

# State of the Rule of Law in Europe in 2022

## Reports from National Human Rights Institutions

Armenia



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## Armenia

*The Office of the Human Rights Defender of Armenia*

### Impact of 2021 rule of law reporting

#### Follow-up by State authorities

Some of the issues identified in the 2021 ENNHRI rule of law report were addressed by the Armenian authorities during the reporting year.

The report pointed to concerns as regards the draft amendments to the Law on Mass Media, which provided for the expansion of the grounds for restricting the freedom of speech in media. The Human Rights Defender, along with various civil society organisations and media representatives, had considered these draft amendments problematic, and called upon the government to reject the adoption of the draft or to amend it significantly, altering the nature of the restrictions. After thorough discussions, the authors of the draft amendments made significant editorial changes, addressing the main concerns raised by the Human Rights Defender and civil society organizations. The draft was adopted on December 10, 2021, and contained revised provisions.

In 2021, the Armenian authorities also made several efforts to address issues related to hate speech, insult and harassment on online platforms, which were also pointed at in the 2021 report. Firstly, more comprehensive provisions criminalizing hate speech were added to the new Criminal Code, which was adopted in 2021, and will enter into force in July 1, 2022. The criminalization of grave insult can also be regarded as part of such efforts; however, according to the Human Rights Defender's assessment, the legislative intervention was not an effective and proportionate measure to tackle this issue (for additional information, see the chapter on media freedom, pluralism and safety of journalists).

## References

- 2021 ENNHRI rule of law report, pp. 80, 86-87: <https://ennhri.org/wp-content/uploads/2021/07/Regional-Rule-of-Law-Report-2021.pdf> (Accessed May 26, 2022)
- 2021 Annual Report of the Human Rights Defender of Armenia, pp. 403-408: <https://ombuds.am/images/files/022666474d87ff84a86acf39be58bec8.pdf> (in Armenian), Accessed May 26, 2022
- Amendments to the Republic of Armenia Law "On Mass Media" adopted on December 10, 2021: <https://www.arlis.am/documentview.aspx?docid=159043> (in Armenian), Accessed May 26, 2022
- Criminal Code of the Republic of Armenia, adopted on May 5, 2021: <https://www.arlis.am/DocumentView.aspx?DocID=153080> (in Armenian), Accessed May 26, 2022

## Impact on the Institution's work

The 2021 ENNHRI rule of law report has proved a valuable source of information to understand European trends as regards rule of law developments, and has assisted the Office of the Human Rights Defender to initiate and substantiate certain proposals and suggestions for amendments as regards relevant laws on the justice system, which were addressed to the National Assembly and the Government.

Moreover, the report has informed the institution's response to the reforms of the judicial system proposed by the National Assembly and the Government of Armenia.

In terms of raising the awareness of the general public about the Human Rights Defender's institution, the report has served a better use of the grant program "Support for the Strengthening the Institutional capacity of the Armenian Human Rights Defender's Office in the Field of Human and Labour Rights Protection and Promotion", aimed at raising the level of public awareness on the role, mandate and functions of the Human Rights Defender on labour rights.

## Follow-up initiatives by the Institution

Based on the recommendations of 2021 report, the Office of the Human Rights Defender has prepared several ad hoc reports, including, but not limited to, the following:

- Ad hoc report on "A Number of Labour Rights Issues According to the Studies of Complaints Addressed to the Human Rights Defender" (1).

- Ad hoc report on the manual distribution of court cases to judges, and the dangers to the constitutional right of each person to a fair examination of their cases by an independent and independent court (2).
- Ad hoc report on the negative impact of not making a decision or a conclusion, and the rejection of an application when the votes are evenly distributed in the Constitutional Court (3).

Additionally, the 2021 ENNHRI report was an important source for the Office of the Human Rights Defender to gather an overview of the trends of legislative amendments in the country, and to substantiate its suggestions in relation to legislative initiatives.

### **References**

- (1) <https://ombuds.am/images/files/0574d02e488c254b3adbee98e8a81382.pdf>
- (2) [https://ombuds.am/en\\_us/site/ViewNews/2075](https://ombuds.am/en_us/site/ViewNews/2075)
- (3) <https://ombuds.am/images/files/90f6009b34332fc3f1077e63a618c7cf.pdf>

### **NHRI's Recommendations to National and European policy makers**

The Office of the Human Rights Defender of Armenia recommends that ENNHRI – through engagement of NHRIs - ensures review and follow up on the issues raised in the previous report - to identify whether the states concerned have registered any improvements during the time of the reporting.

## **Independence and effectiveness of the NHRI**

### **International accreditation status and SCA recommendations**

The Human Rights Defender of Armenia was last re-accredited with A-status in March 2019.

The SCA recognised that the NHRI interprets its mandate in a broad manner. However, the SCA encouraged it to advocate for appropriate amendments to explicitly include provisions in its enabling law in relation to encouraging ratification of or accession to international human rights instruments, promoting human rights, and covering acts or omissions of the private sector.

Additionally, it encouraged the NHRI to strengthen the implementation of its anti-discrimination mandate, particularly regarding LGBTI and women's rights.

Regarding the selection and appointment process, the SCA acknowledged that the NHRI reported that, in practice, vacancies are advertised, the process is broad and transparent,

and that civil society can participate in the screening and selection process. However, this practice is not explicitly enshrined in law, regulation, or in another binding administrative guideline. The SCA encouraged the NHRI to advocate for amendments for the formalisation and application of the selection and appointment process in this direction.

Finally, acknowledging that the budget of the NHRI had increased significantly since the previous review, the SCA encouraged the NHRI to continue to advocate for the funding necessary to ensure that it can effectively carry out the full extent of its mandate, including all additional responsibilities with which it has been mandated, such the NPM under the OPCAT.

### **References**

- <https://www.ohchr.org/Documents/Countries/NHRI/GANHRI/SCA%20Report%20March%202019%20-%20EN%20.pdf>

### **Regulatory framework**

The national regulatory framework applicable to the Armenian NHRI has not changed since the 2021 report. The Human Rights Defender of Armenia continues to function on a constitutional basis and has the mandate to contribute to access to justice for individuals, including through complaints handling, strategic litigation before courts, providing legal assistance to individuals and awareness-raising.

The Human Rights Defender of Armenia is authorized to submit applications to the Constitutional Court in respect of the compliance of laws and other legal acts with the provisions of Chapter 2 of the Constitution which enshrines fundamental human rights and freedoms protected under the Constitution. The Defender exercised this power on several occasions throughout 2021, bringing several complaints before the Constitutional Court, including related to some provisions of the Judicial Code and the Constitutional Law on the Constitutional Court.

Moreover, according to the Constitutional Law on the Human Rights Defender, the Defender has the right to submit written opinions to the competent bodies on normative legal acts related to human rights and freedoms, including the right to fair trial, as well as to submit proposals for legislative amendments to competent bodies if it finds that issues related to human rights and freedoms are not regulated by law or other legal acts or are insufficiently or inadequately regulated.

The current legislation regulating the activities of the Human Rights Defender provides sufficient safeguards to ensure the institution's effectiveness, its ability to carry out its mandate, and its institutional independence.

## References

- Constitutional Law on the Human Rights Defender:  
<https://www.arlis.am/documentview.aspx?docid=146435> (in Armenian),  
Accessed May 26, 2022
- 2021 Annual Report of the Human Rights Defender of Armenia, pp. 33-43:  
<https://ombuds.am/images/files/022666474d87ff84a86acf39be58bec8.pdf> (in  
Armenian), Accessed May 26, 2022

## Enabling and safe space

The Defender takes the view that the relevant state authorities have good awareness of the Armenian NHRI's mandate, independence and role. The established cooperation with the public authorities, including the National Assembly, public administration bodies, law enforcement agencies, the Constitutional Court, etc., indicates that the public administration bodies are aware of the importance of the mandate of the Human Rights Defender and their activities, and the need to maintain the guarantees of the independence of the institution.

Nonetheless, certain problematic issues have been identified. In 2021, the Defender raised concerns over legislative amendments that were aimed at abolishing the budgetary guarantee for the institutional independence of the Armenian NHRI. The Defender stated that the amendments were unconstitutional in their substance. In April 2021, the Government withdrew the legislative amendments abolishing the Defender's financial independence from the National Assembly of Armenia. This issue was already illustrated in detail in the 2020 Annual Report of the Defender, and in the ENNHRI 2021 Rule of Law Report.

The Armenian NHRI considers having adequate access to information and to policy makers and is involved in all stages of legislation and policy making with human rights implications. As already mentioned, according to Article 29 of the Constitutional Law on the Human Rights Defender, the Defender has a mandate to submit a written opinion on draft regulatory legal acts regarding human rights prior to their adoption. Moreover, in all the cases where the Defender finds that human rights issues are not regulated or fully regulated by a legal act, the Armenian NHRI may submit to the body adopting the legal act a relevant recommendation. Moreover, the 252-L decision on Approval of the Government Rules of Procedure, made on February 25, stipulates a mandatory requirement to submit draft normative legal acts on human rights and freedoms to the Defender's opinion.

Furthermore, the Defender and staff members actively participate in the activities of state and local self-government bodies. In particular, the Defender has the right to be present at the sittings of the Government of Armenia as well as sittings of the state and local self-government bodies and to make interventions during such sittings where issues regarding the human rights are being considered. The Defender largely makes use of the possibility to be present at the Government and Ministerial level meetings to deliver relevant recommendations to the Government. The Defender is also entitled to be present at the sittings of the National Assembly, and to intervene where issues regarding human rights and freedoms are being considered. The Defender has permanent representatives in the Constitutional Court and the Parliament who are actively engaged and cooperate with the mentioned institutions. A good example of this cooperation is the active participation of the Defender's representatives in preparing amicus briefs to the Constitutional Court and Participation in Parliamentary Committee discussions.

The addressees of the NHRI's recommendations are legally obliged to provide a timely and reasoned reply. According to the Constitutional Law on the Human Rights Defender, the Defender notifies the competent state or local self-governing body in case of violation of a right registered through a complaint addressed to the Defender or through the Defender's own initiative. The state and local self-governing bodies are obliged to inform the Defender in writing about the measures taken as soon as possible, or no later than 30 days after the receipt of the decision of the Defender.

Similarly, the Constitutional law provides that in all cases where the Defender finds that issues related to human rights and freedoms are not regulated or are not properly regulated by law, the Defender may submit a relevant proposal to the body adopting the legal act, indicating the need to amend or complement the legal act. The body that receives such proposal is obliged to discuss it and inform the Human Rights Defender about how its proposals are being considered as soon as possible, but not later than thirty days.

The institution takes the view that these legislative mechanisms are sufficient and necessary to ensure that the competent authorities, officials, and organisations respond in a reasonable and timely manner to the proposals and recommendations of the Human Rights Defender.

Generally, it can be concluded that the legislative suggestions of the Defender are more often implemented than not. There is a good level of cooperation established between the Human Rights Defender and the executive and legislative powers, which allows for periodic discussions on Defender's proposals and the possible ways of their implementation. Importantly, when rejecting a proposal, state bodies mostly provide justifications which in

general facilitates the constructive dialogue between the Human Rights Defender's Office and respective institution.

Measures necessary to protect and support the NHRI, heads of institution and staff against threats and harassment and any other forms of intimidation are in place. Articles 332.1 and 332.2 of the Criminal Code of Armenia establish liability for obstructing the exercise of the mandate of the Defender, interfering in any way in their activities, preventing the entry of the Defender or their authorized representative, within the exercise of their mandate, into any area as well as threatening, insulting, or blatantly disrespecting the Defender.

According to the Article 6 of the Constitutional Law on the Human Rights Defender, the Defender may not, during their term of office and thereafter, be prosecuted or held liable for activities carried out as part of his or her mandate, including for opinions expressed at the National Assembly. Criminal prosecution against the Defender may be instituted and they may be deprived of liberty only upon the consent of the National Assembly by at least three fifth of the total number of the members of parliament. The Defender may be deprived of liberty without the consent of the National Assembly if caught in the act of committing a criminal offence or immediately thereafter. In this case, deprivation of liberty may not last more than for seventy-two hours. The Chairperson of the National Assembly shall be notified without delay of the deprivation of liberty of the Defender.

Furthermore, the Defender may not, during their term of office and thereafter, be demanded to provide explanation or be questioned as a witness in regard to applications or complaints addressed thereto during their term of office, as well as regarding the essence of documents obtained during the examination or consideration thereof or the decisions rendered by them.

Importantly, the Constitutional Law provides for some guarantees for the employees of Human Rights Defender's Office. According to Article 11, where criminal prosecution is instituted on any ground against a person holding office within the Staff of the Defender, or where they are in any way deprived of liberty, the body conducting the proceedings shall be obliged to promptly inform the Defender thereon, immediately after obtaining data about the person in question. Besides, persons holding office within the Staff of the Defender may not be demanded to provide explanation or be questioned as witnesses with regard to the essence of applications or complaints addressed to the Defender or the decisions rendered by the Defender.

Moreover, the new Criminal Code, which will enter into force on July 1, 2022, establishes criminal liability for publishing defamatory information about the Defender or a person



acting on their behalf, and their family members or information causing harm to their rights and legitimate interests, and for destroying or damaging their properties.

It is to be noted that in 2020 and 2021, expressions of hate speech and insults, as well as blatantly fake or false information concerning the Defender, were disseminated on fake pages and accounts. The issue was even more concerning as the dissemination of these statements, as the Defender was obliged to disclose, was also being implemented or coordinated by high-level public officials. These acts had a clear goal: to create misconceptions about the activities of the institution and to influence its reputation. At the core of this problem was also the fact that the Office of the Human Rights Defender was expected to perform acts that are reserved to law enforcement bodies or to courts, such as investigating the cases of alleged crimes committed by private actors towards public officials. This relates to situations where ordinary people complained to the Defender and asked it to take a decision whereas the matter in question was under consideration by the judicial authority, or applicants were requesting to reverse, for example, decisions on pre-trial detention decision rendered by the investigation services and confirmed by the competent court.

It is also important to mention that in 2021, the Lurer program of Public H1 Television Channel (the main public TV channel in Armenia) failed to cover most of the publications of the Human Rights Defender of Armenia on important developments taking place in the country, and has purportedly avoided to broadcast information on the activities of the Defender. Faced with a consistent approach of the Public Television Company of Armenia not to ensure coverage of the activities of the Defender, the Defender made a statement on this issue on May 6, 2021 when he presented the Annual Report to the National Assembly. The Defender also addressed a formal request for clarifications to the Council of the Public Broadcaster of Armenia and Commission on TV and Radio of Armenia, and conveyed his concerns on the matter to relevant international organisations. This issue was also raised in the 2021 Annual report of the Human Rights Defender.

## **References**

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- 2020 Annual Report of the Human Rights Defender, pp. 26-31 <https://ombuds.am/images/files/883f55af65e3c33553139031c7ac0ce6.pdf> (in Armenian), Accessed May 26, 2022

- 2021 ENNHRI rule of law report, pp. 81-82: <https://ennhri.org/wp-content/uploads/2021/07/Regional-Rule-of-Law-Report-2021.pdf> (Accessed May 26, 2022)
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### **Developments relevant for the independent and effective fulfilment of the NHRIs' mandate**

During 2021, the Office of the Human Rights Defender continued to carry out awareness-raising activities, and the preparation and dissemination of information materials, aiming at improving the knowledge of individuals about rights and freedoms, their protection mechanisms, as well as the activities and mandate of the Human Rights Defender.

Within the framework of the efforts aimed at improving the activities of the Office of the Human Rights Defender, the cooperation with international and local partners continued, including joint implementation of programs aimed at strengthening and developing the institutional capacity of the Office of the Human Rights Defender. In particular, with the support of the Ministry of Foreign Affairs of Bulgaria, the grant program "Support for the Strengthening the Institutional capacity of the Armenian Human Rights Defender's Office in the Field of Human and Labour Rights Protection and Promotion" has been completed. The program was aimed at strengthening the capacity of the Office to investigate

complaints related to Labour rights, and raising the level of public awareness on the role, mandate and functions of the Human Rights Defender on labour issues.

The capacity of the National Preventive Mechanism was also further developed with the support of the Special Fund of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Moreover, appropriate action was taken in each case of insult and dissemination of hatred or false information about the Defender, including reporting the offences to law enforcement authorities.

### **References**

- 2021 Annual Report of the Human Rights Defender of Armenia, pp. 26-33, 69-72, 81-82: <https://ombuds.am/images/files/022666474d87ff84a86acf39be58bec8.pdf> (in Armenian), Accessed May 26, 2022

### **NHRI's recommendations to national and regional authorities**

The Defender recommends relevant authorities to refrain from initiating legislative amendments or measures which could undermine the independence of the institution of the Defender or obstruct in any way its activities, and to continue to engage in effective cooperation with the Defender. The Defender also recommends authorities to refrain from making any public statements insulting or devaluing the activities of the Office of the Human Rights Defender.

## **Human rights defenders and civil society space**

### **Threats and attacks, including strategic litigation against public participation (SLAPPs)**

Both in 2020 and 2021, the Defender's Office has recorded an increase in complaints concerning attacks targeting human rights civil society organisations (CSOs) and their members, and has observed a dangerous increase in instances of insults directed at them.

The analysis of the complaints addressed to the Human Rights Defender pointed to a high frequency of insults and hate speech directed against CSOs, persecution of the representatives of the organisations by individuals, and attempts to obstruct their work. Episodes recorded include an attack on the office of a human rights CSO. Cases of threats and incitement to violence against representatives of CSOs were also recorded.

The Armenian NHRI notes that several cases of attacks (primarily through hate speech) on human rights defenders were carried out by marginal groups. The attacks towards civil society were mainly organised by reactionary groups such as the Veto and Adekvat

initiatives. These are mainly traditionalist, conservative groups which were disseminating hate speech, threats, as well as false narratives about CSO's claiming that they are foreign agents or a threat to national security. The risks posed by these attacks on human rights defenders have been addressed, notably by efforts of the law enforcement bodies, although, in certain cases, the Defender takes the view that state authorities should have acted in a more prompt and targeted manner.

Moreover, cases where public officials made insults and disseminated hate speech towards human rights defenders were also recorded.

The Defender also expresses concern over the launch of a criminal prosecution against the head of a human rights CSO. The reference goes to the criminal prosecution of Sashik Sultanyan – the Chairperson of the Yezidi Centre for Human Rights in Armenia – which was initiated in 2021 and still continues in a very problematic manner. Sashik Sultanyan was charged with publicly inciting national enmity, pursuant to Article 226, Part 2, Clause 1 of the Criminal Code of Armenia. The accusation was based on Sashik Sultanyan's interview, where Mr. Sultanyan presented his views and assessment of human rights violations.

Several Armenian and international organisations, including Human Rights Watch, have expressed their concern about this case, considering the allegations made against Sultanyan false, and stating that during the interview upon which the accusations are based, Mr. Sultanyan was simply presenting and sharing his views on the problems which the Yezidi community in Armenia faces. These reactions were followed by a public response from the Prosecutor General's Office, which, in the assessment of the Human Rights Defender, contained dangerous remarks about critical speech and human rights activities. The NHRI is particularly concerned about the claim of the Prosecutor General's Office that Mr. Sashik Sultanyan was prosecuted because he described Armenia as a state engaging in discrimination against national minorities in the political, economic, cultural, social spheres and public life.

Another worrying issue concerning civic space in Armenia relates to ongoing discussions engaging a group of lawyers from the Chamber of Advocates of the Republic of Armenia on the opportunity to request to the courts to order the termination of the activities of the Open Society Foundations in the Republic of Armenia. The Open Society Foundation implements various programs promoting the protection of human rights and inclusive public policy in Armenia. Although no application has been submitted to the courts yet, these discussions may have a negative effect on the activities on other civil society organisations and civic space actors.

## References

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- “Armenia: Malicious Prosecution of Activist: Drop Charges Against Rights Defender Sashik Sultanyan”, Human Rights Watch, June 16, 2021: <https://www.hrw.org/news/2021/06/16/armenia-malicious-prosecution-activist> (Accessed May 26, 2022)
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- “Armenia must drop “intimidating” criminal charges against minority rights activist – UN experts”, press release of August 10, 2021: <https://www.ohchr.org/en/press-releases/2021/08/armenia-must-drop-intimidating-criminal-charges-against-minority-rights?LangID=E&NewsID=27372> (Accessed May 26, 2022)

## NHRI’s role in promoting and protecting civil society space and human rights defenders

In 2021, the close collaboration between the Human Rights Defender and civil society actors continued, especially in the fields of the protection of the rights of women, children and persons with disabilities. Such collaboration with civil society is carried out in a variety of ways, including through the advisory councils to the Defender - which the Defender has the power to establish in accordance with the Constitutional Law on the Human Rights Defender. Extended council meetings with the participation of the competent state bodies in the field were also held, constituting an important example of the Human Rights Defender’s efforts to provide a platform for exchange between state bodies and civil society.

Taking into account the importance of ensuring a safe and enabling environment for civil society, the Defender made a public statement raising concern about the increasing volume of insults addressed to human rights defenders and CSOs, and emphasizing the inadmissibility of such attacks. The public statement especially pointed to the responsibility of the state in addressing this issue, and its positive obligation to guarantee the safety of CSOs and human rights defenders, and ensure their protection in the country.

The Human Rights Defender's Office has been in constant correspondence with the Prosecutor General's Office and the Police regarding the attacks, insults, and hate speech

directed against CSOs and their representatives, as well as the violent attack targeting the office of one of the CSOs, referred to above. The Human Rights Defender's continues to closely follow the authorities' response to such attacks, including relevant criminal proceedings initiated in this respect, and regularly requests information on the investigation process from criminal prosecution bodies in an effort to ensure an effective and transparent investigation of each case, as well as the accountability of law enforcement agencies in this process.

The Defender addressed this issue in more detail in its 2021 Annual report, also emphasizing the need for public figures to take a more cautious approach when expressing their views about CSOs and human rights defenders.

As regards the problematic issues identified in relation to the criminal prosecution of Mr. Sultanyan, the Defender has released statements, and has engaged in continuous exchanges with the Prosecutor General's Office of Armenia. Addressing this issue in the Annual report, the Defender stressed that prosecuting a person for making critical assessments on alleged human rights violations is highly problematic, and can lead to a dangerous trend of criminalisation of legitimate speech and activities by human rights defenders. The Defender will continue to closely follow and engage on this case.

### **References**

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### **NHRI's recommendations to national and regional authorities**

The Defender recommends the relevant authorities to:

- Introduce comprehensive legislative and practical mechanisms for combating hate speech and harassment, which will ensure the protection of human rights organizations and their members from attacks and persecution. Armenia especially

needs to adopt an anti-discrimination legislation, within the framework of which the necessary tools should be provided for properly addressing hate speech;

- Ensure a proper investigation of cases regarding attacks perpetrated against CSOs and human rights defenders, to ensure that perpetrators be held responsible;
- Ensure that public officials not only discourage and refrain from justifying attacks against civil society, but also make proactive public statements condemning such behaviours and express solidarity;
- Build the capacity of law enforcement agencies to ensure their ability to adequately investigate cases impacting on freedom of speech and involving hate speech and to avoid undue criminal prosecution of human rights defenders in retaliation to their legitimate work.

## Checks and balances

The state of emergency, followed by the quarantine regime which was declared at the start of the COVID-19 pandemic, and the restrictive measures introduced to address it, persisted during 2021. These restrictions were compounded by the martial law that was declared as a result of the 2020 Artsakh war.

Although national legislation provides for the participation of the public in the process of the development of legislation and state policy, several issues were observed in this regard in 2020 and 2021. In particular, in some cases, draft laws concerning matters of public interest were adopted with the use of accelerated procedures and without sufficient public discussion and lacking consultation of civil society representatives. For example, the Draft Amendments to the Criminal Code criminalizing grave insult were not subjected to public discussion, and were adopted with an accelerated procedure, by a special session of the National Assembly passing both the first and second hearings on the same day (July 30, 2021). Considering the potential impact on freedom of expression of the provisions proposed by the draft law, and the public interest nature of the matter, it would have been important to ensure a transparent discussions of the draft with civil society organisations and other citizens' representatives. The Defender raised this issue in a statement made regarding this law.

Regarding access to information held by state and local self-government bodies, it should be noted that the majority of complaints received by the Office of the Human Rights Defender in the reporting year related to the failure of public administration bodies to respond to requests for information within the timeframe provided for by law or to provide a meaningful response. In particular, the Human Rights Defender received 87 complaints in

this regard in the reporting year, while the Committee to Protect Freedom of Expression registered 99 violations of the right to request and receive information. In addition, it should be emphasized that there are insufficient legislative measures and practical tools to ensure that persons with disabilities can effectively enjoy, through means of communication adapted to their needs, their right to receive information on an equal basis with others.

From the point of view of ensuring an effective mechanism of checks and balances, the proper execution of judicial decisions bears particular importance. In 2020 and 2021, the Defender observed that the lack of an effective monitoring mechanisms over the implementation of the decisions of the Constitutional Court has led to an improper implementation of decisions. This is due to the fact that existing legislation only establishes the obligation of the Government to initiate legislative amendments arising from a decision of the Constitutional Court, but does not provide for any remedy or sanction where the Government fails to initiate the relevant amendments or fails to adopt them within a set deadline. Moreover, the Defender noted cases where the Government presented drafts that were not in line with the essence of the decisions of the Constitutional Court, and instances where the positions expressed by the Constitutional Court were ignored by the executive, forcing individuals to initiate new court proceedings to obtain the enforcement of their rights.

### **References**

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## Trust amongst citizens and between citizens and the public administration

According to the results of a social survey published by the International Republican Institute of the United States on January 31, 2022, 46% of the respondents answered “wrong direction” to the question “Generally speaking, do you think that Armenia is heading in the right direction or wrong direction?”. A comparison of this finding with the polls conducted in May-June 2021 reveals that citizens’ trust in the executive and the public administration has deteriorated. More than half of the respondents stated that they were “completely dissatisfied” or “somewhat dissatisfied” with the work of the supreme legislative body and various judicial bodies, and 50% of the respondents reported dissatisfaction with the work of the highest executive body (48% of the respondents were satisfied with the job). A higher level of trust was only registered as regards the police, the armed forces and the local self-governing bodies. These data allow to conclude that there is a rather low level of trust of individuals towards state bodies.

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## NHRIs as part of the system of checks and balances

On March 2019, the “A” status of the Office of the Human Rights Defender of Armenia was reconfirmed, which is an evidence of the independence and effective work of the Human Rights Defender.

In this regard, an important indicator is the high public trust in the Human Rights Defender. According to the results of the social survey published by the International Republican Institute on January 31, 2022, 68% of the citizens who participated in the survey mentioned to be satisfied with the work of the Human Rights Defender (35% indicating they are very satisfied, 33% somewhat satisfied). According to another survey conducted by the Caucasus Research Resource Centre (CRRC) and published in June, 2022, 82% of participants of the survey indicated that they trust the Human Rights Defender (61% stated that they are fully trust, 21% rather trust).

The Defender has the right to apply to the Constitutional Court. In 2021, 11 applications were addressed to the Constitutional Court, to raise issues of compliance of state laws and practices with a number of provisions of the Constitution.

The application of the Human Rights Defender to the Constitutional Court regarding the legality of the provisions concerning the proportionality of the formation of the board of trustees of universities is particularly worth mentioning. In 2021, a number of government decisions set new proportion criteria for the formation of the board of trustees of state universities, providing that 55% of the members of the board would be nominated by the Prime Minister on behalf of the founder, 10% by the Ministry of Education, Science, Culture and Sports, 10% by the faculty, and 25% by the representatives of the student body. This implies that members nominated by the Prime Minister and the authorized body would now correspond to 65% of the board, decreasing the representation of the faculty and students. The Defender took the view that this directly contradicts a key component of the right to education, namely the guarantee of the autonomy of the university. As a result of the application of the Defender, legislative amendments were introduced during the examination of the case to address the Defender's concerns, and the proceedings before the Constitutional Court were terminated.

Another relevant case concerned the Defender's application to the Constitutional Court in relation to the issue of restoring the rights of pilots with disabilities. The Defender considered that the provisions of the Civil Code, the Labour Code, and two applicable Government decisions failed to establish effective mechanisms to protect the rights of pilots with disabilities. The legislation, in particular, was deemed lacking effective remedies allowing pilots to obtain compensation for damage to life or health caused by accidents and occupational diseases at the workplace. This resulted in a continuous violation of the rights of pilots with disabilities for 15 years and in a series of judicial hassles. The Constitutional Court, by decision ՄԴՌ-1618 of November 30, 2021, recognised the relevant legal provisions (N 579 Decision of the Government adopted on November 15, 1992) as being in accordance with the Constitution, insofar as persons suffering from injury, occupational disease or other damage to health caused before the entry into force of the amendment introduced by the 1094-Ն Decision of the Government of July 22, 2004, retain the right to receive compensation from the state, if the activities of the employer organization were ceased, or in case of lack or insufficient capital. As a result of this decision, pilots with disabilities were recognised the right to receive compensation, which the state had denied for 15 years.

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### NHRI's recommendations to national and regional authorities

The Defender recommends the relevant authorities to:

- Provide detailed legislative and practical means to ensure the effective exercise of the right of persons with disabilities to request and receive information;
- Introduce legislative and practical mechanisms to ensure an adequate monitoring of the implementation of the decisions of the Constitutional Court.

### Functioning of the justice system

According to Article 41 of the Constitutional Law on the “Judicial Code”, the distribution of cases among judges is done through a automated computer system. According to the law, exceptions to this method can only be made in cases of *force majeure* rendering the distribution of the cases through the automated system impossible. In July 2021, within the framework of the preliminary investigation of a criminal case, the access to the server of the computer program for distribution of cases between judges and its passwords were confiscated by the criminal prosecution body, to conduct a computer forensic examination as part of the criminal proceedings.

The confiscation obliged the president of each court to proceed with the manual distribution of cases among judges. In this context, the Defender recorded cases where the

presidents of the courts did not observe the relevant rules which regulate the manual distribution of cases. Clear procedures for manual distribution of cases are not provided for, which in itself has given rise to a wide range of interpretations and discretion. The established procedure is not detailed and clear enough to ensure its uniform application and reduce the possibility of arbitrariness. Moreover, the studies conducted by the Defender have demonstrated that the presidents of the court have failed to comply with established rules, such as the requirement to distribute cases in alphabetical order by judges' surnames, and the principle of random distribution. The principle of random distribution does apply both during the automated and manual distribution, as to the rule on alphabetical order, it is specifically related to the manual distribution cases. The violation of the rules of distribution by the presidents of the courts have, in certain cases been conditioned by the fact that their work overload does not permit for the possibility of manual distribution of cases, in other cases those reasons may be due to personal factors and have not been clearly identified.

In connection to this issue, persons deprived of their liberty and lawyers have addressed complaints to the Human Rights Defender, as well as judges in a confidential manner. The complaints were mainly related to the violations in the process of manual distribution of court cases.

The distribution of cases through a computer program is aimed at ensuring the impartiality and independence of judges. The failure to ensure distribution through such automated system threatens these fundamental principles, which constitute important components of the right to a fair trial.

Another problematic practice that is worth mentioning relates to the procedure for the selection and appointment of judges. According to Chapter 16 of the Judicial Code, the selection procedure of judges consists of several phases, namely, written examination, integrity check and interview phases. However, the interview stage remains too vague and enables wide discretion for the Supreme Judicial Council (SJC). Formally, the judges are appointed by a decree of the President, however, the candidates are chosen by the SJC. It is therefore necessary to introduce stricter criteria for assessing the candidate's personal and professional qualities.

On October 29, 2021, the Amendments to the Law on State Duty entered into force. As a result of these amendments, the fees due for applying to a court, including bringing complaints before the Appeal and Cassation Courts, as well as for the provision of copies of documents issued by the courts, were significantly increased. Among others, the minimum rate of the state duty for bringing complaints before a court was increased to 6.000 AMD from 1.500 AMD, and many other fees due in the context of applications to the

courts were increased by 2-5 or even 10 times. The Defender is concerned that such increase in court fees will create obstacles when applying to the courts thus leading to violations of the fundamental right to access to justice.

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### Role of the NHRI in contributing to the effective functioning of the justice system

In relation to the issue of the manual distribution of court cases, mentioned above, the Human Rights Defender applied to the Constitutional Court, arguing that as a result of this process, the objectivity of the distribution of cases between judges is violated, and the constitutional right of every person to a fair trial before an independent and impartial court is endangered. The issues and arguments presented in the application were also summarized in an ad hoc report referenced below.

As mentioned above, an exception from the main method of distribution of cases through the automate system is envisaged only in case of a *force majeure*.

In July 2021, the fact that access to the server of the computer program and the passwords for distribution of cases was confiscated within the framework of the preliminary investigation of a criminal case, was considered *force majeure*. In its application submitted to the Constitutional Court, the Defender disputed that the failure to define “*force majeure*” by law, or at least establish criteria for determining whether a certain situation is to be regarded as a situation of “*force majeure*”, has led to an arbitrary interpretation of this notion which has endangered constitutional rights. One of the issues also raised in the

application is that in the absence of an automated system, court cases are distributed by the presidents of the courts in the absence of any established standards and approaches.

As an example, cases have been registered where the President of the court had assigned certain types of cases to a specific judge (for example cases which are complicated, are sensitive, and are of public interest), which in itself raises doubts about the independence and impartiality of the court.

Based on the decision ՄԴԱՈ (SDAO, which stands for “Procedural decision”)-88 of the Constitutional Court, the application of the Human Rights Defender will be heard on September 6, 2022.

As regards the increase of court fees, the Defender submitted an application to the Constitutional Court disputing the compatibility of these provisions with the right to judicial protection and the right to access to a court as an important component of the right to a fair trial. The Defender has also prepared and published an ad hoc report on this issue, discussing the problematic nature and possible grave consequences of these amendments in more detail. According to the ՄԴԱՈ-87 decision of the Constitutional Court, the application of the Human Rights Defender will be heard on July 1, 2022.

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### NHRI’s recommendations to national and regional authorities

The Defender recommends relevant authorities to:

- Establish more precise and detailed objective criteria and regulations in the legislation to ensure the impartiality and transparency of the distribution of cases between judges by the presidents of the court, when the automated distribution of cases is not possible.
- Repeal the Amendments to the Law on State Duty which significantly increased the fees of state duty for applying to the courts
- Improve the merit-based recruitment process of judges inter alia by ensuring the applications of rules in practice.
- Refrain from implementing initiatives that might impair and hinder the guarantees of the independence of the judiciary and the judicial system.

### Media freedom, pluralism and safety of journalists

The Institution takes the view that the overall situation as regards media freedom, pluralism and safety of journalists has improved since the last report. Nonetheless, some problematic developments should be reported.

In 2021, the National Assembly passed two draft laws related to freedom of speech, which were criticized by civil society and several international organizations. One of the draft laws is the Law “On Making Amendments to the Civil Code” of March 24, 2021, according to which the maximum amount of compensation for insult and defamation was increased from one million AMDs to 3 million AMDs for insult, and from 2 million AMDs to 6 million AMDs for defamation.

The President of the Republic did not sign the law and appealed to the Constitutional Court, disputing its compatibility with freedom of speech. However, the Constitutional Court rejected the application of the President, recognizing the law as compatible with the Constitution.

On July 30 of the same year, the National Assembly adopted the draft law "On Making Amendments to the Criminal Code", which criminalized grave insult. According to the newly introduced provision, cursing a person or insulting them in an extremely indecent manner is considered grave insult.

The new provision received criticism for its use of ambiguous terminology, as well as due to the fact that it provides for a more severe punishment if the act is committed in relation to a person's public activity. It is useful to recall that, pursuant to relevant rules, holding a public position or a public service position is considered as public activity. Critics also considered it to be problematic that part 3 of the provision in question provides for the sanction of detention for a period of 1-3 months. This law was challenged by the Defender before the Constitutional Court, which however ruled the law as compatible with the Constitution.

Furthermore, in 2021, cases of intolerance and insults directed at journalists were registered, including the use of physical violence or coercion, even by public officials. For example, in the complaints addressed to the Defender, the journalists presented cases where they were targeted by Deputies of the National Assembly. A journalist informed about an incident where they had approached the deputy and had turned on the camera of the cellular phone, had presented themselves as a journalist of a daily newspaper and had asked questions. Afterwards, the deputy had attacked, taken the cellular phone, and tried to delete the video.

Through complaints addressed to the Human Rights Defender, journalists pointed out the inaction of law enforcement agencies in cases of obstruction of their professional activities, the failure to take action to ensure their safety, as well as in certain cases, obstruction by police servicemen to the exercise of the professional activities of journalists, for example by denying them access to an area, in the absence of any legal grounds, and without objective reasons.

Mass media outlets also disseminated information about access or attempts of hacking the personal social media accounts of media representatives/journalists.

During 2021, journalists also complained to the Human Rights Defender about restrictions on their professional work in the National Assembly, including the ambiguity of provisions on accreditation, the resulting arbitrary accreditation practices, and other inadmissible



actions of public officials against journalists. The Defender has illustrated in an ad hoc report the reported violations, issues referred to above.

Regarding the problematic draft amendments to the laws on Mass Media and to the Code of the Administrative Offences, mentioned in the ENNHRI 2021 report, it should be noted that in 2021 the draft was significantly revised to in line with the recommendations of the Human Rights Defender and civil society organizations, alleviating key concerns.

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### **Role of the NHRI in promoting and safeguarding an enabling environment for media and freedom of expression**

The Human Rights Defender presented an amicus brief on the draft law on amending the maximum amount of compensation for insult and defamation in the Constitutional Court. The Defender argued that that the draft is problematic in terms of ensuring constitutional guarantees of the principle of proportionality and freedom of speech.

Regarding the constitutionality of the law criminalizing grave insult, the Defender appealed to the Constitutional Court, disputing the compatibility of the newly introduced provision with freedom of speech, as well as with the principles of legal certainty and proportionality. As already mentioned, the Defender also released a statement regarding the problematic nature of this provision and addressed this issue in more detail in the 2021 Annual report. However, the Constitutional Court, by its decision of April 29, 2022, found Article 137.1 providing for criminal liability for grave insult, as compatible with the Constitution.

The Defender continues to examine very closely any reported interferences and hindrances to the professional work of media and journalists. Among others, the Defender has questioned law enforcement authorities in connection with reported cases of physical coercion against journalists, the obstruction of their professional activities, and the inaction of law enforcement bodies, demanding them to provide information on the measures taken in relation to the registered cases.

The Human Rights Defender also released a public statement in relation to a case where a journalist was threatened, insulted, and a picture of their child (a minor) was disseminated. The journalist concerned became a target of online harassment campaign. She received threats, and a photo of herself and her new-born child was spread on various social media pages. All these posts contained or were accompanied by insults directed either at her or her journalistic activities, with a wide range of degrading remarks.

The restrictions imposed on the professional work of journalists, and the inadmissible acts of public officials towards them, illustrated above, have been presented in detail in an ad hoc report of the Human Rights Defender.

Problematic issues identified in relation to existing provisions on accredited journalists' work in the National Assembly were also the object of an application by the Defender to the Constitutional Court, where the Defender disputed the constitutionality of a number of provisions related to the accreditation process. However, by decision ՍԴԱՌ-62 of March 29, 2022, the Constitutional Court terminated the proceedings dismissing the Defender's action.

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### NHRI’s recommendations to national and regional authorities

The Defender recommends the relevant authorities to:

- Repeal existing laws, and refrain from passing draft laws, restricting the freedom of expression and the freedom of the press, and refrain from prescribing rules of procedure that obstruct and restrict the legitimate activities of journalists.
- Ensure an effective investigation into any case of alleged obstruction of the legal activities of journalists, as well as of cases of insults, expressions degrading journalists’ dignity, and any behaviour containing elements of crime.

### Corruption

The implementation of anti-corruption reforms continued in 2021. On March 24, 2021, the Law on Anti-Corruption Committee was adopted, and entered into force on October 23, 2021. According to the provisions of the law, a specialized investigative body, which is responsible for investigating anti-corruption crimes, was established and is now functioning. Moreover, as already stated in the ENHRI rule of law 2021 report, the Law on Amendments to the Judicial Code which provides for the creation of an anti-corruption

court, was adopted on April 14, 2021. The law entered into force on October 29, 2021, and the process of establishing the court is ongoing.

Within the framework of the implementation of its mandate, the Defender raised concern about some regulations and practices which are seen as problematic in terms of giving rise to possible corruption risks. For example, the Human Rights Defender acted on complaints related to disrespectful and illegal behavior of inspectors, in particular tax and customs officers. Indeed, in 2021 as in previous years, the lack of transparency of the activities of public servants during inspections has remained relevant, as illegal actions and disrespectful treatments by inspectors continued to give rise to corruption risks. These include, violations of investigative procedures, for example, entering the property of a taxpayer without any legal basis, taking pictures, or harsh treatment of persons, and violations of rule of ethics by tax and customs servicemen

The Defender followed up, in particular, on the complaints received regarding the illegal actions of the inspection bodies to the State Revenue Committee of Armenia. To enhance the transparency of the activities of inspectors who are in direct contact with citizens, and thus reduce corruption risks, the Defender proposed the installation of portable cameras on the uniforms of the inspectors.

In May 2022, the Ministry of Justice submitted a draft amendment to the Law on Public Service for public discussion. The draft amendment proposed to allow persons holding public office to acquire any partaking (shares, stocks, shares) in the statutory capital of commercial organizations during their tenure as public officials, provided that the person holding public office will transfer that partaking to trust management within one month.

Taking into consideration the necessity of separation between public service and entrepreneurial activities, and inevitable corruption risks arising from such an amendment, the Defender, in their opinion on the proposed amendment, considered the provision of such a legislative regulation inadmissible, since it will in fact enable public officials to engage in entrepreneurial activities during their tenure. Hence, the Defender suggested to refrain from making such an amendment.

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### NHRI's recommendations to national and regional authorities

The Defender recommends the relevant authorities to refrain from pursuing policies which allow holders of public positions to engage in business activities (keeping and acquiring shares and stock in companies under the trust management scheme, etc.) while in office.

### Impact of measures taken in response to COVID-19 on the national rule of law environment

The Institution notes that the overall situation as regards the impact of COVID-19 and the measures taken to address it has improved since the 2021 report.

### Emergency regimes and related measures

Due to changes in the epidemic situation in the country related to the spread of the COVID-19 infection, the state of emergency, which was declared by the Government on March 16, 2020, was replaced by a quarantine regime on September 11, 2020. During the quarantine regime, several restrictions were imposed, but a number of them were not applied in 2021. The quarantine regime has not yet been revoked. In particular, restrictions on public events ceased to apply, and citizens were allowed to organize, hold, and participate in rallies, subject to the respect of the precautionary measures of wearing personal protective equipment and the maintaining of a distance of 1.5 meters between persons. As to the limitations on democratic participation and the suspension of elections, it is important to mention that in 2021, extraordinary Parliamentary elections and elections of local self-governing bodies eventually took place. As such, there were no limitations in regard to electoral process in 2021.

Throughout 2021, the ban on visiting penitentiary institutions was lifted and then re-established. It should be noted that the ban on visits concerned regular visitors, and did not apply to persons or bodies implementing their mandate and functions as provided for by law such as the Human Rights Defender and their authorized representative, Members of the Parliament, monitoring groups, and the lawyers of the accused. Visits were also prohibited in the military units of the Ministry of Defence of the Republic of Armenia living on-base, and visits to psychiatric and social care institutions were allowed only in the

absence of confirmed cases of COVID-19 infection and subject to the observance of precautionary measures.

In order to prevent the spread of the COVID-19 infection, a mandatory requirement to wear a mask indoors was established under the 2021 quarantine regime. As of November 21, 2021, a decree by the Minister of Health established a mandatory requirement to wear a mask in open public spaces.

A number of complaints were addressed to the Office of the Human Rights Defender following the mandatory requirement to wear a mask. Based on its analysis of the complaints, the Defender observed that the issues raised were not only related to incomplete legal regulations, but also to the arbitrary nature of police interventions and the lack of a uniform approach towards persons failing to respect the rules, as a result of which the legal obligations (wearing a mask) and the liability and sanctions for failing to respect them were not sufficiently clear to the citizens

The amendments to the Order N 65-Ն of the Minister of Health provided that the workers of state and local self-governing bodies, as well as other institutions and organizations should submit a negative result of the polymerase chain reaction (PCR test) diagnosis of coronavirus (COVID-19) - every 14 days in order to be able to access the workplace. The test certificate should not be older than 72 hours, except for workers who are pregnant, workers who are fully vaccinated or vaccinated with the first dose, or employees with documented contraindications to the vaccine. In this connection, it should be noted that, according to the Law on Minimum Monthly Salary, the minimum salary in Armenia is 68,000 AMD. The cost of PCR tests in the Republic of Armenia when the above mentioned legislative requirement established was 8000-15000 AMD. Considering the amount of the minimum wage, if the PCR test was to be submitted every 14 days, related costs would have mounted to almost half of a minimum monthly salary. Thus, the price of PCR tests did not make them accessible to everyone. As a result, the parts of the population in the most vulnerable socio-economic situation have borne the greatest financial burden as a result of these regulations.

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### **Actions taken by the NHRI to promote and protect rule of law and human rights in the crisis context**

In 2021, the Human Rights Defender, as an independent body monitoring the implementation of the provisions of the UN Convention on the Rights of Persons with Disabilities, conducted a situational analysis of the rights of persons with disabilities. The analysis also covered issues related to the protection of the rights of persons with disabilities during the COVID-19 pandemic. Within this framework, an assessment of the existing legislation and its application in specific spheres such as health care, education, employment, and participation in political, cultural life and sports was also conducted.

The results of monitoring and assessment were incorporated and included in an *ad hoc* report on the Rights of Persons with Disabilities. The *ad hoc* report highlights a number of issues which were regulated in cooperation with the Office of the Human Rights Defender, e.g., revision of various restrictions during COVID-19 related with masks, education rights, etc. The *ad hoc* report also addresses various legislative and practical issues related to the enjoyment of the rights of people with disabilities, which still remain unresolved. The results of the *ad hoc* report will be assessed during the elaboration of the annual report of the Human Rights Defender, based on annual monitoring, inquiries to CSOs and state agencies, as well as the analysis of individual complaints addressed to the Human Rights Defender, as the *ad hoc* report was published in February 2022.

The issues related to coronavirus in the Armed Forces, which were raised in complaints addressed to the Office of the Human Rights Defender (such as lack of leave periods and restrictions due to officials' refusal to vaccinate), and also identified during monitoring visits to military units, were discussed during the sessions of the Expert Council on Human Rights Protection in the Armed Forces adjunct to the Defender. The Council was established by the Defender in accordance with Article 33 of the Constitutional Law on Human Rights Defender, which states that the Defender may establish councils adjunct thereto, composed of the representatives of CSOs and independent specialists who have the necessary experience and knowledge in the relevant field. The members of the Council are invited by the Defender.

The Defender continued to receive complaints from citizens regarding the application of restrictions imposed in connection to the COVID-19 pandemic. The Defender brought the issues raised to the attention of the competent bodies, and proposed solutions aimed at

addressing them. The main interventions of the Defender are illustrated in the 2021 Annual report of the Defender.

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### **Most important challenges due to COVID-19 for the NHRI's functioning**

As most of the restrictions ceased to apply, the Office of the Human Rights Defender could progressively resume its activities without hindrances. In 2020, due to the restrictions in force and the martial law, the Office of the Human Rights Defender could only conduct 193 visits, while the number of visits increased to 567 in 2021, for a total of 760 visits conducted over the past two years.

At the same time, the Human Rights Defender's public relations development strategy was fundamentally changed in 2021 in accordance with the situation created by the spread of the COVID-19 pandemic. Awareness raising campaigns and public events have in fact been essentially moved online.

With regard to staff safety, the Defender's Office undertook necessary steps, including by acquiring protective equipment, to ensure the safety of employees.

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