



**MAIN THEORETICAL AND PRACTICAL ISSUES OF STATE SERVICE IN THE STAFF OF HUMAN RIGHTS DEFENDER (OMBUDSMAN) OF THE REPUBLIC OF ARMENIA**

**RUSTAM MAKHMUDYAN  
HEAD OF THE ORGANIZATIONAL-LEGAL DEPARTMENT  
OF THE JUDICIAL DEPARTMENT OF THE RA,  
ASSISTANT OF THE CONSTITUTIONAL LAW CHAIR  
OF THE FACULTY OF LAW OF THE YSU, PhD IN LAW**

Taking into account that the amendments and supplements to the law which entered into force in 2011 were not fully applied in the Defender's staff, by reason of making them subject to regulation of another legislative act and which to the best of our belief are ineffective mechanisms, we think that relevant legislative amendments should be made. In our opinion it would be appropriate to make supplement to the law of the Republic of Armenia "On Human Rights Defender", by adding a Chapter entitled "State Service in the Staff of the Human Rights Defender and the Defender's Staff", wherein the legal relations with respect to the state service and the legal acts regulating thereof would be enshrined in details, especially when such regulation is provided for by the Law of the Republic of Armenia "On Prosecutor's Office".

Of course in such conditions separate legal acts should be adopted by the Defender regarding the training, attestation and class rank granting procedures. Moreover, class ranks should serve as class ranks of the state service based on the current hierarchy of positions in the staff.

As an alternative suggestion might serve the adoption by the National Assembly of the Republic of Armenia of a separate law entitled "On State Service in the Staff of Human Rights Defender", where as opposed to the latter, all the procedures regarding the legal status of the Defender's staff and its employees should be given in a more detailed manner.

*Keywords:* Human rights defender (Ombudsman) of the Republic of Armenia, Ombudsman's Staff, Ombudsman's institut, state service

**ОСНОВНЫЕ ТЕОРЕТИЧЕСКИЕ И ПРАКТИЧЕСКИЕ ВОПРОСЫ ГОСУДАРСТВЕННОЙ СЛУЖБЫ В АППАРАТЕ (ОМБУДСМЕНА) ЗАЩИТНИКА ПРАВ ЧЕЛОВЕКА РЕСПУБЛИКИ АРМЕНИЯ**

**РУСТАМ МАХМУДЯН  
НАЧАЛЬНИК ОРГАНИЗАЦИОННО-ПРАВОВОГО УПРАВЛЕНИЯ  
ДЕПАРТАМЕНТА РА,  
АССИСТЕНТ КАФЕДРЫ КОНСТИТУЦИОННОГО ПРАВА  
ЮРИДИЧЕСКОГО ФАКУЛЬТЕТА ЕГУ,  
КАНДИДАТ ЮРИДИЧЕСКИХ НАУК**

Автор считает, что учитывая поправки и дополнения закона, вступившего в силу в 2011 году, не были полностью применены аппаратом Омбудсмана, вследствие их становления предметом урегулирования другого законодательного акта, который, по нашему твердому убеждению, является неэффективным механизмом, и потому должны быть сделаны соответствующие законодательные изменения. Автор считает, что было бы более уместным сделать дополнение к «Закону об Омбудсмене», дополнив в закон главу под названием «Государственная служба в аппарате Омбудсмана и аппарат Омбудсмана», где подробно закрепят правоотношения, связанные с государственной службой и регулирующие их правовые акты, тем более, что такое регулирование предусмотрено «Законом о прокуратуре РА».

Конечно, в таких условиях, Омбудсменом должны быть приняты отдельные правовые акты об обучении, аттестации и о процессе присуждения ранга (званий). Кроме того, звания должны быть как звания государственной службы, исходя из существующей штатной иерархии.

Заменой предыдущему предложению может быть то, что Национальное Собрание может принять отдельный закон под заглавием «О Государственной службе в аппарате Омбудсмана» где в отличие от предыдущего, будут детально изложены все те процедуры, которые относятся к правовому статусу аппарата Омбудсмана и его персоналу.

*Ключевые слова:* Защитник прав человека (Омбудсмен), Аппарат Омбудсмана, Институт Омбудсмана, государственная служба

*Բանալի բառեր* - Հայաստանի Հանրապետության մարդու իրավունքների պաշտպան, Պաշտպանի աշխատակազմ, Պաշտպանի ինստիտուտ, պետական ծառայություն

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**Rustam MAKHMUDYAN**  
*Head of the organizational-legal department  
of the Judicial Department of the RA,  
Assistant of the Constitutional Law Chair of the Faculty of Law  
of the Yerevan State University,  
PhD in Law*

**MAIN THEORETICAL AND PRACTICAL ISSUES  
OF STATE SERVICE IN THE STAFF  
OF HUMAN RIGHTS DEFENDER (OMBUDSMAN)  
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The institution of Human Rights Defender (hereinafter referred to as “Defender”) plays a particular role among the intrastate mechanisms for the protection of human rights and fundamental freedoms. Guided by the fundamental principles of lawfulness, social co-existence and social justice, the latter protects the human rights and fundamental freedoms violated by the state and local self-government bodies and their officials.

Having regard that in accordance with Article 30.2 of the Constitution of the Republic of Armenia citizens shall have the right to equal access to public service in conformity with law, and taking into account the fact that the service in the Staff of the Human Rights Defender of the Republic of Armenia (hereinafter referred to as “Defender’s staff”) is a type of public service, the principles and organizational procedure of public service prescribed by law should apply to it as well.

Moreover, according to the constitutional norm everyone shall have the right to receive assistance of the Humans Right Defender on the grounds and in the manner prescribed by law for the protection of his or her rights and freedoms. And as it is simply impossible to ensure such protection alone, the Defender forms a staff.

Since the first day of the establishment of the Defender’s institution the staff thereof with its legal status has been subjected to substantial contextual changes. It particularly refers to the type of service in the staff, as well as to the



legal status of the staff employees.

The study of international practice shows that almost in all democratic states the service performed in the Defender’s (Ombudsman’s) staff is a state service, and the employees are state servants. Particularly, in Sweden, Spain, Lithuania, Estonia the status of Ombudsman’s staff is very clear, though in these countries the legal status of the staff hasn’t been clearly enshrined by law, but even in that case no problematic situations with respect to it have occurred so far, which cannot be claimed with regard to the Republic of Armenia.

The situation in the system of state service of the Republic of Armenia entirely changed, when the National Assembly of the Republic of Armenia adopted the Law1 of the Republic of Armenia “On Public Service”, as a result of which the content of the concept of public service is defined in a clearer and more comprehensive manner. Besides, the given law enshrines that “The law shall also apply, inter

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alia, to persons holding positions provided for by the list of positions of public service in the Staff of Human Rights Defender”. Though an attempt had been made to clarify the legal status of the Defender’s staff before the adoption of the mentioned law, the abovementioned provision was the first to be prescribed at the legislative level.

Our studies witness that the solution to the discussed issue may be given generally in two ways: a) through legislative amendments, b) by making clarifications in the law enforcement practice. But before addressing that question, it should be mentioned that subject to the requirements for improving the state administration system, nowadays proper organization of and reforms within the state service stand at the forefront of attention. The political and economic reforms currently in process in our country require making changes in the state service which is considered as an inseparable component of statehood, so that the state apparatus would be able to perform its functions in modern conditions.<sup>2</sup>

Though it is difficult to unequivocally classify the Defender’s staff as a state body, however, taking into account that the Defender is a public-legal institution, it is more appropriate to use the term of “public service”. Public service is the exercise of powers conferred upon the state by law, and besides the state and community services, it also includes state and community positions.

The disputes regarding the concepts of “state service” and “state servant”, taking into account their institutional meaning, still continue. According to these opinions, state service includes all the employees of not only state bodies, but also those of different state offices and organizations.<sup>3</sup>

All types of public service included in the law of the Republic of Armenia “On Public Service” are in this or that manner regulated not only by the mentioned law, but also by other legislative and sub-legislative acts, with the exception of the Defender’s Staff, with respect to which it is undoubtedly necessary to clarify the provisions enshrining its legal status.

Service in the Defender’s staff and the legal status of the staff employees are somehow similar to the service in the staff and the legal status of staff employees of the National

Assembly of the Republic of Armenia. Thus, state service in the staff of the National Assembly is a type of state service and the state servant of the staff is a person holding a position provided for by the list of positions of state service (except for the temporary vacancies) or put in the short-term personnel reserve of state service. And the law of the Republic of Armenia “On Public Service” defines the state service as a professional activity, aimed at solving issues and performing functions conferred upon the state bodies by law.

Based on our definition, the legal status of the Defender’s staff may be described as a complex of rights and obligations conferred upon the staff by law, which ensures or contributes to the ordinary flow of the Defender’s activities.

The amendments regarding the legal status of the Defender’s staff have undergone two stages:

The Defender’s staff had by law been defined as a state office, without addressing in any manner the legal status of its employees,

The status of both the Service and its employees had been regulated by law; however nowadays there is no clarification at all.

The legal status of the Defender’s staff formed on 1 March 2004 was not very clear. The law simply prescribed that for the purpose of ensuring the Defender’s activities the Defender shall form a staff. The Defender’s staff shall implement the juridical, organizational, scientific-analytical, informative aspects of the Defender’s activities.

The Defender’s staff is a state office, which has a seal with the image of the state’s Coat of Arms and its name.

The biggest problem of the staff during the first stage was the fact that by the former edition of part 4 of Article 23 of the Law of the Republic of Armenia “On Human Rights Defender” it was only mentioned that “*The Defender’s staff employees are not civil servants and work on the basis of temporary employment contracts*”. The provision with such content caused a problem every time an employee of the Defender’s staff transferred to another system of state service, as his or her status was not clear, and even when employed in that Service it was not clear what Service it was



made equivalent to. Of course some lawyers (both scientists and practical) constantly state that the absence of the clarification of the legal status of the Defender's staff is an issue, however, no amendments have been made throughout many years. Moreover, by the joint efforts of the Civil Service of the Republic of Armenia and the Government of the Republic of Armenia a draft law had been put into circulation, by force of which the employees of the Defender's staff should have been classified as civil servants, but, however later it was rejected as by former Defender's initiative the draft law had been sent to the Venice Commission for the purpose of obtaining professional conclusion. By the conclusion of the mentioned Commission it turned out that the adoption of the draft law would not only endanger the independence of the Ombudsman's institute, but would also contradict both the general idea of Paris principles, and the principles of the classic model of similar institutes. Besides, from our point of view, the draft could not be adopted by two other reasons:

Legal, social and other guarantees prescribed for the civil servants by the law of the Republic of Armenia "On Civil Service" were entirely different from the guarantees conferred upon the employees of the Defender's staff, including those of immunity, for not being interrogated as a witness and others, and

If the employees of the Defender's Staff were classified as civil employees, the objective consideration of the letters of complaint of the citizens against the Civil Service of the Republic of Armenia would cause doubts, for during the consideration of the lawfulness of this or that activity of the body or its official appointing the mentioned employees, the factor of dependency would always exist.

The second stage of the legal status of the Defender's staff was conditioned by the amendments to the law of 2010, as a result of which the Defender's staff was defined as a state governance institution not without legal status, where state service referred to as Service in the Staff of Human Rights Defender is performed.

Based on the logic of the concept of state service prescribed by law, the State Service in

the Staff of Human Rights Defender is a professional activity carried out in the Defender's Staff with a view to ensuring the exercise of the powers conferred upon the Defender with the Constitution of the Republic of Armenia and this Law. With the exception of the activities related to the technical maintenance functions, the professional activity in the staff is state service, and the employees holding relevant positions in the staff are state servants.

As opposed to the former definition prescribed by law, by the amendments it was mentioned that separate units of the Defender's staff may be established in marzes.

At first sight the abovementioned formulations seem to have given answers to all the questions of enshrining the legal status of the Defender's staff, while there are still a lot of gaps and contradictions.

For example, according to the new Article 23.1 added by the same amendments to the law, the provisions of the Law of the Republic of Armenia "On Judicial Service" shall apply to the relations connected with the state service in the Defender's staff insofar as these in themselves apply to the state service in the Defender's staff and do not contradict this Law.

When applying the provisions of the Law of the Republic of Armenia "On Judicial Service" to the relations connected with the state service in the Defender's staff:

Judicial service shall imply state service in the Staff of the Defender;

The powers conferred upon the head of the judicial department shall be exercised by the head of the Defender's staff;

The powers conferred upon the Council of Courts' Chairmen of the Republic of Armenia and the President of the Court of Cassation of the Republic of Armenia shall be exercised by the Defender;

The powers which the President of the Court of Cassation of the Republic of Armenia exercises acting on the opinion of the Council of Courts' Chairmen of the Republic of Armenia, shall be exercised solely by the Defender.

However, the logic of the abovementioned amendments to the law is unclear first of all because it is not clear why the legislation on



judicial service should apply to the Service in the Defender’s Staff, or whether there are so many similarities and generality between the powers and functions. To the best of our belief, the application of the given legislation to the service in the Defender’s Staff and its employees is not convincing and substantiated, though certain standards for the scope of application have been provided for, however, these standards apply only in cases when the legislation on judicial service contradicts the provisions of Law. It is obvious that though there are no such contradictions to the Law, however, the issues of the service in the Defender’s staff remain unsolved.

By analyzing the provisions of the Law of the Republic of Armenia “On Judicial Service” it becomes clear that the current structural units of the Defender’s staff should correspond to the structural units of judicial department, administration body of the judicial service- to the judicial department, and the status of employees —to the status of department’s employees, while no clarification has been given so far. Besides according to part 6 of Article 4 of the Law of the Republic of Armenia “On Public Service”, *Discretionary position is an appointive position, and the official holding that position shall adopt decisions and coordinate the implementation thereof within the scopes of liabilities vested in him or her in accordance with the Law of the Republic of Armenia. Any official holding the discretionary position may be replaced as a result of a change in the distribution of political powers.*

The given definition is followed by the statement that besides positions held in other bodies, the position of Advisors to the Human Rights Defender of the Republic of Armenia and that of Press Secretary are also considered as discretionary positions within the meaning of this Law.

It should be noted that the term of discretionary position within the system of the judicial service is not used in any manner; therefore, based on the provisions of the Law of the Republic of Armenia “On Public Service”, we can state that the legislation on judicial service does not apply to the Advisors to the Defender and Press Secretary.

The next reason is that the transitional provisions of the Law of the Republic of

Armenia “On making amendments and supplements to the Law of the Republic of Armenia on Human Rights Defender” a list of activities was envisaged, which in case of being carried out chronologically, would have resulted in the introduction of all the procedures of judicial service in the Defender’s staff. Particularly it referred to the issuance and authentication of passports of positions and, then to the training, attestation and granting of class ranks, meanwhile besides the authentication of passports of positions, nothing else has been carried out. The problem is that, for example, the first training of state servants should have been held in the Defender’s Staff since the first day of the sixth month following the entry<sup>4</sup> of the law on the discussed amendments into force, however, already two years have passed and no training has taken place so far. Of course, the Defender’s Staff is trying to “justify” this with the fact that relevant amounts haven’t been allocated from the state budget, but, in our opinion it may not serve as justification, as the procedure of training of the employees of the Staff of National Assembly of the Republic of Armenia is organised individually, by concluding contracts with the relevant institutions and making relevant payments. In our opinion, the training process in the Defender’s staff might be organised even with the assistance of international human rights organisation.

As a first step, taking into account that the powers of the Council of Courts’ Chairmen of the Republic of Armenia are identified with the Defender’s powers, the Defender should have adopted relevant acts with respect to the training process, attestation and granting of class ranks. This is substantiated with the fact that on 25 August 2006 the Council of Courts’ Chairmen of the Republic of Armenia adopted the decision N 06N “On the procedure for holding training of judicial servants”, as well as on 17 October 2006- decision N05L “On the procedure for assessment of the activities of judicial servant”<sup>5</sup>, by force of which all the procedures were subjected to legal regulation.

That is, the failure to allocate certain amounts from the state budget does not mean that it is impossible to develop and adopt standards of procedures.



Again returning to the content of amendments and supplements, it should be mentioned that if up to now it would have been possible to organise the training of employees of the Defender's staff in the RA Judicial school SNCO, by force of law of the Republic of Armenia "On Justice Academy" entering into force since 1 September 2013, such opportunities do not exist anymore, for the Academy does not carry out such activities. Thus, in accordance with point 3 of part 1 of Article 3 of the Law of the Republic of Armenia "On Justice Academy", *the Academy shall organise and carry out the training of judicial servants, state servants of the staff of Prosecutor's Office and judicial bailiffs.* In this case nothing is mentioned regarding the training of employees of the Defender's Staff.

Some mathematical calculations were done in the law with respect to the salaries of the employees of the Defender's staff, taking the compensation to judicial servants as a base rate, which was then multiplied by the prescribed coefficients, thus defining the amount of the salary.

It is extremely important that the accession to the Defender's staff be carried out according to the prescribed procedures (through written and oral exams), certain trainings be held in order to ensure the skills of the staff employees, as well as the social safeguards prescribed by law be ensured by the Defender. And the recommendations regarding the solution to the mentioned issues should correspond to the main principles of the public service mentioned in Article 6 of the Law of the Republic of Armenia "On Public Service", for example, the stability of public service, legal equality of public servants before law, publicity of public service, equal access to the public service for the citizens in accordance with their professional knowledge and working abilities, the skills of public servants, the legal

and social security of public servants and so on.

In order to avoid such approaches, as well as to maintain the reputation of institutions dealing with the protection of human and citizen's rights, we suggest the following.

Taking into account that the amendments and supplements to the law which entered into force in 2011 were not fully applied in the Defender's staff, by reason of making them subject to regulation of another legislative act and which to the best of our belief are ineffective mechanisms, we think that relevant legislative amendments should be made. In our opinion it would be appropriate to make supplement to the law of the Republic of Armenia "On Human Rights Defender", by adding a Chapter entitled "State Service in the Staff of the Human Rights Defender and the Defender's Staff", wherein the legal relations with respect to the state service and the legal acts regulating thereof would be enshrined in details, especially when such regulation is provided for by the Law of the Republic of Armenia "On Prosecutor's Office".

Of course in such conditions separate legal acts should be adopted by the Defender regarding the training, attestation and class rank granting procedures. Moreover, class ranks should serve as class ranks of the state service based on the current hierarchy of positions in the staff.

As an alternative suggestion might serve the adoption by the National Assembly of the Republic of Armenia of a separate law entitled "On State Service in the Staff of Human Rights Defender", where as opposed to the latter, all the procedures regarding the legal status of the Defender's staff and its employees should be given in a more detailed manner.

1. The law adopted on 26 May 2011
2. See RA Administrative Law, manual, by joint edition of Professor G. Danielyan, PHD of Law, YSU edition. Yerevan, 2012, p. 232.
3. For more details see *Бахрах Д.Н.* Административное право, Часть Общая, М.,

1993, с. 97. *Манохин В.М.* Советская государственная служба, М., 1966, с. 20, etc.

4. The mentioned law entered into force on 6 January 2011, that is, it should have been implemented on the 1st of July.

5. The mentioned decisions are available at [www.court.am](http://www.court.am) website.