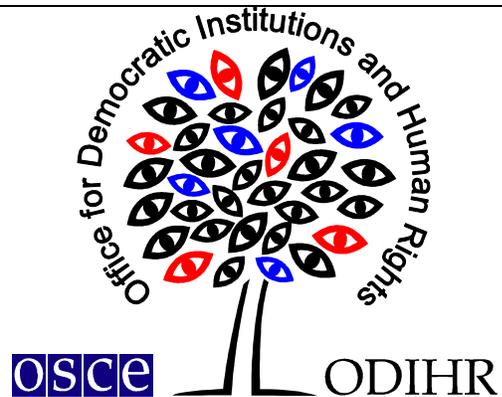


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**OPINION**

**ON THE DRAFT LAW**

**OF THE REPUBLIC OF ARMENIA**

**ON THE DISCIPLINARY RULE BOOK OF THE**

**ARMED FORCES**

**Based on an unofficial English translation of the draft Law provided by the  
OSCE Office in Yerevan**

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**Annex 1: Draft Law of the Republic of Armenia on the Disciplinary Rule Book of the Armed Forces**

**1. INTRODUCTION**

1. *In 2010, the Standing Committee on Defence, National Security and Internal Affairs of the National Assembly of Armenia (hereinafter “the Committee”) discussed the contents of a planned draft Law on the Disciplinary Rule Book of the Armed Forces in Armenia (hereinafter “the draft Law”).*
2. *On 7 September 2010, parliamentary hearings were organized with the participation of Members of Parliament, the Ministry of Defence, the Military Prosecutor’s Office, Military Police, the Investigation Department of the Ministry of Defence, the OSCE Office in Yerevan, the Human Rights Defender’s Office, the Institute for Military Studies Drastamat Kanayan under the Ministry of Defence, and civil society.*
3. *On 15 September 2010, following the discussion of the draft Law during the above hearings, the Chairman of the Committee sent a letter to the Head of the OSCE Office in Yerevan in which he requested OSCE/ODIHR’s expertise on the draft Law. The request was translated and forwarded to OSCE/ODIHR by the OSCE Office in Yerevan.*
4. *This Opinion is prepared in response to the above request.*

**2. SCOPE OF REVIEW**

5. The scope of the Opinion covers only the above-mentioned draft Law. Thus limited, the Opinion does not constitute a full and comprehensive review of all available framework legislation governing disciplinary proceedings within the armed forces and other issues related to military personnel in Armenia.
6. The Opinion raises key issues and provides indications of areas of concern. The ensuing recommendations are based on international standards and good practices related to general human rights and rule of law issues, as found in the international agreements and commitments ratified and entered into by the Republic of Armenia. The Opinion also reflects the contents of a previous OSCE/ODIHR Note on the Application of Sanctions and Enforcement Measures towards Members of the Armed Forces in Armenia.<sup>1</sup> The recommendations contained herein are aimed at providing a framework for further discussion and a basis for future events with key stakeholders to discuss the issues raised.
7. This Opinion is based on an unofficial translation of the draft Law provided by the OSCE Office in Yerevan, which has been attached to this document as Annex 1. Errors from translation may result.
8. In view of the above, the OSCE/ODIHR would like to make mention that this Opinion is without prejudice to any written or oral recommendations and comments to this or other legislation related to disciplinary proceedings and other matters concerning military personnel that the OSCE/ODIHR may make in the future.

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<sup>1</sup> OSCE/ODIHR Note on the Application of Sanctions and Enforcement Measures towards Members of the Armed Forces, Opinion No. CRIM-ARM/163/2010 (AT), of 23 September 2010.

**3. EXECUTIVE SUMMARY**

9. At the outset, it should be noted that for the most part, the draft Law reflects a balanced approach to disciplinary matters in relation to members of the armed forces of Armenia. However, in order to ensure full compliance of the said legislation with international standards and commitments, it is recommended as follows:

***3.1 Key Recommendations***

- A. to outline in detail in Article 2 par 1, or in a separate provision, which other laws of the Republic of Armenia contain duties, rules and orders for members of the armed forces and which of these laws will take precedence in which circumstances; [par 16]
- B. to include specific disciplinary breaches and their consequences in the draft Law; [par 23]
- C. to provide the member of the armed forces that (allegedly) committed a disciplinary breach with the right to be heard by the commander; [par 31]
- D. to clarify in Article 19 par 6 which type of measures will be implemented in response to reports/appeals and who will be responsible for giving this response and supervising implementation of these measures; [par 43]
- E. to specify in detail the applicable appeals procedures and differentiate between the different types of procedures and appeals bodies; [pars 44 and 45]

***3.2 Additional Recommendations***

- F. to specify which laws constitute the “existing rule books of the armed forces mentioned in Article 2 par 1; [par 17]
- G. to review and restructure the draft Law to awareness of its users with regard to the exercise of rights, awareness of obligations, enforceability and implementation; [par 19]
- H. to adopt a more gender-neutral terminology throughout the draft Law; [par 20]
- I. to clarify the relationship between disciplinary liability and criminal liability in the draft Law, and between investigations into both types of liability; [pars 24 and 30]
- J. to amend Article 11 as follows:
  - 1) revise par 5 so that it is clear which “criminal” elements would demonstrate that a disciplinary breach is grave within the meaning of that provision; [par 25]
  - 2) include in the draft Law adequate punitive responses to grave disciplinary breaches under par 6; [par 26]

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- 3) clarify the investigation of those disciplinary breaches not listed in par 6, namely such which are not grave disciplinary breaches and not committed by officers; [par 27]
- 4) specify who will conduct internal investigations mentioned in Article 11 par 6, and the extent of such investigations; [par 28]
- 5) make apparent the nature of disciplinary penalties mentioned in par 6 and clarify which party has the burden of proof in disciplinary proceedings; [par 29]
- 6) ensure that exemptions under par 7 are not possible in case of grave disciplinary breaches; [par 34]
- 7) define the term “extreme necessity” in par 8; [par 35]
- K. to explain whether all commanders, regardless of rank, shall have the power to apply punitive measures under Article 12, and consider adopting a more differentiated approach; [par 33]
- L. to clarify in Article 12 which other legislation regulates disciplinary penalties; [par 36]
- M. to delete Article 12 par 3 and specify each commander’s obligation to treat all subordinates the same and prevent all forms of discrimination in Article 4, par 3 (6) on the role of commanders; [par 37]
- N. to amend Article 16 as follows:
  - 1) review and, if necessary, revise par 2 on the permissible penalties imposed for grave disciplinary breaches; [par 38]
  - 2) elucidate the distinction between pars 3 and 4; [par 39]
  - 3) clarify the nature of par 8; [par 40]
- O. to amend Article 19 par 2 so that the calculation of one months’ time limit is suspended while the respective member of the armed forces is on combat duty, in line or guard group, or on an educational drill; [par 42]
- P. to consider including in the draft Law references to the Armenian Ombudsman as an alterative remedy; [par 46] and
- Q. to include in Chapter 5 of the draft Law an adequate time limit for the adoption of the government decrees mentioned throughout the draft Law; [par 48].

**4. ANALYSIS AND RECOMMENDATIONS**

**4.1 International Human Rights Protection for Members of the Armed Forces**

10. International human rights standards specify that members of the armed forces retain the human rights and fundamental freedoms that they are entitled to as individuals, but that these rights and freedoms are subject to certain limitations

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and duties imposed by military service.<sup>2</sup> Main human rights instruments such as the International Covenant on Civil and Political Rights<sup>3</sup> (hereinafter “the ICCPR”) and the European Convention on Human Rights and Fundamental Freedoms<sup>4</sup> (hereinafter “the ECHR”) expressly cover “everyone” within the jurisdiction of states party to these treaties<sup>5</sup>, which also includes members of the armed forces.<sup>6</sup> Nevertheless, the particular characteristics of military life and its influence on individual members of the armed forces will always need to be taken into account.<sup>7</sup> A recommendation on human rights of members of the armed forces passed by the Council of Europe’s Committee of Ministers in February 2010 reiterated both principles.<sup>8</sup>

11. The OSCE Code of Conduct on Politico-Military Aspects of Security<sup>9</sup> clarifies that OSCE human dimension commitments also apply to armed forces personnel and contains a number of specific safeguards in this respect.<sup>10</sup>
12. Among the human rights enjoyed by members of the armed forces are the right to liberty and the right to a fair trial,<sup>11</sup> guaranteed by Articles 9 and 14 of the ICCPR and Articles 5 and 6 of the ECHR. Both instruments also provide to any person whose Covenant/Convention rights and freedoms have been violated the right to an effective remedy (Article 2 par 3 of the ICCPR and Article 13 of the ECHR). When members of the armed forces are detained or imprisoned, the conditions in the detention/prison facilities and treatment of the detained/prisoners should correspond to the standards set by various

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<sup>2</sup> According to the Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel of the OSCE and the Geneva Centre for the Democratic Control of Armed Forces (DCAF), p. 18, this is based on the recognition that members of the armed forces are “citizens in uniform”.

<sup>3</sup> The United Nations International Covenant on Civil and Political Rights, adopted by General Assembly resolution 2200A (XXI) on 16 December 1966 and acceded by the Republic of Armenia on 23 June 1993.

<sup>4</sup> The Council of Europe’s Convention for the Protection of Human Rights and Fundamental Freedoms, signed on 4 November 1950, entered into force on 3 September 1953. The Republic of Armenia ratified the Convention on 26 April 2002.

<sup>5</sup> While the ECHR applies to everyone within the jurisdiction of the Contracting Parties, the ICCPR specifies that it shall apply to everyone within the territory and jurisdiction of the States party to the Covenant.

<sup>6</sup> See the ECtHR judgment in the case of *Engel v. the Netherlands* of 8 August 1976, application nos. 5100/71; 5101/71; 5102/71; 5354/72; 5370/72, par 54, in which the Court specified that “the Convention applies in principle to members of the armed forces and not only to civilians”.

<sup>7</sup> Ibid.

<sup>8</sup> Recommendation CM/Rec(2010)4 of the Committee of Ministers to member states on human rights of members of the armed forces, adopted on 24 February 2010 at the 1077<sup>th</sup> meeting of the Ministers’ Deputies.

<sup>9</sup> The OSCE Code of Conduct on Politico-Military Aspects of Security of 3 December 1994, adopted at the 91<sup>st</sup> Plenary Meeting of the Special Committee of the CSCE Forum for Security Co-operation in Budapest.

<sup>10</sup> More specifically, par. 32 of the Code of Conduct specifies that “Each participating State will ensure that military, paramilitary and security forces personnel will be able to enjoy and exercise their human rights and fundamental freedoms as reflected in CSCE documents and international law, in conformity with relevant constitutional and legal provisions and with the requirements of service”. See also the Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, Moscow, 3 October 1991, par. 23.1.

<sup>11</sup> Different aspects of the right to a fair trial are, inter alia, guaranteed to the defendant, but also to other persons participating in criminal proceedings, in Articles 9, 15-17, 19-22 of the Criminal Procedure Code of the Republic of Armenia. The applicability of these rights to members of the armed forces is once more stressed in pars E and F of Recommendation CM/Rec(2010)4 of the Council of Europe’s Committee of Ministers.

human rights instruments, notably the European Convention on Human Rights (Article 3), the European Convention on the Prevention of Torture and Inhuman and Degrading Treatment and Punishment<sup>12</sup> and other international human rights treaties to which Armenia is a party, as well as relevant OSCE commitments.

13. At the same time, it ought to be noted that certain countries, such as the Republic of Armenia, have invoked reservations with regard to the applicability of the right to liberty under Article 5 of the ECHR to disciplinary penalties for members of the armed forces.<sup>13</sup> In the OSCE region, members of the armed forces are usually subjected to specific duties under military law that are designed to maintain a disciplined environment, but are subject to criminal law in the same way as civilians.<sup>14</sup> In cases involving potentially severe penalties such as the deprivation of liberty, charges defined as disciplinary charges in certain States may also be qualified as criminal charges under Article 6 of the Convention.<sup>15</sup>

#### **4.2 Relationship to other Relevant Legislation**

14. While the scope of the draft Law is laid down in Article 1, Article 2 focuses on the notion of military discipline and the duties and rules and orders that members of the armed forces are obliged to follow. According to Article 2 par 1, these duties, rules and orders are prescribed by the Constitution, the draft Law, other laws, existing rule books of the armed forces, and orders issued by commanders (chiefs) within the limits of their authority.
15. While references to the Constitution and the draft Law are clear, other parts of this provision lack such clarity; in particular, the reference to “other laws” is not very specific and does not reveal to potential users of this law which other legislation will contain duties and rules/orders for members of the armed

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<sup>12</sup> European Convention on the Prevention of Torture and Inhuman and Degrading Treatment and Punishment, passed by the Council of Europe on 26 November 1987, ETS No. 126. The ratification of this Convention by the Republic of Armenia entered into force on 1 October 2002.

<sup>13</sup> In its reservations to the application of Article 5, the Republic of Armenia stated that this provision shall not affect the operation of the Disciplinary Regulation of the Armed Forces of the Republic of Armenia approved by Decree No. 247 of 12 August 1996 of the Government of the Republic of Armenia, under which arrest and isolation as disciplinary penalties may be imposed on soldiers, sergeants, ensigns and officers. In this context, see also par D in the Recommendation CM/Rec(2010)4 of the Council of Europe’s Council of Ministers, which requires fairness and procedural guarantees in military disciplinary procedures.

<sup>14</sup> OSCE-DCAF Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel, p. 219.

<sup>15</sup> See the ECtHR’s judgment in the case of *Engel and Others v. the Netherlands* (footnote 6), par 82, which states that “there belong to the “criminal” sphere deprivations of liberty liable to be imposed as a punishment, except those which by their nature, duration or manner of execution cannot be appreciably detrimental. The seriousness of what is at stake, the traditions of the Contracting States and the importance attached by the Convention to respect for the physical liberty of the person all require that this should be so.” In the *Engel* case, Article 6 applied to three cases involving 3-4 months’ arrest in a disciplinary unit, but not to the cases of the other two applicants involving four days’ light arrest (meaning no deprivation of liberty) for one and 2 days’ strict arrest for the other (par 85). See also *Galstyan v. Armenia*, ECtHR judgment of 15 November 2007, application no. 26986/03, pars 59-60, where three days of detention led to the applicability of Article 6. This principle is also laid down in Section F, par 28 of Recommendation CM/Rec(2010)4 of the Council of Europe’s Committee of Ministers to member states on human rights of members of the armed forces, which states that the guarantees of fair trial apply to all proceedings “that qualify as criminal under the Convention”.

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forces.<sup>16</sup> Also, there is no information on which law will take precedence in which circumstances.

16. In order to remedy this vagueness of the draft Law, it is recommended to specify in Article 2 par 1, or in a separate provision, which other laws of Armenia contain duties, rules and orders for members of the armed forces and which of these laws will take precedence over others in which situations.
17. Further, the “existing rule books of the armed forces” should also be specified by name. Presumably, these rule books do not include the current Disciplinary Statute of the Armed Forces<sup>17</sup>, which will probably be replaced in its entirety by the draft Law. Should this not be the case, then the draft Law should outline in detail which parts of the currently applicable Disciplinary Statute will be replaced by the draft Law and which parts will remain in force.

**4.3 General Comments on the draft Law**

18. Overall, this draft Law attempts to provide a good baseline for members of the armed forces by outlining military hierarchy and consequences of disciplinary breaches.
19. However, the structure of the draft Law would benefit from certain reviews and amendments. Provisions are very long and often address numerous topics that could be made more noticeable if outlined in a separate provision, e.g. the investigation of a disciplinary breach would become more apparent if described in a separate provision, also the appeals procedure, as far as it exists in this draft Law, is “hidden away” in a provision on reporting (Article 19). Certain provisions, e.g. Article 16, which currently has 19 paragraphs, would become more accessible to users if certain subtopics were summarized in separate articles. It is recommendable to review and restructure the draft Law to enhance awareness of its users with regard to the exercise of rights, awareness of obligations, enforceability and implementation.
20. Further, it is noted that throughout the draft Law, individuals (commanders and military personnel) are referred to as “he”. Further to OSCE/ODIHR’s commitment to help OSCE participating States develop non-discriminatory legal and policy frameworks<sup>18</sup>, it is recommended to adopt gender-neutral terminology by referring to both genders (e.g. “he/she”), or to clarify in a separate provisions that all references to male gender include the female unless clearly stated otherwise.
21. In addition to the above general comments, more detailed comments and recommendations on how to improve parts of the draft Law are listed in the following chapters.

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<sup>16</sup> For another example of vague references to other legislation, see Article 16 par 18.

<sup>17</sup> The Disciplinary Statute of the Armed Forces, approved by Government Decree No. 247 on 12 August 1996.

<sup>18</sup> See the OSCE Action Plan on Promoting Gender Equality of 7 December 2004, annexed to MC Decision 14/04, Chapter V, par 44 (b).

#### **4.4 Disciplinary Liability and Ensuing Procedure**

##### ***4.4.1 Disciplinary Breaches***

22. Generally, liability is mentioned in Article 11, which specifies that a disciplinary breach is a “military servant’s failure to perform, or improper performance of duties to observe military discipline”, the failure to perform or improper performance of service functions, or a military servant’s exceeding of his/her service authority.
23. This definition of disciplinary breaches is quite general. Article 11 does not contain a list of potential disciplinary breaches, nor does it specify exactly which types of breaches will lead to which punishment. It is thus not possible for members of the armed forces to know in exactly which cases they will be considered to have failed to perform their duties to observe military discipline, or to perform service functions.<sup>19</sup> In the interests of legality and foreseeability of the draft Law, it would be advisable to include cases when a disciplinary breach occurs and what its consequences may be.<sup>20</sup>
24. According to Article 11 par 4, a member of the armed forces may not be exempted from criminal liability, should his/her conduct contain elements of acts subject to criminal prosecution. It would be advisable to clarify in this draft Law the relationship between disciplinary liability and criminal liability. Most importantly, it should be ensured that members of the armed forces committing an act that is both disciplinary and criminal in nature, should not be punished twice for the same offence.<sup>21</sup>
25. Article 11 par 5 describes grave disciplinary breaches, which require, inter alia, that the disciplinary breach contains “other elements of acts subject to criminal prosecution”. This is quite vague and difficult to implement in practice, since criminal acts are constituted of numerous elements – indeed, some of these elements by themselves will not even constitute criminal behavior. It is recommended to clarify in Article 11 par 5 which types of “criminal” elements would demonstrate that a disciplinary breach is grave.
26. In this context, it is noted that the available disciplinary punishments under the draft Law do not look severe enough to cover conduct that would constitute grave breaches of discipline, as the most severe punishment under Article 12 of the draft Law appears to be placement in a disciplinary company from one

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<sup>19</sup> See the Armed Forces Act of the United Kingdom of 8 November 2006, 2006 c.52, where all offences, both criminal and disciplinary, are outlined in detail and provisions on such offences also specify the range of possible punishment.

<sup>20</sup> See, in this context, the description of foreseeability for criminal offences in the judgment of the ECtHR in the case of *Korbely v. Hungary* of 19 September 2008, application no. 9174/02, par 70. While the disciplinary breaches mentioned in the draft Law do not, for the most part, equate to criminal offences, applying similar clarity to the draft Law would be an example of good practice in this regard.

<sup>21</sup> See Section 16 of the German Disciplinary Code of the Armed Forces (*Wehrdisziplinarordnung*) of 16 August 2001, BGBl. I S. 2093, last amended in 2008, which states that simple disciplinary measures may not be imposed in cases where, e.g., a court or administration issued a punishment or similar measure in the same case. In such circumstances, disciplinary arrest or the reduction of official or pensioners emoluments may only take place in cases where this is absolutely necessary to maintain military order or where certain misconduct seriously damaged the reputation of the Federal Army. Other forms of deprivation of liberty shall be deducted from the term of disciplinary arrest, which, together with the other deprivation of liberty, may not exceed a total of 3 weeks.

to ten days. It would be advisable to outline adequate punitive responses to grave disciplinary breaches in the draft Law. In case such cases are to be dealt with in a separate piece of legislation, then Article 11 par 5 should include a clear and specific reference to such legislation.

27. In Article 11 par 6, grave disciplinary breaches and breaches committed by officers and non-commissioned officers shall be investigated internally. This begs the question of how other types of breaches will be investigated. This issue needs to be clarified.
28. While the competent commander shall order the above investigation, the wording of Article 11 par 6 does not reveal who will conduct it, nor does the draft Law specify the permissible extent of investigations. It would reflect good practice if the competent commander was excluded from participation in the investigations, as he/she could then maintain a measure of neutrality when taking a decision on the consequences of a breach.
29. Also, Article 11 par 6 states that the investigation shall cover the type of disciplinary penalty – this part of the provision is unclear, as it would imply that the declaration of the penalty is part of the investigative process. In fact, the determination of the penalty is the obligation of the commander once the facts have become clear. Presumably, the burden of proof lies on the investigators, meaning that they need to prove that the respective member of the armed forces committed a disciplinary breach. It is recommended to clarify these issues in the procedure for conducting internal investigations to be passed by decree of the Minister of Defence.
30. It would also be advisable to clarify, in Article 11 par 6 or in a different provision in the draft Law, the relationship between disciplinary investigations and criminal investigations, e.g. whether there will be a form of cooperation between internal military investigators and criminal investigators, and whether at some point the information obtained through internal investigation will need to be passed on to the criminal investigator.
31. In cases where internal investigations have been initiated against members of the armed forces, Article 11 par 9 states that the latter have the right to familiarize themselves with the progress and contents of actions performed with his/her participation and related documents. He/she may also provide suggestions, explanations or objections to them, and may familiarize himself/herself with internal investigation materials prior to the end of the internal investigation. This would suggest that members of the armed forces have a certain right to be heard during investigations against them. It is important, in this context, to ensure that this right to be heard is exercised towards the commander, so that the latter will have the opportunity to hear the defence of the individual member of the armed forces. Specifying such a right in Article 11 par 9 or in a separate provision is recommendable, as it would strengthen the equality of arms principle that Article 11 par 9 aims to establish.

#### ***4.4.2. Disciplinary Penalties***

32. According to Article 5 par 1, commanders (chiefs) and other military servants shall apply various types of incentives or disciplinary penalties with respect to

subordinates or lower-ranking military servants. As Article 5 does not differentiate with respect to the types of punishments applied, this would imply that all commanders have the disciplinary power to impose all disciplinary penalties. Articles 12-15 on the disciplinary penalties imposed on military servants and Article 16 on the procedure for applying disciplinary penalties do not suggest otherwise.

33. Consequently, this means that conceivably, sergeants or lieutenants would have the power to decide on placement in a disciplinary company, lowering of military rank or even dismissal from the army in cases where disciplinary breaches were committed by their subordinates or by military servants of a lower rank. It is questionable whether such extensive disciplinary powers are in keeping with the rank of these members of the armed forces. This does also not appear to be compliant with Article 16 par 7, which would suggest that the power to impose a disciplinary penalty for grave offences may be limited to certain higher-ranking officers. It is advisable to clarify whether all commanders, even those of comparably lower rank, should have the power to apply all of the punitive measures mentioned in Article 12 of the draft Law. It may be more appropriate to adopt a differentiated approach, which would allow lower-ranking commanders to issue warnings and possibly also order additional work duty service, but would leave harsher or more far-reaching penalties such as deprivation of the right of leave, placement in a disciplinary company, lowering of rank or position, removal from educational institutions or dismissal from the military service to higher-ranking members of the armed forces, starting from the ranks of major or lieutenant colonel.
34. Under Article 11 par 7, a commander may decide to exempt a member of the armed forces from a disciplinary penalty, if certain conditions are given. It should be clear in the draft Law that such an exemption should not be possible in case of grave disciplinary breaches. This would also make this provision consistent with Article 11 par 4. It is recommended to amend Article 11 par 7 accordingly.
35. Article 11 par 8 stipulates that such an exemption is also possible in cases where the respective member of the armed forces acted within the limits of his/her authority or in conditions of extreme necessity. It would be advisable to define the term “extreme necessity”, either in this provision or at some other point in the draft Law.
36. Disciplinary penalties are laid down in Article 12 of the draft Law and may range from a simple warning to dismissal from the military service. It is noted that the list of penalties mentioned in this provision does not include arrest or detention, which appear to be included in the current Disciplinary Statute of the Armed Forces.<sup>22</sup> It is not clear whether this means that arrest and detention are no longer applied as disciplinary penalties, or whether these forms of penalties are regulated in a separate law. In case of the latter, it would be advisable to clarify in Article 12 which other legislation regulates possible disciplinary penalties (see par 26 *supra*).

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<sup>22</sup> See Articles 54-56 of the Disciplinary Statute of the Armed Forces, approved by Government Decree No. 247 on 12 August 1996. See also Article 1 of Appendix 14 to the Republic of Armenia Law on Approving the By-Laws of the Garrison Services and Patrol Services of the Armed Forces of the Republic of Armenia.

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37. Article 12 par 3 specifies that certain disciplinary penalties may not be imposed on female members of the armed forces. These penalties are the deprivation of regular leave from the place of deployment of the military detachment for a term of up to one month, additional work duty service for up to five work duty service teams and placement in a disciplinary company from one to ten days. This provision may not be in compliance with the principle of non-discrimination laid down in Article 26 of the ICCPR, as it propagates a difference in treatment of male military personnel and female military personnel in cases of disciplinary breaches.<sup>23</sup> There is no apparent objective justification for not depriving female soldiers of their leave, requiring them to do additional appropriate work duty service, or placing them in a disciplinary company. In order to ensure that male and female soldiers are treated in the same manner and that female soldiers do not receive advantageous treatment merely due to their gender, it is recommended to delete Article 12 par 3. Further, Article 4 of the draft Law on the role of the commander should specify that next to his/her obligation to respect the honor and dignity of subordinates and to preclude their persecution on the basis of personal motives (Article 4 par 3 (6)), he/she should also be obliged to treat all subordinates the same and prevent all forms of discriminatory behavior in the armed forces.
38. Article 16 deals with the procedure of applying disciplinary penalties. In this provision, it is not clear why certain types of penalties, e.g. deprivation of regular leave, additional work duty service and placement in a disciplinary company shall not be applied in cases of grave disciplinary breaches (Article 16 par 2). It would appear that particularly these penalties would have a more punitive and preventive character than certain others. It would be advisable to review and, if necessary, redraft this provision.
39. According to Article 16 par 3, a disciplinary penalty shall not be imposed if six months have lapsed since it was committed. Presumably, this refers to cases where the competent superiors were not aware of the disciplinary breach. Article 16 par 4, on the other hand, states that disciplinary penalties shall be imposed within three days, but no later than within 30 days of the commander learning about the breach. It is recommended to clarify the distinction between both provisions, so that it is clear that usually, Article 16 par 4 applies, but that in cases where the competent commanders do not learn of the disciplinary breach, they are proscribed from applying penalties after 6 months have passed.
40. Article 16 par 8 states that a senior commander may increase, but not lower, a disciplinary penalty imposed by a junior commander, unless the latter has exceeded his/her power to impose a disciplinary penalty. This provision is vague – in particular, it is not clear whether the senior commander is always allowed to impose higher penalties *proprio motu*, or whether this right is a consequence of an appeal against a disciplinary penalty mentioned in Article 16 par 18. In case of the latter, it would not appear appropriate to exclude a possible reduction of the disciplinary penalty by the senior commander, since the member of the armed forces who committed the breach will lodge an appeal in the hope of being exempted from punishment, or of at least receiving

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<sup>23</sup> See OSCE/ODIHR Note on the Application of Sanctions and Enforcement Measures towards Members of the Armed Forces, Opinion No. CRIM-ARM/163/2010 (AT), of 23 September 2010, par 48.

a reduced penalty. It is advisable to clarify the nature of Article 16 par 8 accordingly.

41. In the adoption of the extant Draft Law, it should be recalled that generally, certain cases leading to placement in disciplinary company could amount to “criminal charges” within the meaning of Article 6 of the Convention (see, in this context, par 13 supra), depending on the nature of the offence and the degree of severity of the penalty.<sup>24</sup> In the ECtHR’s judgment in the case of *Galstyan v. Armenia*, for instance, the Court found an administrative detention for “hooliganism” to be criminal in nature due to the punitive and deterrent nature of the sanction and the severity of the penalty (3 days of deprivation of liberty under lock and key and a potential maximum sentence of 15 days). Placement in disciplinary company may be enforced for a period of up to 10 days. Should such placement involve detention (under lock and key), then, depending on the offence, such cases could be considered criminal within the autonomous meaning of the term under Article 6 of the Convention. In such instances, the person in question should enjoy the rights granted to persons under Article 6, including the right to an independent and impartial tribunal. The placement in disciplinary company would in these circumstances need to be decided by a court, since commanders would not satisfy the requirements of independence and impartiality under Article 6 of the Convention.<sup>25</sup> If, however, placement in military company, as a rule, does not involve detention, then such penalty would not reach the threshold of Article 6 and the individual concerned would not enjoy the rights granted by Article 6.

#### ***4.4.3. Filing of Reports and Appeals***

42. Article 19 stipulates the filing of reports by military personnel. According to Article 19 par 1, such reports may also be filed in cases of appeals against disciplinary penalties or against unlawful and unfair actions of other military personnel. Par 2 of this provision states that reports may not be filed while on combat duty, in the line, in a guard group, or during educational drills, unless specifically requested. The time limit for filing such reports is one month. In order to reflect the limitations on soldiers imposed by Article 19 par 2, it is recommended to amend this provision by stating that the calculation of the one month time limit will be suspended accordingly while the member of the armed forces is on combat duty, in the line, in a guard group, or at an educational drill.
43. Following a report, the issues mentioned therein are considered resolved once they have been discussed in full, the necessary measures have been implemented and an exhaustive response corresponding to Armenian laws and other legal acts has been given (Article 19 par 6). This provision is very vague and does not contain a clear obligation for the commander receiving the report. It is not clear which measures will be considered “necessary” and what an “exhaustive response” will need to contain. This provision should reflect in greater detail what type of measures will be implemented, and what type of

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<sup>24</sup> See the ECtHR’s *Galstyan v. Armenia* judgment cited in footnote 15, par 56, and the *Engel and Others v. the Netherlands* judgment, par 82.

<sup>25</sup> See *Hood v. the United Kingdom*, ECtHR judgment of 18 February 1999, application no. 27267/95, par 76.

response will be given. Finally, it should be determined in this provision who will be responsible for giving the response and implementing the measures (presumably the commander or competent superior).

44. Article 16 par 18 speaks of appeals to higher-standing authorities or to court in accordance with procedures stipulated by the draft Law and “other laws”. As in the case of Article 2 of the draft Law (see pars 15 and 16 *supra*), this provision is quite vague and does not specify which laws it is referring to. It is also not clear which higher-standing authorities or courts would be competent to deal with such appeals. The draft Law does not outline which appeals shall be taken to a higher-standing authority and which shall be taken to a court, and whether the higher-standing authority is a necessary first instance, or whether certain appeals may go straight to court. These matters should be clarified, so that military servicemen will have adequate remedies at their disposal.
45. The “appeals procedures stipulated in the draft Law”, referred to in Articles 11 par 9 and 16 par 18, are rudimentary to the issue. Also, the articles in the draft Law governing appeals procedures appear to lack precision and the actual appeals procedure mentioned in Article 19 appears to be a mere example of reporting to superior commanders. The provision contains very few specific references to the appeals procedure, e.g. in Article 19 par 2, 2<sup>nd</sup> sentence. The vaguely formulated response to reports and appeals already discussed in par 43 *supra* also is not clear enough to constitute an effective remedy for members of the armed forces. The draft Law is therefore recommended to regulate the right to appeal in a separate provision, outlining specifically the procedure to follow and the possible ramifications.
46. Further, it may be helpful to include in the draft Law a reference to the Armenian Human Rights Defender as an alternative remedy. Under Articles 7 and 8 of the Law of the Republic of Armenia on the Human Rights Defender<sup>26</sup>, any individual (presumably including members of the armed forces) may lodge a human rights complaint with the Human Rights Defender. The Human Rights Defender has free access to military units (Article 8 of the Law on the Human Rights Defender) to investigate such complaints. It is recommended to include references to the complaints mechanism before the Human Rights Defender in the draft Law. This way, members of the armed forces will be aware of the fact that next to filing a report to their superior commander, or lodging an official appeal against a disciplinary order, they always have the right to complain to the Human Rights Defender.

#### **4.5 Transitional Provisions**

47. Under final provisions (Chapter 5), the draft Law merely states that the law shall enter into force on the 10<sup>th</sup> day of its official publication (Article 20). However, this Article does not specify any time limits for the adoption of numerous government decrees described in various provisions of the draft Law, e.g. Article 5 pars 13 and 14, Article 10 par 6, Article 11 pars 1 and 6, and Article 16 pars 6, 11 and 19.

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<sup>26</sup> Law of the Republic of Armenia on the Human Rights Defender, adopted 21 October 2003, last amended in 2006

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48. These decrees are secondary legislation that is necessary for a proper implementation of the law once it is passed. Work on these decrees shall thus be initiated during discussions on the draft Law, so that they can be adopted quickly once the law has been passed. Nevertheless, to take into account internal adoption mechanisms within the responsible Ministry of Defence, a period of one to three months after the adoption of the law should be granted to ensure proper finalization and adoption of the necessary decrees. Such a time limit should be included under Chapter 5 on final provisions.

*[END OF TEXT]*

**Annex 1:**

*Draft*  
*K-944-06.07.2010-PA-010/0*

**REPUBLIC OF ARMENIA  
LAW**

**Disciplinary Rule Book of the Armed Forces of the Republic of Armenia**

**CHAPTER 1**

**GENERAL PROVISIONS**

***ARTICLE 1. OBJECT OF REGULATION AND SCOPE OF THE LAW***

1. This Law defines the notion and principles of military discipline in the armed forces of the Republic of Armenia (hereinafter, “the Armed Forces”), the duties of military servants related to the observance of military discipline, the types of incentives and disciplinary penalties ordered in respect of military servants, the terms and procedure of their application, the rights of commanders (chiefs) in their application, and other legal matters related to strengthening military discipline.

2. The effect of this Law extends to the persons undergoing military service in the Armed Forces of the Republic of Armenia and the systems of Police and National Security Service at the Government of the Republic of Armenia (hereinafter, “Armed Forces and Other Troops”).

***ARTICLE 2. NOTION OF MILITARY DISCIPLINE AND PRINCIPLES OF ENSURING MILITARY DISCIPLINE***

1. Military discipline is the strict and exact observance by each military servant of the duties and rule and order prescribed by the Republic of Armenia Constitution, this Law, other Laws, the existing rule books of the Armed Forces, and the orders issued by commanders (chiefs) within the limits of their authority.

2. Military discipline is based on the principles of lawfulness, respect for human rights and freedoms, publicity, inevitability and individualization of incentives and disciplinary liability, and the military, legal, and moral education of military servants.

3. Military discipline is ensured through each military servant’s recognition of his personal responsibility for the defense of the Republic of Armenia, for military duty, and for the performance of his duties, as well as through the exact and timely execution of orders given by commanders (chiefs) within the limits of their authority.

**ARTICLE 3. DUTIES OF MILITARY SERVANTS IN OBSERVING MILITARY DISCIPLINE**

1. Military discipline obligates each military servant:
  - 1) To be true to his military vow and strictly to comply with the requirements of the Republic of Armenia Constitution and laws;
  - 2) To perform his military duty and functional duties in good faith and courageously, properly to study military affairs, and to safeguard military and state property;
  - 3) To bear the difficulties of military service firmly, and not to spare his own life for the performance of the military duty;
  - 4) To be vigilant and strictly to protect state and service secrets;
  - 5) To observe the statutory relationship between military servants and to strengthen army comradeship;
  - 6) To respect the commanders (chiefs) and one another, and to observe the rules of military courtesy and salutation; and
  - 7) Not to commit acts that diminish the honor and dignity of military servants.
2. The following are the means of ensuring strong military discipline:
  - 1) Instilling superb moral-psychological and martial features in the military servants, and consciously submitting the commanders (chiefs);
  - 2) Each military servant's recognition of his personal liability for fulfillment of his duties and the requirements of the military rule books;
  - 3) Observing the internal rule and order in the military detachment (unit);
  - 4) Efficiently organizing martial readiness and engaging all the personnel therein;
  - 5) Everyday exactingness of the commanders (chiefs) towards the subordinates, respecting their dignity, permanently caring for them, and skillfully combining and correctly using persuasion, compulsion, and peer pressure of the military personnel; and
  - 6) Creating the necessary physical and living conditions in the military detachment (unit).

**ARTICLE 4. ROLE OF THE COMMANDER (CHIEF) IN ENSURING AND STRENGTHENING MILITARY DISCIPLINE**

1. The commanders (chiefs) of all the brigades, the officers, and non-commissioned officers shall be liable for reinforcing military discipline and the statutory order.

2. In ensuring compliance with the requirements of the Republic of Armenia Constitution, this Law, the Armed Forces internal rule book, garrison and guard rule book, combat and martial rule book, and other laws of the Republic of Armenia, the commander (chief) shall permanently serve as an example for the personnel, promote their sense of dignity and military duty, encourage the worthy ones, and impose penalties on those that breach the military discipline.

3. A commander (chief) must:

1) Pay special attention to studying the individual features of the subordinates, observing the relations defined by military rule books, consolidating the personnel, identifying the reasons behind disciplinary breaches in a timely fashion, and implementing preventive measures;

2) Know the state of military discipline and the moral-psychological state of the personnel, and achieve consistent understanding by the subordinate commanders (chiefs) of the requirements, targets, and methods of reinforcing military discipline;

3) Consistently analyze the state of military discipline and the moral-psychological state of the subordinate personnel, report thereon to the supervisory commanders (chiefs) in a timely and impartial manner, and report about crimes and incidents without any delay;

4) Immediately eliminate identified breaches of the service performance rules and decisively prevent any action undermining the fighting capacity of the military detachment (unit), organize legal awareness-raising measures and work toward preventing crimes, incidents, and disciplinary breaches;

5) Educate the subordinate personnel in a spirit of strict compliance with the military discipline requirements, develop and maintain their sense of dignity and their realization of military duty and honor, and create an atmosphere of intolerance in the military detachment (unit) towards breaches of military discipline, especially of requirements stipulated by the military rule books, and towards manifestations of social injustice; and

6) Respect the honor and dignity of the subordinates and preclude their persecution on the basis of personal motives.

4. A commander (chief) who fails to implement measures to reinforce military discipline and to impose a disciplinary penalty on an offending military servant shall bear liability. The activities of the commander (chief) towards ensuring

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observance of military discipline shall be based on exact fulfillment of the requirements of the laws and military rule books, full use of their disciplinary powers, performance of their duties for establishing rule and order, and preventing breaches of military discipline in a timely manner.

5. In the joint performance of service duties by military servants that are not subordinate to one another, the service relationship and seniority shall be determined as per their positions or, in case of equal positions, their ranks.

6. The premises securing vertical and sole command are the commander's (chief's) right to issue orders and the subordinate military servant's duty to abide by such orders implicitly.

7. In case of a subordinate military servant's obvious disobedience, unnecessary objection, or resistance, the commander (chief) must, for the purpose of restoring rule and order and discipline, implement all the compulsion measures stipulated by laws and military rule books within the limits of his authority.

**ARTICLE 5. THE DISCIPLINARY POWER**

1. The disciplinary power is the power of commanders (chiefs) and other military servants to apply various types of incentives or disciplinary penalties in respect of subordinate or lower-ranking military servants.

2. Commanders (chiefs) and other military servants shall enjoy the following disciplinary powers in line with their position and military rank:

- 1) The commander of a squad or crew: junior sergeant or sergeant;
- 2) The commander of a platoon: senior sergeant;
- 3) The commander of contract rank-and-file crew: senior sergeant;
- 4) The senior of a company, pack, air squadron, and crew: foreman, non-commissioned officer, or senior non-commissioned officer;
- 5) The commander of a company group: lieutenant or senior lieutenant;
- 6) The commander of a platoon, pack, aviation unit, or separate company: captain;
- 7) The commander of a battalion, division, air squadron, or separate company: major;
- 8) The commander of a separate battalion (division, air squadron): lieutenant colonel;
- 9) The commander of a separate or non-separate brigade or a separate or non-separate regiment: colonel;

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- 10) The commander of a division: major general;
  - 11) The commander of an army corps or army group: lieutenant general; and
  - 12) The commander of an army: colonel general.
3. Commanders (chiefs) for whose positions two military ranks are stipulated by position title shall enjoy the disciplinary power corresponding to the higher military rank.
4. In case of temporary performance of the duties of a position stipulated by law, the commander (chief) shall enjoy the disciplinary powers stipulated for such position.
5. Deputy commanders of military units, military detachments, and army units shall enjoy, relative to their subordinates, the disciplinary power of a rank that is one step below the powers vested in their direct supervisors.
6. The deputy commander of a regiment and officers in lower-ranking positions acting as chiefs of units or crews, during travel and during the performance of autonomous tasks outside the deployment place of the military unit under an order of the unit commander, shall enjoy the disciplinary power of a rank that is one step higher than the power pertaining to their current position.
7. Rank-and-file and non-commissioned military servants designated as crew chiefs shall, in the cases stipulated by the first sub-paragraph of this Paragraph, enjoy only the following disciplinary powers:
- 1) Military servants holding the military rank of a private, sergeant, senior sergeant, and foreman: company (crew) foreman;
  - 2) Military servants holding the military rank of a foreman and non-commissioned officer: the commander of a platoon (group); and
  - 3) Non-commissioned officers holding the military rank of a platoon (group) commander: the commander of a company.
8. Officers commanding units comprising students of military educational institutions shall enjoy, relative to their subordinates, the disciplinary power of a rank that is one step higher than the power pertaining to their current position.
9. The heads of structural and separate subdivisions of the system of the Ministry of Defense of the Republic of Armenia shall enjoy, relative to the military servants subordinate to them, the disciplinary powers vested in the commander of a separate brigade or division.
10. The deputies to the general chief of staff of the Armed Forces of the Republic of Armenia shall enjoy disciplinary powers that are one step lower than those vested in the general chief of staff of the Armed Forces.

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11. The general chief of staff of the Armed Forces of the Republic of Armenia shall enjoy the disciplinary powers that are one step lower than those vested in the Minister of Defense of the Republic of Armenia.

12. The Minister of Defense of the Republic of Armenia shall enjoy the full scope of the disciplinary powers stipulated by this Law.

13. The nomenclature of commanders (chiefs) and other competent persons and the scope of their disciplinary powers shall be established by decree of the Minister of Defense of the Republic of Armenia.

14. The power vested in the Minister of Defense of the Republic of Armenia by this Law to adopt acts on the exercise of disciplinary powers and regulatory acts towards military servants in the Armed Forces of the Republic of Armenia shall be exercised in relation to other troops by the heads of the relevant competent state bodies stipulated by the Republic of Armenia Law on the Performance of Military Service.

## **CHAPTER 2**

### **TYPES OF INCENTIVES GIVEN TO MILITARY SERVANTS; PROCEDURE OF GIVING AND APPLYING INCENTIVES**

#### ***ARTICLE 6. INCENTIVES GIVEN TO MILITARY SERVANTS***

1. An incentive is a means of reinforcing military discipline and educating military servants. Each commander (chief) shall, within the limits of his authority under this Law, other laws, and legal acts, incentivize his subordinate military servants for outstanding service, zealous performance of service duties, special personal contribution, and display of positive initiative.

2. The following incentives may be given to military servants:

- 1) Elimination of a disciplinary penalty imposed earlier;
- 2) Declaration of gratitude;
- 3) Informing the military servant's family of exemplary performance of service duties and the incentives received;
- 4) Awarding an agency diploma of honor;
- 5) Awarding a valuable gift or a lump-sum amount;
- 6) Photo of the military servant near the combat flag of the military detachment;
- 7) Granting main leave;
- 8) Granting additional leave;

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- 9) Early dismissal from the deployment place of the military detachment;
  - 10) Awarding an agency medal;
  - 11) Awarding an agency pin;
  - 12) Placing the military servant's photo in the military detachment's honor book and recording his name, patronymic, and surname;
  - 13) Early awarding of the next military rank;
  - 14) Awarding a military rank that is one step higher than the one designated for the military servant's current position; and
  - 15) Awarding a registered arm.
3. For courage and bravery displayed in the performance of military duty, for exemplary command of the troops, for other outstanding service to the Republic of Armenia, the armed forces, and other troops, and for excellence in combat readiness, military servants may be nominated in accordance with the procedure stipulated by law for state awards.
4. For excellence displayed in education and for excellent performance of service duties, students of military educational institutions of the Republic of Armenia may, in addition to the incentives stipulated by sub-paragraphs 1 to 14 of Paragraph 2 of this Article, be awarded bonuses, bonus increases, and other incentives practiced in military educational institutions.
5. The sequence order of the incentives listed in sub-paragraphs 1 to 15 of Paragraph 2 of this Article does not denote their priority. A military servant undergoing a disciplinary penalty may be incentivized by means of eliminating a penalty imposed earlier.

***ARTICLE 7. INCENTIVES GIVEN TO RANK-AND-FILE MILITARY SERVANTS***

1. The incentives prescribed in sub-paragraphs 1 to 14 of Paragraph 2 of Article 6 of this Law may be given to conscripted rank-and-file military servants.
2. The incentives prescribed in sub-paragraphs 1, 2, 4-6, and 10-14 of Paragraph 2 of Article 6 of this Law may be given to contract rank-and-file military servants.

***ARTICLE 8. INCENTIVES GIVEN TO NON-COMMISSIONED OFFICER MILITARY SERVANTS***

The incentives prescribed in sub-paragraphs 1, 2, 4, 5, 10, and 12-14 of Paragraph 2 of Article 6 of this Law may be given to non-commissioned officer military servants. The incentive prescribed in sub-paragraph 11 of Paragraph

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2 of Article 6 of this Law may also be given to non-commissioned officer military servants in other troops.

**ARTICLE 9. INCENTIVES GIVEN TO MILITARY SERVANTS OF THE OFFICER CORPS**

The incentives prescribed in sub-paragraphs 1, 2, 4, 5, 10, and 12-15 of Paragraph 2 of Article 6 of this Law may be given to military servants of the officer corps. The incentive prescribed in sub-paragraph 11 of Paragraph 2 of Article 6 of this Law may also be given to military servants of the officer corps of other troops.

**ARTICLE 10. PROCEDURE OF APPLYING INCENTIVES**

1. Incentives may be applied in relation to an individual military servant or a military crew (unit).
2. The application a particular type of incentive shall take into account the nature of the military servant's outstanding performance and contribution, his attitude towards military service, and his success in the performance of service duties.
3. A repeat incentive for the same contribution may be awarded to a military servant by the Minister of Defense of the Republic of Armenia upon motion by the competent commander (chief).
4. Incentives shall be given in writing, with the exception of the "declaration of gratitude" incentive, which may be given to rank-and-file military servants orally, as well. Incentives given may also be declared in solemn circumstances.
5. Of the incentives given to military servants:
  - 1) The incentive of "eliminating a disciplinary penalty imposed earlier" shall be applied in relation to a military servant undergoing a disciplinary penalty, in the time and procedure stipulated by Paragraph 4 of Article 17 of this Law;
  - 2) The incentive of "declaration of gratitude" shall be applied by an order or by means of oral declaration of gratitude, and must be declared in front of the personnel;
  - 3) The incentive of "informing the military servant's family of exemplary performance of service duties and the incentives received" shall be applied by an order, and an excerpt of the order of the commander (chief) giving the incentive, as well as the documents regarding to the incentives received earlier shall be sent to the military servant's recorded address by registered mail; the text of the order shall be read out in front of all the personnel;
  - 4) The incentive of "awarding an honor diploma of the Ministry of Defense of the Republic of Armenia" shall be applied by an order, and an honor diploma

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of the form approved by the Minister of Defense of the Republic of Armenia shall be delivered to the respective military servant in person;

5) The incentive of “awarding a valuable gift or a lump-sum amount” shall be applied by an order, and the valuable gift or lump-sum amount shall be delivered to the respective military servant in person; the maximum value of the gift and the maximum lump-sum amount, as well as the procedure of awarding them shall be set by a decree of the Minister of Defense of the Republic of Armenia;

6) The incentive of “photo of the military servant near the combat flag of the military detachment” shall be applied by an order, and two copies of the photo shall be delivered to the respective military servant in person; the photo shall be taken in advance; in the photo, the military servant shall be carrying his assigned weapon, and the combat flag of the military detachment shall be open;

7) The incentive of “granting main leave” shall be applied by an order, for the number of days specified in the order, not to exceed the period set by the Republic of Armenia Law on the Performance of Military Service;

8) The incentive of “granting additional leave” shall be applied by an order, for the number of days specified in the order, in the time and procedure set by the Republic of Armenia Law on the Performance of Military Service;

9) The incentive of “dismissal from the deployment place of the military detachment” shall be applied by an order, for the number of days specified in the order, in the procedure set by the Republic of Armenia Law on Approving the Internal Service Rule Book of the Armed Forces of the Republic of Armenia;

10) The incentive of “awarding a medal of the Ministry of Defense of the Republic of Armenia” shall be applied by an order, and an agency medal shall be delivered to the respective military servant in person; the list of such medals shall be approved by the Minister of Defense of the Republic of Armenia;

11) The incentive of “awarding an agency pin” shall be applied by an order, and an agency pin shall be delivered to the respective military servant in person; the list of pins of the Ministry of Defense of the Republic of Armenia shall be approved by the Minister of Defense of the Republic of Armenia;

12) The incentive of “placing the military servant’s photo in the military detachment’s honor book and recording his name, patronymic, and surname” shall be applied by an order; the respective military servant’s photo shall be posted in the honor book of the military detachment, his name, patronymic, and surname shall be recorded, and a respective honor letter shall be delivered to the military servant in person; the procedure of maintaining the honor book of the military detachment and the form of the honor letter shall be approved by the Minister of Defense of the Republic of Armenia;

13) The incentive of “early awarding of the next military rank” shall be applied by an order in accordance with the procedure defined by law, provided that the military servant has had his current military rank for at least half of its specified term;

14) The incentive of “awarding a military rank that is one step higher than the one designated for the military servant’s current position” shall be applied by an order in accordance with the procedure defined by law, provided that the military servant has had his current military rank for at least half of its specified term;

15) The incentive of “awarding a registered arm” shall be applied by an order, and cold arms (a sable, a sword, or a dagger) or firearms (a pistol or a hunting gun) shall be given to the military servant in person. The registered arm shall bear an inscription about the award, including specification of the award-recipient’s military title, initials of the name and patronymic, and the surname.

6. The procedure of keeping a record of the incentives shall be approved by decree of the Minister of Defense of the Republic of Armenia.

### **CHAPTER 3**

#### **DISCIPLINARY BREACHES; TYPES OF DISCIPLINARY PENALTIES IMPOSED ON MILITARY SERVANTS; PROCEDURE OF IMPOSING AND REMOVING DISCIPLINARY PENALTIES**

##### ***ARTICLE 11. DISCIPLINARY BREACHES***

1. A disciplinary breach is the military servant’s failure to perform or improper performance of the duties to observe military discipline as stipulated by Paragraph 1 of Article 3 of this Law, the military servant’s failure to perform or improper performance of the service functions during the reported or academic year, or the military servant’s exceeding of his service authority, which necessitates the imposition of disciplinary liability on the respective military servant in line with the requirements of this Law. A breach of the officers’ code of honor by officer military servants, too, shall be deemed a disciplinary breach. The officers’ code of honor shall be defined by a decree of the Minister of Defense of the Republic of Armenia.

2. If a military servant commits a disciplinary breach, the commander (chief) may limit his actions to an oral warning, including reminding the military servant of his duties and military duty, or apply a disciplinary penalty. As a means of reinforcing discipline and educating, the disciplinary penalty must correspond to the gravity of the disciplinary breach and the level of guilt of the military servant in question.

3. More than one disciplinary penalty may not be imposed on a military servant for the same disciplinary breach.

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4. A military servant subjected to a disciplinary penalty for committing a disciplinary breach shall not be exempted of criminal liability, if his conduct contains elements of an act subject to criminal prosecution.
5. A disciplinary breach shall be deemed grave, if the military servant committed the act in a state of intoxication by alcohol, narcotics, or other psychotropic substances, or if it created grave consequences, such as wastage or loss of state or military property, loss of work capability or death, or if it contains other elements of an act subject to criminal prosecution.
6. In case of a military servant committing a grave disciplinary breach, and in all cases of disciplinary breaches committed by officers and non-commissioned officers, the competent commander (chief) shall order to implement an internal investigation to determine the nature of the disciplinary breach, the circumstances under which it was committed, its consequences, the causes and preconditions of its commission, the level of guilt of the military servant, and the type of the disciplinary penalty. The list of titles of commanders (chiefs) that have the power to order an internal investigation and the procedure of conducting internal investigations shall be approved by a decree of the Minister of Defense of the Republic of Armenia.
7. The commander (chief) ordering an internal investigation may decide to exempt the military servant who committed the disciplinary breach of the disciplinary penalty, if the breach was committed for the first time, or if the military servant who committed the disciplinary breach sincerely repented, apologized to the military personnel, or compensated the loss inflicted as a consequence of the disciplinary breach. In case the military servant who committed the disciplinary breach facilitates the internal investigation, helps to determine the circumstances, consequences, conditions leading to and causes of the disciplinary breach, a less severe disciplinary penalty may be applied in relation to the military servant who committed the disciplinary breach, or it may be decided to apply no disciplinary penalty at all.
8. The commander (chief) ordering an internal investigation may decide to exempt the military servant who committed the disciplinary breach of disciplinary liability, if such military servant had acted within the limits of his authority or in conditions of extreme necessity.
9. The military servant in relation to whom an internal investigation has been ordered shall have the right, during the internal investigation, to familiarize himself with the progress and contents of actions performed with his participation and the documents prepared on the results, as well as provide suggestions, explanations, or objections to them, to familiarize himself with the internal investigation materials prior to the end of the internal investigation, including the opinion prepared as a result of the internal investigation, and to appeal against it in accordance with the procedure stipulated by this Law.

**ARTICLE 12. DISCIPLINARY PENALTIES IMPOSED ON MILITARY SERVANTS**

1. The following disciplinary penalties may be imposed on military servants:

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- 1) Warning;
  - 2) Severe warning;
  - 3) Deprivation of the regular leave from the place of deployment of the military detachment for a term of up to one month;
  - 4) Additional work duty service: up to five work duty service terms;
  - 5) Placement in a disciplinary company from one to 10 days;
  - 6) Deprivation of the agency pin;
  - 7) Warning of non-full compatibility with the position;
  - 8) Lowering of position by one degree;
  - 9) Lowering of military rank by one degree;
  - 10) Removal from the military educational institution; and
  - 11) Dismissal from military service.
2. The sequence order of the disciplinary penalties listed in Paragraph 1 of this Article does not denote their priority.
3. The disciplinary penalties specified in sub-paragraphs 3, 4, and 5 of Paragraph 1 of this Article may not be imposed on female military servants.

***ARTICLE 13. DISCIPLINARY PENALTIES IMPOSED ON RANK-AND-FILE MILITARY SERVANTS***

1. The disciplinary penalties contemplated by sub-paragraphs 1-6, 8, and 9 of Paragraph 1 of Article 12 of this Law may be imposed on rank-and-file conscripted military servants. In addition to those penalties, the disciplinary penalties contemplated by sub-paragraph 10 may be imposed on students of military educational institutions.
2. The disciplinary penalties contemplated by sub-paragraphs 1, 2, 4-6, 8, 9 and 11 of Paragraph 1 of Article 12 of this Law may be imposed on rank-and-file contract military servants.

***ARTICLE 14. DISCIPLINARY PENALTIES IMPOSED ON NON-COMMISSIONED OFFICER MILITARY SERVANTS***

The disciplinary penalties contemplated by sub-paragraphs 1, 2, 5, 7-9, and 11 of Paragraph 1 of Article 12 of this Law may be imposed on non-commissioned officer military servants. In addition to those penalties, the disciplinary penalty contemplated by sub-paragraph 6 of Paragraph 1 of

Article 12 of this Law may be imposed on non-commissioned officer military servants of other troops.

**ARTICLE 15. DISCIPLINARY PENALTIES IMPOSED ON MILITARY SERVANTS OF THE OFFICER CORPS**

The disciplinary penalties contemplated by sub-paragraphs 1, 2, 5, 7-9, and 11 of Paragraph 1 of Article 12 of this Law may be imposed on military servants of the officer corps. In addition to those penalties, the disciplinary penalty contemplated by sub-paragraph 6 of Paragraph 1 of Article 12 of this Law may be imposed on military servants of the officer corps of other troops.

**ARTICLE 16. PROCEDURE OF APPLYING DISCIPLINARY PENALTIES**

1. A disciplinary penalty shall be applied individually in relation to the military servant who committed the disciplinary breach.

2. The disciplinary penalties contemplated by sub-paragraphs 6-11 of Paragraph 1 of Article 12 of this Law shall be applied in cases of grave disciplinary breaches, in case of unsatisfactory assessment of the performance of service functions during the reported or academic year, or in case of establishing loose control over the subordinate personnel.

3. A disciplinary penalty may not be imposed on a military servant for a disciplinary breach, if more than six months have lapsed since the day of committing the disciplinary breach.

4. The disciplinary penalty shall be imposed on the military servant within up to three days of the time of the disciplinary breach, but no later than within 30 days of the commander (chief) learning about the disciplinary breach. The disciplinary penalty shall be executed within the time period specified in the order to impose the disciplinary penalty.

5. The disciplinary penalty shall be imposed in the form of a written order. The order on imposing a disciplinary penalty shall specify the nature of the disciplinary breach, the justification of imposing the disciplinary penalty, and the degree of guilt of the military servant.

6. The competent commander (chief) may decide to have disciplinary penalties and disciplinary breaches discussed in meetings of the personnel and sergeants in the case of rank-and-file military servants, in meetings of non-commissioned officers in the case of non-commissioned officer military servants, or in meetings of officers or officers' courts of honor in the case of military servants of the officer corps. The procedure of organizing the meetings mentioned in this paragraph and the officers' courts of honor, as well as the procedure of reviewing matters therein shall be defined by a decree of the Minister of Defense of the Republic of Armenia.

7. If a commander (chief) considers that his power to impose a disciplinary penalty within the ambit of his authority is insufficient relative to the gravity of the disciplinary breach by a military servant subordinate to him, then such

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commander (chief) may file motion with a higher commander (chief) seeking to have a more severe disciplinary penalty imposed on the military servant who committed the disciplinary breach. A commander (chief) who exceeds his power to impose a disciplinary penalty shall be subject to disciplinary liability.

8. A senior commander (chief) may not lower a disciplinary penalty imposed by a junior commander (chief), if the latter has not exceeded his power to impose a disciplinary penalty. A senior commander (chief) may change the disciplinary penalty imposed by a junior commander (chief) and impose a more severe disciplinary penalty on the military servant who committed the disciplinary breach, if such senior commander (chief) finds that the disciplinary penalty imposed by the junior commander (chief) does not correspond to the gravity of the disciplinary breach.

9. The disciplinary penalties of “warning” and “severe warning” contemplated by sub-paragraphs 1 and 2, respectively, of Paragraph 1 of Article 12 of this Law shall be applied by an order and may be communicated in person or in front of the line.

10. The disciplinary penalties of “deprivation of the regular leave from the place of deployment of the military detachment for a term of up to one month” and “additional work duty service: up to five work duty service terms” contemplated by sub-paragraphs 3 and 4, respectively, of Paragraph 1 of Article 12 of this Law shall be applied by an order and may be communicated in person or in front of the line in accordance with the procedure stipulated by the Republic of Armenia Law on Approving the Internal Service Rule Book of the Armed Forces of the Republic of Armenia. A military servant on whom the disciplinary penalty of “deprivation of the regular leave from the place of deployment of the military detachment” has been imposed shall be deprived of the right to have such regular leave for a period of at least one week. A military servant on whom the disciplinary penalty of “additional work duty service” has been imposed shall be ordered at least one additional work duty service that shall last no more than four hours per day.

11. The disciplinary penalty of “placement in a disciplinary company” contemplated by sub-paragraph 5 of Paragraph 1 of Article 12 of this Law shall be applied in respect of a military servant on whom disciplinary penalties have been imposed more than once for committing intentional disciplinary breaches. This disciplinary penalty shall be applied by an order and may be communicated in person or in front of the line. The disciplinary penalty of “placement in a disciplinary company” shall be imposed by an order of a commander (chief) whose position is no lower than that of the detachment commander. Military servants on whom the disciplinary penalty of “placement in a disciplinary company” has been imposed shall be sent to the respective disciplinary companies created for the different garrisons. In the disciplinary company, service under tightened daily routine shall be performed. The tightened daily routine shall be defined by a decree of the Minister of Defense of the Republic of Armenia.

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12. The disciplinary penalty of “deprivation of the agency pin” contemplated by sub-paragraph 6 of Paragraph 1 of Article 12 of this Law shall be applied by an order and may be communicated in person or in front of the line. If this disciplinary penalty is imposed, the respective agency pin shall be taken away from the military servant.

13. The disciplinary penalty of “warning of non-full compatibility with the position” contemplated by sub-paragraph 7 of Paragraph 1 of Article 12 of this Law shall be applied by an order and may be communicated in person or in front of the line. A military servant on whom a disciplinary penalty is imposed for committing a new disciplinary breach while serving this disciplinary penalty shall be removed from his position by order of the competent commander (chief) and may be appointed to a lower position or, if no vacant position is available, dismissed from military service in accordance with the procedure defined by law.

14. The disciplinary penalty of “lowering of position by one degree” contemplated by sub-paragraph 8 of Paragraph 1 of Article 12 of this Law shall be applied by an order and may be communicated in person or in front of the line. The military servant on whom this disciplinary penalty has been imposed shall be dismissed from his position based on an order of the competent commander (chief) and appointed to a position that is one degree lower.

15. The disciplinary penalty of “lowering of military rank by one degree” contemplated by sub-paragraph 9 of Paragraph 1 of Article 12 of this Law shall be applied by an order and may be communicated in person or in front of the line. By virtue of the order of the competent commander (chief) on imposing this disciplinary penalty, the military servant in question shall be deemed to have been awarded a military rank that is one degree lower.

16. The disciplinary penalty of “removal from the military educational institution” contemplated by sub-paragraph 10 of Paragraph 1 of Article 12 of this Law shall be applied by an order and may be communicated in person or in front of the line. A military servant on whom this disciplinary penalty has been imposed shall, by order of the competent commander (chief), be referred to continuation of military service or be dismissed from military service in accordance with the procedure stipulated by law.

17. The disciplinary penalty of “dismissal from military service” contemplated by sub-paragraph 11 of Paragraph 1 of Article 12 of this Law shall be applied by an order and may be communicated in person or in front of the line. A military servant on whom this disciplinary penalty has been imposed shall, by order of the competent commander (chief), be dismissed from military service in accordance with the procedure stipulated by law.

18. A military servant has the right to appeal against a disciplinary penalty imposed on him to a higher-standing authority or to court in accordance with the procedure stipulated by this Law and other laws.

19. The procedure of keeping a record of the disciplinary penalties imposed on military servants shall be approved by decree of the Minister of Defense of the Republic of Armenia.

**ARTICLE 17. PROCEDURE OF REMOVING DISCIPLINARY PENALTIES**

1. Military servants shall be deemed not to have a disciplinary penalty after the disciplinary penalty term has expired or the disciplinary penalty has been removed as an incentive.

2. The disciplinary penalty term shall be deemed expired:

- 1) After three months of imposing the disciplinary penalty of “warning”;
- 2) After four months of imposing the disciplinary penalty of “severe warning”;
- 3) After two months of imposing the disciplinary penalty of “deprivation of the regular leave from the place of deployment of the military detachment”;
- 4) After two months of imposing the disciplinary penalty of “additional work duty service”;
- 5) After six months of imposing the disciplinary penalty of “placement in a disciplinary company”;
- 6) After six months of imposing the disciplinary penalty of “deprivation of the agency pin”;
- 7) After one year of imposing the disciplinary penalty of “warning of non-full compatibility with the position”;
- 8) After one year of imposing the disciplinary penalty of “lowering of position by one degree”; and
- 9) After one year of imposing the disciplinary penalty of “lowering of military rank by one degree”.

3. If a disciplinary penalty is imposed on the military servant for a new disciplinary breach committed while serving the term of the respective disciplinary penalty contemplated by Paragraph 2 of this Article, the term of serving the former disciplinary penalty shall be suspended, and the term shall be counted as per the term of the new disciplinary penalty, unless the term of the new disciplinary penalty is shorter than the unserved balance of the term of the former disciplinary penalty.

4. The incentive of “removing a disciplinary penalty” may be given to a military servant only after serving at least half of any of the disciplinary penalty terms under Paragraph 2 of this Article. More than one disciplinary penalty may not be removed at once. If the military servant currently has more than one disciplinary penalty, the most recent disciplinary penalty shall be removed.

5. If the term of the “lowering of position by one degree” disciplinary penalty has expired or the disciplinary penalty has been removed as an incentive, the military servant shall, within a period of no more than one month, be appointed to the position he held prior to such disciplinary penalty or to an equivalent position, if such a vacancy is available, subject to a testing procedure.

6. If the term of the “lowering of military rank by one degree” disciplinary penalty has expired or the disciplinary penalty has been removed as an incentive, the military servant shall, within a period of no more than 30 days, be awarded the military rank he held prior to such disciplinary penalty, regardless of the position held. In this case, the term during which the military servant had the military rank prior to the lowering of such rank shall be included in the term stipulated by law for having such military rank.

7. Persons subjected to the disciplinary penalty of “removal from a military educational institution” and referred to continuation of military service or dismissed from military service may apply to be reinstated in the military educational institution in accordance with the established procedure no earlier than one year after the date of their dismissal.

## **CHAPTER 4**

### **LIMITATIONS ON GIVING ORDERS TO MILITARY SERVANTS; PROCEDURE OF REPORT FILING BY MILITARY SERVANTS**

#### ***ARTICLE 18. LIMITATIONS ON GIVING ORDERS TO MILITARY SERVANTS***

1. Oral or written orders or instructions may not be given to military servants, if they:

- 1) Obviously contradict the Republic of Armenia Constitution, laws, and other legal acts;
- 2) Lie outside the authority of the one giving or executing the orders or instructions.

2. When receiving the orders or instructions specified in Paragraph 1 of this Article, military servants must abide by the requirements of laws and report to the superior commander (chief) thereon.

#### ***ARTICLE 19. PROCEDURE OF REPORT FILING BY MILITARY SERVANTS***

1. A military servant may file a report to his immediate commander (chief) on matters related to the performance of military service, or to superior commanders (chiefs) in the cases specified in Paragraph 1 of Article 18 of this Law or in cases of appeals against disciplinary penalties imposed on him or appeals related to unlawful and unfair actions of other military servants towards him. The report must state the substance of the proposed or appealed issue, information on the commander (chief) or other military servant

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whose actions or inaction is appealed, and the name, surname, position, military rank, and residence (education) place of the military servant filing the report.

2. A military servant may not file a report while on combat duty, in the line, in a guard group, on daily duty, or during educational drills, unless specifically inquired during such time. A military servant may appeal against a disciplinary penalty imposed on him within no more than a one-month period of communicating the penalty to him.

3. The commander (chief) who has no competence to resolve the issues stated in the report shall, within a three-day period, forward the report to the superior or competent commander (chief) and notify the military servant filing the report thereof. The report may not be referred for review and opinion to a commander (chief) whose actions or inaction are challenged in the report.

4. The commander (chief) who committed unlawful or unfair actions against the military servant filing the report shall be subject to liability prescribed by this Law, unless his actions or inaction give rise to criminal liability. It shall be prohibited to obstruct a military servant in filing a report, or to punish him for filing a report, or to demean his honor or dignity, or to treat him unfairly, or to hinder the fully-fledged exercise of his right to judicial remedy of violated rights.

5. Decisions concerning the report shall be taken immediately, but in any event no later than within a 15-day period. Decisions on reports necessitating additional review shall be taken within a period of up to 30 days, giving notice to the military servant filing the report of the need to conduct additional review.

6. The issues mentioned in the report shall be deemed resolved, if they have been discussed in full, the necessary measures have been implemented, and an exhaustive response corresponding to the requirements of the Republic of Armenia laws and other legal acts has been given.

7. In case of refusal to resolve the issues stated in the report, written notice thereof shall be given to the military servant filing the report, mentioning the reasons for such refusal, the requirements of the Republic of Armenia laws and other legal acts that served as a basis for the refusal, and explanation of the procedure of appealing against the refusal.

8. A journal recording the reports filed by military servants shall be maintained in military detachments. The procedure of maintaining such journals shall be approved by the head of the respective competent state body.

## **CHAPTER 5**

### **FINAL PROVISIONS**

#### ***ARTICLE 20. COMING INTO FORCE***

This Law shall enter into force on the 10<sup>th</sup> day following its official publication.

## **JUSTIFICATION**

### **Of the Adoption of the Republic of Armenia Draft Law on the Disciplinary Rule Book of the Armed Forces of the Republic of Armenia**

#### **1. Necessity of Adopting the Legal Act (Aim)**

The adoption of the Law is necessitated by the fact that the Republic of Armenia Constitution and Law on Legal Acts require the regulation of disciplinary liability cases, procedures, terms, and related duties of natural persons exclusively by law. The draft Law regulates the rules of military discipline in the Armed Forces and other troops of the Republic of Armenia, the types of disciplinary penalties, and the terms and procedure of imposing disciplinary liability.

##### **1.1. Current State of Regulation and Existing Problems**

Presently, disciplinary matters in the Armed Forces of the Republic of Armenia are regulated by Government Decree 245 adopted in 1996, which does not correspond to the requirements of the Republic of Armenia Constitution and Law on Legal Acts. A number of provisions of the extant Government decree are outdated and do not meet the requirements of modernization of the Armed Forces and defense reforms in the Republic of Armenia.

##### **1.2. Proposed Solutions to the Existing Problems**

The proposed draft Law will regulate the rules of military discipline in the Armed Forces and other troops of the Republic of Armenia, the types of disciplinary penalties, and the terms and procedure of imposing disciplinary liability. A new type of disciplinary penalty applicable to military servants (“placement in a disciplinary company”) has been introduced, and the procedures of imposing, executing, and serving it have been prescribed.

#### **2. Scope of Regulation**

The draft Law regulates the military discipline rules, the duties of military servants related to observance of military discipline, the types of incentives given to and disciplinary penalties imposed on military servants, the rights of commanders in relation thereto, and other matters concerning the reinforcement of military discipline.

#### **3. Expected Result of Enactment of the Legal Act**

If adopted, the draft Law will introduce legislative regulation of disciplinary matters in the Armed Forces of the Republic of Armenia, will secure the unhindered exercise of human and civil rights and freedoms of military servants under the Republic of Armenia Constitution and laws, will promote each military servant’s better understanding of his personal responsibility for the defense of the Republic of Armenia, as well as for military duty and the performance of his duties, and will facilitate the correct imposition of disciplinary penalties by commanders (chiefs) within the limits of their authority.