defender shall render a decision on not considering the complaint where the settlement of the issue referred to in the complaint is beyond the scope of powers of the Defender or where the grounds provided for by this Law for not considering the complaint are present.

2. The Defender shall not consider anonymous complaints, as well as complaints submitted after one year following the day the applicant has learnt or should have learnt about the violation of his or her rights and freedoms, except when the Defender considers the reasons for missing the deadline valid.

3. The Defender shall not consider the complaints which do not contain claims on or do not attest to alleged violation of human rights or freedoms, or it is not clear from the contents of the complaint which state or local self-government body, organisation or the official or representative thereof has violated the right of the person having submitted the complaint. The complaint shall not be considered and the consideration initiated with regard to the complaint shall be terminated also in case the interested person has filed an action or complaint before the court after having submitted the complaint.

4. The Defender shall not consider the complaint also in case the requirements set forth for complaint, prescribed by this Law, are not observed, or the person having submitted the complaint has applied to the Defender with a request not to take any actions with regard thereto or not to consider it.

5. When rendering a decision on not considering the complaint, the Defender shall be obliged to explain the person having submitted the complaint the grounds for not considering the complaint, as well as the procedure provided for by law for the consideration of the complaint.

6. Where after the Defender has rendered a decision on not considering the complaint, the person having submitted the complaint submits another complaint with more detailed information, and where the Defender finds that the complaint with the new information attests to alleged violation of rights and freedoms, the Defender shall render one of the decisions referred to in Article 19 of this Law.

Article 23. Presenting to the person having submitted the complaint the possible means for the protection of his or her rights and freedoms

1. The Defender shall render a decision on presenting to the person having submitted the complaint the possible means for the protection of his or her rights and freedoms, where the

complaint submitted is not subject to consideration yet the examination of the complaint indicates that it is necessary to provide a detailed explanation to the interested person with respect to the possible means for exercising the rights and freedoms.

2. The Defender shall forward the copy of the decision to the person having submitted the complaint, presenting in a separate annex to the decision all the possible means for the protection of the rights and freedoms of the person having submitted the complaint, which the person has not resorted or may resort to.

Article 24. Forwarding the complaint for consideration by another body or organisation

1. Where the issue raised in the complaint is of such nature that it may also be settled by another state or local self-government body, organisation or an official or representative thereof, and where the issue raised in the complaint has not been previously considered by that body or organisation, the Defender may — upon the consent of the person submitting the complaint — forward it thereto for the purpose of consideration and follow the course of consideration thereof.

2. In the case referred to in part 1 of this Article, the Defender shall — upon the consent of the person having submitted the complaint — render a decision on forwarding the complaint for consideration by the state body, local self-government body or organisation or the official thereof within whose competence the disposition of the complaint on the merits falls.

3. In case of rendering a decision on forwarding the complaint for consideration by another body or organisation, as prescribed by this Article, the person having submitted the complaint shall be informed in writing, by sending a copy of the decision, on the complaint having been forwarded for consideration by another body.

Article 25. Powers of the Defender in the course of examination or consideration of a complaint

1. In the course of examination or consideration of a complaint, the Defender shall, within the scope of his or her competences, be authorised to:

(1) visit, in an unimpeded manner, any state or local self-government body or organisation, including military units, as well as places of deprivation of liberty;

(2) request and receive from any state or local self-government body or an official thereof necessary materials, documents, information or clarifications relating to the complaint or to the issue being considered upon own initiative, as well as assistance during visits made to those institutions;

(3) receive from state or local self-government body or an official thereof, except for courts and judges, clarifications concerning issues arising in the course of consideration;

(4) visit, in an unimpeded manner, the organisations referred to in Article 16 of this Law in the course of considerations initiated in cases of alleged violation of human rights and freedoms by these organisations, request and receive from competent bodies representing these organisations the necessary information, clarifications, materials and documents relating to the complaint or the issue;

(5) apply to competent bodies or organisations so as to conduct expert examination related to circumstances subject to clarification based on the complaint or in relation to the consideration upon own initiative and receive the opinions drawn up as a result thereof. The

financial expenses made for conducting the expert examinations and providing the opinions shall be covered by the funds of the State Budget;

(6) become familiar with those cases on criminal, civil, administrative, disciplinary and other offences, the acts with regard to which have entered into legal force, as well as with the materials with regard to which the initiation of criminal cases has been rejected or criminal proceedings have been dismissed; receive these via electronic or other material medium;

(7) request and receive from state or local self-government bodies or organisations any material or document related to the complaint or to the consideration upon own initiative, as well as become familiar with those materials or documents on-site;

(8) apply to the Council of Courts Chairpersons of the Republic of Armenia for the purpose of receiving clarifications of advisory nature with regard to legal issues arising in the judicial practice, as well as submit recommendations with respect to the improvement of the judicial practice;

(9) submit a communication on initiating disciplinary proceedings against a judge. The body entitled to initiate proceedings or the competent representative, having received the communication, shall be obliged to inform the Defender on the results of the consideration of the communication within a period of three days after rendering the decision.

2. Upon the written decision of the Defender, the powers provided for by points 1-7 of part 1 of this Article may be exercised also by persons holding positions within the Staff to the Defender.

3. Information containing state or other secret guarded by law may be made available, as prescribed by law, for familiarisation by the Defender or the person specially authorised thereby for that purpose.

4. The Defender shall not have the right to intervene in judicial proceedings or in the exercise of the powers of judges in a specific case. He or she may request information from the Judicial Department where it is related to the exercise of powers provided for by points 6, 8 and 9 of part 1 of this Article, as well as to drawing up an annual communication or public report, without intervening in proceedings in a specific case.

Article 26. Relations of the Defender with state and local self-government bodies and organisations in the course of consideration of a complaint or consideration initiated upon own initiative

1. When examining or considering a complaint, as well as carrying out consideration upon own initiative, the Defender shall be obliged to provide the state or local self-government body, organisation or the official or representative thereof, whose decision or action (omission) is being appealed, with an opportunity to furnish clarifications on the results of the complaint and examinations conducted, as well as substantiate their positions.

2. The requests for submitting information or clarifications or materials or documents may be addressed to more than one body. As a result of different clarifications received with regard to the consideration of the complaint, prior to rendering the final decision, the Defender may apply to the bodies referred to in this Article or the representatives thereof, with the provisional results of the consideration.

3. Based on the results of examination and analysis of the information on human rights and freedoms, the Defender shall have the right to provide clarifications of advisory nature and

recommendations to the bodies referred to in this Article and the officials thereof, for the purpose of summarising the results of the examination.

Article 27. Decisions rendered by the Defender as a result of consideration of a complaint or consideration upon own initiative

1. As a result of consideration of a complaint or consideration initiated upon own initiative, the Defender shall render one of the following decisions:

(1) on violation of human rights or freedoms, where violation of human rights or freedoms by a state or local self-government body, an official thereof or an organisation has been revealed in the course of consideration of the complaint;

(2) on absence of violation of human rights or freedoms, where no violation of human rights and freedoms by a state or local self-government body or an official thereof or an organisation has been revealed in the course of consideration of the complaint;

(3) on filing an action before the court on declaring as fully or partially invalid the regulatory legal acts — contradicting the law and other legal acts — of a state or local self-government body or an official thereof which has violated human rights or freedoms, where the state or local self-government body or the official thereof, having committed the violation, fails to fully or partially declare its relevant legal act as invalid within the prescribed time period;

(4) on terminating the consideration of the complaint, where grounds provided for by this Law for not considering the complaint or for terminating the consideration have been revealed in the course of consideration of the complaint.

2. In case of rendering the decision referred to in point 1 of part 1 of this Article, the Defender shall suggest the state or local self-government body or the official thereof or the organisation, having committed the violation, to eliminate the violation within a reasonable time period, indicating the necessary measures for restoration of the human rights and freedoms.

3. The Defender shall send a copy of its decision on the complaint, referred to in part 1 of this Article, to the person having submitted the complaint within a period of five days after rendering the decision. The decision of the Defender may not impede the protection by a person of his or her rights and freedoms through other means not prohibited by law.

4. The Defender shall be obliged to send — within a period of five days after rendering the decision — the copy of the decision on the complaint, referred to in points 1 and 3 of part 1 of this Article, to the state or local self-government body, the official thereof or the organisation whose decision or action (omission) has been appealed. The state or local self-government body, the official thereof or the organisation which has received the decision of the Defender, referred to in points 1 and 3 of part 1 of this Article, shall be obliged to inform the Defender in writing on the measures undertaken, within the shortest possible time but no later than within 30 days after receiving it.

5. In the case referred to in point 1 of part 1 of this Article, where there are grounds provided for by law or another legal act, the Defender may recommend the competent state or local self-government body to subject to liability the official upon whose decision or action (omission) the human rights and freedoms have been violated. In case of revealing violation of human rights and freedoms by an organisation, where there are grounds provided for by law or another legal act, the Defender shall apply to competent administrative bodies with a relevant recommendation.

6. The Defender may publish through mass media special information on the state or local self-government body, the official thereof or the organisation which has not responded to the recommendation of the Defender or which has failed to implement or has not duly implemented the measures envisaged by the recommendation, together with or without the response provided by the state or local self-government body, the official thereof or the organisation with respect to the recommendation of the Defender.

CHAPTER 5. ACTIVITIES OF THE DEFENDER IN SEPARATE FIELDS

Article 28. The Defender as the National Preventive Mechanism

1. In the capacity of the National Preventive Mechanism, the purpose of the Defender's activities shall be the prevention of torture and other cruel, inhuman or degrading treatment in places of deprivation of liberty.

2. For the purpose of ensuring the performance of the functions of the National Preventive Mechanism, a separate structural subdivision shall be established within the Staff to the Defender.

Article 29. Powers of the Defender as the National Preventive Mechanism

1. As the National Preventive Mechanism, the Defender shall be entitled to:

(1) make regular, as well as ad hoc visits to places of deprivation of liberty, including buildings or structures adjunct thereto for the purpose of preventing torture and other cruel, inhuman or degrading treatment or punishment. The Defender shall not be obliged to inform in advance on the time and purpose of the visits;

(2) visit, in a confidential and unimpeded manner, persons held in places of deprivation of liberty, as well as have private conversations with them, the employees of the corresponding institutions or any other person in the given place, where necessary engage an interpreter, use technical means. Private conversations shall not be subject to intervention or wiretapping by anybody or a third person;

(3) submit recommendations to competent bodies and organisations for the purpose of improving the conditions for holding persons at any place of deprivation of liberty, as well as preventing torture and other cruel, inhuman or degrading treatment or punishment;

(4) receive information on the number and location of the places of deprivation of liberty, as well as the number of persons held therein;

(5) receive information and clarifications on the treatment and conditions of persons held in places of deprivation of liberty, as well as on any other issue necessary for exercising the powers thereof;

(6) get familiar with all the documents necessary for exercising his or her powers, obtain the copies thereof;

(7) submit recommendations to the competent bodies on legal acts or draft legal acts;

(8) exercise other powers prescribed by this Law and the Optional Protocol — signed on 18 December 2002 — to the 1984 UN Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

2. As the National Preventive Mechanism, the Defender shall maintain regular contact with the United Nations Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as other relevant international organisations.

3. Within the meaning of this Law, the places of deprivation of liberty shall be:

(1) places for holding of arrestees;

(2) penitentiary institutions;

(3) psychiatric organisations;

(4) garrison disciplinary isolators;

(5) vehicles envisaged for transferring persons deprived of liberty;

(6) any other place, where upon the decision, order or instruction of a state or local self-government body or official, with the consent or permission thereof, a person has been deprived or may be deprived of liberty, as well as any such place which a person may not arbitrarily leave without the decision or permission of the court, administrative or other body or official.

4. For the purpose of receiving professional assistance in the capacity of the National Preventive Mechanism, based on the demands put forward by the statement thereon made on the official website or through other public sources, the Defender may engage independent specialists and representatives of non-government organisations, who gain the status of an expert of the National Preventive Mechanism.

5. The experts referred to in part 4 of this Article shall be engaged in the works of the National Preventive Mechanism upon the order of the Defender, based on the corresponding contract concluded with them. They shall be remunerated under the procedure defined by the Defender, at the expense of the State Budget funds, from the financial means allocated to the Staff to the Defender for that purpose. The rules of procedure for the experts of the National Preventive Mechanism, as well as the rules of conduct thereof shall be prescribed by the Defender.

6. Powers provided for by part 1 of this Article may be exercised by state servants and experts of the Subdivision of the National Preventive Mechanism under the Staff to the Defender based on the written decision of the Defender, in the manner and to the extent provided for thereby.

Article 30. Powers of the Defender with regard to improving regulatory legal acts

1. Draft regulatory legal acts regarding human rights and freedoms shall, prior to their adoption, be sent in the prescribed manner to the Defender for opinion. The Defender may submit a written opinion on these drafts within the required time limits.

2. In all the cases where the Defender reveals during his or her activities that issues relating to the human rights and freedoms are not regulated by a law or any other legal act or are not fully regulated, the Defender may submit to the body adopting the legal act a relevant recommendation, indicating the necessity and the extent of making amendments or supplements to the legal act.

3. The body having received the recommendation provided for by part 2 of this Article shall be obliged to consider it and inform the Defender on the results thereof.

Article 31. Annual communication and reports of the Defender

1. During the first quarter of each year, the Defender shall submit to the National Assembly of the Republic of Armenia an annual communication on his or her activities during the previous year, as well as on the state of protection of human rights and freedoms. The procedure and the time limits for submitting an annual communication by the Defender to the National Assembly of the Republic of Armenia shall be prescribed by the Constitutional Law "Rules of Procedure of the National Assembly".
2. The structure of the annual communication of the Defender, the scope of issues included therein, as well as the format of recommendations submitted to state and local self-government bodies, organisations shall be determined by the Defender. The latter shall, at his or her discretion, submit the communication also to the competent state bodies and non-government organisations and also publish it through mass media.
3. In cases of specific issues of public resonance or of gross violations of human rights, the Defender may also make ad hoc public reports or communications, which may include not only cases and facts on the violation of rights but also recommendations on the improvement of regulatory legal acts relating to the human rights and freedoms.
4. The Defender shall ensure the publicity of the communications and the reports.
5. As the National Preventive Mechanism, the Defender shall, during the first quarter of each year, submit a separate annual communication on the activities undertaken during the previous year.

Article 32. Participation of the Defender in the activities of state and local self-government bodies

1. The Defender shall have the right to be present at the sittings of the Government of the Republic of Armenia, as well as of the state and local self-government bodies, and deliver a speech where issues regarding the human rights and freedoms are being considered, as well as put forward issues to be considered at these sittings with respect to violation of the human rights and freedoms as well as the requirements of this Law by these bodies or their subordinate bodies or officials.
2. The Defender, *ex officio*, may not deliver a speech during court sessions. The Defender or the representative thereof may be present at open court sessions for observation purposes.
3. The Defender shall have the right to be present also at the sittings of the National Assembly of the Republic of Armenia, deliver a speech as prescribed by the Constitutional Law of the Republic of Armenia "Rules of Procedure of the National Assembly", where issues regarding human rights and freedoms are being considered.

Article 33. Council adjunct to the Defender

1. The Defender may establish councils adjunct thereto, composed of representatives of non-governmental organisations and independent specialists having the necessary experience and knowledge in the field of human rights.
2. The members of the Council shall be invited by the Defender.
3. The procedure for formation and rules of operation of the Council shall be prescribed by the Defender.

CHAPTER 6. PECULIARITIES OF STATE SERVICE WITHIN THE STAFF TO THE DEFENDER

Article 34. Legal acts regulating state service within the Staff to the Defender

1. Relations pertaining to the appointment to and dismissal from position of state service within the Staff to the Defender, conferment of class ranks, holding a competition for filling vacant positions, training courses for state servants, and inclusion of state servants in the personnel reserve, evaluation of their performance, their substitution and official trips, granting leaves, social guarantees for state servants and other relations pertaining thereto shall be regulated by this Law, as well as by the Law of the Republic of Armenia "On judicial service" where peculiarities regulating these relations are not prescribed by this Law.

2. Official relations of state servants shall be regulated by the in-house disciplinary rules approved by the Defender.

3. Labour relations of state servants shall be regulated by the labour legislation of the Republic of Armenia where peculiarities regulating these relations are not prescribed by this Law and other legal acts.

Article 35. State service and class ranks within the Staff to the Defender

1. State service within the Staff to the Defender shall be deemed professional activity performed for the purpose of ensuring the exercise of powers reserved to the Defender by the Constitution of the Republic of Armenia and this Law. State service within the Staff to the Defender shall be a special type of state service prescribed by the legislation of the Republic of Armenia.

2. Activities of experts engaged by the Defender, specialists, and persons carrying out technical maintenance related tasks and functions, and persons implementing on contractual bases other individual tasks and functions shall not be considered as state service within the Staff to the Defender.

3. State servants shall be conferred with the following class ranks:

(1) state servants holding highest positions — class ranks of the 1st and 2nd class state advisor of state service within the Staff to the Defender;

(2) state servants holding chief positions — class ranks of the 1st and 2nd class advisor of state service within the Staff to the Defender;

(3) state servants holding leading positions — class ranks of the 1st and 2nd class leading servant of state service within the Staff to the Defender;

(4) state servants holding junior positions — class ranks of the 1st and 2nd class junior servant of state service within the Staff to the Defender.

4. Class ranks of state service within the Staff to the Defender shall be conferred to all state servants, their class rank shall be lowered, as well as they shall be deprived of the class rank by the Defender.

Article 36. Staff to the Defender

1. The Staff to the Defender shall ensure complete and effective exercise of the powers of the Defender reserved thereto by the Constitution of the Republic of Armenia, by this Law and other legal acts, as well as the participation of the Defender in civil legal relations.

2. The Staff to the Defender shall be composed of two departments, the Subdivision of the National Preventive Mechanism, the Secretariat, marz and other subdivisions established based on the decision of the Defender, as well as advisors, assistants and press secretary of the Defender.

3. Based on the decision of the Defender, persons holding positions within the Staff to the Defender may act as representatives of the Defender at the National Assembly of the Republic of Armenia and the Constitutional Court of the Republic of Armenia.

Article 37. Secretariat of the Staff to the Defender

1. The Staff to the Defender shall be a state administration institution, having no status of a legal person, which shall be headed by the Secretary of the Staff through the Secretariat.

2. The Secretariat shall be comprised of the Head of Secretariat, state servants, as well as persons carrying out technical maintenance.

3. The structure of the Secretariat shall comprise its structural subdivisions prescribed by law and other legal acts.

4. The Head of Secretariat shall be appointed to and dismissed from position by the Defender.

5. The Secretariat shall operate on the basis of the legislation of the Republic of Armenia and the Statute approved by the Defender.

6. The Secretariat may, within the scope of its competence, acquire and exercise property and personal non-property rights, bear responsibilities, act as a plaintiff or defendant in court.

7. The Secretariat shall support the complete and effective performance of the activities of the Defender, the subdivisions of the Staff thereto, as well as that of advisors, assistants and the press secretary of the Defender.

Article 38. Subdivisions of the Staff to the Defender

1. The subdivisions of the Staff to the Defender shall ensure effective and complete exercise of the powers of the Defender, the competence whereof shall be prescribed by the Defender.

2. The heads of departments of the Staff to the Defender, the Subdivision of the National Preventive Mechanism and marz subdivisions, advisors, assistants and the press secretary of the Defender shall be considered as persons holding discretionary positions who perform state service.

3. The subdivisions of the Staff to the Defender shall act under the direct subordination of the Defender.

4. The Statutes and the structures of subdivisions of the Staff to the Defender shall be

approved by the Defender.

5. Based on the decision of the Defender, marz subdivisions of the Staff to the Defender may be established within the administrative-territorial units of the Republic of Armenia.

Article 39. Management of the subdivisions and the Secretariat of the Staff to the Defender

1. The administration of the subdivisions and the Secretariat of the Staff to the Defender shall be carried out by the Defender. The Defender shall:

- (1) manage, co-ordinate and supervise the current activities of the subdivisions of the Staff to the Defender, ensure the performance of the objectives and functions set before them;
- (2) issue orders, assignments subject to compulsory implementation, render decisions;
- (3) approve and make changes to the number of employees and the staff list of the Staff to the Defender;
- (4) approve the list of positions of state service within the Staff to the Defender and the job descriptions for the positions of state servants;
- (5) appoint to and dismiss from position the state servants and persons holding discretionary positions within the Staff to the Defender, as well as apply incentive measures and impose disciplinary sanctions thereon;
- (6) prescribe the procedure for training, performance evaluation of state servants, the criteria and reference form, rules of conduct of state servants, procedures for conducting official investigation, workflow management (document circulation), keeping the personal files of state servants;
- (7) prescribe the procedure for the formation of selection boards for filling vacant positions of state service within the Staff to the Defender, as well as the rules of procedure thereof;
- (8) upon his or her decision, send on an official trip and grant a leave to state servants and persons holding discretionary positions within the Staff to the Defender;
- (9) issue letters of authorisations for acting on behalf of the Defender, including authorisations with the power of substitution;
- (10) exercise other powers reserved thereto by the Constitution of the Republic of Armenia and this Law.

2. The management of the Secretariat shall be carried out by the Head of Secretariat. The Head of Secretariat shall:

- (1) support personnel policy, fiscal, logistical support related activities;
- (2) appoint to and dismiss from position persons carrying out the technical maintenance of the Secretariat, as well as apply incentive measures and impose disciplinary sanctions thereon;
- (3) provide for the analysis and summarisation of the activities of the Staff to the Defender;

- (4) carry out activities related to the accepting and registering of complaints addressed to the Defender, observance of the time limits thereof;
- (5) keep the personal files of state servants;
- (6) ensure the operation of the official internet web-site of the Defender;
- (7) ensure the implementation of organisational activities necessary for the consultations, meetings, visits of the Defender, as well as for trainings and official trips of state servants;
- (8) exercise other powers reserved thereto by law, the Statute of the Secretariat and the decisions of the Defender.

3. The management of a subdivision under the Staff to the Defender shall be carried out by the head of subdivision. The head of subdivision shall:

- (1) ensure the performance of functions arising from the goals and objectives of the subdivision;
- (2) co-ordinate the implementation of the necessary activities in the fields under his or her responsibility;
- (3) exercise supervision, in the fields under his or her responsibility, over the execution of assignments of the Defender, submit a report on the results to the Defender;
- (4) ensure, as prescribed by the Defender, the document circulation relating to the field under the responsibility of the subdivision;
- (5) within the scope of his or her competence, co-operate with state and local self-government bodies, organisations and institutions;
- (6) act as the representative of the Defender in relations with other bodies, organisations and citizens;
- (7) substitute the Defender in cases and under the procedure prescribed by this Law;
- (8) exercise powers delegated by the Defender, in accordance with part 2 of Article 25 of this Law;
- (9) exercise other powers reserved thereto by this Law, the Statute and the decisions of the Defender.

Article 40. Remuneration of state servants within the Staff to the Defender

1. Increments shall be paid to state servants for having a class rank higher than the class rank corresponding to the subgroup of the given position, for work and/or service record.
2. Increment shall also be paid to state servants for one of the specified conditions or several of them, namely having a class rank, class rank higher than the class rank corresponding to the subgroup of the given position and work and/or service record.
3. In case of having a class rank higher than the class rank corresponding to the subgroup of the given position, increment shall be paid to state servants in the amount of 5 percent of their official pay rate.

4. For the work record, increment shall be paid to state servants in the amount of 2 percent for each year.
5. For class rank, state servants shall receive increments.
6. The total amount of increments paid to state servants may not exceed 30 percent of the basic salary.

Article 41. Final part

1. This Law shall enter into force on the tenth day following the day of its official promulgation.
2. The Law of the Republic of Armenia HO-23-N of 15 November 2003 “On Human Rights Defender” shall be repealed upon the entry into force of this Law.

Article 42. Transitional provisions

1. The Defender shall, in accordance with this Law, approve the statutes and the structure of the Staff to the Defender within six months following the entry into force of this Law.