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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

ARMENIA

RELEVANT LEGISLATION

RELATED TO THE INDEPENDENCE OF THE OMBUDSMAN'S STAFF*

EXTRACTS

***Unofficial translation**

Annex 1. Regulations of the Laws of the Republic of Armenia on Public Service and Civil Service

I. Law of the Republic of Armenia on Public Service¹

Article 3. Public service, public service position, public servant

1. Public service is the implementation of the powers assigned to public authorities by the Constitution and the laws of the Republic of Armenia, covering state service, municipal service and public positions.

2. State service is the professional activity directed to implementation of the powers assigned to state bodies by the legislation of the Republic of Armenia.

3. State service covers service in courts, civil service, diplomatic service, Customs Service, Tax Service, rescue service, military service (except for the obligatory military service of ordinary structure performed by means of appeal on the obligatory military service established by the law), service in bodies of homeland security, service in the Police, service in the anti-corruption committee, criminal and executive service, service of forced execution of court resolutions, service of bailiffs.

5. The public service position is the established position that is based on merit, characterized by career development, requires political neutrality, political restraint, and professional activity, and is provided by the Index of positions for particular types of state service or the Index of positions for municipal service.

6. Person holding public service position, or in the cases and procedure established by the law, persons included in the personnel reserve of state or municipal service, are considered public servants.

7. Each position in the public service has its title, which reflects as accurately as possible the main functions of the position, and does not bear a general nature.

Article 13. The right to hold a public service position

1. Citizens of the Republic of Armenia corresponding to the requirements of Description of a public service position and the requirements for separate types of service and the Republic of Armenia laws on municipal service have the right to hold public service position, while persons with refugee status in the Republic of Armenia may hold municipal service positions, regardless of their nationality, race, sex, religion, political or other views, social origin, property or other status.

Article 15. The maximum amount of number of positions, the index of public service positions, the description of a position, the list of staff

1. The maximum amount of the number of positions within state authorities is determined by the Prime Minister.

5. The state authorities should not have more positions than assigned for them under the Republic of Armenia legislation except for cases stipulated under para. 2 of Article 10 of the current Law.

6. The Deputy Prime Minister coordinating public service (Coordinating Deputy Prime Minister) approves the methodology for drafting the description of a public service position and maintaining the Index of positions.

Article 27. Objectivity

1. Public officials and public servants exercise impartiality while exercising their mandate, excluding any form of discrimination
2. According to the specifics of the service, the public servant is politically neutral while performing the duties of the service.
3. The public servant does not have the right to bear symbols reflecting their affiliation to a political party while performing the duties of the service. (Will enter into force on 01.01.2022)

¹ <https://www.arlis.am/DocumentView.aspx?docid=120832> (in Armenian).

Article 27.1 The political activity of public servants

1. Public servants are obliged to show political restraint in any circumstance.
2. The political activities of public servants should not call into question the impartiality of the public service.
3. Public servants have the right to participate in the pre-election campaign in the manner prescribed by the Electoral Code of the Republic of Armenia, maintaining political restraint.
4. Public servants, while participating in political or public debates or events, including in the run-up to the election campaign, do not have the right to speak in ex-officio, to indicate their official position and title and to use the authority of the position in any way in favor of any party (alliance of parties) or candidate,
5. The provision set forth in part 4 of this Article shall not apply to public servants running as candidates in elections.
6. The participation of a public servant, as an official, in the political campaign during the pre-election campaign should be of purely informational nature and express the official position.

(Enters into force on 01.01.2022)

Law of the Republic of Armenia on Civil Service²

Article 2. The scope of the Law

1. The current Law applies for persons holding office (provided under Index of civil service positions) in legislative, executive, judicial bodies, the Office of the President of the Republic, the Prosecutor's Office, investigative bodies, independent state bodies, autonomous bodies, the Office of the Human Rights Defender, as well as for persons holding office in the state authorities subordinate to the Government, the Prime Minister and the Ministries.

Article 4. The basic concepts used in the Law

1. This Law uses the following basic concepts:
 - 1) civil service – is based on merit, characterized by career development, requires political neutrality and professional activity, and is carried out in authorities specified in para. 1 of Article 2 of the current Law with the aim of implementing the powers assigned to those bodies under Republic of Armenia legislation.
 - 2) public service position – a position unit established under Index of civil service positions. Public service position requires rights and obligations deriving from the legal acts and tasks, as well as professional knowledge and competences and is included within the administration system.
 - 3) The list of civil service positions- the list of all the civil service positions established in accordance of Article 5 of this Law.
 - 4) civil servant – a citizen of the Republic of Armenia who holds a civil service position and carries out professional activity provided for that position, or is registered in the personnel reserve of state service and receives salary from the state budget of the Republic of Armenia under a procedure established by the current Law.

Article 3. Legal acts of the Republic of Armenia on civil service

1. The relations with regard to with civil service are regulated by the Constitution of the Republic of Armenia, the current Law, the Law of the Republic of Armenia "On Public Service", the Law of the Republic of Armenia "About remuneration of persons holding the state positions and civil service positions", the decisions of the Government, Prime Minister and Coordinating Deputy Prime Minister and other legal acts.

3. The Republic of Armenia Law "On Public Service" regulates the binding relations for civil servants deriving from their on basic rights and obligations, social guarantees, system of discipline and relations under other regulations. The Government adopts the conditions and

² <https://www.arlis.am/documentview.aspx?docID=120807> (in Armenian)

procedures for the implementation of the rights of persons enrolling in civil service (that derive from the current Law), while the Coordinating Deputy Prime Minister adopts the peculiarities for the organization of the service.

Article 5. Approving (amending) of the Description of a civil service position and Index of positions

5. Within one month from the emergence of a legal ground for making amendments and supplements in the Index of civil service positions, the Secretary General of the relevant body presents the proposal (supported by documents and drafted under the approved methodology) together with the drafts for Description of a civil service position to the Office of Civil Service.

6. Within three working days after the receipt of consent of the Office of Civil Service on inclusion (exclusion) of the position in the Index of civil service positions, the position is included (excluded) within the information platform of civil service, and the Description of the position is approved.

7. The Coordinating Deputy Prime Minister approves the methodology for setting requirements on

evaluation, classification, titles, drafting of Description of public service positions, its place in the commons system of positions, rights and obligations, maintaining the Index of positions, as well as requirements for professional knowledge and competencies of for holding the civil service position.

Article 6 The classification of civil service positions

1. Civil service positions are classified into groups based on the requirements for organizing the work of the persons holding those positions, the management responsibilities, decision-making powers, influence of activities, the required interactions and representation, complexity of the problems and their solution, as well as professional knowledge and competencies.

2. Civil service positions are classified into the following groups:

1) Civil service management positions;

2) civil service professional positions

3. The group of management positions of the civil service is classified into 1st, 2nd, 3rd, 4th and 5th subgroups. The group of professional positions of the civil service is classified into 1st, 2nd, 3rd, 4th, 5th, 6th, 7th and 8th subgroups.

Article 38. The Organization and Administration of the Civil Service.

1. The Office of the Civil Service of the Prime Minister's Office ensured the administration and unity of civil service in a manner provided by the current Law and other legal acts.

2. The Office of the Civil Service is accountable to the Prime Minister, the Government, and the Coordinating Deputy Prime Minister.

3. The Office of the Civil Service

1) Implements the methodological management and the oversight of the human resources of the relevant bodies.

Annex 2. Regulations on the independence of the Human Rights Defender and the Human Rights Defender's Office

Article 5 para. 1 and 2 of the Constitution of the Republic of Armenia (the Constitution)

"The Constitution shall have supreme legal force. Laws must comply with constitutional laws, whereas secondary regulatory legal acts must comply with constitutional laws and laws".

Article 39 para. 3 of the Constitutional Law on the Human Rights Defender

"The administration of the subdivisions and the Secretariat of the Staff of the Defender shall be carried out by the Defender. The Defender shall: approve and make changes to the number of employees and the staff table of the Staff of the Defender".

General guarantees of independence

Article 191 para. 1 of the Constitution of the Republic of Armenia (the Constitution)

"The Human Rights Defender shall be an independent official who observes the maintenance of human rights and freedoms on the part of state and local self-government bodies and officials, whereas in the cases prescribed by the Law on the Human Rights Defender — also on the part of organisations, as well as contributes to the restoration of violated rights and freedoms and improvement of the regulatory legal acts related to human rights and freedoms."

Article 193 para. 6 of the Constitution

"Other guarantees for the activities of the Human Rights Defender shall be prescribed by the Law on the Human Rights Defender."

Article 5 of the Constitutional Law on the Human Rights Defender

"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."

Article 6 para. 1 of the Constitutional Law on the Human Rights Defender

"The Defender may not, during his or her term of office and thereafter, be prosecuted or held liable for activity carried out as part of his or her mandate, including for the opinion expressed at the National Assembly."

Confidentiality of information as a guarantee of independence

Article 6 para. 4 of the Constitutional Law on the Human Rights Defender

"The Defender may not, during his or her term of office 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 6 para. 5 of the Constitutional Law on the Human Rights Defender

"Correspondence, phone conversations, postal, telegram messages and other forms of communication of the Defender related to exercise of his/her powers, shall be subject to monitoring only by a court decision upon a motion of the Prosecutor General, if it is related to the need to prevent or detect grave or particularly grave crimes."

Article 11 para.2 of the Constitutional Law on the Human Rights Defender

"Persons holding office within the Staff of 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."

Opinion on the Venice Commission on the Draft Constitutional Law on the Human Rights Defender, para. 20

In general, Article 6 (Immunity of the Defender) is in line with existing standards on the guarantee of the independence of the ombudsman, including the provision that his or her immunity continues after the end of his or her term of office. Nevertheless, in the 2015 Joint Opinion, the Venice Commission¹¹ stressed "that this immunity should not only concern the person of the Defender and his (or her) staff, but should also cover baggage, correspondence and means of communication belonging/used to the Human Rights Defender and his/her staff in their professional capacity" (emphasis added).³

Opinion on the Venice Commission on the Draft Constitutional Law on the Human Rights Defender, para. 74

The Venice Commission recommended that with regard to the functional immunity of the Defender "express provisions on the functional immunity of the Defender, **Defender's staff** and experts of the NPM for words spoken or written, recommendations, decisions and other acts undertaken in good faith while performing their functions" should be included.⁴

³ [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)033-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)033-e) , para. 20

⁴ [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)033-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)033-e) , para. 74

Immunity from criminal persecution as a guarantee of independence

Article 193 para. 1 of the Constitution

"The right of immunity prescribed for a Deputy shall extend to the Human Rights Defender. The National Assembly shall decide on giving consent for instigating criminal prosecution against the Human Rights Defender or depriving him or her of liberty by at least three fifths of votes of the total number of Deputies."

Article 6 para. 2 of the Constitutional Law on the Human Rights Defender

"Criminal prosecution against the Defender may be instituted, as well as he or she may be deprived of liberty only upon the consent of the National Assembly of the Republic of Armenia by at least three fifth of the total number of parliament members."

Opinion on the Venice Commission on the Draft Constitutional Law on the Human Rights Defender, para. 22

"Article 6.2 and 6.3 of the draft constitutional law (regarding the criminal prosecution and deprivation of liberty of the Defender) must be read in conjunction with Article 193.1 of the new Constitution, which provides that "The immunity right stipulated for parliamentarians shall apply to the Human Rights Defender", which refers to Article 96 (The Immunity of a Parliamentarian) of the new Constitution. Article 6.3 largely reproduces Article 96.2 of the new Constitution."⁵

Article 11 para.1 of the Constitutional Law on the Human Rights Defender

"Where criminal prosecution is instituted on any ground against a person holding office within the Staff of 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 person in question."

Opinion on the Venice Commission on the Draft Constitutional Law on the Human Rights Defender, para. 20

The staff's functional immunity is partly covered by Article 11 of the draft constitutional law, which refers to procedural mechanisms to protect the staff when criminal prosecution is instituted against them. At the same time, this does not per se prevent the initiation of criminal, administrative or civil proceedings for words spoken or written or other acts performed by the Defender's staff in the exercise of their functions (functional immunity). Such functional immunity of the staff of an NHRI is essential to protect the independence of the institution.⁶

Funding as a guarantee of independence

Article 193 para. 4 of the Constitution

"The State shall ensure due financing of the activities of the Human Rights Defender."

Article 8 para.1 of the Constitutional Law on the Human Rights Defender

"Appropriate funding shall be ensured at the expense of the funds of the State Budget for smooth operation of the Defender and the Staff thereto."

Article 8 para. 2 of the Constitutional Law on the Human Rights Defender

"The budget of the Defender and the Staff thereto shall constitute a part of the State Budget, which is funded in a separate line. The activities of the Defender as the National Preventive Mechanism shall also be specifically funded from the same budget line."

Article 8 para. 4 of the Constitutional Law on the Human Rights Defender

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 if 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 the objection on the budget funding.

Article 8 para. 5 of the Constitutional Law on the Human Rights Defender

"The amount of allocation for funding provided from the state budget to the Defender and the Staff thereto as well as to the Defender as the National Preventative Mechanism cannot be less than the amount provided the year before. The funding from the state budget is implemented in equal monthly installments in the form of pre-payment for every month."

⁵ [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)033-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)033-e) , para. 22

⁶ [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)033-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)033-e) , para. 20

Opinion on the Venice Commission on the Draft Constitutional Law on the Human Rights Defender, para. 24 and 25

"Article 8 is about "Financing of and social guarantees for the activities of the Defender". Article 8.2 provides that "The budget of the Defender and the Staff thereto shall constitute a part of the State Budget, which is financed in a separate line." This is in line with the standard of budgetary independence of the institution. The Defender should also be able to defend, in person, the adoption of his or her budget in Parliament (Article 8.4).

A certain level of financial autonomy is required for the Defender to carry out his or her functions in general and as NPM. Article 8.2 not only sets out that the Defender shall be financed in a separate line of the State Budget, but also that the Defender's activities as NPM shall be specifically financed. This is a welcome improvement, addressing in part the issue raised in paragraph 48 of the 2015 Joint Opinion."⁷

Opinion on the Venice Commission on the Draft Constitutional Law on the Human Rights Defender, para. 28

"Nevertheless, the Defender's functional independence could be further improved by introducing into the draft constitutional law certain safeguards against unwarranted budgetary cutbacks. In this respect, the Venice Commission's recommendations in its 2006 Opinion on amendments to the Law on the Human Rights Defender of Armenia should be reiterated here: (...) Considering its exceptionally sensitive nature and the significance of this provision for the independence of the institution, a provision could be added stating that public authorities shall not use the budgetary process for allocating funds from the budget in a manner that interferes with the independence of the institution of the Human Rights Defender."⁸

Opinion on the Venice Commission on the Draft Constitutional Law on the Human Rights Defender, para. 75

With regard to the Budget of the Defender's Office, the Venice Commission recommended that "safeguards against unwarranted cutbacks to improve the Defender's functional independence" should be introduced.⁹

State Service within the Staff of the Human Rights Defender

Article 34 para. 1 of the Constitutional Law on the Human Rights Defender

"Relations pertaining to the appointment to and dismissal from the office of state service within the Staff of 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."

Article 34 para.2 of the Constitutional Law on the Human Rights Defender

"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 para. 1 of the Constitutional Law on the Human Rights Defender

"State service within the Staff of the Defender shall be considered a 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 of the Defender shall be a special type of state service prescribed by the legislation of the Republic of Armenia."

Article 35 para. 4 of the Constitutional Law on the Human Rights Defender

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

Article 35 para. 2 of the Constitutional Law on the Human Rights Defender

⁷ [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)033-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)033-e), para. 24 and 25

⁸ [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)033-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)033-e), para. 28

⁹ [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)033-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)033-e), para. 75

"The Staff of 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."

Article 39 of the Constitutional Law on the Human Rights Defender- Administration and management of the Subdivisions and the Secretariat of the Staff of the Defender

1. The administration of the subdivisions and the Secretariat of the Staff of 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 of the Defender, ensure the performance of the objectives and functions thereof;
- 2) issue orders, assignments subject to compulsory implementation, render decisions;
- 3) approve and make changes to the number of employees and the staff table of the Staff of the Defender;
- 4) approve the list of positions of state service within the Staff of 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 offices within the Staff of the Defender, as well as apply incentive measures and impose disciplinary sanctions thereon;
- 6) define the procedure for training, performance evaluation of state servants, the criteria and reference form, code of conduct of state servants, procedures for conducting official investigation, case-management (document circulation), keeping the personal files of state servants;
- 7) prescribe the procedure for organizing a competition for filling vacant positions of state service within the Staff of the Defender, for the formation of selection boards, 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 offices within the Staff of the Defender;
- 9) issue powers of attorney for acting on behalf of the Defender, including powers with the right 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 Secretary General. The Secretary General shall:

- 1) support human resources policy, financial-budgetary, logistical support related activities;
- 2) appoint to and dismiss from office persons carrying out technical maintenance of the Secretariat, as well as apply incentive measures and impose disciplinary sanctions thereon;
- 3) provide for the analysis and summarization of the activities of the Staff of the Defender;
- 4) carry out activities related to the acceptance and registration of complaints addressed to the Defender, observance of the deadlines 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 organizational activities required for the consultations, meetings, visits of the Defender, as well as for training and official trips of state servants;
- 8) exercise other powers reserved thereto by law.

3. The management of a subdivision under the Staff of 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 required activities in the fields under responsibility thereof;
- 3) exercise supervision, in the areas under responsibility thereof, 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 related to the field under the responsibility of the subdivision;
- 5) within the scope of the powers thereof co-operate with state and local self- government bodies, organizations and institutions;
- 6) act as the representative of the Defender in relations with other bodies, organizations 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 paragraph 2 of Article 24 of this Law;
- 9) exercise other powers reserved thereto by this Law.

Article 40 para. 1 of the Constitutional Law on the Human Rights Defender

"Relations related to remuneration of the Defender, staff members holding discretionary offices and state servants shall be regulated by the Law of the Republic of Armenia "On remuneration of state servants"."