

## Armenia

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### *Office of the Human Rights Defender of Armenia*

#### **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.

#### **Independence and effectiveness of the NHRI**

##### **Enabling space**

According to Article 29 of the Constitutional Law on the Human Rights Defender (Constitutional Law), the Human Rights Defender (Defender) has a mandate to submit a written opinion on draft regulatory legal acts regarding human rights prior to their adoption. Moreover, in all the cases where the Defender finds that human rights issues are not regulated or fully regulated by a legal act, it may submit to the body adopting the legal act a relevant recommendation, and the body is obliged to consider it and inform the Defender on the results thereof.

The Defender and its staff members actively participate in the activities of state and local self-government bodies. In particular, the Defender has the right to be present at the sittings of the Government of Armenia as well as sittings of the state and local self-government bodies and deliver a speech, where issues regarding the human rights are being considered. The Defender largely uses his right to be present at the Government and Ministerial level meetings to deliver their recommendations to the Government. The Defender is also entitled to be present also at the sittings of the National Assembly, intervening where issues regarding human rights and freedoms are being considered.

The Defender has permanent representatives in the Constitutional Court and the Parliament. They are actively engaged and cooperate with the mentioned institutions. They cannot replace the

Defender; however, these new solutions help to keep strong institutional ties those institutions. A vivid example of this cooperation is active participation of the Defender's representatives in preparing amicus briefs to the Constitutional Court and Participation in Parliamentary Committee discussions. The Defender's representatives conduct regular activities that are accomplished by comprehensive reports containing targeted recommendations on the issues recorded during monitoring. The named recommendations encompass not only suggestions to make legislative amendments or close legal gaps, but also present examples of good practices to tackle existing practical issues. The state or local self-government body having received the relevant recommendation is obliged to consider it and inform the Human Rights Defender on the results within the deadline stipulated under the law. The Constitutional Law on the Defender further prescribes that the relevant body, which has received the Defender's recommendation is 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 (Articles 29 and 26 of the Constitutional Law). The Defender also conducts advisory functions providing in-depth legal analysis on specific topics to different competent bodies bearing in mind current human rights issues and current affairs in Armenia.

The Defender's Office analysed the draft package of amendments to the Law of the Republic of Armenia on Mass Media and to the Code of the Administrative Offences, that envisaged to expand the ground for restrictions of the right to freedom of expression in the field of media. The Defender organised a special discussion with media specialists on these draft laws as well. In addition, the justification of the draft laws was incomplete. It failed to illustrate the necessity and proportionality of the solutions proposed by the draft laws in the light of international experience and standards, it failed to address practical issues and to explain the reason why the proposed model was chosen and how it would solve the existing problems. The draft laws were not properly discussed with experts, and they were not sent to the Defender for an opinion. Furthermore, the fines proposed in the Code on Administrative Offences were disproportionate; they did not envisage a case-by-case assessment; and the fixed amounts of fines may lead to disproportionate interference with the activities of a journalist. The participants of the discussion on the draft laws envisaging a ban on citing anonymous sources (held at the Defender's Office on February 11, 2021) unanimously concluded that the disputed regulations of the draft laws should be withdrawn due to their inadmissibility. The results of the discussion and the HRDO's relevant studies were summarized and presented to the National Assembly with relevant recommendations.

### *References*

- Constitutional Law on the Human Rights Defender, [https://ombuds.am/en\\_us/site/AboutConstitution/79](https://ombuds.am/en_us/site/AboutConstitution/79)
- Open letter of the President of the ENNHRI addressed to the President of the Armenian National Assembly (22 March 2021), <https://ombuds.am/images/files/446ccd626f8534e036f7102b18d76735.pdf>
- Open letter of the Secretary General of the Association for the Prevention of Torture addressed to the President of the Armenian National Assembly, <https://ombuds.am/images/files/d71e28018654d836d431adecd738ddd6.pdf>
- Press release of Freedom House "Armenia: Authorities Must Protect Democratic Institutions and Civil Society", <https://freedomhouse.org/article/armenia-authorities-must-protect-democratic-institutions-and-civil-society>

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

In 2021, the Defender raised concerns over legislative amendments that brought the autonomy and independence of the Defender's Office and its organisational integrity under threat. The amendments envisaged transferring the Armenian Ombudsman's staff back to civil service regime. Another issue concerned amendments to the Constitutional Law on the Defender (approved on March 2021), that is aimed at abolishing the budgetary guarantee for the institutional independence of the Armenian NHRI. In particular, the current law has a constitutional guarantee against a regressive provision of funds to the Defender (Article 8(5) of the Constitutional Law) but the amendments envisage to remove it. Advisory opinions concerning the mentioned amendments have been already requested from OSCE ODIHR and the Venice Commission.

In April 2020, the Government withdrew the legislative amendments abolishing the Defender's financial independence from the National Assembly of Armenia. The Defender stated that the amendments were unconstitutional in their substance and contained grave procedural breaches.

The international organisations clearly underlined that the amendments would have had a negative impact on the Defender's reputation, work efficiency, as well as could result in a special

review of the Armenian NHRI's "A" status as the current regulation is considered as an international best practice.

### *References*

- Open letter of the Chair of the ENNHRI addressed to the President of the Armenian National Assembly (22 March 2021), <https://ombuds.am/images/files/446ccd626f8534e036f7102b18d76735.pdf>
- Open letter of the Secretary General of the Association for the Prevention of Torture addressed to the President of the Armenian National Assembly, <https://ombuds.am/images/files/d71e28018654d836d431adecd738ddd6.pdf>
- Open Letter of support from the ENOC Chair in the context of a proposed amendment to the constitutional law on the Human Rights Defender, <https://ombuds.am/images/files/5872de7ee976d2ad42cf4dff02b7577f.pdf>
- Press release of Freedom House "Armenia: Authorities Must Protect Democratic Institutions and Civil Society", <https://freedomhouse.org/article/armenia-authorities-must-protect-democratic-institutions-and-civil-society>
- "The Government withdrew the legislative amendments abolishing the Defender's financial independence from the National Assembly of Armenia", <https://www.facebook.com/Armenianombudsman/posts/1669707569883367>
- "The Human Rights Defender discussed with the media specialists the draft laws envisaging a ban on citing of anonymous sources: They cannot be adopted in their current form", [https://ombuds.am/en\\_us/site/ViewNews/1527](https://ombuds.am/en_us/site/ViewNews/1527)

## **Human rights defenders and civil society space**

The task of the Defender as a national human rights institution is to contribute to the improvement of the human rights system and strengthening of procedural and institutional guarantees. It also includes the role of civil society, and guaranteeing the protected work of human rights organisations, as well as human rights defenders.

Under Article 33.1 of the Constitutional Law, the Defender establishes adjunct boards, where NGOs are represented. For instance, it established the Advisory Board for the Prevention of Torture (adjunct to the Defender) composed of independent experts as well as experienced

representatives of NGOs in the field of prevention of torture and ill-treatment. The Advisory Board on Military Personnel Rights Issues adjunct to the Defender and an Expert council on the Protection of Rights of Persons with Disabilities have been created as well.

Non-governmental organisations have an important role in terms of human rights and democracy in the country, and the state, through its relevant bodies, must guarantee their free activity in the country and ensure their protected work. It is one of the state's positive obligations. Police, as a law enforcement body, also has an important role in this regard.

Recently, the HRDO's monitoring of mass media and social networks revealed targeted threats, insults, hate speech and calls for violence against a number of human rights non-governmental organisations and its members. In this connection, the Defender applied to the Police requesting information on measures that it undertakes with regard to the recorded case and other similar issues, highlighting their role in preventing, properly recording and identify such cases.

The issues of guaranteeing the unhindered activity of civil society representatives and human rights defenders are under the Human Rights Defender's consistent scrutiny. The Defender has regularly expressed concern over calls for violence and about the inadmissibility of threats against human rights defenders due to their role. In this matter, the obligation of the state to take adequate steps has been emphasized many times. The Human Rights Defender released a statement and dedicated a section of its Annual report to these issues (see references). It informs on cases of targeting human rights NGOs and their members, the growing volume of insults directed at them.

### *References*

- "The Human Rights Defender's statement on the inadmissibility of the targeting of the human rights NGOs", [https://www.ombuds.am/en\\_us/site/ViewNews/1467](https://www.ombuds.am/en_us/site/ViewNews/1467) (in English)
- "The positive obligation of the state to guarantee the activities of civil society organisations and human rights defenders", the 2020 Annual Report of the Human Rights Defender, pp. 662-666, <https://ombuds.am/images/files/883f55af65e3c33553139031c7ac0ce6.pdf> (in Armenian).

## Checks and balances

By virtue of the constitutional guarantees as well as the provisions of the Constitutional Law, the Defender may apply to the Constitutional Court. The Defender also contributes to the development of the legislation by acting as a third party in the cases of the Constitutional Court providing amicus curia briefs on human-rights-and-freedom-based cases. In addition, based on the decision of the Defender, his respective staff members are appointed as Defender's representatives at the Parliament and the Constitutional Court of Armenia. For example, the Constitutional Court recognized unconstitutional legislative regulations allowing treatment of children and incapable persons in psychiatric hospitals without considering their opinions based on the application of the Defender.

The Constitutional Court also set a deadline in 2020 (1) for repealing provisions recognized as unconstitutional, enabling the National Assembly to bring several legal regulations into conformity with the requirements of the Constitutional Court decision. The issues recorded during the Defender's monitoring visits to psychiatric hospitals, the results of discussions of individual complaints addressed to the Defender, as well as the international best practice and legislative problems were at the core of the application addressed to the Constitutional Court.

The issue brought under the Constitutional Court's attention was that the consent of the legal representative was considered as a sufficient condition for providing psychiatric assistance to children and incapable persons, including for their placement in a psychiatric hospital.

With regard to the access to public information, the importance of the right to access official documents is highlighted in the 2020 Annual Report of the Human Rights Defender. In 2020, certain steps were taken to ensure the conformity of Armenian legislation with international standards.

However, the complaints addressed to the Defender revealed the issue of delays in replying to journalistic inquiries by state bodies or failure to provide any reply. The issue of access to information for persons with disabilities was recorded as well.

## References

- “The Constitutional Court recognized unconstitutional legislative regulations allowing treatment of children and incapable persons in psychiatric hospitals without considering their opinions based on the application of the Human Rights Defender”  
[https://www.ombuds.am/en\\_us/site/ViewNews/1055](https://www.ombuds.am/en_us/site/ViewNews/1055)
- 2020 Annual Report of the Human Rights Defender, pp. 411-414  
<https://ombuds.am/images/files/883f55af65e3c33553139031c7ac0ce6.pdf> (in Armenian)
- (1) Constitutional Court, 30 January, 2020  
<https://www.concourt.am/armenian/decisions/common/2020/pdf/sdv-1504.pdf>,  
<https://www.concourt.am/english/decisions/common/index2020.htm> (In Armenian)

## Functioning of the justice system

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 Constitution and the laws of the Republic of Armenia.

In addition, the 2020 Annual Report of the Human Rights Defender provides that one of the main issues in the judicial system is undue delays of court hearings. The COVID-19 outbreak was the primary reason for the delays of court proceedings in the past year, and for delays in carrying out investigative or other procedural actions. The issue of the length of court proceedings is particularly problematic for cases where detention is the preventive measure against the defendant. The examination of the complaints at the Defender’s Office also revealed that one of the reasons for these delays was the issue of translating requests for legal assistance.

Relevant positive solutions in this regard are provided under the Draft of Criminal Procedure Code. The Draft prescribes a maximum time limit for carrying out criminal prosecutions (Article 194 of the Draft Code). The detailed analysis of these issues, specific positive developments and the Defender’s targeted recommendations can be found in the 2020 Annual Report.

With regard to the independence of the courts, it was highlighted that the state and its bodies bear the duty to guarantee the high value of the judicial independence.

The 2020 Annual Report also contains information on the connection of public trust in the judiciary and the ongoing criminal proceedings concerning issues of public interest or public figures. It was provided that the proper awareness-raising in that regard is very important for ensuring public trust in the judiciary and law-enforcement authorities.

### *References*

- 2020 Annual Report of the Human Rights Defender, pp. 662-666, 452-461, 642-643 <https://ombuds.am/images/files/883f55af65e3c33553139031c7ac0ce6.pdf> (in Armenian)

## **Media pluralism and freedom of expression**

The Defender's monitoring revealed that a number of Deputies of the Armenian National Assembly had prepared a draft package of amendments to the Law of the Republic of Armenia on Mass Media and to the Code of the Administrative Offences. According to the draft, it was envisaged to expand the grounds for the restriction of the right to freedom of expression in the field of media. The envisaged amendment would foresee a prohibition to refer to sources that are anonymous or which do not include the data provided by the Law on Mass Media. Given that the proposed amendment was related to the constitutional right to freedom of expression, the draft laws have been studied by the Defender's Office (HRDO) in the context of the relevant international legal standards and ensuring their practical implementation. In addition, the Defender organised a special discussion with media specialists on the draft laws. As a result of the discussion, as well as the studies conducted by the HRDO, it was concluded that if the draft laws are adopted in their current version, the issue of combating false or inaccurate information will not be solved. On the contrary, the draft laws contain non-systemic solutions that may pose additional problems to the media sector, and in general, to the protection of freedom of speech in a systemic way.

In addition, the justification of the draft laws was incomplete. It failed to illustrate the necessity and proportionality of the solutions proposed by the draft laws in the light of international experience and standards, it failed to address practical issues and to explain the reason why the

proposed model was chosen and how it would solve the existing problems. The draft laws were not properly discussed with experts, and they were not sent to the Defender for an opinion. Furthermore, the fines proposed in the Code on Administrative Offences were disproportionate; they did not envisage a case-by-case assessment; and the fixed amounts of fines may lead to disproportionate interference with the activities of a journalist. The participants of the discussion on the draft laws envisaging a ban on citing anonymous sources (held at the Defender's Office on February 11, 2021) unanimously concluded that the disputed regulations of the draft laws should be withdrawn due to their inadmissibility. The results of the discussion and the HRDO's relevant studies were summarized and presented to the National Assembly with relevant recommendations.

As mentioned in the checks and balances section, some complaints addressed to the Human Rights Defender revealed the issue of delays in replying to journalistic inquiries by state bodies or failure to provide any reply.

## Corruption

In Armenia, the institutional framework of fight against corruption is based on a decentralized model.

The law "On Commission for Prevention of Corruption" was adopted on 9 June, 2017. In November 2019 the Commission for Prevention of Corruption (CPC) has been formed by the National Assembly of Armenia. On 25 March 2020, the Republic of Armenia Law "On the Commission for the Prevention of Corruption" was amended which was aimed at the expansion of the scope of functions of the Commission for Prevention of Corruption, as well as strengthening the toolkit of the Commission. The enhanced powers of the Commission for the Prevention of Corruption include the analysis of political parties' financial resources, their sources, expenditures, as well as annual property reports, and the analysis of declarations submitted by party governing bodies.

The Anti-Corruption Strategy adopted on 3 October, 2019 envisaged the establishment of the Anti-Corruption Committee, which will be an investigative body having a mandate to conduct operative-intelligence activities.

The drafts laws regarding the establishment of specialized anti-corruption courts are elaborated and adopted by the Armenian Parliament on April 14, 2021. According to the draft, a specialized court shall be established to adjudicate both corruption crime-related cases, as well as asset recovery cases.

### *References*

- Amendments to the Republic of Armenia Law "On the Commission for the Prevention of Corruption" from 25 March, 2020  
<https://www.arlis.am/DocumentView.aspx?docid=141497> (in Armenian)

## **Impact of measures taken in response to COVID-19 on the national rule of law environment**

### **Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law and human rights protection**

Since the first COVID-19 case has been reported in Armenia, the HRDO has been operating in a 24/7 regime. The HRDO's working directions include:

- operatively and rapidly responding to the emergency calls received through the hot line;
- functioning of a specialized working group on domestic violence prevention issues;
- examination of complaints related to COVID-19 and restrictions due to the state of emergency;
- analysing and providing opinions to legal initiative and amendments related to the COVID-19;
- public awareness raising in the context of the COVID-19 and state of emergency (detailed information on all of the mentioned points was presented in 2020 ENNHRI State of the Rule of Law Report in Europe).

In 2020, the Human Rights Defender received 2952 complaints concerning the COVID-19 pandemic. The addressed issues concerned

- persons deprived of liberty in penitentiary institutions, addressed by themselves or their relatives and lawyers,
- increase of domestic violence cases,
- isolation and self-isolation,
- administrative offence record for not wearing a mask and apprehension to the Police for such offences,
- entering and leaving Armenia,
- support programs adopted by the Government to neutralize the economic and social impact of COVID-19, including difficulties of using the system and issues with entering data by the beneficiaries,

- failure to make payments for the use of communal services (electricity, water, gas, communications and telecommunications due to financial condition) and restoring interrupted supplies,
- food aid to socially vulnerable families,
- receiving salaries and granting vacation,
- failure to perform credit obligations within the short time limits set by credit organisations,
- delays in providing pensions to pensioners due to the contradiction between the address of a person's registration and the actual residence address,
- carrying out testing on COVID-19,
- the right to education,
- family reunions, etc.

In particular, since the first days of the State of Emergency, domestic violence issues have been the subject of acute discussion at the Defender's Office. Nowadays the prevention of domestic violence requires more professional approaches, through proper and coordinated preventive activities.

The issue of the prohibition of the freedom of assembly during the State of Emergency was also addressed by the Human Rights Defender. In July 2020, an online discussion on "The freedom of assembly in the condition of the State of Emergency declared due to the COVID-19 pandemic" was organized within collaboration of the Human Rights Defender and a number of NGOs. The participants of the discussion summarized the recommendations in this regard and submitted them to competent authorities.

In addition, the HRDO has received verbal and written complaints about the support programs (actions) adopted by the Government to neutralize the impact of novel coronavirus (COVID-19) in Armenia, as well as regularly carried out monitoring of mass media and social media in this regard. The results of both the monitoring and the discussion of the complaints were regularly summarized and presented to the Government in order to improve the programs and solve the issues raised for the citizens.

The Human Rights Defender has published a guide on frequently asked questions on the new Coronavirus and human rights in the state of emergency. The guide provides information on various issues starting from means of protection from the new Coronavirus to the legal regime of the state of emergency and restrictions in the penitentiary institutions. The guide has been translated into Yazidi, Kurdish, Assyrian, Russian, English and Hindi to be accessible for the national minorities in Armenia. It has also been printed in Braille and has already been sent to persons with visual impairments. The audio version is also available.

Furthermore, the Defender has published an ad hoc public report “On the mandatory requirement to wear a mask in the studio during the novel coronavirus (COVID-19) pandemic”.

### *References*

- “Frequently asked questions about the new coronavirus and human rights in the state of emergency”  
<https://www.ombuds.am/images/files/432082d18098a7a17bd88873277492da.pdf>
- Ad hoc report “On the mandatory requirement to wear a mask in the studio during the novel coronavirus (COVID-19) pandemic”  
<https://ombuds.am/images/files/29c5d404fc8b3961bde79575f0c92d72.pdf> (available in Armenian)
- “It is evident that the administrative fine for not wearing a mask or failure to wear it properly and depriving a person of liberty are acquiring a punitive nature: The Human Rights Defender of Armenia”  
[https://www.ombuds.am/en\\_us/site/ViewNews/1301](https://www.ombuds.am/en_us/site/ViewNews/1301)
- “The results of the Human Rights Defender’s monitoring with regard to Action 8: From the types of economic activities to the lack of awareness-raising”  
[https://ombuds.am/en\\_us/site/ViewNews/1238](https://ombuds.am/en_us/site/ViewNews/1238)
- “Complaints about inconsistent approach to tuition reimbursement and students loan: the observation of the Human Rights Defender on the 14th action”  
[https://ombuds.am/en\\_us/site/ViewNews/1241](https://ombuds.am/en_us/site/ViewNews/1241)
- “The Human Rights Defender received 794 complaints with regard to the actions addressing the economic impact of COVID-19”  
[https://ombuds.am/en\\_us/site/ViewNews/1256](https://ombuds.am/en_us/site/ViewNews/1256)
- “The Azerbaijani authorities have committed crimes against humanity during the COVID-19 global pandemic with large-scale armed attacks against Artsakh and Armenia” [https://www.ombuds.am/en\\_us/site/ViewNews/1574](https://www.ombuds.am/en_us/site/ViewNews/1574)

### **Most important challenges due to COVID-19 for the NHRI’s functioning**

The most important challenge for the functioning of the Human Rights Defender’s Office during the COVID-19 has been ensuring the safety of the staff during their interactions with citizens, their visits to different institutions, including in the capacity of the National Preventive Mechanism (NPM), as well as regional visits (e.g. border settlements).

While the NPM activities were not suspended, they were affected. They were carried out with even greater vigilance and responsibility, with the use of professional approaches to the fullest extent possible. More details on the Armenian NPM's activities can be found in the 2020 Annual Report on the Activities of the Human Rights Defender in 2020 as National Prevention Mechanism (available in Armenian).

Within the framework of the cooperation between the United Nations Development Fund in Armenia, through the European Union Human Rights Budget Support Technical Assistance Programme, support was provided to the HRDO in the emergency procurement of personal protective equipment for the staff to facilitate the safe and uninterrupted work of the institution, the interaction with citizens, and for the safe visits to closed institution in the capacity of the National Preventive Mechanism.

### *References*

- 2020 Annual Report on the Activities of the Human Rights Defender in 2020 as National Prevention Mechanism  
<https://ombuds.am/images/files/de9d93e7fe42e0fb57562fdea702609e.pdf>  
(Armenian).

