

## COUNTRY REPORT: ARMENIA

### ENVIRONMENTAL PROTECTION IN THE CONTEXT OF THE NEW CONSTITUTION OF THE REPUBLIC OF ARMENIA

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On 6 December 2015 a Constitutional referendum was held in Armenia, and 62% voted 'YES' to the new Constitution which introduces fundamental amendments to the environmental provisions contained in the former Constitution.

Without prejudice to other provisions of the Constitution, in this country report we focus on approaches underlying the constitutional concept of environmental protection, the right to live in a healthy and favorable environment and the right of access to information, including environmental information. On 12 October 2015, prior to the referendum a public hearing was conducted at the Environmental Law Research Center (ELRC) of Yerevan State University with participation of members of the Constitutional Commission, academics, public officials, and representatives of NGOs and international organizations. This country report provides a comparative analysis between the actual text of the new Constitution and the proposals for changes submitted by ELRC as part of the public hearings.

#### **Environmental Protection as a Core Value**

Article 12 of the Constitution entitled 'Environmental protection and sustainable development' reads as follows:

1. The state promotes environmental protection and restoration, reasonable use of natural resources governed by the principle of sustainable development and taking into account responsibility towards future generations.
2. Everyone shall take care about the environmental protection.<sup>1</sup>

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<sup>1</sup> Translated from Armenian by the authors.

ELRC had suggested the following edition of the article: 'The state shall ensure environmental protection and restoration, the reasonable use of natural resources for the benefit of present and future generations' (underline added).

This suggestion essentially amounted to keeping Article 10 of the former Constitution with the corresponding additions and was substantiated on the basis that the clear formulation of norms regarding environmental protection and restoration, and reasonable use of natural resources, at the constitutional level is an important aspect of a modern Constitution, and is an aspect that was reflected in the former Constitution.

Protection of the environment is not only a fundamental value, but is also codified as a 'norm-goal' and 'norm-principle', which is indispensable for establishing human environmental rights, and for the definition of competences of the relevant public authorities at the Constitutional level as well as in legislation. The chapter within which Article 12 is reflected – namely the chapter providing the foundations for the Constitutional order – has fundamental importance in the context of the interpretation of other constitutional provisions. Given the importance of the provision the article 12 as included in the new Constitution therefore does not stand scrutiny for a number of reasons.

First, the word 'promote', is not sufficiently clear and nor strong enough to achieve environmental protection. It is not binding and, therefore, by using that verb the importance of the proactive role of the State in the sphere of environmental protection is significantly reduced.

Second, returning again to the legal certainty of constitutional formulations, the use of the term 'sustainable development' is problematic. Leaving aside the theoretical discourse on defense or criticism of the sustainable development concept a number of problems may arise due to the use of this term. There is no generally accepted legal definition of the concept and the content of sustainable development is therefore uncertain. Therefore, in this case fertile ground for contradictory interpretations is established through the use of this term. It is also not possible to form a clear understanding in the context of Article 12 as to whether sustainable development is perceived as a value (as environmental protection or as a principle).

Third, the expression 'taking into account responsibility towards future generations' in paragraph 1 of Article 12 is also vague and uncertain. The term 'responsibility' in the legal sphere is endowed with certain content, which is further developed in the current legislation. However, the use of this expression in the present context leads to an incorrect understanding of 'responsibility' as a legal term, creating some disruption from the classical interpretation within the theory of law and national practice as well.

It is absolutely clear and completely acceptable that the Constitution values protection and restoration of the environment, the reasonable use of natural resources for

future generations from the perspective of not causing negative impact to the environment. While the idea is well in line with the core constitutional values, its wording, in our opinion, is not consistent enough.

As a logical continuation of the ELRC's suggestions with regard to Article 12, the ELRC also proposed to make a corresponding addition to Article 86 of the then draft Constitution which defines primary policy objectives of the state in different spheres such as economic development, employment, social issues etc. The specific suggestion was to incorporate a new subparagraph addressing environmental protection. In particular, the ELRC proposed to add the following phrase to Art 86: 'ensuring environmental safety for present and future generations'.

A final criticism of Article 12 submitted by the ELRC on the draft Constitution was that the second part of Article 12 is not methodologically substantiated. It is simply inappropriate to impose a constitutional obligation on citizens to protect the environment in the chapter 'Basics of the Constitutional Order'. There is an obvious asymmetry between the state and the individual in terms of sharing the 'burden' to protect the environment in terms of Article 12 - 'the state promotes' while 'Everyone shall ...'. This approach appears to be manifestly inappropriate.

### **Right of Access to Information**

Article 51 of the Constitution establishes the right to access information as follows:

1. Everyone has the right to access data concerning the activities of public authorities, local government and respective officials and to acquaint with the documents.
2. The right to access data can be restricted only by law for the reason of protecting public interest or fundamental rights and freedoms of others.
3. The order to access data as well as the grounds for liability of officials for hiding or unlawfully rejecting access to data is prescribed by law.

The ELRC welcomed the approach in the Constitution to regulate the right to access to data (information) within a single provision. However, the following criticisms concerning this provision were recorded by the ELRC at the public hearings.

First, the content and meaning of the term 'data' is narrower than that of the term 'information'. The latter would have included records formed through, for example, processing or summarizing data while the former would seem to exclude such categories of information. The use of the term 'data' could therefore lay a foundation for limiting the scope of information accessible by the public.

Second, the expression 'data concerning the activities of public authorities, local government and respective officials' significantly narrows the scope of publicly available information. It is obvious that information about the activities is much more limited than information relevant to competences, which is not always directly linked to activities. In addition, the legal content of the word 'activity' itself is not clear. Therefore, ELRC had suggested corresponding replacement of this expression. Unfortunately, the ELRC's recommendations were not accepted.

### **Progress or Regress?**

The new Constitution does not envisage *the right to live in a healthy and favorable environment* which has raised serious concerns among civil society organizations and individual experts that are also shared also by the academic community. A particularly troubling question is why the new Constitution no longer incorporates such a right, which did exist in terms of the previous Constitution. This omission is particularly puzzling given the fact that the decision to bring about constitutional reform was *inter alia* based on the desire to strengthen and establish fundamental human rights. This is clearly evident from the Concept document which underpinned the amendment process. The document, which outlined the proposed amendments of the Constitution, states as follows:

*To overcome the existing half-solutions in the current Constitution and to complete systematic approaches the following is stated:*

- 1. The latest history of constitutional developments in the Republic of Armenia proved that due to both objective and subjective reasons the development of an independent statehood has not reached a stage to record that the democracy has a constant basis, human rights are reliably protected, (underline added) ....*
- 2. In terms of methodology it is necessary to make a coherent transition from the authority-centered system of constitutional solutions to anthropocentric system, which could not be fully implemented within constitutional reforms in 2005. This in turn implies creation of necessary and sufficient preconditions for the realization of the constitutional principle "rule of law" (underline added).*
- 3. Rule of law, constituting the essence of the legal state implies, that human rights must be constitutionally fixed, legally guaranteed, protected and provided with adequate procedural solutions.*

Given these fundamental objectives of the reform, it is entirely unexpected and surprising that the drafters of the new Constitution stepped back from including the right to live in a healthy and favorable environment in the new Constitution. The ELRC deeply believes this

to be a serious drawback of the new Constitution<sup>2</sup>. Unlike the former Constitution, the new Constitution also does not incorporate the *duty to protect and improve the environment individually or jointly with others*, which the ELRC considers to be of vital importance to any society in terms of valuation of public goods.

As a conclusion we find that the new Constitutional solutions in the sphere of protection of the environment and the right to live in a healthy and favorable environment undermine the importance of the environment as a core value and are not efficient in terms of further progressive development of the current legislation.

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<sup>2</sup> Analysis of ELRC concerning environmental human rights in the new Constitution has been widely shared and covered by national media and also posted on the web-page of the Armenian Aarhus Centres – [www.aarhus.am](http://www.aarhus.am).