

Ombudsman Karen Andreasyan's conclusions on Draft Amendments to the Constitution

Having analyzed Draft Amendments to the Constitution of the Republic of Armenia, the Ombudsman presented his conclusions on several human rights related chapters, where not exhaustive list of positive and negative amendments is presented. Along with the professional arguments, Ombudsman's conclusions were also submitted to the Government of the Republic of Armenia.

Below are the conclusions on the provisions of the Second chapter of the Draft "The Fundamental Rights and Freedoms of the Human being and the Citizen", as well as the Third chapter "Legislative guarantees and main objectives of the state policy in the social, economic and cultural spheres".

POSITIVE AMENDMENTS

- Everyone would be entitled to claim damages in cases when that damage is caused by unlawful actions or inaction of the state or local self-government bodies and their officials (Draft, Article 60). Such constitutional guarantee would contribute to accountability and effectiveness of human rights protection by public servants.
- The person who served the punishment for committing a crime would have the right to claim damages if miscarriage of justice in his/her case has been proved, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him (Draft, Article 69). This is an important guarantee to claim damages, which is necessary to restore the violated rights.
- The accused shall have the right to examine or to have examined the witnesses who have testified against him under the same conditions as the witnesses on his/her behalf (Draft, Article 66). The mentioned provisions is an important guarantee in the criminal procedure due to which one can be protected and prove his/her innocence, which is in compliance with international standards.
- As a result of the change administrative authorities must examine the cases of the citizens in an impartial way, within a reasonable time period, during which the person will have the right to become acquainted with all the documents about him/her. Moreover, it would be stipulated that those state and local self-government bodies and officials shall hear the person before adopting an interfering act concerning the person and substantiate it (Draft, Article 49).
- The Constitution would provide everyone the right to access information on the activities of state and local self-government bodies and officials, including the right to become acquainted with the relevant documents, unless it contradicts the public interests. (Draft, Article 50). This would become an important guarantee for strengthening transparent governance and democracy.
- It would be stipulated in the Constitution that the laws envisaging limitations are specific, that is to say, predictable, clearly written, so that each citizen is able to predict the circumstances of his/her conduct (Article 79 of the Draft).
- Foreign citizens and stateless persons shall also have the right to vote and to be elected in local self-government bodies, as well as shall take part in local referenda (Draft, Article 47). The establishment of such democratic principle in the Constitution is an important guarantee.
- The right to elect and be elected will be expanded, which would allow greater number of persons to take part in the state governance and decision-making. Particularly, unlike the current Constitution, the blanket prohibition on the rights of imprisoned persons would be abolished, as a result the mentioned prohibition would cover only persons declared by court as legally incapable, as well as persons convicted for the commission of a grave crime (Draft, Article 47).
- Draft suggests that in matters concerning the child his/her viewpoints in accordance with the age and maturity shall be taken into consideration in the decisions related to him/her (Draft, Article

36). The adoption of the suggested provision would strengthen the formation and promotion of the decisions based on the best interest of the child, which is in conformity with the international standards.

- It would be stipulated in the Constitution that children left without parental care shall have the right to receive protection of the state, as well as child shall have the right to personal relationship and direct contact with his parents (Draft, Article 36).
- Every employed parent (both the mother and father) shall have the right to leave in cases of a newborn child or child adoption. That is to say, both parents would be able to use the right to leave, which is consistent with the international standards and would strengthen equality between men and women regarding upbringing and providing care to their children (Draft, Article 55).
- Making the human body and its parts as such a source of financial gain, as well as reproductive cloning of human beings would be prohibited (Draft, Article 24). Being in line with the international standards the mentioned provisions would protect the person from unlawful physical and medical intervention.
- The practice of bodies operating on the basis of international human rights treaties, to which the Republic of Armenia is a party, shall be taken into account when interpreting the Constitutional provisions on fundamental rights and freedoms (Draft, Article 81). This would promote that the State, to strengthen and protect human rights, besides acting in accordance with Conventional norms is guided by other norms as well, which are periodically developed and improved by international bodies.
- The principles of political neutrality and serving public interests would be stipulated in the Constitution for the public servants (Draft, Article 48). This would promote the effectiveness and impartiality of the work of the state and local-self government authorities' staff.
- Judges, Prosecutors and Investigators would not be allowed to join any party (Draft, Article 45). This would become an important constitutional guarantee to ensure independence and impartiality while performing one's professional duties. .
- State and local self-government bodies would not be able to intervene with the right to hold own opinion, that is to say, the person will be able, by any means, to freely seek information (Article 41 of the Draft). The abovementioned is an important guarantee in the field of freedom of information, as well as the protection of media.
- As a result of the Amendment, everyone shall have the right to receive the support of the Human Rights Defender, not only in case of violation of his/her rights and freedoms by state and local self-government bodies and officials, but also in case of violations of those rights by other organizations (Article 51 of the Draft). This means that, in contrast with the current Constitution, the Ombudsman would be able to protect citizens also from private entities providing public services, which may also violate the rights of persons.
- The principle of equal rights for men and women would be stipulated (Draft, Article 28), which would be an important constitutional guarantee for equal development of the society and would increase the role of women.
- To ensure transparency parties would be obliged to publish annual reports on the sources of their finances, expenditures, as well as property. The activities of parties advocating violent overthrow of the constitutional order or using violence for overthrowing the constitutional order would be suspended by a decision of the Constitutional Court (Draft, Article 45).

CONCERNING AMENDMENTS

- The Draft does not directly guarantee the right of a person to appeal to a higher instance court against the lawfulness for depriving him/her of freedom or subjecting to search as well as it does not directly prohibit subjecting a person to search otherwise than in conformity with the procedure prescribed by law as envisaged by the Article 16 of the current Constitution.
- 2. Despite foreseeing that minimum salary shall be defined by law, Draft does not directly establish the right of each person to fair remuneration in the amount not less than the minimum. Considering the importance of the mentioned rights, it is recommended to clearly articulate this right in Draft thus ensuring additional legal guarantees in the sphere of employment relations (Draft, Article 84).
- 3. According to Draft, law shall define the right of everyone in need to a decent existence (Draft, Article 84). However, it is preferable to replace the word “existence” with the word “standard of living”. Besides, it is not clear why person’s right to satisfy his/her basic needs shall be defined by law, and not guaranteed by the Constitution as a fundamental right.
- The Draft does not clearly reflect the provision of Article 18 of the Constitution, which stipulates the right of everyone to effective legal remedies before public bodies as an alternative to judicial means of human rights protection. Despite envisaging the right to proper administration, the Draft however, does not specify whether the latter entirely encompasses the person’s right to legal remedies before the public body (Draft, Article 49).
- The Draft stipulates that the aim of the restriction and the means chosen for restriction of a person’s right have to be proportionate to the significance of the fundamental right that is restricted (Draft, Article 78). The formulation of this provision is vague and it appears to imply a certain classification in the fundamental rights depending on their significance. The current approach is unacceptable from the perspective of equality and interconnectedness of human rights.
- The Draft envisages everyone’s right to become acquainted with the data about him/her collected in state and local self-government bodies (Draft, Article 33). However, this right should not be solely limited to databases of state and local self-governing bodies, since a number of private entities providing public services (for example, mobile service providers) collect personal data as well.
- Among the main goals of the state such important provision as guarantee of decent standard of living for elderly people, protection of families, support to motherhood and childhood, promotion of development of science and culture, implementation of the policy ensuring the environmental security of present and future generations were withdrawn from the Draft (Draft, Article 86).
- According to Draft, persons declared by court as legally incapable, as well as persons convicted for the commission of a grave crime by a court judgment that has entered into legal force may not vote or be elected or take part in referenda. However, according to the decisions of the European Court of Human Rights, absolute deprivation of prisoners’ right to vote, regardless of the nature or severity of their crime, violates their rights. Hence, the absolute deprivation of the right to vote may restrict free elections and, thus aforementioned restrictions should be based on the principle of proportionality (Draft, Article 47).

- Draft states that everyone legally present in the Republic Armenia shall have the right to leave the country (Draft, Article 39). However, according to the international obligations undertaken by Armenia, everyone shall have the right to leave every, including his/her own country. That is, there is no requirement to be legally present in a country in order to be able to leave it.
- The Draft provides that in matters concerning the child, the interests of the child shall get primary attention (Draft, Article 36). However, according to international standards, primary attention shall get “the best interests of the child”. This term differs from the term “child’s interests”, as the latter does not completely reflect the principle of making the best decisions for the solutions to the child’s matters.
- The Draft states that the exercise of the right to preserve his national and ethnic identity, as well as to develop traditions, religion, language, and culture of persons belonging to national minorities shall be regulated by law (Draft, Article 54). The wording of this provision is unclear. It is vague whether these rights will be protected in case of people’s initiative, or the state is legally bound to take active measures to ensure these rights.

Office of the Ombudsman of the Republic of Armenia