

A N A L Y S I S

On the ethics, conflict of interest, activity restrictions defined by the Republic of Armenia Law on “Public Service” as well as by other laws defining the characteristics of other sectors of public service and in that regard legislative regulations for the application of liability measures

Introduction

The current analysis aims at raising the gaps of the ethics, conflict of interest, activity restrictions issues as prescribed in the RA Law on “Public Service” and in sectoral laws regulating public service, and in that regard lack of the application of liability measures, incompatibilities, similar regulations and present recommendations directed towards the unification of legislative regulation, as well as towards the establishment of the relevant system regulating the ethics, conflict of interest and activity restriction issues for public servants and high-ranking officials.

The following provisions and regulations were the main subjects for the analysis:

1. Issues regarding the ethics rules, ethics commissions and the maintainance of ethics rules in the scope of exercising public servant’s duties, as prescribed by Article 28 of the RA Law on “Public Service” as well as by other sectoral laws regulating the public service.
2. The legal regulations of restriction and other activity restrictions of high-ranking officials prescribed by Articles 23, 24 and 29 of the RA Law on “Public Service”.
3. The legal regulations of conflict of interest prescribed by Article 30 of the RA Law on “Public Service”.
4. The regulations regarding the obligation of declaration of income, property and related persons prescribed by Article 32 of the RA Law on “Public Service”.

5. The regulations regarding the application of administrative sanctions towards the public servant and high-ranking official for the violation of codes of conduct, as well as the prohibitions and activity restrictions.

Within the framework of the Analysis, the provisions of the above mentioned articles were compared with the respective provisions of the laws mentioned below regulating the separate sectors of public service:

1. RA Law on “Civil Service”
2. RA Law on “Tax Service”
3. RA Law on “Customs Service”
4. RA Law on “State Service in the Staff of the RA National Assembly”
5. RA Law on “Diplomatic Service”
6. RA Law on “Police Service”
7. RA Law on “Penitentiary Service”
8. RA Law on “Judicial Acts Compulsory Enforcement Service”,
9. RA Law on “Rescue Service”
10. RA Law on “The Service within the National Security Bodies”
11. RA Law on “Judicial Service”
12. RA Law on “Special Investigation Service”
13. RA Law on “Investigative Committee”
14. RA Law on “The Service within the Department of the Investigative Committee”
15. RA Law on “The Prosecution” (in regard to the prosecutors and prosecution servants)
16. RA Law on “The Constitutional Court” (in regard to the members of the Constitution Court and judicial servants within the staff of the Court)
17. RA Law on “The Human Rights Defender” (in regard to the Omboudsman and the Staff)
18. RA Criminal Code

19. RA Law on “The Rules of Procedure of the National Assembly”¹

20. RA Law on “Local Self-Government”

21. RA Law on “Community Service”.

1. ETHICS

1.1. Ethics rules (conduct) for public servants and high-ranking official.

Ethics rules are prescribed by Article 28 of the RA Law on “Public Service”.

Ethics rules prescribed by the RA Law on “Public Service” are applicable for municipal servants.

Ethics rules for the deputies and judges are prescribed by the sectoral laws.

The regulations of ethics rules for certain public servants are legally reserved to the superior bodies. In particular:

- Ethics rules for the civil servants are defined by the RA Civil Service Council of the Republic of Armenia,
- ethics rules for tax, diplomatic servants and compulsory enforcement officers are prescribed by the RA Government,
- ethics rules for custom servants and people carrying state service within the Republic of Armenia National Assembly are prescribed by the head of the custom’s body and the President of the National Assembly respectively,
- ethics rules for the prosecutors are confirmed by the Republic of Armenia Prosecutor General, for the court servant by the Council of Court’s President, for the state servants of the Republic of Armenia Department of Investigative Committee by the Preident of the Committee respectively.

The prvisions of the Republic of Armenia Law on “Judicial Service” are reffered to the ethics rules of the Staff of the RA Constitutional Court and Human Rights Defender Office insofar as the latter do not contradict the respective sectoral laws.

¹ Lost the force on 18.05.2017.

The Human Rights Defender, the members of the Constitution Court, as well as the members of the City Council lack the direct legislative regulations of the ethics rules.

Disciplinary rules for the investigators, policemen, servicemen in the Investigative Committee, National Security Service and Penitentiary Institutions are prescribed, which may be considered as ethics rules.

Though, the ethics rules prescribed by the RA Law on “Public Service” are applicable for the high-ranking officials, in regard to the public servants it should be recorded, that separate ethics rules for all the groups of public servants are not defined and in this regard, there is no united approach at legislative level.

Taking into consideration the circumstance, that ethics rules are fundamentally different from one another, it is recommended to unite the legislative regulations. In this regard, it should also be mentioned, that the ethics rules, as prescribed by the current legislation, are too common, which does not enable to specify the ethics rules. Some ethics rules are closer to the principals of codes of conduct and their application implies excessive discretion (for example, the ethics rule “Respect the law and abide by the law” prescribed by the RA Law on “Public Service”, by which any violation of the Law is observed, including violations, for which administrative sanctions are envisaged). Regarding this problem, any of the following solutions can be applied:

- a) Standardization of the ethics rules at legislative level, stemming the latter from the guiding principals of ethics, which limits the flexibility for defining new codes of conduct or in the procedure for changing the current rules,
- b) definition of the codes of conduct stemming from the guiding principals of ethics (additional codes of conduct stemming from the guiding principals of ethics rules in regard to other public servants) at the level of codes.

In all cases, the recommended regulations do not relate the codes of conduct of members of parliament, judges and prosecutors.

1.2. The obligation of the public servant in the context of maintaining the ethics rules (conduct) is prescribed by Paragraph 8 of Article 21 of the RA Law on “Public Service”.

The maintainance of the ethics rules as an obligation for the public servants are fixed by the majority of the laws regulating the considered services. Therefore, such obligation is not envisaged for the investigators, policemen, as well as for the servants in penitentiary, rescue and national security bodies. An obligation to maintain disciplinary rules are prescribed for the latter.

In accordance with the RA Law on “Self Local-Government”, while implementing their duties, the member of the community council is obliged to be governed by the law and principles targeted at the well-being of the community and there is no regulation in regard to the head of the community.

A direct obligation for the high-ranking officials to maintain ethics rules is not prescribed by the RA Law on “Public Service”.

In regard to the above mentioned, it is recommended to have direct definition of the obligation to follow the codes of conduct stemming from the guiding principals of ethics rules for the high-ranking officials (with the exception of deputies, judges and prosecutors”) prescribed by the RA Law on “Public Service”, taking into consideration the fact, that in a line with Article 39 of the RA Constitution, no one can bear obligation not prescribed by law.

With respect to the public servants, the above mentioned obligation is recommended to define only by the sectoral laws of the services, which will be omitted from the RA Law on “Public Sevice”.

1.3. Ethics commissions of the public servants

It is prescribed by the Article 38 of the RA Law on “Public Service”, that ethics commissions for public servants are established in the bodies foreseen by Article 2 of the Law.

Provisions related to the establishment of ethics commissions are contained also in the RA Law on “Civil Service”, by which the formation, activity order, as well as the authority of definition of their functions are vested to the Civil Service Council.

As for the head and the member of the community, there is no legal provision prescribed for the formation of ethics commissions.

The issues regarding the violations of the ethics rules by the servants regulating a number of activity types of public service are discussed in the service or disciplinary commissions of the respective body.

In accordance with the RA Laws on “Tax Service” and “Customs Service”, the commissions on service investigation of the respective tax and custom’s bodies examine also the cases of codes of conduct violations by the servants within the tax and custom bodies. There are no provisions regarding the ethics commission, which examines the cases of codes of conduct violations in other public service laws. Instead, there are disciplinary commissions for the police, as well as for the servants in penitentiary, rescue and national security bodies, which discuss the violations of disciplinary rules, including the violations of codes of conduct.

1.4. The proceeding initiated for the violation of ethics (conduct) rules

Article 44 of the RA Law on “Public Service” relates the proceeding instituted by the Commission on Ethics of High-Ranking Officials.

Separate orders regarding the proceeding instituted in relation to the ethics rules violations are prescribed by the RA Judicial Code, as well as by the RA Laws on “The Rules of Procedure of the National Assembly”, “Prosecution” and “Investigative Committee of the Republic of Armenia”.

No other procedures regarding the violations of ethics rules or codes of conduct by other sectoral laws of public service are prescribed. In separate cases, an investigation

procedure is prescribed, by the outcomes of which disciplinary sanctioning measures can be applied.

There are no relevant provisions regarding the violations of ethics rules by high-ranking officials of separate groups, including the member of the Constitution Court, the head and the member of the community, as well as by the separate subject holding discretion position.

The current situation, in broad terms, is an outcome of the failure of the ethics institute in public service. With respect to this, the procedure of the service investigation regarding the disciplinary sanctioning should clearly be separated from the procedures of conducting proceedings on the violation of ethics rules (conduct) by the ethics commissions.

2. The restrictions (prohibition) applied towards public servant and high-ranking official

2.1. “The public servant and high-ranking official is prohibited to”:

The restrictions, as prescribed by Paragraph 1 of Article 23 of the RA Law on “Public Service” are mainly preserved in all the considered laws with the following characteristics:

1) “be representative of third parties in relations/in connection with the body where s/he serves or which is directly subordinated to him/her or controlled by him/her”.

In this regard, the definition in the sectoral laws are mainly the same. The definitions “be an authorized representative of the third party in custom bodies” prescribed by the RA Law on “Custom Service” and “be a third party representative, with the exception of cases, when he/she represents his/her family member or the persons under his/her guardianship” prescribed by the RA Law on “Prosecution” for the prosecutors are prescribed in the respective laws.

By the RA Law on “The Service within the Department of the Investigative Committee”, in addition to the above mentioned restriction, the restriction “be a

representative, with the exception of being a legal representative and cases of acting ex-officio” is also prescribed.

The restriction is not prescribed for the members of the Constitution Court, Human Rights Defender, Members of Parliament, the Head of the Community and Member of the Community Council.

Taking into consideration the circumstance, that the mentioned restriction in all the mentioned laws is actually repeated, it is necessary to reflect the latter only in the RA Law on “Public Service”, considering the fact, that for example, by the RA Laws on “Special Investigation Service” and “Investigative Committee” a direct reference to the restrictions prescribed by the RA Law on “Public Service” is made.

2) “Use his/her service position to secure actual advantages or privileges to political parties, and non-governmental, including religious associations”.

In this regard, the definitions reflected in sectoral laws can conditionally be combined. Thus, the definition “implement violations of the principle of the political restraint of the Civil Servants, that is, to use his/her service position in the interests of parties, non-governmental organizations, including religious associations, proselytize in their favor or implement other political or religious activities while carrying out his/her service duties” is implied by the RA Law on “Civil Service”. Such definitions are also implied in the RA Laws on “Local Self Government”, “Service in the Police”, “The Service within the Department of the Investigative Committee”, “Diplomatic Service” and “The State Service in the Staff of the RA National Assembly”.

The mentioned restriction is a part of “being a party member” restriction. The majority of the sectoral laws are implied with the mentioned respective definition.

In some cases, the restriction is complimented by the demand of political restraints and neutrality. The respective definition is reflected in the RA Judicial Code, as well as in the RA Laws on “Republic of Armenia Investigation Committee”, “The Service within the Department of the Investigative Committee” and “Prosecution” (in regard to the Staff).

The mentioned definition by the respective laws is not prescribed for the custom servants, deputies, as well as for the head and the members of the community.

Taking into consideration the above mentioned, the cited restriction is recommended to reflect in the RA Law on “Public Service”. At the same time, the restriction of a membership to political parties as a peculiarity or self-restraints of the public servants and certain groups of officials are recommended to be prescribed by separate laws.

3) “Receive honoraria for publications or presentations stemming from the discharge of his/her service responsibilities”.

In separate laws (RA Judicial Code, RA Laws on “Constitution Court”, “The Service within the National Security Bodies”, “Human Rights Defender” and “Local Self-Government”), the mentioned restriction is not reflected.

Other sectoral laws regulating public service contain the same mentioned restriction’s definition as prescribed by the RA Law on “Public Service”, with the exception of the RA Law on “Diplomatic Service”, where the receiving of the honoraria is specified with the phrase “from his/her service activity”.

Considering the above mentioned, the cited restriction is recommended to reflect only in the RA Law on “Public Service” and its exceptions in other laws, in case of its necessity for justification.

4) “Use for non-official purposes the logistical, financial and informational resources, state and (or) community property and official information”.

In a number of laws, the mentioned restriction does not essentially differ from the respective definition of the RA Law on “Public Service”.

In separate laws (Ra Judicial Code, RA Laws on “Constitution Court”, “The Service within the National Security Bodies”, “Human Rights Defender” and “Local Self-Government”), the mentioned restriction is not reflected.

In the RA Laws on “Special Investigation Service” and “RA Investigative Committee” a reference to the respective Article of the RA Law on “Public Service” is made and the same

restriction in regard to the servants of civil, customs, Investigative Committees's Department, penitentiary institutions, compulsory enforcement officers and policemen is simply repeated in the respective laws.

The mentioned restriction for certain public servants is essentially repeated specified by the phrase "in relation to the property of the given service". In particular, such definitions are contained in the laws regulating customs, diplomatic, judicial, community, rescue services, as well as services in the national security bodies. The provision for the judicial servants are applicable for the servants within the staffs of the Constitution Court, Prosecutor General's Office and Human Rights Defender's Office.

Taking into account the above mentioned, the cited restriction is recommended to reflect only in the RA Law on "Public Service" and in other laws make a reference to it.

5) "Receive gifts, money or services in relation to the discharge of his/her service responsibilities, save for cases prescribed by the legislation of the Republic of Armenia".

In separate laws (RA Laws on "Constitution Court", "The Service within the National Security Bodies", "Human Rights Defender" and "Local Self-Government"), the mentioned restriction is not reflected.

The restriction of receiving gifts in regard to the judges is prescribed by the RA Judicial Code, the regulations of which are partially in a line with the respective legal regulations prescribed by the RA Law on "Public Service".

The regulations regarding the receiving of gifts are recommended to unite and to reflect the mentioned restriction only in the RA Law on "Public Service" and in other laws make a reference to it.

6) "As a representative of the state, conclude property transactions with persons closely related to him/her or his/her in-laws (parent, spouse, child, brother,

sister, spouse’s parent, child, brother, and sister), save for cases prescribed by the legislation of the Republic of Armenia

The mentioned restriction is repeated in the laws regulating tax, customs services, as well as the RA Laws on the “State Service in the Staff of the RA National Assembly”, “Local Self-Government” and in the RA Laws on “Special Investigation Service” and “Republic of Armenia Investigative Committee” a reference to the respective Article of the RA Law on “Public Service” is made.

The mentioned restriction is not reflected in the considered other laws.

The mentioned restriction is recommended to reflect only in the RA Law on “Public Service” and in other laws make a reference to it.

Besides, the legal regulations concerning the mentioned restriction needs to be clarified making the issue of defining the restriction for the community bodies a matter of discussion.

7) “Work jointly with persons closely related to him/her or his/her in-laws (parent, spouse, child, brother, sister, spouse’s parent, child, brother, and sister) if their service is related to immediate subordination or control of each other (excluding deputies)”.

In accordance with the RA Law on “Public Service”, the mentioned restriction does not apply to deputies. The mentioned restriction, by the respective laws, is not applied to the members of the Constitution Court, judges and the Human Rights Defender.

The mentioned restriction is repeated in the respective laws for the civil, tax, custom, state service within the Staff of the National Assembly, diplomatic, judicial, prosecution, Department of the Investigative Committee, community, police, compulsory enforcement and rescue servants, as well as for the prosecutions and in the RA Laws on “Special Investigation Service” and “Republic of Armenia Investigative Committee” a reference to the respective article of the RA Law on “Public Service” is made.

In accordance with the RA Law on “Local Self-Government”, the member of the Community Council is obliged not to participated in the voting process of the decisions related to his/her interests, as well as to the interests of his/her family members and persons closely related to him/her (parent, sister, brother, child). That specificity is difficult to consider equall to the restriction of “joint work”.

In the RA Laws on “The Service within the National Security Bodies” and “Penitentiary Service”, the scope of the “persons closely related to him/her or his/her in-laws” is changed, where the persons are related to the official and his/her spouse by the “grandmother, grandfather” family relation.

It is recommended to reflect the above mentioned restriction only in the RA Law on “Public Service” and in other laws establish the scope of the close relations, in in-laws connection grounded only by sectoral peculiarities. The established exception concerning the restriction applied to the deputies is recommended to be reviewed.

8) “Within one year following the release from post, be admitted to work with the employer or become the employee of the organization over which s/he has exercised immediate supervision in the last year of his/her tenure”.

The mentioned restriction is very problematic from the point of its nature, as well as its application towards the separate groups of position.

Due to the mentioned reason, that restriction is not reflected in the majority of laws.

The restriction is reflected in RA Laws on “Civil Service”, “Service in the Police”, “Service within the National Security Bodies” and in the RA Laws on “Special Investigation Service” and “Republic of Armeania Investigative Committee” a reference to the respective article of the RA Law on “Public Service” is made. Instead of the period “Within one year following the release from post” the RA Law on “Tax Service” prescribes the period “Within three years following the release from tax post”. The restriction is essentially strict for the tax servants.

On the other hand, the circumstance of the limited labor market should also be taken into consideration, which can lead to difficulties for the dismissed official for finding a job in compliance with his/her professional qualifications.

It is recommended to discuss the issue of the legal enshrinment of the mentioned restriction grounded by the lack of effective mechanism for its application. The legislative prescription of the restriction is recommended to reflect in the RA Law on “Public Service” and in other laws establish an exception in that regard.

2.2. Participation (share, stoke) in the charter capital of commercial organizations

“The public servant must within one month following his/her appointment to office and in case s/he has 10 and more per cent of shares (share, stoke) in the charter capital of commercial organizations hand them over to entrusted management. The public servant has a right to receive income from the property handed over to entrusted management”.

The mentioned restriction prescribed by the RA Law on “Public Service” is also reflected in a number of laws regulating separate sectors of public service.

The RA Law on “Tax Service” lacks the definition “the servant has a right to receive income from the property handed over to entrusted managemet”. In regard to this restriction refleced in the RA Laws on “Special Investigation Service” and “Republic of Armenia Investigative Committee”, a reference to the respective article of the RA Law on “Public Sevice” is made.

The mentioned restriction is not clearly prescribed regarding judicial servnats, servnats within the staffs of prosecution, Constitution Court, Human Rights Defender, as well as in terms of judges, prosecutors and local self-government bodies.

A more detailed definition is prescribed by the RA Law on “The Service within the National Security Bodies” RA Judicial Code, which is not essentially different from the respective provision prescribed by the RA Law on “Public Service”.

The mentioned important provision should be united in the RA Law on “Public Service” and in terms of other laws make a reference to it.

2.3. Prohibition on receiving gifts

The current restriction is prescribed in separate article by the RA Law on “Public Service” and RA Judicial Code. Concerning the mentioned restriction in the RA Laws on “Special Investigation Service” and “Republic of Armenia Investigative Committee”, a reference to the respective provisions of the RA Law on “Public Service” is made. Prohibition on receiving gifts is not prescribed by other sectoral laws.

It is recommended to compare the requirements of the prohibition on receiving gifts with Paragraph 6 “receive gifts in relation to the discharge of his/her service responsibilities...” of Article 23 of the RA Law on “Public Service” to consider the latter under on united restriction.

3. Restriction of other activities of public servant

3.1. “The public servant or high-ranking public official may not engage in entrepreneurship individually”.

The legislative regulation of the mentioned restriction in the considered laws are mainly the same. The provision of the restriction is samely repeated in the RA Laws on “Constitution Court”, “Human Rights Defender”, “The Service within the National Security Bodies” and “Local Self-Government” with the wording of “may not”.

In the majority of the considered laws, the wording “may not” is applied (law on civil, custom, diplomatic service, as well as the laws on the service in the Staff of the RA National Assembly, Judicial Department, Staff of the Prosecutor’s Office, Police, Rescue, National Security, Penitentiary, Compulsory Enforcement, Community, RA Judicial Department, RA Law on “Prosecution”).

In the RA Laws on “Special Investigation Service” and “Republic of Armenia Investigative Committee” regarding the mentioned restriction, one more reference to the respective article of the RA Law on “Public Service” is made.

Taking into consideration the fact, that in all the laws, the respective regulation is the same without any peculiarity, the mentioned restriction is recommended to define only in the RA Law on “Public Service” and in other laws make a reference to it. At the same time, considering the incompatibilities of its enshrinment at constitution level, including also the restriction to entrepreneurship, in that regard it is more convenient to refuse the legislative definition of “individual” term.

3.1.1. Within the meaning of the Law on “Public Service”, entrepreneurship means:

- 1) private entrepreneur,**
- 2) shareholder of a commercial organization, save for cases when the shares of the shareholder of a commercial organization has been completely handed over to entrusted management,**
- 3) holding a post in a commercial organization, being a trust manager of the property of a commercial organization or in any other way being involved in the performance of representative, administrative or managerial functions of a commercial organization.**

The mentioned provisions of the RA Law on “Public Service” needs a review in the light of separating the restrictions to entrepreneurship and holding a position in a commercial organization as prescribed at constitution level.

At the same time, the content of above mentioned, each incompatibility requirement needs to be reviewed.

In the context of the unification of the incompatibility requirements, the detection of all the main incompatibility requirement in terms of their content is highlighted in the RA Law on “Public Service” and in other laws a reference is made to it. The mentioned circumstance is also highlighted in terms of the oversight over the maintainance of the

incompatibility requirements by one body. As for the laws, which are not “covered” by the application of the mentioned provision as prescribed by the RA Law on “Public Service”, it is recommended to adjust their relevant provisions with the respective provision of the RA Law on “Public Service”.

Additional requirements of incompatibility can be prescribed by other laws.

3.2. “Perform other paid work, save for scientific, academic, creative work...”.

“Perform other paid work, save for scientific, academic, creative work or work stemming from the status of the member of an electoral commission, cases as prescribed by the the Electoral Code of the Republic of Armenia”.

The mentioned restriction is repeated in all the considered laws. Therefore, in some laws, the later in complimented with the restrictions “hold other state position” (RA Laws on “Tax Service” and on “Customs Service”) or with the restriction “hold any position not related to his or her status within other public or local self-government bodies (RA Judicial Code, RA Laws on “Prosecution”, “Constitution Court”, “Human Rights Defender”, “The Rules of Procedure of the National Assembly”, “Service within the National Security Bodies”.

In the context of ensuring the unification of incompatibility requirements, the detection of the main incompatibility requirements, including the detection of the content, are highlighted in terms of its content in the RA Law on “Public Service” in a line with the new constitution regulations and in other laws made a reference to it.

4. Conflict of Interest

Within the meaning of the RA Law on “Public Service”, the regulations regarding the conflict of interest apply only to high-ranking officials. Provisions on conflict of interest are contained in the RA Judicial Code (including under the provision of “the conduct of a

person holding the position of a judge”), as well as in the RA Law on “The Rules of Procedure of the National Assembly”.

It is recommended to apply the legislative regulations on conflict of interest also to the public officials reflecting the conflict of interest characteristics in the sectoral laws, if there are such. The questions needs solution in the context of comparing the review of current conflict of interest regulations (including conflict of interest prevention and management mechanisms).

5. Liability measures for the violation of restrictions (prohibitions)

Within the meaning of Article 47 of the RA Law on “Public Service”, in view of the peculiarities of state and municipal services, the grounds of dismissal from a public service posts are set by the laws of the Republic of Armenia on various categories of state service, as well as by municipal service. A ground of dismissal of a public servant from his/her post is also the violation of the requirements prescribed by Article 24 of the given law. It should be noted, that the mentioned provisions of the RA Law on “Public Service” do not relate to the high-ranking officials.

According to the RA Law on “The Rules of Procedure of the National Assembly”, violation of the incompatibility requirements prescribed at constitution level is a ground for the termination of a deputy’s powers.

Provisions regarding the earlier termination of the powers of the community council member and the chief of a community are respectively prescribed by Articles 22 and 26 of the RA Law on “Local Self-Government” (“The powers of the community council member and the chief of a community are terminated earlier, if the latter hold an inconsistent position”).

In accordance with Paragraph 3 of Article 14 of the RA Law on “Constitution Court”, based on the conclusion of the Constitution Court, the powers of the Member of the Court shall be terminated on the basis of a ruling of the Constitutional Court by the appointing

body when the Member violates the incompatibility restriction rules related to the Constitutional Court Member prescribed by the Law.

Within the meaning of Paragraph 2 of Article 153 of RA Judicial Code, “one of the grounds for subjecting the judge to disciplinary liability is the regular or a grave violation of the codes of conduct (Paragraph 3)”. According to Paragraph 3 of Article 157 of the Code “Applying to the RA President to terminate the powers of a judge”, the type of disciplinary sanction is applied, if in the outcomes of the regular or the grave disciplinary violation, he/she is incompatible for the position of a judge.

It is prescribed by Paragraph 2 of Article 193 of the amended Constitution dated 2016 that incompatibility requirements for the deputies also apply to the Human Rights Defender. Nevertheless, provisions regarding the violation of mentioned requirements are contained neither in the Constitution nor in the RA Law on “Human Rights Defender”.

The violation of the mentioned restrictions can be a ground for the dismissal of a person from the respective post:

- Such formulation is reflected in relation to the civil, tax, custom, Staff of the National Assembly, diplomatic, special investigative, Department of Investigative Committee, rescue and community servants regarding the non-compliance of the restrictions.
- A ground of dismissal of police, penitentiary institutions, compulsory-enforcement officers and national security bodies’ servants from their posts can also be “the failure to submit his/her asset and income declaration as prescribed by law”.
- The restriction violations by prosecutors and investigators of investigative committee can lead to disciplinary sanctioning. The issue regarding the dismissal is solved by the head of the given body.

Liability measure for the restriction violation are not established by the sectoral laws for the servants of Judicial Department, Prosecutor’s General, as well as for the servants within the staffs of the Constitution Court and Human Rights Defender.

According to the new regulations of the Constitution, violation of incompatibility requirements can be a ground of dismissal for a number of high-ranking officials (deputy, judge, member of Constitution independent body). In that regard, the legislative enshrinment of the provision leading to such outcome in regard to all persons holding public office and public service position with the establishment to the respective mechanisms is recommended.

Effective liability measures for the violations of restrictions (prohibitions) should be applied. In that regard, the prescribed regulations should apply to all the persons holding public office and public service position. At the same time, other regulations, in the context of the violation of restriction (prohibition) requirements by the people holding political positions should be considered, taking into consideration the status characteristics.

6. Liability measures for the violation of codes of conduct

Liability measures regarding the violation of public servants' ethics rule are not directly prescribed by the RA Law on "Public Service", meanwhile such rules are prescribed by a number of sectoral laws regulating public service. Particularly, disciplinary sanctions for the violation of codes of ethics are prescribed for tax, custom, diplomatic, compulsory, judicial department servants, as well as for the servants within the staffs of the Prosecutor's General Office, Department of the Investigative Committee and for judges and prosecutors.

A gross violation of ethics rules by the servants of tax, judicial, staff of the Prosecutor's General Office, Department of Investigative Committee is considered a ground for the dismissal from the position or service. Such provision is also applied to the prosecutors, with the exception of the RA Prosecutor General and his/her deputies.

Disciplinary liability measures for the violation of ethics rules is prescribed or not directly prescribed for the civil, community, Staff of the National Assembly, Special Investigation, Rescue, Penitentiary, National Security Bodies, Police services, as well as for

the servants within the staff of the Constitution Court and the Human Rights Defender Office, though for the latter liability measure regarding the violation of service or disciplinary rules are prescribed.

Taking into account the above mentioned, the liability measure for the violation of ethics rules are recommended to separate from the liability measures for the improper exercise of the service or the official duties.

It is also recommended to consider a provision on the application of liability measures for the violation of ethics rules by the RA Law on “Public Service”.