

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

Adopted on 16 December 2016

**CHAPTER 1. GENERAL PROVISIONS**

**Article 1. Subject matter of the Law**

This Constitutional Law shall define 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 is an independent official who observes the maintenance of human rights and freedoms by public and local self-government bodies and officials, and in cases prescribed by this law also by organisations, facilitates the restoration of violated rights and freedoms, improvement of normative legal acts related to rights and freedoms.
2. The Defender shall be entrusted with the mandate of the National Preventive Mechanism provided 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 implementation of the provisions of the UN Convention on the Rights of the Child adopted on 20 November 1989, as well as carry out prevention of violations of the rights of the child and the protection thereof.

**Article 3. Principles of the activities of the Defender**

1. In the course of exercising his or her powers, the Defender shall be guided by the principles of legal equality, impartiality, publicity, transparency and other principles set forth in the Constitution of the Republic of Armenia.

**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 within other public or local self-government bodies, any position within commercial organisations, engage in entrepreneurial activities, and perform other paid work except for scientific, educational and creative activities.
2. The Defender may join or otherwise engage in activities of international human rights organisations 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 office, 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.

### **Article 6. Immunity of the Defender**

1. 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.

2. 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.

3. The Defender may be deprived of liberty without the consent of the National Assembly if caught in the act of committing a criminal offence or immediately thereafter. In this case, deprivation of liberty may not last more than for seventy-two hours. The Chairperson of the National Assembly shall be notified without delay of the deprivation of liberty of the Defender.

4. 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.

5. 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 7. Security of the Defender**

1. 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. Funding and social guarantees for the activities of the Defender**

1. 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.

2. 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.

3. The Defender shall — as prescribed by the legislation and within the deadline 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 activities of the Defender and the Staff thereto for the upcoming year to the authorised state body to be included 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 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.

5. 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.

6. The Defender shall participate in the hearings at the National Assembly on the draft Law of the Republic of Armenia «On State Budget» in part related to funding of activities of the Defender and the Staff thereto, as well as the Defender as the National Preventative Mechanism.

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

8. During the entire term of office, the Defender shall be released from mandatory military service, mobilisation and military exercises.

#### **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 this law, with the necessary materials, documents, information and clarifications — free of charge and within the shortest possible time — 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 deadline is not specified in the request.

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 rapid response by the Defender upon his or her request the bodies referred to in this paragraph 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 restriction or deprivation of liberty. Conversations in private 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 as well as requests or other documents sent by the Defender shall not be subject to verification or censorship. They must be sent to the Defender without delay 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 clearly disrespectful attitude towards him or her shall entail criminal liability.
3. Failure to provide the materials, documents, information or clarifications requested by the Defender within the deadlines prescribed by this Law shall entail administrative liability.

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

1. 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.
2. 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.

**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 authority within the public, having higher education, having been a citizen of solely 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 office 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 the members of the Parliament, 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 in the presence of the members of the National Assembly of the Republic of Armenia:

"By assuming the office of the Defender, I hereby swear to defend the human rights and freedoms of an individual and a 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 office after the oath-taking ceremony at the National Assembly of the Republic of Armenia, on the day following the expiry of the term of office 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. The elections of the Defender shall be held within the time frame set forth in the Constitutional Law of the Republic of Armenia "The Rules of Procedure of the National Assembly".

### **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 office, in cases of loss of citizenship of the Republic of Armenia or acquisition of a citizenship of another state, when a criminal judgment of conviction rendered against him or her becomes final, a judgment on declaring him or her as having no active legal capacity, as missing or dead becomes final, 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 a week after submitting the resignation letter the Defender submits a second resignation letter. In case of early termination of the powers of the Defender on the ground of resignation, the Defender shall publish and present to the National Assembly a brief communication on the activities implemented during the period between the presentation of regular annual report thereof and the date of submitting a letter of resignation.

3. The term of office 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 paragraph 1 of this Article, apart from cases of expiry of the term, 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 paragraph 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 paragraphs 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 paragraph 4 of this Article.

### **Article 14. Substitution of the Defender**

1. During the temporary absence of the Defender, including when he or she is on leave, official trip or when his or her powers have been terminated, one of the department heads holding discretionary office within the Staff of 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 head of a department within the Staff of the Defender who is elder.

3. During the absence of the Defender, the head of the department substituting the Defender shall exercise the powers of the Defender reserved thereto by this Law, except for powers prescribed by Article 26, paragraphs 5-7 of Article 28, paragraphs 1-4 of Article 29, Articles 31-33, paragraph 4 of Article 35, paragraph 4 of Article 36, paragraph 3 of Article 37, points 3-7 and 9 of paragraph 1 of Article 39 of this Law.

## **CHAPTER 4. PROCEDURE FOR CONSIDERATION OF ISSUES WITHIN THE POWERS OF THE DEFENDER**

### **Article 15. 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 public importance or it is related to the protection of interests of persons who cannot benefit from legal remedies for protection of their rights and freedoms on their own.
- 2.** When carrying out consideration on 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 16. 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 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 lodging a complaint to the Defender or a representative thereof either by post or in person. 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 in person and through their representatives.
- 4.** For the purpose of protecting the rights and freedoms of another person, the representative, legal successor, heir of that person as well as bodies of guardianship and custody for the protection of the rights of children, legally incapacitated or partially incapacitated people may apply to the Defender. Legal representatives, persons authorised as prescribed by law, including attorneys at law may act as a representative. Upon the request of the Defender or the representative thereof, the representative of the person shall be obliged to present the power of attorney, the advocate's licence, whereas the legal successor and the heir shall be obliged to present 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 related to the need for protecting the interests of such persons who cannot benefit from legal remedies for their protection on their own.
- 7.** State and local self-government bodies may not lodge complaints with the Defender.
- 8.** Applying to the Defender or intervention by the Defender may not result in any adverse consequences or unequal treatment or threat for the complainant. Any treatment of that kind shall entail liability prescribed by law.

### **Article 17. Deadlines and requirements for lodging a complaint**

1. A complaint must be lodged with the Defender within a year following the day when the applicant has learnt or should have learnt about the alleged violation of his or her rights and freedoms.
2. The complaint shall be lodged in writing or orally.
3. No state duty shall be charged for the complaints being lodged with the Defender.
4. The complaint must be signed, include the surname, name, place of residence (address) of the person lodging a complaint or the name, location of the legal person and contact information. No other specific form is prescribed for the complaint.
5. The procedure for lodging an online complaint shall be approved by the Defender.
6. Contents of oral complaints and data provided for by paragraph 4 of this Article shall be reduced to writing by the Defender or the authorised representative thereof.
7. A complaint lodged with the Defender shall be deemed as the consent of the person who has lodged 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.

### **Article 18. Making complaints or contents thereof public**

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

### **Article 19. Decisions 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 complainant possible means for the protection of his or her rights and freedoms;
  - 4) on referring the complaint for consideration to another body.
2. The Defender shall send a copy of the decision prescribed by paragraph 1 of this Article to the complainant promptly but no later than within 30 days upon receipt of the complaint.
3. In the cases prescribed by paragraph 1 of Article 15 of this Law, the Defender may render a decision on initiating consideration upon own initiative.
4. Decisions rendered by the Defender on the complaint or on considering it upon own initiative shall not be subject to appeal.

### **Article 20. 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 met.

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 thereof or organisation the decision or action (inaction) of which is being appealed.

3. Together with rendering a decision on accepting the complaint for consideration, the Defender shall notify the complainant that lodging a complaint with the Defender does not suspend the deadlines prescribed for applying to the competent body or court to restore the violated rights and freedoms.

#### **Article 21. 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 have the right to not consider anonymous complaints, as well as complaints lodged 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 for cases when the Defender considers the reasons for missing the deadline valid. The complaint shall not be considered if it appears that information about the identity of the complainant was false.

3. The Defender shall have the right to not consider the complaints which do not contain claims 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 complainant. 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 on the same ground and the same subject matter after having lodged the complaint or there is a final judgment in regard to the same ground and the same subject matter.

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 complainant 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 complainant 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 complainant lodges 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 22. Presenting to the complainant possible means for the protection of his or her rights and freedoms**

1. The Defender shall render a decision on presenting to the complainant possible means for the protection of his or her rights and freedoms, where the lodged complaint 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 send a copy of the decision to the complainant, presenting in a separate annex to the decision all the possible means for the protection of the rights and freedoms of the complainant, which the person has not resorted yet or may resort to.

### **Article 23. Referring the complaint for consideration to 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 complainant — refer it thereto for the purpose of consideration thereto and within reasonable time regularly follow the course of consideration thereof.
2. In the case referred to in paragraph 1 of this Article, the Defender shall — upon the consent of the complainant — render a decision on referring the complaint for consideration to the public body, local self-government body or organisation or the official thereof within whose powers the disposition of the complaint on the merits falls.
3. In case of rendering a decision on referring the complaint for consideration to another body or organisation, as prescribed by this Article, the complainant shall be informed in writing, by sending a copy of the decision, on the complaint having been referred for consideration to another body.

### **Article 24. 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 powers, 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 the competent 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 15 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 issue under consideration upon own initiative and receive the opinions drawn up as a result thereof. The financial expenses incurred 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 discontinued; receive these via electronic or other data carrier;
  - (7) apply to the bodies of judicial authorities responsible for analysis of the judicial practice to receive clarifications of consultative nature regarding legal issues arising in the judicial practice as well as for submitting recommendations on the improvement of the judicial practice;
2. Upon the written decision of the Defender, the powers provided for by points 1-6 of paragraph 1 of this Article may be exercised also by persons holding office within the Staff thereto.
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 specifically 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 and 7 of paragraph 1 of this Article, as well as to drawing up an annual communication or public report, without intervening in the proceedings in a specific case.

**Article 25. 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 (inaction) is being appealed, with an opportunity to furnish clarifications on the complaints and results of the 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 26. 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 existence of a 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 a 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 normative 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 deadline;

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 paragraph 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, indicating the necessary measures for restoration of the human rights and freedoms.

**3.** The Defender shall send a copy of the decision on the complaint, referred to in paragraph 1 of this Article, to the complainant within 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 five days after rendering the decision — a copy of the decision on the complaint, referred to in points 1 and 3 of paragraph 1 of this Article, to the state or local self-government body, the official thereof or the organization the decision or action (inaction) of which 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 paragraph 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 paragraph 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 (inaction) the human rights and freedoms have been violated. In addition to the fact of subjecting to liability, the Defender may propose a type of disciplinary measure. Competent state or local self-government body or public officials shall be obliged to consider recommendations of the Defender and within deadline prescribed by paragraph 4 of Article 26 of this law to inform the Defender. In case a type of disciplinary measure proposed by the Defender is not applied or in case of not subjecting the person to disciplinary responsibility the competent public official shall be obliged to provide respective justification. 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 to subject to liability.

**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 AREAS**

### **Article 27. The Defender as the National Preventive Mechanism**

**1.** The objective of the Defender's activities as the National Preventive Mechanism shall be the prevention of torture and other cruel, inhuman or degrading treatment in places of deprivation of liberty stipulated in paragraph 4 of Article 28 of this law.

**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 of the Defender.

### **Article 28. 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 of his or her choice 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 of his or her choice held in places of deprivation of liberty, as well as have conversations in private with them, the staff members of the corresponding institutions or any other person in the place in question, where necessary engage an interpreter, use technical means. Conversations in private 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 of detention 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 the powers of the Defender, 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.

**2.** Information obtained in the capacity of the National Preventative Mechanism shall be protected. Personal data shall not be published without a written permission of the person.

**3.** 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, including by means of exchange of information and meetings with them.

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

- (1) places for holding of arrestees and detainees;
- (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 freely leave without the decision or permission of the court, administrative or other body or official.

**5.** For the purpose of receiving professional assistance in the capacity of the National Preventive Mechanism, based on the requirements set forth in the announcement thereon made on the official website or through other public sources, the Defender may engage independent specialists and (or) representatives of non-government organisations, who acquire the status of an expert of the National Preventive Mechanism.

**6.** The experts referred to in paragraph 5 of this Article shall be engaged in the activities of the National Preventive Mechanism 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 of the Defender for that purpose. The rules of procedure for the experts of the National Preventive Mechanism, as well as the code of conduct thereof shall be prescribed by the Defender.

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

#### **Article 29. Powers of the Defender with regard to improving normative legal acts**

1. The Defender shall have the right to submit a written opinion on draft normative legal acts regarding human rights and freedoms prior to their adoption to the relevant body.

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 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 paragraph 2 of this Article shall be obliged to consider it and inform the Defender on the results thereof within the deadline stipulated in paragraph 4 of Article 26.

4. The Defender shall have the right to apply to the Constitutional Court of the Republic of Armenia in regard to compliance of laws, decisions of the National Assembly, orders and instructions of the President, decisions of the Government and the Prime-Minister, by-laws with Chapter 2 of the Constitution.

5. The Defender may organise training for the staff thereto as well as for beneficiary bodies and organisations on issues related to human rights and freedoms.

#### **Article 30. The powers of the Defender in the area of the protection of child rights**

1. Pursuant to paragraph 3 of Article 2 of this Law the Defender shall have the powers to:

2) conduct monitoring of compliance of the legislation to provisions of the UN Convention on the Rights of a Child adopted on 20 November 1989;

3) carry out regular, as well as ad hoc unimpeded visits to childcare and child protection institutions as well as comprehensive educational institutions. The Defender shall not be obliged to notify about the time and purpose of the visit in advance;

4) present special public reports related to the child rights;

5) present recommendations to the competent bodies in relation to the improvement of legal acts related to children rights or the drafts thereof or practice;

6) carry out other powers prescribed by this law.

### **CHAPTER 6. ANNUAL COMMUNICATION AND REPORTS OF THE DEFENDER, PARTICIPATION OF THE DEFENDER IN THE ACTIVITIES OF STATE AND LOCAL SELF-GOVERNMENT BODIES AND THE COUNCIL UNDER THE DEFENDER**

### **Article 31. Annual communication and reports of the Defender**

1. During the first quarter of each year, the Defender shall present to the National Assembly of the Republic of Armenia the annual communication on the activities thereof during the previous year, as well as on the state of protection of human rights and freedoms. The procedure and the deadlines for presenting the 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 submit the communication also to the competent state bodies and non-government organisations and also publish it through mass media.
3. In relation to specific issues forming public resonance or gross violations of human rights, the Defender may also prepare 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 normative 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, present a separate report 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, and deliver a speech in accordance with the procedures prescribed by the Government of the Republic of Armenia, as well as sittings of the state and local self-government bodies and deliver a speech in accordance with the procedures stipulated for sittings thereof, where issues regarding the human rights and freedoms are being considered.
2. The Defender in his status may not deliver a statement during court sessions. The Defender or the representative thereof may be present at public 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 under 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 procedure of the Council shall be defined by the Defender.

## **CHAPTER 7. PECULIARITIES OF STATE SERVICE WITHIN THE STAFF OF THE DEFENDER**

### **Article 34. Legal acts regulating state service within the Staff of the Defender**

1. 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.
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 of the Defender**

1. 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.
2. Activities of experts engaged by the Defender, specialists, and persons carrying out technical maintenance related tasks and functions, and persons carrying out other individual tasks and functions on contractual bases shall not be considered as state service within the Staff of 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 counselor of state service within the Staff of the Defender;
  - (2) state servants holding chief positions — class ranks of the 1st and 2nd class counselor of state service within the Staff of the Defender;
  - (3) state servants holding leading positions — class ranks of the 1st and 2nd class leading servant of state service within the Staff of the Defender;
  - (4) state servants holding junior positions — class ranks of the 1st and 2nd class junior servant of state service within the Staff of the Defender.
4. 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 36. Staff of the Defender**

1. The Staff of the Defender shall be a state administration institution, having no status of a legal person, whose functions are implemented by the Secretariat of the Staff.
2. 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.

3. The Staff of the Defender shall be composed of two departments, the Subdivision of the National Preventive Mechanism, the Secretariat, regional and other subdivisions established based on the decision of the Defender, as well as advisors, assistants and press secretary of the Defender. Departments, Subdivision of the National Preventative Mechanism and regional subdivisions are separate subdivisions of the Staff of the Defender.

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

#### **Article 37. Secretariat of the Staff of the Defender**

1. The Secretariat shall comprise the Head of Secretariat, state servants, as well as persons carrying out technical maintenance.

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

3. The Head of Secretariat shall be appointed to and dismissed from office by the Defender.

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

5. The Secretariat may, within the scope of powers thereof, acquire and exercise property and personal non-property rights, bear responsibilities, act as a plaintiff or civil defendant in court.

6. 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 of the Defender**

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

2. The subdivisions of the Staff of the Defender shall perform directly under the Defender.

3. The Statutes and the structure of subdivisions of the Staff of the Defender shall be approved by the Defender.

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

#### **Article 39. 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 Head of Secretariat. The Head of Secretariat 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 summarisation 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 organisational 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, 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 paragraph 2 of Article 24 of this Law;
- (9) exercise other powers reserved thereto by this Law.

**Article 40. Remuneration of the Defender and state servants within the Staff of the Defender**

1. 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".

**CHAPTER 8. FINAL AND TRANSITIONAL PROVISIONS**

**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.
3. Paragraph 5 of Article 16, paragraphs 5-7 of Article 28, Article 33, as well as Chapter 7 shall enter into force as of 1 March 2017. Till that the relevant provisions prescribed by 3 O -23-L Law of the Republic of Armenia "On the Human Rights Defender" of 15 November 2003 shall be in effect.
4. The powers of the Defender prescribed by this Law in relation to consideration of violations of human rights and freedoms by organisations shall be in effect as of 1 March 2017.

**Article 42. Transitional provisions**

1. The Defender shall, as prescribed by this Law, approve the statutes and the structure of the Staff of the Defender within six months following the entry into force of this Law.
2. Till the day of taking up the office of the President of the Republic of Armenia elected in accordance with the procedure prescribed in Article 125 of the Constitution as amended in 2015 class ranks prescribed by point 1 paragraph 3 of Article 35 of this law are granted, lowered, as well as deprived by the President of the Republic of Armenia upon the recommendation of the Defender.

**The President of the Republic of Armenia**

**S. Sargsyan**

14 January 2017

Yerevan

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