

## The Constitutional Amendments Draft Cannot be Put to Referendum

On October 5, 2015, the RA National Assembly passed a decree to Approve Holding a Referendum on RA Constitutional Amendments Draft.

According to Article 4(2)(c), RA Law on Referendum, “the issues below shall not be put on referendum:

c) issues related to human and civil rights, freedoms and obligations, elimination or restriction of constitutional guarantees for their implementation and issues directly assigned by the Constitution to the exclusive competence of national and local governments.”

As compared to the current RA Constitution, the Constitutional Amendments Draft comprises provisions restricting human and civil rights and freedoms.

The Constitutional Amendments Draft approved by the RA National Assembly includes the following restrictions to human and civil rights and freedoms:

1. Under Article 43 of the RA Constitution, “The fundamental human and civil rights and freedoms set forth in Articles 23-25, 27, 28-30, 30.1 and Article 32(3) of the Constitution may be restricted only by law, if necessary in a democratic society in the interests of national security, public order, crime prevention, protection of public health and morals, constitutional rights and freedoms as well as honor and reputation of others”.

*Under Article 76 on Restrictions of Human Rights and Freedoms, Constitutional Amendments Draft, “In state of martial law or emergency, the fundamental human and civil rights and freedoms, except for those in Articles 23-26, 28-30 and 35-37, as well as Article 38(1), Article 41(1), Article 47(1), 1<sup>st</sup> sentence in Article 47(5) and Article 47(8), Article 52, Article 55(2), Article 56, Article 61 and Article 63-72 of the Constitution, may be temporarily suspended by law or further restricted only to the extent required by the situation within the scope of international commitments on deviation in emergency or state of martial law.”*

**In the current Constitution, the phrase “democratic society” is one of the key concepts of this provision. As for the Draft, the articles on right restrictions lack the requirement of necessity “in democratic society”; this means that such restrictions might be arbitrary and not depend on any such necessity in a democratic society.**

2. According to Article 6 of the RA Constitution, “The Constitution of the Republic has

shall have supreme legal force and the norms thereof shall apply directly”.

*Under Article 5, Constitutional Amendments Draft: “The Constitution of the Republic has shall have supreme legal force.’*

Hence, with the proposed amendments, the right to direct application of constitutional rights is restricted.

3. Under Article 35 of the RA Constitution, “...Man and woman of marriageable age have the right to marry and start a family of their own free will. They are entitled to equal rights as to marriage, during marriage and divorce...”

*Under Article 35, Constitutional Amendments Draft, “1. Man and woman of marriageable age have the right to marry and start a family of their own free will. The marriage age, marriage and divorce procedures are established by law. 2. Man and woman are entitled to equal rights as to marriage, during marriage and divorce. 3. The freedom to marry may only be restricted by law to protect health and morals.”*

In other words, under Constitutional Amendments, the freedom of marriage may be restricted by law, with protection of health and morals as grounds for such restriction. The current Constitution has no such restrictions.

4. Constitutional Amendments introduce a new chapter, Chapter 3. Legislative Safeguards and Key Public Policy Objectives in Economic, Social and Culture Areas. The safeguards in this Chapter are rather vague since articles do not declare these rights as constitutional norms but rather envisage their stipulation by law or in compliance with law, which may be arbitrary and render it difficult to assess their compliance with constitutional regulations, given the absence of the latter.

5. Under Article 32, RA Constitution, “Everyone shall have the freedom to choose his/her occupation. Everyone shall have the right to fair remuneration in the amount no less than the minimum set by the law and the right to working conditions in compliance with the safety and hygiene requirements...”

*Under Article 82, Constitutional Amendments Draft, “Everyone shall be entitled to healthy, safe and adequate working conditions, limitation of maximum working hours, daily and weekly rest and annual paid leave, as prescribed by law.”*

In other words, the Constitutional Amendments no longer declare the right to work as a constitutional norm since it shall be prescribed by law.

6. Under Article 38, RA Constitution, “...Everyone shall be entitled to free of charge basic



medical services. The list and procedure of such services shall be prescribed by law.”

*Under Article 85, Constitutional Amendments Draft, “1. Everyone shall be entitled to health protection, as prescribed by law. 2. The list and procedure of free of charge basic medical services shall be prescribed by law”.*

**In other words, the Constitutional Amendments no longer declare the right to free of charge basic medical services as a constitutional right but rather stipulate that this right shall be prescribed by law; this may entail arbitrary wording and thereby restrict the exercise of this right.**

7. Under Article 101(6), RA Constitution, application to the RA Constitutional Court may be filed by “every person in a specific case with the final judicial act available, all the legal remedies exhausted and if he/she challenges the constitutionality of a law provision applied against him/her by the act in question.”

*Under Article 169(1)(8), Constitutional Amendments Draft, application to the RA Constitutional Court may be filed by “every person in a specific case with the final judicial act available, all the legal remedies exhausted and if he/she challenges the constitutionality of a statutory legal act provision applied against him/her by the act in question, which has caused violation of his/her fundamental rights and freedoms enshrined in Chapter 2 of the Constitution, also taking into account the interpretation of relevant provision in the law enforcement practice.”*

**In other words, the Constitutional Amendments restrict the right to apply to the RA Constitutional Court to seek protection of economic, social and cultural rights.**

Hence, the Constitutional Amendments Draft approved for referendum by the RA National Assembly implies elimination of the constitutional guarantees for exercising and restricting some of the human and civil rights and therefore cannot be put to referendum under Article 4(2)(c), RA Law on Referendum.

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