

## **Ombudsman Karen Andreasyan's conclusion on the section of the Draft Constitution concerning the Human Rights Defender**

Having analyzed the Draft Amendments to the Constitution of the Republic of Armenia the Ombudsman presented his conclusions on a number of chapters directly related to human rights, where a not exhaustive list of positive and negative amendments is presented. Below are the conclusions on the provisions of the 10<sup>th</sup> Chapter of the Draft "The Human Rights Defender".

### **POSITIVE AMENDMENTS**

- According to the Draft, in addition to his/her powers in public sector, the Human Rights Defender would be granted powers to protect human rights and freedoms also in other sectors (Draft, Article 190). The aforementioned formulation expands the powers of the Ombudsman.
- It would be provided by the Constitution that a complaint of an applicant is not a necessary precondition for the Human Rights Defender to be able to demand necessary documents, information and clarifications from state bodies (Draft, Article 190). Submission of the relevant information to the Human Rights Defender would become a direct obligation for state and local self-government bodies.
- State bodies and public officials would be obliged to support the activities of the Human Rights Defender (Draft, Article 190). This provision would contribute to free execution of the powers of the Defender, which was also welcomed by the Venice Commission.
- Proper financing of the Human Rights Defender's activities from the state budget shall be guaranteed by the Constitution (Draft, 191). This would contribute to the independence of the Human Rights Defender, as well as the effective execution of its powers.

### **CONCERNING AMENDMENTS**

- According to the Draft amendments, the Human Rights Defender must demonstrate political reservation during public speeches (Draft, Article 192). The term "reserved" is problematic and cannot be applied towards the Human Rights Defender. Political reservation is considered one of the main principles of the conduct for public servants, while the Human Rights Defender is not a public

servant, but a high-ranking official. Hence, it is suggested to apply the concept “political neutrality” in the given provision.

- The scope of provisions to be reviewed by the Constitutional Court upon Ombudsman's application would be narrowed, since the Ombudsman would be given authority to challenge exclusively the legal acts related to the rights envisaged in the Second chapter of the Draft. Since the legislative guarantees of social, economic and cultural spheres related to the rights of work conditions, social security, decent existence, health protection would be stipulated in the Third chapter of the Draft, those rights would no longer be subject to constitutional appeal by the Ombudsman. In case of such amendment the persons would be deprived of the opportunity to receive Ombudsman's support in effective protection of the aforementioned rights. Hence, it is suggested to amend the Draft, so that the RA Human Rights Defender is able to apply to the Constitutional Court concerning the conformity of the aforementioned provisions to the Constitution as well.
- The wording of the Draft may result in restricting the Human Rights Defender's authority to examine private cases. In particular, in its Preliminary Opinion Venice Commission mentioned that it is unclear from this definition whether the Human Rights Defender would have powers to review individual cases or whether his/her role would be limited to a general overview of the situation of human rights in the country. The Commission emphasized that the *Defender should be able to work in individual cases and this should be set out explicitly*. Thus, we suggest explicitly establishing in the Draft the Human Rights Defender's authority to examine private cases as well.
- The Draft suggests that the Human Rights Defender shall present an annual report on his activities and the situation of protection of human rights and freedoms only to the National Assembly. Whereas, the current Law prescribes that the Ombudsman's Annual Report would also be presented to bodies other than the National Assembly as well. The mentioned amendment, mainly, narrows the scope of the current regulation, since it does not ensure the possibility of raising wider awareness on the activities of the Defender and the situation of human rights and freedoms among the public. Therefore, it is recommended to foresee a provision in the Draft on presenting Ombudsman's Annual Report to the President, executive and judicial branches of power, as well as to the mass media and relevant non-governmental organizations.

- According to a number of international organizations, the Human Rights Defender must retain immunity after expiry of his/her office term as well, which is not mentioned in the Draft. Particularly, the Venice Commission mentioned in its opinion that the Human Rights Defender must have immunity from legal process in respect of words spoken not only during his or her term of office, but also thereafter. Besides, in order to strengthen the independence of the Human Rights Defender, it is important to envisage guarantees on immunity of documents and immovable property of the institution as well. *Hence, it is suggested to foresee a provision in the Draft through which the judicial immunity of the Human Rights Defender will be insured also after the expiry of the term of office as well.*

**Office of the Ombudsman of the Republic of Armenia**