

---

Warsaw, 12 May 2021  
Opinion-Nr.: NHRI-ARM/411/2021 [AT]

---

## **OPINION ON THE DRAFT LAW AMENDING ARTICLE 8 OF THE LAW ON THE HUMAN RIGHTS DEFENDER**

---

### **ARMENIA**

---

This Opinion has benefitted from contributions made by Alice Thomas, International Human Rights and Legal Expert, and Mr. Yves Doutriaux, Member of the French Council of State.

Based on an official English translation of the Draft Law provided by the Office of the Human Rights Defender of Armenia

---



---

OSCE Office for Democratic Institutions and Human Rights

---

Ul. Miodowa 10, PL-00-251 Warsaw  
Office: +48 22 520 06 00, Fax: +48 22 520 0605  
[www.legislationline.org](http://www.legislationline.org)

---

## **EXECUTIVE SUMMARY AND KEY RECOMMENDATIONS**

The Human Rights Defender is the main national human rights institution in Armenia, and as such mandated to promote and protect human rights and equality, with special additional competences as Armenia's National Preventive Mechanism in accordance with the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as in the fields of children's rights and the rights of persons with disabilities. Given this wealth of responsibilities, it is important that the Office of the Human Rights Defender enjoys the necessary safeguards for its institutional and financial independence and that it has sufficient funds at its disposal for the smooth and effective functioning of this institution. The need for such funding has also been emphasized in the UN Paris Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights as a means to ensure such institutions' independence from governments and from related financial control.

The current Draft Amendment proposed by the Ministry of Finance would delete Article 8 par 5 of the Constitutional Law on the Human Rights Defender, which stipulates that the budget allocated to the Office of the Human Rights Defender may not be reduced compared to the budget allocated the previous year and provides that funding from the state budget shall be implemented in equal monthly instalments in the form of pre-payment.

The existing provision prevents the State from undertaking unnecessary and unjustifiable budget cuts to the detriment of the Human Rights Defender's Office, thereby strengthening its independence from the executive. If this provision were deleted unconditionally, then this may significantly weaken the independence and effective functioning of the Office of the Human Rights Defender, which would have serious repercussions for human rights protection and the promotion of equality in Armenia. The proposed amendment may undermine Armenia's adherence to its international obligations and OSCE commitments and could over time call into question its compliance with the Paris Principles.

Moreover, deleting Article 8 par 5 in its entirety, without re-introducing any necessary provision regulating the allocation of funds, would create a gap undermining the independence and efficiency of the Office of the Human Rights Defender in Armenia. OSCE/ODIHR also calls upon the competent public authorities to ensure that the Draft Amendment and any other legislative initiatives pertaining to the Human Rights Defender's Office are subject to open, inclusive, extensive and effective consultations, including with the Office of the Human Rights Defender. Such consultations should take place in a timely manner, and at all stages of the law-making process, including when the planned reform and subsequently the draft legislation are discussed by the Government and later, the National Assembly, respectively.

For this reason, OSCE/ODIHR recommends the following:

- A. to retain as it is the first sentence of Article 8 par 5 preventing budget cuts; [pars 25 and 29] or, in case Article 8 par 5 is revised, to consider introducing a provision that would allow budget cuts only under exceptional circumstances, where such reduction is justified by objective needs and is proportionate to budget cuts in other public institutions, in order to maintain the Human Rights Defender's financial independence; [par 30]
- B. to retain as it is the second sentence of Article 8 par 5 regulating the allocation of funds as it is; [par 33] and
- C. public authorities should ensure that any amendments to the Constitutional Law on the Human Rights Defender are subjected to open, inclusive, meaningful and effective consultations that include the Office of the Human Rights Defender and civil society. [par 40]

***These and additional Recommendations are included throughout the text of this Opinion, highlighted in bold.***

***As part of its mandate to assist OSCE participating States in implementing OSCE commitments, the OSCE/ODIHR reviews, upon request, draft and existing legislation to assess their compliance with international human rights standards and OSCE commitments and provides concrete recommendations for improvement.***

## TABLE OF CONTENTS

<b>I. INTRODUCTION.....</b>	<b>5</b>
<b>II. SCOPE OF THE OPINION .....</b>	<b>5</b>
<b>III. LEGAL ANALYSIS AND RECOMMENDATIONS .....</b>	<b>6</b>
1. Relevant International Human Rights Standards and OSCE Human Dimension Commitments .....	6
2. Background .....	7
3. The Draft Amendment.....	8
3.1. <i>Safeguards Concerning Budgetary Reductions</i> .....	9
3.2. <i>The Distribution of Funds</i> .....	12
4. The Process of Preparing and Adopting the Draft Amendment .....	12

**ANNEX 1:** Draft Law on the Amendments to the Constitutional Law of the Human Rights Defender

**ANNEX 2:** Article 8 par 5 of the Constitutional Law of the Human Rights Defender

## **I. INTRODUCTION**

---

1. On 24 March 2021, the Human Rights Defender of Armenia sent to the OSCE Office for Democratic Institutions and Human Rights (hereinafter “OSCE/ODIHR”) a request for a legal review of the “Draft Law on the Amendments to the Constitutional Law of the Human Rights Defender” (hereinafter “the Draft Amendment”). The Draft Amendment aims to abolish Article 8 par 5 of the Constitutional Law on the Human Rights Defender.
2. On 6 April 2021, OSCE/ODIHR responded to this request, confirming the Office’s readiness to prepare a legal opinion on the compliance of these draft amendments with international human rights standards and OSCE human dimension commitments.
3. This Opinion was prepared in response to the above request. OSCE/ODIHR conducted this assessment within its mandate to assist OSCE participating States in the implementation of their OSCE commitments.

## **II. SCOPE OF THE OPINION**

---

4. The scope of this Opinion covers only the Draft Amendment submitted for review. Thus limited, the Opinion does not constitute a full and comprehensive review of the entire legal and institutional framework regulating the Office of the Human Rights Defender in Armenia.
5. The Opinion raises key issues and indicates areas of concern. In the interest of conciseness, it focuses on issues that require amendments or improvements and does not address the Constitutional Law on the Human Rights Defender in its entirety. The ensuing legal analysis is based on international and regional human rights and rule of law standards, norms and recommendations as well as relevant OSCE human dimension commitments. The Opinion also highlights, as appropriate, good practices from other OSCE participating States in this field. When referring to national legislation, OSCE/ODIHR does not advocate for any specific country model; it rather focuses on providing clear information about applicable international standards while illustrating how they are implemented in practice in certain national laws. Any country example should always be approached with caution since it cannot necessarily be replicated in another country and has always to be considered in light of the broader national institutional and legal framework, as well as country context and political culture.
6. This Opinion is based on an official English translation of the Draft Amendment provided by the Office of the Human Rights Defender of Armenia, which is attached to this document as an Annex, along with the text of the provision that it seeks to abolish. Errors from translation may result. Should this Opinion be translated into another language, the English version shall prevail.
7. In view of the above, OSCE/ODIHR would like to stress that this Opinion does not prevent OSCE/ODIHR from formulating additional written or oral recommendations or comments on respective subject matters in Armenia in the future.

### III. LEGAL ANALYSIS AND RECOMMENDATIONS

#### 1. RELEVANT INTERNATIONAL HUMAN RIGHTS STANDARDS AND OSCE HUMAN DIMENSION COMMITMENTS

8. National Human Rights Institutions (hereinafter “NHRIs”) are independent bodies with the mandate to protect and promote human rights. They are “a key component of effective national human rights protection systems and indispensable actors for the sustainable promotion and protection of human rights at the country level”.<sup>1</sup>
9. The United Nations Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights, also known as the “Paris Principles”, contain internationally recognized rules on the mandates and competencies of NHRIs.<sup>2</sup> The Paris Principles also set out minimum standards on the establishment and functioning of NHRIs, and promote key principles of pluralism, transparency, guarantees of functional and institutional independence and effectiveness of NHRIs. The implementation of the Paris Principles and evaluation of NHRIs against these principles is undertaken by the Global Alliance of National Human Rights Institutions (hereinafter “GANHRI”) Sub-Committee on Accreditation (hereinafter “SCA”).<sup>3</sup> The SCA publishes reports on the accreditation applications of states, reviews their status and provides them with status accreditation every five years.<sup>4</sup> The status of NHRIs may also be reviewed if the legislation regulating them is amended.<sup>5</sup> The SCA additionally develops “General Observations”, which clarify and further explain the Paris Principles.
10. The UN General Assembly and the UN Human Rights Council have also issued various resolutions on NHRIs.<sup>6</sup> Additionally, the United Nations Development Programme (hereinafter “UNDP”) and the Office of the United Nations High Commissioner for Human Rights (hereinafter “OHCHR”) have published a Toolkit for Collaboration with National Human Rights Institutions. The toolkit explains the various models of NHRIs

---

<sup>1</sup> See UN High Commissioner for Human Rights, *Report to the UN General Assembly* (2007), A/62/36, par 15.

<sup>2</sup> The UN Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights (hereinafter “the Paris Principles”) were defined at the first International Workshop on National Institutions for the Promotion and Protection of Human Rights in Paris (7-9 October 1991), and adopted by UN General Assembly Resolution 48/134 of 20 December 1993.

<sup>3</sup> The Global Alliance of National Human Rights Institutions (GANHRI), formerly known as the International Coordinating Committee for National Human Rights Institutions, was established in 1993 and is the international association of national human rights institutions (NHRIs) from all parts of the globe. The GANHRI promotes and strengthens NHRIs in accordance with the Paris Principles, and provides leadership in the promotion and protection of human rights.

<sup>4</sup> See Article 15 of the GANHRI Statute (version adopted on 22 February 2018). Accreditation is the official recognition that an NHRI meets the requirements of or continues to comply with the Paris Principles. The SCA awards A, B or C status to NHRIs. Status A means that an NHRI is fully in compliance with the Paris Principles and a voting member as regards the work and meetings on NHRIs internationally; Status B means that the NHRI does not yet fully comply with the Paris Principles or has not yet submitted sufficient documentation in this respect, while status C institutions are not seen as being compliant with the Paris Principles. The Armenian Human Rights Defender currently holds Status A (see the most recent SCA recommendations in this regard, SCA Report and Recommendations of March 2019, pages 13-15).

<sup>5</sup> United Nations Development Programme (hereinafter “UNDP”) and the Office of the United Nations High Commissioner for Human Rights (hereinafter “OHCHR”), *Toolkit for Collaboration with National Human Rights Institutions* (hereinafter “UNDP-OHCHR Toolkit”), December 2010), page 241.

<sup>6</sup> See e.g., UN General Assembly, *Resolution no. 70/163 on National Institutions for the Promotion and Protection of Human Rights*, A/RES/70/163, adopted on 17 December 2015; *Resolutions nos. 63/169 and 65/207 on the Role of the Ombudsman, Mediator and Other National Human Rights Institutions in the Promotion and Protection of Human Rights*, A/RES/63/169 and A/RES/65/207, adopted on 18 December 2008 and on 21 December 2010 respectively; *Resolutions nos. 63/172 and 64/161 on National Institutions for the Promotion and Protection of Human Rights*, A/RES/63/172 and A/RES/64/161, adopted on 18 December 2008 and 18 December 2009 respectively; and *Resolution no. 48/134 on National Institutions for the Promotion and Protection of Human Rights*, A/RES/48/134, adopted on 4 March 1994. See also *Resolution no. 27/18 on National Institutions for the Promotion and Protection of Human Rights of the UN Human Rights Council*, A/HRC/RES/27/18, adopted on 7 October 2014.

and provides guidance on how to support NHRIs in the different phases of their existence, from their establishment to supporting their development into more mature NHRIs.<sup>7</sup>

11. At the Council of Europe (hereinafter “CoE”) level, Parliamentary Assembly Recommendation 1615 (2003) lists certain characteristics that are essential for the effective functioning of ombudsman institutions.<sup>8</sup> The European Commission for Democracy through Law (hereinafter “Venice Commission”), in addition to issuing numerous opinions on NHRI legislation, also published the Principles on the Protection and Promotion of the Ombudsman Institution (“the Venice Principles”) in 2019.<sup>9</sup>
12. In the 1990 Copenhagen Document, OSCE participating States committed to facilitating “the establishment and strengthening of independent national institutions in the area of human rights and the rule of law”.<sup>10</sup> Other OSCE commitments have further emphasized the important role that NHRIs play in the protection and promotion of human rights, in particular, the Bucharest Plan of Action for Combatting Terrorism, which tasks the OSCE/ODIHR with continuing and increasing “efforts to promote and assist in building democratic institutions at the request of States, inter alia by helping to strengthen [...] ombudsman institutions”.<sup>11</sup>

## 2. BACKGROUND

13. The Office of the Human Rights Defender, established in 2004, is the main NHRI in Armenia, which currently holds SCA A accreditation. The most recent Constitutional Law on the Human Rights Defender (hereinafter “the Law”) dates from 2016, with adaptations to ensure its compliance with the 2015 Constitution. Based on Article 2 of the Law, the Human Rights Defender is also Armenia’s National Preventive Mechanism under the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The same provision also specifies that the mandate of the Human Rights Defender shall include monitoring of the State’s implementation of the UN Convention on the Rights of the Child and of the UN Convention on the Rights of Persons with Disabilities, as well as protecting and preventing violations of the rights of children and persons with disabilities.
14. Article 191 par 1 of the Constitution describes the Human Rights Defender as “an independent official who observes the maintenance of human rights and freedoms on the part of state and local self-government bodies and officials”, and in certain cases prescribed by the Law on the Human Rights Defender, “also on the part of organizations” and “contributes to the restoration of violated rights and freedoms and improvement of the regulatory legal acts related to human rights and freedoms”. Article 193 of the Constitution contains specific guarantees for the activities of the Human Rights Defender, such as immunity, a list of activities that are incompatible with the position of Human Rights Defender, as well as special provisions on funding. Thus, par 4 of this

---

<sup>7</sup> UNDP-OHCHR, *Toolkit for Collaboration with National Human Rights Institutions* (hereinafter “UNDP-OHCHR Toolkit”), December 2010), page 241.

<sup>8</sup> Parliamentary Assembly of the Council of Europe (PACE), *Recommendation 1615 (2003) on the Institution of Ombudsman*, 8 September 2003; see also other CoE documents of relevance, e.g., CoE Committee of Ministers, *Recommendation Rec(97)14E on the Establishment of Independent National Institutions for the Promotion and Protection of Human Rights*, 30 September 1997; PACE, *Recommendation 1959 (2013) on the Strengthening the Institution of Ombudsman in Europe*, adopted on 4 October 2013.

<sup>9</sup> European Commission for Democracy through Law (Venice Commission), *Principles on the Protection and Promotion of the Ombudsman Institution (“the Venice Principles”)*, 3 May 2019.

<sup>10</sup> See OSCE Copenhagen Document (1990), par 27.

<sup>11</sup> See *Bucharest Plan of Action for Combatting Terrorism* (2001), Annex to OSCE Ministerial Council Decision on Combating Terrorism, MC(9).DEC/1, 4 December 2001, par 10.

provision specifies that “the State shall ensure due financing of the activities of the Human Rights Defender”.

15. The Law contains more specific provisions on the funding of the NHRI, notably in Article 8, which guarantees the Human Rights Defender and his/her Office appropriate funding from the state budget to ensure the smooth operation of the work of the Human Rights Defender and his/her staff. Article 8 par 2 specifies that the budget of the Human Rights Defender and of his/her staff shall constitute a separate line within the state budget and shall also cover his/her activities as the National Preventive Mechanism. The Human Rights Defender proposes a budget estimate for his/her Office to the Government, which will, if it approves, include the budget request in the draft State Budget. If the Government rejects the Defender’s budget proposal, it is submitted to the National Assembly along with the draft State Budget. The Government shall then present a justification of its objection to the proposal to the National Assembly and the Human Rights Defender. Based on Article 8 par 6, the Defender shall participate in the hearings at the National Assembly on the draft Law on the State Budget insofar as they concern the budget for his/her Office.
16. According to Article 8 par 5, funding allocated from the State Budget to the Defender and his/her staff “cannot be less than the amount provided the year before”. The funding from the state budget is implemented in equal monthly instalments in the form of pre-payment for every month.
17. The Draft Amendment, adopted by the Government on 11 March 2021 and now pending with the National Assembly, aims to abolish Article 8 par 5 of the Law. In a factsheet attached to his letter of request to the OSCE/ODIHR, the Human Rights Defender noted that in its official written justification, the Ministry of Finance, which had authored the Draft Amendment, argued that this is necessary because the existing legal regulations create obstacles for foreign investments in Armenia. According to the provided factsheet, the Ministry further stated that the existing provision does not allow the Government to allocate money from one area to another to overcome existing financial challenges, including economic difficulties resulting from the COVID-19 pandemic or the conflict with Azerbaijan in 2020. The Minister of Finance reportedly also stressed that certain safeguards for the Office of the Human Rights Defender remain, notably the fact that the budget is approved by the National Assembly, which may prevent extensive cuts by the Government.
18. The proposed deletion of Article 8 par 5 from the Law has been heavily criticized not only by the Human Rights Defender, but also in statements and open letters issued by national and international civil society groups,<sup>12</sup> and by the Armenian Chamber of Advocates<sup>13</sup> and the European Network for National Human Rights Institutions.<sup>14</sup>

### **3. THE DRAFT AMENDMENT**

19. The Draft Amendment, once passed, would delete Article 8 par 5, which ensures that the budget allocated to the Office of the Human Rights Defender is not reduced compared to

---

<sup>12</sup> See, e.g., Statement of NGOs of 22 March 2021 in support of the Human Rights Defender at [https://www.ombuds.am/en\\_us/site/ViewNews/1590](https://www.ombuds.am/en_us/site/ViewNews/1590). See also Freedom House, Armenia: Authorities Must Protect Democratic Institutions and Civil Society, press release of 12 March 2021, at: <https://freedomhouse.org/article/armenia-authorities-must-protect-democratic-institutions-and-civil-society>, and an open letter of 26 March 2021 sent by the Secretary-General of the Association on the Prevention of Torture (APT) to the President of the National Assembly of Armenia, at <https://armenpress.am/eng/news/1047492.html>.

<sup>13</sup> See the statement of the Chamber of Advocates of 15 March 2021 in support of the Human Rights Defender at <https://hetq.am/en/article/128550>.

<sup>14</sup> See the open letter sent by the Chair of the European Network for National Human Rights Institutions to the President of the National Assembly of Armenia of 22 March 2021, at <http://ennhri.org/wp-content/uploads/2021/03/Letter-of-Support-Armenian-NHRI.pdf>.

the budget allocated the previous year. This same provision also stipulates that the funding from the state budget shall be implemented in equal monthly instalments in the form of pre-payment for every month.

### 3.1. Safeguards Concerning Budgetary Reductions

20. In the context of financial matters concerning the Office of the Human Rights Defender, it is important to recall relevant international standards pertaining to NHRIs and their funding. The Paris Principles emphasize that NHRIs need to have adequate funding at their disposal to ensure the smooth conduct of their activities, and in order to be independent from governments and not subject to financial control.<sup>15</sup> The SCA, in its 2018 General Observations, has linked this requirement to the duties of states to protect the most vulnerable members of society, who are often the victims of human rights violations, even in times of severe resource constraints.<sup>16</sup> In a 2015 resolution, the UN General Assembly stressed that NHRIs shall not face any unjustifiable budgetary limitations as a result of activities undertaken in accordance with their respective mandates.<sup>17</sup>
21. As stated in a 2003 resolution of the CoE Parliamentary Assembly and in the 2019 Venice Principles, it is only with sufficient and independent funds at its disposal that an NHRI will be able to ensure the full, independent and effective discharge of its mandated activities, responsibilities and functions.<sup>18</sup> Sufficient funds are particularly important where an NHRI has been tasked with additional responsibilities,<sup>19</sup> as in the case of the Armenian Human Rights Defender, which is also the National Preventive Mechanism for Armenia and has special competences relating to the rights of the child and the rights of persons with disabilities. In this context, the SCA, when considering the Human Rights Defender's request for re-accreditation in 2019, encouraged the Defender to continue to advocate for the funding necessary to ensure that it can effectively carry out the full extent of its mandate.<sup>20</sup>
22. The SCA has also noted that generally, financial arrangements should be such that an NHRI has complete financial autonomy as a guarantee of its overall freedom to determine its priorities and activities, including via a separate budget line over which the NHRI has absolute management and control.<sup>21</sup> The 2019 Venice Principles issued by the Venice Commission emphasize, in relation to ombudsperson institutions specifically, that an Ombudsman shall be consulted and shall be asked to present a draft budget for the coming financial year.<sup>22</sup> Additionally, these institutions' adopted budgets shall not be reduced during a financial year, unless the reduction generally applies to other state institutions as well.<sup>23</sup>

---

<sup>15</sup> See Paris Principles, B.2 (Composition and guarantees of independence and pluralism). See also, in this context,

<sup>16</sup> See the latest revised General Observations of the Sub-Committee on Accreditation, as adopted by the GANHRI Bureau (hereinafter "SCA General Observations") at its meeting held in Geneva on 21 February 2018, p. 28.

<sup>17</sup> UN General Assembly, *Resolution no. 70/163 on National Institutions for the Promotion and Protection of Human Rights*, A/RES/70/163, adopted on 17 December 2015, par 11. See also *Resolution no. 27/18 on National Institutions for the Promotion and Protection of Human Rights of the UN Human Rights Council*, A/HRC/RES/27/18, adopted on 7 October 2014, par 9.

<sup>18</sup> See also, in this context, PACE Recommendation 1615 (2003) on the Institution of Ombudsman, 8 September 2003, par 7.7. See also Venice Commission, Venice Principles, 3 May 2019, par 21.

<sup>19</sup> See revised SCA General Observations, as adopted by the GANHRI Bureau at its meeting held in Geneva on 21 February 2018, p. 28.

<sup>20</sup> SCA Report and Recommendations of March 2019, p. 15.

<sup>21</sup> See revised SCA General Observations, as adopted by the GANHRI Bureau at its meeting held in Geneva on 21 February 2018, p. 29. See also UNDP-OHCHR Toolkit, December 2010, page 146.

<sup>22</sup> See Venice Commission, Venice Principles, 3 May 2019, par 21.

<sup>23</sup> See Venice Commission, Venice Principles, 3 May 2019, par 21.

23. Bearing in mind the above requirements, the explicit obligation that Article 193 par 4 of the Armenian Constitution places on the State to ensure due financing of the activities of the Human Rights Defender is welcome. Likewise, it is positive that the Human Rights Defender submits its own budget proposal, which, if rejected by the Government, is discussed as part of the overall draft State Budget, and that the Human Rights Defender also takes part in these hearings. This constitutes another opportunity for both the National Assembly and the Human Rights Defender to discuss, within the context of a democratic parliamentary debate, the mandate, activities and financial needs of the Human Rights Defender, and possible improvements in that respect. The fact that the budget of the Human Rights Defender and of his/her staff shall constitute a separate line within the state budget also helps maintain the financial independence of this institution.<sup>24</sup>
24. Article 8 par 5 is compliant with the above-mentioned standards and principles in that by disallowing reductions in the budget for the Office of the Human Rights Defender from one year to the next, it prevents unnecessary and unjustifiable budget cuts for this institution, thereby strengthening its independence from the executive. If this provision were deleted unconditionally, then this may significantly weaken the independence and effective functioning of the Office of the Human Rights Defender, as it could leave this important human rights institution defenseless against possible future budget cuts. Such measures would be detrimental to the Office of the Human Rights Defender and would have negative repercussions for human rights protection and the promotion of equality in Armenia in general, given this institution's important role, which is also critical to upholding rule of law and ensuring democratic governance in general.
25. While it is true that the annual budget is approved by the National Assembly, and this in itself would appear to provide some form of protection for the Human Rights Defender and his/her Office, such protection is, by itself, not sufficient to ensure the Defender's full financial independence. Additional safeguards are needed to ensure that the Office of the Human Rights Defender does not become the victim of disproportionate and/or unjustified budget reductions. **Based on the above considerations, it is recommended to retain the current wording of Article 8 par 5.**
26. At the same time, if necessary, consideration could be given to enhancing the current provision with a newly worded provision that would still provide sufficient safeguards to ensure protection to the Office of the Human Rights Defender from unnecessary or arbitrary budget cuts. In this context, it is noted that arguably, the existing provision may in practice prove to be somewhat rigid, as it does not permit any reductions in the budget of the Office of the Human Rights Defender, regardless of the circumstances. Generally, if the State of Armenia is obliged to reduce its overall budget due to economic hardships or crises, a provision allowing for budget cuts to the Office of the Human Rights Defender consistent with overall budget cuts affecting all public bodies would not *per se* be in violation of the standards set out in the Paris Principles.
27. In this context, it is however essential that the Law continues to protect the financial independence of the Human Rights Defender, to avoid a situation where the executive may unduly impact the work of this institution by threatening to reduce funds in the future. Budgetary processes should not be instrumentalized to insert political control over this type of institution, as this could undermine its independence. One way to prevent such instrumentalization would be to specify in the Law that in times of financial

---

<sup>24</sup> See, in this context, SCA, Report and Recommendations of the Session of 7-18 December 2020, Specific Recommendations for National Human Rights Council of Côte d'Ivoire – CNDH, p. 8, where the SCA welcomed a new provision in the law providing for the CNDH budget to be allocated in a specific budget line of the State budget.

hardship, the budget of the Human Rights Defender's Office may be reduced in relation to the previous financial year only by a percentage not greater than the percentage by which the budgets of the National Assembly, President and Government, or similarly situated institutions, are reduced.<sup>25</sup> Moreover, as stated in the Venice Commission's 2006 Opinion on earlier amendments to the Law, a provision could be added specifying that public authorities may not use the budgetary process for allocating funds from the budget in a manner that interferes with the independence and functioning of the institution of the Human Rights Defender<sup>26</sup> and would prove detrimental to human rights protection and the promotion of equality in Armenia.

28. Similar recommendations can be found in recent OSCE/ODIHR opinions pertaining to NHRI legislation from other OSCE participating States,<sup>27</sup> which also noted that any reductions in an NHRI's funding allocation compared to the previous year need to be objectively justified.<sup>28</sup> Generally, if budget cuts are inevitable, they should not target NHRIs disproportionately and the reduction of funding should be commensurate with that of other core areas.<sup>29</sup> This is particularly important in the Armenian context, given that the budget of the Office of the Human Rights Defender constitutes only a small part of the overall state budget.
29. It therefore follows that abolishing Article 8 par 5 completely without introducing an equivalent safeguard to prevent unnecessary or even unjustified budget cuts to the detriment of the Office of the Human Rights Defender would endanger this institution's financial independence and functionality. Instead, **it is recommended to retain Article 8 par 5 or possibly enhance it with a more flexible provision that would allow budget cuts under certain justified circumstances while still containing sufficient safeguards to maintain the Human Rights Defender's financial independence, so as to ensure the smooth running of the institution.**
30. Finally, it is unclear whether the relevant decision-makers in Armenia are planning to introduce budget cuts to other institutions and public bodies as well. In any event, future budget cuts should not disproportionately target the Office of the Human Rights Defender. The request received from the Human Rights Defender notes that his Office has the smallest budget of all public and constitutional bodies, and states that public institutions with larger budgets have so far not been threatened with budget reductions and have even benefited from an increase in their budgets, e.g. in the case of the State Commission for the Protection of Economic Competition. Bearing this in mind, it is paramount that the relevant decision-makers in Armenia conduct an overall review of their budgetary situation, and adequately justify any future attempts to reduce the funding for the Office of the Human Rights Defender in a given year. Such budget cuts should

---

<sup>25</sup> See Venice Commission, Opinion on Amendments to the Law on the Human Rights Defender of Armenia, 22 December 2006, par 80, and also Venice Commission, Opinion on the Draft Constitutional Law on the Human Rights Defender, 12 December 2016, par 28, which reiterates the points made in the 2006 Opinion. See also SCA, Report and Recommendations of the Session of 7-18 December 2020, Specific Recommendations for the Protector of Citizens of Serbia (PCRS), where the SCA encouraged the PCRS to continue to advocate for amendments to the law providing that the PCRS' funding cannot be decreased unless such a decrease will be applied to all similarly-situated institutions, p. 32.

<sup>26</sup> Venice Commission, Opinion on Amendments to the Law on the Human Rights Defender of Armenia, 22 December 2006, par 81, and Opinion on the Draft Constitutional Law on the Human Rights Defender, 12 December 2016, par 28.

<sup>27</sup> OSCE/ODIHR Opinion on the on the Draft Amendments to the Act on Establishment of the Slovak National Centre for Human Rights, 21 January 2019, par 46. See also OSCE/ODIHR Opinion on the Draft Federal Law on the Support to the National Human Rights Institution of Switzerland, 31 October 2017, par 88, OSCE/ODIHR Opinion on the on the Draft Law Amending and Supplementing the Ombudsman Act of Bulgaria, 29 March 2017, par 33, and OSCE/ODIHR Opinion on the Draft Act on the Independent National Human Rights Institution of Iceland, 6 February 2017, par 76.

<sup>28</sup> OSCE/ODIHR Opinion on the Draft Amendments to the Act on Establishment of the Slovak National Centre for Human Rights, 21 January 2019, par 46.

<sup>29</sup> See OSCE/ODIHR Opinion on the on the Draft Law Amending and Supplementing the Ombudsman Act of Bulgaria, 29 March 2017, par 33. See also UNDP-OHCHR, Toolkit for Collaboration with National Human Rights Institutions (hereinafter "UNDP-OHCHR Toolkit"), December 2010), page 254.

only be undertaken in the context of a wider process of reducing the budgets of all or most other public institutions.

#### **RECOMMENDATION A.**

To retain the provision preventing budget cuts to the Human Rights Defender's Office in Article 8 par 5 or, alternatively, to replace it with another provision that would allow budget cuts in certain justified circumstances, while still ensuring the Human Rights Defender's financial independence and effective functioning.

### **3.2. The Distribution of Funds**

31. The abolishment of Article 8 par 5 would also remove from the Law the current regulation of how funds are allocated to the Office of the Human Rights Defender, namely in advance, in equal monthly instalments.
32. According to the 2018 SCA General Observations, national laws should, among other provisions, ensure the appropriate timing of release of funding, as this is particularly important to ensure an appropriate level of skilled staff.<sup>30</sup> If Article 8 par 5 were abolished in its entirety, with no new alternative proposals in place that would regulate the allocation of funds, this would create a gap in legislation that would not be compliant with the requirements elaborated by the SCA. Moreover, the explanations provided by the Ministry of Finance as to the need to delete Article 8 par 5, as described in the factsheet attached to the Human Rights Defender's letter of request, in particular the "obstacles to foreign investment" and the inability to allocate funding from one area to the other to overcome financial challenges, do not appear to apply here. Even in the case of reduced funding, the Law should specify how this is to be allocated and distributed.
33. It is recommended **to refrain from removing this part of Article 8 par 5 from the Law and to retain the provision as is.**

#### **RECOMMENDATION B.**

To refrain from removing from the Law in Article 8 par 5 the regulation on how funds are allocated to the Office of the Human Rights Defender.

## **4. THE PROCESS OF PREPARING AND ADOPTING THE DRAFT AMENDMENT**

34. OSCE participating States have committed to ensure that legislation will be "adopted at the end of a public procedure" (1990 Copenhagen Document, par 5.8).<sup>31</sup> Moreover, key commitments specify that "[l]egislation will be formulated and adopted as the result of

<sup>30</sup> See revised SCA General Observations, as adopted by the GANHRI Bureau at its meeting held in Geneva on 21 February 2018, p. 29.

<sup>31</sup> Available at <<http://www.osce.org/fi/odihr/elections/14304><http://www.osce.org/fi/odihr/elections/14304>>.

an open process reflecting the will of the people, either directly or through their elected representatives” (1991 Moscow Document, par 18.1).<sup>32</sup> The Venice Commission’s Rule of Law Checklist also emphasizes that the public should have a meaningful opportunity to provide input.<sup>33</sup> It is clear that the same applies also, and above all, to persons and institutions directly affected by a law under preparation.

35. In the factsheet attached to his letter of request, the Human Rights Defender has emphasized that during the drafting process and before circulating the Draft Amendment, this piece of draft legislation was not discussed with him or with his Office. Nor does there appear to have been any public discussion on the Draft Amendment prior to its submission to the National Assembly, and the Human Rights Defender maintained that he only found out from the media that this matter had been included in the agenda of the Government meeting of 11 March 2021. According to information received from the Human Rights Defender, the Government has recently discontinued its previously established practice of allowing representatives of the Human Rights Defender to attend Government meetings. At the same time, the Human Rights Defender has stressed that he has, on numerous occasions, expressed his willingness to discuss different variations of amending Article 8 par 5 of the Law in the past.
36. The SCA has emphasized that where NHRI laws are amended, an open, transparent and meaningful consultative process should be undertaken, including with the NHRI itself.<sup>34</sup> For consultations on draft legislation to be effective, they should be organized in a way that provides sufficient time for stakeholders to prepare and submit recommendations on draft legislation, while the State should set up an adequate and timely feedback mechanism whereby public authorities should acknowledge and respond to contributions, providing for clear justifications for including or not including certain comments/proposals.<sup>35</sup> Public discussions and an open and inclusive debate will increase all stakeholders’ understanding of the various factors involved and enhance confidence and trust in the adopted legislation, and in the institutions in general.<sup>36</sup>
37. It is thus essential that an NHRI be involved in meaningful consultations in relation to draft legislation that affects or concerns it, at all stages of the law-making process, from the preparation of the initial draft by the government, to parliamentary debates and up until the adoption, as well as future evaluation of the legislation.<sup>37</sup> Given that there appear to have been no proper consultations with the Office of the Human Rights Defender prior to the Draft Amendment being submitted to the National Assembly, the latter is urged to organize in-depth and meaningful public consultations that also involve the Office of the Human Rights Defender, and other interested parties.
38. The legal drafters have prepared an Explanatory Statement to the Draft Amendment, which according to the Human Rights Defender lists a number of reasons justifying the contemplated reform, but it is not clear whether this statement mentions the research and

---

<sup>32</sup> Available at <<http://www.osce.org/fi/odihr/elections/14310>><http://www.osce.org/fi/odihr/elections/14310>.

<sup>33</sup> See Venice Commission, *Rule of Law Checklist*, CDL-AD(2016)007, Part II.A.5.

<sup>34</sup> For example, concerning the development of the NHRI in Norway, the SCA recommended that “[a]n inclusive and consultative process to ensure broad support for a new NHRI should be initiated by the Government without delay”, emphasizing that “[t]he process should include the [existing institution], civil society groups and other stakeholders”; see GANHRI SCA, *2011 Report*, Norway, October 2011, pages 15-16.

<sup>35</sup> See e.g., *Recommendations on Enhancing the Participation of Associations in Public Decision-Making Processes* (from the participants to the Civil Society Forum organized by ODIHR on the margins of the 2015 Supplementary Human Dimension Meeting on Freedoms of Peaceful Assembly and Association), Vienna 15-16 April 2015.

<sup>36</sup> See e.g., ODIHR, *Opinion on the Draft Federal Law on the Support to the National Human Rights Institution of Switzerland*, Warsaw, 31 October 2017, par 95.

<sup>37</sup> See also the *Belgrade Principles on the Relationship between National Human Rights Institutions and Parliaments*, (2012), which the OHCHR recommends to use as guidelines to strengthen co-operation between NHRIs and parliaments for the promotion and protection of human rights at the national level, especially par 4, which states that “Parliaments, during the consideration and adoption of possible amendments to the founding law of a NHRI, should scrutinize such proposed amendments with a view to ensuring the independence and effective functioning of such institution, and carry out consultation with the members of NHRIs and with other stakeholders such as civil society organizations”.

impact assessment on which these findings are based. Given the potential impact of the Draft Amendment on the financial independence and functioning of the Human Rights Defender's Office, an in-depth regulatory impact assessment is essential. The starting point for such an assessment should be the collection and review of data pertaining to the overall operations of the Human Rights Defender's Office (disaggregated by gender and other diversity characteristics, as relevant and appropriate), including the number of registered claims per year, multi-year trends, the number and nature of the Human Rights Defender's recommendations, and the average time that it takes to deal with claims. This assessment should likewise contain a proper problem analysis, i.e. it should outline advantages and disadvantages of the current Article 8 par 5 and should then apply evidence-based techniques to identify the most efficient and effective regulatory option to improve the law, and at the same time maintain the independence and effective functioning of the Human Rights Defender's Office.<sup>38</sup> In the event that such an impact assessment has not yet been conducted, the legal drafters are encouraged to undertake such an in-depth review. The data collected on the status quo and the need for, and potential impact of, the proposed reform should be the subjects of a public debate before the National Assembly with the participation of the Human Rights Defender and his staff.

39. In light of the above, the public authorities should ensure that the Draft Law, and any other legislative initiatives pertaining to the Human Rights Defender, are subject to consultations, including with the Office of the Human Rights Defender. Such consultations should take place in a timely manner, and at all stages of the law-making process.
40. **Public authorities, in particular the authors of the Draft Amendment and the National Assembly, should ensure that the amendments to the Constitutional Law on the Human Rights Defender are subjected to open, inclusive, meaningful and effective consultations that include the Human Rights Defender and civil society.**

#### **RECOMMENDATION C.**

The authorities should ensure that the amendments to the Constitutional Law on the Human Rights Defender are subjected to open, inclusive, meaningful and effective consultations that include the Office of the Human Rights Defender and civil society.

[END OF TEXT]

---

<sup>38</sup> See e.g., OSCE/ODIHR, [Preliminary Assessment of the Legislative Process in the Republic of Uzbekistan](#) (11 December 2019), Recommendations L and M; and Venice Commission, [Rule of Law Checklist](#), CDL-AD(2016)007, Part II.A.5.

