



**OFFICE OF THE HUMAN RIGHTS DEFENDER  
OF THE REPUBLIC OF ARMENIA  
PUBLIC RELATIONS UNIT**



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**The Government is obliged to ensure the participation of elected and detained members of the Council of Elders in the first sessions of those councils (justifications)**

20.12.2021

The Government, and specifically the Ministry of Justice, has a direct obligation to ensure that detained members of the Council of Elders, elected during the local self-government elections, participate in the first sessions, and are not deprived of their constitutional rights. This refers to the first session, during which the Heads of the community will be elected.

Complaints have been addressed to the Human Rights Defender in particular from Mr. Aram Harutyunyan and Mr. Mamikon Aslanyan, who participated in the local self-government elections and were elected as members of the Council of Elders of Vartenis and Vanadzor respectively. They are in the penitentiary institutions of the Ministry of Justice as detainees against whom criminal cases have been filed.

Both of them complained that their detentions were intended to prevent them from participating in the first sessions of the Council of Elders, in which case in both cases the votes would be distributed in such a way that neither Mr. Aram Harutyunyan nor Mr. Mamikon Aslanyan would be elected as Heads of their respective communities. Moreover, they will be deprived from their voting rights; that is their right to vote and/or get elected.

In addition, the Office of the Human Rights Defender registered alarming-calls about the pressure on the mentioned members of the Council of Elders after the detentions. They are portrayed in places, in their communities, as people who have already committed a crime and have been deprived of the opportunity to become Heads of their communities. This was specifically mentioned by the complainants.

Based on the complaints of Mr. Aram Harutyunyan and Mr. Mamikon Aslanyan, the private interviews held with them in the penitentiary institutions, and the analysis of the necessary documents, the Human Rights Defender registers the following.

First, the presumption of innocence is guaranteed to those members of the Council of Elders as a mandatory component of the right to a fair trial. Therefore, the way they are treated cannot violate this constitutional and international requirement.

In addition, the right to vote of every citizen of Armenia is guaranteed by the Constitution, and the Constitution itself lists the exhaustive range of permissible restrictions on that right.

According to Article 48(4) of the Constitution of the Republic of Armenia, "Persons who have been declared incompetent by a court decision that has legally entered into force, as well as those who have been convicted by a court decision that has legally entered into force to have committed grave crimes intentionally and are

serving their sentence, do not have the right to vote or get elected, and to participate in referendums. Persons convicted of other crimes by a court decision that has entered into force, and are serving their sentence, also do not have the right to be elected."

Therefore, the Constitution stipulates at least two mandatory conditions for depriving a citizen of the right to vote or get elected, which must exist at the same time: 1) being convicted; 2) serving a sentence. In the case of the right to be elected, the Constitution has gone further, stipulating protection from the deprivation of that right in case of any crime.

Pursuant to Article 42.2(1) of the Electoral Code (which has the status of Constitutional Law), "The election of the Head of the community is held during the first session of the newly elected Council of Elders."

In other words, the Constitution and the Electoral Code stipulate that in case of local self-government elections, the final exercise of the citizen of Armenia to be elected is not limited to being elected a member of the Council of Elders- it is resolved through the election of the Head of the community during the first session. In other words, the first session for the election of the Head of the community is an integral part of the process of exercising the citizen's right, which is guaranteed by the Constitution.

In the case of Vardenis and Vanadzor communities, the conditions required by Article 48 of the Constitution are not met: not even one of the mandatory conditions do not exist: 1) there is no convicted person, 2) and there is no serving of any sentence. The current situation is also problematic from the point of view of full realization of Armenian citizens' constitutional right to vote.

The issue is the fact that those citizens who were detained as a result of criminal cases are the leaders of political forces, and who have participated in the elections as candidates for Heads of their respective communities.

That is, citizens have elected them with the expectation that they would be the Heads of their respective communities. In other words, the exhaustive realization of the electoral rights of the citizens would be accomplished if the detained members of the Council of Elders participate in the first session during which the Head of the community would be elected.

This is the essence of representative democracy. This is how the system of democracy is formed in the country as a result of the right to vote. The same principle applies to parliamentary elections and the formation of a Government.

Therefore, in order to fully guarantee the constitutional right of the members of the Council of Elders Mr. Aram Harutyunyan (Vardenis) and Mr. Mamikon Aslanyan (Vanadzor) to be elected, the Government of Armenia, in particular, the Ministry of Justice, must ensure their participation in the first sessions of the Councils of Elders of their respective communities, exercising the right to vote by priority, with the following principle:

By releasing them from detention, which will ensure their full participation in the sessions of the Councils of Elders. Otherwise, the legitimacy of their further detention in the current situation requires the criminal prosecution bodies and courts to overcome a high threshold and justify with high standards, ensuring their physical participation in the Councils of Elders, even if still detained, ensuring their participation in council

meetings and exercising their right to be elected by Zoom, Skype, or any other means (while still in detention).

Failure to comply with any of the above points will violate the constitutional right to be elected, and it would be problematic in terms of the full exercise of the constitutional right to vote as well. Moreover, the issue is urgent considering the date of the first sessions of the Council of Elders.

As the mentioned members of the Council of Elders are in a state of deprivation of liberty (precautionary measure: detention), that is, in the penitentiary centers of the Ministry of Justice, then the exercise of their constitutional right to be elected must be ensured by the Government of Armenia, in particular, by the Ministry of Justice, regardless of the attitude of the criminal prosecuting body or the court that granted/satisfied the motion for detention.

In other words, the solution of this issue cannot depend on the will of the criminal prosecuting bodies investigating, because it is not related to the subject of the criminal case under investigation; besides, it is about the electoral rights guaranteed by the Constitution of Armenia, from which there are no grounds to deprive in any specific situation.

This statement of the Human Rights Defender of Armenia will be sent to the OSCE observation mission, other international organizations, observer organizations, as well as to the Central Electoral Commission.

That statement will be made in the text of the official inquiry of the Human Rights Defender of Armenia and will be sent to the Minister of Justice of Armenia, with a request for urgent explanations. In addition, the letter will be sent to the Prosecutor's Office according to its mandate.

**Mr. Arman Tatoyan**  
**The Human Rights Defender of Armenia**