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REVIEW AND IMPROVEMENT OF HUMAN RIGHTS AND FREEDOM GUARANTEES ENSHRINED IN THE CONSTITUTION OF THE REPUBLIC OF ARMENIA

STUDY

The study is an Armenian language publication developed by the Human Rights Research Center NGO within the framework of the "Support for Judicial Reforms" program implemented by the Eurasia Partnership Foundation in cooperation with the Helsinki Association and the Human Rights Power NGO.

The content of the study and the views expressed are those of the Human Rights Research Center NGO and may not necessarily reflect the views of the Eurasia Partnership Foundation, the Helsinki Association and the Human Rights Power NGO.

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EXECUTIVE SUMMARY

The “Review and Improvement of Human Rights and Freedom Guarantees Enshrined in the Constitution of the Republic of Armenia” study carried out by the Human Rights Research Center NGO (HRRC) is a unique professional legal analysis, where the legal-constitutional guarantees for the protection of human rights and freedoms have been thoroughly studied, and research-based proposals on making respective amendments in the Constitution of the Republic of Armenia have been presented.

This research initiative is also a response to the initiation of constitutional reform¹ in Armenia. In the framework of this process and in parallel to the study, aiming to bring the issues of constitutional protection of human rights to the attention of the public and the state, HRRC carried out public discussions and awareness efforts and presented ongoing analyzes and proposals to all stakeholders, including the RA Ministry of Justice, the Professional Commission on Constitutional Reforms and the Office of the Human Rights Defender.

HRRC’s position is that the next constitutional reforms should be implemented through a more accountable, transparent and participatory process and should be aimed at the adoption of a Constitution that will become a real and effective tool for the protection of the rights and freedoms of RA citizens and individuals.

The implementation of the study and the development of the proposals have been guided by international legal standards for the protection of human rights and freedoms, progressive tendencies of law development and the possibilities for compliance with the international legal obligations of the Republic of Armenia.

The mentioned guidelines were identified by studying the international documents on human rights ratified by Armenia within the framework of the UN and the Council of Europe and the practices of the bodies acting on their basis, the most progressive developments of international law and constitutional protection of human rights.

The scope of the research includes the international standards for the protection of human rights and freedoms and the norms and guarantees on human and rights and freedoms enshrined in Chapters 2, 3 and related articles of the RA Constitution².

Issues studied in this document and relevant proposals are presented in the following 10 research chapters:

- Review of the Constitutional guarantees for the protection of social, economic and cultural rights (Chapter 1).
- Review of the Constitutional guarantees for Environmental Rights (Chapter 2).
- Review of the Constitutional guarantees for the protection of the rights of the child (Chapter 3).
- Review of the Constitutional provisions on ensuring equality and prohibition of discrimination (Chapter 4).

¹ The legal basis for this process is the Strategic Judicial Reform Program (RA Government Decision N 1441-L, 2019).

² The Constitution of the Republic of Armenian (English), <https://www.president.am/en/constitution-2015/>

- Review of the Constitutional grounds for restriction of human rights and freedoms (Chapter 5).
- Review of the Constitutional limitations of the rights to vote of citizens who have been convicted and are serving their sentences (Chapter 6).
- Review the Constitutional right of the local communities to be heard as a manifestation of direct democracy (Chapter 7).
- Review of the Constitutional provision of the right to protection of personal data (Chapter 8):
- Review of the Constitutional provision of the right to free expression (Chapter 9).
- Specification of the bodies interpreting the constitutional provisions on fundamental rights and freedoms (Chapter 10).

Based on the conducted study, HRRC sent an official request to the RA Ministry of Justice and the Professional Committee on Constitutional Reforms with a proposal to include the following conceptual approaches in the Constitutional Reforms Concept.

1. **Eliminate the artificial separation of Chapters 2 and 3 of the Constitution**, enshrining all the economic, social and cultural rights under the Constitution (the rights to medical service and medical care, a healthy environment, healthy and safe working conditions, rest, minimum wage, adequate standards of living, social security, participation in cultural life, enjoyment of scientific achievements ...) as directly applicable fundamental rights and restoring the right of individuals and the Human Rights Defender to challenge the issue of compatibility of normative legal acts with the constitutional content of the above-mentioned rights before the Constitutional Court. The rationale of this conceptual approach, the studied issues and the presented proposals are included in Chapters 1 and 2 of the study.
2. **Review and improve a number of human rights guarantees enshrined in Chapters 2 and 3 of the Constitution and related articles**, in particular, the rights of the child, equality rights, the voting rights of convicted persons, the right of communities to be heard, the clarification of human rights limitation, and a number of other constitutional guarantees. The rationale of this conceptual approach, the studied issues and the presented proposals are included in Chapters 3-10 of the study.

This executive summary presents the issues and proposals discussed in Chapters 1, 2, 3, and 4 of the research, as these issues are prioritized by the research team for advocacy by international stakeholders.

REVIEW OF CONSTITUTIONAL GUARANTEES FOR THE PROTECTION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

*Summary of Chapter 1

As a result of the 2015 constitutional amendments, there has been a regress in terms of a number of constitutional guarantees for economic, social and cultural rights and the weakening of their protection regime.

The non-regression principle is a known principle of international public law and is often applied specifically in the context of protection of economic, social, cultural and environmental rights.³

From the point of view of the current tendencies of expanding the scope of protection of human rights, and taking into the account the international human rights obligations undertaken by the Republic of Armenia, the constitutional amendments resulting in the deterioration of protection regime and legal status of human rights are problematic and unacceptable.

The 2005 edition of the Constitution used to enshrine economic, social and cultural rights in Chapter 2, among the Basic Human Rights and Freedoms of the Human Being and the Citizen. These included the rights to safe working conditions, social security, medical care, adequate living standards, housing, participation in cultural life, free choice of employment, strike, education, property rights, and more.

As a result of the 2015 amendments, most economic, social and cultural rights - the right to social security, health, decent living, minimum wage, adequate working conditions and housing, and the right to participate in cultural life – are no longer enshrined in Chapter 2 of the Constitution and ceased to be "basic human rights".

They are now partially enshrined in Chapter 3 of the Constitution as legislative guarantees in the economic, social and cultural spheres and the main goals of state policy.

Additionally, a number of rights, including the right to an adequate standard of living, including the rights to the improvement of living conditions, access to scientific achievements, and the right to live in a healthy environment, were removed from the text of the Constitution altogether as a result of the 2015 amendments.

At the same time, the rights to education, property, free choice of employment and strike remained enshrined in Chapter 2 of the Constitution as directly applicable basic rights.

Thus, the rights left out of Chapter 2 of the Constitution ceased to be considered "basic rights", and as a result of which they do not have the effect of direct applicability enshrined in Article 3 of

³Economic, Social and Cultural Rights Handbook for National Human Rights Institutions, OHCHR, HR/P/PT/12, New York and Geneva, 2015 (անգլերեն); <https://www.ohchr.org/Documents/Publications/training12en.pdf> :

the Constitution. The principles of proportionality, legal certainty and inviolability of the essence of the basic rights enshrined in Articles 78-80 of the Constitution, as well as Article 81 of the Constitution, do not apply to the latter.

Moreover, with the above-mentioned changes, the individual and the Human Rights Defender were deprived of the mechanism of challenging the constitutionality of legal acts in relation to the rights left out of Chapter 2.

Economic, social and cultural rights are enshrined in a number of international documents ratified by the Republic of Armenia.

The comprehensive analysis of the 2015 amendments related to the protection of economic, social and cultural rights shows that:

- The changes have significantly affected the citizen's ability to enjoy and exercise the rights enshrined in the UN International Covenant on Economic, Social and Cultural Rights and other international legal instruments ratified by the Republic of Armenia.
- The changes can be assessed as a regression in terms of fulfilling the obligations of the state and the protection of human rights in the Republic of Armenia as defined by the Covenant.
- There is a need for a substantive review of the constitutional provisions of a number of social, economic and cultural rights, based on the international best practice in relation to those rights and the international legal obligations of the Republic of Armenia.

Due to the need to review the constitutional guarantees for the protection of economic, social and cultural rights, the HRRC research team presented the following recommendations:

- 1) To eliminate the separation of *Chapters 2 and 3 of the Constitution* and recognize all economic, social and cultural rights as basic human rights.
- 2) To restore *the right to receive medical care and assistance* in *Chapter 2* of the Constitution as directly applicable rights.
- 3) To enshrine *the rights to healthy, safe working conditions, rest and minimum wages* as directly applicable rights in *Chapter 2* of the Constitution and replace the policy objective of promoting employment of the population under *Article 86* of the Constitution with the objective of “*ensuring full employment of the population*”.
- 4) To enshrine *the right to social security* as a subjective right in *Chapter 2* of the Constitution and expand the grounds for exercising the right to social security, adding “*unaffordability of the access to health care*”.
- 5) To enshrine in *Chapter 2* of the Constitution *the right of everyone to an adequate standard of living, including adequate housing conditions*, as a directly applicable right.
- 6) Under *Article 38* of the Constitution, restore *the guarantee of compulsory basic education* and enshrine *the right to self-government of higher education institutions* and define the grounds for restricting that right in the Constitution.

- 7) Include a relevant article in Chapter 2 of the Constitution with the following text:
"Everyone has the right to participate in cultural life. Everyone has the right to benefit from scientific progress and its benefits."

REVIEW OF CONSTITUTIONAL GUARANTEES OF ENVIRONMENTAL RIGHTS

*Summary of Chapter 2

The Republic of Armenia has ratified a number of international documents, which to one degree or another relate to the protection of the environment.⁴

The current Constitution of the Republic of Armenia contains norms that refer to the obligations of the state to promote the environment and the obligations of individuals to protect the environment (Article 12 of the Constitution).

Article 10 of the Constitution, as amended in 2005, enshrined the obligation of the State to ensure the protection and restoration of the environment and reasonable use of natural resources. Article 31 stipulated that the exercise of property rights must not harm the environment. Article 33.2 enshrined the right of everyone to live in an environment conducive to their health and well-being and the obligation to protect and improve the environment individually and in association with others. The same article also defined the accountability of officials for concealing or refusing to provide environmental information. These guarantees have been abolished as a result of the 2015 constitutional amendments.

Whereas international constitutional practice and mechanisms for protection of environmental rights have evolved considerably and outlined the scope for effective environmental legislations, the current Constitution of the Republic of Armenia, compared to the previous edition, does not enshrine even the material (healthy environment) and procedural (environmental information) rights in the Constitution. **Thus, as a result of the 2015 Constitutional amendments, there has been a regression in terms of constitutional guarantees for the protection of environmental rights⁵:**

⁴ UN International Covenant on Economic, Social and Cultural Rights, UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage (1972), Vienna Convention for the Protection of the Ozone Layer (1985), Montreal Protocol on Substances that Deplete the Ozone Layer.

⁵The regression is also recorded by the specialists of the field in more detail

https://www.ecolur.org/hy/news/electionspoliticsecology/---:/7694/?fbclid=IwAR3uynJxZ6CC9cH_jz19iQvNQ6sH4dopVNdJnZup0be492KOPmVJN8Rvngk

The biggest range of environmental regulations is largely framed by the domestic environmental situation and specifics. In this regard, it should be noted that in recent decades, environmentalists in Armenia have raised a number of environmental concerns.⁶⁷:

Due to the need to review the constitutional guarantees of environmental rights, the HRRC research team presented the following recommendations:

- 1) To enshrine in *Article 12* of the Constitution the *obligation of the state to protect a healthy and safe environment*.
- 2) In *Chapter 2* of the Constitution, to enshrine *the right of everyone to live in a healthy environment* as a directly applicable right.
- 3) To broaden *Part 1 of Article 42* of the Constitution, adding a provision *stipulating the inadmissibility of rejecting environmental information and the accountability for concealing that information*.
- 4) 4) In *Part 3 of Article 60* of the Constitution, *as a basis for restricting the right to property, to enshrine the protection of the environment*.

REVIEW OF CONSTITUTIONAL GUARANTEES OF THE RIGHTS OF THE CHILD

*Summary of Chapter 3

With the 2015 constitutional amendments, the rights of the child in Armenia were constitutionalized, which was a positive development.⁸

However, a review of the current constitutional arrangements shows that, based on Armenia's commitments under the UN Convention on the Rights of the Child, Armenia's commitments within the ILO conventions and progressive trends in the field of child protection, there is a need of some revisions, addressed in this chapter.

- Review N1. There is a terminological inconsistency between the term "*best interests of the child*" and the provisions of the UN Convention on the Rights of the Child.

The wordings "child interest" and "child's vital interest" in the norms of the RA Constitution do not ensure identifying terminology in line with the international obligations of the Republic of Armenia, and due to that, also lack substantive compliance. Ensuring terminological identification

⁶ Environmental policy in Armenia, V. Burnazyan, <https://ge.boell.org/en/2019/06/24/ekologiakan-kaghakanowtyowne-hayastanowm> :

⁷Example: Overview of public complaints about the Amulsar mine operation <https://www.ecolur.org/hy/news/amulsar/> :

⁸ In Article 37 of the Constitution, the rights of the child received a separate provision. Some of the rights of the child are also enshrined in Articles 36 of the Constitution (rights and responsibilities of parents), 47 (right of citizenship of the Republic of Armenia), 57 (freedom of choice of work and labor rights).

in the provisions of the Constitution is important in terms of interpreting a directly applicable constitutional norm in accordance with the international obligations of the Republic of Armenia and the practice of bodies acting on the basis of international human rights instruments in the context of the application of Article 81 of the Constitution.

- Review N2. The child's right to be heard has not been fully enshrined at the constitutional level.

The full constitutional enshrinement of the child's right to be heard during any administrative and judicial proceedings concerning herself/himself under Article 12 part 2 of the Convention on the Rights of the Child stems from both the international obligations of the Republic of Armenia and the positive judicial practice of the Constitutional Court and can create added value for the development of new mechanisms for the child's right to be heard.

Accordingly, it is important for the first part of Article 37 of the Constitution to fully enshrine the right of a child to be heard, in line with the provisions of the Convention on the Rights of the Child.

- Review N3. Prohibition of children's economic exploitation and work that is dangerous for the child, hinders their education or harms their health and physical, mental, moral and social development.

Part 4 of Article 57 of the Constitution of the Republic of Armenia does not reflect the full scope of the international obligations of the Republic of Armenia regarding the prevention of child labor and child exploitation. The minimum working age does not meet the criteria for setting the minimum age set by the international instruments ratified by the Republic of Armenia (Convention on the Rights of the Child, ILO Convention No. 138) and weakens the constitutional basis of the child's right to decent work. Accordingly, it is important that the right of a child (up to 18 years old) to be protected from economic exploitation and from such work that can be harmful, hinder the child's education or damage their health and physical, mental, moral and social development is enshrined in the Constitution.

Due to the need to review the constitutional guarantees for the protection of the rights of the child, the HRRC research team has presented the following recommendations.

- 1) To make a terminological change in *Articles 36 and 37* of the Constitution, replacing the terms "child's interest", "child's vital interest" with the internationally accepted wording "*child's best interest*".
- 2) In the first part of *Article 37* of the Constitution, to fully enshrine the child's right to be heard directly or through their representative in any judicial or administrative proceeding concerning themselves.
- 3) Under *Article 57* of the Constitution to enshrine the right of a child (up to 18 years old) to be protected from economic exploitation and work that may be dangerous to the child or impede their education or damage their health and physical, mental, moral and social development.

REVIEW OF CONSTITUTIONAL PROVISIONS ON ENSURING EQUALITY AND PROHIBITION OF DISCRIMINATION

*Summary of Chapter 4

The constitutional basis for ensuring equality and prohibition of discrimination is enshrined in Articles 28-30 of the RA Constitution. These can be considered as constitutional guarantees of *ensuring equality de jure*.⁹

The practice of bodies governed by international human rights treaties and the constitutional developments of other countries have made progress in enshrining the principle of equality, not only in terms of de jure equality, but also in terms of enshrining the principle of *substantive equality/equality de facto*.

This chapter addresses the need to create a sufficient constitutional basis for the principles of equality, non-discrimination and inclusion, and to change existing problematic legal arrangements.

The international standards for ensuring substantive equality have been the subject of a special examination under this Chapter, and the best possible solutions to reflect them in the RA constitutional regulations have been identified.

Accordingly, the following have been studied and addressed:

- The establishment of the Constitutional guarantee of de facto equality;
- The establishment of the Constitutional guarantee of the inclusiveness of education;
- The establishment of the Constitutional basis for ensuring the right to equality of members of religious organizations;
- The enshrinement of the rights-based approach to disability within the framework of state policy objectives defined under the Constitution;
- The need to eliminate the Constitutional basis of the institution of legal incapacity;
- The need to eliminate discriminatory terms used in the text of the Constitution.

Based on the need to review the constitutional provisions on equality and non-discrimination, the HRRC research team has presented the following recommendations:

- 1) To add the following provisions to the Article 29 of the Constitution:
 - *"The state can use special measures to ensure the equal rights of individuals. The use of such means is not considered discrimination."*
 - *"The state must take special measures to ensure equal rights for persons with disabilities."*

⁹ Article 28 of the Constitution of the Republic of Armenia enshrines the equality of all before the law, and Article 30 enshrines the equality of women and men. Article 29 of the Constitution defines the prohibition of discrimination. The fourth sub-item of Article 86 of the Constitution, as the main goal of the state policy in the economic, social and cultural spheres, enshrines the promotion of de facto equality between women and men.

- 2) To add the 5th part to *Article 41* of the Constitution with the following content:
“The state ensures the equality of the followers of the Armenian Apostolic Church and other religious organizations in all spheres of public life.”
- 3) To replace "prevention of disability" enshrined in *Article 86* of the Constitution as a goal of state policy in the social, cultural and economic spheres with the goal of "*protecting the rights of persons with disabilities, ensuring equal opportunities and building an inclusive society.*"
- 4) To remove the phrase "*declared legally incapacitated by a court decision that has entered into force*" from *Part 4 of Article 48* of the Constitution.
- 5) To remove the restrictions on holding certain positions on the grounds of being declared legally incapacitated from *Articles 98, 164 and 193* of the Constitution.
- 6) To make terminological changes in *Articles 27 and 86* of the Constitution, namely, in *Article 27*, replacing the term "*person with a mental disorder*" with the term "*person with a mental health issue*"; the terms "*alcoholic*" and "*drug addict*" with, respectively, "*person with an addiction to alcohol/drugs*", and in *Article 86* replace "*disabled*" with "*person with a disability*".

REVIEW OF CONSTITUTIONAL GROUNDS FOR RESTRICTIONS OF HUMAN RIGHTS AND FREEDOMS

*Summary of Chapter 5

Prior to the 2015 Constitutional amendments, the text of the Constitution included two articles on restrictions of human rights (Articles 43 and 44), the first of which listed the requirements for restrictions of a number of rights, and the second enshrined temporary human rights restrictions during a state of emergency or martial law.

As amended in 2015, the Constitution waived the general requirements for human rights restrictions, stating the grounds for the restriction of each right separately, within a specific article. This approach takes into account the specifics of the restriction of each right and liberty, and stems from the approaches to this issue that is line with a number of human rights treaties ratified by the Republic of Armenia (such as ICCPR, ECHR, etc).

However, a study of the constitutional norms on restrictions of human rights shows that there is a need for certain revisions, addressed in this chapter:

- Not all requirements for assessing the legality of human rights restrictions are included in the Constitution. In particular, this refers to the wording "*necessary in a democratic society*", which, being enshrined in the previous two editions of the Constitution, was not enshrined in the 2015 Constitutional amendments. In this regard, we can state that there has been a reduction of constitutional guarantees.

- The provisions on human rights restrictions in Article 41 (*Freedom of Thought, Conscience and Religion*) and Articles 60 (*Right of Ownership*) define a broader list of legitimate purposes of restrictions compared to the list defined by the international obligations of the Republic of Armenia. Such an excess violates the provision under Article 81 of the Constitution, stating that "*Restrictions on rights and freedoms may not exceed the restrictions established by international treaties of the Republic of Armenia*".

Based on the need to review the constitutional basis for restrictions on human rights and freedoms, the HRRC research team has presented the following recommendations:

- 1) To enshrine the wording "*necessary in a democratic society*" as a requirement for assessing the permissibility of a restriction in Article 31 (inalienability of private, family life, honor and reputation), Article 32 (inalienability of the apartment), Article 33 (freedom of communication, privacy), Article 34 (protection of personal data), Article 40 (freedom of movement), Articles 42 (freedom of expression), 44 (freedom of assembly) and 45 (freedom of association) of the Constitution of the Republic of Armenia.
- 2) To *remove* the phrase "*state security*" from *Part 2 of Article 41* of the RA Constitution.
- 3) To formulate *Part 8 of Article 60* of the RA Constitution as follows: "*Everyone is obliged to pay taxes, duties and other obligatory payments in the manner and amount prescribed by law.*"