

## Armenia

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*Human Rights Defender of the Republic of Armenia*

### **Independence and effectiveness of the NHRIs**

#### **International accreditation status and SCA recommendations**

The NHRI was reaccredited with A status in the March 2019 SCA session. The SCA noted that, despite the NHRI's report on the breadth and transparency of the selection and appointment process, the practice is not enshrined in the law, regulation or in another binding administrative guideline. The SCA welcomed the increase of funding to the NHRI and encouraged the NHRI to keep advocating for the provision of adequate funding for carrying out its extended mandate. Moreover, the SCA highlighted that the law is silent on whether or not the Defender can be re-elected, which leaves open the possibility of an unlimited term – in the SCA's view, it would be preferable to limit the term of office to the possibility for one re-election.

#### **Developments relevant for the independent and effective fulfilment of the NHRIs' mandate**

The last SCA review of the Armenian National Human Rights Institution took place in March 2019. Following the review, the national regulatory framework on the Human Rights Defender (the Defender) has not been changed.

The Defender continues to have a number of institutional and financial guarantees, provided by the Constitution of Armenia and the Constitutional Law on the Human Rights Defender securing the Defender's independence and effective performance of its functions. Immunity of the Defender, criminal liability for hindering the activities of the Defender, administrative liability for not responding to the Defender's request or not providing the requested materials, annual state funding for the Defender not less than the amount provided the year before are among these guarantees.

The Defender's activities include 2 fundamental directions: human rights protection mainly by investigating and resolving complaints, as well as monitoring activities; and human rights promotion through contributing to the improvement of legislation, human rights education and awareness raising, breaking stereotypes and in general supporting the

improvement of the human rights system and strengthening the rule of law in the country. Moreover, the Constitutional Law provides, inter alia, three conventional mandates to the Defender: (1) National Preventive Mechanism (NPM) provided for by the Optional Protocol, (2) independent monitoring mechanism under the UN Convention on the Rights of the Child and (3) independent monitoring mechanism under the UN Convention on the Rights of Persons with Disabilities. Furthermore, the draft Law on Ensuring Equality that is planned to be adopted later this year designates the Defender to become an equality body.

Taking into account the legislative changes on the mandate following the constitutional amendment of 2015 in Armenia, a series of activities aimed at enhancing awareness about the role and mandate of HRDO as redress mechanism among society at large, especially among civil society and media representatives have been conducted. The new legislative provisions (e.g. educational mandate, financial and institutional guarantees), as well as the conducted capacity-building and awareness-raising activities enhanced operational effectiveness and institutional influence of the Human Rights Defender's Institution throughout the country.

As of 31 December 2018, the operation efficiency rate of the Human Rights Defender's Office (HRDO) has approximately increased five times. In 2018 visits to representatives of child care and protection institutions has increased 11 times, visits to penitentiary institutions has doubled, etc. Meanwhile, in 2019, the number of complaints addressed to the Defender increased by 22% or by 2386 complaints, reaching 13,140 (in comparison in 2018 the HRDO received 10,754 complaints). In 2019, the number of cases that were positively resolved were also increased, reaching 1,593.

### *References*

- RA Constitution <https://www.president.am/en/constitution-2015/>
- RA Constitutional Law on the Human Rights Defender [https://www.ombuds.am/en\\_us/site/AboutConstitution/79](https://www.ombuds.am/en_us/site/AboutConstitution/79)
- [https://www.ombuds.am/en\\_us/site/ViewNews/694](https://www.ombuds.am/en_us/site/ViewNews/694)
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- [https://www.ombuds.am/en\\_us/site/ViewNews/1162?fbclid=IwAR0k-H4AfkftU\\_c3379u33C2wVNQ7M2IIEPN5JMwvf1dLspd35V1VvzGN98](https://www.ombuds.am/en_us/site/ViewNews/1162?fbclid=IwAR0k-H4AfkftU_c3379u33C2wVNQ7M2IIEPN5JMwvf1dLspd35V1VvzGN98)

## Human rights defenders and civil society space

In 2018, the State Revenue Committee of Armenia prepared a draft on making amendment to the Law of the Republic of Armenia on Non-Governmental Organizations. According to the draft it was envisaged that all NGOs are obliged to publicize the content of their annual report, including information about their financial activities, projects, number of employees and etc. The draft was presented for the Defender's opinion.

In his opinion, the Defender raised a number of concerns and made relevant recommendations.

Firstly, the Defender emphasized that necessary legal tools for the state about NGOs accountability are important, however, in a democratic society, civil society organizations must have the necessary autonomy and independence of activities while carrying out their activities and oversight over state. According to the 103 paragraph of the OSCE/ODIHR and Venice Commission Guidelines on Freedom of Association any restriction must be prescribed by law, necessary in a democratic society and in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. Restrictions on access to resources that reduce the ability of associations to pursue their goals and activities may constitute an interference with the right to freedom of association. It should be noted that the justification of the draft did not specify which of the above-mentioned grounds was taken into account so that all non-governmental organizations were required to publicize their report.

The Defender also referred to the Recommendation CM/Rec (2007)14 of the CoE Committee of Ministers to member states on the legal status of non-governmental organisations in Europe, which states that NGOs which have been granted any form of public support can be required to make known the proportion of their funds used for fundraising and administration. Thus, the Defender recommended to apply less stringent requirements for those NGOs who have not received any form of public support.

Another issue with the draft was that the NGOs should publicize information on the names of employees and volunteers, including the names and surnames of the members of the organization, persons in the management bodies and staff, if they used the organization's funds during the reporting year. The Defender referred to the paragraph 167 of the OSCE/ODIHR and Venice Commission Guidelines on Freedom of Association, which states that associations should not be under a general obligation to disclose the names and addresses of its members, since this would be incompatible with both their right to

freedom of association and the right to respect for private life. Among other national and international legal provision, the Defender also referred to the Paragraph 64 of the Explanatory Memorandum to Recommendation CM/Rec (2007) 14 of the Committee of Ministers to member states on the Legal Status of Non-Governmental Organisations in Europe, which states that Obligations to report should be tempered by other obligations relating to the right to life and security of beneficiaries and to respect for private life and to confidentiality. In particular, a donor's desire to remain anonymous should be respected. The Defender recommended to make relevant changes in order not to publicize personal data included in the organization's report, such as the names and surnames of the organization's members, governing bodies, staff and volunteers.

It should be noted that the Defender's recommendations were accepted by the State Revenue Committee and the draft law was adopted with relevant changes addressing the concerns raised in the Defender's opinion.

### *References*

- <https://www.osce.org/odihr/132371?download=true>
- [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016805d534d](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805d534d)

## **Checks and balances**

After the protests and democratic developments that took place in Armenia from April to May 2018, reforming judiciary system was one of the priorities in the new Government's agenda.

On 20 May 2019, the Prime Minister of Armenia Mr. Nikol Pashinyan, in a Facebook post, has called for people to block the entrances and exits of all courthouses in the country. Immediately after the call, the Defender made a statement, noting that State power shall be exercised in conformity with the Constitution and the laws, based on the separation and balance of the legislative, executive and judicial powers. Thus, any interference in the activities of the courts in the Republic of Armenia and their administration of justice is prohibited. The courts are to guarantee the country's legal security and the stability of the legal system, ensuring the uninterrupted protection of human rights. Through their daily activities, the courts are obliged to ensure the exercise of fair trial and other rights. However, the Defender added, that indeed, there are certain issues that remain concerning

in the judicial system, such as external and internal independence of the courts, low level of public trust in judges and court decisions, etc.

### *References*

- Statement of the Defender <https://www.ombuds.am/am/site/ViewNews/779> (Available in Armenian)

## **Functioning of justice systems**

Analyses of the judicial practice and administration of justice carried out, as well as investigation of complaints within the capacity of the Human Rights Defender show that serious reforms are needed in the system of judiciary. Issues related to external and internal independence of the courts, low level of public trust in judges and court decisions, lack of mechanisms for the guarantee of a fair trial and other constitutional rights, etc. All the reforms in this field, however, must be carried out in a strict compliance with the provisions enshrined in the RA Constitution and the laws.

One of the main issues in the judicial system is undue delays of the court hearings. The courts have a particular obligation to ensure that all parties to a court proceeding make all the necessary efforts to avoid undue delays of case examination. However, violations of reasonable time requirement become widespread in our country. Court proceedings take months and even years. Issues requiring court's assessment are also delayed causing problems for individuals. This is mainly justified by the overloaded court system, which is an unacceptable justification.

The Human Rights Defender records that the state should organize legal systems in a way that enables the courts to guarantee the right to obtain a final decision within a reasonable time. In order to comply with this requirement, states may initiate different mechanisms, such as increasing the number of judges, setting a time limit for particular cases, etc. However, if the state allows the judicial proceeding to go beyond the reasonable time clause, without developing the aforementioned mechanisms, then the state is ultimately responsible for the delay.

Even if we take into consideration that the procedures affecting reasonable time requirement depends on the parties, their attitude does not dispense the court from their obligation to consider the case within a reasonable time. This is required by the Article 6 (1)

of the Convention and therefore by the European Court of Human Rights. Everyone should have effective remedies for restoring that violated right and the state, in its turn, should create all necessary legal mechanisms for that.

Thus, the Defender summarized the complaints concerning examination of cases within reasonable time in the courts and applied to the Constitutional Court, as well as published an ad hoc report with regard to this issue.

### *References*

- [https://www.ombuds.am/en\\_us/site/ViewNews/1051](https://www.ombuds.am/en_us/site/ViewNews/1051)
- [https://www.ombuds.am/en\\_us/site/ViewNews/1057](https://www.ombuds.am/en_us/site/ViewNews/1057)
- [https://www.ombuds.am/en\\_us/site/ViewNews/1043](https://www.ombuds.am/en_us/site/ViewNews/1043)
- Ad Hoc Report of the Human Rights Defender on the lack of mechanisms to restore a right to judicial hearing within a reasonable time  
<https://ombuds.am/images/files/e722139fe25348c1076dae0df9496c55.pdf> (available in Armenian)

## **Media pluralism**

The respect for journalists' professional activities is under the Defender's primary attention, highlighting that the state is responsible for guaranteeing the rights and ensuring safety of journalists, especially during mass rallies and events of public concern. It has a duty both to refrain from manifestations of ill-treatment by state bodies or public officials and, as a positive obligation, to create safe working conditions, as well as conduct effective investigation of violence.

During the April 2018 events, a number of cases of violence against journalists took place. In some cases, they were accompanied by damaging journalists' equipment, which proves that they were targeted and the infringements against them were aimed at hindering their activities. These are illegal interventions in journalistic freedom and proper legal assessment should be provided to every such act. Hence, the HRD stresses the importance of initiating criminal proceedings by law enforcement bodies regarding every such case as a guarantee of the principle of inevitability of criminal responsibility.

In 2018, the HRD has published legal standards for journalists while requesting information containing personal data and the corresponding obligations of state bodies in this regard

(e.g. how to reply to the journalistic inquiries?). The purpose of this publication aims at further strengthening the collaboration between journalists and state bodies.

Moreover, the HRDO periodically organizes capacity-building activities for journalists and mass media representatives on national and international standards on hate speech, freedom of opinion and expression, right to private life, constitutional mandate of the HRD, rights redress mechanisms etc. It is important to note, that during the trainings, the journalist and mass media representatives were urged to remove from their accounts any comment containing hate speech or insulting speech.

## **Corruption**

The Defender, as a protector of human rights, aspires to eliminate the root causes of human rights violations, changes the attitude towards bribery, primarily within the judiciary and prosecution, but also in the society. In this respect, the mandate of the Defender is broad and covers the prevention of corruption as well (e.g. drafting proposals for legislative amendments, raising awareness of the population on their rights when dealing with the courts, etc.).

The realization of efficient anticorruption actions entails cooperation between multiple actors, including the Human Rights Defender. According to the reforms in the field, it is planned not to have a universal anticorruption body in Armenia. The Government has formed a commission to prevent corruption while another body with legal authority to investigate and prosecute the corrupt activities together with the corruption court will be set up in 2021.

In an effort to further ensure effective implementation of anticorruption policies in Armenia, the Government has adopted a decision on establishing the Anticorruption Council of Armenia. In their capacities as members of the Council, the Defender participates in the elaboration of anticorruption policy and its implementation measures.

## **In-focus section on COVID-19 measures**

### **Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law in the country**

On 16 March 2020, the Armenian Government approved the Decree "On declaring state of emergency in the Republic of Armenia" in response to the outbreak of the novel coronavirus (COVID-19) in the world and in Armenia, as well as the declaration by the Head

of WHO on the recognition of the spread of this disease as a pandemic. Further, the RA Government decision on Declaring State of Emergency in the Republic of Armenia was amended several times, and extended the restrictions imposed by the decision till May 14, 2020.

Since the first COVID-19 case has been reported in the Republic of Armenia, a working group on the COVID-19 and state of emergency within the HRDO was established. The aim of the WG is to operatively and rapidly response to the emergency calls received through the hot line. Hence, the Office continues to work in a 24/7 regime. Moreover, a specialized working group on domestic violence prevention issues was established as well.

It should be emphasized that these days the number of applications, complaints and inquiries addressed to the Defender is significantly higher than in ordinary circumstances. Complaints mostly relate to issues on: (1) entering and leaving Armenia; (2) salaries; (3) human rights in closed institutions (penitentiary institutions, psychiatric establishments, etc.); (4) lack of possibility to pay for utilities (water, gas and electricity) due to isolation or self-isolation, restoration of interrupted supplies, etc.

All the legal initiative and amendments related to the COVID-19 pandemic were sent to the Human Rights Defender's legal opinion taking into account its independent mandate and role in protection of human rights and prevention of torture. One of the main observations of the Defender concerns the legal status of isolation. In particular, it underlined that the isolation of a certain person based on the instruction of the state authority (not a general call of the Government addressed to the population based on the well-known principle "stay home") must be as deprivation of liberty, rather than restriction of freedom of movement.

Another comment related to disproportional restriction on the freedom of media allowing publishing only information provided by state authorities. This clause was further removed inter alia based on the observations of the Defender. However, the Minister of Justice underlined that this restriction may be recovered if there will be any abuses by media representatives. Therefore, the Office of the Human Rights Defender is conducting monitoring of media in the respective perspective, in order to present grounded arguments on suggestions of restrictions if there will be any.

As for the draft legal acts with regard to COVID-19 and State of Emergency, the Human Rights Defender raised a number of issues related to the interconnection of freedom of movement and deprivation of liberty. In particular, it was highlighted, that:

- legal grounds for any restriction related to the deprivation of liberty should be regulated by the law adopted by the Parliament;
- grounds for the deprivation of liberty should be also precisely regulated, according to the RA Constitution and well-known international documents ratified by Armenia (e.g. ECHR);
- procedure for the deprivation of liberty should be prescribed by law, as directly required by the Constitution;
- application of minimum rights and guarantees under Article 27 of the RA Constitution and Article 5 of the ECHR should be prescribed by law ensured in practice.

Another important direction of the work of the Human Rights Defender is the public awareness raising in the context of the COVID-19 and state of emergency. For that purpose, frequently asking question (FAQ) guide was published in Armenian and most common languages among foreigners, living in Armenia.

## References

- The statement of the Human Rights Defender on the Coronavirus disease (COVID-19) [https://www.ombuds.am/en\\_us/site/ViewNews/1081](https://www.ombuds.am/en_us/site/ViewNews/1081)
- The Human Rights Defender is involved in the Commission for Coordination of Activities to Prevent the Spread of Coronavirus [https://www.ombuds.am/en\\_us/site/ViewNews/1080](https://www.ombuds.am/en_us/site/ViewNews/1080)
- The Human Rights Defender on the Coronavirus disease (COVID-19) [https://www.ombuds.am/en\\_us/site/ViewNews/1095](https://www.ombuds.am/en_us/site/ViewNews/1095)
- The Human Rights Defender's Office calls to address applications and complaints to the Defender online [https://www.ombuds.am/en\\_us/site/ViewNews/1096](https://www.ombuds.am/en_us/site/ViewNews/1096)
- The Human Rights Defender has published a guide on frequently asked questions conditioned by the State of Emergency [https://www.ombuds.am/en\\_us/site/ViewNews/1134](https://www.ombuds.am/en_us/site/ViewNews/1134); [https://www.ombuds.am/en\\_us/site/ViewNews/1131](https://www.ombuds.am/en_us/site/ViewNews/1131)
- In the State of Emergency, the Human Rights Defender works 24-hours a day [https://www.ombuds.am/en\\_us/site/ViewNews/1128](https://www.ombuds.am/en_us/site/ViewNews/1128)
- Legal position of the Human Rights Defender on draft laws restricting the privacy of correspondence and other rights [https://www.ombuds.am/en\\_us/site/ViewNews/1137](https://www.ombuds.am/en_us/site/ViewNews/1137)
- The Human Rights Defender translated the statement of principles of the Council of Europe anti-torture Committee (CPT) into Armenian [https://www.ombuds.am/en\\_us/site/ViewNews/1145](https://www.ombuds.am/en_us/site/ViewNews/1145)
- The Human Rights Defender monitors the situation with regard to domestic violence during the State of Emergency [https://www.ombuds.am/en\\_us/site/ViewNews/1146](https://www.ombuds.am/en_us/site/ViewNews/1146)
- A working group on domestic violence prevention issues was established at the Human Rights Defender's Office [https://www.ombuds.am/en\\_us/site/ViewNews/1153](https://www.ombuds.am/en_us/site/ViewNews/1153)
- Protective equipment and disinfectants have been obtained for the Office of the Human Rights Defender [https://www.ombuds.am/en\\_us/site/ViewNews/1152](https://www.ombuds.am/en_us/site/ViewNews/1152)
- In the state of emergency, calls to the hotline of the Human Rights Defender increased 4 times [https://www.ombuds.am/en\\_us/site/ViewNews/1167](https://www.ombuds.am/en_us/site/ViewNews/1167)
- Other press releases, statements and success stories in the context of COVID-19 are available on the official website of the Human Rights Defender - [https://www.ombuds.am/en\\_us/site/news](https://www.ombuds.am/en_us/site/news)

