

“The A.D. Sakharov Armenian Human Rights Protection Center”, NGO presented its opinion to the Ministry of Finance of the Republic of Armenia on the “Unified Website of Legal Acts Projects Publication” (<https://www.e-draft.am/projects/2060/about>) published in the “Government of the Republic of Armenia amending and supplementing the decree of December 24, 2003, No. 1937-N and declaring void the Government of Armenia decree of April 29, 2010, No. 566-N” Decree of the Government of the Republic of Armenia (hereinafter referred to as Decree).

1. In our opinion, this draft needs to be reviewed and refined in terms of structure and content, and the arrangements for subsidies and grants should be separated and developed separately.
2. This draft should first of all comply with the requirements of the RA Law on “Non-Governmental Organizations” (hereinafter Law), RA Law on “Principles of Administrative Proceedings”, Administrative Offenses and RA Civil Codes, as well as RA Administrative and Civil Procedure Codes. Therefore, this draft should be presented to the public as a package.

If this decision specifies that a commission will be set up, which in its turn will conduct tenders on behalf of the state, then it is assumed that the participating NGO should have a legitimate expectation that the actions and inaction of the tender committee will be followed by subsequent decisions and may be litigated with administrative and/or judicial procedures.

However, it is not clear from the contents of this draft whether this committee is an administrative body or not, or whether its decision will be considered an administrative act or not, and if not, why and what status they will have, or they will be challenged in civil or administrative proceedings, as well as the relationship between the non-governmental organization and the commission involved and what the mechanisms of accountability for each of them will be and what will be regulated by law or regulations, or what will be the role of the Ministry of Finance in case of disputes arising. There are many questions that can arise during court litigation.

3. The content of the definition of the new point in this draft is also unclear (see paragraph 10.1 of the draft) according to which if a grant contract is signed with a grantee and the grant is not provided within six months, that contract may be terminated.

If there is such a prerequisite that the grant may not be awarded for up to six months after the contract is concluded, then what is the point of holding a tender and signing a contract. It should be noted that in such a case we will be subject to legal “contract and law” as defined by the Civil Code of the Republic of Armenia, according to which the termination of the contract on the initiative of one of the parties, either prematurely or on the basis of non-fulfillment of the contractual obligations, will then be subject of liability to the other party. Therefore, the question arises whether the authors of the project thought about this or not, and what justifications they have in this regard.

4. We agree with the Armenian Lawyer Association's opinion that the requirements of Article 6 (Parts 1-2) of the RA Constitution and Article 46 of the RA Law on “Normative Legal Acts” have not been taken into account in the development of this draft law; therefore it should be revised and re-processed in accordance with the requirements of the current legislation of the Republic of Armenia and after be publicized.
5. Of course, this draft developed by the Ministry of Finance should also reflect the requirements of Article 9 of the current RA Law on “Non Governmental Organizations”, clarify the content of this article and elaborate the mechanisms ensuring its implementation, rather than relying solely on the RA State Budget Law or the local act of the Government of the Republic of Armenia, which in its turn does not comply with the requirement of the RA Law on Normative Legal Acts.
6. By the way, as additional information: the RA State Revenue Committee, in accordance with the RA Law on “Non-Governmental Organizations”, is recognized as a state authorized body and has put into circulation a Draft Law on Amendments to the Law developed by itself and a number of

NGOs, which has not yet been adopted. The current law has a number of regulations, including the procedure for NGOs to submit financial reports and to audit.

Although the RA legislation does not yet clearly define the concepts of “grant”, “non-governmental organization”, “public interest”, “volunteering” or “volunteer” and other important concepts related to civil society structures and their activities, it should first of all be developed a draft law amending that law, and then submitting the amended draft for public discussion.

Therefore, based on the above, we propose to the Ministry of Finance to withdraw this draft law from circulation only after jointly discussing and revising it with our concerned NGOs submit it for public discussion.

At the same time, we propose to further establish an official website and digitize all announcements, all necessary documents related to the tendering and submission process, and to create an electronic platform for communication and submitting applications.

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