



Disposition of HCA Vanadzor regarding the RA Draft Law on “The RA Human Rights Defender”

Table of Content

1. *Chronological course of drafting the bill*..... **Error! Bookmark not defined.**
2. *Regarding the institutional format of preventive mechanism against torture***Error! Bookmark not defined.**
3. *Regarding the lack of political will for the establishment of Military Ombudsman’s institute*.....**Error! Bookmark not defined.**
4. *About the formation of RA Human Rights Defender as a monopolistic institute***Error! Bookmark not defined.**
5. *Risks of the formation of RA Human Rights Defender as a monopolistic institute*.....**Error! Bookmark not defined.**
6. *Summary*..... **Error! Bookmark not defined.**

1. Chronological course of drafting the bill

1.1 The activities directed at the amendments of the RA law on “Human Rights Defender” can be broken down into 2 stages: pre-constitutional and post-constitutional amendments.

Stage of pre-constitutional amendments

1.2 The initial version of the RA draft law on “Making amendments and addenda to the RA law on Human Rights Defender” was drafted in July, 2014.

1.3 The revised version of the draft law was sent to the RA Minister of Justice on March 10, 2015, while on March 11 it was also sent to non-governmental organizations, including Helsinki Citizens' Assembly Vanadzor Office, to get recommendations regarding the draft law.

1.4 The main goal of adopting the draft law was to legislatively stipulate the model of "Ombudsman Plus" of the national preventive mechanism against torture (hereinafter referred to as NPMT), aiming to ensure the involvement of the civil society in the NPMT, as an equal and full partner.

1.5 The draft law above did not develop further, which was contingent upon the constitutional amendments scheduled for December, 2015.

Stage of post-constitutional amendments

1.6 As a result of the Referendum, called for December 6, 2015, the RA Constitutional Amendments were enforced.¹

1.7 The list of laws, nominally defined by the constitutional amendments, and subject to adoption, amendment or supplements, was approved via NH-170-A decree of the President of the Republic of Armenia dated on February 10, 2016, including the constitutional law on “Human Rights Defender”.

1.8 The RA bill (hereinafter referred to as Bill) on “Human Rights Defender” was submitted to the RA National Assembly by the RA Minister of Justice on April 29 of this year.

1.9 On June 6, 2016 the Bill was incorporated in the NA sitting agenda.

¹See [HCAV's assessment over the RA Constitutional amendments](#) ,

See also HCA Vanadzor Report on Adoption Process of Imposed Constitutional Amendments, <http://hcav.am/wp-content/uploads/2016/01/Constitutional-Reform-2015.pdf>

1.10 On October 13, 2016 the RA NA issued the revised version of the Bill.

1.11 On November 10, 2016 the RA NA Standing Committee on Protection of Human Rights and Public Affairs organized parliamentary hearings to discuss the package of draft laws on “Human Rights Defender”, and other related laws.

1.12 On November 14, 2016 the draft law was included in the four-day sitting agenda of the NA.²

The HCA Vanadzor’s assessment regarding the RA Constitutional bill on “Human Rights Defender” is presented below.

For compiling the current document the basic principles on national preventive mechanisms by the UN Subcommittee on Prevention of Torture³, PACE recommendations, the opinions of Council of Europe Committee of Ministers, as well as other international agencies regarding the institute of the national preventive mechanism against torture have been studied.

2. Regarding the institutional format of preventive mechanism against torture

2.1 A number of approaches for the selection of an institutional format/model for national preventive mechanism against torture exist in the international practice: some countries have established a separate independent body, in other countries the Human Rights Defender acts as NPMT, while in some others the "Ombudsman Plus" model has been introduced.⁴

2.2 In the rationale of the Bill the authors make a reference to the Constitution adopted on December 6, 2015, and link the regulations proposed by the Bill only with it. Whereas, the authors of drafting the RA bill on “Human Rights Defender” shall consider the commitments undertaken by the Republic of Armenia, as well as the provisions of the action plan of the National Strategy for Human Rights Protection.⁵

2.3 Pursuant to Article 2 of the Bill, the human rights defender is the official provided by the Constitution.

2.4 Pursuant to Article 191 of the RA Constitution, the human rights defender is an independent official, who shall monitor state or local self-government bodies and officials, while in cases defined by the RA law on Human Rights Defender also the protection of

² See history of the draft law, http://parliament.am/draft_history.php?id=8383

³ See http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/OP/12/5&Lang=en

⁴ See: http://helsinki.hu/wp-content/uploads/Murray_briefing_paper.pdf

⁵ See NSHRPAP 113-119 actions approved by #303-N decree of the RA Government dated on February 27, 2014, <http://www.arlis.am/DocumentView.aspx?DocID=97193>

human rights and freedoms by organizations, promotes the restoration of the human rights and freedoms, improvement of the regulatory legal acts relating to the rights and freedoms.

2.5 According to Article 2 (2) of the Draft law, the Defender shall be the national preventive mechanism prescribed 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.

2.6 Chapter 5 of the draft law regulates the scope of Defender's activities in separate fields. In the capacity of the NPMT the purpose of the Defender's activities shall be the prevention of torture and other cruel, inhuman or degrading treatment in places of deprivation of liberty. For the purpose of ensuring the performance of the functions of the NPMT, a separate structural subdivision shall be established within the Staff to the Defender (Article 27.2 of the draft law).

2.7 Article 29 of the draft law defines the powers of the Defender as the national preventive mechanism. Pursuant to Clause 4 of the same article, for the purpose of receiving professional assistance in the capacity of the National Preventive Mechanism, based on the demands put forward by the statement thereon made on the official website or through other public sources, the Defender *may* engage independent specialists and representatives of non-government organizations, who gain the status of an expert of the national preventive mechanism.

2.8 The experts above shall be engaged in the activities of the NPMT upon the order of the Defender, 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 to the Defender for that purpose. The rules of procedure for the experts of the National Preventive Mechanism, as well as the rules of conduct thereof shall be prescribed by the Defender (Article 28,5).

2.9 In compliance with Article 32 of the draft law, the Defender may establish councils adjunct thereto, composed of representatives of non-governmental organizations and independent specialists having the necessary experience and knowledge in the field of human rights. The members of the Council shall be invited by the Defender. The procedure for formation and rules of operation of the Council shall be prescribed by the Defender.

2.10 From the regulations above we infer that Human Rights Defender is viewed as National Preventive Mechanism against Torture by the Draft, who, in turn, takes a unilateral decision over the format of involving non-governmental organizations and experts and the scope of activities thereof. In case of such regulation the civil society representatives are not viewed as full and equal partners under NPMT, and are denied the chance to take decisions. Whereas, the model of "Ombudsman Plus" foresees formation and launching of National Preventive Mechanism against Torture comprised of Human Rights Defender and non-

governmental organizations as equal partners. Moreover, UN Subcommittee on Prevention of Torture⁶ had also highlighted the need for defining such a regulation.

2.11 It is worth mentioning that the RA incumbent human rights defender did not give any opinion regarding the obvious unlawful restrictions by the RA Ministry of Justice and Penitentiary Department against the representatives of the group of Public Observers of Penitentiary Institutions and Bodies of the Ministry of Justice of the Republic of Armenia applied during July-October, 2016, when the Group representatives were prevented from meeting with some of the detainees. This fact is noteworthy in terms of valorizing and assessing the activities of experts, NGO representatives and civil society by the human rights defender.

2.12 According to Article 35.2, of the Draft law, the staff to the Defender shall be composed of two departments, the Subdivision of the National Preventive Mechanism, the Secretariat, marz and other subdivisions established based on the decision of the Defender, as well as advisors, assistants and press secretary of the Defender.

2.13 Based on the draft law, persons holding positions within the Staff to the Defender may act as representatives of the Defender at the National Assembly of the Republic of Armenia and the Constitutional Court of the Republic of Armenia (Article 35. 3).

2.14 Pursuant to Article 37.1 the Defender shall define the competences of subdivisions, the statutes and the structures of subdivisions of the Staff to the Defender.

2.15 Defining the competences of the staff by the Defender is a safeguard for independence of human rights defender's institute. However, the implementation of NPMT functions, defined by the draft law, in line with the principles of the UN Subcommittee on Prevention of Torture restricts the equal participation of the NGOs in the National Preventive Mechanism against Torture.

3. Regarding the lack of political will for the establishment of Military Ombudsman's institute

3.1 The international practice proves that the national mechanisms in the field of human rights protection are more efficient in case several specialized ombudsmen function. Through the specialized ombudsmen the state more effectively carries out the commitments undertaken in the field of human rights protection.

3.2 Hence, Ombudsman for Children operates in a number of countries like the Netherlands,⁷ Estonia⁸ and Sweden⁹, while in some states of the USA Ombudsman for the

⁶ See http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/OP/12/5&Lang=en

⁷ See the institut of Netherlands' Ombudsman for Children, <https://www.dekinderombudsman.nl/241/english/>.

⁸ See the institute of Estonia's Ombudsman for Children! <http://lasteombudsman.ee/en/welcome>

⁹ See the institut of Sweden's Ombudsman for Children <https://www.crin.org/en/library/organisations/ombudsman-children-sweden>

rights of the elderly, and Ombudsmen for gender equality in Scandinavian countries function. Public Defender's Office on consumers' rights currently functions in Denmark, and Ombudsman on issues of personal data protection in Hungary, and etc.¹⁰

3.3 Thus, the international practice testifies that the development of the national mechanisms for human rights protection in countries goes in line with the logic of establishing specialized Ombudsmen.

3.4 Under the Action Plan for National Strategy on Human Rights Protection (hereinafter also APNSHRP)¹¹ approved by #303-N decision of the RA Government dated February 27, 2014 Clause 115 defines as an action the establishment of the institute of Military Ombudsman pursuant to the effective regulations of the RA law on “Human Rights Defender”, while Clause 114 prescribes the publication of an annual theme report on the situation of human rights in the RA Armed Forces according to PACE 1742 (2006) Recommendation via the RA law on “Human Rights Defender” prior to the establishment of the institute of Military Ombudsman.

3.5 The RA draft law about “Making amendments and addenda to the RA law on human rights defender” drafted in 2015 foresaw a regulation, pursuant to which, one of the Deputy Defenders carries out activities in the sphere of protection of human rights and freedoms in the Armed Forces under the Defender’s order. In the first trimester of each year that very Deputy to the Defender issues a report on the situation of human rights in the Armed Forces.

3.6 It is noteworthy that the implementation of the activities in the field of protection of human rights and freedoms in the Armed Forces on the level of one of the Deputy defenders is not in line with Clause 9.2 of Article 9 of PACE 1742 (2006), according to which, Military Ombudsman should be an independent body.¹²

3.7 Serious concerns have been repeatedly presented in the publications and reports of non-governmental organizations regarding the human rights situation in armed forces of the Republic of Armenia.¹³ Issues on the human rights situation in the RA armed forces were

¹⁰ See Рудик А., Лазарева Л. Институт специализированного и местного омбудсмана как механизм защиты прав человека: зарубежный опыт

¹¹ See: 113-119 actions of APNSHRP approved by #303-N decision of the RA Government dated February 27, 2014 <http://www.arlis.am/DocumentView.aspx?DocID=97193>

¹² See HCAV’s package of recommendations on the institute of Independent Military Ombudsman as important defense mechanism for human rights protection in the armed forces <http://hcav.am/wpcontent/uploads/2015/07/%D5%8C%D5%A1%D5%A6%D5%B4%D5%A1%D5%AF%D5%A1%D5%B6-%D6%85%D5%B4%D5%A2%D5%B8%D6%82%D5%A4%D5%BD%D5%B4%D5%A5%D5%B6.docx.pdf>

¹³ See HCAV Report on the Human Rights Situation in Armed Forces of the Republic of Armenia <http://hcav.am/wp-content/uploads/2014/05/%D4%B6%D5%A5%D5%AF%D5%B8%D6%82%D5%B5%D6%812.pdf>

also recorded in the reports of the UN Human Rights Committee,¹⁴ Committee against Torture¹⁵ and other international organizations.¹⁶

3.8 PACE 1742 (2006) Recommendation proposes that the Assembly member states introduce independent civic institute of military ombudsman as a means of effective protection of servicemen's rights.

3.9 Pursuant to Paragraph 85-V of explanatory memorandum to PACE 1742 (2006) Recommendation, servicemen shall have an opportunity to submit a complaint to an independent body to seek protection over the breach of their rights.¹⁷ The institute of Military Ombudsman is the best example of independent body.

3.10 The necessity for the introduction of the Military Ombudsman is also stated in the handbook on Human Rights of Armed Forces Personnel and Fundamental Freedoms of Armed Forces Personnel compiled by OSCE ODIHR and Geneva Centre for the Democratic Control of the Armed Forces.¹⁸

3.11 A number of Ombudsman's offices have been established as a part of efforts directed at the reassessment of public-armed forces relations. Among such institutes is the one established in 1959 in Germany, which served as grounds for the formation of Ombudsman's offices on armed forces in Norway (1952) and Austria (1955).¹⁹

3.12 One of the main motives to create the institute of Military Ombudsman is the increase of efficiency in examining the complaints over the breach of human rights in the armed forces, i.e. public defender's offices dealing with the servicemen's rights have been formed in the armed forces in Belgium, Ireland, United Kingdom, since there were concerns that the existing ad hoc systems were insufficient to address all of the complaints.

3.13 The establishment of the institute of Military Ombudsman, as prescribed by APNSHRP (Action 115), was foreseen for the 4th trimester of 2014, however, the deadline

¹⁴ See UN Human Rights Committee/Consideration of reports submitted by States parties under article 40 of the Covenant, Concluding observations adopted by the Human Rights Committee at its 105th session, 9-27 July 2012

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/ARM/CO/2&Lang=En

¹⁵ See Committee against Torture Forty-eight session 7 May-1 June 2012/ Consideration of reports submitted by States parties under article 19 of the Convention Concluding observations of the Committee against Torture

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/C/ARM/CO/3&Lang=En

¹⁶ See Amnesty International annual report 2015/201, <https://www.amnesty.org/en/countries/europe-and-central-asia/armenia/report-armenia/>

See also Human Rights Watch World report 2015: Armenia <https://www.hrw.org/world-report/2015/country-chapters/armenia>

¹⁷ See Human rights of members of the armed forces – Recommendation CM/ Rec (2010) 4 and explanatory memorandum http://www.coe.int/t/dghl/standardsetting/hrpolicy/Others_issues/Armed_Forces/Rec/Publication_FA_ru.pdf

¹⁸ See Handbook on Human Rights of Armed Forces Personnel and Fundamental Freedoms of Armed Forces Personnel, <http://www.osce.org/hy/odihr/88572>

¹⁹ See Ombuds institutions for the Armed Forces a handbook. DCAF <http://www.dcaf.ch/Publications>

for the implementation of the above action was put off until the first trimester of 2016 based on #1302-N decision of the RA Government issued on November 12, 2015.²⁰

3.14 In response to # 412 note of HCA Vanadzor dated on August 6, 2016 regarding the inquiries about the implementation of APNSHRP, the Human Rights Defender- responsible body for the implementation of action 115 of the APNSHRP- replied that the introduction of military ombudsman is not expedient taking into account the practice of various countries and the dispositions of international organizations over this issue.

3.15 The RA Ombudsman's aforementioned disposition fully contradicts both the practice of separate states (Germany²¹, the Netherlands²², Canada ²³ and etc.), and the views of international organizations: PACE, Geneva Centre for the Democratic Control of Armed Forces.

3.16 On November 10, 2016 during the parliamentary hearings regarding draft laws on "Human Rights Defender", and other related laws, organized by the RA NA Standing Committee on Protection of Human Rights and Public Affairs, the Organization again voiced about the necessity to establish the institute of independent military ombudsman, but the Human Rights Defender once again mentioned that the introduction of the institute of military ombudsman was not expedient, and that a separate subdivision in the Staff to the Defender would be established for the protection of Servicemen's rights.

3.17 Thus, we record that the idea of creating an independent military ombudsman is being consistently rejected by the RA Human Rights Defender.

4. About the formation of Human Rights Defender as a monopolistic institute

4.1 The RA law on "Human Rights Defender" (hereinafter also Law) was adopted on October 21, 2003. The law fails to define separate fields of human rights protection that the Human Rights Defender should be engaged in.

4.2 On September 13, 1993 the Republic of Armenia ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, while on September 14, 2006 the RA joined the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, which fed into the definition of Human Rights Defender as National Preventive Mechanism.

4.3 On April 8, 2008 as implementation of international commitments, a supplement was made to the RA law on "Human Rights Defender", pursuant to which, the Defender acts as

²⁰ See Paragraph 15, Part 1 of the decision by the RA Government dated November 12, 2015 on "Making amendments and addenda to #303 decision of the RA Government issued on February 27, 2014", <http://www.arlis.am/DocumentView.aspx?docid=101581>

²¹ See Parliamentary Commissioner for the Armed Forces <http://www.bundestag.de/en/parliament/commissioner/commissioner/198744>

²² See The Inspector-General of the Netherlands Armed Forces <http://www.mindef.nl/ministerie/igk/english/index>

²³ See Ombudsman for National Defence and the Canadian Forces <http://www.ombudsman.forces.gc.ca/>

an independent national preventive mechanism envisaged by the Optional Protocol to the “Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment”.²⁴

4.4 It was during the discussion of those supplements that a number of non-governmental organizations drafted a bill, whereby it was proposed to introduce the "Ombudsman Plus" model. However, the National Assembly adopted only the model of Human Rights Defender as a NPMT.

4.5 With the currently circulated draft law it was proposed that monitoring of the application of the provisions of the UN Convention on the Rights of the Child adopted on 20 November 1989, as well as prevention of violations of the rights of the children and their protection be carried out by the Human Rights Defender.²⁵

4.6 The Republic of Armenia ratified a number of conventions, particularly, in 1993 Armenia joined the Convention on the Elimination of All Forms of Discrimination against Women, on July 29, 1995 the Convention on Equal Remuneration for Men and Women Workers for Work of Equal Value, on March 1, 2004 the Revised European Social Charter and on March 30, 2007 the Convention on the Rights of Persons with Disabilities, on February 23, 2011 the Convention on the Protection of All Persons from Enforced Disappearance, and etc. However, the draft fails to define the functions to be implemented by the Human Rights Defender set forth by the aforementioned and other conventions.

4.7 Thus, the discriminatory and differentiated approach in the Draft is obvious in terms of defining the functions of Human Rights Defender in the field of human rights protection via the conventions ratified by the Republic of Armenia and international commitments, moreover, the Draft rational fails to specify why only the two conventions should be mentioned.

4.8 Through the proposed Draft separate structural subdivisions are to be established in the Staff to the Defender for the purpose of ensuring the functions of a national preventive mechanism against torture, protection of the servicemen's rights, as well as the prevention of violations of the rights of children.

4.9 On one hand, with such an approach the Draft defines the formation of the Human Rights Defender as a monopolistic and sole institute in all the aspects of human rights protection in the RA, on the other hand, the Draft stipulates a discriminatory approach regarding the protection of human rights of different social group representatives in terms of defining the functions of Human Rights Defender.

4.10 Through such an approach the Draft restricts the establishment of specialized ombudsmen. Whereas, the creation of specialized ombudsmen would promote human rights

²⁴ See the RA Law on making supplements to the RA Law on “Human rights defender” dated April 8, 2008
<http://www.arlis.am/DocumentView.aspx?docid=43714>

²⁵ See Paragraph 3, Article 2 of the RA constitutional draft law on “Human rights defender”
<http://www.parliament.am/drafts.php?sel=showdraft&DraftID=8383&Reading=0>

protection methods, diversity of toolkits, as well as ongoing improvement in full compliance with international tendencies of human rights protection.

4.11 Hence, the RA Human Rights Defender, along with the RA Government and the RA NA, has adopted the policy of strengthening the monopolistic position of incumbent Ombudsman in the field human rights protection in the RA.

5. Risks of the formation of RA Human Rights Defender as a monopolistic institute

5.1 The Republic of Armenia has had four human rights defenders until present. None of the last 3 has been in office until the termination of their powers, and has resigned earlier from the set deadline.

5.2 The first Human Rights Defender Larisa Alaverdyan was in office in 2004-2006.²⁶

5.3 The second Human Rights Defender Armen Harutyunyan served in 2006-2011, Reprisals against Armen Harutyunyan began after he had come up with a special report on the February 19, 2008 presidential elections and post-election developments. The Defender had also declared that the Ombudsman's office was ready to conduct an independent investigation into March 1 events, or participate in it activities. It was due to the aforementioned report that the Defender was qualified as "failing official" by the RA Robert Kocharyan, which was followed by his public statements about threats on his and his family's security. He submitted his resignation in 2011 although his term expired in 2012.

5.4 The third Ombudsman Karen Andreasyan was elected on March 2, 2011 and was to serve until March 2 of 2017, but he submitted his resignation in January 2016. In 2015 the Defender released a special report regarding the right to a fair trial and corruption in the system of Justice, which even specified the amount of bribes given to the judges, which received severe criticism from the RA General Prosecutor G. Kostanyan in the first place, instead of judges. In January 2016 Karen Andreasyan resigned, the causes of which, as stated by him on his Facebook page, were "multilayered...if I was to stay an Ombudsman in 2016,

²⁶ As stated by the first Human Rights Defender Larisa Alaverdyan in one of her interviews, in 2004-2006 she was subjected to serious reprisals by the Government. The first public clash occurred in the winter of 2005, when Alaverdyan demonstratively left the Government sitting, chaired by RA President Robert Kocharyan. The reason was that the President deprived her of the right to speak, as granted by law, and suggested her only posing questions. The issue of adopting a draft law about limiting the powers of the human rights defender was being discussed at the government sitting. The second clash took place in September, 2005 when the Defender released a special report entitled "Breach of the rights to property, fair trial and judicial protection", which focused on the encroachments of human rights during the construction of Northern Avenue and Main Avenue. Via the constitutional amendments, adopted by the November 29 Referendum, the Defender was granted the right to apply to the constitutional court, and in December Alaverdyan applied over the issue of the rights of Kentron residents to property, and to identify the constitutionality of the Government's decisions, but she did not manage to institute the claim to the court. On January 4 by the decree of the RA President the management of the Defender's staff was handed to the committee, comprised of three officials, before the election of a new Defender. This way the Defender was discharged from office.

then this significant office would not be as efficient as it had grown into over long-lasting effortful years.”²⁷

5.5 Thus, the reasons for the early resignation of all the three previous human rights defenders were contingent upon reprisals against their activities exerted by the executive power and the silent agreement of the RA NA. The unprecedented attacks of the RA NA MPs against the RA third human rights defender are exceptional.

5.6 Based on the fact that the Ombudsman is a person-determined institute, with such working style of the executive and legislative power, the reprisals exerted against the human rights defender would paralyze the only institute of human rights defender, which may stop existing and moreover, reverse in case of a number of specialized ombudsmen.

5.7 We believe that the current RA Human Rights Defender A. Tatoyan finds that he won't become the “failing official” of the RA executive power, or he has not drawn proper conclusions from the experience of the previous three human rights defenders.

6. Summary

Based on the aforementioned, we record that the submitted RA draft law regarding the RA law on Human rights defender.

- 6.1 Forms the monopolistic position of human rights defender's institute in the field human rights protection.
- 6.2 Restricts the effective and partnering involvement of civil society, NGOs and experts in the mechanism of human rights protection.
- 6.3 Has a discriminatory and differentiated approach against the commitments undertaken by the international conventions on human rights protection ratified by the RA,
- 6.4 Risks the development of national mechanisms for human rights protection.

²⁷ See RA Human Rights Defender Karen Andreasyan's final speech, <https://www.youtube.com/watch?v=f665BQQGJjQ>
See also Opinion of HCA Vanadzor Chairman Artur Sakunts regarding the resignation of Karen Andreasyan, <http://hcav.am/events/14-01-2015-01/> <http://hcav.am/events/18-01-2016-698752301/>