ANNUAL REPORT

ON THE ACTIVITIES OF THE REPUBLIC OF ARMENIA HUMAN RIGHTS DEFENDER AND VIOLATIONS OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN THE COUNTRY DURING 2009

YEREVAN 2010

Contents

PART 1.
MAIN AREAS OF THE DEFENDER'S ACTIVITIES

1.1. Complaints and Complainants

1.1.1. Statistical Analysis of Complaints

During the period 1 January to 30 December 2009, the Human Rights Defender of the Republic of Armenia (hereinafter, "the Defender") received 3,783 complaints from 4,683 persons, of which 1,147 were written (including 42 petitions (collective complaints) lodged by 942 complainants) and 2,636 oral. During this period, favourable settlement was achieved for 78 complaints, resulting in the violated rights of 378 persons being restored.

Table 1 below compares the 2008 and 2009 average monthly numbers of complaints made to the Defender.

Table 1

Number of Complaints

	Total		Monthly Average			
	2008	2009	2008	2009	Difference	Percent Change
Total	4,090	3,783	341	315	-26	1.4 %
- written	1,227	1,147	102	96	-6	1.1 %
- oral	2,863	2,636	239	220	-19	92.1 %
Number of complainants	5,806	4,683	484	390	-94	80.6 %

Figure 1. Average Monthly Number of Complaints

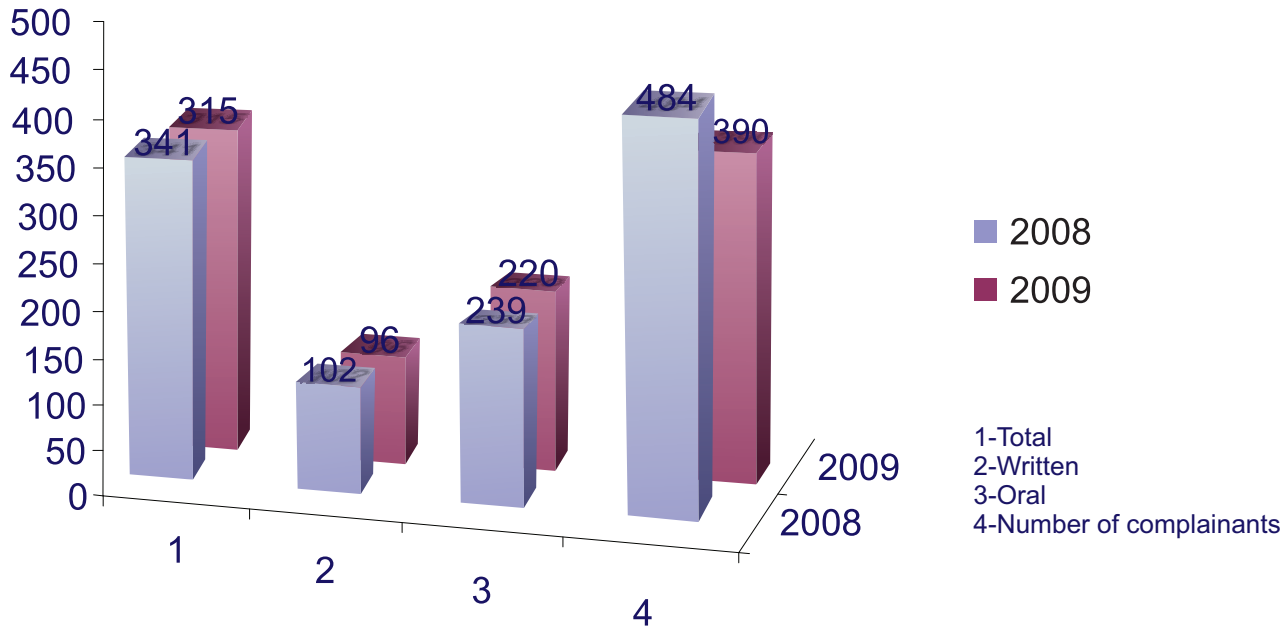


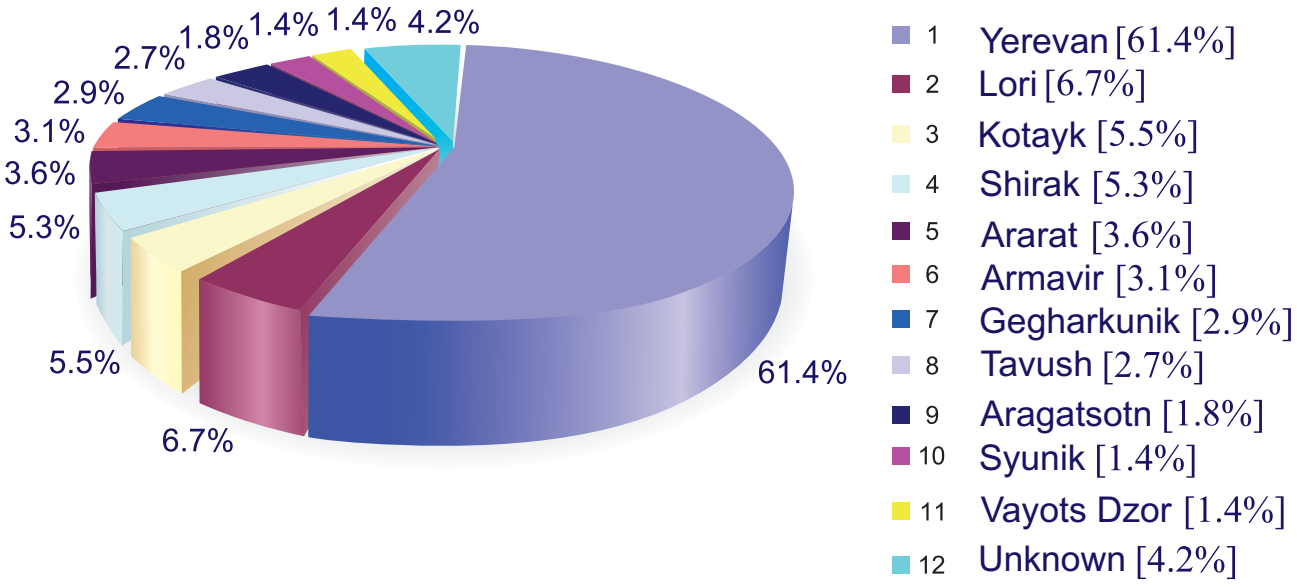
Table 1 reveals that the average monthly number of complaints to the Defender fell by 7.6 percent in 2009 compared to 2008 (5.9 percent for written and 7.9 percent for oral complaints), while the overall number of complainants declined by 19.4 percent. This trend is mainly due to a reduction in the number of complaints had to be dismissed by the Defender, which in turn reflects the citizens' increased awareness of the Defender's powers and the role of the Defender's institution.

During 2009, complaints alleging violations of human rights were received from residents of all the *marzes* (provinces) of Armenia, including residents of the capital city Yerevan, as illustrated in Table 2 (a breakdown of the number of complaints by administrative-territorial units of the Republic of Armenia).

Table 2

		2008		2009	
	Province	**Number**	**%**	**Number**	**%**
1.	Yerevan (city)	795	64.8	**704**	**61.4**
2.	Lori Marz	49	6.8	**77**	**6.7**
3.	Kotayk Marz	67	5.4	**63**	**5.5**
4.	Shirak Marz	68	4.4	**61**	**5.3**
5.	Ararat Marz	37	3.7	**41**	**3.6**
6.	Armavir Marz	42	1.9	**35**	**3.1**
7.	Gegharkunik Marz	45	2.6	**34**	**2.9**
8.	Tavush Marz	22	1.7	**31**	**2.7**
9.	Aragatsotn Marz	23	2	**21**	**1.8**
10.	Syunik Marz	23	2.1	**16**	**1.4**
11.	Vayotz Dzor Marz	13	1	**16**	**1.4**
12.	Unidentified[1]	43	2.6	**48**	**4.2**
	Total	**1,227**	**100**	**1,147**	**100**

Figure 2. Number and Percentage of Complaints Received by Administrative-Territorial Units of the Republic of Armenia, 2009



[1]Complaints in which complainants did not specify their address.

In 2009 – as in 2008 – complaints from the City of Yerevan accounted for the largest share of written complaints addressed to the Defender. The Table above also shows that in 2009, relative to 2008, the percentage of complaints from Vayotz Dzor, Tavush, Kotayk, and Gegharkunik provinces increased, while the relative percentage of complaints from Yerevan and other provinces declined.

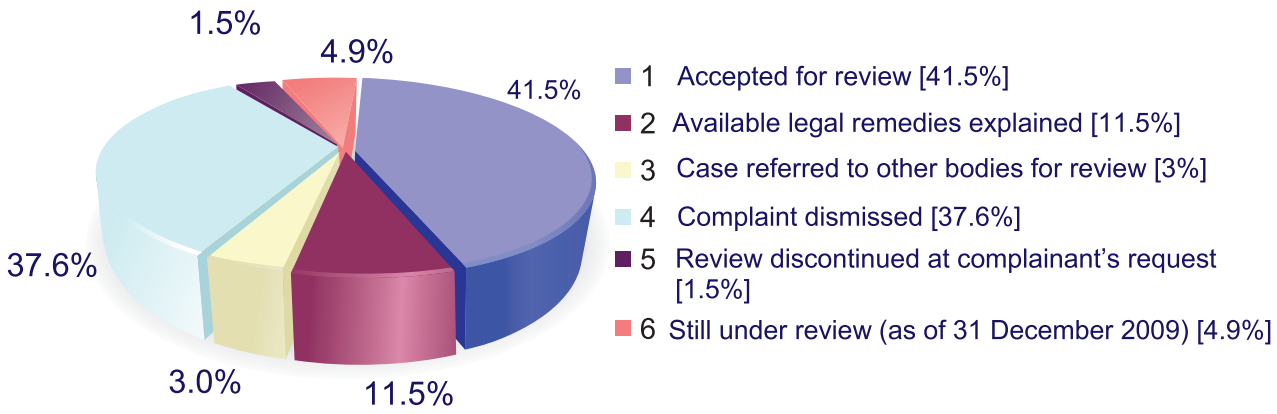
Table 3 shows decisions made on the written complaints received in 2009 as well as the number of complaints which were discontinued at the complainant's request or which were still undergoing review.

Table 3

Decisions Made on Written Complaints, 2009

		2009	
	Decision	**Number**	**%**
1.	Accepted for review	476	41.5
2.	Available legal remedies explained	132	11.5
3.	Case referred to other bodies for review	35	3.0
4.	Complaint dismissed	431	37.6
5.	Review discontinued at complainant's request	17	1.5
6.	Still under review (as of 31 December 2009)	56	4.9

Figure 3. Decisions Made on Written Complaints, 2009



In 2009, the Defender continued to receive complaints against non-state bodies and organizations or against individuals, as well as anonymous complaints and complaints that did not in the Defender's opinion represent a violation of human rights and fundamental freedoms or did not seek to have an issue resolved. Such complaints are dismissed in accordance with the procedure defined by law (Articles 7(2), 9, and 10 of the Republic of Armenia Law on the Human Rights Defender).

Table 3 shows that 431 complaints were dismissed on the grounds cited above. When a complaint is deemed to be inappropriate, the complaint review procedure stipulated by law is explained to the complainant. Those challenging the lawfulness and legal grounds of court decisions are informed of the legal consequences of such actions and the Defender's institutional principles of judicial independence and non-interference with the courts are explained.

More than half the complaints addressed to the Defender in 2009 were oral. These were received during the Defender's or his staff officials' visits to the provinces, government institutions, and organizations, as well as via citizens' visits to the Defender's staff or telephone calls.

As in previous years, some of those making oral complaints were not prepared to submit a written complaint or provide their name, surname, or address, claiming that they feared the negative consequences of lodging such an application. The Human Rights Defender's 2008 Annual Report provides further discussion of such cases.

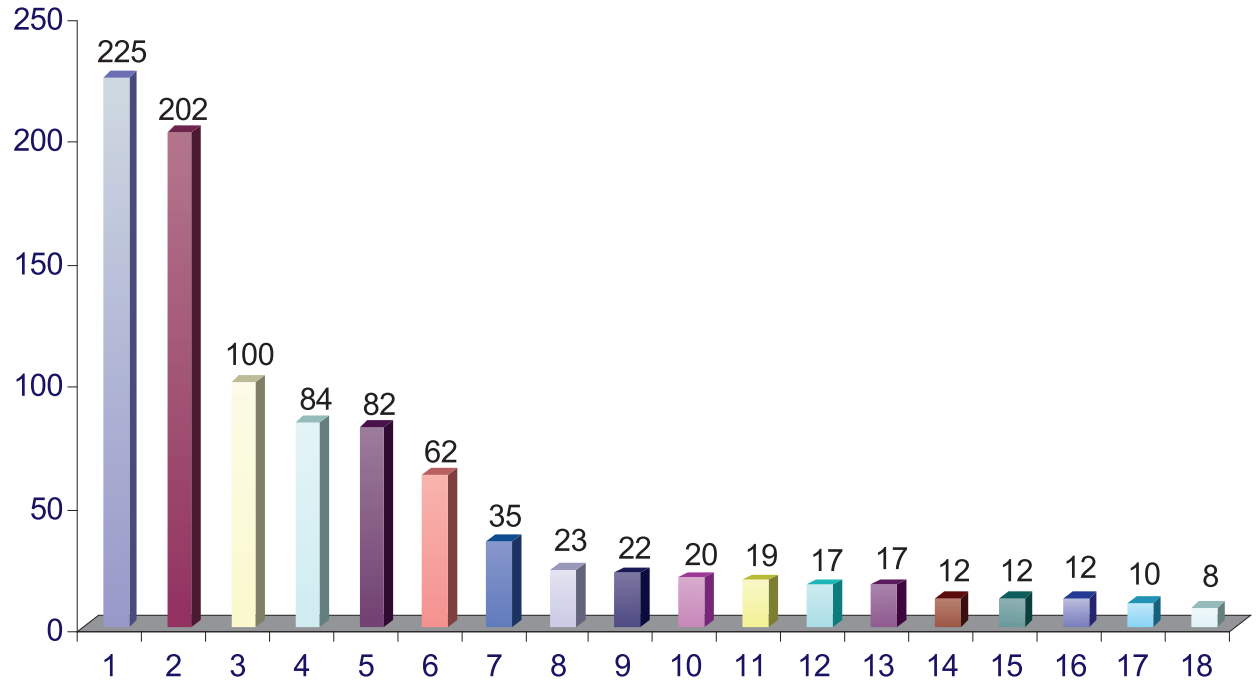
Table 4 shows the number of complaints received against public bodies. In 2009, most complaints were lodged against the police, courts, the RoA Ministry of Labor and Social Affairs, the Yerevan City Administration, and the RoA Ministry of Justice.

Table 4

Written Complaints Received Against Public Bodies in 2009

	Public Body	2009
1.	Police	**225**
2.	Courts	**202**
3.	RoA Ministry of Labor and Social Affairs	**100**
4.	Yerevan City Administration	84
5.	RoA Ministry of Justice	82
6.	RoA Ministry of Defense	62
7.	Prosecutor's Office	35
8.	Administrative districts of Yerevan	23
9.	National Security Service adjunct to the RoA Government	22
10.	Provincial Government (*marzpetarans*)	20
11.	RoA Ministry of Education and Science	19
12.	Village administrations	17
13.	Ministry of Territorial Administration (infrastructures)	17
14.	State Committee of the Real Estate Cadastre adjunct to the RoA Government	12
15.	RoA Government	12
16.	RoA Ministry of Health	12
17.	State Revenue Committee	10
18.	City/Town administrations (besides Yerevan city administration)	8

Figure 4. Written Complaints Received Against Public Bodies in 2009



1 Police [225]
2 Courts [202]
3 RoA Ministry of Labor and Social Affairs [100]
4 Yerevan City Administration [84]
5 RoA Ministry of Justice [82]
6 RoA Ministry of Defense [62]
7 Prosecutor's Office [35]
8 Administrative districts of Yerevan [23]
9 National Security Service adjunct to the RoA Government [22]
10 Provincial Government offices [20]
11 RoA Ministry of Education and Science [19]
12 Village administrations [17]
13 RoA Ministry of Territorial Administration (infrastructures) [17]
14 State Committee of the Real Estate Cadastre adjunct to the RoA Government [12]
15 RoA Government [12]
16 RoA Ministry of Health [12]
17 State Revenue Committee [10]
18 City & town administrations (besides Yerevan city administration) [8]

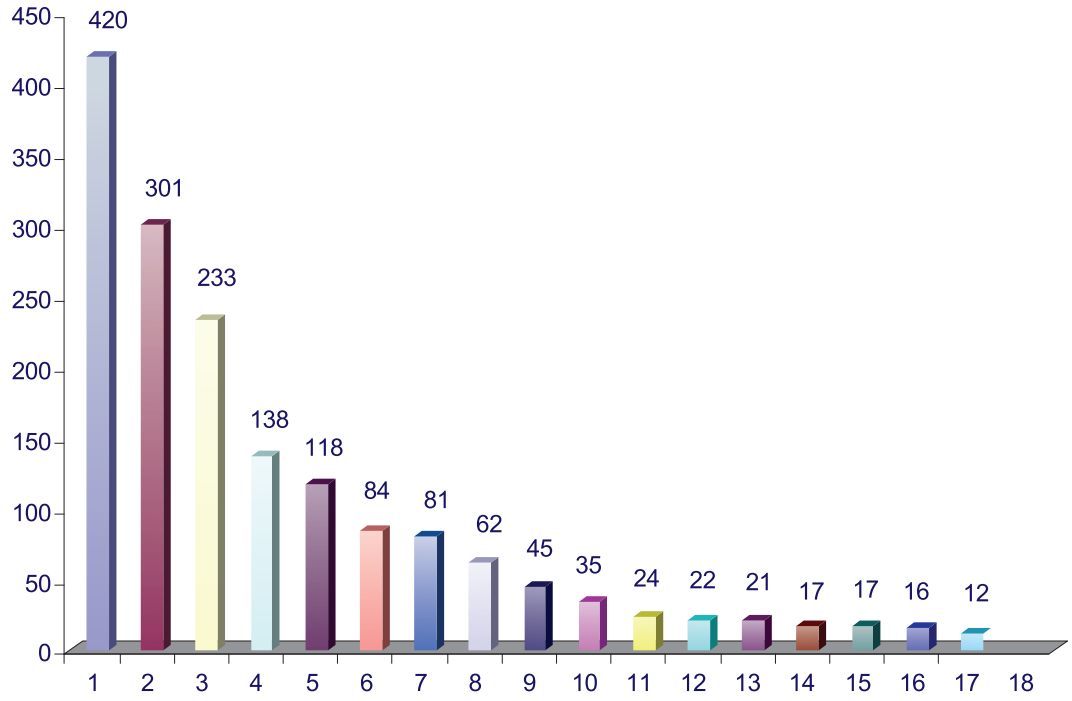
Table 5 represents the actual number of complainants filing complaints against public bodies. Most complainants filed complaints against the police, the Yerevan City Administration, the RoA Ministry of Education and Science, courts, and the RoA Ministry of Labor and Social Affairs.

Table 5

Written Complaints by Number of Complainants in 2009

	Public Body	**2009**
1.	Police	**420**
2.	Yerevan City Administration	**301**
3.	RoA Ministry of Education and Science	**233**
4.	Courts	138
5.	RoA Ministry of Labor and Social Affairs	118
6.	RoA Ministry of Justice	84
7.	Administrative districts of Yerevan	81
8.	RoA Ministry of Defense	62
9.	National Security Service adjunct to the RoA Government	45
10.	Prosecutor's Office	35
11.	Provincial Government offices	24
12.	Ministry of Territorial Administration (infrastructures)	22
13.	City/Town administrations (besides the Yerevan city administration)	21
14.	Board of Public Television and Radio Company	17
15.	Village administrations	17
16.	RoA National Assembly	16
17.	State Committee of the Real Estate Cadastre adjunct to the RoA Government	12
18.	RoA Ministry of Health	12

Figure 5. Written Complaints According to Actual Number of Complainants in 2009



1 Police [420]
2 Yerevan City Administration [301]
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4 Courts [138]
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9 National Security Service adjunct to the RoA Government [45]
10 Prosecutor's Office [35]
11 Provincial Government offices [24]
12 RoA Ministry of Territorial Administration (infrastructures) [22]
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15 Village administrations [17]
16 RoA National Assembly [16]
17 State Committee of the Real Estate Cadastre adjunct to the RoA Government [12]
18 RoA Ministry of Health [12]

1.1.2. Legal Advice

Giving citizens legal advice is one area in which the Human Rights Defender of the Republic of Armenia is active. Under the RoA Law on the Human Rights Defender (hereafter, "the Law"), the Defender provides two types of advice: mandatory and discretionary advice.[2]

In 2009, the Defender provided mandatory legal advice in 563 cases in the following ways:

1. Advice was given to complainants about available remedies for the protection of rights and freedoms (Paragraph 1(2) of Article 11 of the Law); and
2. In cases when a complaint was deemed inadmissible, the complainant was advised about the legal procedure defining why this was the case (Paragraph 2 of Article 11 of the Law).

The Defender also advised citizens as he saw fit – during their visits to his Staff, by telephone, and during field trips. Such legal advice was also carried out by the Defender's staff.

The range of issues on which the Defender gave advice was mostly the same as in previous years. His efforts can be classified into the following categories in terms of the nature of issues raised and the areas of concern.

The first category of complaints concerned violations of civil and political rights. Advice in this area mostly related to torture or cruel, inhuman or degrading treatment, infringements of the right to personal liberty and security, arbitrary arrest and detention, failure to grant detainees access to a lawyer, and problems connected with acquiring citizenship or passports. Detained and convicted persons also lodged complaints alleging breaches of their right to a fair trial.

The second category of complaints concerned violations of social and economic rights. The bulk of advice in this area related to benefits, refugee housing, rights of persons with disabilities, the refunding of citizens' deposits with savings banks of the USSR, and violations of property rights.

Citizens also received advice on the types of pension available, entitlement to a private pension and the way to obtain that, and how to exercise the right to claim a pension on the basis of a power-of-attorney.

In many cases, the Defender provided advice to citizens about issues relating to refugees, changes in the classifications of disabilities, and what privileges may be granted to persons with disabilities.

In 2009, the Defender's Staff received over 56 complaints related to violations of property rights, suggesting that the concerns expressed by the Defender in earlier reports are still unresolved.

[2]Detailed legal analysis of mandatory and Defender-initiated legal advice can be found in the 2006 Annual Report of the Human Rights Defender (pp. 17-18).

Complainants received advice on a number of provisions of the RoA Land Code, including the granting of permits for construction on land belonging to the state or local authorities, the transfer of ownership of such sites without compensation, and the lease of such sites without a tender being announced by the RoA Government. Furthermore, the RoA Civil Code provisions on easement were explained to a number of complainants.

Some complaints to the Defender invoked problems related to the procedure of appeals against the State Committee of the Real Estate Cadastre adjunct to the RoA Government and its territorial units. In such cases, the Defender provided information on the legal regulation of that sector and on the procedure of appealing against the actions (or lack of action) of the relevant state body.

The USSR Savings Bank deposit refund issue remained an issue in 2009, as illustrated by various complaints requesting that the Defender explain the procedure by which their deposits would be refunded.

Refugee housing issues, too, remained in the spotlight. In some cases, however, refugee families continued to be considered eligible for improved housing without due regard for the criteria and standards defined by the RoA Government decree.

Third, many complainants received advice on how to safeguard their personal rights during criminal proceedings. Three sub-categories can be identified.

First, some complainants were informed of the available remedies of their rights and freedoms in relation to the refusal of law-enforcement authorities to start criminal investigations into a reported crime or in cases when a criminal prosecution was dropped.

Second, some complainants received advice related to the violation of rights and freedoms by criminal prosecution bodies and courts during pre-trial proceedings.

Third, others were advised about the activities of an independent committee (created by a Decree of the RoA President) that has the power to grant early conditional release or substitute the remaining unserved portion of a sentence with a less severe punishment.

The fourth category of complaints concerned the rights of military servicemen and military service in general. The Defender's office informed the complainants about the legislation on RoA Military Service, what military conscription offices are entitled or not entitled to do, and the rights of military servicemen and their family members. In relation to their military posting, some also received advice about the protection of rights and freedoms of Armenian citizens while serving abroad.

The fifth main area of legal advice given in response to complaints related to explaining the international legal remedies available for the restoration of human and civil rights and freedoms.

Many citizens expressed dissatisfaction over rulings, decisions, and verdicts of the Armenian courts, alleging that their rights had been violated. In such cases, the Defender decided to inform them that, under Article 7 of the RoA Law on the Human Rights Defender,

the Defender did not have the power to intervene in court proceedings. Under Article 10(1) of the Law, the Defender shall not review complaints that fall under the exclusive jurisdiction of courts and shall discontinue the review of a complaint if a complainant lodges a court appeal during the Defender's review of their complaint. Citizens were also informed that if they were in disagreement with the final decision of the RoA Court of Cassation, they had the right to apply to the European Court of Human Rights within a six-month period of the official announcement of the final verdict. When necessary, the procedure for applying to the European Court of Human Rights was explained to complainants.

1.1.3. Meeting with Citizens

To ensure the Defender's direct contact with the public and his swift and effective response to complaints, in 2009 the RoA Human Rights Defender continued to pay special attention to meeting citizens. During the year, the Defender received 110 citizens in the Office. The Defender also met with citizens during his trips to the provinces (the public had been informed prior to his visit). During such meetings:

– Written complaints were received, especially if the issues raised by visitors had necessitated further inquiry or checks; and

– Relevant advice was given.

Measures were taken throughout 2009 to learn more swiftly about violations of rights and to respond effectively. The Internet has been used extensively to this end.

1.1.4. Visits and Rapid Response

In 2009, numerous visits by the RoA Human Rights Defender and/or his representatives constituted an effective means of monitoring the activities of public bodies (i.e. central and local government bodies and officials). Visits were made in accordance with the RoA Law on the Human Rights Defender either on the basis of complaints or at the Defender's initiative. In all cases visits were effective because the bodies being investigated were not warned of the visit; thus, the real situation was revealed – any violations of rights were exposed and any misinformation was proved to be such.

Investigations conducted during visits to the Yerevan City Police Department Arrest Custody Center revealed that some arrested individuals had been held in various stations of the Yerevan City Police Department for 20 hours or more, or even in some cases as long as two days, before being transferred to the Arrest Custody Center. However, Article 133 of the RoA Criminal Procedural Code provides that "arrested persons shall be detained in arrest custody centers."

Examinations performed in a number of provincial police stations revealed that detained persons had been frequently held in arrest custody centers for over three days despite the fact that Article 137(2) of the RoA Criminal Procedure Code stipulates that "a detained person may not be held in an arrest custody center for over three days unless his transfer from the arrest custody center to the pre-trial isolation unit or other places of detention defined by law is impossible due to the absence of transportation." These investigations thus revealed that RoA Police officials had breached the relevant requirements of both the RoA Criminal Procedure Code and the RoA Law on Custody of Arrested and Detained Persons.

To address this issue, the RoA Human Rights Defender sent an official letter to the RoA Police Chief. In response, the RoA Police Chief announced Decree 2625-A "On Strengthening the Internal Supervision of the Respect and Protection of the Rights of (Arrested) Persons Apprehended in RoA Police Bodies" and sent it to the Defender. The Decree instructed the heads of all police stations to strictly comply with the requirements of the RoA legislation prescribing safeguards for the lawful rights and freedoms of arrested persons. The heads of each station were held responsible for executing the Decree.

When the Defender's Staff made subsequent visits to police stations, they observed that the situation had been improved in light of the Decree: the previously widespread violations had become much scarcer.

Examinations carried out in the penitentiary institutions of the RoA Ministry of Justice revealed problems of overcrowding in a number of penitentiary institutions (due in part simply to the lack of inmate capacity in penitentiaries). The situation posed a corruption risk in terms of how decisions about transfering inmates to vacant cells would be made. Moreover, the conditions in a large number of penitentiary institutions remain inadequate.

To this end, the Minister of Justice, in a letter dated 14 October 2009, informed the RoA Human Rights Defender about the RoA Penitentiary Service Infrastructure Reform Program. This foresees the construction of new penitentiary institutions in line with international standards, so that existing institutions with inadequate physical conditions can be closed down or replaced. However, the Minister's letter did not specify a timeline for such activities.

The RoA Human Rights Defender has always focused attention on protecting the rights of children. He has frequently made visits to orphanages, boarding schools, and various institutions of child care and education so that he can be well informed about issues relating to the protection of children's rights in such institutions and present them to the relevant authorities.[3]

During all trips to Armenia's provinces, representatives of the RoA Human Rights Defender also visited RoA Ministry of Defense military detachments and units deployed there. They examined the living and sanitary/hygiene conditions of the servicemen, informed them of their rights, and gave them advice on relevant legal matters.[4]

[3]For details, see Section 4.2 of this Report, as well as www.ombuds.am.

[4]For details, see Section 4.1 of this Report.

In 2009, as in previous years, the RoA Human Rights Defender received a large number of written and oral complaints raising issues that could most effectively be addressed via the rapid response approach. For example, many citizens asked the Defender to protect their rights or freedoms on non-working days or during night hours. For any written complaint addressed to the Defender or oral complaint lodged by telephone, the Defender took the lead in setting up rapid response teams comprising members of his staff. These teams visited the relevant custody centers in police stations, sites of mass public events, penitentiary institutions, or military detachments.

The Defender's representatives were present at virtually all mass and small scale public events (demonstrations, rallies, and protests) held in Armenia regardless of the hour.

Based on numerous reports from citizens about the possible restriction of the right to freedom of movement, the RoA Human Rights Defender instructed that the highways into Yerevan be monitored on 1 March and 15 May 2009. While the monitoring did not reveal any cases of the RoA Police restricting the right to freedom of movement, the Defender's representatives did note that from early morning in a number of towns the only means of transport available at places from which public transport normally travelled to Yerevan was taxis.[5]

The monitoring carried out by the Rapid Response Team of the Defender's Staff during a large number of 2009's mass and small scale public events (demonstrations, rallies, and protests) showed that the RoA Police mostly acted in line with the RoA Law on Holding Meetings, Demonstrations, Rallies, and Protests. However, there were also cases in which the Police, in violation of Article 14 of the aforementioned law, prohibited the holding of a public event. To this end, the RoA Human Rights Defender made a public announcement suggesting to the RoA Police that they take measures to minimize interference with the exercise of the citizens' right to freedom of assembly, as well as to secure the zone necessary for unhampered access to public facilities in a way that does not hinder the exercise of the citizens' right to peaceful and unarmed assembly.[6]

Numerous citizens and their defense lawyers complained that policemen in various parts of the country had detained people in police stations and unlawfully held them there during night hours without access to a defense lawyer. In all such cases, the policemen in question told a member of the Defender's Staff over the telephone that such allegations were not true. Subsequently, however, the same citizens telephoned the Staff and informed that after the telephone conversation between the policemen and the member of the Defender's Staff their violated rights had been restored.

The number of false statements made by citizens to the Defender's Staff regarding alleged unlawful conduct of the members of law-enforcement authorities increased in 2009. Regrettably, such cases waste the limited material, financial, and human resources of the

[5]For details, see Section 3.16 of this Report.

[6]See www.ombuds.am.

Defender's Staff.

Many detained or convicted persons held in penitentiary institutions of the RoA Ministry of Justice went on hunger strike in defense of their rights. Whenever the RoA Human Rights Defender's Staff heard of such cases, the Rapid Response Team visited the relevant penitentiary institution and spoke with the hunger-strikers. During all such visits, the Team found the hunger-strikers to be subject to full-time medical supervision. The reason for going on hunger strike was usually the perceived injustice of unfounded accusations and convictions rather than the conduct of the institution's administration.

1.2. Cases Favorably Resolved

The RA Human Rights Defender's decisions have no binding power and the Defender's Office is no substitute for institutions through which citizens can seek legal recourse to restore their rights. Moreover, the Defender's decisions are made independently of legal acts adopted by public bodies. Thus, instances of individuals and citizens having their rights restored serves as the main indicator of how effective the Human Rights Defender's work is.

Of course, the situation is complicated by the fact that the Defender must restore human rights that have been violated by public bodies. Therefore, to resolve an issue, the Defender's intervention is often necessary, but it is not sufficient because any violation being addressed by the Defender must also be acknowledged and addressed by the officials concerned. The complete restoration of violated human rights largely depends on the extent to which officials implement the Defender's advisory comments, which reflect the following essential principles enshrined in the RoA Constitution: "The State is bound by fundamental human and civil rights and freedoms as directly applicable law" (Article 3); "State and local government bodies and officials may perform only those acts for which they are authorized by the Constitution or laws." (Article 5)

Below are some examples of cases that were favorably resolved as a result of the Defender's activities.

Illustrative Case 1

Citizen A.A. addressed a complaint to the RoA Human Rights Defender stating that he had lost his passport and that his request for a new Armenian passport at the relevant passport department of the Police had been refused on the grounds that he had failed to show a property certificate for the house in which he was registered. He also noted that he was registered at the apartment of his sister's husband, who refused to give him a copy of the property certificate. The application also informed the Defender that the General Jurisdiction Court of Yerevan's Malatia-Sebastia districts had decided to reject the sister's husband's claim to terminate A.A.'s registration.

In response to the Defender's inquiry into the reasons for not issuing a passport to the citizen (who had not received any response to eight months' repeated attempts to obtain a passport from the Malatia Passport Unit of the Passport and Visa Department of the RoA Police), the Head of the Passport and Visa Department of the RoA Police wrote a a letter to the Defender noting that a case of lost passport was now underway for the citizen. On 8 September 2009, the Malatia Passport Unit of the Passport and Visa Department of the RoA Police finally issued a passport (series AK, number 0226353) to citizen A.A.

Illustrative Case 2

In a complaint to the RoA Human Rights Defender, citizen A.E. informed that he was a member of the "Jehovah's Witnesses" religious organization and had been convicted on 15 January 2007 by the First Instance Court of Kotayk Province to a two-year prison sentence under Article 327(1) of the RoA Criminal Code for refusing to perform alternative service.

The applicant explained that at the time of the complaint the military conscription office was forcibly drafting him to the army (for which he had been summoned to the military conscription office) despite the law that exempts a person who has already served a sentence for evasion from further military conscription.

Responding to the Defender's letter about this case, the RoA Military Commissioner, Major General S. Chalyan confirmed that, under Article 327 of the RoA Criminal Code, a person convicted by court to a prison sentence (regardless of whether the sentence is served) may not be charged again with the crime prescribed by Article 327 (i.e. evading the compulsory military service draft) and that it is not possible to forcibly draft such person to the army for compulsory (or alternative) service because the person cannot be held criminally liable for a second refusal to perform such service. Based on this response, citizen A.E. was registered in the reserve in accordance with established procedure.

Illustrative Case 3

In a complaint to the RoA Human Rights Defender, defense lawyer A.V., a member of the RoA Chamber of Advocates, informed the Defender of his client's case. The client, a UAE citizen, had arrived in Armenia on 1 September and when crossing the customs border had declared that he was importing USD 200,000 into Armenia. The customs officer had explained to him that if he did not spend the whole amount, he had the right to take it back to the UAE. When trying to return to the UAE on 15 September, the UAE citizen had stated that he had USD 120,000 in his suitcase. A customs officer then prohibited him from crossing the Armenian border, seized his passport and the sum of money, and filed a violation of customs rules, the content of which was not properly explained to the person concerned.

The complainant also informed the Defender that on 15 September his client had been held in the Ararat Customs House from 7am to 5pm, where he was deprived of the rights of access to a telephone, an interpreter, and the services of a lawyer.

The Defender addressed the Chairman of the State Revenue Committee adjunct

to the RoA Government in relation to A.V.'s complaint. In his letter 24911/13-2, the State Revenue Committee Chairman informed the Defender that a decision to drop legal charges against the UAE citizen had been taken on 29 September 2009. His UAE passport and cash sum of USD 120,000 were returned to him.

Illustrative Case 4

Citizen R.B. applied to the RoA Human Rights Defender asking him to help arrange visits to her husband, Sh.H, who had been transferred to the Nubarashen Clinic of the RoA Ministry of Health on 17 March at the decision of the General Jurisdiction Court of Yerevan's Kentron and Nork-Marash districts.

R.B. later informed the Defender in a further letter that after the Defender's intervention the issue had been favorably resolved and that she had been able to visit her husband Sh.H. on 10 April.

Illustrative Case 5

In a complaint to the Human Rights Defender, citizen V.S. stated that his son, H.S. (born 1991), who had been adopted by his aunt (his father's sister) on 31 March 2004, was was drafted to the army despite being the only child of a single parent with second-order life disability.

In response to the Defender's letter to RoA Military Commissioner, Major General S. Chalyan, the latter noted that, based on the decision of Gegharkunik Province Conscription Commission and the report of the National Conscription Committee, the RoA Minister of Defense had decided on 2 July 2009 (decision number 723) to defer H.S.'s compulsory army service on the basis of Paragraphs 3 and 4 of Article 13 of the RoA Law on Military Duty.

Illustrative Case 6

In her complaint, citizen H.Kh. informed the RoA Human Rights Defender that, according to a court warrant, an alimony sum of 15,000 Armenian drams per month was to be confiscated from Kh.S. for her minor. At the time of the complaint this amount had not been paid.

The Defender made inquiries and in response the RoA Chief Bailiff informed him that the Alimony Confiscation Unit of the RoA Ministry of Justice Service for Compulsory Execution of Judicial Acts had started the collection procedure. However, it transpired that sinced debtor Kh.S. did not reside at the address specified in the execution warrant, he had been declared 'wanted' and execution proceedings had been suspended. Thus, measures were taken to find Kh.S. and his belongings.

Citizen H.Kh. informed the Defender that Kh.S. was staying at his mother's house. She provided the address and the Defender passed the information on to the RoA Chief Bailiff. The Chief Bailiff subsequently informed the Defender in a letter (number Ev 1155) that Kh.S., who was indeed residing at the address supplied by H.Kh., had presented himself

to the Service for Compulsory Execution of Judicial Acts and had undertaken to clear the arrears and thereafter regularly pay the alimony sum.

Illustrative Case 7

In a complaint, citizen G.G. informed the Human Rights Defender that state registration of his right to a land plot allocated to him was being refused on the grounds that the same body had at different times issued two inconsistent legal documents regarding the land plot in question.

The Defender raised the issue with the Head of the Ashtarak Territorial Unit of the Staff of the State Committee of the Real Estate Cadastre adjunct to the RoA Government, proposing that relevant provisions of the RoA Law on Legal Acts be followed. Article 24(3) of the said law states: "A newly-adopted legal act of the same body shall not contradict earlier-adopted legal acts of equal legal force that have entered into effect. In cases of inconsistency between legal acts of equal legal force adopted by the same body, the provisions of the legal act that earlier entered into effect shall apply, with the exception of the case stipulated by paragraph 4(2) of Article 92 of this Law." Paragraph 4(2) of Article 92 of the said law stipulates: "In cases of inconsistency between legal acts of equal legal force that were adopted and entered into effect prior to the enactment of this Law, the provisions of the legal act that later entered into effect shall apply."

Based on these stipulations, the Defender suggested that G.G.'s property right be registered in line with the 16 January 1997 state act on the right to land ownership. In response, the Defender received a letter informing him that the Ashtarak Territorial Unit of the Staff of the State Committee of the Real Estate Cadastre adjunct to the RoA Government had registered G.G.'s ownership right to the 0.32 hectare land plot.

1.3. Expert Review of Draft Legal Acts

The expert review of draft legal acts has remained a key priority among the Defender's activities. Indeed, Paragraph 42 of Presidential Decree NH-174-N (18 July 2007) "On Defining the Procedure of Organizing the Activities of the Republic of Armenia Government and Other Public Administration Bodies Subordinate to the Government" states that draft laws related to human rights and freedoms shall, before their submission to the Government, be referred to the Republic of Armenia Human Rights Defender for opinion.

During 2009, 57 draft laws and 14 draft decrees of the Government were sent to the RoA Human Rights Defender for review. The drafts were thoroughly analyzed by the Defender's Staff, discussions with those who had rafted them were held, and conceptual proposals were made on a number of the drafts. In some other cases, the Defender suggested that the draft acts be brought into line with legal principles of drafting laws.

The Defender has repeatedly emphasized that draft legal acts must meet the principle of legal certainty, citing the definition of the term "law" elaborated by the European Court of

Human Rights for the purposes of the Convention – i.e. no legal provision may be considered "law" if it fails to meet the principle of legal certainty or fails to be worded with sufficient clarify such that citizens would be able to accordingly adjust their behavior. Citizens should be able, using legal counsel if necessary, to predict the likely consequences of their actions. Thus, to avoid problems of implementation, the Defender suggested that the legal provisions of a number of draft legal acts be rewritten to make them clearer and more comprehensible.

The expert review of all draft legal acts focused closely on ensuring that the provisions in such drafts did not either unnecessarily limit citizens' rights or contravene legal acts of equal or higher legal force.

1.4. Information and Public Relations

In the Defender's previous annual reports, it has been repeatedly stated that developing relations between the Defender and the public, including the mass media, is crucial. Closer public relations are not only considered essential for the transparency and publicity of the Defender's activities but also for supporting the protection of human rights and the increased legal awareness of society. Clearly, a number of prerequisites, including technical, human, and financial resources, are needed for the effective performance of these functions. Although the Defender's Staff did not undergo major changes in this respect in 2009, the benefits of cooperation in the sphere were still noticeable.

The Defender's activities are covered on a virtually daily basis in newspapers and the Internet. In 2009, the number of television programs featuring the Defender or representatives of his Staff doubled.

In addition, efforts to advance public relations focused on regular press conferences. The number of and response to press conferences exceeded by far that of previous years. Opinions expressed in press conferences organized by the Defender during 2009 were later covered in mostly positive or neutral terms in newspapers and on television. In the days following such press conferences, public bodies and other stakeholders reacted to the positions expressed by the Defender by means of conducting internal investigations or publishing interviews with various officials and analytical articles. Thus, the Defender has justifiably conitued to adopt the practice of raising and publicizing all challenges and issues related to the protection of human rights. However, the Defender's outspokenness has aroused different reactions both domestically and abroad.

It is worth noting in this context that, back on 30 April 2008, the Azeri publication *Zerkalo*, harshly criticized a press conference speech made by Azerbaijan's Ombudsperson Elmira Suleymanova and compared her to the Armenian Defender of Human Rights, noting that Elmira Suleymanova had never raised and would hardly ever raise the flagrant violations of human rights that exist in Azerbaijan, unlike her Armenian or Georgian counterparts.

The development of public relations and information dissemination were negatively

affected by certain aspects of the process of presenting the Defender's Annual Report for 2008. Article 17(1) of the RoA Law on the Human Rights Defender states: "During the first quarter of each year, the Defender shall present to the RoA President and bodies of legislative, executive, and judicial power a report on his activities during the previous year and on the violations of human rights and fundamental freedoms in the country. The report shall also be presented to the National Assembly during its spring session. The Defender shall also present the report to mass media and relevant non-governmental organizations."

Thus, on 10 March 2009, the RoA Human Rights Defender presented his annual report to the aforementioned state bodies and to the mass media in accordance with the procedure defined by law. Parallel to presenting the report, the Defender awarded a commendation to one politician and one journalist for their significant contributions to building a culture of tolerance in Armenia. Journalist Anna Israyelyan of *Aravot* daily and politician and secretary of the "Heritage" political party Laris Alaverdyan received the awards.

However, the Defender's report to the RoA National Assembly was not delivered during its spring session; the National Assembly invited the Defender eight months later than the date stipulated by law for presenting the report. When the report was finally being presented, very few members of the National Assembly were present. They commented that "attendance today shows the attitude in Armenia towards the protection and appreciation of human rights" (Rafik Petrosyan of the Republican Party of Armenia).

Pluralism should be ensured not only through the newspapers and the Internet but also via television since it reaches a much wider audience (it is much greater than the combined readership of the press and Internet). Issues related to the biased coverage of Armenia's National TV channel was addressed in the Defender's previous reports. The coverage of information by Armenia's National and private TV stations somewhat improved in 2009. The Defender's visits to the provinces in 2009 were actively covered by the provincial TV stations, too, which greatly helped to raise awareness of the protection of human rights among those in Armenia's regions.

In 2009, the Defender continued to develop public relations in the areas presented below.

1.4.1. Preparation and Dissemination of Daily Information on the Defender's Activities

In 2009, the Defender's activities were covered more actively than in 2008. Information about the Defender's inquiries and the official responses he received was provided to the mass media where the issues were of particular importance or heightened public interest. The number of the Defender's statements, which are also posted in the "Statements" section of his website, doubled from 2008 to 2009. The Defender's Office issued over 100 press releases during 2009.

Journalists continued to face harassment and infringements in 2009. According to Mesrop Harutyunyan, expert of the "Committee to Protect Freedom of Expression" non-governmental organization, 18 cases of physical violence against journalists were reported in 2008, compared with 11 in 2009; 16 instances of the harassment of mass media and its staff were reported in 2008, compared with 14 in 2009. The Defender issued statements in connection with these incidents, deploring the events and stressing that failure to identify the perpetrators of such violence creates an atmosphere of fear and impunity in the country. Many of the press releases and statements on these and many other issues were broadcast in various television and radio programs (mainly news) and were also published in the press.

1.4.2. Daily Monitoring of Armenian and Foreign Mass Media for Publications Related to Human Rights

Throughout 2009, one of the objectives of developing information and public relations was to review and check the accuracy of information published in Armenian and foreign mass media or in the reports of various human rights organizations. Such an approach proves effective because it constantly keeps the Defender and his staff informed of news published in Armenian and foreign mass media, significant events, and the statements of other countries' ombudspersons and international human rights organizations.

The Armenian press, currently an effective source of information, enables the Defender to intervene and study cases at his initiative. In 2009, the Defender took the initiative to accept over two dozen cases and make visits and inquiries based on mass media publications. It is worth highlighting that, based on media publications, the RoA Human Rights Defender instructed his staff to visit RoA Ministry of Justice penitentiary institutions in Hrazdan, Yerevan-Kentron, and Sevan, where they discovered a number of violations. They informed the governors of the respective institutions of their findings and filed reports to the RoA Minister of Justice. In a letter to the Minister, the Defender requested that an internal investigation be launched and that offending officials be held liable in accordance with legal

procedure in order to prevent various violations from reoccurring.

In 2009, monitoring was also combined with the archiving of materials related to human rights.

1.4.3. Organizing Press Conferences and Interviews with the Defender and His Staff

In 2009, the RoA Human Rights Defender convened a number of press conferences. Information on the Defender's opinions and actions related to human rights issues and cases of public interest was provided to journalists. In addition, statistics for the reporting period and information on ad hoc public reports were presented.

In a meeting with journalists on 10 October 2009, the RoA Human Rights Defender addressed labor law, monopolies, and environmental protection issues. In terms of violations of the labor law, the Defender noted that, based on an earlier report, his Office had made inquiries with the State Labor Inspectorate of the RoA Ministry of Labor and Social Affairs in order to obtain information on possible violations of the rights of drivers of public transport minivans. It was established that a number of drivers worked much longer than the maximum work time defined by law but were not paid overtime. The unpaid amount totalled about 144 million drams. Moreover, there was no medical supervision of the drivers. In one company, only four of the 24 drivers employed had the necessary documents. The Defender stressed that the situation not only violated the labor rights of drivers but also jeopardized the safety of passengers.

Environmental issues mostly concerned deforestation, the improper use of forests and national parks, the unlawful disposal of construction refuse, and the inadequate control over mining companies. These problems represent a violation of Article 33.2 of the Constitution, which guarantees everyone's right to live in an environment conducive to health and well-being.

All the press conferences organized by the Defender's Office have generated significant responses from various mass media and state bodies.

1.4.4. Measures to Raise General Legal Awareness and Specific Public Awareness of Human Rights

Measures to raise general legal awareness and specific public awareness of human rights are vital since many in the Armenian public do not know about their rights and fundamental freedoms. This can result in public bodies taking arbitrary actions or pursuing corrupt practices. Hence, a key function of the Defender is to raise public awareness of human rights and fundamental freedoms.

To raise general legal awareness and specific public awareness of human rights, a library was opened in the Office of the RoA Human Rights Defender in 2009 with about 1,000 books on the protection of human rights, as well as criminal and international law. In addition, the *Newsletter of the Human Rights Defender* is regularly published.

1.4.5. Maintaining the Defender's Website

Maintaining the Defender's official website remains an important part of developing public relations. In 2009, a new section and subsection were added to the Defender's website. The "Library" section of the website informs the public of the books available in the library and the procedure of accessing them. The "Visits" subsection, which covers the visits of the RoA Human Rights Defender and his staff, has been modified. A "Newsletters" subsection was added to the "Publications" section of the website. It contains the electronic version of the *Defender's Newsletter*, which covers the activities of the RoA Human Rights Defender.

1.5. International Cooperation

The RoA Human Rights Defender has continued to cooperate with international organizations, ombudsman institutions of other countries, and other human rights organizations. In 2009, the Defender's Office cooperated closely with the European Union, the Council of Europe, the OSCE, the UN, the USAID, and their local offices in Armenia. The main activities implemented in the area of international cooperation are presented below.

United Nations Organization

United Nations Development Programme (UNDP)

The Office of the RoA Human Rights Defender continues to cooperate productively with various UN agencies. The following activities were carried out in 2009 in the context of the UNDP's "Strengthening the Human Rights Defender's Office" Project (launched in 2007):

- ✓ The existing system of processing complaints made to the Human Rights Defender's Office was evaluated. The "Mulberry System" used by six Armenian ministries was recommended to the Defender's Office. It was adapted and implemented in the Office. During the process, the UNDP cooperated with experts of the European Commission's Twinning program.
- ✓ In 2009, a two-day "*Training Workshop on the Prevention of Torture: Monitoring the Activity of the National Preventive Mechanism"* was organized for the Defender's staff and representatives of three NGOs.
- ✓ With the support of the UNDP Armenia Office, the Raoul Wallenberg Institute organized a training course on the European System of Human Rights Protection at the European University Viadrina (Frankfurt) for four members of the Defender's staff and a project assistant of the UNDP's "Strengthening the Human Rights Defender's Office" Project.
- ✓ Strengthening of the Resource Center/Library of the Human Rights Defender's Office: a librarian from the Raoul Wallenberg Institute conducted a three-day training course on contemporary library know-how. With the support of the Raoul Wallenberg Institute and the UNDP, the library of the Human Rights Defender's Office was opened on 7 March 2009, equipped with 132 books.
- ✓ The UNDP supported the Human Rights Defender's working visit to Geneva to meet with the UN High Commissioner of Human Rights. The purpose of the meeting was to reinforce cooperation between the RoA Human Rights Defender's Office and the Office of the UN High Commissioner of Human Rights.

UNICEF

In 2009, the Human Rights Defender's Office implemented a UNICEF-funded project in Armenia to study Armenian legislation on the rights of the child and to identify its flaws and weaknesses. A package of recommendations was prepared as part of the project and submitted to the RoA National Assembly. The results of the analysis were reflected in the Defender's Ad Hoc Public Report on Certain Issues Affecting the Rights of the Child in the RoA Legislation,/exact title: Public Ad Hoc Report on Some Gaps in the Child Rights' Related Legislation of the Republic of Armenia/ which was published with the support of the Eurasia Partnership Foundation. To ensure sustainability of the project, the National Assembly Standing Committee for Human Rights Protection and Public Affairs organized

parliamentary hearings on the Defender's Public Ad Hoc Report on Some Gaps in the Child Rights' Related Legislation of the Republic of Armenia.

European Union

Optional Protocol to the Convention against Torture (OPCAT)

Since 2008, the RoA Human Rights Defender has been the country's independent national preventive mechanism required by the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Article 6.1 of the RoA Law on the Human Rights Defender). To this end, the Human Rights Defender's Office launched a three-year program ("Effective Protection of Human Rights through the Institution of the Human Rights Defender as the National Preventive Mechanism under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment") with the support of the European Commission and the European Instrument for Democracy and Human Rights. The project aims to enhance how the National Preventive Mechanism functions and ensure greater transparency of the activities of the penitentiary institutions by evaluating and publicizing the state of human rights in such institutions.

Twinning

On 26 October 2009, the "Support to the Office of the RoA Human Rights Defender" Twinning project between the Office of the RoA Human Rights Defender and the French/ Spanish ombudsmen was launched under the European Neighborhood Policy. Its primary objective is to provide institutional and functional support to improve the performance of the RoA Human Rights Defender's Office and to align the activities of the Defender's staff with international best practice in national human rights institutions. This is the first twinning project under the European Instrument for Democracy and Human Rights in the Republic of Armenia and will bolster the protection and promotion of human rights and the rule of law.

OSCE Yerevan Office

As part of its continued cooperation with the OSCE Yerevan Office, in 2009 the RoA Human Rights Defender's Office launched a project entitled "Ensuring the Right to Live in a Healthy Environment and Law Enforcement Practice in the Republic of Armenia", in collaboration with experts from the Environmental Law Academic and Research Center at the Law Department of Yerevan State University. The aim of the project was to analyze legislation that relates to the right to live in a healthy environment and ascertain how it complies with the principles and rules of international law and whether it practically secures the right to a healthy environment so that recommendations for improving national legislation could be drafted.

Membership in the Francophone Association of Ombudsmen and Mediators

On 6 September 2009, the Office of the RoA Human Rights Defender officially joined the Francophone Association of Ombudsmen and Mediators, which was created in 1998 and has 56 members. It is one of the partner networks of the International Organization of the Francophone in the field of Human Rights and Good Governance.

The Association's activities are aimed at strengthening ombudsman institutions, or creating them in countries where such institutions do not yet exist, as well as facilitating the sharing of experience. The Francophone Association of Ombudsmen and Mediators organizes biennial conferences attended by about 50 ombudsmen and mediators, representing 35 countries.

European Ombudsman Institute

In October 2009, the RoA Human Rights Defender was elected as a member of the Governing Board of the European Ombudsman Institute in its enlarged annual conference. The objectives of this reputable organization founded in 1988 are to conduct research in the area of human rights protection, to defend civil liberties, and to provide general and academic support to ombudsman institutions. The ombudsmen of all European countries are currently members of this organization. Representatives of about 60 countries participated in the election of the members of the Governing Board of the European Ombudsman Institute.

Support to the Ombudsman Institution of the Republic of Mountainous Karabakh

Due to the efforts of the Republic of Mountainous Karabakh (RMK) and the RoA Human Rights Defender, the executive body of the European Ombudsman Institute decided on 31 August 2009 to grant the RMK Ombudsman Institution the status of a fully-fledged (institutional) member of the European Ombudsman Institute. During the election, the regions represented by candidates and the nature of their activities at the national, local, and regional levels are taken into consideration.

1.6. Cooperation with Non-Governmental Organizations

In 2009, the Defender continued cooperating closely with the representatives of numerous non-governmental organizations (NGOs) that deal with cultural and charitable issues, the rights of national citizens and ethnic minorities, environmental concerns, human rights, the issues of children, women, refugees, and persons with disabilities, and other problems. Urgent issues of societal concern were discussed at regular meetings between them.

In meetings with the Defender, representatives of NGOs dealing with issues of ethnic minority communities presented various legal issues. The Defender made comments about these issues in the light of RoA Constitutional standards and international documents on ethnic minorities.

The Defender's instructed a representative of the Defender's Staff to meet with NGOs that address the protection of women's rights to discuss gender-related issues. The participants agreed to hold such meetings on a regular basis.

In meetings with the representatives of religious organizations registered in Armenia, various issues surrounding the legislation that regulates their formation and activities were discussed.

The Defender and his Staff met with NGOs in Armenia's Shirak and Lori provinces as well. The issues raised by the NGOs were discussed with the Shirak and Lori Provincial governors' offices and the Vanadzor Town Administration. NGOs complained about RoA Government decree 912-N (18 May 2006) "On Approving the Procedure for Legalizing and Disposing of Structures Built without Planning Permission". They were unhappy that the fee for legalizing structures built without planning permission had been set at the same rate across all of Armenia's provinces and communities. They argued that since socio-economic conditions vary across the regions, the aforementioned decree should have adopted a differentiated approach to pricing.

The NGO representatives also complained about the adoption of the RoA Law on the Status of Individual Homes in Yerevan with Missing Title Deeds because it allowed Yerevan residents to privatize their homes and adjacent structures at no cost, while the same opportunity was not provided to residents of other communities and provinces. The Defender explained to them the need for adopting the said law.

PART 2.
HUMAN RIGHTS VIOLATIONS ARISING FROM LEGISLATION

Having legislation that effectively promotes and protects human rights is crucial since legislation itself is a key safeguard for respecting and securing human rights. Indeed, legislative inconsistencies, gaps, and ambiguities provide conditions for the violation of human rights. Hence, the section below outlines some of the legislative causes of different human rights violations.

2.1. Civil and Political Rights

2.1.1. Prohibition of Torture

Torture is considered to be one of the gravest encroachments on human dignity and personal security. Targeted measures must be actively pursued to eliminate torture. This horrendous and deplorable practice, which has existed for centuries, unfortunately continues to the present day. The fight against torture, hence, is both an international and domestic priority.

The prohibition of torture, an essential safeguard of human rights and fundamental freedoms, is reflected in recognized international legal documents (the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political rights (1966), the European Convention on Human Rights (1950), the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987), and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)) and various RoA legislative acts (RoA Constitution, RoA Criminal Procedure Code, and RoA Criminal Code). The right to be free from torture is one of the few human rights that cannot be even temporarily restricted in any situation, including in times of war or public emergency.

As mentioned above, the RoA Human Rights Defender was designated as the national preventive mechanism required by the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In its 'Implementation of the European Neighbourhood Policy in 2007' Report on Armenia, the Commission of the European Communities commended Armenia's ratification of the Optional Protocol,[7] and, subsequently, the Defender's activities as the National Preventive Mechanism.[8]

Although the prohibition of torture is quite well enshrined in RoA legislation, some problems do still remain. In October 2009, the Defender addressed the RoA Government with the recommendation that relevant amendments to the RoA Criminal and Criminal

[7]Ratified by the RoA National Assembly on 31 May 2006, entered into effect on 22 June 2006.
[8]See http://ec.europa.eu/world/enp/pdf/progress2008/sec08_392_en.pdf

Procedure Codes be made. The Criminal Code needs to be amended in order to reflect elements of torture as defined in the aforementioned Convention. On 17 November 2000, the UN Committee against Torture had already noted with concern, in paragraph 37 of its concluding observations on Armenia, that the definition of "torture" in the RoA Criminal Code fails to contain a number of elements of torture as defined in Article 1 of the Convention, and it recommended that the definition of torture in Armenian law be brought into line with the definition in Article 1 of the Convention.[9] Moreover, in November 2007, the UN Committee against Torture emphasized in its General Comment on the implementation of Article 2 of the Convention that State Parties must criminalize the crime of torture in accordance with the elements defined in Article 1 of the Convention.[10]

The definition of the term "torture" in Article 119 of the RoA Criminal Code ("torture is any act through which strong pain or physical or mental suffering is intentionally inflicted upon a person, if this did not lead to the consequences provided for by Articles 112 and 113 of this Code") differs substantively from the definition of "torture" in the Convention. The RoA Criminal Code definition not only fails to reflect all the elements of "torture" defined in the Convention, but also stipulates a qualitatively different crime – an ordinary "domestic" offense. In the RoA Criminal Code, torture is included in the section on crimes against the person rather than the section on crimes against public service. The crime of "torture", as defined in Article 119 of the RoA Criminal Code, can be committed by anyone. The specific objectives of extorting information or a confession from the victim or a third party by intimidation or punishment and the like are not stipulated. Moreover, Article 12 of the UN Convention against Torture provides that each State Party shall ensure that its relevant authorities proceed to a prompt and impartial investigation, wherever there are reasonable grounds to believe that an act of torture has been committed. Article 183 of the RoA Criminal Code, however, provides that the "torture" offence proscribed by Article 119 of the Code may only be prosecuted on the basis of a private complaint by the victim, and that the criminal case proceedings shall be discontinued if the victim settles with the suspect, the accused, or the defendant.

A specific element of the "torture" crime as defined in the UN Convention against Torture is criminalized in Article 341(2) of the RoA Criminal Code. It states that a judge, prosecutor, investigator, or inquest official that by threats or other unlawful acts coerces a witness, suspect, the accused, the defendant, or a victim to testify, or a forensic expert to issue a false statement, or a translator to provide an inaccurate translation, shall be punished with imprisonment for a term of three to eight years. Thus, the RoA Criminal Code criminalizes as "torture" only those cases where there is coercion of testimony, inaccurate translation, or a false expert opinion during the proceedings; it fails to cover many other instances of "torture" (as defined in the Convention) – i.e. torture for a certain purpose by or

[9]Concluding observations of the Committee against Torture. Armenia. 17/11/2000. COMMITTEE AGAINST TORTURE. Twenty-fifth session. 13-24 November 2000.

[10]Committee against Torture, General comment N2, Implementation of Art. 2 by States parties, http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.GC.2.CRP.1.Rev.4_en.pdf

with the consent of a public official in general, such as torture in demonstrations, torture in penitentiary institutions, torture in the armed forces, and the like. These are areas in which violence or other acts committed by public officials for the purposes set forth in Article 1 of the Convention should be directly criminalized in the RoA Criminal Code as torture.[11]

In all such cases, the official in question would be held criminally liable for the sum of the crimes of 'exceeding official authority' and/or 'inflicting grievous bodily harm'. Oddly, charges for the "torture" crime defined in Article 119 cannot be made in conjunction with other crimes because "the use of violence" is considered by Article 309(2) as an aggravating factor in the crime of exceeding official authority. According to the logic of the RoA Criminal Code, all cases of violence (including "torture") are covered except for infliction of grievous bodily harm, and the same sanction for all acts of violence is prescribed. This fails to reflect the danger that "torture", as defined in the Convention, poses to society. In its 2007 General Comment on Article 2 of the Convention, the Committee noted that in a situation of "torture" as defined in the Convention, the holding of a person criminally liable for degrading treatment, for example, rather than torture – i.e. for a crime of substantively lesser gravity – would still amount to a breach of the Convention. Analysis of working practice in Armenian courts shows that, despite the proscription of "torture" as such in the Criminal Code, persons committing acts that essentially amount to torture are instead being held criminally liable for beating, exceeding official authority, or inflicting bodily harm. In this case, NGOs and the general public are deprived of the chance of carrying out targeted monitoring of criminal proceedings in cases of "torture" as defined in the Convention. Moreover, perpetrators of torture crimes are then entitled to exemption from criminal liability or the sentence by means of an amnesty or pardon, which contradicts the established practice of ruling out the option of amnesty or pardon for torturers. This approach was reflected in the Committee's General Comment on Article 2 of the Convention alleviate

According to Article 341(2) of the RoA Criminal Code, if "torture" is involved in cases of a judge, prosecutor, investigator, or inquest official coercing a witness, a suspect, the accused, or a victim to testify, or an expert to issue a false opinion, or a translator to provide inaccurate translation, then such unlawful actions will be deemed more serious.[12] In addition to "torture," Article 341(2) also cites "mocking" and "the use of other forms of violence." Article 341(3) states that if "the same acts result in grave consequences" then the sentence will be made yet more severe. A number of questions emerge from this. If torture, mocking, and the use of other forms of violence are essentially considered to be the same, then why would an act accompanied with torture not give rise to grave consequences? What "grave consequences" are implied in Article 341(3)? How are they qualitatively different from torture? Hence, the use of terms such as "violence," "inflicting grievous bodily harm,"

[11] Under the RoA Criminal Code, not every manifestation of violence by the body conducting criminal proceedings would in theory amount to the crime of torture. Criminal policy has failed to cover cases of torture by an investigator or police officer for coercing a person to speak, file a report, or plead guilty, or the strong pain or suffering inflicted upon a third party for purposes of extorting testimony.

[12] Torture is considered to make a crime against justice more serious. The act stipulated by Article 341(1) of the RoA Criminal Code implies the use of threats or other unlawful acts but not torture.

"mocking," and "torture" in the RoA Criminal Code should be clarified. An appropriate penal policy needs to be developed that will give due consideration to the gravity of sentences as well as the need for differentiated sanctions.

The RoA Criminal Code has so far failed to criminalize the so-called "passive" manifestation of torture, i.e. when there are reasonable grounds to believe that a person is being tortured by another person, but a public official fails to implement measures to prevent that torture or to conduct an effective investigation into it in order to shield private persons from criminal liability. The Committee notes that, in such cases, the public official in question should be held criminally liable as a perpetrator or facilitator.

Based on the foregoing, it is recommended that: a) in the chapter on crimes against public service, "torture" be defined in line with the Convention and with the meaning referred to by the Committee in its General Comment; b) the "domestic" crime proscribed by Article 119 of the RoA Criminal Code and its individual elements be merged into the "beating" crime proscribed by Article 118 of the RoA Criminal Code in order to solve the current terminological chaos; and c) the word "torture" be removed from Article 341(2) of the RoA Criminal Code and added to Article 341(2.1), thus clearly distinguishing torture from other forms of violence.

Based on the international best practice of defining torture, as set out in the criminal codes of various countries, the Defender has proposed two options for defining the crime of torture in the RoA Criminal Code.

Amendments to the RoA Criminal Procedure Code are also necessary in light of the international legal commitments of the Republic of Armenia, including, in particular, the State's undertaking to provide compensation to victims of torture.[13]

Complaints received by the Defender in 2009 indicate that the requirements of laws are not always fully applied in legal practice. The Defender has received numerous complaints about Armenian police officers' engaging in cruel and inhuman treatment and torture, beating persons up, and extorting statements from the accused persons by means of violence and threats. The number of complaints related to torture grew considerably in 2009.

Given the Defender's status as the independent National Preventive Mechanism, representatives of the Defender's Staff made regular visits to 10 penitentiary institutions of the RoA Ministry of Justice during April-October 2009 with a view to identifying and preventing cases of torture and other cruel, inhuman or degrading treatment or punishment. The conditions of both pre-trial detainees and convicted persons were examined. The visits revealed problems related to overcrowding, sanitation and hygiene, the food provided to pre-trial detainees and convicted persons, health care, contacts with the external world, and a number of other areas. The Defender's staff also identified gaps in domestic legislation on penitentiaries that further undermine the rights and lawful interests of persons deprived of liberty.

[13]This initiative of the Defender is still being reviewed by the RoA Ministry of Justice.

The issues identified were comprehensively analyzed from legal, social, and psychological standpoints. Based on the findings, a Report on the Protection of the Rights and Lawful Interests of Persons in Penitentiary Institutions of the RoA Ministry of Justice was produced. The report reveals three types of issue:

1. There are issues that remain unresolved due to a lack of resources even though some legislative regulation exists (e.g. renovation of prisons and cells in penitentiary institutions, installation of heating systems in the institutions, prevention of overcrowding, ensuring diversity of food, and the like). A related issue worth mentioning here is the low remuneration of penitentiary servants.
2. There are issues connected with gaps in RoA legislation or the inadequate legal regulation of certain matters.
3. There are issues that emerge while prison sentences are being served and are due to the inappropriate conduct of penitentiary staff (lax compliance to the requirements concerning certain types of penitentiary institutions, discrimination against pre-trial detainees and convicts, and the like).[14]

2.1.2. Right to a Fair Trial

The amendments to the RoA Constitution adopted on 27 November 2005 marked the beginning of the second phase of judicial reforms in Armenia, with the primary focus being on a fundamental reform of the Armenian judiciary to safeguard human rights and lawful interests and align them with the recognized principles and rules of international law. This process is largely influenced by Armenia's ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, which resulted in the adoption of the European values system as a guideline for the future development of the Armenian legal system.

As a cornerstone of respect for human rights, the right to a fair trial is also an integral element of the rule of law and a prerequisite for contemporary legitimate states.

The Defender has repeatedly stated that the Republic of Armenia has a long way to go before it can ensure respect for the right to a fair trial. Effective administration of justice has two key components: the *institutional* component (i.e. the existence of an independent and impartial judiciary) and the *procedural* component (the fair trial of civil and criminal cases).

Everyone's right to a fair trial is guaranteed by both international treaties ratified by the Republic of Armenia and Armenia's own domestic legislation. Article 6(1) of the European Convention states: "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable

[14]See the Defender's 2009 Ad Hoc Public Report on the Protection of the Rights and Lawful Interests of Persons in Penitentiary Institutions of the RoA Ministry of Justice.

time by an independent and impartial tribunal established by law." This legal provision is reflected in Article 19 of the RoA Constitution and other legislative acts.

The elements of the right to a fair trial include the existence of an independent and impartial tribunal established by law, the right to a hearing within a reasonable time, the right to a public hearing, the equality of arms, adversarial proceedings, the presumption of innocence, the rights of everyone charged with a crime, and the like.

The right to a fair trial is equally important in the administration of justice in both civil and criminal cases. Ensuring respect for human rights is essential in all areas of the state's functioning and in all branches of law. However, it is particularly vital during criminal proceedings. While the fight against crime is important to ensure the prosperity and stability of society and state, the right to a fair trial must be safeguarded in order to make sure that only the guilty are punished. Otherwise, the very meaning of criminal proceedings will be distorted: they will turn from being an effective tool against crime into an instrument for retaliation. In this regard, having legislation that corresponds to European standards is a necessary but insufficient precondition for ensuring the right to a fair trial in criminal proceedings. For, even with the best legislation, criminal proceedings can still be anything but democratic if the legislative standards are not properly applied.

Another essential element of the right to a fair trial is that there should be equality between parties in matters of liability for contempt of court. Article 314.1 of the RoA Criminal Procedure Code prescribes judicial sanctions for contempt of court. In cases of contempt of court, obstruction of court proceedings, abuse of procedural rights, or the failure to perform procedural duties or the inadequate performance of them, the court has the power to apply the following judicial sanctions to parties to the proceedings, persons participating in criminal proceedings, and other persons present at the court session: 1) a warning; 2) removal from the courtroom; 3) a judicial penalty; and 4) a complaint to the Prosecutor General or the Chamber of Advocates, respectively, requesting that measures of liability be applied. Criminal liability is also prescribed for contempt of court. Article 343 of the RoA Criminal Code is called "Contempt of Court", Paragraph 1 of which states: "Contempt of court, which takes the form of a witness, a victim, or a defense lawyer wilfully avoiding appearance before the court, failing to abide by the judge's instructions, disrupting the court session, or performing any other act that obviously manifests contempt for the judge or order in the courtroom shall be punished with a fine amounting to no more than 100 times the minimum wage or with detention of no more than one month."

In June 2009, the RoA Human Rights Defender filed a request to the RoA Constitutional Court requesting that it determine if Paragraph 1 of Article 343 of the RoA Criminal Code complies with a number of articles in the RoA Constitution since the legal provision in question shows that the legislature considers that only witnesses, victims, and defense lawyers may be held responsible for contempt of court. Under the current legislation other persons participating in criminal proceedings cannot be charged with the crime of contempt of court – that is they cannot be held guilty of willfully avoiding appearance before the court,

disobeying the judge's instructions, causing disruption of the court session, or committing other acts that manifest obvious contempt of the court or order in the courtroom. Therefore, the legislation creates unequal conditions between defense lawyers and other participants in court proceedings, especially the prosecutor, since the defense lawyer may be prosecuted for conduct for which the prosecutor and others may not be. Moreover, it limits the court's ability to apply criminal liability measures stipulated by law to prosecutors and others who are actually engaging in contempt of court. Thus, this legal provision treats parties to criminal proceedings unequally by stipulating a legal clause that is discriminatory. As such it contradicts the European standards of equality of arms and adversarial proceedings, as well as the provisions of the RoA Constitution regarding the equality of all before the law, the right to a judicial remedy, and the equality of sides.

Furthermore, the language of Article 343(1) of the RoA Criminal Code (expressions such as "failing to abide by the judge's instructions," "any other acts," and "obvious contempt for the judge or order in the courtroom") creates legal uncertainty, a favorable condition for the arbitrary interpretation or application of the article. However, the case law of the European Court of Human Rights and the legal position of the RoA Constitutional Court deem that a legal provision may not be considered "law" unless it corresponds to the principle of legal certainty (*res judicata*), i.e. is worded with sufficient clarity that the person concerned, using counsel if necessary, would be able to adjust their behavior accordingly or predict the likely consequences of their actions. Any crime and its legal consequences must be clearly prescribed by law so that, based on the text of the legal provision, or as a result of its interpretation by court if necessary, all are able to clearly predict the criminal legal consequences of their actions or failure to act. Furthermore, there must be no legal provision that prescribes criminal liability for lawful acts.

In addition, the principle of proportionality between the criminal offence and the sanction prescribed for the offence, embedded in Articles 14.1 and 43 of the RoA Constitution, requires that the legislature prescribe the criminal legal consequences of crimes such that due consideration is given to how much danger is posed to society by the act and such that acts subject to criminal sanctions are clearly distinguished from acts that lead to other legal consequences. This means that rules prescribing criminal liability should preclude the possibility of broad interpretation, i.e. criminal legal consequences should not be meted out for acts that have other legal consequences. In contrast, the aforementioned provision of the RoA Criminal Code fails to clearly distinguish between the acts proscribed by Article 343(1) and those proscribed by Article 314.1 of the RoA Criminal Procedure Code, as well as the actions (or inaction) stipulated by Article 39 of the RoA Law on Advocacy, which leads to other legal consequences.

The RoA Constitutional Court decided (Decision No.851) on 14 January 2010, on the basis of the RoA Human Rights Defender's appeal, that since Article 343(1) of the RoA Criminal Code was not applicable to other participants of court proceedings, it contradicted the requirements of Articles 14.1(1) and 19(1) of the RoA Constitution and was thus null and void.

2.1.3. Right to Personal Liberty and Protection

A considerable number of complaints filed to the Defender in 2009 were, as in previous years, related to violations of the right to personal liberty and protection. The number of such complaints, having risen in 2008 relative to 2007, continued to grow in 2009. These complaints mostly concerned the unsubstantiated taking into custody of citizens to various stations of the RoA Police where they were unlawfully detained, their cruel and inhuman treatment, torture, and beating by police officers during such detention, the extortion of statements from accused persons by means of violence and threats, unlawful pre-trial detention, and the like.

The legal regulation of certain aspects of the Police's right to take people into custody, analyzed in earlier reports of the Defender, deserves further attention in order to ensure respect for the right to personal liberty and protection. Article 180(2) of the RoA Criminal Procedure Code, in particular, states that apprehending and searching persons is also lawful at the stage of preparing materials for the purposes of starting criminal proceedings. This may lead to unreasonable restrictions on a person's liberty. The RoA legislation does not prescribe any safeguards against such groundless restrictions. The legislation does not specify the maximum period for holding a person in custody or a procedure for establishing the apprehended person's identity without delay. In addition, Article 17(2) of the RoA Law on Police, which reads "in cases provided by law, the Police shall be obliged to hold apprehended and arrested persons, as well as detained persons, in cases stipulated by law", is also vaguely worded and gives the Police a direct right to hold apprehended persons. To date, this issue has not been resolved.

2.1.4. Right to Vote and Be Elected

Problems related to the RoA electoral legislation were thoroughly discussed in the 2007 and 2008 Annual Reports of the Defender. In particular, the Defender addressed problems related to gaps, inconsistencies, and ambiguous legal provisions in the RoA Electoral Code and other legal acts that regulate the electoral process. He made recommendations on improving the RoA electoral legislation, but these are yet to be implemented. The issues raised were related to the sound administration of the electoral process, the deadlines of election result re-counts in territorial electoral commissions, the regulation of campaigning in the media, the coverage of the campaign, the immunity of candidates nominated in the proportional and majority contests of the RoA National Assembly elections, the restriction of the active voting rights of dual citizens (registered in the RoA) under the RoA electoral legislation, the types of campaigning, the prohibited methods of campaigning, the prohibition of the free provision of goods or services to candidates (parties) in support of their campaign, the procedure of using campaign posters or other materials, the liability for breaching provisions of the RoA electoral legislation, and other matters.

2.2. Economic and Social Rights

2.2.1. Labor Rights

RoA labor legislation covers the exercise and protection of the individual's constitutional rights and freedoms with respect to employment by prescribing safeguards of the person's labor rights and freedoms and by upholding the rights and interests of employees and employers (Article 2 of the RoA Labor Code).

Nonetheless, the analysis that follows indicates that there are gaps and inconsistencies in the RoA labor legislation, which lead to violations of the individual's employment rights.

1) Article 9(2) of the RoA Law on Remuneration for Work stipulates that if an employee performs work that poses a threat to health, then the employee shall be paid an extra 50 percent of their basic salary. Article 9(3) of the same law defers to the RoA Government the power to approve the lists of employment types and professions that should be considered particularly hard or hazardous or particularly harmful to health.

According to paragraph 24 of Section XIII of the list approved under paragraph 1(a) of Government Decree 1907-N (11 December 2003), only employees that are directly engaged in the handling of air traffic with maximum intensity or difficulty may be granted the full 50 percent supplement. However, domestic legislation, including the RoA Law on Aviation and other related legal acts, does not set forth any standards or regulations concerning "air traffic with maximum intensity or difficulty". Consequently, all specialists engaged in the handling of air traffic across the territory of Armenia, regardless of their work conditions, have lost entitlement to the supplement.

Article 3(1.b) of the RoA Law on Aviation states that the RoA Government and bodies of public administration may, in the process of regulating aviation activities carried out in accordance with the RoA Law on Aviation, accept and adopt the civil aviation regulations of international civil aviation organizations (Eurocontrol and others) in order to simplify and facilitate regulation. Thus, the General Department for Civil Aviation adjunct to the RoA Government issued an official clarification report (report number 1) on 28 October 2004, in which it cited as a "regulation" a document adopted by Eurocontrol. However, in Europe this document has not actually been designated as a regulation and is non-binding for European Union Member States. Moreover, the document has not been recognized by the RoA Government and/or public administration bodies as a "regulation applicable to domestic affairs" as per Article 3(1.b) of the RoA Law on Aviation (i.e. it has not been incorporated into the domestic legal system in accordance with the procedures stipulated by the legislation, has not been officially published, and so on).

The staff of the RoA General Department for Civil Aviation consider that the aforementioned documents indicate that RoA air space is not a territory in which air traffic is handled with maximum intensity or difficulty. This situation shows that it is necessary that domestic legal acts define certain regulations (or standards) for maximum intensity (or difficulty) air traffic.

2) Paragraph 1(2) of Article 144 of the RoA Labor Code distinguishes between two types of overtime work: overtime work at the employer's demand and overtime work based upon mutual consent of employer and employee. Paragraph 2 of the same article states that an employer may engage an employee in overtime work only in exceptional cases stipulated by Article 145 of the RoA Labor Code. The RoA Labor Code, however, does not contain provisions on the permissible cases of overtime work *upon mutual consent of the parties*, even though this approach is stated in Paragraph 3 of Article 139 of the RoA Labor Code. In addition to defining the standard length of working hours in Paragraphs 1 and 2 of Article 139 of the RoA Labor Code, the legislature sets maximum working hours in Paragraph 1, including overtime work performed at the employer's demand. It cites the cases prescribed by Article 145 of the Labor Code, in contrast to Paragraph 2, where the legislature defines the maximum working hours, including overtime work undertaken with mutual consent, but fails to refer to any other provision of the Code. This means that any length of overtime work undertaken with the mutual consent of employer and employee is permitted.

Consequently, it has become necessary to bring the RoA Labor Code into line with international best practice on the legal regulation of overtime work. According to Article 3 of the Hours of Work (Industry) Convention (Convention 1, 1919) of the International Labour Organization, overtime work is permitted only in exceptional cases in order to ensure that ordinary work can be undertaken.

3) Article 184(1) of the RoA Labor Code stipulates that for each hour of overtime work a sum of at least one and a half times the regular hourly pay rate must be paid. However, Article 184(2) states that if both employer and employee agree the hourly overtime rate may be set at an amount no lower than the regular hourly pay of the employee. In practice this means that the provisions of Article 184(2) of the Labor Code are taken to mean that if employer and employee agree, overtime work may be remunerated at the same rate as work performed during regular hours. This leads to situations in which people in need of income agree to perform overtime work for the same remuneration as they receive during regular hours, despite exhaustion or deteriorating health.

4) Article 185 of the RoA Labor Code allows that work performed on non-working days (holidays, remembrance days, and days-off) may or may not be considered part of the work schedule. Under Article 185(1) of the RoA Labor Code, work performed on holidays, remembrance days, and days-off, which is not part of the designated work schedule, shall be remunerated at the rate of at least twice the hourly (daily) pay rate or, if the employee so desires, a day can be taken in lieu – either a day off during the following month or an extra day of annual leave.

Under Article 185(2) of the RoA Labor Code, work performed on a day that is designated by the work schedule as a "day off" shall be remunerated at the rate of twice the hourly (daily) pay rate, but the same article fails to regulate the remuneration of work performed on days designated by the work schedule as "holidays and remembrance days". This creates serious problems for both employees and employers.

5) Article 113(1) of the RoA Labor Code provides the grounds for the termination of an employment contract. Article 113(1.4) states that an employer may terminate an employment contract if an employee is unsuitable for his position or job. Under Article 120(1) of the RoA Labor Code, an employer may terminate an employment contract based on the grounds stipulated by 113(1.4) of the RoA Labor Code – i.e. when the employee is unable to perform their work duties due to their lack of professional knowledge or health condition. Article 120(3) of the RoA Labor Code states that the employee's suitability for his/her position or job shall be assessed by the employer, while the employee's health condition shall be determined by a medical report.

In view of this and the fact that the RoA Labor Code contains no procedure by which the employer shall determine the suitability of an employee, it is necessary to amend Article 120 of the RoA Labor Code so that a procedure by which an employer shall assess the suitability of an employee's professional knowledge for his/her position or job is clearly defined.

6) The RoA Code of Administrative Infringements prescribes penalties for an employer that violates the labor legislation rather than for the director of the employer's executive body. However, legal entities may not be sanctioned for an administrative infringement. In its ruling in case T-2220, the RoA Economic Court found that "it is a universally-recognized fact that a legal entity may not be penalized for an administrative infringement under the RoA Code of Administrative Infringements" and concluded that this point did not need to be proven (the ruling was upheld by the 14 October 2005 ruling of the RoA Cassation Court). In any case, this statement is clearly in line with the provisions of Articles 9-13 and 19 of the RoA Code of Administrative Infringements, which state that only individuals may be held liable for administrative infringements due to certain features that cannot apply to legal entities (e.g. guilt, age, and culpability).

Thus, an employer that is a legal entity cannot be penalized for an administrative infringement. Given these complications, it is necessary that the word "employer" used in the relevant sections of the RoA Code of Administrative Infringements be replaced with the word "official."

7) Article 178(1) of the RoA labor Code defines the notion of "salary" as "the remuneration paid to an employee for the performance of work stipulated by the employment contract." Article 178(3) states that "salary shall include the base salary and any type of supplementary amount paid by the employer to the employee for work performed by the latter."

Article 184 of the Labor Code regulates remuneration for overtime work and night time work by providing that "for each hour of overtime and night time work an amount of no less than one and a half times the hourly pay rate shall be paid." However, Article 9(4) of the RoA Law on Remuneration for Work regulates in differently – it establishes a supplement at double the amount of the hourly rate for each hour of night time (i.e. 11pm to 8am) work and overtime work.

According to established legal practice, this discrepancy between the RoA Labor

Code and the RoA Law on Remuneration for Work should be resolved in favor of the RoA Labor Code since Article 3(1) of the RoA Law on Putting the RoA Labor Code into Effect states that within a year of the Code coming into effect, laws and other legal acts that contain provisions on labor law must be brought into line with the Code.

The uncertainty in the aforementioned provisions of the Labor Code has created possibilities for its arbitrary reading and application. In this respect, the RoA Minister of Labor and Social Affairs issued an official clarification on these provisions on 3 November 2006, which read as follows: "According to Paragraph 1 of Article 184 of the RoA Labor Code, an employee shall be paid, in addition to their basic pay, a supplement of no less than one and a half times (150 percent) the basic pay rate for each hour of overtime work and night time work." However, in practice, this official clarification is being neglected, and Article 184 of the RoA Labor Code is being interpreted in a variety of ways.

To rectify the current situation and avoid conflicting interpretations of the provision in question, as well as to safeguard the labor law principles enshrined in Article 13 of the RoA Labor Code, which includes the principle that every employee is entitled to fair remuneration for work, Article 184 of the Labor Code should be amended to state that:

a) A supplement of 150 percent of the basic pay rate must be paid in addition to basic pay;

b) Such a pay rate shall apply both to employees whose salary is calculated on an hourly rate as well as those whose salary is calculated on a monthly rate.

Such amendments will put an end to the inconsistent application of the legal provisions and safeguard the exercise of every employee's right to fair remuneration for work.

2.2.2. Social Security Rights

Issues Related to the Legislative Regulation of Pension Rights

In 2009, gaps that exist in the legislation on the payment of pensions were identified. As a result of these legislative flaws, certain categories of pensioners have been essentially deprived of the possibility to exercise their lawful rights to a pension. The problem relates to how the RoA Law on Scientific and Scientific-Technical Activities is being applied. Under Article 19(3) of this law, the state must pay persons with a degree in science not only a pension, but also a supplement, the amount and payment procedure of which shall be defined by the RoA Government. The law entered into force in 2000, but the procedure has still not been adopted by the RoA Government. The Defender raised this issue in a letter to the Chief of Staff of the RoA Government, who informed the Defender in response that legal provisions to outline the procedure for and amount of the supplement were going to be discussed in the context of pension reforms.

The Defender has paid constant attention to issues related to the application of the pension legislation since the adoption of the 15 January 2005 decision of the RoA

Constitutional Court. Such issues are analyzed in detail in Paragraph 3.5 of this Report.

Another issue related to the exercise of pension rights was raised by the "Armenian 'Sakharov' Center for the Protection of Human Rights" non-governmental organization. The issue concerns the restriction of pension payment dates by "VTB-Armenia Bank" CJSC in accordance with a contract on provision of paid services between the Bank and the RoA Ministry of Labor and Social Affairs. Thus, the Defender studied how Article 55(1) of the RoA Law on State Pensions is being applied in practice and uncovered the following picture.

On 28 November 2001, "Armsavingsbank" CJSC (presently "VTB-Armenia Bank" CJSC) and the RoA State Fund for Social Insurance concluded a contract on provision of paid services whereby the Bank undertook, at the assignment of and with the resources of the Fund, to perform pension payments throughout the RoA territory. On 31 October 2005, the aforementioned contract was amended to stipulate a deadline for administering pension payments to pensioners by the Bank's branches – it was set at 12 calendar days after the branches were credited with the relevant amount. Then, under another amendment to the contract made in 2006, the 12-day period was extended to 15 days. When the deadline stipulated by the contract passes, any balance that remains after payments have been made is returned to the Client within three bank days.

In case EKD 0398/02/2008, the Yerevan Civil Court ruled (a ruling that has now become final) that Paragraph 2.1f of the aforementioned contract (the paragraph that prescribes a timeframe for pension payments within a month) as null and void. As a result, pension payments were being paid during the whole month. However, since March 2009, branches of "VTB-Armenia Bank" CJSC resumed the practice of limiting the pension payment time period in a month.

According to the clarification provided by the State Social Security Service of the RoA Ministry of Labor and Social Affairs, pension payments are currently performed in the RoA prior to the 20th day of each month. If a pensioner does not receive the pension during this timeframe, then payment is deferred to the following month. Such a restriction was imposed on the basis of the amendment made to Article 55 of the RoA Law on State Pensions on 26 December 2008, which entered into effect on 5 February 2009. This amendment states that each month's pension shall be paid prior to the 20th day of the month and stands in contrast to the previous wording of the provision, which stipulated payment of each month's pension during the following month.

The content of this legal provision implies that the state is obliged to pay the pension for each month no later than the following month. Indeed, Decision 3-1046(VD) of the RoA Cassation Court interprets it this way. It reads: "The Cassation Court finds that Article 55(1) of the RoA Law on State Pensions should be construed not as the pensioner's right to receive each month's pension during a certain time period but rather as the competent state body's obligation to pay the pension to the pensioner no later than by the end of such a time period." Under the RoA Constitution, the objective of the Cassation Court is to ensure the consistent application of the law. Accordingly, the RoA Judicial Code defines that the

Cassation Court's reasoning (including the interpretation of the law) in a case with certain factual circumstances shall be binding for courts in the examination of a case with similar/ identical factual circumstances.

The amendment to Article 55(1) of the RoA Law on State Pensions has not altered the substance of this legal provision; rather, the deadlines for pension payment by the state have been further limited. By doing so, the legislature tried to further improve the pensioner's legal situation by limiting the time period during which the competent state body is obliged to pay the pension amount to the pensioner.

However, if the competent state body's obligation to pay the pension to the pensioner no later than by the 20th day of the current month is construed as a deadline by which the pensioner must exercise his or her right to receive the pension, amendments to the relevant contract would clearly contradict the literal meaning of the words and expressions contained in the said article. Such an interpretation would completely alter the meaning of the said legal provision and seriously violate the requirements of the RoA Law on Legal Acts.

Based on this line of reasoning, the Defender has recommended that the State Social Security Service and the RoA Ministry of Labor and Social Affairs promptly take measures to restore the procedure in which pensions were paid throughout the entire month. Despite this, the State Social Security Service has amended the contract with the bank, claiming that amendments will be made after a system for non-cash payment of pensions is implemented. The Defender has followed this up by regularly requesting feedback on the progress of the implementation of the non-cash pension payment system. In a letter dated 11 October 2009, the RoA Ministry of Labor and Social Affairs informed the Defender that the Ministry has now submitted to the RoA Government the relevant draft legislation on the implementation of the system for non-cash payment of pensions.

Compensation for Severe Injuries sustained at Work, Profession related Illness, or other Health Problems Caused by the Performance of Employment Duties

Despite the fact that the RoA Human Rights Defender has drawn attention to the problems in this sphere in all of his annual reports, the issues remain unaddressed. As there is still no legislation on obtaining compensation from liquidated organizations for severe injuries sustained at work, profession related illness, or other health problems caused by the performance of employment duties, citizens continued to lodge such complaints throughout 2009.

Paragraph 16 of Government Decree 579 (15 November 1992) states that if an organization's activities are terminated due to liquidation or restructuring, any damages shall be compensated for by its successor or, in the absence of a successor, by the social security agency with funds from the state budget. On the same matter, Article 1086 of the Civil Code of Armenia (in force since 1999) states that in the case of the liquidation of a legal entity, recognized by the established procedure as liable for damage inflicted upon life or health, the respective payments shall be capitalized according to the rules established by laws or

other legal acts in order to pay the victim. Under the same article, to clarify situations in which an organization's activities cease due to its liquidation and there is no legal successor to perform such obligations, a procedure was to be adopted that provided compensation to citizens that were injured during the performance of employment duties. However, during the last decade no such procedure has been adopted. Instead, the Government adopted a decree on 11 November 2004 repealing Paragraph 16 of Government Decree 579 dated 15 November 1992. Consequently, the problem remains unresolved, and many citizens have been deprived of their right to receive their due compensation.

The RoA Human Rights Defender has drawn the attention of both the RoA Prime Minister and the RoA Minister of Labor and Social Affairs to this problem. The Defender recommended prompt action to fill the legislative gap and suggested that the possibility of providing due compensation for the missed period be considered.

The draft Law on Mandatory Social Insurance for Workplace Accidents and Profession related Illness, which according to the RoA Ministry of Labor and Social Affairs has been under development for years, and which would have resolved the aforementioned problem, has not yet been adopted.

As a step toward solving the problem, the RoA Prime Minister instructed in 2008 that a discussion be organized with the participation of the RoA Central Bank, the RoA Ministry of Labor and Social Affairs, and the Defender's Staff. A subsequent meeting was also organized in the RoA Ministry of Labor and Social Affairs, during which it was agreed to provide an interim legal solution to safeguard the right to receive compensation for damage inflicted to citizens after 1 August 2004. It was also suggested that a RoA Government decree be drafted or amendments made to RoA Government decree 579 (of 15 November 1992) that would allow citizens to receive amounts due from the state budget. The participants of the discussion agreed to develop a separate procedure on the capitalization of a liquidated organization's financial resources. In cooperation with the RoA Central Bank, a concept paper on the introduction of mandatory social insurance for workplace accidents and profession related illness will be developed and submitted to the RoA Government. This will then be followed by a draft law on the same issue.

However, it must be noted that this issue, which has been raised for many years now, has not yet been resolved. The Defender will continue to follow up these issues.

2.2.3. Property Rights

In 2009, the Defender continued to receive complaints from owners of property located in zones being expropriated for public and state needs, and holders of other property rights, mostly regarding inadequate compensation. Such problems occurred because the procedure prescribed by law for negotiating the compensation price defined by the sale contract was not followed and because the price proposed by the buyer never changed.

In his 2008 Annual Report, the Defender detailed the recommendations he made at the drafting stage of the RoA Law on Alienation of Property for Public and State Needs, including the recommendation to clarify the role of the state as champion of public and state interests.

The 2008 Annual Report addressed the legislative problems connected with the legalization of unauthorized structures, including the need to amend Government decrees 731-N and 912-N dated 18 May 2006 and the procedures approved in them. The Defender recommended that deadlines be set for recognizing and registering state or local authority ownership rights over structures that citizens or legal entities built without planning permission on land owned by the state or local authorities. The recommendations were aimed at securing the legalization of such structures. However, the relevant legislation has not yet been amended along these lines.

Despite the fact that it has been raised in earlier annual reports, another problem that persists since the adoption of the RoA Law on Alienation of Property for Public and State Needs is the failure to legalize buildings and structures that have been used for decades by holders of property rights in areas recognized as “sites of exceptional, prevailing public interest”. The Defender recommended that residents of apartment buildings located in sites being expropriated for state or public needs be allowed to purchase structures built without planning permission prior to 15 May 2001. Such legislation has not yet been adopted.

Although the Defender has repeatedly addressed problems in the area of urban development legislation and pointed out the lack of clear regulatory mechanisms, no progress can be reported in this sector either. The problems related to urban development legislation were analyzed in detail in the Defender’s 2008 Annual Report.

In view of the rulings of the European Court of Human Rights concerning appeals against the Republic of Armenia in relation to violations of property rights, particular attention should be paid to Recommendation Rec(2004) 6 of the Committee of Ministers of the Council of Europe to Member States on the Improvement of Domestic Remedies. When a ruling points to structural or general deficiencies in national law or practice (a “pilot case”) and a large number of appeals to the Court reflect the same problem (“repetitive cases”) or are likely to be lodged, the relevant state should ensure that potential applicants have, where appropriate, an effective remedy that allows them to apply to a competent national authority. Such a rapid and effective remedy would enable them to obtain redress at national level, in line with the principle of subsidiarity of the Convention system. If this procedure were implemented in Armenia’s domestic legal system, it could make a significant contribution to safeguarding the right to an effective remedy in the Republic of Armenia.

2.2.4. Right to Live in a Healthy Environment

Under Article 10 of the RoA Constitution, "the State shall ensure the conservation and renewal of the environment and the sound use of natural resources." Article 33.2 of the RoA Constitution states: "Everyone has the right to live in an environment conducive to health and well-being. Everyone is obliged, individually and jointly, to conserve and improve the environment. Officials will be held liable for concealing or refusing to provide information about the environment."

As civilization advances, the impact humans are having on the environment takes on many new forms and the consequences are unpredictable. Thus, cooperation and mutual accountability between state and civil society becomes increasingly important. It is extremely important for society to claim its right to live in a healthy environment and to respond in a timely fashion to each violation of such a right. Unfortunately, public awareness of matters related to environmental protection remains low. Thus, adequate monitoring by state and society is required if environmental problems are going to be solved and the abuse and negligence of the environment by officials and individuals halted.

The RoA Law on Environmental Impact Assessment regulates the legal, economic, and organizational aspects of assessing the environmental impact of various activities. Based on this law, the RoA Government adopted the decrees "On the State Body Competent to Perform Environmental Impact Assessment" and "On Approving the Procedure of Issuing Environmental Impact Assessment Competence Certificates". In addition, based on the requirements of the RoA Law on Ensuring Sanitation and Epidemiological Security of the RoA population, and with a view to honoring the commitments RoA assumed at the United Nations Conference on Environment and Development (Rio de Janeiro, 1992) and the World Health Organization's 2nd and 3rd European Conferences on Environment and Health (Helsinki 1994 and London 1999), the RoA Government approved the National Action Plan on Environmental Hygiene and the RoA Environmental Hygiene National Action Plan Priority Actions Implementation Timetable. The 2007-2011 Action Plan under the Republic of Armenia State Environmental Monitoring Concept Note was also approved. The Defender remains focused on issues related to the right to live in a healthy environment, and will persist in addressing environmental problems in his reports.

In 2009, the Defender's environmental inspections and visits (Dsegh forest, Jrvezh forest park, and different parts of the City of Yerevan) have shown that serious human rights problems remain in the area of environmental protection. The main problems are related to poor environmental controls in the City of Yerevan and in Armenia's provinces, which results in the mass cutting of trees or the improper use of forests and national parks, the illegal disposal of construction and industrial waste, and the inadequate control of mining companies. In the fall of 2008, environmental NGOs alerted the public to the catastrophic environmental situation in Kapan – they reported that toxic heavy metals were discovered there in the soil, water, and food, and that the concentration of certain elements was 100-

fold above the standard, which could affect the human immune system and the gene pool. Moreover, the Kapan area was polluted with hundreds of thousands of cubic meters of tailings and waste. Environmentalists were also claiming that they had been unable to receive information on the findings of inspections into the activities of the "Deno Gold Mining" company operating in Kapan (inspections had been carried out in 2007 and 2008 by the RoA Ministry of Environmental Protection and Syunik province's Territorial Environmental Protection Agency). The Defender asked the relevant state authorities to investigate the lawfulness of tree cutting activities in Lori province and if illegal felling was detected to take appropriate measures as stipulated by law. As a result, a criminal case was opened and is now being investigated.

To date, there is no separation of the powers of the "Sevan National Park" State Non-Profit Organization and the Sevan Town Administration to lease territories on the shores of Lake Sevan. In his 2007 Annual Report, the Defender mentioned the problems related to Lake Sevan in view of its exceptional economic and ecological significance. Concerns had also been expressed over the recent construction "boom" in the City of Yerevan, the quality of development, and the violations of human rights in the process. These problems continue.

Environmental problems are due not only to flaws in legislation but also, and more so, to deficiencies in the way laws are applied in practice. The RoA has ratified a number of international conventions on the environment and the RoA Government has approved a number of international environmental action plans. Examples of progress in this area include the "Second National Action Plan for the Protection of the Environment in the RoA" approved under Protocol Decision 33 of the RoA Government (of 14 August 2008), the "Concept Note on the Improvement of Legislation on Environmental Fees and Their Amounts" approved under Protocol Decision 18 of the RoA Government (of 30 April 2009), and the drafting of the first national RoA report on the implementation of the Framework Convention on Climate Change. While environmental problems largely depend on the existence of appropriate legislation and human and financial resources, the development and adoption of national policies is often more important. Moreover, there is still a need for legislation that regulates the provision of environmental information to the public by state bodies and the procedures by which the participation of the wider public in environmental decision-making is ensured. The requirement to adopt such procedures also flows from the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, as stated in the findings and recommendations of the Aarhus Convention Compliance Committee adopted in March 2006. However, no progress has been made in this area to date.

Overall, environmental protection in the Republic of Armenia remains far from adequate.

PART 3.
ANALYSIS OF HUMAN RIGHTS VIOLATIONS BY PUBLIC BODIES

The nature of complaints received in 2009 reveals that the public bodies that deal with citizen's applications and complaints do not always comply with the principles enshrined in Article 3 of the RoA Constitution and the RoA Law on Fundamentals of Administration and Administration Proceedings. Regardless of whether violations of rights have actually occurred, the number of complaints against public bodies *per se* is indicative of the fact that the officials processing applications and complaints have failed to adequately perform their duties. For, even if the complainants' rights have not been violated, the complainants have been inappropriately treated, have been unable to receive information as to why applications were refused, and have encountered other unacceptable practices.

The Defender's viewpoint in decisions providing a clear assessment of the performance of certain state or local government bodies, i.e. statements substantiating that these bodies have acted unlawfully or failed to act appropriately, are not acknowledged by these bodies. Moreover, they try to circumvent factual evidence and interpret facts in ways that favour them. In this regard, it is worth noting that the annual reports of the Human Rights Defender do not always serve their purpose – the issues raised are not resolved, the poor administration of state or local government bodies continues, and those guilty are not held legally responsible.

3.1. National Assembly of the Republic of Armenia

In complaints against the RoA National Assembly, citizens mentioned the adoption or non-adoption of certain laws and commented on amendments in the legislation. Such complaints have been reviewed among the Defender's Staff in accordance with established procedure.

In his 2008 Annual Report (Section 3, Illustrative Case 1), the Defender discussed the problems raised in the complaint of citizen A.Sh. The complainant had asserted that, through a tender held in May 2004, she had been recruited as a Senior Specialist in the Regional Policy Analysis Department of the RoA National Assembly Staff's Local Government Administration Unit. Due to the long-term diplomatic appointment of her husband, she stepped down from the post for three years on the condition that, under Article 47(1) of the RA Law on Diplomatic Service, she would be given an equivalent job on her return. In June 2008, after her return to Armenia, she presented a written application to the National Assembly's Chief of Staff requesting that she be restored to an equivalent position, but her application received no reply. This led her to believe that the respective officials' conduct was related to her husband's personal character and political views.

The Defender's review of the complaint showed that H. Kotanyan, the National Assembly's Chief of Staff at that time, had not interpreted Article 47(1) of the RoA Law on Diplomatic Service in favor of the complainant, which essentially violated her rights. The Defender declared on 20 February 2009 that the actions (inaction) of H. Kotanyan was a violation of human rights and recommended to G. Gharibjanyan, the National Assembly's current Chief of Staff, that he take adequate measures to restore A.Sh.'s right to employment.

In response to this statement, G. Gharibjanyan informed the Defender that Article 47(1) of the RoA Law on Diplomatic Service had been compared with the relevant provisions of the RoA Law on Public Service in RoA National Assembly Staff in order to try and resolve the issue. Referring to the "unless a different procedure is stipulated" clause in Article 47(1) of the RoA Law on Diplomatic Service, he noted that the detailed regulation of public service in RoA National Assembly Staff is stipulated by the RoA Law on Public Service in RoA National Assembly Staff. Article 12(1) of that law states that appointments to vacant public service positions in the Staff are made in accordance with the procedure stipulated by the same law, i.e. vacancies in the Staff can only be filled by means of a closed or open tender.

Thus, the Defender's statement went unheeded by **the legislative body of the Republic of Armenia** on the grounds that there was a legislative gap – i.e. the RoA Law on Public Service in RoA National Assembly Staff contains no legal provisions or grounds for restoring public servants released from their position to an equivalent position.

3.2. Government of the Republic of Armenia

Complaints against the RoA Government were mostly connected to Government decisions or decrees that deprived complainants of certain rights or did not, in the opinion of the complainants, fairly distinguish between various social groups, such as the residents of the capital city Yerevan and residents in the provinces. Some complaints were related to the non-execution of RoA Government decisions or decrees because of bureaucratic redtape. Many complaints concerned the suspension or postponement of various projects due to the global crisis.

Government Decree 912-N (of 18 May 2006) approved the Procedure for Legalizing and Disposing of Structures Built without Planning Permission (hereafter, "the Procedure"). The Procedure is problematic in that it only sets a deadline for legalizing structures that citizens have built without planning permission on sites owned by the citizens (30-60 days after receiving an application); it fails to specify a deadline for legalizing structures citizens have built without planning permission on state-owned land and have used for years. The problem is that citizens apply to the relevant body in order to legalize their structures, but the body states that the issue will be addressed only when the land and structure in question are recognized as state-owned property, and this takes several months, if not a year.

This problem was also mentioned in the Defender's 2008 Annual Report (Section 2.2.3). The Defender raised the issue with the RoA Government, but it has not yet been resolved.

Based on a complaint by residents of building 41 Yeznik Koghbatsi Street, Yerevan, the Human Rights Defender sent letter 2-0193 to the RoA Prime Minister back on 18 June 2008. In it he raised the issue of legalizing buildings and structures used for decades by citizens holding property rights in areas recognized as "sites of exceptional and prevailing public interest" since the adoption of the RoA Law on Alienation of Property for Public and State Needs (Section 2.2.3 of the 2008 Annual Report). Specifically, the Defender noted the shortcomings of RoA Government Decree 1529-A (of 20 December 2007), which allowed the Yerevan Mayor, in sites being expropriated for public and state needs, to sell or donate to citizens land unlawfully occupied prior to 15 May 2001 and/or structures built without planning permission on land that is adjacent to the citizens' homes. There are also apartment blocks in sites being alienated for public and state needs, and over the years the residents of such buildings, too, have built unauthorized balconies, kitchens, and other structures adjacent to their apartments in an attempt to improve their homes.

Given this situation, the Defender recommended that equal opportunity for legalization of these structures be granted to residents of **apartment buildings** located in these sites by making the appropriate amendments to Government Decree 1529-A (of 20 December 2007). As a result, a draft decree of the Government amending the RoA Government Decree 1529-A of 20 December 2007 was circulated. The draft proposed the addition of a new sub-paragraph "b" to Paragraph 1 of Decree 1529-A in order to permit the sale or donation of the aforementioned unauthorized structures to residents of **apartment buildings** located in sites subject to alienation.

However, according to the RoA Ministry of Justice's opinion of state expert review (contained in letter E4124 of 25 September 2008), the matter is already regulated by the RoA Law on the Status of Individual Homes in Yerevan with Missing Title Deeds and RoA Government Decree 912-N of 18 May 2006 "On the Procedure of Legalizing and Disposing of Structures Built without Planning Permission." Therefore, the Ministry of Justice stated that the decree concerned did not need to be amended. In view of this comment, the draft was removed from circulation.

The Defender expressed his disagreement with the position of the RoA Minister of Justice in a letter to the RoA Prime Minister dated 21 April 2009, stating that "Article 1 of the RoA Law on the Status of Individual Homes in Yerevan with Missing Title Deeds allows citizens to legalize individual homes and adjacent residential extensions, including land plots in actual existence, for construction and maintenance. But this urban development authorization and/or issuing of land allocation documents can only be applied to cases in which title deeds have not been preserved." Moreover, Article 2 of the relevant Law regulates the legalization of state-owned land of up to 300 square meters which is being

clearly used and is adjacent to land lawfully designated for the construction and maintenance of residential homes owned by citizens and/or the legalization of residential homes and/or residential extensions built on such sites.

It follows, therefore, that the RoA Law on the Status of Individual Homes in Yerevan with Missing Title Deeds fails to regulate the legalization of unauthorized structures (including the land under such structures) built adjacent to apartments or non-residential premises that are outside the area of an apartment building or inside or outside the site necessary for the maintenance of such a building by the owners of the apartments and non-residential premises in the apartment block. This was in fact noted in the written refusals that citizens received from the Yerevan City Administration. Furthermore, Paragraph 25 of RoA Government Decree 912-N (of 18 May 2006) designates fees for the legalizing of structures, whereas RoA Government Decree 1529-A (of 20 December 2007) allows the Yerevan Mayor to donate such structures to citizens free of charge.

In view of the above, the Defender deemed that residents in similar situations could be treated differently, which may lead to discrimination. He thus recommended that the Government instruct another review of the situation so that Government Decree 1529-A of 20 December 2007 might be appropriately amended. In response to the subsequent RoA Government instruction (dated 1 June 2009), the RoA Minister of Justice responded to the Defender's comments by essentially asserting his earlier position.

Based on this reply and the RoA Ministry of Justice's expert opinion, the Defender sent a letter to the Yerevan Mayor on 6 July 2009 requesting that he consider, within the scope of Article 2 of the RoA Law on the Status of Individual Homes in Yerevan with Missing Title Deeds, the possibility of privatizing free-of-charge buildings and premises (including the land under them) built by citizens adjacent to apartment buildings in sites subject to expropriation.

In a letter dated 31 July 2009, the Yerevan Mayor noted that Article 2 of the RoA Law on the Status of Individual Homes in Yerevan with Missing Title Deeds concerned individual homes and could not regulate the demolition of structures built without planning permission adjacent to apartment buildings. He noted that if citizens lodge applications, the issue could be reviewed under RoA Government Decree 912-N of 18 May 2006.

Essentially, state bodies are issuing conflicting interpretations of the legal regulation of the same matter, which means that the issue needs to be further addressed. The Defender remains focused on this problem.

Back in 2006, residents of building 9 Isahakyan Street, Gyumri, sent a complaint to the RoA Human Rights Defender informing that their building had been built in 1924, had been recognized to be under fourth-degree danger of collapse prior to the 1988 earthquake, but had never been renovated. Reinforcement had started at the beginning of 1988, but was never finished because of the earthquake in late 1988. The roof, sewer system, and sanitary facilities of the building were in an appalling condition, as well. Since the start of

the complaint's review in 2006, the Defender has requested clarification from the governor of Shirak province a number of times.

In letters sent to the Defender during 2006-2008, the Shirak governor informed that the reinforcement and renovation of the building in question was stipulated by the medium-term expenditure framework (MTEF) applications submitted to the RoA Government on an annual basis. However, each year, the works had been postponed.

On 24 May 2009, in response to another of the Defender's letters, the Shirak governor informed that 10 of the 101 apartment buildings recognized to be under third- and fourth-degree danger of collapse in the City of Gyumri were indeed particularly prone to collapse and confirmed that within the list of those 10 buildings the one located at 9 Isahakyan Street was included. The governor further clarified that the Shirak governor's office had repeatedly included such buildings in the MTEF applications submitted to the competent state body. Indeed, the Shirak governor's office had last raised the issue before the RoA Deputy Prime Minister on 9 February 2009. The provincial governor also informed the Defender that housing programs were being implemented in Shirak province for families that had lost their houses in the earthquake, whereas the RoA Ministry of Urban Development was developing a separate nationwide program on buildings subject to reinforcement and renovation.

Based on the foregoing and the importance of the issue, the Defender sent a letter to the RoA Prime Minister on 4 November 2009, expecting that the problem would soon be dealt with.

During the Human Rights Defender's numerous visits to Armenia's provinces, non-governmental organizations and individuals complained about the procedure approved under RoA Government Decree 912-N of 18 May 2006 "On Approving the Procedure for Legalizing or Disposing of Structures Built without Planning Permission." The problem is that the same price has been set for legalizing unauthorized structures in any province or community of Armenia, but in reality the market value of structures in the regions is much lower than in Yerevan. Therefore, they complained that it is unfair to set a blanket price for the legalization of all structures, arguing that the legal procedure should have provided for some differentiation in legalization fees in order to account for the variation between Yerevan and the regions. The issue is still under consideration.

Some complaints were received from homeless families living in rural settlements of the (1988) Earthquake Zone. Under Paragraph 2 of the Procedure approved under Government Decree 432 dated 10 June 1999 "On Approving the Procedure of the Registration and De-Registration of Citizens Entitled to Urgent Allocation of Apartments in Settlements of the Earthquake Zone and the Donation of Such Apartments to Such Citizens (prior to being amended by Decree 1024-N of 11 September 2008), the priority right to receive an apartment shall be reserved for citizens (including their family members) whose accommodation (apartment, house, or a part of the house) was destroyed or rendered unfit

for residence due to the earthquake. By virtue of the amendments made by Decree 1024-N dated 11 September 2008, Paragraph 2 of the Procedure was restated as follows: "The priority right to receive an apartment shall be reserved for Armenian citizens (including their family members) whose accommodation (apartment in an apartment block) was destroyed or rendered unfit for residence due to the earthquake."

Paragraph 4 of the Procedure now stipulates that citizens must submit an application to the head of the local authority of their residence in order to receive an apartment. The application must contain the number of family members, including those temporarily absent, as well as the temporary residence address. If necessary, the application shall be accompanied by a statement on the right to use additional residential space. Mayors of rural settlements have registered homeless families in appropriate lists in accordance with the procedure approved under the aforementioned decree.

Later, however, the RoA Government adopted Decree 1337-N (of 13 November 2008) approving the procedure entitled "The Priority Order of Registration and Housing Provision to Families that Became Homeless because of the Earthquake in Rural Settlements of the Earthquake Zone." This procedure was expected to resolve the housing issues of families that became homeless in rural settlements. However, under the procedure to register for improved housing conditions, citizens are required to submit certain documents which were not foreseen by Government Decree 432 of 10 June 1999 (the documents that allowed citizens to be originally registered in the lists of homeless families). For example, Paragraph 6(3) of the aforementioned procedure states that citizens must present not only an application, but also a report on the family composition as of 7 December 1988 (the day of the earthquake) based on the household register or, in case of its absence, an archive report.

The problem is that in many of the communities the relevant documents have not been preserved, and this essentially deprives citizens of the chance to receive housing. Some have complained about refusals to accept reports issued by a community mayor (about the citizen having had a separate household prior to the earthquake, including a residential home that was lost due to the earthquake) on the grounds that the reports did not conform with the requirements of the aforementioned procedure. Thus, after the adoption of RoA Government decree 1337-N, many citizens residing in rural settlements were removed from the list of homeless families for reasons beyond their control.

According to information provided by the RoA Lori governor's office, the office had proposed to the RoA Government an amendment to Paragraph 6(3) of the Procedure approved under RoA Government Decree 1337-N of 13 November 2008. The proposed amendment was aimed at prescribing other grounds for allowing the local authority council to review and favorably resolve the issue of including citizens that lost their homes in the "waiting" lists of homeless families.

3.2.1. State Committee of the Real Estate Cadastre adjunct to the RoA Government

Complaints against the State Committee of the Real Estate Cadastre adjunct to the RoA Government (i.e. the territorial units of the Staff of the Cadastre Committee) concerned the failure to register rights established by court rulings, the refusal to register inheritance rights on various grounds, mistakes in the measurement process, the failure to substantiate refusals to register rights, and the like. Some complaints concerned errors caused by changes in the documented location and position of land owned by citizens due to mapping activities performed after initial state registration (especially in provinces), which has led to disputes between citizens and state and local government bodies.

Citizens also complained about the refusal to register ownership rights over land designated for the collective organization of horticulture, which was allocated to them during Soviet years in different regions of the Republic by various decisions of the Council of Ministers of the Armenian Soviet Socialist Republic. Based on those decisions, design institutes in Yerevan developed designs for the organization of horticultural areas, which, together with the decisions, were provided to the regional council executive committees, which were responsible for allocating land plots to institutions and organizations. The latter distributed the plots of land among their employees and the decisions and designs were provided to horticulture companies as well. It then transpired that the ownership rights of citizens over land that had been used, developed, or mapped by citizens as horticultural land had already been registered. Some of the land plots that had not been used, developed, or demarcated were privatized to citizens by the Local Land Reform and Privatization Commissions during the land privatization process of 1991-1993, and the rest was transferred to the communities in the form of agricultural land plots. Considering that similar problems were reported in a number of communities throughout the Republic, the Defender raised the issue with the relevant authorities.

In response, the Chairman of the State Committee of the Real Estate Cadastre adjunct to the RoA Government informed the Defender that the delineation of territories and the development of schemes dividing horticulture areas were in process. He also noted that, in parallel, temporary land use schemes were being developed in order to change the designated use of allotments and provide them to horticulture companies in communities in which land plots formerly allocated for horticulture had been donated to local authorities. In addition, he stated that temporary land use schemes had already been prepared for eight local authorities in Kotayk province and two local authorities in the Aragatsotn province, and these were being agreed upon. The Defender was also told that, based on an instruction by the RoA Prime Minister, a working group had been created to develop legislation that regulates horticultural issues.

3.2.2. National Security Service adjunct to the RoA Government

On 11 November 2009, the Staff of the RoA Human Rights Defender received an oral complaint, followed by a written one, about T.S., an investigator of the Investigative Department of the RoA National Security Service (NSS), who made a telephone call to K.H. summoning him to the Investigative Department of the NSS for an interrogation on 23 August 2009. The investigator confiscated K.H.'s passport and, subsequently, on 6 November 2009, called him back to the NSS Investigative Department by means of a court summons as a witness in criminal proceedings started on the basis of charges filed under Article 325(2) of the RoA Criminal Code.

The complainant also informed the Defender that he had a third-degree disability, was in ill health, had repeatedly undergone treatment in a neurological ward, was in need of treatment at the time, and was unable to obtain government-subsidized health care because of not having his passport. An employee of the RoA Human Rights Defender's Staff telephoned the Deputy Head of the NSS Investigative Department in order to clarify the situation. During the telephone conversation, M.M. stated that the investigator had confiscated K.H.'s passport since his status in the criminal case might later change.

Under Paragraph 19 of the RoA Government Decree 821 (25 December 1998) "On Approving the By-Laws of the Passport System in the Republic of Armenia and the Description of the Passport of an Armenian Citizen," the passports of suspects and accused persons who, as a preventive measure, have signed a promise not to leave the country, as well as passports of persons sentenced to imprisonment shall be temporarily confiscated by investigation or inquest bodies or courts, and the passports of persons drafted to the army for military service shall be held by military conscription offices. The passports of suspects and accused persons shall be returned to their holders upon termination of the relevant preventive measure, while the passports of convicts and persons drafted to the army for military service shall be returned to their holders after serving the sentence or being demobilized.

Investigation or inquest authorities shall issue a personal identification document to non-detained suspects and accused persons (this does not authorize them to leave the Republic of Armenia). The template of such a document shall be developed and approved by the RoA Interior and National Security Ministry. Except for the cases prescribed above (Paragraph 19), passports may not be confiscated, passed on to other persons, or pledged.

The investigator of the NSS Investigative Department thus violated legislation by confiscating the passport of a citizen who was simply a witness in a criminal case. Although the NSS Investigative Department justified this legislative violation by arguing that K.H.'s status in the criminal case might later change, it is a noteworthy example of the violation of human rights, especially because it deprived the person of the right to health care under Article 38 of the RoA Constitution. The Defender is following up on the complaint.

3.3. Police of the Republic of Armenia

While the number of complaints against the RoA Police system grew considerably in 2009 over 2008, the content of complaints generally remained the same. Complaints against the actions (or lack of action) and decisions of RoA Police officers were related to citizens being taken, without any clear grounds, into police custody, where they were detained, treated inhumanely or even tortured by police officers, the failure to process crime reports in accordance with the procedure stipulated by criminal procedure legislation, the use of force and threats to extort testimonies from the accused, and the failure to issue passports to citizens when lawfully demanded.

It is worrisome that the number of complaints alleging torture at the hands of police officers has increased in 2009. Indeed, citizens have become increasingly disgruntled with the inadequate running of police activities.

Practice shows that beating, violence, and torture are frequently applied in order to extort confessions. In some cases, the Defender's representatives visited police stations in which they discovered citizens with bruises and other signs of torture on their bodies. In one case, for example, the Defender's representatives visited a police station on the basis of a complaint addressed to the Defender's Staff, where they found the citizen in question with a bleeding nose. All the citizens apprehended in such cases were charged with the offence proscribed by Article 316 of the RoA Criminal Code. In some cases, incidents of beating, violence, and torture had continued at the police stations.

Admittedly, the Armenian reality makes it virtually impossible to restore the violated rights of citizens who allege to have suffered from torture. The Police always conclude that citizens' allegations of suffering violence and torture at the hands of police officers are groundless and inaccurate. Replies to the Defender's inquiries into such allegations generally state something like: "***the inspection carried out by the RoA Police Headquarters established that the allegations do not correspond with reality***" or "***the allegations in the letter do not reflect the reality***" or "***the RoA Police conducted an internal investigation which failed to prove the allegations of violence against the citizen by police officers***."

Unfortunately, such phenomena have developed into habitual flaws in the Armenian law-enforcement system and the current atmosphere of impunity contributes to an increase in the number of such cases.

Other complaints against the RoA Police alleged that when police stations receive crime reports, they fail to abide by the requirements of Article 181 of the RoA Criminal Procedure Code – i.e. instead of making a formal decision, they simply make a record of the reported crime in their so-called "third journal." Heads of police stations cite Decree 12/354 (1999) of the RoA Prosecutor General and Minister of Interior, which states that "reports and incidents … shall be recorded in the entry registration journal in the police office, reported to the head of the station, and recorded in register number 2 (verified information at the guard post)."

However, Decree 12/354 (1999) of the RoA Prosecutor General and Minister of Interior does not meet the requirements of the RoA Criminal Procedure Code. Thus, it was recommended to the RoA Police Chief that he consider repealing Decree 12/354 (1999) of the RoA Prosecutor General and Minister of Interior. The following reply was received: "The Yerevan City Department, the provincial departments, and the stations subordinate to them have been instructed to process crime reports in line with the requirements of Article 181 of the RoA Criminal Procedure Code. Subordinate units shall apply Decree 12/354 (1999) insofar as it does not contradict the RoA Criminal Procedure Code."

Despite the aforementioned instruction of the Chief of Police, in some cases police officers continued to violate the requirement of the Criminal Procedure Code, and internal investigations in relation to were launched only after the Defender's intervention. Nevertheless, this represents progress in the relationship between the RoA Human Rights Defender and the RoA Police as internal investigations resulted in disciplinary action toward several police officers, in contrast to previous years.

A number of complaints were received against the actions (or lack of action) of the Passport and Visa Department of the RoA Police, as well as passport units and their staff. The complaints mostly concerned cases in which citizens who were entitled to an Armenian passport were refused one on the grounds that they lacked a place of permanent residence or were citizens of the Russian Federation.

Some complainants requested that the Defender intervene in order to quash their criminal prosecution or revise court rulings in relation to them. In such cases, the Defender explained the legal remedies available to the complainants in question.

Interestingly, the Defender has recently been receiving complaints against unlawful actions of (or lack of action from) RoA Transport Police officers as well. However, such violations were not substantiated.

A number of complaints addressed to the Defender that concerned reported crimes or unlawful conduct by police officers were referred to the Office of the RoA Prosecutor General, the Investigative Department of the National Security Service adjunct to the RoA Government, the RoA Special Investigative Department, and the RoA Police for consideration. In such cases, the relevant bodies usually made responses in reasonable time with consideration of the citizens' allegations.

Case of Heightened Public Interest

Particular attention should be paid to the case of M.S. who was charged in criminal proceedings started by the Erebuni Investigative Unit of the General Investigative Department of the RoA Police. The case was publicized in the press and on the Internet.

Citizen H.S. and others informed that, during April-June 2008, they had participated as volunteers in the UN-sponsored "The Best 10 Schools" project, which was implemented, among others, in Special School number 11 in Nubarashen. They noted that during their contact with the school's children they had discovered that the education quality in the special

school was extremely poor and that food and sanitation standards were unacceptably low. Moreover, they had heard from female students of higher grades that Armenian Language and Literature teacher L.A. had subjected them to sexual harassment.

The complainants stated that a CD with a recording of the *Haylur* news program of TV station H1 about the promiscuous conduct of L.A., teacher of the Nubarashen Special School number 11, had been received by the Erebuni Investigative Unit, and that materials had been prepared on the basis of information obtained from the CD. A criminal investigation was launched on 11 February 2008 but about six months later charges were brought against M.S., a member of the volunteer group and a public activist, for perjury with pecuniary motives. Thus, on 15 August, a criminal case was opened against M.S. and she was required to sign a declaration that she would leave the country.

The Defender sent letters to M. Sargsyan, Deputy Prosecutor General of the RoA, asking for clarification of the case. The latter informed that the viewing of the CD received at the Erebuni Investigative unit of the General Investigative Department of the RoA Police had revealed that D.A. (born on 18 November 1992, resident of the town of Metsamor in Armavir province), student of Nubarashen Special School number 11, had stated in an interview that, during her education in the aforementioned school, Armenian Language teacher L.A. had raped one of the students of the school, D.A., and had engaged in promiscuous conduct with A.P., M.Sh, M.D, and herself. She had told her sister, L.A., a student of the same school, and her mother, N.A, about this. On hearing of this, her mother had made several visits to the school but had been unable to meet the Principal. However, during the gathering of evidence for the case, D.A., contrary to the information disclosed by her in the interview, stated that neither teacher L.A. nor anyone else had exerted any violence or performed any promiscuous acts against either her or any of the school's students mentioned by her in the interview.

Furthermore, School Principal M.E. claimed that in the initial stages of the project's implementation, M.S. had demanded that the project's budget, one million Armenian drams (transferred to the school's bank account), be given to her in cash for personally incurring the costs of the project's activities. However, the Principal had rejected the demand. The Principal alleged that due to this refusal, M.S. had started to spread false information about the school. In addition, the Principal stated that in May 2008, they had obtained photos of [project volunteer] A.Gh. embracing school students D.A. and L.A. The Principal had objected to project manager M.S. about this and subsequently prohibited A.Gh. from visiting the school. Later, they learnt that A.Gh. was spreading rumors and doing everything possible to retaliate against M.E. and L.A. for what they had done. M.E. and others explained that the video recordings were an attempt by M.S. and others to retaliate.

It was also reported that, on 1 September 2009, an article entitled "Yet Another Victim" was published in the daily newspaper *Hraparak*, in which M.J. and L.A., graduates of the 1990 class of Nubarashen Special School number 11, told about the violence and molestation they had suffered during their studies at the hands of the school's principal and

teacher L.A. However, on 19 October 2009, the decision was taken not to prosecute M.E. and L.A. due to the absence of a criminal incident.

On 21 October 2009, prosecutor D.G., who had guided the procedures of the case's pre-trial investigation, instructed that the charges against M.S. be changed and that she be charged under Article 135(1) of the RoA Criminal Code. On the same day she was so charged and informed that the pre-trial investigation was now closed. M.S. pleaded not guilty and objected to the termination of her criminal prosecution on the basis of an amnesty. On 23 October 2009, she was invited to the investigative unit to review the evidence that had been gathered for the criminal case. The Defender continues to monitor the case.

3.4. Prosecutor's Office of the Republic of Armenia

Under Article 103 of the RoA Constitution, "the prosecutor's office shall monitor the lawfulness of inquests and investigations in the cases and by the procedure stipulated by law." However, the prosecutor's office's inadequate supervision of the police is one reason why police stations still fail to abide by the requirements of Article 181 of the RoA Criminal Procedure Code when receiving reports of crimes.

Complaints against the RoA Prosecutor's Office mostly concerned violations of law in the performance of investigative and other actions during pre-trial investigation of criminal cases, the failure to conduct a comprehensive and impartial examination of the evidence obtained in the case, prosecution using evidence obtained in breach of law, and unacceptable prosecutorial supervision of the lawfulness of such activities.

As mentioned above, visits to a number of police stations in the RoA by the Defender's representatives have revealed that persons apprehended to or detained in police stations are held in arrest custody centers of the respective police stations longer than permitted by law. Police officers claim that such practice is based on *the written instructions of the provincial (marz) prosecutors*. But this violates the requirements of both Article 137 of the RoA Criminal Procedure Code and Article 6 of the RoA Law on Custody of Arrested and Detained Persons.

The Defender's inquiries have shown that detainees are indeed held in Arrest Custody Centers on the basis of letters from provincial (*marz*) prosecutors. These letters contain a subjective decision (over the wording "***to hold the detained person in the Arrest Custody Center for the performance of a number of investigative actions***"), rather than legitimate legal grounds. Article 5 of the RoA Constitution provides that state and local government bodies and officials may perform only those acts for which they are authorized by the Constitution or laws.

The Defender has raised this problem in official letters to the RoA Police Chief and Prosecutor General. The Deputy Police Chief replied by stating that "to preclude the improper practice of holding detainees in Arrest Custody Centers of the RoA Police system based on

the letters of judges, prosecutors, and investigators but in breach of deadlines prescribed by law, the RoA Police Chief has instructed (instruction 2-I dated 29 January 2009) the competent units of the Police to hold detainees in Arrest Custody Centers of the RoA Police in strict compliance with the requirements of the RoA Criminal Procedure Code and the RoA Law on Custody of Arrested and Detained Persons."

The Deputy Prosecutor General informed the Defender that, with a view to preventing such violations in the future, prosecutors in the provinces, the City of Yerevan, and administrative districts had been instructed to bolster supervision of the practice of holding detainees in Arrest Custody Centers. Despite these instructions, however, RoA police officers continue to engage in improper practice. The Defender considers that this reflects the inadequate or improper functioning of the supervisory procedure stipulated by the Constitution and laws.

3.5. Special Investigative Service of the Republic of Armenia

The Defender has observed the actions of (or lack of action from) the Special Investigative Service (SIS) mostly in terms of how complaints were handled that related to citizens being [unfairly] apprehended by police officers or being beaten and tortured in police stations. The RoA SIS sent the following reply to all of the Defender's inquiries into such matters: "Investigations have revealed that the complainant's allegations of being beaten or abused by police officers are without grounds, are fabricated, and are merely lodged in order that the citizen escape from criminal liability." Moreover, the SIS went no further than obtaining statements from police officers about the facts alleged by the Defender not corresponding to reality. The SIS also asserted that it had held face-to-face interrogations, during which police officers had insisted on the same in front of the complainants.

The Defender's letters about such cases were accompanied with photos showing traces of torture and bruises on the bodies of the citizens in question. Indeed, many citizens have been subjected to beating, violence, and torture by police officers. However, in order to avoid liability for such actions, the police, without sufficient grounds, charged the relevant victims under Article 316 of the RoA Criminal Code, thus obtaining a certain element of 'bargaining power' – citizens were offered that the criminal charges against them under Article 316 could be dropped if they withdrew their allegations of violence.

This meant that RoA SIS investigators never substantiated the violent and unlawful conduct of police officers in relation to citizens because victims had withdrawn their testimonies. As a result, the SIS would normally decide to discontinue criminal proceedings due to the absence of *corpus delicti*. Once more, it is evident that there is impunity in the law-enforcement system, with regrettable consequences.

3.6. Monitoring of Court Practice

The monitoring of court trials during 2009 revealed gaps in both the legislation and the implementation of laws. Addressing such gaps would help to increase public confidence in the courts.

3.6.1. Impact of Legislative Shortcomings on the Effectiveness of Fair Trial

In one monitored court session, the defense lawyer requested that the court adjourn the session for an hour so that he could speak in private to his client. The court explained that private conversations with clients should normally be provided for by the penitentiary institution in which the accused is held and that the court did not have an appropriate room for such conversations. The court suggested that he apply to the administration of the penitentiary institution. The lawyer insisted that the need had arisen to have a private talk with his client, and requested once again to grant such a possibility. In the end, the court granted the lawyer's request by adjourning the hearing till the following day, thereby giving the lawyer time to address the administration of the respective penitentiary institution and have a private conversation with the accused.

Article 141(5) of the RoA Criminal Procedure Code states that the administration of places holding detainees must permit a defense lawyer or legal representative to visit the detainee without hindrance and ensure them the possibility of a private and confidential meeting without any restriction on the number or duration of such visits. However, the legislation does not provide for such private conversations or meetings in courthouses. This can affect the length of court proceedings since in order to grant the lawyer and client such an opportunity, the hearing has to be adjourned. The problem is merely technical – it can be quickly resolved by designating a room in courthouses for such purposes and passing legislation that allows its use for private consultations.

It is noteworthy that, although many courthouses were renovated and new ones built in the process of judicial reforms, some of them do not have waiting rooms for witnesses. Thus, witnesses have to wait in the corridors of the courthouse prior to the commencement of proceedings or during breaks between hearings. The prosecutors and lawyers often wait in the same corridors, which leads to intentional or unintentional contact with witnesses, which then casts doubt on the impartiality of proceedings. This may undermine confidence in justice and trigger various motions and statements demanding that witnesses be isolated from each other during proceedings, which in turn may cause delays in court proceedings.

3.6.2. Legislation Permitting the Return of a Case for Additional Pre-Trial Investigation

The Defender has observed how Article 309[1] of the RoA Criminal Procedure Code is being applied in practice. Complainants have argued that Article 309[1] implicitly allows the return of a case for additional pre-trial investigation, similar to Article 311 of the Code, which the RoA Constitutional Court had declared null and void by its decision of 24 July 2007 for contradicting Article 19(1) of the RoA Constitution.

The defunct article (Article 311(2) of the RoA Criminal Procedure Code) stated: "The court may return a case for additional investigation upon the prosecutor's motion if there are grounds for replacing the charges either with more grave ones or with charges differing from the original ones in terms of circumstantial evidence." Article 309[1] of the RoA Criminal Procedure Code states: "If the prosecutor finds, during the trial of a case in a first instance court, that the filed charges need to be supplemented or amended to become more or less severe, because circumstances have emerged that were unknown and could not have been known in pre-trial proceedings, and if the case's circumstantial evidence fails to allow that the charges be supplemented or amended without adjourning the trial, then the prosecutor shall file a motion to adjourn the trial for the purposes of supplementing or amending the original charges and filing new charges. The prosecutor may file such a motion at any time before the court retires to the deliberation room."

Essentially, the provisions that the Constitutional Court nullified for contradicting the RoA Constitution were "revived" by amending the legislation to provide the new Article 309[1]. The criminal procedure principle of adversarial proceedings is completely breached by the wording of Paragraph 5 of Article 309[1], which states: "If it is established during the trial that the defendant's act is not correctly categorized in terms of law, and the prosecutor neither decides to re-categorize the act as a more serious offence nor requests postponement of the court session, then the court, acting *proprio motu*, may postpone the court session by a period of up to 10 days and propose that the Prosecutor General or his Deputy reaffirm the indictment." This provision has no place in legislation that has rejected inquisitory principles of criminal justice in favor of adopting adversarial principles. Its existence not only contradicts the RoA Constitution, but legally prescribes the dependence of courts on the prosecutor's office.

Furthermore, Paragraph 2 of Article 309[1] of the RoA Criminal Procedure Code violates the principle of legal certainty by stating: "If the grounds stipulated by Paragraph 1 of this Article are present, the court shall postpone the session on the basis of a motion from the prosecutor in order that necessary investigative and other procedural actions be performed and new charges filed. The court session may be postponed by no more than one month, except in cases when a longer period is reasonably required for the performance of investigative or other procedural actions." The legal uncertainty inherent in the clause "when a longer period is reasonably required" provides the potential for corruption. Indeed, reviews of lawyers' complaints about the detention of persons at the pre-trial stage as a

precautionary measure and discussions with them about the practice support the conclusion that the practice of selecting precautionary measures is still far from the standards of the European Court of Human Rights.

3.6.3. Legal Practice concerning Detention (Ordered or Changed) as a Precautionary Measure

In legal practice, courts do not comply with the requirements of the RoA legislation on criminal procedure. For example, according to Armenian law, any precautionary measures imposed by the body conducting criminal proceedings must be reasoned, contain information about the crime attributed to the accused or the suspect, and justify the need to order the precautionary measure in question (Article 136 of the RoA Criminal Procedure Code). When examining motions to order or change detention as a precautionary measure, courts must take into account the strength of the presented arguments. This includes assessing the risk of the suspect hiding from the investigation, obstructing the investigation, interfering with the administration of justice, committing a new offence, or threatening public order (Article 135 of the RoA Criminal Procedure Code).

The comments made in the Defender's 2008 Annual Report on the predominant choice of detention as a precautionary measure remain relevant. In deciding on such motions, courts mostly rely directly on the arguments of the investigator or prosecutor, which tend to be mere citations of Article 135 of the RoA Criminal Procedure Code on the need for applying detention as a precautionary measure, without any factual substantiation. Thus, when making decisions to apply detention as a precautionary measure or to prolong a detention term, courts should take into account the standards of the European Convention for the Protection of Human Rights and Fundamental Freedoms and the jurisprudence of the European Court of Human Rights.[15]

3.6.4. The Courts' Interpretation of Contempt of Court

In a court hearing of the criminal case of N.P. in the General Jurisdiction Court of Kentron and Nork-Marash, the presiding judge announced the start of the trial phase and requested that the prosecutor announce the final section of the indictment. The public prosecutor, H.H., proceeded to read it from his seat without asking the presiding judge for permission to stay seated. Then, the defense, namely the defendant, asked the presiding judge whether he could also address the court from his seat. The presiding judge explained that one could address the court from his or her seat only with the presiding judge's consent.

[15]See, for example, Patsuria vs. Georgia, Dolgova vs. Russia, Ilikov vs. Bulgaria, V. vs. Switzerland, Pungelt vs. the Czech Republic, Wemhoff vs. Germany, Lavents vs. Latvia, Neumeister vs. Austria, Stogmuller vs. Austria, and Letellier vs. France.

Then, the defendant inquired whether the court had allowed the prosecutor to read the final section of indictment while sat. The court answered that, in such cases, the prosecutor was not addressing the court but was reading out the final section of the indictment for the defense. The defendant replied that the defense had already received the indictment paper, knew about its contents, and did not need it read out.

Article 54 of the RoA Criminal Procedure Code provides that, during the court examination of a criminal case, the prosecutor may announce the indictment in court, make speeches and remarks in first instance and appellate courts, and be present in a hearing in the Cassation Court. Article 314(2) of the RoA Criminal Procedure Code states: "All participants of proceedings shall address the court with the words "High Court," after which they shall stand up and make the necessary statements, file motions, and express objections. The presiding judge may permit deviation from the rules of addressing the court." Article 333 of the RoA Criminal Procedure Code stipulates: "The presiding judge shall announce that the court is proceeding to the trial and the trial shall begin with the prosecutor announcing the final section of the indictment."

Essentially, there is no legal regulation of the aforementioned issue. Therefore, the rule in Article 314(2) should apply, which provides that the presiding judge may permit deviation from the rules of addressing the court. It should also be taken into consideration that the judge's conduct during the trial in court should not cast any doubt on his or her impartiality.

3.6.5. Provision of Free Legal Aid

On 8 October 2008, the RoA Constitutional Court passed decision SDO-765 which deemed that the legal requirements concerning accredited advocates in the RoA criminal and civil procedure codes and the RoA Law on Advocacy contradicted Articles 18 and 19 of the RoA Constitution and thus were declared null and void. The amended legislation means that everyone can now apply direct to the RoA Cassation Court rather than through an accredited lawyer. The legislation essentially safeguards the exercise of everyone's constitutional right to apply to the highest court of the country. In a number of complaints, however, citizens have bemoaned the lack of access to free legal aid in civil and administrative cases.

Article 6 of the RoA Law on Advocacy states that advocacy is a paid service and that "the state shall secure free legal aid for citizens in criminal proceedings in the cases and procedure stipulated by the Republic of Armenia Criminal Procedure Code, as well as in the cases and procedure stipulated by the Republic of Armenia Civil Procedure Code, namely: 1) cases of collecting alimony, and 2) cases of compensation for employment trauma or other health damage or loss of main income provider." This rather narrow scope of free legal aid effectively deprives many socially-vulnerable citizens of access to court.

It is necessary, therefore, to amend the legislation so that various aspects of the

provision of free legal aid to **socially-vulnerable persons** can be regulated, including the list of persons entitled to such aid and the relevant procedures for securing it.

3.6.6. Protection of Property Rights

In the past, annual reports of the RoA Human Rights Defender addressed the complaints regarding below-market-value compensation to owners of property located in sites recognized as "sites of exceptional and prevailing public interest" and other problems related to the protection of property rights. Such annual reports stressed the advantages of domestic arrangements for the protection of citizens' rights in such situations in terms of the state's international reputation and budget considerations.

On 23 June 2009, in the case of Minasyan and Semerjyan vs. Armenia, the European Court of Human Rights ruled that the owner's rights had been violated under Article 1 of Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms. It was essentially the first judgment in which the European Court of Human Rights found a violation of human rights due to expropriation for state and public needs in Yerevan's "alienation zone".

The applicant in the case complained that her property right over the house located in the "expropriation zone" had been terminated in breach of Article 1 of Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms. She demanded that the violation be recognized and that she receive proper recompense in terms of moral and financial damages.

The European Court of Human Rights considered that making a decision about the question of just compensation would be premature and that the question should be put on hold to allow the possibility of agreement being reached between the Government and the applicants. The European Court of Human Rights invited the Government and the applicants to submit, within three months of the final ruling, their written comments on the matter of fair recompense.

Thus, the European Court of Human Rights ruled that Article 1 of Protocol 1 to the European Convention had been violated but at the same time deferred the question of just compensation until appropriate suggestions had been received from the parties.[16] This European Court ruling highlights the significance of the state reaching adequate compensation with citizens prior to the expropriation of sites recognized as "sites of exceptional, prevailing public interest".

On 26 June 2009, the RoA Government adopted Decree 944-N "On Recognizing an Exceptional, Prevailing Public Interest in Relation to Land Plots Owned by Citizens Residing in the Halidzor Rural Community of the Syunik Province of the Republic of Armenia and

[16]In an earlier case similarly alleging a violation of the right to property (Chghlyan vs. Armenia), the European Court did not examine the merits of the case, because the parties entered into friendly settlement.

Changing the Designated Use of Such Land." The residents of the Halidzor rural community complained that they had not received adequate compensation prior to the alienation and that land development works had begun on the land they still rightfully owned. On 19 October 2009, the Defender made a statement on the situation, in which he reiterated the importance of rectifying violations of the right to property through domestic remedies and noted that restoration of violated rights by decision of an international court undermines the state's reputation and budget.

3.6.7. Protection of Defense Lawyers

The strength of the legal profession is an important prerequisite for the right to a fair trial and public confidence in the administration of justice. In his 2008 Annual Report, the Defender discussed the protection of lawyers. One of the issues noted there was the problem of advocates leaving the courtroom without first obtaining permission from the presiding judge. This became even more pressing in 2009. To address the issue, the Defender asked the RoA Constitutional Court to determine whether Article 343(1) of the RoA Criminal Code complies with the RoA Constitution.[17]

In practice, a lawyer who files a motion for the judge to recuse himself or herself can not only irritate the judge but also cause the court to request the RoA Chamber of Advocates to sanction the lawyer. On 4 November 2009, for example, in the RoA Civil Appellate Court, in a session presided by L.G., the lawyer R.Gh. filed a motion for the presiding judge to recuse himself on the ground that the judge had spoken with the respondent's lawyer prior to the hearing and was trying at the trial stage to bring into the case a person that was not initially included as a party to the case. Though the reasons cited by the lawyer for the said motion seriously irritated the judge, the advocate was allowed time for filing such a motion in writing.

In another case, during a hearing in the General Jurisdiction Court of the Arabkir and Kanaker-Zeytun districts of Yerevan held on 19 March 2009, presided over by judge S.A., defense lawyer H.E. read a motion for the judge to recuse himself. The court postponed the hearing to 23 March 2009, when it announced two verdicts: a decision to reject the motion and a decision to sanction the lawyer.

Under Paragraphs 1 and 2 of Article 19 of the RoA Law on Advocacy, an advocate shall honestly and diligently defend the client's rights and lawful interests using all means and methods not prohibited by the RoA legislation and shall comply with the requirements of this Law, the Ethics Code of Advocates, and the By-Laws of the Chamber of Advocates. Article 28 of the RoA Civil Procedure Code allows that all persons participating in the case may deliver challenges, ask questions, provide explanations to the court, present their arguments on any issue arising during the examination of the case, and so on. Article 21(2)

[17]For details, see Paragraph 2.1.2. of this Report.

of the RoA Civil Procedure Code states: "A judge shall recuse himself or herself at his or her initiative or based on the motion of a person participating in the case. A person participating in the case may only file such a motion … before the trial commences, except in cases when such person proves that … the grounds for the motion became known to him only after the trial commenced and could not have been known any earlier. In such cases the motion may be filed … at any time prior to the end of the trial." Finally, Article 22(2) of the RoA Civil Procedure Code state that any motion for a judge to recuse himself or herself shall be filed in writing and shall include the grounds for such a motion.

The sincere exercise of such legal provisions for the filing of motions during a trial (including motions for the judge to recuse himself) constitutes the defense lawyer's procedural rights and their proper performance of their procedural duties. Attempted or actual restrictions of the lawyer's actions (without good cause) undermine the effectiveness of fair trial. It is absolutely unacceptable to apply judicial sanctions to lawyers for filing such motions, when they are simply exercising their rights in good faith without any contempt of court.

3.7. Monitoring of Court Hearings

3.7.1. Acquittals by RoA Courts

During 2009, courts of the Republic of Armenia delivered verdicts of acquittal and some of them were passed in cases monitored by the Defender's Staff. For example, in the court hearing of a case related to the events of the 1st and 2nd of March 2008, the defense lawyer asserted throughout the trial, including his defense speech, that his client had been handcuffed in the course of an identity parade during the pre-trial investigation, which violated Article 221(3) of the RoA Criminal Procedure Code ("a person subject to identification should be brought before the identifier together with at least three other persons of the same sex, who look and are dressed as similar as possible.").

The Yerevan Criminal Court ruled that there had been a material breach of the recognition procedures and declared the recognition protocol as inadmissible evidence. The Court also found a breach of the accused person's right to defense in recognition procedures. Moreover, the Yerevan Criminal Court noted in a supplementary decision that the person's arrest lasted longer than the 72 hours prescribed by law. Despite all of this, however, the Yerevan Criminal Court, and later the RoA Criminal Appellate Court, found the accused person guilty and convicted him. The case went to the RoA Cassation Court, where the lower courts' decisions were quashed, the criminal prosecution was terminated, and the criminal case was closed. Essentially, the accused was acquitted and immediately released.

The decision of the Cassation Court in this case (decision number EKRD/0295/01/08 dated 16 September 2008) reasoned that the evidence for the charges constituted inadmissible

evidence, because their substance was fully based on the outcome of an investigative action that was declared inadmissible: the constitutional prohibition of the use of evidence obtained in violation of law applies also to evidence arising out of such violations.

3.8. State Bodies in the System of the RoA Ministry of Justice

3.8.1. Department for Compulsory Execution of Judicial Acts

In 2009, as in previous years, complaints against the activities of the Department for Compulsory Execution of Judicial Acts were related to the failure to execute judicial acts during the time periods stipulated by law, groundless delays in execution, some cases of rushed or flawed execution, arbitrary interpretation of final rulings by the execution officers, and other violations.

In the past, the Defender's Annual Reports have repeatedly noted that, especially in cases in which the debtor was a state body or official that would not comply with a ruling, the execution officers failed to enforce compliance by such means as administrative sanctions. When the State Committee of the Real Estate Cadastre adjunct to the RoA Government, for instance, cites various reasons to refuse for months (or even years) to register rights awarded in a ruling, execution officers, instead of taking real action, spend months inquiring with the relevant unit of the Cadastre whether the judgment has been executed, or why the final judgment has not been executed, or the like. Many complaints also concern the rough and disrespectful treatment of citizens by the staff of the Department for Compulsory Execution of Judicial Acts, including the infliction of bodily injuries during eviction procedures, the failure to give due notice to debtors about execution proceedings, and the unlawful conduct of auctions.

Illustrative Case

In a letter to the RoA Human Rights Defender, citizen L.E. noted that the RoA Administrative Court had examined her application and decided on 12 September 2009 to discontinue administrative case proceedings. As a result it had demanded 4,000 drams from her as stamp duty, payable to the state budget. The ruling was final.

On 23 October 2009, the RoA Administrative Court issued a writ to enforce execution of the ruling. Based on this writ, an execution officer of the Yerevan City Shengavit Unit of the Department for Compulsory Execution of Judicial Acts of the RoA Ministry of Justice had issued a decision on 4 November 2009 to start execution proceedings. The decision read as follows: "…to confiscate from debtor L.E. 4,000 drams, as well as 5,000 drams to cover the costs of performing the execution actions." The decision was sent to L.E. on 5 November 2009 in letter number EH 12096/05, which L.E. received by mail on 10 November 2009.

The complainant L.E., however, had paid the 4,000 drams at the Shengavit Branch of "VTB-Armenia Bank" on 5 November 2009, and she complained that she was unfairly being

demanded to pay the costs of execution actions even though she had voluntarily complied with the ruling (by making the payment on 5 November 2009), rather than by compulsion, and certainly not as a result of the actions performed by the execution officer.

The Defender asked the RoA Chief Execution Officer to offer an explanation for this and consider whether S.H., the execution officer of the Yerevan City Shengavit Unit of the Department for Compulsory Execution of Judicial Acts of the RoA Ministry of Justice, had respected the requirements of Articles 28, 66 and 67 of the RoA Law on Compulsory Execution of Judicial Acts. The RoA Chief Execution Officer replied by informing the Defender that execution proceedings had commenced and that the actions of the Shengavit Unit's execution officer were in conformity with the requirements of the legislation.

The Defender, disagreeing with the reply, sent another letter to the RoA Chief Execution Officer, noting that attention should have been paid to the fact that the citizen had complied with the judgment voluntarily, rather than through compulsion, and certainly not as a result of the actions performed by the execution officer. This could be proven by the following facts: a) L.E. had paid the 4,000 drams required by the judgment at the Shengavit Branch of "VTB-Armenia Bank" on **5 November 2009** [and had a receipt to prove this], b) while the decision to start execution proceedings was taken by S.H., the execution officer of the Yerevan City Shengavit Unit, on 4 November 2009, the citizen was only duly notified about it on 10 November 2009, when she received letter number 12096/05 **mailed by the execution officer on 5 November 2009**. Thus, L.E. was informed about the start of execution proceedings five days after she had voluntarily complied with the judgment (in the best case, it was on the day of mailing the letter, i.e. on 5 November 2009, but even if this were the case, she would still have voluntarily complied with the judgment).

The Defender argued that it follows from these facts that, during the one-day period from the time the decision to start execution proceedings was taken (4 November 2009) to the time L.E. voluntarily complied with the judgment (5 November 2009), the execution officer had not performed any execution actions (known to the debtor), which would inflict costs of performing execution actions stipulated by Article 66 of the RoA Law on Compulsory Execution of Judicial Acts. Article 66(1) of the RoA Law on Compulsory Execution of Judicial Acts states: "Costs of performing execution actions consist of the resources spent by the execution officer, other parties to the execution proceedings, and any other persons for their organization and activities." Paragraph 2 of the same article clarifies: "Costs of performing execution actions are the resources spent: 1) To discover, examine, seize, transport, store, evaluate, and sell the debtor's assets; 2) To pay the experts; 3) To transfer confiscated amounts to the creditor; 4) To search for the debtor and/or his assets; or 5) To perform other execution actions."

As none of the aforementioned actions were performed in this case, the Defender suggested that the RoA Chief Execution Officer reconsider L.E.'s case and inform the Defender about the outcome. As a result, the issue raised by citizen L.E.'s was favorably resolved.

3.8.2. Penitentiary Institutions of the RoA Ministry of Justice

In contrast to previous years, in 2009 the Defender did not receive any petitions concerning violence or degrading treatment of detainees and convicts by the staff of penitentiary institutions. However, other complaints received and the visits of the Defender's representatives to such institutions showed that a number of problems still remained in Armenia's prisons.[18] Complaints and applications received by the Defender's Office included requests to change the closed confinement regime with an open regime, failure to provide adequate medical assistance to inmates, and the refusal to transfer inmates to different cells.

A number of complaints concerned the actions and decisions of (or lack of action from) the independent committee that has the power to grant parole or substitute the remaining portion of a sentence with a less severe one. In this respect, Article 115(3) of the RoA Penitentiary Code was explained to prisoners. It states: "If the motion to grant parole or replace the remaining portion of a sentence with a less severe one is rejected by the relevant independent committee, the institution administration executing the sentence shall have the power to reconsider the convict's early conditional release or replacement of sentence three months after the date of such a rejection being received, with the exception of cases stipulated by Article 116 of the Penitentiary Code."

3.9. Ministry of Defense of the Republic of Armenia

Although the number of complaints against the RoA Ministry of Defense grew in 2009, the joint efforts of the Defender and the senior commander of the armed forces during have ensured the favorable resolution of many issues raised during the year. Indeed, the positive experience of cooperation between the RoA Human Rights Defender and the RoA Ministry of Defense can serve as an example for other RoA public agencies and their heads. Of course, the sector is not free from shortcomings, but there is readiness at the RoA Ministry of Defense to address these deficiencies, which is not the case in many other public agencies. As stated earlier, the restoration of violated rights largely depends on the willingness of state bodies to correct practices that violate human rights.

In 2009, the Defender's representatives made many more visits to numerous military units, including the duty stations subordinate to detachments close to the border. The shortcomings and deficiencies discovered during the visits were presented directly to the RoA Minister of Defense, whose ongoing concern has resulted in the implementation of measures to address the issues. Experience has shown that the desired results can be achieved in the armed forces when the chief commander of the armed forces (i.e. the RoA

[18]For details, see Paragraph 1.1.4. of this Report.

Minister of Defense) is informed directly of the shortcomings. In contrast, unit commanders, military commissioners, department heads of the Chief Command of the RoA Armed Forces and others (who are often unaware of the Defender's powers and the role and significance of the Defender's institution) tend to obstruct the Defender's activities.[19]

In their meetings, the RoA Human Rights Defender and the RoA Minister of Defense have agreed to establish permanent liaison between the Deputy Minister of Defense and the Advisor to the Defender for Issues of the Military and Servicemen in order to ensure the swift resolution of certain issues. Despite its short history, the cooperation has produced positive results.

On 22 December 2009, for instance, the Defender was addressed by A.N., a resident of Gyumri, informing that he had venous dilatation and was walking with difficulty, in spite of which the military commissioner was determinedly trying to conscript him to the army. He asked the Defender to intervene for him so that he could undergo an additional medical examination.

The Deputy Minister of Defense A. Nazaryan was informed about the request. He then had a telephone conversation with the RoA Military Commissioner, Major General S. Chalyan. The latter informed that the citizen had been thoroughly examined and offered leg surgery, which he had refused in writing, as stated in a document included in the conscript's personal file. The citizen, however, was claiming that he had not written such a note.

On 29 December, the conscript was taken to the national conscription station. The Defender's representatives attempted to be present at the medical examination because the complainant insisted that his information was not being properly taken into account. However, S. Chalyan was against this and said in a disregarding tone that the Defender's representatives should not try to control his work and that, regardless of it, the citizen would be conscripted to the army.

The way the issue was handled changed only after the Minister of Defense was informed. It turned out that the conscript did indeed suffer from the alleged illness. His conscription was deferred, and the Ministry proceeded to arrange his surgery. It was also established that, in reality, the conscript had not written the alleged note, and that no such note even existed in his personal file.

Paragraph 4.1 of this Report contains further information on the complaints received during 2009 against the RoA Ministry of Defense, the measures taken in response, and the results.

[19]The point here does not concern the RoA Ministry of Defense Legal Department, the Military Police Department, and army units number 1 and 3 of the RoA Ministry of Defense, because the latter have always expressed their readiness to work jointly to eliminate the shortcomings.

3.10. RoA Ministry of Territorial Administration (Infrastructures)

Complaints against the RoA Ministry of Territorial Administration concerned the lack of appropriate control over the activities of RoA territorial administration bodies and local self-government bodies (in respect to mandatory and delegated powers), the failure to process applications, and complaints about their activities.

Complaints from various provinces showed that regional governors were concluding fixed-term (usually one-year) contracts with school principals. This practice not only violates the stability of employment relations, but also increases the risk of corruption. Under Article 95(1) of the RoA Employment Code, "a fixed-term employment contract is concluded, if the employment relationship cannot be set for an indefinite period due to the nature of the work or the performance terms, unless this Code or laws stipulate otherwise."

As state owned non-profit organizations, schools act as employees for an indefinite time. Therefore, the principal's work cannot be limited to a fixed term, because it would violate a key principle of the employment legislation enshrined in Article 3 of the RoA Labor Code, namely the principle of employment stability. Employment relations in state non-profit organizations are regulated by the RoA Employment Code, and only the provisions of the RoA Employment Code are applicable, as explained by a note submitted by the RoA State Labor Inspectorate.

In its decision in civil case 3-483 (VD) of 26 September 2008 (the complaint of H.M. against "VTB-Armenia Bank" CJSC), the RoA Cassation Court found that a fixed-term employment contract is an exception from the general rule, which means that, as a rule, employment relations must be regulated by an indefinite-term contract, and that concluding a fixed-term employment contract is permissible only in exceptional cases.

A fixed-term employment contract may be concluded only if the employment or its conditions of performance are non-permanent, or if the preconditions specified in Paragraphs 2 or 3 of Article 95 of the RoA Labor Code are present. The said paragraphs of Article 95 provide:

"2. Employment contracts with persons employed in elected positions shall be concluded for the election term.

3. An employment contract may be concluded for a fixed term, if:

1) The employee provides personal services to the employer;

2) The work is performed by house workers;

3) The work is performed off hours;

4) Seasonal work is performed; or

5) Temporary (up to two months') work is performed."

The situation of internally displaced persons is difficult, as well. There are citizens that used to live in regions close to the border who were robbed or had their property looted or set on fire by the Azeris during the liberation of Karabakh. As a consequence, they

temporarily settled in various regions of Armenia. After the ceasefire, they repeatedly asked state bodies to clarify whether or not they could return to their homes. They were told that the regions would be restored. However, nothing has been done to date.

According to Protocol Decision 39 of the RoA Government dated 25 September 2008, a three-year resettlement plan would create conditions for the return of over 330 households to their places of origin, while the RoA Ministry of Territorial Administration would deal with the issues of those residing in temporary shelters, houses of relatives, or in other countries, by coordinating and facilitating the implementation of activities stipulated by the plan. Paragraph 32(2) of the Protocol Decision states that the plan can be implemented if funding is received from international organizations and foreign states. As no funding has become available yet, the plan has been stalled.

Furthermore, persons that migrated from the territory of Mountainous Karabakh cannot benefit from a number of privileges stipulated by the RoA Law on Legal and Social-Economic Safeguards for Persons that were Deported from Azerbaijan during 1988-1992 and Acquired Armenian Citizenship, because the RoA Ministry of Territorial Administration asserts that the law applies only to persons that were deported from territories within Republic of Azerbaijan.

In this situation, citizens that are internally displaced persons cannot return to their original settlements. But since they were not deported from Azerbaijan, they cannot obtain the privileges associated with refugee status. Clearly, the officials in this sector need to take measures to resolve this issue.

Complaints were received about the condition of a diversion route, temporarily in use due to the renovation of a 2 km segment of the Sevan-Gavar road, which is covered by water in an area close to the administrative boundary of Lchashen village. Complainants noted that despite the strategic transit significance of this road, it did not comply with the traffic safety rules, did not have traffic signs, was too narrow for two-way traffic, lacked roadside pillars, and became virtually impassable after precipitation.

The First Deputy Minister of Territorial Administration informed the Defender, in response to the Defender's inquiry, that measures were underway to finalize the ground work before it snowed so that the road being renovated could serve traffic.

3.10.1. Migration Agency

The Human Rights Defender's Office continues to receive complaints from refugee families against the Migration Agency. Most raised issues of the need for improved housing. Although the state is implementing measures to provide housing to refugees, many complain about the way various lists for housing projects are compiled or prioritized.

In their letters, refugees informed the RoA Human Rights Defender that, after being deported to Armenia, they had settled in apartments of relatives but later had difficulties registering their children at their relatives' address or encountered problems in continuing their stay with relatives. The Migration Agency of the RoA Ministry of Territorial Administration clarified that the RoA Government is currently implementing a housing program for refugee families in priority need, and that the aforementioned families cannot be included in this program because they reside at a specific address. At present, no housing programs are being implemented for refugee families residing at a specific address (with relatives or friends, or in rented apartments).

Under Paragraph 6 of RoA Government Decree 330 dated 9 August 1997 "On Approving the Procedure of Registering Refugees in Need of Housing and the Procedure of Allocation of Housing Space in the Republic of Armenia," a refugee family may be registered as being "in need of housing" at the territorial agency of community social services. The Migration Agency also noted that such applications would be considered during the implementation of housing programs.

Under Paragraph 24, the "priority need" list shall include:

a) Families of persons who suffered disabilities during the war, families of deceased or missing fighters, and persons considered to have status equivalent to theirs in accordance with the established procedure;
b) Persons in the first or second category of disability;
c) Families of persons that died during state or public duty, or when saving human lives;
d) Families with four or more children; and
e) Families with twins under the age of 8.

Under Paragraph 25 of the Procedure, refugees not included in the lists mentioned in Paragraph 24 shall be recorded in the general list based on the year of immigration to the Republic of Armenia and the number of family members, in the following order:

a) Refugees residing in hazardous or dilapidated houses, basements, barracks, and other premises not suitable for residence, as well as refugees residing in other residential space allocated in the past in accordance with the established procedure, but recognized as not suitable for residence;
b) Refugees residing in schools and kindergartens;
c) Refugees residing in temporary dwellings;
d) Refugees residing with relatives;

e) Refugees residing in apartments occupied unlawfully;
f) Refugees residing in dormitories;
g) Refugees residing in hotels;
h) Refugees residing in rented apartments or subleased houses of the state-owned housing stock.

In view of the merits of persons included in priority lists and their services to the homeland, as well as the status of persons included in the priority list, it is important that housing improvement programs consider their current residence conditions, social status, and other factors.

As for the "housing purchase certificates" program, many families in the provinces have been unable to purchase apartments through this program due to fluctuations in market prices and the low amount provided by the certificate. Many families still need to receive housing purchase certificates. There are 1,100 families on the priority list of families eligible for housing purchase certificates for a house in Yerevan: their housing problem should have been dealt with during 2009 but was not because of the global crisis (no funding was available from the state budget). The remaining refugees that were not included on the priority list can purchase a house no earlier than the 2010-2012 cycle.

3.10.2. State Committee for Water Resources

The complaints against the RoA State Committee for Water Resources were mainly from land users in rural settlements. They complained about the failure of water use companies to supply the necessary volume of water during the irrigation season. Since they were unable to properly irrigating fields, orchards, and other cultivated land plots, they sustained significant losses, but the State Committee for Water Resources did not try to redress these problems. In addition, citizens have complained in the media about not having drinking water for days; in some cases, water is taken to villages by cars only on certain days of the week.

In his 2008 Annual Report (Section 3.9.2), the Defender addressed the housing problem of a resident of the Darbnik community of Ararat province. In 2001, the resident's land plot had been flooded because of the collapse of a well located on the upper side of the land plot. At first, they blocked the water off with soil and continued to cultivate the 1,000 square meter plot of land and the 30 fruit trees. They were later destroyed, however.

From 2002 onward, the citizen in question filed complaints to the mayor of the local authority, the State Committee for Water Resources, the RoA President, the RoA Prime Minister, the RoA Ministry of Environmental Protection, the governor of Ararat province, the Minister for Territorial Administration, and other state bodies. However, these letters referred the complainant back and forth from one body to another and the issue remained unresolved.

In 2008, based on a letter from the Human Rights Defender, the RoA Deputy Prime Minister (Minister for Territorial Administration) instructed the State Committee for Water Resources under the RoA Ministry for Territorial Administration, as well as the RoA Ministry of Finance, to resolve the issue with the help of the "Millennium Challenge Account Armenia" State Non-Profit Organization.

In a letter dated 13 September 2008, the State Committee for Water Resources under the RoA Ministry for Territorial Administration informed the Defender that the Artesian well in the Darbnik community of the Ararat marz was going to be renovated under the Ararat Valley Drainage System Rehabilitation Component of the Millennium Challenge Account Armenia program. According to their timetable, the works would be performed in the winter of 2009-2010.

From 2002 till today, the failure by the competent officials to act has essentially deprived the citizen of his house (which became hazardous and lost its utilities) and his land (which turned into a swamp). For several years now, he has had to pay rent on an apartment, the owner of which demands that he leave because he is unable to pay.

Another issue worth mentioning here is that of "double" charges to citizens. Some citizens were in debt to the "Irrigation" CJSC of the State Committee for Water Resources as they had failed to honor their obligations in a timely manner (by failing to pay for used water resources). After such rulings were declared final, the citizens concerned paid off their debts. At the same time, however, the Department for Compulsory Execution of Judicial Acts started execution proceedings by which the relevant amounts were withheld from the citizens' pensions. Thus, the citizens effectively paid twice. The RoA Civil Appellate Court established this fact and ordered that the "Irrigation" CJSC of the State Committee for Water Resources pay back the relevant amounts to the citizens.

However, this 2006 ruling is yet to be executed because the "Irrigation" CJSC of the State Committee for Water Resources was declared bankrupt on 7 June 2007 by a ruling of the RoA Economic Court. The State Committee for Water Resources has expressed no interest in repaying these amounts to the pensioners concerned.

3.11. RoA Ministry of Education and Science

The RoA Ministry of Education and Science is one of the few state bodies that effectively cooperates with the Defender's Office. Moreover, the RoA Minister of Education and Science follows up closely on shortcomings and deficiencies identified and ensures that measures are being taken to address the issues raised.

In 2009, a wave of protest was caused by the list of high schools and general schools that was approved by the RoA Government on the basis of subsection 3.1 of the "4.4.3. Education and Science" section of the Program approved under RoA Government Decree 878-N (24 July 2008) and Paragraph 148 of the Action Plan approved under RoA Government Decree 40-N (15 January 2009). This was because the list did not take into account either the socio-economic conditions of families or the possible difficulties connected with a child's attendance at school (such as transport costs, issues of the child's psychological development due to detachment from their usual environment, and the like).

The problem is particularly acute in those provinces where there are only one or two high schools (Vayotz Dzor and Tavush). People that are already in difficult socio-economic conditions are having to overcome problems connected with impassable roads in winter and the availability of transport. Clearly, the right to education is automatically restricted when it becomes dependent on a family's socio-economic condition.

Another problem is access to education in their native language for national minority children since not all the high schools offer such education. The European Committee of Social Rights has noted the problem of insufficient access to education in the native language of national minority children.

In response to the Defender's inquiries regarding this issue, the RoA Minister of Education and Science stated that the number of high schools would be increased in 2010 and promised that all the identified shortcomings would be addressed.

General schools (especially in the provinces) have not yet fully solved the problem of heating. Some children continue to drop out because of socio-economic conditions and the practice of raising funds from parents on various occasions (e.g. for renovation of classrooms or the procurement of a TV set or audio player for the classroom) continues.

The Defender has also received complaints from the provinces about names of children from Yerevan and various other regions suddenly appearing in the class registers of graduating classes. Despite the fact that these children have not or have only partially attended the schools in such provinces, the records show that they are graduating with excellent marks.

Another key issue in education is access to higher education for the socially-vulnerable segments of the population. Such access can be secured by means of effectively implementing the centralized system for general school graduation and university admission exams, increasing the number of government-subsidized places for university students, and expanding the scope of waiving tuition fees.

3.12. RoA Ministry of Health Care

Complaints received against the RoA Ministry of Health in 2009, similar to previous years, concerned problems in the delivery of government-subsidized free health care, medication, and referrals, as well as the protection of rights of persons undergoing inpatient psychiatric treatment, and the like. Abuse in the health system takes place because the population is not sufficiently informed about which medical services must be paid for and which ones are free.

Complaints were also received from health care professionals concerning violations of their employment rights by managers of health care institutions. Some of them, wishing to remain anonymous, noted that clinic managers demanded monthly payments of certain amounts from them and did not allow them to provide free medication to eligible citizens.

The problem of voluntary 24-day stays in inpatient psychiatric facilities, which is not stipulated by the RoA Law on Psychiatric Care, is worrisome. As was mentioned in earlier annual reports of the Defender, the 24-day period is delimited by the amount of funding (for food and other expenses) allocated by the state per patient. In other words, after the 24-day period has lapsed, the patient will be discharged from the hospital regardless of the treatment's progress or the need for a longer stay.

Non-voluntary (compulsory) treatment of persons is problematic, as well. Under Article 22(1) of the RoA Law on Psychiatric Care, a person suffering from mental disorder may be hospitalized without his or his lawful representative's consent in certain cases prescribed by law. Article 174 of the RoA Civil Procedure Code states that a citizen's application concerning compulsory treatment in a psychiatric hospital shall be filed with the general jurisdiction court of the area in which such a hospital is located, while Article 140(1) states that decisions of the general jurisdiction court as to the merits of a case shall become final a month after they are announced. So, if a person gives consent to be treated voluntarily, there is no need to apply to court; but if the person refuses and the institution goes to court, then the judgment becomes final after a month. In the meantime, however, the citizen is subjected to compulsory treatment without waiting for the outcome of an appeal.

During a visit to Shirak province, the staff of the RoA Human Rights Defender found no fence around the premises of the "Gyumri Mental Health Center" SNCO. Article 22(1.1.(9)) of the RoA Law on Psychiatric Care allows that a person hospitalized to a psychiatric institution is entitled to rest, including open-air exercise and eight-hour sleep at night – during this time he must not be engaged in medical or other activities. Due to the absence of a fence at the "Gyumri Mental Health Center" SNCO, the right to exercise of those hospitalized at this psychiatric institution is violated. The Defender sent a letter to the governor of Shirak province requesting that he ensure that measures are taken to put a fence around the institution.

Urgent measures are required to address the treatment of children with autism. In 2009, the Defender received petitions from parents of autistic children, who informed

the Defender that they were having to pay for diagnosis and treatment. They requested that he take measures to ensure that they could obtain government-subsidized care. The issue of registering the drugs needed for the treatment of autistic children was raised as well: currently, these drugs may only be registered if a positive opinion of certain experts is received. The Defender regularly discusses this issue with the RoA Ministry of Health Care and continues to monitor the situation.

3.13. RoA Ministry of Labor and Social Affairs

In 2009, complaints against the RoA Ministry of Labor and Social Affairs, and entities under its jurisdiction, mostly concerned problems encountered while trying to obtain compensation for work trauma, profession related illnesses, and other health damage. The Defender has repeatedly raised this issue in his annual reports, but to date no solutions have been found.

A resident of a Home for the Elderly in Haghtanak district sent a complaint informing the RoA Human Rights Defender that he was entitled to compensation for health problems caused by his employment in the "Armenian Railway" Company. The new owner of the company, the "South Caucasus Railway" CJSC, was refusing to pay the compensation on the grounds that the new company was not liable for the obligations of the former "Armenian Railway" Company.

In response to the Defender's inquiry for clarification, the Deputy Minister of Transport and Communication informed the Defender that the Ministry had taken measures to address the problems of monthly compensation payments for damage inflicted upon the health of former employees of the "Armenian Railway" Company. He stated that the complainant was included in these measures and that the latter was now able to receive his compensation. The complaint received no further review as the issue had been favorably resolved.

3.13.1. RoA State Service for Social Insurance

Complaints against the State Service for Social Insurance included the arbitrary interpretation of the sector's legislation. In his 2008 Annual Report, the Defender included an illustrative case related to a list of positions and types of work for which certain categories of persons employed in education and culture were entitled to a private pension for long-term service (approved under Government Decree 793-N dated 29 May 2003). The Defender had received petitions from teachers who had worked in Training and Production Plant number 6 subordinate to the former Myasnikyan district Public Education Department, which was then considered an "institution adjunct to the school." When they reached the required age, they requested partial pensions, but were refused on the grounds that the list approved

under the aforementioned decree of the RoA Government did not include the work they had performed. In 2008, the Defender suggested that the RoA Government amend Decree 793 (dated 29 May 2003), but the problem was not addressed during 2009.

Another complaint filed in 2009 raised issues in connection with certain provisions of the same RoA Government decree. The problem was related to paragraph 4(7.a) of Appendix 2 to Government Decree 793 dated 29 May 2003, which provides that all categories of aviation technicians are entitled to a lengthy service pension.

An aviation technician filed a complaint informing the Defender that, since graduation from the Aviation Technical Vocational School, he had worked in civil aviation as an engine technician. He presented a statement confirming that, during 1995-2004, he had worked as a technician in the Diagnostic Laboratory of the Aviation Technical Base of "Armenian Airways" CJSC. After turning 55, he presented to the State Service for Social Insurance under the RoA Ministry of Labor and Social Affairs the statement certifying his employment, expecting he would be registered for a lengthy service pension. He was refused.

Paragraph 4(22(7)) of Appendix 2 to Government Decree 793 dated 29 May 2003 states that all categories of aviation technicians (mechanics, engine operators) of the engineering technical staff, all categories of aviation engineers, and all managers of workshops, shifts, precincts, and technical services for aircraft maintenance are entitled to lengthy service pensions. Paragraph 24 of the same Appendix states that the period of employment that entitles certain categories of civil aviation employees to a lengthy service pension must be verified on the basis of the employment record book as well as a statement issued by the employer confirming that the person was directly engaged in technical maintenance activities.

The Defender requested that the Artashat Territorial Unit of the State Service for Social Insurance under the RoA Ministry of Labor and Social Affairs comment on the complaint and explain the legal reasons why aviation technicians that worked in an aviation laboratory were not included in the notion of "all categories of aviation technicians" mentioned in Paragraph 4(22(7.a)) of Appendix 2 to Government Decree 793 dated 29 May 2003.

In response, the Defender received a letter from the First Deputy Head of the State Service for Social Insurance. The latter argued that the citizen's employment as an aviation technician in the laboratory of "Armenian Airways" CJSC during 5 May 1995 to 16 January 2004 could not be considered under Article 14(4) of the RoA Law on State Pensions and Paragraphs 22(7.a) and 24.d of the Procedure approved by RoA Government Decree 793-N dated 29 May 2003 ("Appendix 2. Procedure for Calculating the Length of Employment for which National Insurance is Due, Granting Pensions, and Including Certain Types of Employment or Other Activities Therein").

Essentially, the Service not only failed to justify why the aviation technicians that worked in the laboratory cannot be included in the notion of "all categories of aviation technicians" mentioned in the aforementioned Government decree, but also fails to state

who or what types of employees are included in such a list. Thus, the issue is still being addressed.

Complaints concerning legal provisions in the RoA Law on Scientific and Scientific-Technical Activities (presented in Section 2 of this Report) are of particular importance in this area, as well.

The Defender has remained focused on issues related to the 15 January 2008 decision of the RoA Constitutional Court. After that decision, citizens filed requests to have their pensions reassessed. The applications were accompanied by documents proving that the pensioners had worked in highly dangerous or hazardous conditions. However, the reassessment did not lead to a rise in their current pension, rather their requests were treated as a basis for granting an entirely new pension.

In this regard, the Defender cited to relevant authorities Article 73.1 of the RoA Law on State Pensions. It states that in cases when additional documents are presented for the reassessment of a pension that was granted before the Law entered into effect, the pension shall be reassessed in accordance with the procedure defined by law, and a **new pension** shall be granted. In such cases, pension-eligible employment shall continue to include the whole term of employment in highly dangerous or hazardous conditions, the flight time equivalent of civil aviation employees, terms of employment certified by a statement, the term of child care, and the term of full-time education, without any changes to the pension-eligible employment period, assessed in accordance with legislation, in the original pension file.

In reality, various problems arise in the reassessment of pensions due to the fact that the procedure stipulated by law is not respected; even if documents proving employment in highly dangerous or hazardous conditions are provided, the pension is considered to be granted anew.

In a complaint to the Defender, Yerevan resident T.M. informed that he had worked in the “Nairit” CJSC for many years in conditions particularly hazardous for health and retired as per List number 1 approved under RoA Government Decree 1987-N dated 13 October 2005. In 2008, the pension reassessment process began but extended only to citizens that were recorded prior to 2003; his pension, with a multiplier of 1.5 years, was granted only for the years of employment preceding 1996. The pension was not reassessed on the basis of decision SDO-723 of the RoA Constitutional Court.

Having reviewed the complaint, the State Service for Social Insurance under the RoA Ministry of Labor and Social Affairs informed that the citizen’s employment length was assessed with a multiplier of 1.5 in line with the said decision of the RoA Constitutional Court, and that the discrepancy in the pension amount (70,842 drams) had been paid to him. As of 1 October 2009, his employment period was calculated as 48 years and 9 months, and the pension amounted to 40,634 drams. Review of the complaint was terminated due to a favorable resolution of the matter.

3.13.2. "State Employment Service" Agency of the RoA Ministry of Labor and Social Affairs

Complaints against this body concerned the failure to register persons as unemployed on various grounds, bureaucratic red tape, arbitrary refusal of applications, the failure to provide information, and claims to refund amounts paid.

In a letter to the RoA Human Rights Defender, citizen S.S. informed that he had been registered at the Malatia-Sebastia district's "State Employment Service" Agency center since March 2008, turned 55 in July 2008, and was granted benefit from September 2008. Later, it was demanded that he return the benefit amounts received until December 2008.

The Defender requested the Head of the "State Employment Service" Agency under the RoA Ministry of Labor and Social Affairs to comment on the situation. Based on the response of the RoA Ministry of Labor and Social Affairs, the Head of the Agency informed, citing Article 1099(3) of the RoA Civil Code, that the Agency would discontinue the process of reclaiming the unemployment benefit from the citizen. Article 1099(3) of the RoA Civil Code states that any sums mistakenly paid to citizens who received them in good faith without any form of deception shall not be reclaimed when those sums represent a basic wage and related payments, pensions, benefits, compensation for damage to life and health, alimonies, or other moneys. Review of the complaint was terminated due to its favorable resolution.

3.13.3. Medical-Social Expertise Commission

The Defender continued to receive complaints against the Medical-Social Expertise Commission (MSEC). Citizens complained about the arbitrary refusal of applications to grant or change classes of disability as well as bureaucratic red tape in the practices of officials. The Defender also continued to receive complaints about trauma benefits (to be paid during the disability term established by the MSEC) being unpaid due to the organizations in question ceasing to exist. This issue was reflected in the 2006, 2007, and 2008 annual reports of the Defender.

3.13.4. State Labor Inspectorate

In 2009, the Defender continued to receive complaints related to employment rights, including the employers' failure to perform final settlement, to pay the final settlement amount due, to give proper notice of dismissal or grounds of dismissal, as well as cases of dismissal in violation of the requirements prescribed by law. Considering that these complaints were mainly against employers of private companies, they were referred to the RoA State Labor

Inspectorate for review in line with Paragraph 1(3) of Article 11 of the RoA Law on the Human Rights Defender. As a result, the issues raised in some of the complaints were favorably resolved.

3.14. RoA Ministry of Finance

In complaints against the Ministry of Finance, citizens complained about compensation for deposits, as well as monetary compensation for losses sustained by part-owners of the unfinished cooperative housing stock due to the depreciation of amounts paid by them in Soviet rubles.

There is still no solution to the problem connected with the savings of citizens in special [ruble] accounts opened in the USSR Savings Bank by USSR citizens holding checks issued by the "Vneshposiltorg" Soviet Association in 1976 under joint decree 98/26 of the USSR Savings Bank dated 7 May 1988. Under Paragraph 5.2 of the decree, checks accepted by the Savings Bank were redeemed and destroyed on the same date, and the obligation to compensate the amounts was placed on the USSR Impexbank.

The RoA Ministry of Finance rejected citizens' demands to refund the foreign currency equivalent of their deposits. No clearly stated procedure or grounds exist for the possible compensation of citizens that had opened special ruble accounts in line with the requirements set forth by the "Vneshposiltorg" and the USSR Savings Bank on 7 May 1988. The RoA Minister of Finance was asked to comment on the situation.

3.15. RoA Ministry of Environmental Protection

Environmental issues have become more acute in recent years. As a consequence of inadequate control in Yerevan and Armenia's various provinces, trees are being felled, green areas are being destroyed or improperly used, and construction and industrial waste is being disposed of in non-designated sites.

The staff of the RoA Human Rights Defender visited the RoA province of Lori on 11 March 2009 in order to investigate allegations of illegal logging made in the press. The team visited the Ghlorkut, Tandzidzor, and Atanighash green areas of the Ahnidzor Community, where inspections revealed that several dozens of trees had been cut, and the remaining stumps had not been numbered in accordance with RoA legislation.

The Defender raised the issue with the competent authorities, requesting that the lawfulness of the logging in the relevant sites be checked and that appropriate measures prescribed by law be taken if cases of illegal logging were discovered. As a result, it was established that the Ghlorkut, Tandzidzor, and Atanighash green areas of the Ahnidzor Community are under the Motkor forest company's "Dsegh Forestry". In inspections during

11-26 March 2009, the State Environmental Inspectorate found 31 cases of illegally cut trees. It calculated that 1,533,500 Armenian drams' worth of nature damage compensation was due. Subsequent inspection of the whole forest revealed that there were in fact 84 illegally cut trees, bringing the damage compensation to 4,352,000 Armenian drams.

In response to the Defender's note asking for clarification on the situation, the RoA Police Chief informed the Defender that, according to evidence gathered, a criminal case based on Articles 315(1) and 296(3) of the RoA Criminal Code had begun and a pre-trial investigation was underway. The Defender continues to monitor the situation.

To date, issues continue to arise in connection with the separation of powers between the "Sevan National Park" SNCO and the Sevan Town Administration. Conflicts occur over the leasing of areas along the shoreline of Lake Sevan. For instance, the "Sevan National Park" SNCO and the Sevan Town Administration have concurrently leased the same land plot to different persons, which has undermined the interests of citizens.

There are also a number of problems in legislation and legal practice: despite the existence of a legal framework, regular impact assessments are not made and the amount of damage inflicted upon the environment and human health is not determined due to the absence of effective methods, experts, institutions, or financing to assess the real amount of damage inflicted by environment pollution.

Public awareness of environmental protection issues is relatively low. Government Decree 660 dated 28 October 1998 requires measures to raise public awareness of planned changes to habitats, including public participation in discussions and decision-making on published urban development projects; however, the RoA legislation still fails to adequately provide a procedure by which state bodies must provide environmental information to the public and a procedure by which public participation in environmental decision-making is secured. The setting forth of such procedures is also required by the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters. The following example is indicative of the problems associated with public access to green areas.

Illustrative Case

On 18 August 2009, the daily newspaper *Golos Armenii* published an article entitled "20 Hectares Multiplied by 30 Years of Work," which raised the issue of a pine tree park turning into a dump, and the site being transferred to the Voghjaberd local authority, rather than Jrvezh.

The article claimed that, a 2007 mapping of the Jrvezh Forest Park territory showed that it was 423 hectares rather than 404. The "mistake" was immediately "corrected": the "extra" area was taken off the map. Strangely, though, it was cut from the center of the forest park rather than its verges. In June 2009, the RoA Government approved the new map and transferred the "extra" territory to the Voghjaberd local authority. The water pipe that irrigates the forest park, which is vital to its conservation, passes through this area. The

justification for annexing the 20 hectares of the forest was that it was a dump. The journalist noted that over 20 plant species registered in the Red Book [of Endangered Species] could be found in the territory of the forest park.

In addition to the 20 hectares, the article raised another issue: 32 hectares of the forest park had been leased to a charitable non-governmental organization run by the Vardanyan family, and there was information that the lessee was requesting that the Government privatize those 32 hectares. The Defender's staff visited the Jrvezh Forest Park and found a fence put around a significant portion of the park, with a sign that read: *"Grand" Forest, Trespassing Strictly Prohibited*.

The RoA Minister of Environmental Protection was asked to comment on the situation. In response to the Defender's letter, the Minister presented materials related to the change of the Jrvezh Forest Park territory from 400.43 to 423.8 hectares as well as documents related to the lease of 32 hectares of the forest park to the charitable non-governmental organization run by the Vardanyan family.

After reviewing the materials, the Defender informed the Minister of Environmental Protection that Paragraph 1 of the "Environmental Impact Assessment Plan for the Forest Restoration Program of the 30 Hectare Leased Section of the Jrvezh Forest Park under the "Natural Reserve Complex" SNCO of the RoA Ministry of Environmental Protection," which was included in the correspondence, stated that one of the aims of the project was the creation of a "leisure zone." Specifically, Paragraph 4.1 declared that the program would create a "living collection of imported species of trees and bushes" that would serve as a "leisure zone" under the name "Grand" Park in the Southern section of the Jrvezh Forest Park. Moreover, according to Paragraph 5.2 of the program, its implementation would help to improve the functioning of the forest park and ensure the leisure of the population in the leisure zone without any damage to the Park's green areas.

RoA Government Decree 2286-N dated 1 December 2005 (which amended RoA Government Decree 1046-N of 18 July 2002) added the following sentence to Paragraph 29 of the By-Laws of the "Natural Reserve Complex" SNCO approved under the decree: "In appropriate areas of the organization, land may be leased in accordance with the procedure stipulated by law for leisure activities for up to 25 years, or up to 60 years in case of building construction, or up to 10 years for agricultural purposes."

Thus, the Defender's letter to the Minister asked him to clarify the meaning of the sign reading "Grand Forest, Trespassing is Strictly Prohibited", for if the 30.22-hectare area leased for 25 years in the central part of the Jrvezh Forest Park was designated to be used for public leisure activities, then who could be "trespassing"? How could members of the public organize their leisure in the area if they so wished?

In response, the Chief of Staff of the RoA Ministry of Environmental Protection informed that the lessee had removed the aforementioned signs as of 25 November 2009, thereby ensuring compliance with contractual obligations.

3.16. RoA Ministry of Transport and Communication

In 2009, numerous complaints were received in connection with regular passenger carriers violating timetables or failing to ensure the normal operation of automobile transport. Most of these complaints were filed when the government opposition convened public rallies in Yerevan and citizens wishing to travel to Yerevan were unable to because public transport was not functioning properly.

In a complaint to the Defender, the Chairman of the Vanadzor Office of the Helsinki Citizens' Assembly informed that passengers were not transported from Vanadzor to Yerevan on 1 March, 1 May, or 15 May 2009, despite the presence of minivans in the bus station ready to travel. When asked why passengers were not being transported, the drivers had said that "there was an oral instruction from above." On the aforementioned dates, a large number of passengers were stranded in the Vanadzor Town bus station. Most of them were citizens that worked, studied, or lived in Yerevan and were given neither a reasonable explanation of the situation nor notification of when the issue would be resolved.

When requested to comment on the situation, the RoA Minister of Transport and Communication informed the Defender, among other things, that the activities of all the bus stations under the "Hayavtokayan" CJS company were organized in accordance with the regular work schedule on 1 March, 1 May, or 15 May 2009. As for the alleged failure to transport passengers from Vanadzor to Yerevan by minivan on 1 March, 1 May, or 15 May 2009, the Minister explained that inspections performed by the RoA Transport Inspectorate had revealed a buildup of passengers on those dates due to an increase in the number of passengers wishing to travel to Yerevan, and that, consequently, the Vanadzor-Yerevan minivans planned under the timetable of the Vosketev LLC were insufficient to meet passenger demand. The Minister further stated that the Vanadzor-Yerevan-Vanadzor route had also been served by buses owned by the Millaren LLC, and that, on the dates in question, no complaints had been filed about passenger transportation by the Millaren LLC. The RoA Transport Inspectorate had warned Vosketev LLC to take measures in the future to address such problems.

The Vanadzor Office of the Helsinki Citizens' Assembly objected to the Minister's explanations, arguing that they failed to reflect the real situation.

Based on citizens' reports of restrictions of the human right to freedom of movement, the Human Rights Defender instructed his staff to monitor the Edjmiatsin-Yerevan highway from 9:25 am to 2:30 pm on 1 March 2009 and from 1:30 pm to 2:25 pm on 15 May 2009. It was established that, at the traffic police checkpoint located near the Parakar section of the Edjmiatsin-Yerevan highway, a fence had been erected that blocked off two of the three lanes into Yerevan. The police were stopping vehicles bound for Yerevan that were transporting three or more passengers or had dark-tinted windows. In some cases, the police would also search the vehicles. During the 1.5 hours observed, no public transport (bus or minivan) drove to Yerevan from the towns of Edjmiatsin or Armavir. To determine the

reasons for this, the group visited the town of Edjmiatsin, where it found no vehicles (except for taxis) parked in the area from which public transport would routinely depart for Yerevan. During their visit to Edjmiatsin, the group was informed that the situation was the same in the town of Armavir.

Based on the foregoing, the Defender sent a letter to inform the RoA Minister of Transport and Communication that, in the future, whenever such complaints were received, the Defender would instruct his rapid response team to monitor each reported case using audio and video recording devices in order to establish the truth. The Defender also asked the Minister to supply the Vanadzor-Yerevan-Vanadzor and Ejmiatsin-Yerevan-Ejmiatsin public transport timetables. After the letter was sent, the Chairman of the Vanadzor Office of the Helsinki Citizens' Assembly orally informed the Defender that passenger carriers there were no longer breaching timetables.

The Defender also received complaints concerning the list approved under Decree 251 of the RoA Government dated 8 July 1997. The list prescribed exemptions for certain categories of citizens using any urban, near-urban, or inter-city public transport regardless of who owned such transport (with the exception of taxis). However, exemption for persons with first- and second-class disabilities and victims of persecution applied only to urban passenger transport (with the exception of buses). While the list approved under the aforementioned decree grants exemptions to war veterans of the former USSR, the media reported that the last of the 103 Soviet veterans residing in Armenia died on 15 November 2009. Hence, the list approved under RoA Government Decree 251 dated 8 July 1997 should be revised.

3.17. Territorial Administration Bodies and Local Self-Government Bodies

In 2009, the staff of the Human Rights Defender visited the provinces in order to review issues raised in complaints and to become familiar with the problems faced by the population in the regions. Issues of concern to the public were discussed with non-governmental organizations active in the regions, the provincial government offices (*marzpetarans*), town administrations, and citizens whenever it was deemed necessary. Some issues were resolved on the spot, while others were raised in letters sent to the RoA Government or other state bodies.

3.17.1. Provincial Government Offices

Numerous complaints were received from homeless families living in rural settlements of the earthquake zone concerning the adoption by the RoA Government of a new procedure that caused such families to drop out of waiting lists.[20] The state is neither reinforcing numerous hazardous apartment buildings that exist in the provinces nor providing alternative housing to their residents due to a shortage of resources.

Complaints were also received against provincial governors about violations of the employment rights of the staff of schools and health care facilities. H.P. and T.K., residents of the province of Gegharkunik filed a complaint informing the Defender that they worked in the Martuni Medical Center CJSC (H.P. as the chief accountant and T.K. as the chief economist). Due to their complaint to the RoA President concerning violations of their employment rights by the governor of Gegharkunik province, the RoA State Labor Inspectorate had carried out inspections in the Gegharkunik governor's office and the Martuni Medical Center CJSC. The inspections revealed violations of a number of provisions of the RoA employment legislation, and a letter was sent inviting the Gegharkunik governor to address them by 25 October. The complainants told the Defender that the Gegharkunik governor had refused to address the issues raised in the letter or the violations of their rights. The Defender then requested that the Gegharkunik governor and the RoA State Labor Inspectorate comment on the situation. Review of the complaint is underway.

In another case, the review of a complaint by A.Z. revealed the following. A.Z.'s apartment in Gyumri had been destroyed in the [1988] earthquake. Left homeless, he was moved to the Erebuni Hotel in Yerevan; however, the hotel was then sold in 2005 and he was given just three days to vacate his room. The Tourism Development Foundation of Armenia gave him USD 3,700 as one-time financial aid but since this sum was insufficient for the purchase of an apartment, he bought a mobile home made from wood. He requested that the Gyumri City Administration include his name in the waiting list of homeless families, but his request was denied on the ground that he had received assistance and was considered to have no housing issues.

In reviewing the petition, the Defender invited the Gyumri Mayor, the RoA Minister of Urban Development, and the governor of Shirak province to comment on the situation. They all asserted that A.Z. had been lawfully removed from the waiting list of homeless families because he had exercised his right to improved housing. They also noted that the amount had been paid to A.Z. as charitable assistance for the purpose of acquiring a housing purchase certificate. However, the certificate is a token document that certifies the holder's right to receive state financial support in order to purchase a finished apartment (or house) from any individual or legal entity. It is unclear how a private entity could provide funding for acquiring a housing purchase certificate.

[20]For details, see section 3.2 of this Report.

The Defender claimed that the payment of the said amount did not *per se* amount to "improvement of housing conditions" and, therefore, that A.Z. should not have been removed from the waiting list of homeless families. The Defender made an official statement declaring that the complainant's removal from the waiting list of homeless families on the basis of Paragraph 12(a) of the Procedure approved under Government Decree 432 dated 10 June 1999 and on the Procedure of Urgent Allocation of Apartments to Citizens in Settlements of the Earthquake Zone was a violation of his human rights and recommended that the Gyumri Mayor include him in the waiting list of those who will receive an apartment. In a subsequent letter, A.Z. told the Defender that no action had yet been taken – he had not been reinstated in the waiting list for housing.

On 29 October 2009, a letter was sent to the Gyumri Mayor asking for clarification on the matter. In response, the Deputy Mayor of Gyumri informed the Defender that a copy of the Defender's official statement on reinstating A.Z. in the housing waiting list, together with a cover letter, had been sent to the RoA Deputy Prime Minister with a request for a relevant government instruction. This had not yet been received; the Defender was told that A.Z.'s reinstatement could only occur after the relevant instruction had been received from the RoA Deputy Prime Minister.

Since A.Z. had been removed from the waiting list of families made homeless by the earthquake in accordance with a letter from the governor of Shirak province, the Defender decided to discuss the matter with him during a visit to the province. This was followed up with a letter to the governor on the same issue. In response, the Shirak governor informed the Defender that the Gyumri Mayor had been recommended to consider inclusion of A.Z. in the waiting list of families made homeless by the earthquake and find a solution in accordance with legal procedure.

On 23 December 2009, the Defender sent a letter to the RoA Deputy Prime Minister, Minister for Territorial Administration, informing him of the situation and inviting him to comment.

In various complaints to the RoA Human Rights Defender, several citizens asserted that since 1992 they had owned (based on state title deeds) the land plot number 189 of district number 1 and land plot number 33 of district number 4 in the administrative territory of Arzni's local authority but that the Arzni Village Administration had sold the land plots to another person without informing them and was now offering them another land plot that they did not wish to take up.

In response to the Defender's inquiry, the governor of Kotayk province informed the Defender that, during the last mapping survey, the location of the land plots in question had been changed without the owners' consent, and that they had not been included in the land allocation archiving lists, which meant that the State Committee of the Real Estate Cadastre refused to officially register their plots of land. The governor also noted that the issue could only be resolved via the courts.

The Defender has also asked for clarification from State Committee of the Real Estate Cadastre. Once a response is received, the complaint will be processed as appropriate.

3.17.2. Yerevan City Administration

In previous annual reports, the Human Rights Defender repeatedly touched on legislative issues related to the urban development sector, especially as it was quite often difficult to distinguish between the responsibilities of the Yerevan City Administration and those of district administrations in terms of suspending, preventing, or eliminating the consequences of constructions built without planning permission.

The RoA Law on Local Self-Government in the City of Yerevan, adopted 26 December 2008, defined special procedures for the formation of territorial administration and local self-government bodies in the City of Yerevan. Yerevan became a local authority, and Yerevan's district local authorities turned into administrative districts. The new law states that the Yerevan Mayor shall organize the activities of the heads of administrative districts in terms of suspending construction that lacks planning permission, eliminating premises built without planning permission, and halting illegal land use.

Nonetheless, the Defender received numerous complaints in 2009, in which citizens complained about the relevant bodies' failure to prevent such construction, especially in the citizens' yards, and the authorities' failure to deal with the impact of this as well as their lack of action in stopping the illegal usurpation of land. Such a high number of complaints suggests that the activities of the Yerevan City Administration are ineffective in suspending illegitimate construction, eliminating its consequences, and preventing the illegal usurpation of land. Moreover, cases with identical facts have been treated differently.

The Defender has also received complaints about development projects based on documents issued in breach of urban development rules, which permit construction works without any regard for requirements on fire safety, insulation, or distance from other buildings, houses, or premises.

Some complaints stem from the fact that citizens are not informed of planned urban development activities and no discussion of projects takes place. This conflicts with the RoA Law on Urban Development and the procedure approved under RoA Government Decree 660 dated 28 October 1998 "On Approving the Procedure of Raising Public Awareness of Planned Changes to the Environment, including Public Participation in Discussions and Decision-Making on Published Urban Development Projects."

Quite often, inconsistencies arise over the determination of lawfulness of construction documents issued by various state government and local self-government bodies. The Yerevan City Administration, for instance, claims that the urban development documents it issues meet the requirements of RoA legislation, while the State Urban Development Inspectorate of the RoA Ministry of Urban Development asserts that the same documents breach urban development rules and standards.

Attention should also be drawn to media publications and information provided to the Defender by citizens who complained about the systematic cutting of trees and destruction of green areas in different parts of the City of Yerevan (e.g. yards and areas of common use).

In response to inquiries made by the Defender, the Yerevan City Administration explained that trees had not been cut but rather they had simply been pollarded. However, once construction works in these areas began, it became impossible to prove that trees had in actual fact been cut down.

It is worrisome that citizens suffer because certain state bodies clash over interpreting RoA legislation – because they read it in ways that protect their own interests. For example, the Yerevan Mayor recognized state ownership of premises built without planning permission next to an apartment building – it had to undergo state registration before it could be sold to a citizen. The State Committee of the Real Estate Cadastre claimed that the measurement and registration fee for the premises should be paid by the Yerevan City Administration. On the other hand, the Yerevan City Administration claimed that the State Committee of the Real Estate Cadastre should do this work free of charge. The Defender notified the RoA Prime Minister of the issue in writing, after which the Prime Minister gave an instruction to the State Committee of the Cadastre and invited the Yerevan Mayor to discuss the issue and find a solution. However, the issue has not been resolved to date.

The Defender continues to receive complaints from holders of property rights in sites subject to expropriation for public and state needs. Most of them concerned compensation; some complained about the lack of state supervision over the developers. For example, Gradinvest LLC was due to build an apartment building at 1 Yekmalyan Street, Yerevan by June 2008 and make apartments in the building available to citizens with whom it had apartment sale contracts. So far, only two floors of the building have been constructed, and the construction work has virtually stopped.

In response to the Defender's letter, the Yerevan City Administration informed him that construction of the building in question had resumed at full speed – two floors above ground level had been built and negotiations with residents were being conducted. The City Administration also noted that it would regularly monitor Gradinvest LLC to make sure it was honoring its contractual obligations.

After the Yerevan City Administration had responded in this way, however, the Defender learned from articles in the press, as well as from citizens, that Gradinvest LLC was not honoring its obligations. The company had only three or four persons working on the construction site; it was clear that at that pace it would be unable to complete the construction within a reasonable timeframe. Moreover, Gradinvest LLC was failing to honor the contractual provision that bound it to compensate the residents' monthly lease in a dram amount equivalent to US $100. As for the negotiations with residents, the complainants claimed that the management of Gradinvest LLC was refusing to meet with them.

In 2009, numerous complaints were received concerning the erroneous legalization of real estate, or arbitrary refusal to legalize it, under the RoA Law on the Status of Individual Homes with No Title Deeds Preserved in the City of Yerevan. Citizens complained that the legalization work was inadequately performed and failed to meet deadlines. Measurements taken by the city administration and cadastre employees resulted in significant discrepancies

of surface area, and applications were rejected without any clear grounds being stated (for example, a land plot used by a citizen for decades was legalized under his neighbor's name).

Problems have also arisen in connection with the activities of the commission set up (under Yerevan Mayor's Decree 5082-A dated 28 November 2007) to resettle residents of hazardous buildings with state financing: the commission tells citizens that it will discuss their issue in its next session, which is delayed for an indefinite period (for months, or even a year). These flaws in the organization of the commission's work are possibly due to a lack of regulation.

In some cases in which courts passed final rulings that promised to provide apartments to citizens, the City Administration said that the issue would be reviewed by the commission (created under Decree 7592-A of the Yerevan Mayor dated 11 August 2009), which had decided to examine each request for housing on an individual basis. It stated that if sufficient grounds were present, it would recommend that the Yerevan Mayor consider allocating the relevant apartments (case number 1-0750/09, citizen S.K.). However, final rulings are to be executed not "considered"; if there is disagreement, then there may be an appeal according to the procedure stipulated by law.

Another problem related to housing is that, for decades, many residents lived in buildings and dormitories owned by the state or local authorities. Having paid for a number of infrastructural improvements over the years, they repeatedly asked the Yerevan City Administration to privatize their apartments. However, they were told that, under Article 12 of the RoA Law on Local Self-Government in the City of Yerevan, the Yerevan City Council had to define the procedure of managing Yerevan-owned property in order for them to be in a position to be able to privatize the rooms they occupied. More than half a year has passed since the election of the Yerevan Council, and the Council has convened numerous sessions but the said procedure has not yet been adopted. The replies to the Human Rights Defender's inquiries on this problem are sent in violation of the deadlines prescribed by law. In some cases, no reply is given despite repeated reminders.

Some complainants have informed the Defender that when they requested certain documents from the Yerevan City Administration, the latter required them to make payments to the "Yerevan Fund" or have their requests rejected. When some citizens who made the required payments (the amounts typically reached several hundred thousand drams) demanded a refund after their requests were rejected, they were told that the money had been spent on charity. It is difficult to establish whether citizens voluntarily made such payments or were obliged to do so. However, it is clear that the citizens were acting in good faith in such circumstances.

Another problem is that the Yerevan City Administration is a debtor in a number of rulings against it. The RoA Human Rights Defender is reviewing three petitions concerning the failure of the Yerevan City Administration to comply with final rulings and the failure of execution officers to apply administrative or criminal penalties against the state bodies

or officials responsible. Back in 2008, the Defender raised the issue in a letter to the RoA Minister of Justice. The latter ordered an internal investigation, but it failed to yield any results. In 2009, a letter was sent to the RoA Prosecutor General, but, again, no progress was made. In view of the situation, the RoA Human Rights Defender sent a letter to the Staff of the RoA President on 1 October 2009. The issue is still under review.

In his complaint to the RoA Human Rights Defender, Yerevan resident A.M. told that a building was being constructed at a distance of only 20 centimeters from his private house and that his home and yard would thus be completely visible to anyone through the windows of the new building. The Yerevan City administration had told A.M. that it had granted permission to reconstruct the residential house by maintaining the floor surface area and adding more floors. The Defender received inconsistent replies to his requests for comment on the petition.

The First Deputy Mayor of Yerevan informed the Defender that the two-storey house was going to be reconstructed (to add two floors and an attic) as per the project agreed upon with the Yerevan City Administration on 29 July 2008. He stated that the construction permit had been issued by the City Administration on 8 August 2008 and the developer was proceeding with construction in line with the approved project. The City Administration also noted that the project design documents had been reviewed and endorsed by the "Urban Seismic Construction and Expertise" LLC.

The Head of the State Urban Development Inspectorate of the RoA Ministry of Urban Development informed the Defender that their investigation had established that a four-storey residential house with an attic was being built at the disputed address according to: the architectural terms of reference issued by the Yerevan City Chief Architect on 30 April 2008; the project agreed upon on 29 July 2008; and the construction permit issued by the Yerevan City Administration on 8 August 2008. It thus found that the urban development documents of the house under construction were compiled in breach of RoA legal procedures – in terms of required distance, sunlight, visibility, and fire safety (SNIP paragraph 2.07.01-89.2.12 and fire safety requirements, Table 1) – and that the construction permit was issued in breach of Paragraph 11 of RoA Government Decree 91 dated 2 February 2002.

Facts gathered during the complaint's review supported the above conclusion, namely that the urban development documents issued by the relevant employees of the Yerevan City Administration (i.e. the architectural terms of reference) were complied in violation of RoA legislation. These illegitimate documents served as the basis for the project's design, the construction permit, and the actual construction work. As a consequence, the complainant's right to property had been violated. Based on this, the Defender issued a formal statement on 5 November 2009 declaring that the actions of the Yerevan City Administration employee who had issued the architectural terms of reference were a violation of human rights. He recommended that the Yerevan Mayor sanction the official in question.

In reply, the Yerevan City Administration informed the Defender that his recommendation had not been accepted and reiterated its position.

Yerevan resident G.Z. informed the Defender that, since November 2008, he had been asking the Yerevan City Administration to change the designated use of a building owned by him, but had faced arbitrary delays. On 5 December 2008, the Real Estate Management Department of the Yerevan City Administration Staff had sent a letter informing him that the topographical extract of the land in question had to be presented to the Yerevan City Administration. On 22 December 2008, he presented the required document. A month later, he received another letter in which the Yerevan City Administration claimed that, according to the professional opinion issued by the Architecture and Urban Development Department of the Yerevan City Administration Staff, there was an inconsistency between the topographical extract of the land and the real estate ownership (use) right registration certificate. After the inconsistency was checked, he applied to the Yerevan City Administration again. He received another letter, this time stating that his application could be reviewed only after he present the consent of the other owners of the jointly-owned land plot and the basis of the sale (decision of district council or sale contract).

G.Z. complained that his neighbors, i.e. the other owners of the jointly-used plot of land, had already changed the designated use of their premises without his, which meant that the Yerevan City Administration had not demanded them to produce similar documents. The facts of this case clearly show that G.Z. was subjected to discriminatory treatment.

In response to the Defender's inquiry into the issue, the First Deputy Mayor of Yerevan informed the Defender that the Yerevan Mayor had made a decision (number 349-A) on 29 April 2009 in relation to the application by citizen G.Z. on changing the functional designation of the premises and including them in the housing stock, which amounted to a final resolution of the issue. Review of the complaint was terminated due to its favorable resolution.

Residents of Aghbyur Serob Street in Yerevan filed a complaint informing the Defender of the following. During 1988-1992, the complainants had been deported from Azerbaijan and settled in the abandoned houses, numbers 46, 48, 50, 52, 54, 110, and 112, on Aghbyur Serob Street, where they were now still living. For years, local Armenians had also lived in the abandoned houses. The complainants had applied for ownership of their homes, but the Mayor of Arabkir local authority had rejected the applications on the grounds that there was a long-term plan, from as early as 1980, to build a highway connecting Aghbyur Serob Street with Babayan Street, which he claimed was still valid.

In 1998, the Arabkir District Administration had suggested that the 'unlawfully-occupied' premises be vacated, but due to the requirements of RoA Government Decree 255 dated 29 April 1992 on refugees, their eviction was suspended until places of permanent residence or shelter were found. Thus, the complainants petitioned the Defender for his support in obtaining ownership rights for their homes.

In review of the petition, the Defender invited the Yerevan City Mayor and the Head of the Arabkir Territorial Unit of the RoA State Committee of the Real Estate Cadastre to comment on the issue, and forwarded a recommendation on resolving the issue to the Chief of Staff of the RoA Government. The Chief of Staff of the Yerevan City Administration informed

the Defender that a letter had been sent to the Head of the Arabkir District of Yerevan. The letter asked for the transfer of documents available in the Yerevan City Administration to the district administration for purposes of considering the registration of ownership rights for the relevant houses and their donation to the tenants. Based on the recommendations of the Head of the Arabkir District, the Mayor of Yerevan adopted decision 3179-A on 10 July 2008, and house plans were issued. For each apartment in the buildings in question, state registration of ownership rights was then performed, and the process of finalizing donation contracts as per the relevant decision of the district council continued.

On 13 October 2009, the residents of Aghbyur Serob Street of Yerevan sent a letter of gratitude to the Defender. In this case, **the housing problems of 39 families (105 persons)** were finally resolved owing to the Defender's intervention.

3.17.3. Administrative Districts of Yerevan

Complaints against Yerevan's administrative districts mostly concerned the activities of territorial agencies in providing social services and awarding benefits. Some complaints were received about bars, restaurants, and entertainment facilities operating in various administrative districts violating noise level standards, an issue that the heads of administrative districts were failing to address. Citizens also complained about the lack of controls to prevent unauthorized construction and land usurpation in administrative districts, as well as the failure to address their complaints, which resulted in violations of their right to common shared ownership.

While some administrative districts actively organize improvements and 'green initiatives' in streets, squares, and other areas, there are districts that do not even properly remove the waste or pave the streets. Condominiums and other bodies for the management of apartment buildings are still nascent. Most of them are formalistic and do not serve the purposes for which they were set up. Maintenance requirements on apartment buildings are usually not met; buildings quickly become dilapidated or hazardous.

In a complaint to the RoA Human Rights Defender, residents of the building located at 2 Marshal Baghramyan Avenue (Yerevan) informed that they could not sleep quietly at night due to the nighttime activities of the Pioneer bar-restaurant located in the basement of their building. In the past, they had appealed to the City Administration and district administration: noise levels had been repeatedly measured in their apartments and results presented to the City Administration and district administration. Although the measurements showed that all rules were being audaciously violated, their complaints were simply ignored. Noise from the bar-restaurant was unremitting from evening hours until 6am. Residents also noticed noise vibration was also harming the building's structural stability, the consequences of which could be seen in some apartments. Moreover, they were disturbed by noise from cars, drunken customers, powerful round-the-clock air conditioners, as well as the unpleasant smell from the restaurant and the unhygienic condition of entrance number 5 to their building.

In response to the Defender's letter, the Head of Kentron District local authority informed the Defender that the director of the company operating the bar had been subjected to a disciplinary sanction and warned that the sanction would be repeated if violations reoccurred.

On 5 August 2009, however, the complainants submitted yet another complaint. The Defender addressed the Head of the local authority of Kentron District on 1 June 2009 and in reply the latter informed the Defender (letter of 19 June 2009) that the situation had been resolved due to the efforts of staff from the Trade and Services Unit (under the Kentron District local authority) – the bar-restaurant located at 2 Baghramyan was closed. Review of the complaint was terminated due to a favorable resolution of the issue.

3.17.4. City & Town Administrations

Complaints against city administrations concerned cases of unauthorized construction and the failure of local authorities to demolish such constructions or implement measures to restore the original appearance of the sites (instead, only administrative sanctions were applied to the offenders). In some cases, lawful documents had been issued to construction developers, but since there was no control over contractual compliance, deviations from designs had occurred.

In Yerevan, as well as other towns of Armenia, residents are neither informed of planned changes to their environment prior to development nor engaged in the discussion of and decision-making on published urban development projects and designs. This leads to violations of their rights under the RoA Law on Urban Development.

Many complaints were received in 2009 against the city administrations of Gyumri and Vanadzor (both cities are in the earthquake zone). Although the government makes efforts every year to construct housing in the earthquake zone, people there complain about the unfair distribution of houses, changes in the order of persons in the waiting list of homeless families, disregard for certain privileges, lack of inclusion in such lists, and so on.

Residents of buildings number 9 and 11 on Yerevanyan Street in the Town of Martuni (Gegharkunik province) filed a complaint informing the RoA Human Rights Defender that another resident of their town was carrying out unlawful construction in the area between their two buildings. They had repeatedly raised the issue with Martuni's Town Administration and Police, but the Town Administration intervened only by ordering the offender to pay a 400,000 dram administrative sanction.

In response to the Defender's inquiry into the complaint, the Mayor of Martuni informed the Defender that citizen H.A. owned a 30 square-meter plot of land in the area between the aforementioned two apartment buildings, and that he used to have a small shop there. The Mayor noted that the Town Administration had lawfully permitted H.A. to reconstruct the shop located on his own land in accordance with the approved project design. During

the reconstruction, however, H.A. had violated the design terms and built a 44.5 square meter shop instead of the permitted 30 square meters by usurping 14.5 square meters of community-owned land. In doing so, he committed the administrative offence proscribed by Article 154(1) of the RoA Code of Administrative Offences, which the Martuni Town Administration Commission for Administrative Offences punished on 29 October 2008 with a penalty of 400,000 drams and required the offender to rectify the situation. The Martuni Town Administration had filed a claim to the RoA Administrative Court for the penalty to be enforced and collected. The claim was admitted on 23 December 2009 and a ruling was passed on 6 February 2009.

At his own expense, H.A. voluntarily eliminated the consequences of the offence and brought the building into line with its design. Review of the complaint was terminated due to a favorable resolution of the issue.

In one complaint, 39 residents of the Town of Martuni informed the Defender that, based on decision number 4 (dated 1991) of the RoA Government and the Martuni Privatization Commission, plots of land in different sites had been allocated to Martuni residents. In the site called "near the Hospital," plots of land adjacent to homes (0.04 hectares each) were allocated to 120 residents. According to the decision, state acts of land ownership were issued and officially registered by the state Cadastre. Despite this, the "home-adjacent" land allocated in the "near the Hospital" site was mapped in 2005 as "plots of land not subject to privatization," "development sites", and "a market area." As a result, the complainants' right to property was violated.

Since 2007, the Defender has been requesting clarification on the issue from the Martuni Mayor, and several discussions of the situation have been held in the Town Administration. In a reply sent in 2007, the Martuni Mayor informed the Defender that the disputed issue had been discussed in session number 8 of the Martuni Town Council on 26 October 2007, which had resulted in the Town Administration requesting that Gegharkunik provincial government office and the RoA Government change the designated and functional use of the land within the reserve stock of Martuni.

In 2008, the Mayor informed the Defender of a request to change the "mixed development and green sites for public use" status, foreseen by the town's master plan, to simply "green sites for public use". Representatives of the RoA Gegharkunik provincial government office, the Ministry of Urban Development, the Ministry of Agriculture, the Ministry of Environmental Protection, the State Committee of the Real Estate Cadastre, other interested state bodies, and the authors of the project design papers participated in discussions. The documentary package was revised by the authors and the Town Administration on the basis of comments and recommendations received, after which it was presented to the RoA Ministry of Urban Development for final approval. The issue was being finalized, but detailed floor plans and some geodesic works were still needed, after which the process could be completed.

During a visit of the Defender's representatives on 4 December 2009, the Martuni Mayor informed them that, although citizens with property rights in the site had been offered

space (free of charge) in the market to be constructed there, construction there would be impossible, because 5 to 6 rows of high-voltage power lines passed through the site. The Town Administration had requested the "Electrical Networks of Armenia" CJSC to take down the pylons and shift the lines to circumvent the site, but the company refused arguing that the site was within the local authority's territory and that therefore the Town Administration should carry out the work. The Town Administration could not afford to do the work, which would cost around 100 million drams according to preliminary estimates. As a result, citizens were deprived of their constitutional right to enjoy property. The Defender has asked the RoA Government to resolve the issue.

K.H., a resident of the Town of Sevan, filed a complaint informing the Defender that, based on the master plan approved by Sevan Town Administration, the "Sevan National Park" SNCO had allocated him a 900 square-meter plot of land (on the left hand side of the Sevan-Yerevan highway) on 24 January 2007 for the construction of a leisure zone. The 25-year contract was notarized and registered by the state. He had been diligently paying the taxes and improving the area. Two years later, on 30 April 2009, however, he asked the Sevan Town Administration to issue documents necessary for construction but was refused on the grounds that, back on 25 December 2007, the area had been allocated to the "Armenian Airways" CJSC for development, and that the latter had since sold its right to a different person.

The Defender raised the issue with the RoA Deputy Prime Minister (Minister for Territorial Administration), suggesting that the reasons for the situation be clarified and that measures to restore the citizen's rights be taken. At the Deputy PM's instruction, the Chairman of the State Committee of the Real Estate Cadastre, the RoA Minister of Environmental Protection, and the governor of Gegharkunik province reviewed the situation and informed the Defender that the problem could be solved via negotiations or through the courts. Subsequently, the complainant informed the Defender that a plot of land plot had been offered to him as a result of negotiations. But its value was not commensurate to the one that had earlier been allocated to him.

To decisively resolve the issue, the Defender wrote a letter inviting the RoA Deputy Prime Minister to organize a discussion with the Sevan Mayor, "Sevan National Park" SNCO, the Gegharkunik governor's office, and the citizen in question. The citizen was asked to bring photos of his preferred land to the discussion. On 21 January 2009, a discussion was held in the RoA Ministry of Territorial Administration, during which the participants agreed on a plot of land. They also agreed to prepare the necessary documents within a one-month period so that the issue could be favorably resolved.

3.17.5. Village Administrations

Complaints received from rural communities in 2009 concerned land disputes, the state's failure to provide compensation to villagers who suffered from storms and hail, the refusal to provide compensation for livestock destroyed as a consequence of animal epidemics, and the like. One of the problems faced in rural settlements is that from 1991, Land Reform and Privatization Commissions allocated land to villagers and state acts on the right of land ownership were issued to them. However, in many cases, mayors of local authorities allocated the same land to other persons. Problems also arose in connection with mapping performed since 1991 – changes in the marked location and position of land have caused conflicts between villagers.

A.Kh., resident of the Nor Kyank community (Ararat province), informed the RoA Human Rights Defender in a complaint that according to a 1991 protocol decision of the Land Reform and Privatization Commission, a 0.36 hectare plot of land plot had been allocated to him, as proven by the state act on the right of land ownership. Despite the existence of the aforementioned document, however, the complainant was unable to obtain a certificate of registered ownership rights (issued in the new form). So, in 2008, the Mayor of Nor Kyank had ordered a 70,000 dram administrative fine due to the complainant's 'unlawful' use of the land. He was fined even though, during a hearing of a related case by the Ararat province First Instance Court in 2007, a representative of the Nork Kyank Village Administration had stated that the disputed land had been temporarily provided to the complainant in order for him to install a trailer home and live there.

Back in 2007, the Mayor of Nor Kyank had known about the complainant's 'unlawful' use of land but the administrative fine was not ordered until 7 August 2008. Under Article 37 of the RoA Code of Administrative Offences, an administrative sanction for a continuing and lasting offence may only be ordered within two months of the date of discovering the offence. Further inquiries into the situation revealed that failure to pay the administrative sanction had been neglected, while registration of ownership rights over the land had been refused on the grounds that the citizen had filed a court claim to recognize his right but the court had not yet made a decision.

PART 4.
RIGHTS OF SPECIAL AND VULNERABLE GROUPS

4.1. Rights of Military Conscripts and Servicemen

Article 3 of the RoA Law on Defense states that the armed forces comprise "the state's military structure, the cornerstone of the Republic of Armenia's military security system" and therefore ensure the armed defense of the country's independence, territorial integrity, and security. Clearly, the Defender should pay particular attention to the protection and restoration of rights of persons engaged in such a key structure. That is why the position of 'Advisor to the Defender for Military Issues' was instituted within the Defender's Staff back in 2007.[21]

Since 2004, annual reports of the Defender have repeatedly addressed a number of issues related to the protection of human rights in the RoA armed forces. In the 2008 Annual Report, the Defender made several recommendations on the resolution of structural problems in this area. The Defender's activities vis-à-vis the armed forces are aimed at protecting the rights and freedoms of servicemen (including officers, non-commissioned officers, and the supreme command) from the unlawful actions of competent state officials. His activities also focus on implementing special measures to restore violated rights, including active measures to raise awareness among servicemen.

To carry out this work, the Defender sometimes requests the support of reputable international organizations; joint discussions of problems in this area are held, and experience is shared with counterparts from various countries. The OSCE Yerevan Office plays an active role in the protection of human rights in the armed forces: the Memorandum of Understanding signed with the Office stipulates expert assistance by the OSCE to the Defender's Staff.

In 2009, as in previous years, the Defender protected rights of servicemen via two means: review of complaints (oral and written) and visits to military units at his own initiative. In addition, the Defender also provided comments and suggestions on relevant draft legislation being proposed by the RoA Ministry of Defense.

The most significant problems, which have existed from the past until present, are presented below.

As competent state bodies fail to pay proper attention to future conscripts early on (e.g. from school), the level of conscripts' legal awareness remains the same. This must be addressed by education sector officials as well as by territorial offices for military conscription. With appropriate regulation, schools would properly teach military and legal subjects. In view of the importance of this problem, the Defender and/or his staff visiting various military units not only interview servicemen but also explain to them RoA legislation on military service and conscripts' rights.

[21] For details, see Paragraph 4.1 of the Human Rights Defender's 2008 Annual Report.

Although the institution of the Human Rights Defender has existed for six and a half years, some military personnel (members of the officer corps) have yet to comprehend its role and significance. Moreover, officers, quite often unaware of certain provisions of the RoA Law on the Human Rights Defender, and in defiance of Article 5 of the RoA Constitution, claim that they will comply with the requirements of specific laws only after they are given an order from their superiors. Thus, they not only fail to appreciate the importance of protecting human rights but also consider it unnecessary.

Realizing the strategic significance of the armed forces for the nation's security, the Defender's staff has never violated any rules about protecting military secrets whilst acting for the benefit of the rights and fundamental freedoms of humans and citizens.

During a visit to a detachment of the RoA Ministry of Defense in Lori province, the commander of the detachment, Lieutenant Colonel Z.D. engaged in conduct that obstructed the work of the Defender's staff. He argued that his detachment had a "special" character. The visiting staff members presented the scope of their activities and their desire to make a tour of the detachment, even if accompanied by a commander. In response, both Z.D. and the Deputy Commander of the Detachment, Lieutenant Colonel G.M. prohibited the Defender's staff from touring the detachment, claiming that the visit during break hours "disturbed" them. The Defender's representatives were allowed to tour the detachment, albeit with severe restrictions, only after a telephone conversation between the Deputy Commander of the Detachment, Lieutenant Colonel G.M. and the Chief of the Artillery Department of the Chief Command of the RoA Armed Forces, Colonel M.

In some cases, the Defender's staff were not permitted to examine soldiers' military files or servicemen's leave schedules on the grounds that they were confidential. It remains unclear what secrets could possibly have been found in leave schedules or soldiers' military files.

The RoA Ministry of Defense sent numerous letters informing the Defender that the heads of all units of the armed forces had been instructed to comply with Article 8 of the RoA Law on the Human Rights Defender. Nonetheless, the requirements of the Law are still not fully upheld.

Most complaints related to the exercise and protection of rights of military servicemen concerned the following issues:

1. **Officers wishing to be demobilized prior to the end of their contract term are treated differently.**

In complaints sent to the Defender in 2009, officers of the RoA armed forces, most of whom were graduates of the Military Medical Department of Yerevan State Medical University or the V. Sargsyan Military Academy of the RoA Ministry of Defense, informed that they had expressed a desire, due to family concerns, social issues, and other reasonable factors, to terminate their contracts with the RoA Ministry of Defense and to make all the payments required by law. The Chief Command of the RoA Armed Forces granted such requests to some officers but withheld them from others, or the granting of the requests was made

conditional on the relevant officers being stripped of their military ranks.

In such cases, officials of the Chief Command of the RoA Armed Forces acted in breach of Articles 18, 27.1, and 32 of the RoA Constitution, as well as Paragraph 1(7) of Article 57 of the RoA Law on Military Service. Article 32 of the RoA Constitution states that everyone has the freedom to choose work, while the RoA Law on Military Service states that military servicemen shall be released from military service. It stipulates also that if officers resign from military service within the first ten years of graduation from a military educational institution, they must reimburse the costs of their education. Thus, the inconsistent responses to officers requesting leave by the Chief Command of the RoA Armed Forces are illogical. Moreover, Article 14 of the RoA Law on Defense exhaustively prescribes the powers of the Chief Command of the RoA Armed Forces. Servicemen have reported, though, that in many cases, when they applied to the Chief Commander of the RoA Armed Forces, they faced degrading and demeaning treatment.

Virtually all such complaints to the RoA Human Rights Defender were favorably resolved – i.e. early termination of military service contracts was granted.

2. Persons whose military service is deferred due to illness are required to undergo a repeat medical examination earlier than required.

The Defender has received petitions concerning this issue virtually every year. However, their incidence is growing, and any citizen whose military service is deferred due to illness cannot be sure that he will not be summoned to the military conscription office at any time and drafted to the army. According to the Procedure approved under Decree 378 of the RoA Minister of Defense dated 30 March 2006, the National Medical Commission may grant a conscript deferral of military service due to illness in accordance with the RoA Law on Military Duty. In practice, though, conscripts granted such exemption are forced to appear before military conscription offices and undergo a repeat medical examination. A citizen may be granted a three-year deferral, for instance, and then convened to a checkup by another commission, which may reverse the finding of the original commission and recommend conscription of a citizen who was earlier granted deferral. Whenever such conscripts fail to present themselves at the military conscription office, the conscription officers intimidate them and their family members. The Defender's staff discovered such a case related to the Erebuni Military Conscription Office.

Over the course of several months, the Defender repeatedly sent letters to the RoA Ministry of Defense asking for an explanation. Responses were always evasive and failed to meet legal requirements. The only explanation provided by the RoA Ministry of Defense in response to the Defender's October letter was that certain conscripts were "selected" for additional medical examination on the basis of requests from the RoA Military Prosecutor. In reality, though, RoA legislation does not provide such powers to the Office of the Military Prosecutor. A decree signed by the RoA Minister of Defense in April 2009 "legalized" the aforementioned practice of the Office of the Military Prosecutor. The Defender strongly believes that the RoA Minister of Defense should consider repealing the said decree because

it directly puts persons in a less favorable legal position and contradicts the philosophy of fighting corruption through this procedure – just the concept of "selection" already poses corruption risks.

Another question that arises is whether a person returning to the Republic of Armenia, after a decision of deferral, may be held liable for premature medical examination. Citizen A.A., for instance, was held liable in such a situation. Another citizen who returned to Armenia was required to undergo medical examination earlier than the date originally set. The new examination reversed the original findings and the citizen was drafted to the army. The RoA legislation does not rule out this possibility. However, there is no mechanism to appeal the decisions of the National Medical Commission, either.

3. Due to the lack of an appropriate and comprehensive medical examination, persons with illnesses are drafted to the RoA Armed Forces.

Complaints filed by numerous citizens revealed that the practice of territorial military conscription offices drafting conscripts with health problems to the army is not only continuing, but also becoming a more frequent occurrence. Citizens complained about the difficulty with which territorial military conscription offices issue, or sometimes even refuse to issue, "referrals" to conscripts needing examinations in specific health care institutions. In contrast, the RoA legislation directly states that local conscription commissions should issue referrals: "If a medical opinion on the citizen's suitability for army service cannot be obtained locally, then the local conscription commission must refer him to an appropriate health care institution for a medical checkup." (Article 7 of the RoA Law on Military Duty.)

These are the types of cases in which conscripts with university degrees end up dying in the detachment after only a few days of military service. In particular, A.M. drafted to the RoA Armed Forces through the Arabkir Military Conscription Office died because of a chronic gastrointestinal illness that was ignored despite the presentation of medical documents proving his condition.

Most citizens who complain about the actions of the military conscription offices avoid filing written petitions for fear of 'retaliation' by the military conscription commissioner in the form of drafting their children to the most remote detachments. Such complaints were filed orally against the military conscription offices of Nor Nork and Shahumyan local authorities in Yerevan, the Masis local authorities in Ararat province, the Aparan local authority in Aragatsotn province, the Gyumri local authority in Shirak province, and the Charentsavan local authority in Kotayk province.

The press regularly publishes articles about the conscription of young men with certain illnesses, and the Defender follows up on such publications in accordance with the procedure established by law. An example of this is the article published in the press about the case of conscripts A.O. and E.M.

In addition, actual cases of the conscription of young men with illnesses were discovered during visits to various regions. The Defender's representatives encountered

such conscripts in virtually all of the military detachments they visited.[22]

For instance, serviceman M.N. (drafted through the Martuni Military Conscription Office) serving in detachment number 81151 of the RoA Ministry of Defense informed that he had a perineal hernia, which caused him pain after physical work. Private Z.M., serving in the management platoon of the artillery division, informed the Defender's representatives that he weighed only 46 kilograms at the time of conscription and at the time of their visit, and that had had a cardiovascular illness since childhood.

Private G.M. (drafted through the Vanadzor Military Conscription Office in draft number 08/2) of detachment number 55035 of the RoA Ministry of Defense informed that he had been drafted as "fit for the army" despite having only about 10-13 healthy teeth and a defective chewing function. He requested a detailed medical checkup. The Defender made a recommendation on such a checkup to the RoA Minister of Defense.

Private V.D. (drafted through the Artik Military Conscription Office) of detachment number 73128 of the RoA Ministry of Defense informed that he had had neck pain and strains since childhood, but the National Medical Commission had found him fit for "non-effective service" (Paragraph 37.c) and drafted him to the army. There, his health condition deteriorated, and the detachment commanders referred him to the Zangezour Garrison Hospital, where the hospital chief refused to perform surgery. Moreover, the required seals were missing from V.D.'s military brochure.

4. Conscripts with mental disorders of varying degrees are being drafted to detachments close to the border and have to serve duties in field positions.

This problem was raised during visits made at the Defender's instruction. It is worrisome that such servicemen perform their military service in detachments close to the border. Members of the visiting teams discovered from interviews with a number of servicemen that many of them had a health condition referred to in Paragraph 7.c of a relevant decree of the RoA Minister of Defense, which meant that their service should have been restricted in certain ways, including a prohibition to carry arms. This was confirmed by papers issued by medical commissions, but for some unknown reason, they had been drafted to detachments close to the border. The same issue exists in relation to persons who have attempted suicide at different ages by slashing wrists or inflicting scratches or scars on various parts of their bodies. On the other hand, many servicemen thought that they should not have been classified as having mental disorders and requested repeat medical checkups in order to reverse the original decisions. Some servicemen actually had serious mental health problems, and many of the detachment commanders assured the Defender's representatives that they posed a great danger and had to be constantly supervised by the officers.

Such issues highlight that much remains to be done by the Conscription Department

[22] The Defender sent letters to the RoA Minister of Defense about shortcomings identified during each visit to the regions and recommending measures to address them, including information on servicemen with health problems. See also the Defender's website.

of the Chief Command of the RoA Armed Forces. Indeed, instead of obstructing visits by the Defender's representatives to the National Conscription Station, they should be ensuring the effective distribution of conscripts, so that those with mental disorders are not drafted to detachments close to the border and young men with no parents or only one parent are not drafted to detachments that are more than 100 kilometers away from their homes (as required by the RoA Law on Military Duty), and the like.

5. Territorial Military Conscription Offices take the passports of conscripts.

Although this issue was raised in only a few complaints to the Defender, there is a firm conviction that the phenomenon is more widespread. As legislation confers no such powers to military conscription offices, the practice of withholding passports is simply illegal. Only RoA Government Decree 821 (1998) and the RoA Criminal Procedure Code define specific cases in which a citizen's passport may be taken away.

In one such complaint sent to the Defender's Office, a citizen complained about the staff of the Arabkir Military Conscription Office. However, instead of replying to the content of the questions raised in the Defender's letter, the RoA Minister of Defense provided an evasive and arbitrary explanation, noting that they had repeatedly invited the citizen to receive his passport but that he had refused. The Defender believes that the taking of passports by military conscription offices is an unlawful practice that *per se* creates corruption risks. To this end, the Defender made an official statement that declared a violation of human rights.

6. Military servicemen have housing problems.

This issue was discussed in the 2008 Annual Report of the Defender. Despite the small number of such formal complaints in 2009, many officers did raise the issue during the provincial visits of the Defender's representatives and explained the negative consequences of the failure to address it.

The problem should be viewed primarily in the context of the RoA Constitution, Article 34 of which provides: "Everyone has the right to an adequate standard of living for himself and his family, including housing and improvement of living conditions. The state shall take measures to ensure the exercise of this right by citizens." Paragraph 1(3) of Article 48 of the Constitution also touches on the issue by stating that "the state's main objectives in the economic, social, and cultural spheres are … to promote housing construction and to facilitate the improvement of housing conditions for each citizen". Of course, providing such conditions or opportunities to military servicemen enhances their loyalty to serve in the Armed Forces. During 2009, a written complaint by a citizen on this matter was favorably resolved.

Citizen H.G. informed the Defender that he served in the RoA Armed Forces during 1993-2002, had since retired from the army, and held the rank of a lieutenant colonel in reserve. During his service, an apartment had been provided to him. After he retired in 2002, he had tried to privatize the apartment but was unsuccessful. The Housing Division of the Ministry of Defense had provided empty answers to his numerous requests to the RoA Ministry of Defense, claiming that the house privatization issue would be discussed

in one of the future sessions of the Central Housing Commission of the RoA Ministry of Defense. The complainant also informed the Defender that, due to his uncertain status, his and his family members' rights were being violated – in fact, they were disenfranchised in the elections. The RoA Ministry of Defense responded to the Defender's inquiry about the complaint stating that the issue of privatizing the house to ex-serviceman, retiree H.G., had been discussed in the 16 June 2009 session of the Central Housing Commission of the RoA Ministry of Defense. The Commission had decided, in fulfillment of the requirements of Decree 778 of the RoA Minister of Defense dated 17 July 2009, to allow privatization of the apartment in question to citizen H.G.

Officers in a number of detachments claimed that the lack of adequate housing was hindering their attempts to start a family. Despite having apartment lease contracts, many officers serving in places away from home were, for various reasons, not receiving the monetary compensation due to them from the relevant department of the RoA Ministry of Defense.

As for social problems, officers serving in the field noted that their paid leave and wages were the same as those of servicemen serving in detachments close to the City of Yerevan. Clearly, this was not contributing to an increase in the number of persons wishing to serve in field positions. The Defender will elaborate on this issue in his 2010 Annual Report since further inquiries are required.

7. Servicemen (with an untarnished record) are sometimes not demobilized after two years of service, which some commanders justify in various absurd ways.

During the 2009 Fall Draft, the Office of the RoA Human Rights Defender received numerous phone calls concerning detachment commanders' refusal to demobilize servicemen that had completed two years of military service. Such cases were also discovered by a working group set up by the Defender during its three-day visit to a number of detachments in Lori province. The commanders of such detachments claimed to be following an order by the RoA Minister of Defense: they said the demobilization would take place in several stages, and that they could start demobilizing servicemen only after 16 November, even though the Presidential Decree stipulated 1 November as the starting date of the demobilization process.

On 17 November 2009, the Defender's Advisor for Military Issues had a telephone conversation with commander T.Sh. of one Detachment N under the RoA Ministry of Defense in order to find out why private K.A. was not being demobilized despite having completed two years of his compulsory army service. The detachment commander responded in a contemptuous tone that he was acting in accordance with the law and that no one should try to scare him with complaints because he had "lost his sense of fear ten years ago." Moreover, T.Sh. informed the Advisor that the duration of compulsory military service established by law was not 24 months, but rather, "24 or more" months, and therefore, he claimed his actions to be legitimate and in line with the laws. He concluded by saying that they had

decided to start demobilization from his detachment on 5 December 2009. Interestingly, the Staff Officer of the Chief Commander of the RoA Armed Forces, colonel A.B., agreed with the aforementioned position, which he reiterated in a telephone conversation with the Defender's Advisor.

The Defender believes that such demobilization practices contradict the RoA Constitution and laws, and that the aforementioned comments of high-ranking officers are unlawful and unwarranted for the following reasons:

Under Paragraph 4(1) of Article 4 of the RoA Law on Military Service, the duration of compulsory military service for privates is stated as 24 months. Thus, the legislation very clearly and imperatively stipulates a 24-month period for compulsory military service. The law does provide a procedure for prolonging the duration of service if required – the Government may decide to prolong the period of compulsory military service by up to two months. However, no Government decision was taken in the case described above. Therefore, the requirements of Article 14.1 of the RoA Constitution were ignored (Article 14.1 states that all persons are equal before the law, and discrimination based on sex, race, skin color, ethnic or social origin, genetic features, language, religion, world view, political or other views, national minority status, property status, birth, disability, age, or other personal or social circumstances shall be prohibited).

Based on the foregoing, the Defender invited the RoA Ministry of Defense to comment on the following questions:

- Were the responses of the detachment commander and the Staff Officer of the Chief Commander of the RoA Armed Forces justified and legitimate? If not, what steps will be taken to eliminate such phenomena?
- Does Decree 0244 of the RoA Minister of Defense dated 14 October 2009 comply with the RoA Constitution? Does it not contradict the requirements of Article 4 of the RoA Law on Military Service?

The Defender also recommended to the RoA Government that a procedure for regulating conscription activities, which would also streamline the terms and procedure of demobilization, be drafted and presented for approval. The Ministry of Defense rejected the Defender's recommendation.

The Conscription Department of the Chief Command of the RoA Armed Forces should perhaps intervene because the schedule planned by the Conscription Department should reflect the real situation so that the number of servicemen being demobilized (per detachment) corresponds with the number of persons being drafted.

In general, the Conscription Department of the Chief Command of the RoA Armed Forces has not adequately cooperated with the Defender's Office, especially during the conscription period. However, it should be noted that the Conscription Department was not the only public agency engaged in conscription activities: representatives of a number of other public bodies, as well as other structural units of the RoA Armed Forces, were involved, including the RoA Military Prosecutor's Office, the Conscription Unit of the Military

Conscription Office of the RoA, the Medical Department of the Chief Command of the RoA Armed Forces. Therefore, it is considered that all of these entities have obstructed the activities of the Defender's representatives in this area.

During the 2009 spring draft, representatives of the Military Police Department of the RoA Ministry of Defense directly obstructed the work of the Defender's staff – commander A.B. and his officers claimed that the Defender's representatives were not entitled to have private interviews with conscripts. The Head of the Conscription Department of the Chief Command of the RoA Armed Forces tried to justify the practice by claiming that they were acting on according to law. During the 2009 spring draft, employees of the same Department, however, directly supported the work of the Defender's representatives. This was due to the involvement of a Department official, A.A. None of the visits by the Defender's representatives was obstructed; moreover, discussions on a number of issues were organized.

A representative of the RoA Military Prosecutor's Office participates in these activities in order to supervise the lawfulness of conscription. In practice, however, this supervision is pointless because the representative, instead of complying with the requirements of the Constitution and laws, engages in contradictory conduct. In such a situation, it is worth exploring whether this particular representative of the RoA Military Prosecutor's Office should continue to participate in the conscription process or be replaced with another official.

Here is an example of the problem. Medical records in the personal file of conscript H.H. being drafted through the Masis Military Conscription Office showed that he was suffering from psoriasis. This was the reason cited for refusing to admit him to the V. Sargsyan Military Academy of the RoA Ministry of Defense. Moreover, during his studies in the M. Melkonyan College, he was treated in the RoA Ministry of Defense Hospital for about two months, where his psoriasis diagnosis was confirmed. Later, based on a referral by the Military Conscription Office, the conscript was examined in another, civilian health care institution, which issued an opinion that made no mention of his illness. Effectively, the two medical reports contradicted one another.

To address the inconsistency, the Defender's representatives recommended that the conscript be referred to another health care institution for further medical checkups. H. Mkrtchyan, the representative of the RoA Military Prosecutor's Office that was participating in the discussion, initially agreed with the recommendation, but when the discussion was broadened to engage representatives of a number of agencies, he tried to claim that it was not necessary to refer the conscript to a different health care institution, and that he had to be drafted to the army. Later, it was established that he was drafted to Detachment N under the RoA Ministry of Defense, which was most probably due also to the RoA Human Rights Defender's intervention and persistence.

During 2009, with the support of the OSCE Yerevan Office, the Defender issued a public ad hoc report on respect for human rights in the implementation of disciplinary policies in the RoA Armed Forces. The Report analyzed the problems of legislation and practice and recommended an action plan to address them.

4.2. Rights of the Child

Annual reports of the RoA Human Rights Defender pay special attention to the protection of the rights of the child in support of the premise that *protection of the rights of the child is a complex and comprehensive process that should engage not only parents and family, but also the public at large and* ***the whole state system****.*

As an independent institution with guaranteed tenure that is responsible for the protection of human rights and freedoms violated by state government and local self-government bodies and their officials, the RoA Human Rights Defender carries out the protection of the rights of the child in the following ways:

a) Review of complaints received by the Defender's Office alleging violations of the rights of children;
b) When hearing of alleged violations of the rights of children (from the media, reports by other sources, and the like), rapid response to such situations by conducting an inquiry into the case;
c) Regular visits to child rearing institutions and other social protection institutions (children's homes, child care and rearing institutions, daycare centers, and the like), as well as the penitentiary institution holding women and juveniles, to reveal problems that exist there and call competent authorities to focus on such problems; and
d) Meetings with non-governmental organizations involved in the protection of the rights of the child to analyze and respond to problems from the standpoint of the non-governmental sector, as well.

In 2008, the Defender's Staff launched an ongoing review process of RoA legislation on the rights of the child in order to make specific recommendations for improvement. The initial results were reflected in the Defender's Ad Hoc Public Report on Certain Issues Affecting the Rights of the Child in the RoA Legislation, which was published in 2008 with the support of UNICEF and the Eurasia Assistance Foundation. The Report was shared with the competent authorities, including the RoA National Assembly. The main recommendations made in the Report on legislative amendments are expected to be adopted in the near future.

From the standpoint of protection of the rights of the child, the Defender has repeatedly stated the importance of creating a separate unit or role within the Defender's Office to deal with the rights of children. In fact, the Committee on the Rights of the Child made the following observation about the Report of the Republic of Armenia on the implementation of provisions of the 1989 UN Convention on the Rights of the Child: "…the Committee recommends that the State party, in accordance with the Committee's general comment No. 2 (2002) on the role of national human rights institutions in the protection and promotion of the rights of the child, establish either a Procurator specifically responsible for children's rights, or a specific section or division within the Office of the Human Rights Procurator to

be responsible for children's rights." However, the issue has still not been resolved due to a lack of staff positions and state financing.

The nature of complaints addressed to the Defender concerning the rights of children did not change in 2009. The 12 official complaints concerned:

a) Difficulties in executing court acts for alimony payment. This was due to the parents' failure to make timely payment of alimonies or concealment of real income or migration to a different country as well as the execution officers' failure to use all of their legal powers, inability to act swiftly, or even in some cases their lack of action.
b) Abuse of the child's rights by parents living separately from one another. The parent not living with the child (mostly due to divorce) often abuses his or her right to see the child to the detriment of the child's best interests. The guardianship and custody agency, which must participate in all such trials, must thoroughly study the situation in advance and obtain answers to all relevant matters. In reality, though, this agency often sympathizes with one of the parents instead of abiding by its duty to protect the child's interest.
c) Complaints about the actions of, or lack of action from, the guardianship and custody agency regarding its opinions and decisions on placing the child under the care of one parent, on determining the suitability of the child's stay with one parent, or on other disputes related to the child.

As noted above, in the context of measures to protect the rights of children, the Defender and/or his staff make regular visits to children's homes, boarding institutions, and various other organizations engaged in child care and rearing. During visits to the "Yerevan Child Home," "Yerevan Child Care and Protection Boarding Institution number 1," "Yerevan Child Care and Protection Boarding Institution number 2," the "Zatik" Home for Children, and the "Mary Izmirlian Home for Children," the Defender's staff revealed various issues, such as the inadequate condition of their buildings, the need for renovations, non-compliance with standards on the size of children's rooms, problems related to the provision of housing and employment to graduates of children's homes, and the like.

The Defender presented these and other issues to the competent authorities. The RoA Minister of Labor and Social Affairs responded by stating that the Ministry had frequently proposed renovation and improvement of the buildings of these institutions under the Medium-Term Expenditure Frameworks (MTEF) of the Government, but they were never included in annual RoA state budgets due to a shortage of government funding. The 2010-2012 MTEF proposal submitted to the RoA Ministry of Finance in 2009 was temporarily suspended. The Ministry will include the same in its 2010 state budget financing proposal in order to obtain consent from the Ministry of Finance. The RoA Ministry of Labor and Social Affairs cooperates with a number of international donor organizations in order to obtain funding from them to perform some of the renovation works.

As for the issue of young adults staying in children's homes after turning 18, the

RoA Ministry of Labor and Social Affairs has submitted to the RoA Government a draft decree of the Government "On Approving the Procedure of Housing Registration of Children Left without Parental Care, the Procedure of Providing Housing Purchase Certificates to Such Children, and the Program of State Assistance to Such Children, and Repealing RoA Government Decrees 983-N dated 23 July 2003 and 1419-N dated 30 October 2003." If the draft decree is adopted, it will be possible to provide housing purchase certificates to these children, and many of them will be able to purchase their own apartments.

The Defender remains focused on all the issues raised.

4.3. Rights of Persons with Disabilities

All the annual reports of the RoA Human Rights Defender address in detail the issues of persons with disabilities as a vulnerable group of Armenian society. However, the overall situation has not changed or improved much.

The principles of state policy on the social protection of persons with disabilities and the state's equal opportunities policy are reflected in the RoA Law on Social Protection of Persons with Disabilities in the Republic of Armenia. A number of legal acts regulating other sectors contain provisions related to the exercise of rights of persons with disabilities, as well. Protocol decision 44 of the RoA Government session held on 3 November 2005 approved the "2006-2015 Strategy for Social Protection of Persons with Disabilities," which is aimed at ensuring the social integration of persons with disabilities and their full participation in all walks of public life. Based on the priorities approved under the Strategy, annual programs for social protection of persons with disabilities are endorsed and carried out. As for special institutional mechanisms, a national commission dealing with issues of persons with disabilities was created under Decree 98-N of the RoA Prime Minister dated 25 February 2008 in order to facilitate the safeguarding of equal rights and equal opportunities for persons with disabilities. Similar provincial commissions and a commission for the City of Yerevan have been created, as well. Despite all these measures, however, the situation in Armenia in terms of equal opportunities for persons with disabilities and their integration in society remains far from satisfactory.

As of 1 January 2009, a total of 170,950 persons with disabilities were registered in Armenia. The issues related to the exercise of rights by persons with disabilities were particularly acute in the spheres of health care, social and psychological rehabilitation, public general education, transport, communication, access to employment, and social protection. In virtually all these spheres, problems were primarily due to the environment being inaccessible for persons with disabilities. Inclusive education remains inaccessible for persons with disabilities mainly due to the fact that the educational institutions have not been tailored to the needs of persons with disabilities. Ramps exist at the entrances to a number of schools but the inside of the buildings are not accessible for children with disabilities

because they can reach only the classrooms on the first floor. As for the restrooms, children in wheelchairs still have no physical access to them. Persons with disabilities face the same problems in places of vocational and higher education.

As in the past, the most urgent problems relayed to employment were the low rate of job placement of persons with disabilities who are capable of working, the lack of adequate employment safeguards in legislation, the lack of employer awareness of the rights of persons with disabilities and the benefits granted to employers hiring persons with disabilities, the inaccessibility of the workspace for persons with disabilities, and the inadequacy of vocational training. According to statistics, only 8% of persons with disabilities who are capable of working are actually employed. This is an extremely low figure.

Problems in other spheres are due to the inaccessibility of social infrastructure, such as buildings, premises, and streets, which is a significant obstacle to the participation of persons with disabilities in the nation's social, political, and cultural life (elections, visits to cultural or sports centers, and the like). Access to public transport is another pressing problem for persons with disabilities: in effect, they are almost completely deprived of the right to freedom of movement. Other serious problems remain in areas such as the provision of health care services, government-subsidized medication, and rehabilitative services for persons with disabilities.

Observation of the Yerevan City Council election on 31 May 2009 revealed that adequate conditions had not been put in place to secure the voting of persons with disabilities. With a few exceptions, the competent authorities had failed to take the necessary measures to make polling stations physically accessible for voters in wheelchairs and voters with mobility difficulties.[23]

Thus, although legislation in many cases stipulates safeguards to ensure equal rights and equal opportunities for persons with disabilities, including mechanisms to promote their participation in various spheres of public life, there is virtually no implementation of such provisions in practice. Indeed, the level of awareness of the rights, needs, or abilities of persons with disabilities, as well as of the programs and legislative safeguards that exist, is very low. This hinders the practical realization of such rights.

The Republic of Armenia has undertaken commitments to secure equal rights and equal opportunities for persons with disabilities and to preclude discrimination under a number of international legal treaties, such as the UN's International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the Revised European Social Charter, and others. On 3 March 2007, the Republic of Armenia signed the UN Convention on the Rights of Persons with Disabilities, thereby undertaking a number of commitments towards the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability. However, the Republic of Armenia has

[23]Report of "Unison" Non-Governmental Organization that monitored the Yerevan City Council election on 31 May 2009.

still not ratified the Convention.

The National Human Rights Program expected from the RoA Government in 2010 also contains measures to enhance respect for the rights of persons with disabilities. The Program will facilitate the full realization of measures to ensure the equality of opportunities for persons with disabilities and the implementation of the UN Convention on the Rights of Persons with Disabilities. As specific priorities, measures will be implemented to raise public awareness of persons with disabilities (about their rights, needs, abilities, and how those can be realized), disseminate information on existing programs, services, and legislative safeguards, and ensure equality in educational programs and the full participation of persons with disabilities in public life. The possible role and functions of the Office of the RoA Human Rights Defender as an awareness-raising mechanism in developing such measures should be taken into consideration.

In 2009, the RoA Human Rights Defender conducted a review of the main commitments of the Republic of Armenia under the terms of the UN Convention on the Rights of Persons with Disabilities, as well as the RoA legislation regarding persons with disabilities, in order to see how they comply with international legal instruments. The review focused on not only legal aspects but also social and psychological issues. In the near future, its findings will be presented to the Human Rights Committee of the RoA National Assembly for discussion.

4.4. Rights of Refugees

An overview of refugees' complaints shows that they continue to face substantively the same issues that affected them in the past. For example, a number of complainants requested the Defender's intervention in housing improvement or provision. The 2008 Annual Report reflected on inadequate procedures that left ex-refugees "in the lurch" after they adopted RoA citizenship and were naturalized. Unfortunately, such practices continued in 2009.

A former refugee, for instance, acquired RoA citizenship in 2004 and continued to live in the Village Administration building that lacked utilities. In 2005, he was offered a housing purchase certificate, which he refused due to the insufficient amount provided by the certificate for purchasing a house. Families in similar situations (present in different provinces of the country) remain in need of housing.

A clean environment, sanitation, and adequate utilities are the key issues faced in settlements, towns, or villages inhabited by refugees. The Defender receives oral and written complaints related to these issues. The provision of water supply to the refugee-inhabited Silikyan District of Yerevan was organized owing to the Defender's intervention.

In another case, a complainant who had refugee status complained about the condominium demanding 31,000 drams (alleged "arrears" for utility services) from him for issuing a statement. He was told that he did not have to pay this sum if he did not need the

statement. The complainant requested the Defender's support. As the complaint did not fall under the Defender's jurisdiction, the complainant was advised about other available remedies – he was advised to apply to the district mayor, and then, if the latter did not resolve the issue, to the Defender. The Defender was subsequently informed that the issue had been resolved after the refugee had applied to the district mayor.

The exercise of the constitutional right to health care and services is an urgent issue for vulnerable groups, especially refugees. A former refugee, being socially destitute, requested the support of the RoA Human Rights Defender in providing appropriate health care and ensuring the return to Armenia of her daughter who lived in the Kislovodsk Region of Russia, had many children, and was ill and socially destitute.

With the support of the RoA Human Rights Defender, N.R. (undergoing in-patient treatment) and her seven children were able to return to Armenia from the Kislovodsk Region of Russia. According to the information provided by her mother, cancer patient N.R. had not been given proper health care and support in Russia. The RoA Human Rights Defender raised the issue with A. Selyukov, the Human Rights Commissioner for the Stavropol Region. After the intervention, N.R. was able to receive proper health care. After her return to Armenia, she wrote a letter to the Defender expressing her gratitude for the Defender's vital support in ensuring her and her children's return to Armenia.

4.5. Rights of National Minorities

During 2009, the RoA Human Rights Defender continued to cooperate actively with 24 non-governmental organizations representing 11 national minority communities. Leaders of two national minority communities in contact with the Defender are members of the Expert Council adjunct to the Defender. An overview of the few complaints alleging violations of national minority rights indicates that the violations were mostly of a general nature and were not connected with national minority status. In their complaints, national minority representatives raised the same issues as ethnic Armenian complainants (housing, difficulties of access to social services, and dissatisfaction about Armenian court rulings).

However, this does not necessarily mean that the sphere is devoid of problems. The Committee on the Elimination of Racial Discrimination (CERD), in Paragraph 277 of its concluding observations (2002) on RoA's third and fourth regular reports, noted that the absence of complaints and legal action by victims of racial discrimination could possibly be an indication of a lack of awareness of available legal remedies. Indeed, when the staff of the RoA Human Rights Defender talked with representatives of national minorities, the latter clearly noted that they were not familiar with the domestic and international legal texts concerning national minority rights and legal remedies available in cases of violations. Thus, the relevant remedies for the protection of their rights and freedoms were presented to them. The discussions focused on ways of preventing possible practices of racial discrimination, as well as mutual tolerance, tolerance and friendship between nations and racial or ethnic groups,

and the aims and principles of the UN Charter, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and the European Convention for the Protection of Human Rights and Fundamental Freedoms.

The Defender and/or his staff participated in all public events organized by national minority communities, as well as events organized in Armenia and abroad by various international organizations (the EU, the CoE, and the OSCE) on issues of national minorities.

When the Defender and/or his staff met with representatives of national minority communities, the following issues were raised:

a) Insufficient funding from the state budget;
b) Lack of tax exemptions for non-governmental organizations of national minorities;
c) Lack of television and radio programs and designated air time for content in the native language of national minorities;
d) Lack of access to the electronic and print media of the historical homeland of national minorities;
e) Lack of government support to the creation and publication of textbooks in the native language of national minorities;
f) Absence of pre-school institutions offering education in the native language of national minorities;
g) Limited access to government in the form of quotas in elected bodies; and
h) Problems related to the teaching of the Armenian language, etc.

In view of the small size of national minority communities living in Armenia, it is particularly important that the RoA Government support the preservation of these groups' linguistic and cultural identity.

In a resolution on the implementation of the Framework Convention for the Protection of National Minorities by Armenia (issued February 2007), the Committee of Ministers of the Council of Europe urged the Armenian authorities to take measures in the following areas: further increase awareness-raising measures among the public, politicians and the media regarding national minorities, increase efforts to ensure the availability of sufficient and qualified teachers and textbooks for education in minority languages, take measures to establish pre-school education, especially in areas where persons belonging to national minorities live in substantial numbers, etc. The resolution noted that the financial difficulties affecting many fields relating to the protection of national minorities have an impact on the effective implementation of the measures adopted by the authorities.

Although complaints mostly concerned issues of a general nature and were not connected with national minority status, in one complaint representatives of the Yezidi national minority community complained that, a Yezidi cemetery, located in the orchards of Nork-Marash local authority since 1940, had been partially destroyed due to construction in the area. They had raised the issue repeatedly with various government bodies, but had

received no response. They asked the Defender to check the boundaries of the cemetery through the Yerevan City Administration, define them legally, and take measures to remove any buildings constructed there unlawfully. The complaint is still under review.

4.6. Rights of Women

Although the RoA Human Rights Defender received virtually no complaints related to women's rights during 2009, a number of issues in this area merit attention. To date, the Republic of Armenia lacks a framework law on gender equality; a Law on Equal Rights and Equal Opportunities for Women and Men is currently being drafted. Civil society has also initiated the development of a Law on Fighting Domestic Violence, which will be presented to the RoA Ministry of Labor and Social Affairs for further processing.

Moreover, to coordinate state policy on women's issues, the RoA Government endorsed the 2004-2010 National Action Plan on Improving the Status of Women and Enhancing Their Role in Society and the accompanying Timetable of Actions under Decree 645-N dated 8 April 2004. The National Action Plan defines what the principles, priorities, and main focus of state policy for women's issues in the Republic of Armenia should be. A clear timetable is set out that defines concrete actions in areas such as equal rights and equal opportunities for women and men in decision-making and public and political life, improvement of women's social-economic status and health, eliminating violence against women and the trafficking of girls and women, enhancing the role of the media and cultural institutions in awareness-raising on women's issues and shaping female role models, and institutional reforms.

To ensure continuation of the Plan, a Government Decree on the Gender Policy Concept Note is currently being drafted. Based on the Concept Note, a future plan will be elaborated. For each year covered by the 2004-2010 National Action Plan on Improving the Status of Women and Enhancing Their Role in Society, annual reports on activities implemented by RoA ministries and provincial government offices (as well as Yerevan City Administration) were presented to the Government and approved by protocol decisions of the latter. No other mechanisms exist for monitoring and evaluating implementation of the Plan.

As for special institutional mechanisms, Armenia still lacks an effective national mechanism for women's advancement that would ensure, in line with recommendations from the Committee on the Elimination of Discrimination against Women, the development and effective implementation of a gender strategy in all spheres of public policy and the coordinated implementation of the UN Convention on the Elimination of All Forms of Discrimination against Women and the Republic of Armenia 2004-2010 National Action Plan on Improving the Status of Women and Enhancing Their Role in Society.

While a number of practical steps have been undertaken to ensure equal rights and

equal opportunities for women and men in all spheres of public life and to address women's issues, serious problems still exist in this sector. These include the inadequate participation of women in the country's political life, high rates of unemployment among women, social and economic problems faced by women, the lack of adequate facilities for the exercise of women's right to health, violence against women, and trafficking.

The Republic of Armenia has ratified a number of international legal instruments on human rights, including some directly concerned with women's rights. These include: the UN Convention on the Elimination of All Forms of Discrimination against Women, its Optional Protocol, the UN Convention on the Political Rights of Women, the United Nations Convention against Transnational Organized Crime Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, the Council of Europe Convention on Action against Trafficking in Human Beings, and a number of other treaties adopted in the frameworks of the Council of Europe and the International Labor Organization.

In February 2009, the UN Committee on the Elimination of Discrimination against Women presented to the RoA Government its concluding observations on the combined third and fourth regular reports. These observations included concrete recommendations on measures that should be implemented by Armenia. The most important issues raised by the Committee related to: the low level of awareness of the UN Convention on the Elimination of All Forms of Discrimination against Women, its Optional Protocol, and the Committee's general comments, the ineffectiveness of the gender quota system stipulated by the RoA Electoral Code, the lack of other temporary special measures to ensure de facto equality between women and men, the absence of specific legislation on domestic violence, the lack of effective measures to identify and eliminate the root causes of trafficking, the insufficiency of shelters for victims of trafficking and domestic violence, the lack of effective national mechanisms for the advancement of women, the lack of a specific division within the Office of the Human Rights Defender to deal with gender equality issues, women's insufficient participation in the country's political and public life, insufficient access to health services, problems in education and employment, and the like. The next combined regular report, to be submitted to the Committee by 2013, will describe the measures that have been implemented to address the aforementioned issues.