HUMAN RIGHTS DEFENDER
OF THE REPUBLIC OF ARMENIA

OSCE OFFICE IN YEREVAN

2007 ANNUAL REPORT
OF THE HUMAN RIGHTS DEFENDER
OF THE REPUBLIC OF ARMENIA

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ANNUAL REPORT

ON THE ACTIVITIES OF THE HUMAN RIGHTS DEFENDER OF THE REPUBLIC OF ARMENIA AND VIOLATIONS OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN THE REPUBLIC OF ARMENIA DURING 2007

YEREVAN 2008

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PART 1.
MAIN AREAS OF THE DEFENDER'S ACTIVITIES

1.1. Dealing with Complaints and Complainants
1.1.1. Statistical Analysis of Complaints

During the period from January 1 to December 29, 2007, the Human Rights Defender of the Republic of Armenia received 3,697 complaints from 5,764 persons, of which 1,101 were in writing (including 66 collective complaints lodged by 2,133 applicants) and 2,596 were oral.

During the period from January 1 to December 29, 2007, the matters raised in 96 complaints were resolved, resulting in the restoration of violated rights of **530** persons.

Table 1 shows the total and average monthly number of complaints addressed to the Defender in 2006 and 2007.

Table 1

Number of Complaints

	Total		**Average Monthly**			
	2006 (10 months)	**2007**	**2006**	**2007**	**Difference**	**Percentage Change**
Total	2,687	3,697	269	369	+100	137.1 %
Of which: in writing	1,247	1,101	125	110	-15	88 %
oral	1,440	2,596	144	259	+115	179.8 %
Number of persons	6,567	5,764	656	576	-80	87.8 %

The comparative numbers in Table 1 above illustrate that, in 2007, the average monthly number of complaints addressed to the Defender increased by 37.1% relative to 2006: the number of written complaints fell by 12%, while that of oral complaints grew by 79.8%. The number of persons applying to the Defender fell by 12.2%.

During 2007, complaints regarding human rights violations were received from residents of all the Marzes (regions) of Armenia, as confirmed by the regional breakdown of the number of written complaints (Table 2).

Chart 1. Average Monthly Number of Complaints

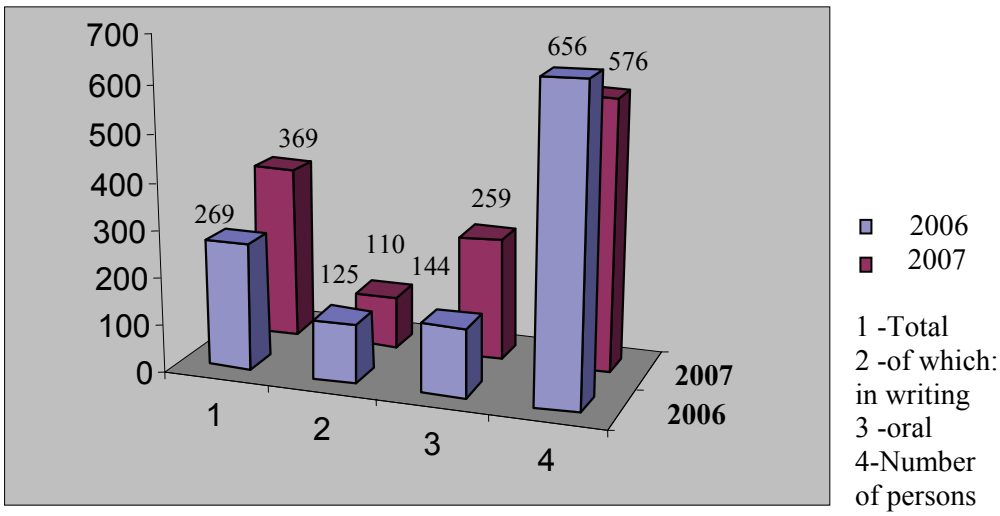


Table 2

Breakdown of the Number of Written Complaints, by Administrative-Territorial Units of Armenia

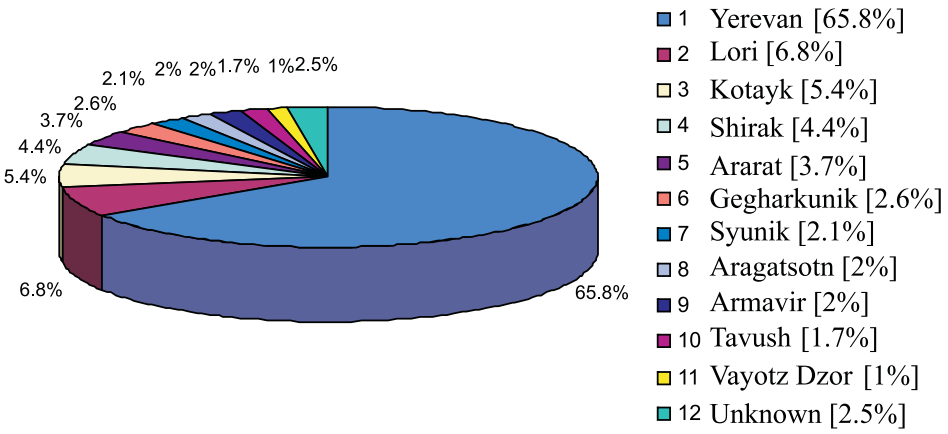
		2006 (10 months, February 20 to December 31)		2007	
	Region	**Number**	**%**	**Number**	**%**
1.	Yerevan	**772**	**61.9**	**725**	**65.8**
2.	Shirak	**96**	**7.7**	**48**	**4.4**
3.	Lori	**83**	**6.7**	**75**	**6.8**
4.	Kotayk	**62**	**5.0**	**59**	**5.4**
5.	Gegharkunik	**46**	**3.6**	**29**	**2.6**
6.	Ararat	**40**	**3.2**	**41**	**3.7**
7.	Armavir	**33**	**2.6**	**21**	**1.9**
8.	Syunik	**29**	**2.3**	**23**	**2.1**
9.	Tavush	**27**	**2.2**	**19**	**1.7**
10.	Aragatsotn	**22**	**1.8**	**22**	**2**

11.	Vayotz Dzor	**16**	**1.3**	**11**	**1**
12.	Unknown[1]	**21**	**1.7**	**28**	**2.6**
Total		**1,247**	**100**	**1,101**	**100**

The analysis of the number of complaints addressed to the Defender shows that in both 2006 and 2007, the City of Yerevan accounted for the largest share of the total number. The table above also shows that, in 2007, the percentage shares of the City of Yerevan and the Marzes of Lori, Kotayk, Aragatsotn, and Ararat grew relative to 2006, while the percentage shares of the Marzes of Shirak, Syunik, Tavush, Gegharkunik, Armavir, and Vayotz Dzor declined.

In 2007 and previous years of the activities of the Defender's Office, the scarcity of complaints from the regions, relative to those received from the City of Yerevan, is not an indication of better protection of human rights in the regions; rather, it is due to the regional population's denial of the law, caused by the indifference of public agencies towards respect and protection of human rights, as well as the fact that the Defender's Office is not as accessible for the regional population. Hence, the statistics in Table 2 support the necessity of creating regional representations of the Defender's Office.

Chart 2. Number and Percentage Breakdown of Written Complaints by Administrative-Territorial Units of Armenia, 2007



[1] This line includes the complaints of senders that did not specify their address or were not registered at any address.

Table 3 contains statistics on decisions made in relation to written complaints received during 2007, as well as complaints the review of which was pending or had been terminated at the applicant's request.

Table 3

Decisions Made in Relation to Written Complaints

		2007	
	Decision	**Number**	**%**
1.	Accepted for review	397	36.1
2.	Remedies presented	143	13
3.	Forwarded to other bodies for review	69	6.3
4.	Not accepted	420	38.1
5.	Review terminated at applicant's request	12	1.1
6.	Review pending as of December 29, 2007	60	5.4

Similar to previous years, citizens continued in 2007 to address to the Defender's Staff complaints about non-state bodies and organizations or natural persons, as well as anonymous complaints, complaints lodged more than a year after the date on which the applicant found out or should have found out about the violation of his rights and freedoms, and complaints that, in the Defender's opinion, do not indicate or allege a violation of human rights and fundamental freedoms (in accordance with Articles 7(2), 9, and 10 of the Republic of Armenia Law on the Human Rights Defender, decision is made not to review such complaints).

On the 420 complaints not accepted for review, as indicated in Table 3, the aforementioned justification was cited as the basis for not reviewing the complaint.

When it is decided not to review a complaint, the procedure stipulated by law for reviewing complaints is explained to the applicant.

During 2007, oral complaints accounted for over half of the total number of complaints addressed to the Defender. They were received during visits of the Defender or competent officials of the Defender's Office to regions, state institutions, and organizations, or citizens' visits to the Defender's Office, or by telephone from citizens requesting oral advice.

Experience shows that in 2007, similar to the past, some people avoided the submission of their complaints in writing or specification of their name, surname, or address, claiming that lodging a complaint may have negative consequences for them. Such claims and supporting facts were adequately reflected in the Defender's Annual Report for 2006, as well.

Chart 3. Number of Complaints, 2007

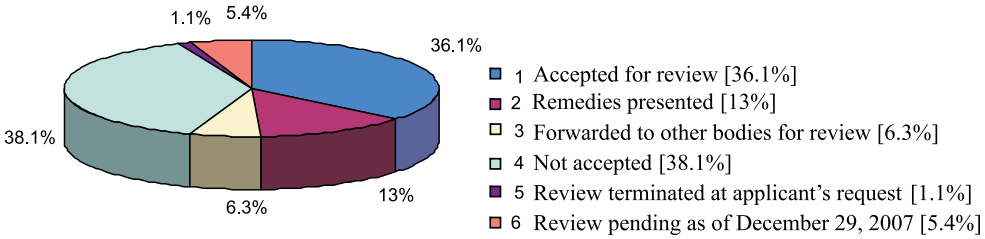


Table 4 provides some statistics on complaints against public bodies.

Table 4

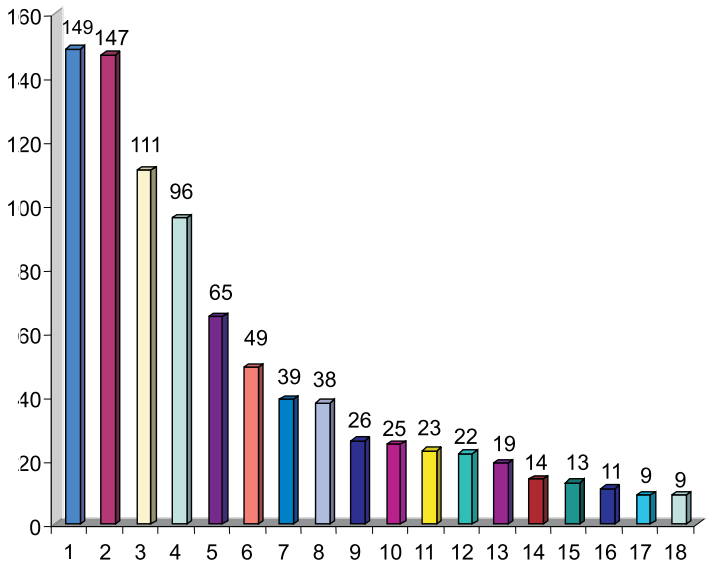
Number of Written Complaints, by Public Agencies Concerned

	Public Agency	2007 (12 months)
1.	Courts	**149**
2.	Police	**147**
3.	Prosecution Office	**111**
4.	Yerevan City Administration	96
5.	Ministry of Justice	65
6.	District municipalities of Yerevan	49
7.	State Committee of the Real Estate Cadastre	39
8.	Ministry of Labor and Social Affairs	38
9.	State Fund for Social Insurance	26
10.	Ministry of Territorial Administration	25
11.	City administrations (except for Yerevan)	23
12.	Ministry of Defense	22
13.	Regional governors' offices (Marzpetarans)	19
14.	Ministry of Health	14
15.	Village administrations	13
16.	Commission deciding early conditional release of sentenced persons	11
17.	Government of Armenia	9
18.	Ministry of Education and Science	9

It is clear from Table 4 that, in 2007, the largest number of complaints was lodged against courts, the Police, and the Prosecution Office.

Further analysis shows that violations of almost all the rights have been alleged.

Chart 4. Number of Written Complaints, by Public Agencies Concerned, 2007



1 Courts [149]
2 Police [147]
3 Prosecution Office [111]
4 Yerevan City Administration [96]
5 Ministry of Justice [88]
6 District municipalities of Yerevan [78]
7 State Committee of the Real Estate Cadastre [39]
8 Ministry of Labor and Social Affairs [38]
9 State Fund for Social Insurance [26]
10 Ministry of Territorial Administration [25]
11 City administrations (except for Yerevan) [23]
12 Ministry of Defense [22]
13 Regional governors' offices (Marzpetarans) [19]
14 Ministry of Health [14]
15 Village administrations [13]
16 Commission deciding early conditional release of sentenced persons [11]
17 Government of Armenia [9]
18 Ministry of Education and Science [9]

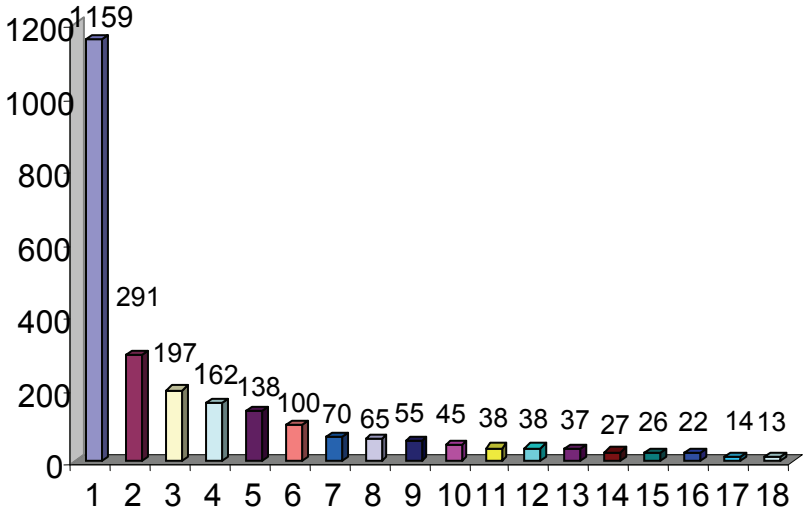
In order to make statistics on complaints against public bodies more comprehensive, Table 5 presents also the number of complainants involved in collective complaints.

Table 5

Number of Applicants Lodging Written Complaints

	Public Agency	2007 (11.5 months)
1.	Yerevan City Administration	**1,159**
2.	Police	**291**
3.	City administrations (except for Yerevan)	**197**
4.	Courts	162
5.	Prosecution Office	138
6.	District municipalities of Yerevan	100
7.	Ministry of Education and Science	70
8.	Ministry of Justice	65
9.	Regional governors' offices (Marzpetarans)	55
10.	State Committee of the Real Estate Cadastre	45
11.	Commission deciding early conditional release of sentenced persons	38
12.	Ministry of Labor and Social Affairs	38
13.	Government of Armenia	37
14.	Ministry of Territorial Administration	27
15.	State Fund for Social Insurance	26
16.	Ministry of Defense	22
17.	Ministry of Health	14
18.	Village administrations	13

Chart 5. Number of Applicants Lodging Written Complaints, 2007



1 Yerevan City Administration [1,159]
2 Police [291]
3 City administrations (except for Yerevan) [197]
4 Courts [162]
5 Prosecution Office [138]
6 District municipalities of Yerevan [100]
7 Ministry of Education and Science [70]
8 Ministry of Justice [65]
9 Regional governors' offices (Marzpetarans) [55]
10 State Committee of the Real Estate Cadastre [45]
11 Commission deciding early conditional release of sentenced persons [38]
12 Ministry of Labor and Social Affairs [38]
13 Government of Armenia [37]
14 Ministry of Territorial Administration [27]
15 State Fund for Social Insurance [26]
16 Ministry of Defense [22]
17 Ministry of Health [14]
18 Village administrations [13]

1.1.2. Advisory Services

One of the functions of the Human Rights Defender is the provision of advisory services. The Republic of Armenia Law on the Human Rights Defender distinguishes between two types of advice: mandatory advice and advice rendered at the Defender's initiative2; however, in both cases, the safeguards of the applicant's rights and freedoms are explained to him (if appropriate action is beyond the Defender's legally-prescribed mandate, such as advice on how to appeal against a court decision, judgment, or verdict), or the lawfulness of the respective public agency's actions is justified.

When there is an actual or alleged violation of the applicant's rights due to an unconstitutional law or a conflict with the rules and principles of the international law of human rights and freedoms, the Defender does not render advice, but rather, either requests the Constitutional Court of Armenia to declare a legal rule unconstitutional, or proposes legislative reforms to be carried out by the competent authorities.

During 2007, the Defender rendered mandatory advice in 563 cases in the following circumstances and forms stipulated by the Republic of Armenia Law on the Human Rights Defender:

1. Advice on how to appeal against a court decision, judgment, or verdict (Paragraph 1(2) of Article 7 of the Law);
2. Presenting to the applicant the remedies of his rights and freedoms (Paragraph 1(2) of Article 11 of the Law); or
3. When deciding not to review a complaint, explaining to the applicant the legally-prescribed procedure of reviewing his application (Paragraph 2 of Article 11 of the Law).

In 2007, with a view to overcoming legal nihilism and raising awareness of human rights, the Defender, acting at his initiative, rendered advice to citizens during meetings held with them in the Defender's Office, by telephone, and during official field trips. Advice was also rendered by the relevant staff of the Defender's Office. This type of advice was rendered mostly in oral form, including comprehensive legal advice on issues arising in various areas of public life. The scope of issues on which the Defender rendered advice in 2007 was broadly similar to that in 2006, plus election-related matters raised in 2007.

The performance of this function by the Defender is directly affected by the variety of issues raised in complaints received by the Defender. In 2007, the advice rendered by the Defender can be grouped in three categories in terms of the nature and sphere of issues raised.

The first category comprised advice rendered by the Defender on applications related to the exercise of civil, political, and socio-economic rights.

[2] The legal analysis of the circumstances and forms of mandatory advice and advice rendered at the Defender's initiative is presented in greater detail in the Defender's Annual Report for 2006 (pages 17-18).

A significant number of applicants received advice on the protection of their socio-economic rights, including, in particular, advice on issues related to benefits, pension legislation, refugee housing, rights of persons with disabilities, the refund of citizens' deposits placed with savings banks of the former USSR, and violations of the right to property.

On the important social matter of benefits, some citizens requested the Defender's support in becoming eligible for poverty family benefits in spite of sharing a household. Considering the importance of raising the citizens' awareness of the legal regulation of this sphere, the Defender clarified that, under Paragraph 3 of the Regulation Family Poverty Assessment in Armenia, a family member who is registered at the place where the family resides, but does not actually reside at such place, shall be recorded in the social card and database as a "missing member" of the family. Under Paragraph 4 of the aforementioned Regulation, separate social cards are filed for families residing at the same place only in case if:

a) There is a final judgment of court on the division of the living space; or

b) Families reside at the same place in apartments with separate entrances or maintain separate households (separate entrances, separate water meters, separate electricity meters, or other circumstances indicating the separation of households), as confirmed by a recommendation of the Social Assistance Council and the protocol of a household assessment visit by the agency.

In view of the special importance of adequately safeguarding social rights, it had become necessary to provide citizens with clarifications on some provisions of the Republic of Armenia Law on State Pensions concerning the types of pensions stipulated by Article 11 of the same law, the allocation and payment of a partial pension under Article 37, and the right to receive one's pension with a power-of-attorney under Article 56. Considering the large number of applications received in connection with the latter issue, the Defender intends to request the competent authority to address aforementioned violations.

The Defender has received a number of applications on complaints regarding issues faced by persons with disabilities. These issues are rather diverse: some concern changes of the disability category, while others have to do with privileges granted to such persons. To this end, the Defender decided to present the provisions of Article 27 of Government Decree 780-N dated June 13, 2003 "On Approving the Classifiers Used in Medical-Social Assessments and Criteria for the Determination of Disability Categories.

In another case, the citizen was informed about his entitlements under Government Decree 251 dated July 8, 1997 (as amended on November 19, 1998) "On Entitlements of Certain Categories of Citizens and Measures to Ensure the Enforcement of the Republic of Armenia Law "On Making Amendments to the Law on the Social Protection of Persons with Disabilities, the Law on Social Protection of Military Servicemen and Their Family Members, and the Law on the Repressed'."

Studies show that the citizens' constitutional right to adequate living conditions and access to housing remain rather serious problems. There are particular problems in connection with ***unsafe buildings***. To this end, the Defender decided in accordance with the established procedure to present the legal provisions regulating this sphere, including Government Decree 682 dated October 25, 2000 "On Solving the Housing Problems of Residents of Unsafe Residential Houses Subject to Demolition in the Territory of the Republic of Armenia (with the exception of settlements included in the Earthquake Zone Rehabilitation Priority Program)" (as amended by Government Decree 1559-N dated November 10, 2006): according to the procedure stipulated by the aforementioned Decree, tenants shall be entitled to apartments with the same number of rooms as the apartments previously occupied by them, but not more than the apartment size to which their families are eligible (as per the number of persons in the family).

Complaints on property rights, given the wide range of issues raised therein, may be grouped in several categories.

Based on a number of complaints addressed to the Defender, it was necessary to render advice on several provisions of the Land Code of the Republic of Armenia related to the granting of development rights over state- or community-owned land plots, the free-of-charge provision of such land plots as ownership, and the leasing of parts of such land plots without a tender as stipulated by the Government of the Republic of Armenia. Given the nature of issues raised, some aspects of the statute of limitations regarding acquisition under Article 72 of the Land Code were presented, as well.

In view of a number of applications addressed to the Defender, the Republic of Armenia Civil Code provisions on servitude (right to make limited use of another person's land plot) were presented. Considering that several citizens had asked about the distance between their own premises and nearby construction, it was clarified that the notes responding to the Defender's inquiries had referred to the urban development and fire safety rules stipulated by the Rules of Urban Development and Planning and Construction of Urban and Rural Settlements, according to which the minimum distance between residential, industrial, and auxiliary premises must be 6 meters.

Other complaints addressed to the Defender raised issues related to the procedure of appealing the decisions of the Republic of Armenia State Committee of the Real Estate Cadastre and its subdivisions. In such cases, the Defender decided to present the legal regulation of this sphere and the procedure of appealing against acts (the inaction) of the Cadastre Committee.

Some complaints concerned issues that are beyond the scope of the Defender's authority defined by law; however, in view of the need to give citizens appropriate advice, the available remedies of their rights were described in notes attached to the Defender's respective decision. A general analysis of such complaints addressed to the Defender shows that most of them are concerned with challenging contracts executed by citizens or provisions of such contracts, which,

according to Article 306 of the Republic of Armenia Civil Code, may only be done by court procedure. Some of these complaints are concerned with the refund of personal income tax collected from citizens as a result of actions carried out by the Yerevan City Development Investment Projects Implementation Unit, as defined by Government Decrees 1505 and 1605-N dated February 26, 2006. In one of the complaints, citizens informed that 10% of the price of a contract between them and the Central Bank of Armenia had been collected as personal income tax and had not been refunded even after the adoption of the relevant Government decree. The Defender decided to present to those citizens some provisions of the Republic of Armenia Law on the Personal Income Tax and to clarify the procedure for challenging such contracts under the Civil Code of the Republic of Armenia.

The issue of deposits with the Savings Bank of the former USSR, which attracted much attention in 2006, remained topical in 2007, as confirmed by numerous complaints on this matter requesting the Defender to explain the procedure by which their deposits with the USSR savings banks would be refunded to them.

In these cases, too, the Defender rendered advice, informing the concerned citizens that deposits placed with the Republican Bank of the Armenian Soviet Socialist Republic (affiliate of the former USSR Savings Bank) prior to June 10, 1993 would be refunded in accordance with Appendix 8 to the Republic of Armenia Law on the 2006 State Budget and the "Procedure of Refunding Cash Deposits Placed with the Republican Bank of the Armenian Soviet Socialist Republic (affiliate of the former USSR Savings Bank) prior to June 10, 1993" approved under Government Decree 352-N dated March 16, 2006. Paragraph 2 of Appendix 8 to the Republic of Armenia Law on the 2006 State Budget defines the priority order in which various groups will be refunded.

In spite of decisions not to review a number of applications, the Defender's Office replied by sending notes explaining certain provisions of Government Decree 358 dated November 15, 1996 "On the Privatization of the Unfinished Construction of State (Public) Residential Houses (Apartments) Assigned to Citizens" and Government Decree 191 dated June 18, 1997 "On Approving the Privatization Procedure of the Unfinished Construction of Apartments in State (Public) Multi-Apartment Residential Houses Assigned to Citizens." In relation to several complaints, the Defender explained to citizens the general procedure defined by Article 626 of the Republic of Armenia Civil Code regarding compensation of the landlord by the tenant for improvements of property.

Refugee housing issues remain at the center of attention. However, an important distinction needs to be made here: in some cases, refugee families continue to consider themselves eligible for improved housing conditions, without any regard for the criteria defined in the relevant decree of the Government. The Defender has rendered advice on such situations, informing the citizens that, under Paragraph 4 of Government Decree 717-N dated May 20, 2004, a refugee family

deported from Azerbaijan during 1988-1992 (including former refugees that have acquired Armenian citizenship) is eligible for the housing program, if:

- The family resides in a temporary dwelling; or
- The family resides in a wagon-house installed in a land plot allocated to it or another area, or a semi-finished house on a land plot, the technical conditions of which permit the completion of its construction.

In addition to the aforementioned general conditions, the eligibility of program beneficiaries is determined by the refugee family's factual residence in a temporary dwelling or wagon-house as of August 1, 2003, which must be established by a study carried out by the Migration and Refugee Department of the Republic of Armenia to determine the housing conditions and family composition of refugee families that found shelter in temporary dwellings and wagon-houses in the territory of the Republic of Armenia. Applicants were informed that, in order to be included in the registration list of families in need of housing, under Government Decree 330 of 1997, they must apply to their respective Territorial Social Service Agency.

In their complaints to the Defender, refugees inquired whether it was lawful to draft them to the army. The applicants were informed that, under Article 46 of the Constitution of the Republic of Armenia, every citizen is obliged to participate in the defense of the Republic of Armenia in accordance with the procedure defined by law. As for refugees, Article 18 of the Law on Refugees gives refugees the right to acquire citizenship of the Republic of Armenia and to serve in the armed forces in accordance with the procedure stipulated by laws of the Republic of Armenia. Therefore, acquiring Armenian citizenship and serving in the army is a right, rather than an obligation of refugees, as Article 46 of the Constitution imposes the obligation to participate in the defense of the Republic of Armenia on Armenian citizens.

The second category comprised applications related to safeguards of the rights of military servicemen and the rights of parties to criminal proceedings, on which, too, the necessary information was provided.

The advice rendered on safeguards of the rights of military servicemen and parties to criminal proceedings may be further grouped into several subcategories.

The first subcategory includes cases in which applicants got explanations of the safeguards and remedies of their rights and freedoms connected with the refusal to instigate a criminal case based on a crime report and the dropping of criminal charges.

The second subcategory includes cases in which advice was rendered on violations of rights and freedoms at the pre-trial stage of criminal cases by criminal prosecution bodies and courts (courts exercising judicial oversight of pre-trial proceedings).

In the third subcategory of cases, advice was rendered on the activities of the independent commission created by Presidential Decree to decide the early

conditional release of sentenced persons and the substitution of the remaining part of the sentence with a less severe type of sentence.

In a number of cases, information was provided about the legislation on army service, the activities or inaction of the Military Conscription Offices, and the rights and freedoms of military servicemen and their family members.

Quite a few complaints were concerned exclusively with civil law matters: these applicants were categorically refusing to take their cases to court and were applying to state bodies that do not have the power to resolve such matters.

Furthermore, advice was rendered on the acquisition of citizenship or a passport, as well as the protection of the rights and freedoms of Armenian citizens abroad in connection with recording for military conscription purposes.

Below are examples of complaints in response to which legal advice was rendered.

Some applicants, not alleging any violation of human rights and fundamental freedoms, have simply requested to clarify the law. For instance, in his application to the Human Rights Defender, a citizen informed that, during 1980-1983, his daughter had served in army detachment 3407. She had died of cancer in 1983. The applicant claimed that his daughter's death was connected with the performance of her service duties, and that the competent authorities were obliged to award him, as a family member of the deceased military servant, a pension in accordance with the procedure defined by Government Decree 208-N dated February 5, 2004.

The applicant also stated having made numerous appeals to a variety of competent authorities, all of which had been rejected. He asked the Defender to clarify whether he was entitled to the compensation under the aforementioned Government Decree.

The citizen submitting the application was informed that the official correspondence presented by him confirmed that his daughter's name, according to Order 73 dated March 18, 1983 of lieutenant colonel E. Fedotov, the detachment commander, had been eliminated from the staff list in connection with her death not related to the performance of service duties. Hence, the requirements of Government Decree 208-N of 2004, which he was citing, did not apply to his case. The matters raised in the application were primarily concerns of civil law, which had to be solved in accordance with the procedure stipulated by the civil procedure legislation of the Republic of Armenia.

Some applications were concerned with the exemption from compulsory military service of the applicant's relatives (son, grandson, nephew, etc.) that had a certain status (an orphan with one parent or no parents, a guardian, a person with an inadequate health condition, and the like).

In a large number of applications addressed to the Defender, the senders complained about the conduct of criminal investigative authorities, asking the Defender to supervise their activities, to review the file of the criminal case

pending before court, to take the case from one investigator and to assign it to another, or to have the person released on bail.

The third category comprised applications for advice on remedies of human and civic rights and freedoms under international legal instruments.

In quite a few cases, citizens complained about court judgments that had become final, claiming that such judgments violated their rights. In those cases, the Defender decided to explain to them that, under Article 7 of the Republic of Armenia Law on the Human Rights Defender, the Defender has no right to interfere with court proceedings. Article 10(1) of the same Law prohibits the Defender from reviewing complaints that are subject to the exclusive jurisdiction of courts and requires the Defender to terminate the review of a complaint, if, at any time since launching the review, the relevant person has lodged a court claim or complaint. Citizens were also informed that, in case of disagreement with a final judgment of the Cassation Court of the Republic of Armenia, they have the right to apply to the European Court of Human Rights within a six-month period of the publication of the final judicial act. Whenever necessary, detailed explanation of the terms and procedure of applying to the European Court of Human Rights was given to applicants.

The staff of the Human Rights Defender received and rendered advice to citizens on working days at the Defender's Office. Advice was rendered in the regions, as well, during regional visits made as per the timetable of visits approved by the Defender.

1.1.3. Receptions

To ensure the Defender's direct contact with the public and rapid and efficient responses to applications, the Human Rights Defender paid great attention to personally receiving citizens during both 2006 and 2007. In 2007 alone, the Defender received 153 citizens in the Defender's Office. The Defender also received citizens during his regional visits, about which the public was given advance notice.

Receptions were organized at the initiative of citizens or the Defender, by the Defender or, at his instruction, by staff members that have the power to propose draft decisions to the Defender.

In line with the requirements of the Republic of Armenia Law on the Human Rights Defender, the following procedures were followed during receptions:

– Written applications were received, if the issues raised by visitors necessitated additional investigations or checks. Besides, the reasons why the request could not be fulfilled during the reception, as well as the application review procedure and deadlines were explained to visitors. If, for whatever reason, visitors were unable to formulate their requests in writing, the staff receiving them provided the necessary assistance;

– If the application content was such that reviewing the matters raised therein would fall beyond the scope of the Defender's authority, it was explained to the applicant that, if the application were received, a decision on not reviewing it would probably be taken. However, if the applicant insisted, the application was received;

– Advice was rendered.

Citizens were generally received in accordance with the specified procedures. During 2007, institutional strengthening measures were implemented in order to ensure more rapid reporting of human rights violations and the effectiveness of the response. The Internet was widely used for this purpose.

1.1.4. Visits, Rapid Response

The analysis of over four years' experience has shown that the effective performance of the Defender's functions depends largely on visits to state bodies and organizations. Visits are the best way to develop a clear understanding of the human rights situation in various spheres of public life. Visits help to understand the local situation, to carry out a comprehensive review of violations, to draw comparisons between different public bodies or different units of the same body in terms of respect for human rights, and to identify new violations.

Under the Republic of Armenia Law on the Human Rights Defender, visits are made either on the basis of a complaint about a violation of rights and freedoms or at the Defender's own initiative (*ex officio* visits).[3]

A complaint-based visit is aimed at checking the credibility of allegations made in the complaint, revealing the causes of the violation, preventing future violations, make necessary recommendations, and take other measures stipulated by law. Visits are made on the basis of not only written or oral complaints, but also tips, media reports, or information that became available to the Defender from other sources.

Ex officio visits are generally carried out in accordance with an annual plan approved by the Defender. They serve a preventive purpose, with a particular focus on making state bodies, organizations, and their officials more vigilant and accountable in the protection of human rights. Unlike agency supervision, about which the audited bodies or organizations are usually given advance notice, the Defender's planned visits are measures indirect supervision, which through surprise visits stand a much greater chance of discovering violations of human rights.

Hence, the effectiveness of the Defender's or his representatives' visits hinges upon the unexpectedness of such visits for state bodies and organizations.

[3] For further details, see the Defender's Annual Report for 2006, Section 1, paragraph 1.1.4 ("Visits and Studies"), page 21.

A visit can be truly effective only if the officials of the respective state body are not given advance notice of the visit. Otherwise, the offenders would have time to disguise the consequences of their actions (inaction) or formally restore the rights at breach, undermining the purpose of the Defender's visits, which is to facilitate the discovery of violations of rights and freedoms and the root causes of such violations.

Rapid response is an essential safeguard of the effective performance of the Defender. Rapid response is the implementation of urgent and immediate measures aimed at addressing violations of human rights and freedoms and the restoration of rights on the basis of information obtained by the Defender. In such cases, the Defender convenes an urgent meeting and instructs to create a group that immediately pays a visit to the places where violations were reported. Rapid response teams are made up of employees specializing in the relevant sphere in the Defender's Office.

Example 1

An example of rapid response was the case of the suicide of a conscripted military servant in a detachment of the Police Troops of Armenia in November 2007, to which the Defender, based on his own sources of information, was the first to respond. Upon his instruction, a rapid response team traveled to the scene and produced a detailed report that was posted on the Defender's official website.4 The media report on the case came later. This indicates that the Defender's Office not only collects information about violations of human rights from the mass media, but also, in some cases, acts as an information source for the media as a result of the rapid response.

Example 2

On August 15, 2007, a resident of a building on Sisakyan Street in Yerevan informed the Defender's Office that employees of the Yerevan City Administration and the District Municipality of Ajapnyak were evicting residents from their homes without an appropriate court judgment and enforcement document. After the Defender's phone call, the eviction stopped. However, another report was received on the following day about dismantling the roof of the building. A rapid response team immediately visited the building and found out that the building roof was being dismantled without any legal basis. Owing to the direct engagement of the Human Rights Defender, these activities were stopped. The residents of the building have since sent letters of gratitude to the Defender.

Example 3

On November 29, 2007, based on a report, the Defender's representatives visited the "Hospital of Convicts" Penitentiary Institution of the Ministry of Justice

[4] www.ombuds.am

of the Republic of Armenia. As they reached the penitentiary institution, an ambulance was about to transfer detainee Artavazd Simonyan to the "Erebouni" Medical Center; therefore, the private interview with Artavazd Simonyan took place in the ambulance. He told the Defender's representatives that, on November 13, 2007, he had been apprehended by employees of the Police General Department against Organized Crime, and that his arrest had been accompanied with cruel and inhuman treatment. He also specified that, while there, employees of the aforementioned Department had hit different parts of his body, including his spinal cord, breaking his ribs and causing his legs to weaken. Doctors confirmed that Artavazd Simonyan was being transferred to the "Erebouni" Medical Center with a "brain stroke" diagnosis. In this connection, the Defender sent a letter to the Republic of Armenia Police Chief, proposing to conduct an internal investigation and, in case of finding a violation, to take measures to punish the offenders in the procedure stipulated by law.

In some cases, the Defender or his representatives will, in addition to investigating the facts alleged in a complaint and meeting with the complainant, render general advice to persons in the relevant body or organization, privately meet with persons wishing to see them, and give advice and recommendations on the remedies of rights and freedoms. The Defender or his representatives have the power to demand the head of the relevant institution to provide explanations on certain matters on the spot.

As a result of visits, reports are compiled, covering mainly the following information:

- Time and purpose of the visit;
- Composition of the visiting team;
- Violations found;
- Recommendations on addressing the violations; and
- Proposals to hold the guilty officials responsible, etc.

The Defender or his representative may undertake, at the end of a visit, to compile a protocol that will be signed by the head of the visiting team and the head of the visited state body or organization.

As a rule, visit reports are posted on the Defender's official website. The Defender may decide to send an official letter about the findings of the visit to the head of the relevant public body, in accordance with Article 12 of the Republic of Armenia Law on the Human Rights Defender:

- Demanding materials and documents related to the complaint;
- Demanding explanations on matters that arose during the review of the complaint; and
- Instructing to conducting expert examinations and produce opinions, etc.

Statistics confirm the large number of visits in 2007. During the year, there were visits to all the marzes (regions) of the country, meetings with marz governors, mayors, other officials, and representatives of NGOs and the mass media. There were visits to elderly homes, orphanages, special schools, psychiatric institutions, refugee settlements, army detachments, and detention institutions (pre-trial detention centers and prisons). The number of regional visits was close to 50.

During visits to elderly homes, it was established that the number of persons requesting to reside in such homes had declined considerably. It also became clear that almost all the premises needed improvement, although there were no complaints about the availability of food, clothing, and medication in neuropsychological boarding homes and homes for the elderly. There was a shortage of employees due to low salaries.

During the visits to orphanages, it became clear that they had all the necessary conditions for children's physical and psychological health and development. Some issues were identified in connection with children's documentation, especially the acquisition of birth certificates, which were mainly a consequence of the irresponsible conduct of parents.

The situation in special public education institutions for orphans and children deprived of parental care was found to be desperate. It was to a degree due to the fact that homeless families had settled in such institutions, negatively affecting the overall education process in the schools. Studies have shown that children's care in special schools does not correspond to the minimum requirements for children's care and education. The Republic of Armenia Ministry of Labor and Social Affairs responded to these alarming questions, stating that, by yearend 2007, some of the special public education institutions would be reorganized to boarding institutions for child care, while others would turn into general public education institutions.

Visits to penitentiary institutions and places for holding arrested persons showed that the "Vardashen," "Vanadzor," and "Artik" penitentiary institutions were the only ones in which the confinement conditions were close to the international standards. All the other penitentiary institutions need renovation. The "Goris" penitentiary institution had been built above underground water space, which had driven its buildings into a desperate condition. The premises were in an extremely poor state in the "Sevan," "Abovyan," "Nubarashen," and "Yerevan Kentron" penitentiary institutions, as well. In the "Sevan" penitentiary institution, in particular, all the buildings were in a strikingly bad state. Besides the hopeless state of the bathrooms and canteen, sanitation and hygiene rules were at breach. The medical wards had concrete floors. The offices of doctors lacked not only the necessary medical instruments, but also washbasins. The "Abovyan" and "Yerevan Kentron" penitentiary institutions did not have any rooms whatsoever for long visits. Almost all the penitentiary institutions had vacancies due to low salaries.

Visits to army detachments continued in 2007. The scope of agencies covered by visits was expanded: previously, the Defender would only visit units

subordinate to the Ministry of Defense; in 2007, visits were organized to the Border Troops of the National Security Service and the Police Troops, as well. During the visits, there were meetings with both the unit commanders and conscripted servicemen. The detachment premises were toured with a view to checking the conditions of sanitation and hygiene, and the living conditions of servicemen. The process of the army draft was monitored by means of visits to the National Routing Center of the Ministry of Defense.

As in 2006, there was a case in 2007 when the detachment commanders obstructed the entry of the Defender's representatives into the detachment. It happened when the Defender's representatives were visiting the National Routing Center of the Ministry of Defense. The Defender sent notes to the heads of the competent authorities, after which the issue was urgently resolved, and appropriate instructions were given to the relevant unit heads.

In conclusion, it can be stated that the positive outcomes of the Defender's work are to a degree due to the rapid response to violations of human rights and visits to the places of violations. The comprehensive and comparative analysis of information obtained during visits includes an assessment of the relevant legislation, which can later result in the submission of legislative proposals to the competent authorities.

1.2. Cases that Had a Positive Outcome

Given the non-binding nature of his decisions, the Human Rights Defender of the Republic of Armenia may not act as an institution replacing other remedies of citizens' rights. The Defender's decisions do not halt the effect of legal acts adopted by public bodies. The Defender's decisions are of a purely consultative nature, and recommendations made by the Defender may be followed by public bodies only on account of the Defender's high reputation.

In view of the foregoing, the following are indications of the overall effectiveness of the Defender's work:

1. Strict implementation of the Defender's recommendations by officials;
2. The lack of repeat applications by citizens on matters on which appropriate inquiries have already been made and measures taken to restore the violated rights;
3. The implementation of specific measures by public bodies to restore citizens' rights and to punish those guilty of the violation in response to the Defender's annual and ad hoc reports;
4. Regular coverage of the Defender's work by the mass media;
5. Effectiveness of the Defender's work in preventing violations of human rights;
6. Constructive cooperation with NGOs and international organizations.

However, the effectiveness of the Defender's work is best of all illustrated by cases in which violated rights have been restored.

During 2007, the Defender's work resulted in the restoration of rights in 96 cases, including cases that had been admitted for review in 2004, 2005, and 2006, but were finally resolved only in 2007. The cases that had a positive outcome included some based on collective complaints.

The cases that had a positive outcome include not only complaints about rights that were restored before the Defender's finding of a violation, as a result of cooperating with the public bodies, but also complaints based on which violations of rights were found and presented to the offending employee of the relevant body and/or his supervisor. As a result of the 96 cases, the violated rights of 530 individuals were restored.

Below are some of the cases that had a positive outcome due to the Defender's interference.

Example 1

A woman residing in the City of Vanadzor informed that her son had died at a military post near the border in the Tavush Marz (region), leaving behind his wife and under-age child, whom she now had to look after. They did not have an apartment, although the state had undertaken to provide them an apartment, as the family of a serviceman who died while performing his duties. During the review of her application, the Vanadzor Mayor informed that, under the procedure approved by Government Decree 947-N of June 9, 2005, the Vanadzor City Administration had sent the documents to the Ministry of Defense on March 17, 2006, for the commission providing support to needy families to review the request to provide an apartment to the family of deceased freedom-fighter Aramayis Martirosyan.

The aforementioned commission discussed in its session the possibility of providing an apartment to the family. As a result of the Defender's interference, the commission decided to compensate the family 4,162,000 (four million one hundred and sixty-two thousand) Armenian drams, as per the tariff schedule established by the State Committee of the Real Estate Cadastre, to purchase a two-room apartment.

Example 2

A resident of the Arzakan Village of the Kotayk Marz sent a letter informing the Defender's Office that his family comprised 11 members, including 11 children. The payment of the benefit to their family had been stopped, as they did not have a social card. The family was unable to restore eligibility for the benefit. During the review of the complaint, the Defender was first informed that payment of the benefit to the citizen's family had been stopped on account of the fact that he had voluntarily refused to receive a social card. Then, in response to another inquiry, the Defender was informed that the family benefit case, under Government

Decree 369-N Dated March 1, 2007, had been submitted to the Ministry of Labor and Social Affairs on July 1, 2007 in order for the Ministry to recognize the family's eligibility for the state benefit effective from January 1, 2005. As a result, the family became eligible for the benefit from July 2007 and the benefit due for 2005, 2006, and 2007, including the lump-sum cash assistance on the occasion of the daughter's admission to elementary school in 2005, a total sum of 954,000 drams.

Example 3

The neighbors of a resident of the City of Yerevan informed in a complaint that their neighbor was a single retired woman with no heirs. They wanted to help her placement in a home for the elderly, but would not succeed. As a result of the Defender's interference, the Deputy Minister of Labor and Social Affairs F. Berikyan informed the Defender that the citizen had been referred to the Gyumri Boarding Home for the Elderly on September 11.

Example 4

In his complaint to the Defender, a resident of Yerevan expressed dissatisfaction over the unlawful acts (inaction) of the employees of the Shengavit District Unit of the State Committee of the Real Estate Cadastre.

The applicant informed that he had requested information about real estate from the aforementioned state body. After not receiving a reply within the legally-specified five-day period, he visited the Shengavit District Unit of the State Committee of the Real Estate Cadastre with the expectation to receive an answer to his request; there, they told him to wait, but again, no reply was given.

After the Defender made an inquiry about the issues raised in the complaint, the Head of the Shengavit District Unit of the State Committee of the Real Estate Cadastre informed that the issue had been discussed in the State Committee of the Real Estate Cadastre and the employee responsible for providing the information had been subjected to a disciplinary penalty.

Example 5

In a letter to the Yerevan Mayor dated March 23, 2007, the Human Rights Defender had informed the Mayor that, in the areas declared by Government Decree 108-N of January 25, 2007 as "expropriation sites" and in the Kond and Kozern neighborhoods, there were decades-old buildings with no clear legal status. Citizens' rights over such buildings were not recognized in accordance with the procedure stipulated by the Republic of Armenia Law on the Legal Status of Unauthorized Buildings, Premises, and Occupied Land Plots, as the sites had earlier been identified as sites subject to expropriation.

In view of the interests of defending the residents' rights, the Defender requested the Mayor to inform what was being done to recognize the tenants' ownership title prior to the compilation of protocols describing the buildings and

premises subject to expropriation (as had been done in the Kond and Kozern neighborhoods).

On April 16, 2007, the Yerevan Mayor sent a negative reply to the Defender's inquiry, stating that the Defender had not specified in his inquiry the exact neighborhoods included in the Yerevan City Development Plans, and that there were a number of sites in Yerevan with many buildings without a status. The Mayor also wrote that the issue in the Kond and Kozern neighborhoods of Yerevan was different from the issues of many other neighborhoods of Yerevan, because in Kond and Kozern, for several decades, no status had been granted to citizens' property for reasons that did not depend on them.

Unsatisfied with this reply, the Defender sent a letter to the Prime Minister of Armenia, attaching copies of the Defender's inquiry and the Yerevan Mayor's reply, and asking the Prime Minister to oversee the matter.

In a letter dated July 30, 2007, the Yerevan Mayor informed the Defender that the Governing Board of the "Yerevan City Development Investment Projects Implementation Unit" (decision 96 of July 13, 2007) and the Yerevan Mayor (decision 2100-A dated July 16, 2006) had decided to create an inter-agency commission to address the problems of expropriation sites declared subject to an overriding public interest, especially in District 33, by reviewing the matters raised by the residents and facilitating the measurement and inventory-taking of property in such sites. The work of the commission, with the engagement of six representatives of District 33, had already commenced in the form of measurement and inventory-taking activities, which were necessary to recognize the citizens' *ownership* right over property used by them for decades without any legal status.

As a result of the work of this commission, the Yerevan Mayor adopted several decrees recognizing the ownership rights of numerous citizens. However, the activities of the commission are still underway.

Example 6

171 residents of District 16 of the Ajapnyak Community of Yerevan addressed a letter to the Defender, informing him that they had jointly renovated the circular courtyard shared by residents of buildings 36-46, including the planting of trees, the installation of an irrigation network and benches, and the provision of lighting.

The site was serving as a playground for children and a leisure area for residents.

They had lately been informed that, under the Yerevan Mayor's Decree 1821-A dated June 22, 2007, without consulting them, 20-square-meter land plots had been allocated to each of 21 residents of various buildings for the purpose of building garages.

After filing a complaint with the Defender, a joint working group was created, and its work resulted in the adoption of the Yerevan Mayor's decree 5681-A dated December 19, 2007 annulling decree 1821-A dated June 22, 2007 and

decree 2883-A dated August 15, 2007, including the land plot floor plans issued on their basis and the agreements on granting land plot development rights; eventually, the violated rights of 171 residents were restored.

Example 7

In a letter to the Human Rights Defender, a citizen's representative informed that the citizen had acquired property, which later turned out to be under lien to secure the previous owner's debts. The citizen had filed a court claim that had been granted, but the Enforcement Department had failed to execute the judgment that had ordered removal of the lien. As a result of the Defender's interference, the Head of the Yerevan City Unit of the Enforcement Department replied that the property was no longer subject to lien.

Example 8

In a letter to the Human Rights Defender, a citizen informed that the Ashtarak Unit of the Aragatsotn Marz Department of the Police had instigated a criminal case against his brother. According to him, after charging his brother with a crime, the latter had made a written request to the investigating authority to agree that advocate Zaruhi Postanjyan be engaged as his lawyer in the case, but had been rejected without any justification.

A similar complaint on the same case was lodged by advocate Zaruhi Postanjyan, member of the Chamber of Advocates of Armenia, requesting the Defender to address the unlawful conduct of investigator G. Arakelyan, which had violated the right of the accused to have a lawyer without any delay.

It became clear from the notes compiled by the Defender's representative that the latter had had a telephone conversation with the case investigator, who had confirmed his willingness to agree to Zaruhi Postanjyan's engagement as the advocate in the case at any time. The applicant and the advocate filed an additional letter requesting the Defender to halt the proceedings, as the matter raised in the original complaint had been resolved in a lawful manner.

Example 9

In a letter to the Human Rights Defender, a citizen informed that he and his father both had refugee status, while his mother had taken up Armenian citizenship. He also informed that he was regularly being phoned and invited to the Shengavit Military Conscription Office Medical Commission for a health checkup, even though he and one of his parents still had refugee status. He stated that, under Article 20 of the Republic of Armenia Law on Refugees, refugee children lose their refugee status, if their *parents* take up Armenian citizenship in accordance with law; in this case, it had not happened, as his father had retained his refugee status and had not taken up Armenian citizenship.

In response to the Defender's note on the matter raised in the complaint, the Military Commissioner of Armenia informed in his letter 2/4844 that the

documents related to the conscription of the citizen in question had been examined by the Military Prosecution Office and Military Conscription Office of Armenia, and that he had been determined to have refugee status; therefore, he could be drafted to the Republic of Armenia armed forces either after acquiring Armenian citizenship, or voluntarily on the basis of his and his parents' application.

Example 10

In a letter to the Human Rights Defender, a citizen informed that at 10am on July 10, 2006, Yerevan City Police Department officers Arman Baghdasaryan and Alik Marukhyan had unlawfully entered into his apartment and apprehended him to the Yerevan City Police Department. They had shown him a false document (alleging that a letter had been received from the Schukino Police Unit of Moscow about the instigation of a criminal case in respect of him, and that he was wanted for a crime in Russia), based on which they searched him and demanded US $15,000 in return for a decision not to extradite him to Russian law-enforcement agencies (the Schukino Police Unit). After he refused to pay, intelligence officers A. Baghdasaryan and A. Marukhyan had exerted psychological and physical pressure to force him to write and sign a statement confessing that he had cheated some Vahe Simonyan to give him 400,000 Russian rubles (the equivalent of US $15,000), and promising to return the amount in only three days, specifying even an exact hour. According to the complainant, it was later established that intelligence officer A. Baghdasaryan was Vahe Simonyan's friend and neighbor, and that they were acting jointly in this process. He also specified that the statement had been written in the police building under the police officers' pressure, as confirmed by the record on the statement that it had been taken by Arman Baghdasaryan, whose signature was present on the statement.

The citizen also informed that he had filed numerous complaints with the Police and the Office of the Prosecutor General regarding the aforementioned conduct of the police officers, and that there was still no criminal investigation into their conduct; rather, they had only been reprimanded.

The citizen attached to his letter a copy of the Moscow Police Chief letter 07/6-2396 dated September 19, 2006 in response to the inquiry of his lawyer N. Sargsyan, which made it clear that there was no criminal case against him in Russia, and that the Armenian Police had not received any letter or request from the Moscow City Police Department.

In response to the Defender's letter, the Deputy Prosecutor General of Armenia stated in his letter 16-441-06 that, on April 11, 2007, the Yerevan City Prosecution Office had instigated a criminal case on the basis of Article 309(1) of the Criminal Code of Armenia, which was being investigated.

Example 11

In a letter to the Human Rights Defender of the Republic of Armenia, a citizen informed that he was born in 1955 in the Mayisyan Village of the Armavir Marz. From the 1960s to 1998, he had lived outside of Armenia. After his return to Armenia, he was not registered anywhere, and does not have any personal identification document; the Passport Division of the Armavir Police would not issue him a personal identification document, as his personal data had disappeared from all the national archives, and he did not have residence status anywhere in the country.

The applicant claimed there was a violation of his right to have some residence status (citizen, foreigner, or stateless person) in Armenia, which was an obligation of the state bodies.

The Defender declared this complaint admissible for review, about which the applicant was notified. Later, as a result of many letters sent by the Defender on the issues raised in the complaint, the Head of the Passport and Visa Department of the Republic of Armenia Police informed in her letter 25/01-18307 that, on October 3, 2007, the Metsamor Division of the Armavir Marz Department of the Police had issued the citizen an Armenian passport (AH 0447681), specifying the Mayisyan Village of the Armavir Marz as his place of residence.

1.3. Expert Review of Draft Legal Acts

A key element of the Defender's work is the expert review of draft legal acts. If draft laws and other legal acts that are related with human rights and fundamental freedoms are adopted in a rush, without an in-depth legal analysis, often contain uncertainties and even inconsistencies. As a consequence, their enforcement violates rights; the legal gap renders effective remedies impossible; uncertainties and inconsistencies of legal acts leave room for arbitrary enforcement to the detriment of the right-holders.

In this light, it is vital to carry out thorough expert review of draft laws and other legal acts; the Human Rights Defender has a central role in this process.

The role of the Defender in these procedures was enhanced by Presidential Decree NH-174-N dated July 18, 2007 "On Defining the Procedure of Organizing the Activities of the Republic of Armenia Government and Other Public Administration Bodies Subordinate to the Government": paragraph 42 of this Decree provides 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 comments.

Hence, numerous draft laws were referred to the Human Rights Defender in 2007, which were thoroughly analyzed by the Defender's staff; in some cases, the drafts were discussed with their authors, and the Defender issued opinions on drafts.

Below are some examples:

1. The Republic of Armenia Ministry of Justice referred to the Defender a draft Law on Local Self-Government and Territorial Administration in the City of Yerevan and a draft Law on Amending the Electoral Code of the Republic of Armenia, both of which the Defender reviewed thoroughly. A number of conceptual recommendations were made on deficiencies and omissions in the draft Law on Local Self-Government and Territorial Administration in the City of Yerevan, the vast majority of which was accepted by the authors.

The Defender's recommendations on the draft Law on Amending the Electoral Code of the Republic of Armenia were accepted, as well.

2. The Central Bank of Armenia referred to the Defender a draft Law on the Financial System Ombudsman, several of the provisions of which the Defender found unconstitutional. To this end, the Defender expressed the opinion that the draft had to be revised and made appropriate recommendations.

3. Regarding the draft Amendments to the Law on the Freedom of Faith and Religious Organizations, the Defender's position was that the draft suffered from a number of uncertainties and omissions, and that it had to be supplemented. Appropriate recommendations were made.

4. In his opinion on the draft Law on State Guarantees of Equal Rights and Equal Opportunities for Women and Men, the Defender emphasized that, while, in practice, there was some inequality of rights and opportunities for women and men, the problem could not be solved by adopting a separate law. Moreover, the Defender stated that the proposed draft was primarily of a declarative nature and contradicted other laws.

5. The Defender's staff carried out an in-depth review of the draft Law on Operative-Intelligence Activities and concluded that some provisions in the draft either were ambiguous or left extensive room for interpretation, which was against the principle of legal certainty; therefore, it was recommended to revise those provisions. Besides, the Defender made recommendations on individual articles of the draft law, some of which were incorporated before the adoption of the draft. The Law has now entered into force.

However, the position of the Human Rights Defender on the Law on Operative-Intelligence Activities is that the Law contains a number of provisions that are susceptible in terms of respect for human rights and may lead to encroachments on human rights.

6. The Defender's staff also discussed the draft Law on the Repressed. As a result, it was concluded that this draft, too, contained ambiguous provisions, which the Defender suggested revising. The Defender made a number of recommendations with a view to having the deficiencies of the draft addressed. Despite those deficiencies, the Defender expressed the opinion that the draft would be generally successful in introducing structured regulation of the matters in question.

7. The Defender expressed disagreement with the draft Law on Administrative Proceedings Conducted in Cases of Violations of Traffic Rules Detected Using Video Recording or Photographing Devices.

The underlying concepts of the draft were based on a presumption of guilt, "contaminating" all the provisions of the draft. The Defender's analysis concluded that the draft should not contain a clause prescribing a sanction for an administrative infringement. The Defender stated that it would be more appropriate to make relevant amendments to the Republic of Armenia Criminal Code and Code of Administrative Infringements. Several provisions of the draft were considered to be unclear and in need of revision.

8. The Defender's staff also reviewed and discussed the draft Amendments to the Law on Police and the related draft amendments to the laws on traffic safety, state registration of rights over property, and stamp duties. No suggestions or comments on these drafts were presented.

9. The draft Law on Refugees and Asylum, which was submitted by the Government, was discussed thoroughly.

The Defender endorsed the attempts made in the draft to prescribe detailed rules on issues related to refugees and asylum-seekers and to properly safeguard the rights and legitimate interests of these groups. A whole chapter of the draft law was dedicated to asylum procedures. Temporary protection was defined as a specific legal notion. The draft also addressed the protection of rights of persons under 16 traveling without a companion or under-age refugees separated from the family.

Clearly, this draft was significant progress in the field of legislative reform. However, it was undermined by some deficiencies and omissions, which were brought up in a number of recommendations.

Nevertheless, the Defender's assessment was that the draft would regulate matters falling within its scope in a generally permissible degree of detail.

10. The Defender's staff had a detailed discussion of the draft Law on Missing Persons. The opinion on the draft stated that the draft did not clarify the difference between cases in which a citizen could be declared absent or missing by court. It was emphasized that the draft needed to clarify which body had the power to grant or terminate the "missing person" status. A number of other comments on the draft and recommendations on addressing deficiencies were made.

11. Together with the relevant unit of the Ministry of Finance and Economy, the Defender's staff discussed the draft Law on Internal Audit and the related draft Amendments to the Treasury System. The recommendations made were incorporated in the final versions of the drafts.

12. In order to issue an opinion on the draft Amendments to the Criminal Code (aimed at revoking Article 301, "Public Calls to Forcibly Change the Constitutional Order"), the Defender created a working group, which, having studied the matter, did not reach a straightforward conclusion; consequently, the Defender requested the Venice Commission to assess the proposed amendment for

compatibility with the freedom of expression under the European Convention on Human Rights. In response to the Defender's letter, the Venice Commission stated that, while Article 301 of the Criminal Code of Armenia was compatible with the provisions of the European Convention on Human Rights, the application of this article in practice might be prone to abuse.

13. On the draft Amendments to the Judicial Code, the Defender expressed the opinion that, in terms of judicial principles, it was unfair to prescribe a pecuniary sanction for only one party to the proceedings (i.e. the defense). Therefore, the Defender suggested either removing this provision or prescribing a similar sanction for the case prosecutor, as well, by amending the Law on the Prosecution Office.

In relation to this draft, the Defender indicated that in principle he did not object to the proposal that, similar to former judges, prosecutors, advocates, and investigators, judicial clerks also be eligible for inclusion in the list of judge candidates and promotion. However, the Defender found unreasonable the proposal to define special eligibility conditions for a specific group of public servants. The fact that one is a judicial clerk does not *per se* imply that he or she possesses the necessary qualification to serve as a judge. Similarly, a lawyer who works in other spheres of public service, or even the private sector, may satisfy the established criteria.

Therefore, all candidates, with the exception of graduates of the Judicial School, should be subject to the same procedure of inclusion in the list of judge candidates and promotion.

A number of suggestions were made on shortcomings in the draft amendments to the Judicial Code.

14. The Defender's staff discussed draft amendments to the Law on Legal Acts and made suggestions on uncertainties and technical shortcomings found in the proposed amendments.

15. The Human Rights Defender submitted a number of comments on the draft Law on the Special Investigative Service. Concerning the provision in the draft prohibiting citizens formerly convicted for a crime from serving in the Special Investigative Service, regardless of the expiry or quashing of the criminal record, the Defender indicated that it contradicted Article 84(8) of the Republic of Armenia Criminal Code, which provides: "The expiry or quashing of the criminal record eliminates all legal consequences concerned with the criminal record. This provision shall not hinder the imposition by law of restrictions on the right to hold the positions of a judge, prosecutor, police servant, penitentiary servant, and national security servant." In other words, such restrictions may not be imposed on positions other than those listed in the relevant Article, unless this Article of the Criminal Code is amended.

The Defender also disagreed with the idea that only senior positions in the Special Investigative Service be filled through a competitive procedure, as well as the procedure of organizing, conducting, and finalizing the results of the

competition. Besides, the Defender suggested changing the procedure of forming the competition commissions and the procedure of appointing the head and deputy head of the Special Investigative Service.

The Defender submitted recommendations on a number of other controversial provisions and shortcomings of the draft, indicating that the draft needed further review.

16. The Defender considered the drafting of a Law on Labor Migration as a step forward and submitted comments and recommendations on the draft to the competent state body.

More specifically, the Defender highlighted the importance of prescribing, in the contract between the intermediary and the potential labor migrant, the intermediary's obligation to provide the potential labor migrant pre-departure information on the foreign employer, the nature of the job, the workplace, the Armenian diplomatic or consular institution in the respective foreign state, the contract validity term, and other relevant matters.

Other recommendations on the draft were submitted, as well.

17. The Defender did not make any comments or observations on the draft amendments to the Law on the Statutes of the National Assembly and the Law on Judicial Service.

18. In his opinion on draft amendments to the Law on Trade and Services, the Defender highlighted some of the technical shortcomings found in the draft and suggested ways of addressing them.

19. In his opinion on the draft Government Decree on the Procedure of Simplified Tax Recording (including recording for commodities and tangible assets), the Defender indicated inconsistencies with other legal acts and made suggestions on addressing a number of shortcomings in the draft.

20. The Defender did not make any comments or suggestions on the draft amendments to the Presidential Decree "On Defining the Procedure of Organizing the Activities of the Republic of Armenia Government and Other Public Administration Bodies Subordinate to the Government."

1.4. Information and Public Relations Unit

Throughout 2007, the Defender remained focused on disseminating information on the activities of his office and developing relations with the public. These functions not only ensure the publicity and transparency of the Defender's work, but also raise the awareness of the general public on the protection of human rights and remedies available in the country. There are many methods for developing public relations and disseminating information, and their implementation depends largely on the availability of technical, human, financial, and many other resources in an organization. Despite the scarcity of such

resources in 2007, the activities in this sphere were consistently carried out in accordance with the international standards.

The aforementioned conclusion is supported by the findings of a public opinion poll published in the August 3 issue of the *Hayastani Zrutzakitz* newspaper. The poll was conducted among 1,053 citizens selected randomly to answer the following question: "To whom or to what organization would you apply, if your civic rights were violated?" The responses were as follows:

1.	No one	27%
2.	**The Human Rights Defender**	**16.2%**
3.	Individuals with criminal authority	15.3%
4.	Court	10.2%
5.	Newspapers	8.3%
6.	Human rights activists	5.9%
7.	The television	3.7%
8.	The Police	3.4%
9.	The Prosecution Office	2.5%
10.	A member of the parliament	1.7%
11.	The President of Armenia	1.4%
12.	An opposition party	1.4%
13.	The Constitutional Court	1.4%
14.	The Government	1.1%

Clearly, the vast majority (27%) of the survey respondents did not trust any body whatsoever. However, 16.2% of the citizens (the second largest group of respondents) would prefer the Human Rights Defender' to courts or other state bodies. These numbers indicate that Armenian citizens are somewhat aware of the Defender's Office and the scope of its activities.

Statistics on the Defender's official website provide additional evidence of public interest in the work carried out by the Defender's Office: in 2007, the number of visitors to this website doubled over 2006 to reach 75,211. These developments may be due to the fact that, during 2007, there was extensive coverage of the spheres in which the Defender's Office was active.

The Defender's close cooperation with the mass media is considered the primary method for fostering public relations. There is already a positive trend, which is important in several respects. Firstly, the mass media influence the public perception of state bodies, including the Defender. Secondly, by disseminating information on the human rights situation, the mass media somehow contribute to raising legal awareness and building civil society. Thirdly, the Defender needs the mass media in order to effectively communicate his position on various issues related to human rights.

During 2007, the Defender continued to develop the public relations' component of his work in the following areas:

1. Preparation and dissemination of daily information on all the spheres of the Defender's activities;
2. Daily monitoring of Armenian and foreign mass media for publications related to human rights;
3. Organizing press conferences and regular interviews with the Defender and his staff;
4. Measures to raise general legal awareness and specific public awareness of human rights; and
5. Maintaining the Defender's website.

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

The activities of the Human Rights Defender of Armenia are multifaceted and involve a variety of techniques used to protect human rights. Active and consistent coverage of the Defender's activities continued in 2007, resulting in an almost doubling, relative to 2006, of the volume of mass media reports and television programs covering the Defender's activities. Information on the activities of the Defender's Office, the Defender's meetings, visits, cooperation with international organizations, pending cases, and functions related to legislative reform was collected, processed, and disseminated. In order to spread information on cases of heightened importance or public interest, information about 50 cases was posted in the "Case Number" section, and about 60 progress reports were posted in the "News" section. Over 50 press releases were issued. Materials and comments on a variety of issues were provided to journalists.

It is of particular importance to pay attention to encroachments on the professional activities of journalists, which continued in 2007. Following a process of analysis and verification, the Defender instructed to publish statements harshly condemning such incidents and urging the law-enforcement agencies to do their best to find the offenders, as such cases undermine the freedom of expression and pluralism in the country. Despite numerous statements and official letters, law-enforcement agencies have so far been mainly unsuccessful in identifying the offenders or their "clients."

The vast majority of press releases and statements on these and many other issues were broadcast in various (mainly news) television and radio programs, and printed in the press. Contrary to the television stations, the bulk of Internet-based news agencies and newspapers pay closer attention to covering the Defender's activities.

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

During 2007, one of the aims of developing information and public relations was to review and check the accuracy of information published in the Armenian and foreign mass media and reports of various human rights organizations. Activities in this field have kept the Defender and his staff regularly informed of news published in Armenian and foreign mass media, significant events, and statements of other countries' ombudspersons and international human rights organizations. The Armenian print press, being an effective source of information, enables to respond rapidly and take action in respect of human rights-related issues that need the Defender's attention. In over a dozen cases in 2007, the Defender acted on an *ex-officio* basis to admit cases and to make visits and inquiries based on mass media publications.

However, it should be noted that the information published in the Armenian mass media needs to be checked, because some publications contain incorrect or untruthful information. An archive of human rights-related publications, classified by sectors, is being compiled on the basis of the daily monitoring of the mass media. There were about 500 publications on the activities of the Defender and his Office in the print press in 2007. News reports were submitted electronically, and about 60 television and radio reports and interviews were broadcast. Reinforcing the cooperation initiated with a number of leading international human rights organizations in 2006, periodicals and websites of such organizations, too, published a number of reports on the activities of the Armenian Human Rights Defender in 2007.

For Armenia, like any other post-Soviet country undergoing the transition to democracy and the rule of law, it is essential to have access to information published in the mass media and electronic media of established democracies about the practice of protecting human rights, the experience of human rights organizations, and cases of heightened public interest.

The analysis of materials published in the websites and electronic mass media of other states' ombudspersons and international human rights organizations helps to stay informed of global developments in the sphere of human rights.

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

Press conferences are among the best ways to ensure the transparency and publicity of the activities of the Defender and his Office; they not only enable journalists to pose their questions directly to the Defender, but also can be used to present the Defender's positions and responses to all the pending human rights issues and incidents drawing heightened public interest. In order to present the activities of his Office, the Human Rights Defender of Armenia convened a number of press conferences in 2007, which were actively attended by almost all the mass media.

In the press conferences, statistics on the relevant period, materials concerning the 2006 Annual Report, and other information on issues raised by the Defender and journalists were shared with journalists.

In order to cover the available information and the Defender's positions on various issues, the Information and Public Relations Unit of the Defender's Office, based on the Defender's instruction, actively participates in the visits of the Defender and his staff to the regions, penitentiary institutions, law-enforcement agencies, special schools, homes for the elderly, and other places. During such visits, the group disseminates information on the Defender's activities with a view to raising general public awareness.

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 necessitated by the fact that a significant part of the Armenian population do not know about their rights and fundamental freedoms and do not wish to benefit from the legal remedies available for defending their rights in dealings with state bodies. These attitudes promote corrupt practices and enable public officials to violate citizens' rights, which they are called to safeguard. Members of our society, who prefer unlawful means of protecting their rights either due to their legal ignorance or intentionally, inflict significant damage upon the democratization of our country and the rule of law. To this end, an important function of the Defender is to raise the awareness of the general public on human rights and fundamental freedoms, as well as the importance of their supremacy.

An Action Plan for 2008 aimed at raising the legal awareness of Armenia's population has been elaborated.

Television remains the most influential among all the mass media; it attracts the largest audience and is needed to affect the public opinion. The Defender's Office has plans to create a special series of television programs in 2008. With the attendance of the Defender's staff and representatives of state bodies, the program will present the Defender's activities, including issues related to pending cases, shortcomings of the legislation, and possible reforms.

There has already been progress towards establishing a periodical covering the activities of the Defender's Office.

The Republic of Armenia Law on the Human Rights Defender was published and disseminated in two languages. However, this and other laws need to be published with understandable commentaries for appropriate target groups.

5. Maintaining the Defender's Website

Maintaining the Defender's official website is a part of the effort to develop public relations. Considering that the Internet is very popular in Armenia, it is essential to post information on the activities of the Defender's Office on the Defender's official website.

During 2007, the "News" section of the website was updated on an almost daily basis; information on the Defender's activities, citizens' letters of gratitude,

and press releases on meetings, matters of heightened public interest, and success stories were posted. The Defender's statements were posted in the "Statements" section of the site.

The "Frequently Asked Questions" section provides visitors comprehensive and accessible information on the powers of the Defender and his Office, the procedure of applying to the Defender, and other related matters. It contains a detailed description of who may apply to the Defender, when, how, and on what matters, as well as the decisions that the Defender may take, how to arrange a meeting with the Defender, and so on. Posting progress reports on pending cases (with due respect for the confidentiality of applicants) has been an important and helpful source of information for journalists covering this sphere. Additional information has been provided to interested journalists. In 2007, a new section called "Visits" was created in the website for posting detailed information on the Defender's and his representatives' visits.

The website also contains the Defender's speeches made at conferences and workshops on human rights. As was already mentioned, the number of visitors to the Defender's official website doubled in 2007 relative to 2006.

1.5. Cooperation with Non-Governmental Organizations

Considering the important role of non-governmental organizations in promoting civil society and the democratization process, the Human Rights Defender closely cooperates with many non-governmental organizations dealing with cultural and charitable issues, the rights of ethnic minorities, environmental and regional concerns, human rights, and the issues of children, women, refugees, and persons with disabilities. This cooperation is crucial for the protection of human rights and freedoms; it helps to prevent violations and raises the awareness of the general public on the activities of the Defender. Vulnerable groups often trust NGOs and discuss violations of human rights with them more easily than with state bodies.

During 2007, the Defender and his representatives took part in over eight dozen events organized by NGOs.

NGOs are an essential component of civil society and a democratic state. While struggling for the protection of human rights, they are also an important source of information and a key actor in disseminating and raising awareness of human rights ideas. Cooperation with NGOs has contributed to the enhanced publicity of the activities of the Defender and his Office. NGOs are essential for raising general public awareness of the capacity and activities of the Defender's Office.

Under the Republic of Armenia Law on Human Rights Defender, regional representations of the Defender's Office may be, though still have not been, created in the marzes (regions). Until such representations are created in the marzes, cooperation with various regional NGOs remains very important. Regional NGOs

have supported the Defender's Office with information on the human rights situation in the regions and the organization of meetings with the regional population. The cooperation with regional NGOs has enhanced the role of active young people in public life by engaging them in various practical activities aimed at the protection of human rights. Joint discussions have been discussed with a special focus on problems of individual applicants and matters of heightened public interest.

NGOs actively participated in a two-day international forum on "The International Experience of Cooperation between Constitutional Courts and Human Rights Defenders in the Protection of Human Rights," which was the first one of its kind in the CIS area in terms of its substance and attendance: the forum was attended by about 30 ombudspersons and representatives of the constitutional courts of various countries.

A workshop on "Strengthening Cooperation between the Human Rights Defender and Civil Society" took place with the support of the OSCE Office in Yerevan. During the seminar, representatives of the UK Parliamentary and Health Ombudsman's Office and the Swedish Ombudsman's Office for Ethnic Discrimination presented the their countries' experience in terms of the ombudsman's role and interaction with civil society.

The United Nations Development Programme Armenia Country Office and the Office of the Human Rights Defender of Armenia jointly organized a seminar to discuss the Prospects of Cooperation between the Human Rights Defender of Armenia, the Council of Europe Commissioner for Human Rights, and the European Court of Human Rights.

There have been discussions and joint visits with NGOs and the Group of Public Observers of Penitentiary Institutions of the Ministry of Justice. The Defender's Office has collaborated successfully with NGOs and alliances of NGOs dealing with issues of women, persons with special needs, ethnic and religious minorities, and environmental matters.

With a view to creating the national preventive mechanism contemplated by the Optional Protocol to the Convention against Torture, the Council of Europe organized a seminar that was attended by the Office of the Human Rights Defender of Armenia and NGOs. International experts of the Council of Europe presented the international experience related to the designation of a national preventive mechanism.

1.6. International Cooperation

A key area of the Defender's activities is the establishment and development of cooperation with international organizations working in the field of human rights and their representations in Armenia. During 2007, the Defender furthered the achievements of previous years, carried out activities aimed at the

honoring of various commitments, implemented projects, made new arrangements, and concluded agreements.

International cooperation provides an opportunity to become familiar with the human rights activities of international organizations and the international experience of various ombudspersons, and to use the knowledge and skills of international experts for further improving the activities of the Office of the Armenian Human Rights Defender.

In this area, the activities of the Defender's Office have focused on the following main priorities:

- Further integration with international systems of institutions protecting human rights;
- Establishing and developing ties between the Defender's Office and international human rights organizations and their representations in Armenia;
- Establishing and developing ties with other countries' national institutions for the protection of human rights;
- Expanding cooperation with international human rights organizations and other institutions in order to continue developing the professional knowledge and skills of the staff of the Defender's Office;
- Developing and implementing a strategy of cooperation; and
- Promoting respect for human rights.

During 2007, the Defender and his staff participated in a number of conferences, seminars, discussions, and other international meetings, during which they reached many understandings on experience sharing, promoting the role of the Armenian Human Rights Defender in international human rights organizations, and other forms of cooperation. Besides, in cooperation with the international human rights organizations and their representations in Armenia, various activities were frequently held in the Republic of Armenia.

The Defender's Office is actively engaged in mutually beneficial cooperation with the Council of Europe: in this framework, there will be a series of activities to support the fulfillment of Armenia's commitment to create the national preventive mechanism contemplated by the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The first workshop on this topic was held in Yerevan on September 11, 2007, and the second was in December; during both workshops, international experts thoroughly explained the "Human Rights Defender + Civil Society" format for the national preventive mechanism. The next activity in the frameworks of this project will take place in January 2008.

During October 17-19, 2007, in the frameworks of the cooperation program between the Office of the Human Rights Defender of Armenia and the Council of Europe, seven members of the staff of the Defender, led by Armen Harutyunyan, the Defender, made a study tour to the Council of Europe (Strasbourg). During the study tour, the delegation of the Human Rights Defender of Armenia had meetings with Mr. Thomas Hammarberg, the Council of Europe

Commissioner for Human Rights, Mr. Jean-Paul Costa, the President of the European Court of Human Rights, Mr. Jean-Louis Laurens, the Director for Strategic Planning, Ambassador Per Sjögren, the Chairman of the Ago Group, Mr. Philippe Boillat, the Director General of Human Rights and Legal Affairs of the Council of Europe, Mr. Schnutz Rudolf Dürr, the Head of the Constitutional Department of the Venice Commission, Mr. Johan Friestedt of the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Mrs. Despina Chatzivassiliou, the Secretary of the Monitoring Group of the Parliamentary Assembly of the Council of Europe, and Ambassador Christian Ter-Stepanian, the Permanent Representative of Armenia to the Council of Europe.

The participants of the meetings discussed the honoring of Armenia's commitments under a number of international conventions and treaties and issues related to the human rights situation in Armenia. The relevant officials of European organizations, being well-aware of the legislative, judicial, prosecutorial, and other issues faced by Armenia and other post-Soviet countries, expressed their willingness to cooperate with the Human Rights Defender of Armenia in any sphere given the crucial role of an independent national ombudsman in promoting respect for human rights and the proper implementation of the European Convention by state bodies.

In 2007, the Human Rights Defender of Armenia submitted his first request to the Venice Commission, asking for the expert opinion of this reputable international organization on the compatibility of Article 301 of the Armenian Criminal Code with the European standards. In the words of Mr. Schnutz Rudolf Dürr, this request marked the beginning of a new tradition in the format of cooperation between the Venice Commission and ombudspersons.

The Office of the Human Rights Defender of Armenia sustained the mutual trust-based comprehensive cooperation with the Yerevan Office of the Organization for Security and Cooperation in Europe (the OSCE). One of the first products of this cooperation was the publication in 2007 of the Methodological Guidelines for the review of complaints submitted to the Human Rights Defender during and after elections.

Another joint event was organized on November 15 and 16, 2007 by the OSCE Yerevan Office, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), and the Office of the Human Rights Defender of Armenia: this workshop, funded by the German Government, aimed at assessing the current level of cooperation between the Defender, Armenian public authorities, and civil society, and to facilitate the development of projects to intensify such cooperation. The discussion resulted in the elaboration of an action plan that may serve as a basis for future projects.

Finally, on December 10, 2007, a seminar on "Human Rights and the Armenian Realities" was organized jointly with the OSCE Office in Yerevan on the occasion of the International Day of Human Rights Protection. Over 100

representatives of human rights NGOs, international organizations, and foreign embassies in Armenia were invited. The seminar participants discussed human rights-related issues faced in Armenia.

During 2007, the Office of the Human Rights Defender of Armenia deepened its cooperation with the UNDP Country Office, as illustrated by the launch in July 2007 of a two-year project to support capacity development of the Staff of the Human Rights Defender of Armenia. In the frameworks of this project, a conference was held on November 27, 2007 on the Prospects of Cooperation between the Human Rights Defender of Armenia, the Council of Europe Commissioner for Human Rights, and the European Court of Human Rights. In December, jointly with the Raoul Wallenberg Institute, with the support of the Swedish International Development Cooperation Agency (SIDA), a training course on "Housing Law: International Rules and the Armenian Reality" was carried out for the staff of the Defender's Office. There were trainers from both Armenia and abroad, as well as representatives of NGOs and state bodies dealing with housing matters.

On October 5 and 6, 2007, an international forum on "The International Experience of Cooperation between Constitutional Courts and Human Rights Defenders in the Protection of Human Rights" was organized jointly by the Constitutional Court of Armenia and the Human Rights Defender of Armenia: the forum was the first one of its kind in the CIS area in terms of its substance and attendance. It was honored by the attendance of Mr. Gianni Buquicchio, the Secretary of the Venice Commission, Mr. Jean-Paul Costa, the President of the European Court of Human Rights, Mr. Nikolaus Schwaerzler, Member of the Executive Board of the European Ombudsman Institute, chairmen and members of constitutional courts, and ombudsmen from about 35 European countries.

The forum was organized in the frameworks of the 12th Annual Forum of the Constitutional Court of Armenia with the support of the UNDP, the OSCE Office in Yerevan, the Venice Commission, and the Moscow Office of UNESCO. The participants presented the experience of cooperation between the ombudsmen and constitutional courts in their respective countries; there were discussions and proposals to organize similar conferences in the future, as well.

With a view to experience sharing and capacity building, the staff of the Human Rights Defender of Armenia has continued to cooperate with the offices of ombudsmen of other countries. In 2007, in the frameworks of the Eunomia Project carried out jointly by the Government of Greece and the Council of Europe Commissioner for Human Rights, based on an understanding reached between the Human Rights Defender of Armenia and the Ombudsman of Greece, three members of the staff of the Armenian Defender made a study tour to Greece; in October, three members of the staff of the Greek Ombudsman visited Armenia.

In addition to the foregoing, the Defender's staff have participated in numerous conferences, workshops, and training courses both in Armenia and abroad, including, in particular, the 18th International School on Human Rights held

in Warsaw in June with the financial support of the Council of Europe, the "Good Governance" seminar held in Sofia in September under the Eunomia Project, the "Strategic Planning and Public Relations Strategy" seminar held in Istanbul by joint efforts of the Bratislava Regional Center and the Turkish International Cooperation and Development Agency, the Lisbon Forum 2007 on "National Human Rights Institutions - the Cornerstone of the Protection and Promotion of Human Rights" organized by the North-South Center and the Venice Commission in November, and other activities.

The Defender's Office continued strategic planning exercises with a view to optimizing its performance, avoiding redundancies, efficiently distributing resources, and ensuring consistency in its activities.

In meetings with the heads of various international organizations active in the sphere of human rights, understandings were reached on new projects to be implemented in 2008 and the continuation of projects started in 2007.

1.7. Expert Council

In order to receive expert assistance, under Article 26 of the Republic of Armenia Law on the Human Rights Defender, the Defender has created an Expert Council comprising individuals with knowledge in the field of human rights and fundamental freedoms. Most of the members of the Expert Council are representatives of non-governmental organizations. They engage on a voluntary basis and are not paid for their activities. The Council has discussed matters of heightened public interest and reviews on legislative improvements.

During 2007, the Council focused particularly on environmental issues. Armenia has ratified 16 international conventions and 11 protocols on environmental protection. Despite significant efforts made and progress achieved in this area, there are still problems in connection with the adoption and implementation of a framework policy on the environment. The Expert Council has expressed concerns in relation to the operation of the Teghut Mine.

PART 2.

LEGISLATIVE CAUSES OF VIOLATIONS OF HUMAN RIGHTS

2.1. Civil and Political Rights

2.1.1. Prohibition of Torture

On May 31, 2006, the National Assembly of the Republic of Armenia ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter, "OPCAT", which entered into force on June 22. Article 17 of the OPCAT provides that "each State Party shall maintain, designate or establish, at the latest one year after the entry into force of the present Protocol or of its ratification or accession, one or several independent national preventive mechanisms for the prevention of torture at the domestic level." Article 18(4) makes particular reference to the need for States Parties to "give due consideration to the Principles relating to the status of national institutions for the promotion and protection of human rights" (the Paris Principles").

Under Article 17 of the OPCAT, the Republic of Armenia undertook to designate or establish, within one year of ratifying the OPCAT, a national preventive mechanism for the prevention of torture at the domestic level. Considering that the OPCAT entered into force for the Republic of Armenia on October 14, 2006, the defined one-year period ended on October 14, 2007.

The following measures have been taken in Armenia to implement the OPCAT: on September 20, 2007, the Government of Armenia approved the draft Amendments to the Law on the Human Rights Defender, which designated the Defender as the independent national preventive mechanism contemplated by the OPCAT. The draft was then submitted to and is currently in the agenda of the National Assembly of Armenia.

Besides, draft amendments to the Law on Holding Arrested and Detained Persons and to the Penitentiary Code of Armenia were submitted with a view to prescribing the legal bases necessary for the Defender to make unhindered visits to penitentiary institutions and institutions for holding arrested persons.

On December 11 and 12, 2007, a workshop took place in the Office of the Human Rights Defender with the participation of non-governmental organizations, including representatives of the organizations that are included in the Ministry of Justice and Police Groups of Public Observers. The NGO representatives suggested discussing the idea of establishing a "Defender+NGOs" ("Ombudsman+") mechanism and an appropriate draft Law was presented.

2.1.2. Right to a Fair Trial

In his 2006 Annual Report, the Defender addressed the amendments made to the civil and criminal procedure codes of Armenia on July 7, 2006, which defined the admissibility criteria for appeals lodged with the Cassation Court.

The Defender had indicated that the criteria were incompatible with the principle of legal certainty, creating leeway for arbitrary decisions by the Cassation Court.

The problem has more to do with enforcement practice, rather than the provisions of the legislation *per se*.

Nevertheless, the aforementioned codes were not amended, while practice showed that the Cassation Court is arbitrarily enforcing the established criteria.

The Human Rights Defender has received complaints about the impossibility of lodging a cassation appeal through advocates specifically accredited for this purpose by the Cassation Court: poorer persons cannot pay the fee set by any of the advocates accredited by the Cassation Court. Thus, persons are in practice deprived of their right under Article 10 of the Armenian Constitution.

Article 101(6) of the Constitution provides that, in conformity with the procedure set forth in the Constitution and the Law on the Constitutional Court, an application to the Constitutional Court may be filed by every person in a specific case in which there is a final judicial act, when all the available judicial remedies have been exhausted, and the person challenges the constitutionality of a provision of the law applied to him in the relevant judicial act.

Applicants have indicated that the limited number of advocates accredited to lodge appeals with the Cassation Court demand excessive fees for their services, and that they cannot afford to pay such fees.

Article 6 of the Republic of Armenia Law on the Advocacy defines that the services of an advocate are rendered for a fee, as well as the obligation of "the state to guarantee the provision of free legal aid in criminal cases in the procedure and instances defined by the Criminal Procedure Code, as well as in the procedure and following instances defined by the Civil Procedure Code:

1) Alimony collection cases; and

2) Cases related to compensation for severe injury inflicted at work, other health damage, or damage inflicted as a consequence of breadwinner loss.

The same article provides that free legal aid may also be provided at the advocate's own initiative.

Thus, waiver of the fee for lodging an appeal with the Cassation Court would depend on the good will of an accredited advocate.

Therefore, persons who are socially vulnerable and cannot afford to pay accredited advocates to lodge their appeal with the Cassation Court are effectively deprived of possibilities to exercise their constitutional rights. **I.e., a person**

cannot exercise his constitutional right (to file an application with the Constitutional Court), unless a final judgment of the Cassation Court is obtained.

Article 14.1 of the Armenian Constitution provides: "Discrimination based on sex, race, skin color, ethnic or social origin, genetic features, language, religion or belief, political or other views, membership of a national minority, property, birth, disability, age or other personal or social circumstances shall be prohibited."

Discrimination is also prohibited under Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

In reality, however, the right of court access, which is enshrined in Article 18 of the Armenian Constitution and Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, is limited in Armenia on the ground of social or property status.

Article 18 of the Armenian Constitution provides: "Everyone shall be entitled to effective legal remedies to protect his rights and freedoms before judicial and other public bodies."

Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms safeguards everyone's right to a fair trial, which includes the right of court access.

The current legislative regulation of the right of court access in Armenia is illusionary.

The logic of the method for accrediting advocates in the Cassation Court, as stipulated by Article 29.1 of the Law on the Advocacy, is unclear: to obtain such accreditation, an advocate must apply in writing to the Chairman of the Cassation Court of the Republic of Armenia during the period from November 20 to 30 of each year. The application must be accompanied with the consent letters of 10 other advocates who are members of the Chamber of Advocates.

Clearly, this legislative regulation of the Cassation Court's accreditation procedure for advocates is formalistic and cannot even meet the requirements of ensuring the high quality of advocates taking cases before the highest national court.

Article 29.1(6) of the Law on the Advocacy provides that accreditation is granted for a 13-month period. However, by Decree 79A of April 7, 2007, the Chairman of the Cassation Court extended the validity terms of the accreditation of advocates already accredited in the Cassation Court till January 10, 2009.

Article 5 of the Armenian Constitution provides: "State and local self-government bodies and officials may perform only such acts for which they are authorized by the Constitution or laws.

The current legislation on the accreditation of advocates in the Cassation Court and the aforementioned Decree of the Cassation Court Chairman restrict human rights safeguarded by the Constitution and international treaties of Armenia.

Free legal aid for taking appeals to the Cassation Court should be safeguarded by amending Article 6 of the Law on the Advocacy and placing this responsibility on the Public Defenders.

2.1.3. Right to Liberty and Security of Person

Certain legal issues raised in the 2006 Annual Report in relation to the apprehension of persons should be addressed here.

Under recent amendments to the Criminal Procedure Code of Armenia, apprehension may be lawfully applied also during the stage of preparing materials for instigating a criminal case.

Article 180(2) of the Criminal Procedure Code provides that, during the preparation of materials, explanations and other materials, as well as an examination of a scene may be needed, and, if there are sufficient grounds for suspecting that a crime was committed, **persons may be apprehended and subjected to a personal search**; moreover, samples may be taken for examination, and forensic procedures may be carried out.

Such regulation may cause unnecessary restrictions of human rights. Moreover, the Criminal Procedure Code does not prescribe any safeguards for avoiding groundless apprehension: the Code does not specify the maximum period of holding an apprehended person and performing without any delay measures to establish the apprehended person's identity. Article 153 of the Criminal Procedure Code is silent on this matter. At times, in the absence of any grounds supporting the longer-than-authorized holding of apprehended persons, police officers claim that they "invited" the person "simply for a chat."

The vague wording of Article 17(2) of the Law on the Police gives police officers the explicit right to hold apprehended persons. They have exercised this authority in practice, too.

Examples of violations of the right to liberty and security of person are presented in the "Analysis of Violations of Human Rights, by Public Bodies" section of this Report.

2.1.4. Freedom of Expression

In his 2006 Annual Report, the Human Rights Defender of Armenia noted the absence of sub-legislation supporting the exercise of the right to freedom of information.

The Defender drew the attention of the Prime Minister of Armenia to some urgent issues arising in the enforcement of the Law on the Freedom of Information, which have seriously obstructed the exercise of citizens' constitutional rights to receive information.

The problem is with Article 10(1) of the Law on the Freedom of Information, which provides that "state and local self-government bodies, state

institutions, and state organizations shall provide information or copies (photocopies) thereof in accordance with the procedures defined by the Government of Armenia." However, the Government has failed to define such procedures since November 15, 2003, the date on which the Law on the Freedom of Information came into force. As a consequence, some state and local self-government bodies refuse to provide the requested information citing the absence of the aforementioned procedures.

Article 11(4) of the Law on the Freedom of Information provides that the refusal to provide information may be appealed to the competent state body or to court; however, to date, the Government of Armenia has not designated the "competent state body" for appeal purposes.

Considering that the aforementioned problems have still not been addressed, the Defender sent another letter to the Prime Minister of Armenia, asking to take measures in this respect in the shortest possible timeframe.

In 2007, like before, there were reported cases of violence against journalists and obstruction of their professional work. In many press conferences during 2006, the Defender had denounced violence against journalists and expressed concerns over the possibility of such cases becoming a part of the culture. Though the Defender has made numerous appeals for law-enforcement bodies to follow up on the investigation of such cases, there has so far been no tangible progress.

The freedom, independence, and plurality of the mass media are essential for the exercise of the constitutional right to receive information. To this end, the Constitutional Amendments made in 2005 prescribed that, by law, an independent regulatory body would be created, half of the members of which would be elected by the National Assembly for a six-year term, and the other half would be appointed by the President of the Republic for a six-year term (Article 83.2 of the Constitution). Another article of the Constitution provides that the incumbent members of this independent body will remain in office until the end of their term of office stipulated by the Law on Television and the Radio. When their terms of office expire or their powers are terminated, the arising vacancies shall be filled successively by the National Assembly and the President of the Republic (Article 117(11) of the Constitution).

On February 26, 2007, the National Assembly of Armenia adopted Amendments to the Law on Television and the Radio and the Statutes of the National Commission for Television and the Radio. The amendments to the Law on Television and the Radio, which were necessitated by the constitutional amendments, prescribed that the National Commission for Television and the Radio would have eight members (as opposed to the previous nine-member commission), of which four would be appointed by the President and four by the National Assembly (all the members of the previous commission had been presidential appointees).

As a result of these amendments, the National Assembly has been engaged in the process of determining the membership of the National Commission for Television and the Radio. This is a crucial measure to ensure the freedom, independence, and plurality of the mass media. However, the constitutional and legislative framework for the implementation of Article 83.2 of the Constitution does not enable the National Assembly to take part in the formation of the commission in the relatively near future on equal grounds with the President of the Republic.

2.1.5. Freedom of Thought, Conscience, and Religion

The issue of conscientious objection to compulsory military service is closely connected with the freedom of thought, conscience, and religion. In his 2006 Annual Report, the Defender thoroughly addressed Armenia's commitments in this area: upon accession to the Council of Europe, the Republic of Armenia had undertaken to adopt, within three years of accession, a law on alternative service in accordance with the European standards. The Republic of Armenia Law on Alternative Service defines the length of alternative military service as 36 months and that of alternative labor service 42 months. The latter is carried out in places designated by the Government of Armenia (psychiatric hospitals, care homes for persons with disabilities, homes for the elderly, and so on). Conscription for the alternative service is performed and supervised by the authorities that are also responsible for the regular military service draft.

In Resolution 1361 (2004), the Parliamentary Assembly of the Council of Europe considered "the length of the alternative civilian service, set at forty-two months, unacceptable and excessive," asking to reduce the length of service to thirty-six months. In Resolution 1532 (2007) on the Honoring of Obligations and Commitments by Armenia, the Parliamentary Assembly of the Council of Europe again addressed Armenia's commitment to adopt a law on alternative service "in compliance with European standards" and "pardon all conscientious objectors sentenced to prison terms."

Nevertheless, the Law on Alternative Service has not been amended in these respects yet.

2.1.6. Right to Elect and Be Elected

During the 2007 parliamentary elections in Armenia, considering that voting day violations are more likely in polling stations, the importance of preventing such violations, and the fact that the Defender has no power to act in prevention of such violations in polling stations (the work of polling station commissions is supervised by higher electoral commissions), the Defender had planned to immediately forward reports of violations in polling stations to the Central

Electoral Commission and territorial electoral commissions, following up on the implementation of appropriate measures by them.

The Defender also responded rapidly to allegations of inaction on the part of the responsible units of the Police, such as the failure to issue the required certificates to those whose names were omitted from the voter lists, the failure to prevent practices disrupting the work of commissions, the failure to respond to reports, and other cases.

To carry out these measures, rapid response teams had been created in the Office of the Human Rights Defender. Staff was on duty round-the-clock on May 12 and 13, 2007.

On May 12, about 100 citizens applied to the Human Rights Defender.

A number of citizens applied to the Defender in connection with errors in the voter lists, such as missing names in the voter lists, "dead souls" (names of dead people being in the voter lists), the names of the same people being in the list multiple times due to the incomplete specification of their addresses in the voter lists, and the like.

Some applications were received from citizens that had not been given prior notice of their voting place and wanted to know where their polling station is. Inquiries were made and the relevant information was provided to these applicants.

The Defender also received allegations of "bussing" of citizens to vote for a particular candidate using regular public transport minibuses.[5] There were numerous media reports on this issue.

Issues Related to the Electoral Legislation

Some issues related to the Armenian electoral legislation are analyzed below.

The Formation of Electoral Commissions

Independent and impartial electoral commissions are an essential prerequisite of the proper administration of the electoral process. Though the provisions of the Armenian Electoral Code on the formation of electoral commissions were positively assessed by international organizations, the observation of the 2007parliamentary elections showed that they need to be further reviewed.

The Exercise of the Voting Rights of Armenian Citizens Abroad

Prior to the 2007 February amendments to the Electoral Code, Armenian citizens who resided or were abroad exercised their voting rights in diplomatic and consular missions of the Republic of Armenia in accordance with the procedures defined by the Electoral Code and the Central Electoral Commission.

[5] Information on complaints addressed to the Human Rights Defender of the Republic of Armenia on May 12, 2007; www.ombuds.am

However, all the provisions of the Armenian Electoral Code concerning the procedure of voting abroad were revoked as a consequence of the amendments made in February 2007.

Under the amended Electoral Code, elections may be carried out only in the territory of the Republic of Armenia, and there is no possibility to vote in diplomatic and consular missions of Armenia.

This disenfranchisement of citizens abroad is consistent with the requirements of Article 3 of Protocol 1 to the European Convention on Human Rights.

The Explanatory Report to the Code of Good Practice in Electoral Matters adopted by the Venice Commission of the Council of Europe highlight that quite a few states grant their nationals living abroad the right to vote, and even to be elected.

In other words, the Code does not prescribe any requirement to secure voting rights abroad; rather, it is presented as an option that may be considered.

However, as for the voting right of Armenian citizens that permanently reside in Armenia, but were abroad on voting day (including Armenian citizens that were abroad in connection with the performance of their official duties), the Human Rights Defender considers the violation of their right to vote unjustifiable. They should be given the possibility to vote abroad as a ways of ensuring the exercise of their voting right.

The Human Rights Defender has recommended to the Speaker of the National Assembly of Armenia taking the legislative initiative to amend the Electoral Code in order to ensure the exercise of voting rights by Armenian citizens that permanently reside in Armenia, but are abroad on voting day.

Legal Regulation of the Election Campaign in the Mass Media

Article 20 of the Armenian Electoral Code regulates the campaign in the mass media by defining the duty of the mass media to respect the principles of fair, balanced, and impartial coverage of the election campaign. However, given how the 2007 parliamentary campaign was covered on television and the radio, it is considered necessary to prescribe more detailed regulation of and more clear criteria on the procedure of election campaign coverage in news programs.

The Immunity of Candidates Nominated in the Proportional and Majoritarian Contests of the National Assembly Elections during the Election Period

Article 111(6) of the Armenian Electoral Code requires the consent of the Central Electoral Commission in order to detain or apply court-ordered administrative or criminal sanctions in respect of candidates nominated in the

proportional and majoritarian contests of the National Assembly elections during the election period.[6]

Clearly, by introducing this provision, the legislature pursued the aim of protect candidates from the state bodies' and their officials; politically-motivated interference with his activities during the election period.

This provision has been construed in different ways in practice: some, for instance, have said that is should not apply to cases in which a court, based on the motion of the investigative authority, has prolonged detention. In one case, a detained person, who became registered as a candidate for the parliamentary elections, had his detention prolonged without the consent of the Central Electoral Commission. However, such construal would be inconsistent with the aim of introducing this provision.

The Armenian Electoral Code should be amended to clearly define the requirement to obtain the consent of the Central Electoral Commission in cases of prolonging a candidate's detention (in case of a person that was initially detained prior his registration as a candidate for the parliamentary elections).

Safeguards of the Voting Rights of Persons with Dual Citizenship

Article 131 of the Republic of Armenia Law on Citizenship defines a "dual citizen" as "a person who has citizenship of more than one state."

A "dual citizen of the Republic of Armenia" is "a person who, in addition to citizenship of the Republic of Armenia, has also citizenship of another state."

Paragraph 4 of the same article provides that a dual citizen of the Republic of Armenia has all the rights and bears all the duties and responsibility of a citizen of the Republic of Armenia, with the exception of cases stipulated by the international treaties or laws of the Republic of Armenia.

In this light, the Electoral Code of Armenia has defined the procedure of exercising the voting rights of dual citizens: Article 2(7) of the Electoral Code provides that a person who is concurrently a citizen of the Republic of Armenia and another state, and is registered in the Republic of Armenia, shall participate in the voting in accordance with the procedure stipulated by the Code.

A person who is concurrently a citizen of the Republic of Armenia and another state, and is not registered in the Republic of Armenia, shall not participate in the voting.

As for the right of dual citizens of Armenia to be elected, Article 65(3) of the Electoral Code provides that citizens of the Republic of Armenia who have citizenship of another state may not be either nominated or registered as presidential candidates in Armenia.

[6] Some have made the theoretical proposition that it would be more appropriate to require the consent of the Prosecutor General of Armenia to life the immunity of parliamentary candidates, considering that electoral commissions in Armenia have a political composition.

Article 97(5) of the Electoral Code provides that citizens of the Republic of Armenia who have citizenship of another state may not be either nominated or registered as parliamentary candidates in Armenia.

The Armenian electoral legislation does not contain a similar prohibition in respect of local elections.

Under the electoral legislation of Armenia, dual citizens may vote in Armenia (provided that they are registered in Armenia), but may not be elected in nationwide elections. Such legal regulation contradicts the Council of Europe Code of Good Practice in Electoral Matters.[7]

In their Joint Opinion, the Venice Commission and OSCE/ODIHR stressed the fact that, if a state recognizes the right to dual citizenship, persons with dual citizenship should not have fewer rights than other citizens. Such restrictions are not common.

Based on the foregoing, it is necessary to revise the legal regulation of the voting rights of Republic of Armenia citizens who are also citizens of another state.

Legal Regulation of the Election Campaign

The electoral legislation of Armenia defines the forms and types of election campaigning. Nevertheless, the lack of any definition of the "election campaign" and the unclear provisions of the Electoral Code on violations of the campaign procedure may cause ambiguities in their implementation. For instance, the legislation does not address the responsibility of various actors for violating the campaign procedure in favor of any candidate or party.

During elections and referenda, the campaign may be carried out in the following ways: using the mass media, in the form of public campaign activities (campaign gatherings and meetings with constituents, public campaign discussions, debates, assemblies, rallies, and demonstrations), publishing printed materials, and disseminating audio and video materials.[8]

However, while Article 18(6) of the Electoral Code provides an exhaustive list of the permitted ways of election campaigning, Article 18(2) implies that election campaigning may also be carried out in other ways not prohibited by law.

The Electoral Code defines not only the right of Armenian citizens, parties, and party alliances to campaign in favor of or against any candidate or party, but also the list of entities that may not campaign.

For instance, state and local self-government bodies, their employees during the performance of their official duties, members of the Constitutional Court, judges, Armenian police and national security officers, staff of the prosecution office, military servicemen, charitable and religious organizations, foreign citizens and organizations, and members of electoral commissions may neither campaign nor disseminate any campaign materials.

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[7] Joint Opinion of the Venice Commission and OSCE/ODIHR on the February 26, 2007 Amendments to the Electoral Code of the Republic of Armenia.

[8] Article 18(6) of the Electoral Code of the Republic of Armenia.

There is a need to address the unauthorized methods of campaigning: the Electoral Code provides that, during the election campaign, candidates (parties) may not personally or in any other way provide (promise) to citizens at no cost or at privileged terms any cash, food, securities, commodities, or to render (promise) services. However, candidates and parties are not the only entities that have the right to campaign, as citizens of Armenia, too, have this right.[9]

Article 18(7) of the Electoral Code of Armenia should be amended to prohibit any entity from engaging in the aforementioned conduct.

The legislation should regulate the prohibition of service provision or work performance during the campaign at no cost or at privileged terms for the purpose of supporting candidates or parties.

It is also necessary to explicitly ban any election-related lotteries and other risk-based games during the election campaign.

Article 21 of the Electoral Code of Armenia defines the procedure of using campaign posters and other materials.

Article 21(2) of the Electoral Code provides that "a community mayor shall, no later than within five days after the beginning of election campaign, allocate special places in his community for putting up campaign posters. Such places shall be convenient for visits of voters."

This provision has been widely interpreted in practice: there has been some controversy over whether the placement of such posters on the administrative buildings of state and local self-government buildings is lawful. For administrative buildings of state bodies, there cannot be any doubt: the community head may not permit other entities to place posters on buildings owned by the state or private entities.

However, the Electoral Code does not define the premises at which campaign posters may not be placed. It would be appropriate to prohibit the placement of posters on monuments, buildings and other premises of historic, cultural, or architectural significance, and administrative buildings of state and local self-government bodies.

The provisions of the Electoral Code regarding the voting result recount procedure in territorial electoral commissions should be revised, as well. Article 40.2(1) of the Electoral Code prescribes the right of candidates, Precinct Electoral Commission members who have authored a special opinion, and proxies registered in the relevant precinct to appeal the voting results in that precinct. However, the provisions defining the procedure of exercising this substantive right need to be revised: Article 40.2(12) of the Electoral Code provides that "the recount activities in Territorial Electoral Commissions shall stop at 14:00 on the fifth day after the voting day." The review of practice in this field has shown that, in some cases, because of this time restriction, voting results are not recounted.

[9] Article 18(2) of the Electoral Code of the Republic of Armenia.

The following paragraphs address the sanctions prescribed for violating the electoral legislation.

There are three types of legal sanctions for violating the electoral legislation: sanctions prescribed by the Electoral Code, administrative sanctions, and criminal sanctions.

The CIS Convention on the Standards for Democratic Elections, Electoral Rights and Freedoms provides that the list of violations of the campaign terms and procedure by candidates and political parties (alliances) and violations of the campaign coverage procedure by the mass media, which must be sanctioned.

Article 139 of the Electoral Code addresses matters of liability for violating the provisions of the Code. It defines 31 possible violations of the electoral legislation.

However, some of its provisions are very vague: for instance, ""hindering the free expression of voters' will," "hindering election-related functions," "hindering the normal course of elections by electoral commission members or public servants and employees of local self-government bodies," or "hindering the normal course of the election campaign."[10]

Such vague language may unnecessarily obstruct the practical enforcement of these provisions.

2.1.7. Right to Freedom of Peaceful and Unarmed Assembly

Under Article 29 of the Constitution of the Republic of Armenia, everyone has the right to peaceful and unarmed assembly. Article 43 of the Constitution provides that a number of fundamental human and civil rights and freedoms enshrined in the Constitution, including the right to peaceful and unarmed assembly, may be restricted only by law, if it is necessary in a democratic society in the interests of national security or public safety, for the prevention of crime, for the protection of health or morals or for the protection of the constitutional rights and freedoms, as well as the honor and good name of others.

With somewhat different wording, these constitutional provisions have been reflected also in the Law on Conducting Meetings, Assemblies, Rallies, and Demonstrations. While under Article 43 of the Constitution, the relevant distance must be defined "by law," some provisions of the aforementioned Law give wide discretion to the Police in designating restrictions on the exercise of such rights: Article 9(4)(2) of the Law provides that the authorized body may prohibit the holding of a public event "at **such a distance away** from the Office of the President of the Republic, the Nuclear Power Plant of Armenia, underground gas repositories and their supporting infrastructure, and the "Orbita 2" Ground Satellite Station, **which the Police shall consider necessary for security purposes**."

[10] Joint Recommendations of the Venice Commission and OSCE/ODIHR on Electoral Law and Administration in Armenia, December 2003.

2.2. Economic, Social, and Cultural Rights

2.2.1. Freedom to Choose Work

In his 2006 Annual Report, the Human Rights Defender of Armenia thoroughly analyzed the legislative acts causing violations of the freedom to choose work and progress towards the honoring of international commitments undertaken by the Republic of Armenia in this sphere. This section will discuss the measures implemented in 2007 to address issues raised in the 2006 Annual Report, as well as the new issues that emerged in this field during 2007.

The 2006 Annual Report addressed the commitments of the Republic of Armenia under the International Covenant on Economic, Social and Cultural Rights, especially the undertaking to submit regular reports on the progress made in achieving the observance of the rights recognized in the Covenant. Though the deadline for the submission of the second report by the Republic of Armenia expired in 2000, the second report was not submitted to the UN Economic and Social Council even in 2007.

As for the Revised European Social Charter, the first national report of the Republic of Armenia on the conformity of the national law and practice with its provisions was submitted to the European Committee of Social Rights in 2006. The Conclusions of the Committee were adopted in June 2007.

The conformity of the national law and practice with the provisions of the Revised European Social Charter was reviewed in the 2006 Annual Report of the Defender; the Defender suggested amending the Republic of Armenia Labor Code provisions on the grounds for employment contract termination without notice to ensure their conformity with Article 4§4 of the Revised European Social Charter.[11] However, such amendments to the Labor Code were not made during 2007.

In its Conclusions, the European Committee of Social Rights, too, emphasized the non-conformity of the relevant provisions of the Armenian labor law with Article 4§4 of the Charter. The Committee concluded that the provisions on the termination of employment contracts without notice in certain cases (when the employee fails to fulfill his obligations or fulfills them inadequately, or when there has been a loss of confidence in the employee, or when the employee undertakes military service) are not in conformity with the requirements of the Revised European Social Charter.

The 2006 Annual Report of the Defender attempted to explore the definition of "a reasonable period of notice" in line with the criteria established by the European Committee of Social Rights. The main criterion used by the Committee in defining the "reasonable" period of notice is the length of service.

[11] Article 4§4 of the Charter recognizes the right of all workers to a reasonable period of notice for termination of employment.

In the 2006 Annual Report, the Defender emphasized the fact that the Armenian Labor Code did not require the period of notice to be calculated on the basis of the employee's length of service.

The European Committee of Social Rights, too, noted that the situation in Armenia was not in conformity with the Charter on the ground that the period of notice was not calculated in light of the employee's length of service.

The Committee further stressed that one month was not a reasonable period of notice for employees with more than one year's service.

Based on the experience of the Defender's Office,[12] the 2006 Annual Report stressed the need to revise Article 113(1)(9) of the Labor Code of Armenia to clarify the "pension age" concept. However, none of the aforementioned issues have been resolved yet.

The conformity of Article 17 of the Labor Code (which prescribes the minimum age for employment) with the Revised European Social Charter is addressed in great detail in the section on the rights of the child.

2.2.2. Right to Social Security

Violations of Pension Rights

In the 2006 Annual Report, the Defender addressed the issues arising in connection with the Law on State Pensions, which eliminated the procedure granting a privilege in the calculation of the length of service for the period of employment in particularly hazardous and particularly grave conditions.

Article 45(2) of the Law on State Pensions provides that the accrued length of service for pension purposes cannot be longer than one year per calendar year, with the exception of the procedure stipulated by Article 48 of the Law. However, Article 48 does not deem employment in particularly hazardous and particularly grave conditions as a privilege in the calculation of the length of service.

Article 30 of the Law on State Pension Security of Armenian Citizens, which was in effect prior to the enactment of the Law on State Pensions, required the period of employment in particularly hazardous and particularly grave conditions to be multiplied by 1.5 for purposes of calculating the length of service.

Under the new procedure stipulated by the Law on State Pensions, in the event of submitting additional documents justifying the length of service, the whole pension shall be recalculated, including a calculation of the already-calculated length of service on the basis of available documents in accordance with the new procedure. Thus, the procedure of calculating additional length of service does not apply to employment in particularly hazardous and particularly grave conditions.

Effectively, a person who submits additional documents loses entitlement to the calculation of additional length of service, which under the old law had been

[12] In many cases, the employer dismisses the employee when the latter reaches the pension entitlement age stipulated by the Republic of Armenia Law on State Pensions.

acquired for [the period of] employment in particularly hazardous and particularly grave conditions for purposes of the pension that had already been calculated and assigned to him. Consequently, this provision deprives individuals of rights acquired under the old law.

Considering that the relevant provisions of the Law on State Pensions were not amended since the publication of his 2006 Annual Report, the Defender filed an application with the Constitutional Court of Armenia in September 2007, requesting the Court to determining the conformity of Article 73(2) of the Law on State Pensions with Article 42(3) of the Constitution of Armenia.

Another issue directly affecting the exercise of pension rights is connected with the legally-prescribed possibility to obtain a court order recognizing the length of service in the event of the absence of either the work-book or other documents confirming the length of service.

Under paragraphs 2 and 3 of Article 47 of the Law on State Pensions, courts may not recognize the length of service that meets the required minimum (25 years): courts may recognize the "missing part" of the length of service, provided that it does not exceed 10 years.

Being of the opinion that the restriction imposed by the Law on State Pensions on the recognition of the length of service and the prohibition of such recognition in the event the length of service meets the required minimum (25 years) violate the constitutional right of everyone to an effective legal remedy, the Defender requested the Constitutional Court of Armenia in October 2007 to determine the conformity of paragraphs 2 and 3 of Article 47 of the Law with Article 18(1) of the Constitution of Armenia.

Compensation for Severe Injury Inflicted at Work, Professional Disease, or Other Health Damage Inflicted in Connection with the Performance of Employment Duties

In the 2006 and previous annual reports, the Defender addressed the problem of getting compensation from liquidated organizations for severe injury inflicted at work, professional disease, and other health damage inflicted in connection with the performance of employment duties. However, the problem has not been regulated by legislation yet. In 2007, the Defender continued to receive complaints from citizens who had been rejected compensation for health damage inflicted in connection with the performance of employment duties.

In 2006, the Defender had invited the Prime Minister's attention to the urgent need for legislation addressing this problem. Some background information is provided below.

Paragraph 16 of Government Decree 579 dated November 15, 1992 provides that, in case of the termination of activities due to the liquidation or restructuring of an organization, damage shall be compensated by its successor or, in the absence of one, the social security agency with funding from the state budget. On the same matter, Article 1086 of the Civil Code of Armenia that

entered into force in 1999 defines that, in 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 for the purpose of their payment to the victim. However, there is still no law or government decree establishing such rules. Instead, the Government adopted a decree on November 11, 2004, repealing Paragraph 16 of Government Decree 579 dated November 15, 1992. Consequently, the problem remains unresolved.

The Minister of Labor and Social Affairs sent a letter informing the Defender that, given the urgency of the matter, he had suggested that a draft Law on Mandatory Social Insurance for Workplace Accidents and Professional Diseases be submitted to the Government by end-June 2007 in accordance with the Action Plan Supporting the Implementation of the Government's Program for 2007. The Minister also informed that the draft was being developed and, once finished, would be submitted to the Defender and other stakeholders for discussion and agreement.

Later, the Minister informed that a draft Law on Mandatory Social Insurance for Workplace Accidents and Professional Diseases had been submitted to the Government in accordance with the established procedure.

However, the problem has not been resolved by legislation yet. In September 2007, the Defender again urged the Government to take measures to solve this problem without further delay.

Procedure of Granting Family Poverty Allowances

During 2007, the Defender continued to receive complaints related to the procedure of granting family poverty allowances. Most of them had to do with the lowering of the family eligibility score due to the introduction of a higher premium for each year of the base pension or length of service, which made formerly-eligible families no longer eligible for the family poverty allowance.

Some complaints were concerned with the refusal of the competent authorities to pay family poverty allowances to citizens that did not present a social card. In many of these cases, the problem was solved due to intervention by the Defender.

As mentioned in the 2006 Annual Report, the Family Poverty Assessment Procedure for 2006 (approved under Government Decree 2317-N of December 29, 2005) had introduced some changes that made it easier for families with pensioners to retain their entitlement to the family allowance.

The amendments made to the family poverty assessment procedure by Government Decree 1896-N dated December 28, 2006 ("Decree on Defining the State Allowance Amounts for 2007 and Amending and Supplementing a Number of Government Decrees"), too, were aimed at regulating the aforementioned problem. One of the amendments introduced a more favorable coefficient for single pensioners, which, in case of other conditions being equal, make them

eligible for the allowance. However, the continuing flow of complaints about the procedure of granting allowances indicates that the problem has still not been adequately dealt with.

2.2.3. Right to Education

Article 17(2) of the Revised European Social Charter provides that the Contracting Parties undertake to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools.

Though the Constitution of Armenia and the legislation adopted in accordance with it guarantee everyone's right to education, the European Committee of Social Rights noted, in its Conclusions adopted in 2007 with regard to the report submitted by Armenia, based on other sources, that the education system of Armenia faces a number of issues in terms of accessibility and efficiency, such as absenteeism, non-attendance, and dropouts due to the economic and financial conditions of the family. Many schools cannot function properly during the winter. Due to the low wages, teachers have to leave schools, instead offering private tutoring. Based on other sources, the Committee also noted the misbalance between schools of urban and rural settlements due to the lack of teaching staff in rural areas. The Committee also noted the inadequacy of native language instruction for children from national minorities.

2.2.4. Right to Health Care and Services

The Defender addressed in his 2006 Annual Report two issues related to the right to receive health care and services: 1) the fact that the "osteoporosis, arthrosis" disease is not included in the list of diseases approved under the Government Decree on Approving Social Groups and Lists of Diseases Eligible for Medication Purchases Free of Charge or at Discounted Prices; and 2) the timeframe for government-subsidized treatment of acute psychiatric conditions.

On the first issue, the Defender recommended that the Minister of Health of Armenia take measures to incorporate the "osteoporosis, arthrosis" disease in the list of diseases approved under the Government Decree on Approving Social Groups and Lists of Diseases Eligible for Medication Purchases Free of Charge or at Discounted Prices. However, it has still not been done.

Besides, the Republic of Armenia Law on Psychiatric Care provides that a patient's discharge from the psychiatric in-patient facility shall be performed **if he has recovered and his mental state is adequate, there is no need for further in-patient care, or if the timeframe for checks or expert assessments has expired**. However, the duration of government-subsidized treatment for acute psychiatric conditions remains fixed at 24 days, regardless of the patient's recovery or need for

further in-patient treatment. There have still been no amendments to Decree 346 of the Minister of Health dated April 9, 2004, approving the Prices and List of Authorized Services under State-Guaranteed Free-of-Charge Health Care and Services. In such cases, precisely projecting the period needed for the person to recover is not feasible.

It is also necessary to review some provisions of the Law on Psychiatric Care and their enforcement in practice.

The procedure of compulsory hospitalization of persons with mental disorders is closely connected with not only the right to health care, but also the right to liberty and security of person. Nevertheless, there are serious problems in the legal regulation of these matters.

The Procedure of Involuntary Treatment

Article 15(1) of the Republic of Armenia Law on Psychiatric Care provides that the treatment of a person who has a mental disorder shall be performed on the basis of his or his lawful proxy's written application, with the exception of the cases stipulated by Article 15(3).

Article 15(3) provides that the treatment of a person who has a mental disorder may be carried out without his or his lawful proxy's consent only in case of either applying medical compulsory measures stipulated by law or involuntary hospitalization.

Article 22(1) of the Law provides that a person who has a mental disorder may be hospitalized without his or his lawful proxy's consent only in cases defined by law.

However, neither the Law on Psychiatric Care nor the Civil Procedure Code of Armenia (Chapter 30 of which covers the proceedings of cases of compulsory treatment of citizens in psychiatric hospitals) prescribes the grounds that must be present in order for a person to be subjected to involuntary hospitalization. Usually, such grounds would include the threat of imminent self-harm or harm to others, serious deterioration of the person's health condition in case of the failure to place him in a hospital, and the like.

The Law effectively defines that a person may be hospitalized only in cases defined by law, but such cases are not defined. In the absence of the aforementioned grounds, compulsory hospitalization becomes practically impossible. It is revealing that, from the date the Civil Procedure Code took effect (January 1, 1999) till September 1, 2005, no cases of involuntary treatment in psychiatric hospitals had been heard. As of June 5, 2006, 20 court appeals had been lodged against involuntary treatment by psychiatric institutions.[13]

Hence, it should be asked how exactly the compulsory hospitalization had been performed. One may assume that, in each case, the relevant organization

[13] Report on the Enforcement of the Republic of Armenia Law on Psychiatric Care, Yerevan 2006, Mental Health Foundation.

determined the need for hospitalization and "defined" the grounds, while the courts did not have any criteria to follow in determining whether persons' compulsory treatment in psychiatric institutions had been lawful.

The next question in the area of compulsory hospitalization is connected with judicial review. Under Article 5 of the European Convention on Human Rights, the European Court of Human Rights requires regular judicial review of the status of "persons of unsound mind." However, neither the Law on Psychiatric Care nor the Civil Procedure Code of Armenia defines any procedure of posterior judicial review of involuntary hospitalization.

Article 13 of the Law on Psychiatric Care covers the procedure of disclosing information on the mental health of citizens. It defines such information as medical secrecy, which can only be disclosed to the patient or his lawful proxy at their demand in the cases and procedure stipulated by law.

However, the Armenian legislation is yet to define the cases and procedure of disclosing such information to the patient or his lawful proxy, which may become an obstacle to the practical exercise of this right.

Moreover, there must be a possibility of disclosing such information to other persons and bodies in certain cases; for instance, at the request of the investigating authority for purposes of the investigation, or in order to check and treat a person who is unable to express his will, and in other cases when the interests of the person so require. All of these grounds should be exhaustively defined by law.

The Law prescribes the rights of persons with mental disorders; however, their practical exercise is often rendered impossible due to the lack of any sub-legislative regulation. In the absence of technical conditions, the exercise of such rights often depends on the good will of the personnel in the relevant health care organization.[14]

2.2.5. Right to Property

In his 2006 Annual Report, the Defender thoroughly analyzed the process of expropriation of property for needs of society and the state in connection with urban development projects in the City of Yerevan. This Report will only address the measures implemented and acts adopted since the Constitutional Court published its decision.

In its decision of April 18, 2006, the Constitutional Court of Armenia declared that Article 218 of the Civil Code, Articles 104, 106, and 108 of the Land Code, and Government Decree 1151-N dated August 1 2002 were incompatible with Article 31(3), 43, and a number of other articles of the Constitution of Armenia.

[14] For details, see the Report on the Enforcement of the Republic of Armenia Law on Psychiatric Care, Yerevan 2006, Mental Health Foundation.

Therefore, the relevant legal acts (based on which property had been expropriated for needs of society and the state), which were later declared by the Constitutional Court as incompatible with the Constitution of Armenia, had violated citizens' rights under the Constitution of Armenia and the European Convention on Human Rights.

Article 74(4) of the Republic of Armenia Law on Legal Acts provides that the legal act by which another legal act is declared as null and void may address:

1. The recognition of the violated rights of persons or restoration of the status that existed before the violation;
2. The suspension or termination of acts that violate or threaten to violate the rights of persons; and
3. The compensation of damage inflicted as a consequence of the adoption and voiding of the voided legal act.

Though these provisions of the Law do not apply to cases in which the Constitutional Court declares a legal act as incompatible with the Constitution, the legislature should have addressed the aforementioned issues in the Law on Expropriation of Property for the Needs of Society and State (adopted on November 27, 2006). This Law contains a number of other controversial provisions, on which the Defender had issued his opinion in 2006 (see Annex 7 to the 2006 Annual Report of the Human Rights Defender of the Republic of Armenia).

2.3. Rights Related to Military Service

1. Matters of disciplinary liability in the Armed Forces of the Republic of Armenia are regulated by the Disciplinary Statutes of the Armed Forces of the Republic of Armenia approved under Government Decree 247 dated August 12, 1996.

However, Paragraphs 1 and 2 of Article 83.5 of the Constitution of Armenia provide that restrictions of the rights and freedoms of natural persons and legal entities, their obligations, the types and extent of the liability and the procedure of holding them liable, the means of compulsion and the procedure of applying them, as well as the cases, procedure, and terms of disciplinary liability may be prescribed only by laws of the Republic of Armenia.

Therefore, since the Constitution was amended in 2005, the legal situation in the Armed Forces of the Republic of Armenia is such that a legal act regulating matters of disciplinary liability effectively does not exist, because, as already mentioned, the Disciplinary Statutes of the Armed Forces of the Republic of Armenia were approved under a Government decree, which is impermissible under Paragraphs 1 and 2 of Article 83.5 of the Constitution of Armenia.

Besides, the Disciplinary Statutes of the Armed Forces do not contemplate the types of disciplinary offences: with analogy to general criminal or

administrative law, this is a problem, as commanders may order different types of disciplinary penalties for identical offences, causing righteous indignation among the personnel.

2. During 2007, the Human Rights Defender of Armenia received complaints about violations of the procedure by which military conscription offices enlist reservists. Such problems arise especially in relation to the alternative service of members of religious sects, as regularly reported by international human rights organizations, as well.

Article 24(1)(1) of the Republic of Armenia Law on Military Duty provides that citizens that have completed regular military service or alternative service shall be enlisted in the reserve. A number of citizens that belong to sects have refused on various grounds to perform either regular military service or alternative service, and have been convicted to imprisonment under Article 327 of the Criminal Code of Armenia. Having served a part of their sentence, they have been released; their requests to the military conscription offices to be enlisted as reservists have been denied. The problem is that, under Article 24(1)(3) of the Law on Military Duty, citizens are enlisted as reservists, if they have not been drafted to the armed forces or other troops **in accordance with the procedure stipulated by law before turning 27**. Some of the aforementioned citizens have not turned 27 yet: thus, a person who, for refusing regular military service or alternative service, has served a sentence in accordance with law for such refusal, but, until turning 27, cannot be enlisted as a reservist. Becoming enlisted as a reservist is necessary for purposes of receiving a military card, registration or re-registration at one's residence address, prolonging the validity term of one's passport, getting permission to leave the country, and so on. As a consequence, these individuals cannot exercise their constitutional rights (such as the freedom to choose employment, the freedom of movement, and so on).

Article 24(1) of the Law on Military Duty also fails to prescribe the right of citizens that have a scientific degree (a candidate of science or a doctor of science) to be enlisted as reservists before turning 27.

This issue is currently being discussed.

PART 3.

ANALYSIS OF VIOLATIONS OF HUMAN RIGHTS, BY PUBLIC BODIES

While analyzing violations of human rights by public bodies, it should be noted that, should each official perform his functions properly, there will hardly be any violations of rights.

Article 5(2) of the Constitution of Armenia provides that state and local self-government bodies and public officials may perform only such acts for which they are authorized by the Constitution or laws.

Besides, in their work, public bodies must always abide by the principles enshrined in Article 3 of the Constitution, which states that "the human being, his dignity, and fundamental human rights and freedoms are supreme values.

The state shall ensure the protection of fundamental human and civil rights in conformity with the principles and norms of international law.

The state shall be bound by fundamental human and civil rights as the directly-applicable law."

The Republic of Armenia Law on the Fundamentals of Administration and Administrative Proceedings is drafted with a view to ensuring the exercise of the aforementioned rights: it proclaims the rule of law, respect for rights, and compliance with laws as legally-binding principles for administrative bodies.[15]

In the conduct of administration, administrative bodies may not, with the sole purpose of complying with formalistic requirements, encumber persons with obligations or refuse to grant them rights, if the obligations born by such persons have been substantively honored." (See Article 5 of the Law.)

"In the exercise of discretionary powers, administrative bodies must abide by the need to respect constitutionally-enshrined human and civil rights and freedoms, their equality in law, the proportionality of administration, and the prohibition of arbitrary conduct, and must pursue other aims defined by law." (See Article 6(2) of the Law.)

Any deviation from these principles is considered a violation of human rights and fundamental freedoms. The Defender admits and reviews allegations of such deviations.

A pattern observed in the work of public bodies is that, whenever one of them fails to perform its duties, others fail to exercise their authority to sanction the former. It even happens in cases in which the performance or non-performance of certain acts is criminally punishable. Thus, a citizen finds himself in a vicious

[15] See the 2006 Annual Report of the Human Rights Defender of the Republic of Armenia, Yerevan 2007, p. 74-75.

circle that involves a breach of a core principle of criminal procedure—that of the inevitability of punishment.[16]

The complaints received in 2007, which have been classified by public bodies, indicate that public bodies dealing with requests and complaints of citizens do not necessarily abide by the rule of law, Article 3 of the Constitution, or even the Law on the Fundamentals of Administration and Administrative Proceedings.

The large number of complaints against public bodies, regardless of whether they result in a finding of a violation, shows that the officials of such bodies have failed to perform their duties in respect of processing requests. Even if not all complaints involve violations of rights, they are a consequence of inattentive or uncaring attitudes, the failure to provide adequate information on the grounds of rejecting requests, or other impermissible and negligent practices.

In line with the historical trends, complaints against the law-enforcement agencies (the Police, the Prosecution Office, courts, and bodies under the Ministry of Justice, including the penitentiary institutions) account for the largest share of complaints received in 2007.

The reason is that law-enforcement agencies have the power to restrict rights, which is prone to various risks of violating rights and freedoms. Therefore, the majority of the complaints against law-enforcement agencies have been admitted for review.

3.1. Staff of the President of the Republic of Armenia

Four complaints against the Staff of the President of the Republic of Armenia were received in 2007.

Their authors complained of how the Oversight Service of the President dealt with citizens, and how employees of the Division for Suggestions, Applications, and Complaints had failed to perform or had improperly performed their official duties.

Example 1

A resident of the City of Yerevan alleged unlawful conduct in respect of him by Aida Asatryan, the Head, and Armen Rostomyan, an employee of the Division for Suggestions, Applications, and Complaints of the Oversight Service of the President.

He alleged that Aida Asatryan was concealing his complaints to the President against various officials, including the Vardenis Unit of the Gegharkunik Region Police, prosecutors, and some judges. Moreover, he claimed that Aida Asatryan, by providing false and unlawful responses, was obstructing progress in resolving the matters raised in his complaints.

[16] Examples are provided below.

The applicant also alleged that, on July 30, 2007, when he had visited the aforementioned Division to learn about the response to his letter, Armen Rostomyan had started shouting at him during a conversation, after which he had punched his chest, and then ordered the police officers on duty to remove him from the building.

In his letter 1507 dated September 5, 2007 sent in response to the Defender's request for explanations on the matters raised, the Chief of Staff of the President stated the following:

"On July 30, 2007, the applicant, M.P., during his presence in the Division for Suggestions, Applications, and Complaints of the Oversight Service of the President, behaved improperly and shouted at employees of the Division, as a consequence of which it became necessary to remove him from the building. For many years, he has been sending applications and complaints to the Staff of the President on various matters. Different officials of the Staff, the Oversight Service, and the Division for Suggestions, Applications, and Complaints, have processed them in accordance with the legally-prescribed procedure within the limits of their authority and have informed the applicant of the outcome."

In another inquiry, the Defender requested the Head of the Oversight Service of the Staff of the President to provide copies of M.P.'s complaints addressed to the Staff of the President and of the responses to them.

In attachment to his letter NV-1711 dated October 11, 2007, the Head of the Oversight Service of the Staff of the President sent copies of the citizen's applications and requests and the responses thereto (a total of 37 pages). The analysis of the materials showed that the Division for Suggestions, Applications, and Complaints of the Oversight Service of the President had been processing the citizen's complaints in accordance with the procedure stipulated by law, and that the citizen simply did not agree with the outcome. Therefore, the 37 pages of copies of the citizen's applications and requests to the President, as well as the responses sent to him, were provided to the citizen, so that he could study them and, in case of having any further complaints, submit them to the Defender.

Based on this, the review of the citizen's complaint was terminated.

Example 2

Citizen M.A. informed the Defender's Office that, on December 24, 2004, he had been declared the winner of the civil service competition for the position of a lead expert in the Public Relations and Mass Media Department of the Staff of the President of the Republic of Armenia. Another person, a radio technician by the name H.K., had also been declared a winner of the same competition. During December 28-30, M.A. had frequently telephoned the Staff of the President and the Civil Service Council in order to become informed about which of the two winners had been appointed to the vacant position. An employee of the Human Resource Department of the Staff of the President had orally informed him that he had been appointed to the position for a three-month trial period. On April 4, 2005, he

reported to work and turned in his work-book and two photos, but was not granted access to the order on his appointment.

M.A. complained that, during three months, he had not been given any work instructions, had not been engaged in the performance of any function of the Department, had been isolated from its work, and had not been given a computer. Only in the second half of January 2005 was he granted a pass allowing him to enter the Staff premises; however, M.A. claimed that the pass did not specify the department in which he worked, his position, or the validity term of the pass. He claimed his name was not in the wage list and he did not sign any papers, though he was paid (instead of 41,800 Armenian drams per month, he had been paid 38,073 and 33,210 drams, respectively, for two months).

M.A. also informed that the Human Resource Department of the Staff of the President was still refusing to return his work-book to him.

He had filed a court claim requesting to nullify the order to dismiss him from work, to prolong his trial period, and to confiscate the payment due for the forced outage. The claim had been rejected by all the judicial instances in Armenia. On March 1, 2006, he had lodged two applications with the Letters Division of the Staff of the President, one addressed to the President, and the other to the Chief of Staff; however, his applications were orally rejected.

In his response to the Defender's request for explanations on the matters raised, the Chief of Staff of the President stated: "During meetings, the Division for Suggestions, Applications, and Complaints of the Oversight Service of the President answered the questions raised by M.A. in his applications. As for his request to return his work-book, he was repeatedly told during the meetings that, as soon as he returned to the Human Resource Department Pass number 4 granting access to the Staff premises, his work-book would be returned to him. M.A.'s claim against the "Staff of the President of Armenia" state government institution has been heard by the first instance, appellate, and cassation courts of Armenia. The Cassation Court upheld the judgment of the Civil Appellate Court and rejected the cassation appeal."

Then, the Defender sent another letter to the Chief of Staff to the President, drawing his attention to the fact that M.A., in his court claims against the "Staff of the President of Armenia" state government institution, had requested to nullify the order to dismiss him from work, to prolong his trial period, and to confiscate the payment due for the forced outage. He had not filed any court claim demanding to return his work-book or to provide the originals of his appointment and dismissal orders. Moreover, Article 27 of the Labor Code provides: "When dismissing an employee, the administration must return to the employee his work-book and perform final settlement during the period stipulated by Article 105 of the Labor Code."

Article 130(2) of the Labor Code of Armenia provides that, on the final settlement day, the employer must pay the employee his salary and other related

payments, and to fill out in accordance with the established procedure and return to the employee his work-book.

Based on the foregoing, the Defender suggested taking measures to return M.A.'s work-book and to provide to him his appointment and dismissal orders.

In response, the Head of the Human Resource Department of the Staff of the President sent letter HKB-53 dated May 3, 2007, stating the following: "By letter HKB-33 dated March 21, 2007, M.A. was informed that, at 14:15 on March 23, 2007, he could report to the Staff of the President in relation to the possibility to receive his work-book and his appointment and dismissal orders. However, on the scheduled day, M.A. failed to report to the Staff of the President."

The review of the complaint was terminated.

Later, in an additional complaint, M.A. made new allegations of fraud and unlawful acts committed in respect of him by officials of the Staff of the President, the Civil Service Council, and the Real Estate Cadastre Committee and asked to forward his complaints and supporting documents to the Office of the Prosecutor General for further action.

The Defender decided to forward M.A.'s new complaint and supporting documents to the Office of the Prosecutor General for review.

Example 3

In his letter to the Human Rights Defender of the Republic of Armenia, Yerevan citizen K.K. informed that, on May 22, 2007, he had sent letters to V. Barseghyan, the Head of the Oversight Service of the Staff of the President of the Republic of Armenia, but had not received any response.

A. Bakhshyan, the Head of the Oversight Service of the Staff of the President, responded to the Defender's inquiry by stating that, on May 23, 2007, the Staff of the President had received registered envelope number 536 containing two letters, one of which was addressed to the President, and the other to the Head of the Oversight Service of the Staff of the President. She further stated that the letters did not contain any suggestion, request, or demand. She also informed that over a dozen letters sent by the same citizen in the past had been processed in accordance with the procedure stipulated by law, and that he had been informed about their review both in writing and orally during meetings with employees of the Staff of the President.

Considering that the review of K.K.'s complaint did not reveal any violation of his rights or fundamental freedoms by state or local self-government bodies or their officials, the Defender, based on Article 15(1)(2) of the Law on the Human Rights Defender, decided to find no violation of human rights or freedoms.

3.2. Police of the Republic of Armenia

A total of 136 complaints against the police system were received during 2007, of which:

- 73 were admitted for review;
- 16 were given information about available remedies;
- 20 were forwarded to other bodies for review;
- 17 were not admitted;
- 0 had the review terminated at the applicant's request; and
- 10 were still pending review.

The complaints against the Police were mainly concerned with groundless apprehension to the Police, unlawful detention, failing to instigate a criminal case on the basis of a crime report, failing to investigate actively open criminal cases, using violence or threats to extort confession from the accused, torturing them, filing groundless charges, and so on.

Some the complaints against the Police are connected with the actions (inaction) of the Passport and Visa Department of the Police.

The authors of these complaints mainly complain of police conduct, the lawfulness of which must be checked by the Prosecution Office: for instance, complaints about the failure to instigate a criminal case on the basis of evidence, the suspension of criminal cases, or the lawfulness of police requests for detention orders have been generally forwarded to the Prosecution Office for review, or the legally-prescribed procedure for appealing against such decisions was explained to the applicants.

When a complaint was connected with the lawfulness of the refusal to instigate a criminal case on the basis of evidence, and there were grounds to question the legality of the refusal, the Office of the Defender demanded the case file from the competent authority and studied it. In case of substantiated complaints, the Defender's Office suggested to the Prosecutor General abolishing/reviewing the decision to refuse the instigation of a criminal case.

The Defender's Office found some cases in which, instead of instigating a criminal case on the basis of a crime report in accordance with the procedure stipulated by Article 181 of the Criminal Procedure Code, sending a copy of such decision to the applicant, and explaining the right to appeal against the decision, the Police finally dealt with the issue by filing an internal statement or report, about which the applicants were often not even informed. The Defender has addressed this issue in earlier annual reports, as well. Though the practice of only filing internal statements has been mainly abolished, such cases can still be found.

The number of complaints against the Police has increased significantly in 2007 relative to the years before. The increase may be due to the unlawful actions (inaction) of police officers and the amendments made to the criminal procedure legislation at yearend, resulting in the complete transfer of pre-trial investigation functions to the Police.

In any event, complaints regarding the conduct of police officers and officials are worrisome. However, the cooperation between the Human Rights Defender and the Police has become more efficient in 2007 relative to 2006.

Studies have shown that, in some cases, citizens are unlawfully held in police stations. The Defender's Office has received a number of allegations about physical and psychological ill-treatment during police custody as a means of extorting testimony; however, in response to all of the Defender's letters, competent authorities have informed that such allegations are not truthful. On the other hand, representatives of international organizations have repeatedly stated that ill-treatment is not precluded even in democratic countries, but that officials found guilty of such practices are criminally punished.

A significant share of the complaints received by the Defender's Office is concerned with cruel and inhuman treatment and torture by police officers.

The Defender has repeatedly voiced his concerns over the death of citizen L. Gulyan.

Example 1

A citizen informed the Defender's Office that, at around 3am on May 10, 2007, her husband L. Gulyan had been apprehended to the Shengavit Police Station to testify in relation to a murder committed earlier that day. She stated that her husband had been held in the Shengavit Police Station until 11pm on May 10, after which he had been released on condition of returning to the Police Station at 10am in the next morning.

She stated that, at the specified hour on the next day, her husband had voluntarily reported to the Police Station, where he had stayed for around three hours, after which he had been transferred from the Shengavit Police Station to the Republic of Armenia Police General Department for Criminal Intelligence.

The applicant also informed that, only at around 5pm on May 12, she had found out that her husband L. Gulyan had fallen from the second floor of the police building in an attempt to escape and had died; the applicant claimed it was absurd, and that she was sure that her husband had died because of violence and torture committed by police officers.

Based on his authority under Article 12(1)(4) of the Law on the Human Rights Defender, the Defender expected the Prosecutor General of Armenia to oversee the case directly with a view to ensuring its comprehensive, impartial, and complete investigation.

During the second half of 2007, the share of complaints against the actions of the Traffic Police increased in the total number of complaints against the Police. Many complaints raised the issue of first instance courts having heard cases of administrative infringements on the basis of claims filed by the Traffic police, about which the respective citizens had not been properly informed; as a consequence, they only found out after the bailiffs instigated proceedings to confiscate amounts ordered by courts. Citizens claim that, in some cases, the protocol on the administrative infringement states a period during which the citizen has not violated any traffic rule or has not even driven a vehicle.

Example 2

A citizen informed the Defender's Office that, in a telephone call on October 25, 2007, the Department for Execution of Court Acts had notified him of a certain amount to be confiscated from him for violating the traffic rules. The applicant claimed he had never had or driven a car. He said he had not even been informed of a court hearing.

As of the last day of 2007, no response had been received to the Defender's letter on this issue.

Example 3

An applicant informed the Defender's Office that, on August 8, 2006, an officer of the Traffic Police had subjected him to an administrative penalty of 3,000 drams for violating the traffic rules. On September 1, 2006, he had paid this amount at the Armenian Savings Bank and submitted the receipt to the Traffic Police, where it had been registered and returned to him.

The applicant also informed that, although the whole amount had been paid, he had later received a summons from the First Instance Court of the Malatia-Sebastia Districts of Yerevan. He had submitted the receipt to the court, which had disregarded it and ordered confiscation of 15,000 drams.

Later, the judgment had been sent to the Department for Execution of Court Acts, which had demanded him to pay 20,000 drams.

Here, it is important to note that the Traffic Police does not respond to the Defender's letters in a timely fashion, which is a grave violation of law.

Below are some other typical examples of how the police violate the law.

Example 4

A citizen informed the Defender's Office that, on July 6, 2007, he had requested the Yerevan City Police Department Central District Passport Division to prolong the validity term of his passport, but had been denied.

In response to the Defender's inquiry for information on the matter raised in the complaint, the Yerevan City Police Department Central District Passport Division sent letter 43/6389 stating that the citizen's passport validity term had not been prolonged due to a restriction in respect of him in the computer system.

In the same letter, the Central District Passport Division informed the Defender that, on August 2, 2007, the restriction had been lifted by the Passport and Visa Department, and the validity term of the citizen's passport had been prolonged.

Thus, the matter raised in the complaint was lawfully addressed.

Example 5

An applicant informed the Defender that he had refused compulsory military service on the basis of religious belief, for which he had been charged with

a crime and sentenced to a prison term under Article 327(1) of the Criminal Code of Armenia.

He stated that, later, he had requested a passport from the Hrazdan Division of the Kotayk Region Department of Police, but had been denied without any explanation.

In response to the Defender's inquiry, the Hrazdan Division of the Kotayk Region Department of Police informed that it had issued a passport to the citizen on February 3, 2007. Based on the foregoing, the review of the complaint was terminated on the ground of the issue having been resolved favorably for the applicant.

Example 6

In a letter to the Defender and a number of other senior officials, a defense lawyer informed that his client had been charged on June 22, 2007 for allegedly breaking into the Molybdenum Concentrate Drying Workshop of the Enrichment Plant of the Zangezour Copper and Molybdenum Factory at around 2am on November 29, 2006 and stealing 602 kg of molybdenum concentrate worth a total of 4,381,356 drams. A July 11, 2007 judgment of the Criminal Appellate Court of the Republic of Armenia had overturned a June 22 decision of the Syunik Region First Instance Court ordering to detain the accused and had released him on bail.

After his release on bail, the accused and his lawyer had thrice been invited to the Investigative Unit of the Syunik Regional Department of Police, additionally interrogated as an accused in a confrontation with a witness, and reported to the investigative authority whenever lawfully demanded by the investigator.

The applicant also informed that, on August 13, 2007, without his knowledge, his client had been invited to the Kapan Police Station and, after two hours, transferred in handcuffs to the City of Yerevan, the Police General Department for the Fight against Organized Crime, where he had been held for 23 hours before being released.

The police officers had disregarded his client's demands to notify his lawyer: this is a grave violation of the Constitution and criminal procedure legislation of Armenia.

The aforementioned is a typical example of how a person is deprived of liberty; however, in a letter sent to the Defender, the Police informed that, in order to clarify and justify certain aspects of the criminal case, based on an instruction from the Office of the Prosecutor General, the accused had through the Kapan Police Station been **invited** to the Police General Department for the Fight against Organized Crime for **an interview**. **The police further stated that** the person had not undergone any ill-treatment or violation of his rights and freedoms.

However, the status of being "invited" is not defined in the criminal procedure legislation, and such responses of the Police aim at legitimizing their actions.

Example 7

Based on an urgent request, the Defender's staff visited the Noubarashen Penitentiary Institution and met with a detainee on November 19, 2007. During the interview, he informed the Defender's staff that, during the period from October 5 to 7, he had been unlawfully detained in the Masthots Police Station (in Yerevan), where the criminal intelligence officers had cruelly battered him. The applicant claimed that he had confessed the stealing, but the officers, not considering it sufficient, had continued to beat him so that he pled guilty of other crimes that he had not actually committed. The applicant stated that they had hit him with truncheons on his head, legs, and arms, inflicting deep wounds, hairfall on the respective part of his head, and dislocation and bruising of the arm joint.

During their visit, the Defender's staff took note of the injuries and studied the "Journal of Bodily Injuries" at the Noubarashen Penitentiary Institution. It was stated in the journal that the arrested person had been admitted to the Noubarashen Penitentiary Institution on October 9, 2007 with light-blue hemorrhage around his back and forearms, as well as scratches on is forehead.

The Defender suggested to the Police Chief of Armenia conducting an internal investigation and, in case of discovering violations, taking measures to punish the guilty individuals in accordance with law. However, as of the last day of 2007, no response was received.

Example 8

A citizen informed the Defender's Office that, at around 6am on August 15, 2007, around 10 persons had jumped over his fence, broken into his house (in the Dzoraghbyur Village of the Kotayk Region) through the window, and battered him. In fear, the applicant had cut his veins, stabbed himself with a knife, and lost consciousness. He came back to his senses in the Intensive Care Unit of the Abovyan City Hospital after surgery of his liver, stomach, and other organs. He informed that the people that had battered him had introduced themselves as "employees of the Khorhrdayin District Station."

In response to the Defender's inquiry regarding the matters raised in the complaint, the Head of the Investigative Department of the Office of the Prosecutor General informed that, on August 17, 2007, the Kotayk Investigative division of the General Investigative Department of the Police had instigated a criminal case based on Article 110 of the Criminal Code in relation to the alleged incitement of suicide by means of threat by officers of the Criminal Intelligence Unit of the Nor-Nork District Station of the Police, and that, starting from September 25, 2007, the pre-trial investigation of the criminal case was underway in the Investigative Department of the Office of the Prosecutor General.

On September 27, 2007, the citizen was invited to visit the investigator, but to date, had failed to do so. The Kotayk Regional Police was instructed to obligate him to report to the investigator.

As of the last day of 2007, there was still no information about further progress under the criminal case.

Contacts with police officers have indicated that they face a number of problems: police stations and units do not have adequate equipment and computers, while the regional units do not have any. There is no Internet connectivity. They do not receive the official gazette, and training courses are rarely organized.

3.3. Prosecution Office

During 2007, the Human Rights Defender of the Republic of Armenia received a total of 102 complaints against the actions (inaction) and decisions of the Prosecution Office. Consequently, the following decisions were made:

- 26 were admitted for review;
- 15 were given information about available remedies;
- 33 were forwarded to other bodies for review;
- 18 were not admitted;
- 0 had the review terminated at the applicant's request; and
- 10 were still pending review.

The complaints against the Prosecution Office were mainly concerned with violations committed by employees of the prosecution office in the investigation of criminal cases: suspects and the accused are not notified of their right to have defense counsel or of other rights during the time periods stipulated by the criminal procedure legislation, cases are not investigated comprehensively and objectively, and the required investigative and procedural activities are not carried out. Though there are a significant number of allegations of interrogation using psychological pressure, the Defender is unable to prove or confirm them, because the competent state officials deny such allegations and there is no other evidence. In many cases, applicants ask the Defender to oversee the lawfulness of the criminal case investigation or court proceedings, or even to perform various procedural activities, despite the fact that the power to oversee the lawfulness of the pre-trial investigation is vested in the prosecutor. As a consequence, it has been impossible to find violations of human rights in some of the cases in which applicants alleged unlawful conduct (inaction) by employees of the Prosecution Office.

However, some of the complaints forwarded to the Office of the Prosecutor General have been addressed to the applicant's satisfaction. Unlike other public bodies, the Prosecution Office has closely cooperated with the Defender's Office. The letters sent to and received from the Prosecution Office in relation to complaints have been discussed with the Organizational Control, Statistics, and Analysis Department of the Prosecution Office, and the shortcomings of prosecution offices in various communities and regions have been identified. The Prosecutor General has instructed his office to follow up more thoroughly on the

issues raised by the Defender and to conduct comprehensive and objective review of facts.

Example 1

A defense lawyer informed the Defender that his client had been arrested by decision of an investigator of the Erebouni Investigative Division of the Police and charged under Article 112(1) of the Criminal Code for kicking and punching another citizen's abdomen and head during a fight, as a consequence of which the latter had fallen down, broken a leg, and suffered grave bodily injury.

On September 1, 2007, the accused was detained for two months. The defense requested the First Instance Court of the Erebouni and Noubarashen Districts to release the accused on bail, and on September 28, 2007, the court granted this request.

About a week later, on October 4, based on an instruction of the Prosecutor for Erebouni and Noubarashen Districts, the investigator of the Erebouni Investigative Division of the Police decided to terminate the decision to release the accused on bail, and again detained him.

The lawyer informed that the decision to re-detain his client was motivated by the investigator's argument that, since his release on bail, the accused had failed to report to the investigator when summoned, thus avoiding the investigation.

The investigator had further claimed that the accused, through his relative, had influenced a witness to change his pre-trial testimony in favor of the accused.

The applicant claimed that these arguments were groundless and not truthful, and that the investigator's decision to terminate the decision to release him on bail was unlawful.

In response to the Defender's request for information on the questions raised in the complaint, the Office of the Prosecutor General sent the following letter:

"The review of the criminal case showed that, on December 4, 2007, the investigator of the Erebouni Investigative Division of the Police and the prosecutor had jointly decided to terminate the court decision authorizing the release of the accused on bail and instead to apply the same court's detention order dated September 1, 2007, on the ground that the accused, while at large, would obstruct the pre-trial investigation."

The defense lawyer appealed to court against the aforementioned decision of the investigator. The appeal was granted and the accused was released.

The Office of the Prosecutor General convened an urgent meeting to discuss the lawfulness of investigator Deleyan's decision to terminate the court decision to release the accused on bail and to detain him again for a 15-day period. It was established that the investigator's decision had been made in violation of Articles 41, 136, 143, and 151 of the Criminal Procedure Code.

As a result of the urgent meeting, it was decided to draw the attention of the Prosecutor for Erebouni and Noubarashen Districts to such cases in order to preclude the erroneous and arbitrary construal and application of law.

Example 2

A group of applicants informed the Defender that, for about a year, law-enforcement agencies were disregarding their complaints regarding the unlawful actions of the Headmaster of School 175 in Yerevan. They said that their complaints had alleged specific facts related to the headmaster's unlawful conduct, including the issuance of a graduation certificate to a person that was in Greece, the existence of fake signatures in protocols, and other similar facts.

The applicants also informed that a number of teachers were reporting facts confirming the unlawful conduct of the headmaster, but the **employees of the Prosecution Office of the Erebouni and Noubarashen districts of Yerevan** and education sector officials had failed to take any legal action.

After the Defender sent a letter, the Office of the Prosecutor General informed that the case file was being developed in the Prosecution Office of the Shengavit District of Yerevan.

In some cases, employees of the prosecution office do not comply with requirements of the Criminal Procedure Code, such as Article 181 on the decisions that must be made. In quite a few cases, when citizens have requested the prosecution office to instigate a criminal case in relation to the competent officials' failure to execute final court acts, such requests have been disregarded due to the fact that the alleged offender is a state official.

Example 3

A citizen informed the Defender's Office that the First Instance Court of the Yerevan City Center and Nork-Marash Districts had granted his claim against the Yerevan Mayor and required the later to prolong the deadline set by Paragraph 4.2 of Decision 1269 dated October 16, 2001, thus approving the applicant's architectural design specifications, which the Yerevan Mayor had appealed to the Civil Appellate Court and later the Cassation Court of Armenia. All of the aforementioned courts had ruled in the applicant's favor. Based on an execution order of the Civil Appellate Court, the Department for Execution of Court Acts instigated execution proceedings on July 29, 2004, but had so far been unable to comply with the requirements indicated in the judgment. The applicant also informed the Defender's Office that, on April 22, 2004, he had applied to the Office of the Prosecutor General in connection with the fact that the final judgment of the Civil Appellate Court was not being executed; the Office of the Prosecutor General had forwarded his application to the Yerevan City Prosecution Office, which, in the letter dated March 12, 2007, informed the applicant that the Yerevan City Administration could consider the prolongation of the deadline and approval

of the architectural design specifications only after the Yerevan Urban Development Plan (Getar Development Project) were approved.

Based on the foregoing, the Defender sent a letter to the Prosecutor General. The Deputy Prosecutor General replied by stating that the Yerevan City Prosecutor had been instructed to examine and resolve the matter in accordance with the procedure stipulated by law. Later, the Defender received a letter from the Yerevan City Prosecutor, trying to justify the arguments put forward by the Yerevan Mayor for not complying with requirements of the Armenian legislation.

These arguments cannot justify the failure to not execute a judgment. Under Article 14 of the Civil Procedure Code of the Republic of Armenia, a court act that has become final shall be binding on all state and local self-government bodies, their officials, legal entities, and citizens, and must be executed in the Republic of Armenia territory. Moreover, Article 353 of the Criminal Code criminalizes an official's intentional failure to execute or the obstruction of the execution of a final court act.

There are usually no cases off breaching deadlines; however, the Defender's Office continues to receive letters that substantively fail to address some of the issues alleged in citizens' complaints.

Some of the complaints against the Prosecution Office have not been reviewed by the Defender; the authors of some others have been informed of the available remedies. Most of these complaints have to do with the weighing of evidence, groundless charges, and the like.

A large number of complaints are connected with the formalistic nature of the "appeal to a higher authority." Experience has shown that complaints in which citizens complain of the activities of officials of various units of the Office of the Prosecutor General are forwarded to and reviewed by the officials against whom citizens complain. This practice seriously undermines not only the effectiveness of available remedies, but also public trust in the agency, causing people to look for other ways of solving their problems.

Nevertheless, the best achievement in 2007 is the closer cooperation between the Office of the Defender and the Office of the Prosecutor General with a view to safeguarding human and civil rights and freedoms.

3.4. Courts

Complaints against courts are mainly connected with judgments, rulings, and decisions. While it is natural for convicted persons to be dissatisfied with their conviction, or a party to a civil case to complain about a judgment not in its favor, the large number of complaints illustrates that public trust in the judiciary remains far from adequate.

The 159 complaints against courts received in 2007 were dealt with in the following way:

- 23 were admitted for review;
- 7 were given information about available remedies;
- 4 were forwarded to other bodies for review;
- 109 were not admitted;
- 0 had the review terminated at the applicant's request; and
- 16 were still pending review.

Of all the complaints against courts received in 2007, the Group for Restoration of the Criminal Procedural and Military Servicemen's Rights admitted only one complaint for review: it is concerned with the review of the court-ordered detention, rather than the sentencing or the finding of guilt. This complaint is based on a statement by Gagik Hakobyan (Armenian citizen, co-owner of "Royal-Armenia" LLC) addressed to the Defender, in which he informed that he had been unable to take part in hearings of the Criminal Appellate Court of Armenia only because, due to health problems, he was in Spain for treatment during a lengthy period, while the court, disregarding this fact, had declared him fugitive and ordered to detain him.

The applicant also informed the Defender of his decision to interrupt his treatment abroad and return to Armenia in order voluntarily to appear before the Criminal Appellate Court on October 3, 2007 and to take part in the 11am hearing in the criminal case instigated against him and Aram Ghazaryan.

G. Hakobyan also stated that copies of this statement had been sent through DHL to the Criminal Appellate Court, his lawyer, and a number of news agencies.

Considering that G. Hakobyan had expressed his willingness to voluntarily appear before the court, and based on Article 16 of the Law on the Human Rights Defender, the Defender suggested to M. Khachatryan, the President of the Criminal Appellate Court, considering the possibility of releasing G. Hakobyan on bail, but has still not received any response from the Court.

3.4.1. Monitoring of Court Sessions and Practice

The monitoring of human rights and freedoms is primarily based on everyone's awareness of his rights and ability to protect them from encroachments. Everyone should know his rights and be able to exercise them without violating the rights of others. By publicizing and disseminating objective information on violations of human rights, the Defender draws the attention of state and local self-government bodies and their officials to a case, expecting that similar violations will be precluded in the future. The activities of the Defender, especially the monitoring, help to increase the awareness of means and methods of protecting human rights.

While the analysis of complaints does not reveal the complete picture of violations of human rights and freedoms, their comparison with other sources of

information on violations ensures the objective and credible assessment of the situation.

Article 16 of the Republic of Armenia Law on the Human Rights Defender provides: "Based on the review and analysis of information on human rights and freedoms, the Defender may consolidate findings and send consultative clarifications and recommendations to state and local self-government bodies and their officials."

In order to review and analyze potential violations of procedural rights indicated by applicants, staff of the Defender have monitored court sessions and, based on Article 12 of the Law on the Human Rights Defender, have gained access to cases on which there are final judgments, rulings, or decisions.

Applicants have been told about the powers of the Defender, including his inability under Article 7 of the Law on the Human Rights Defender to interfere with court proceedings.

Some of the complaints addressed to the Defender are connected with violations of the procedure legislation, including unreasonable delays in proceedings, the failure to send the claim, judgment, ruling, or decision to the parties in due time, the failure to give parties due notice of the hearing, and the like.

Below are some typical examples.

Example 1

In its decision dated January 26, 2007, the Cassation Court of Armenia addressed the matter of due notice: the party appealing to the Cassation Court had been unable to participate in the hearing at the first instance court because of not getting due notice, as a consequence of which he had lost property. The Cassation Court noted that "regardless of the method of notification, the notice must be such as to enable proving the fact of notifying the party of the court hearing."

Then, the Cassation Court explained that properly notifying the parties of the time and place of a court hearing and other procedural activities is an essential element of the parties' right to a fair trial, equality before the law, and adversarial proceedings.

The European Court of Human Rights has noted in its judgments that the principle of "equality" in terms of a "fair balance" between the parties requires each party to have a reasonable possibility to present his case in conditions that will not place him at a disadvantage vis-à-vis his opponent.

The principle of adversarial proceedings implies that each party must have the possibility to learn about and comment on evidence that exists in the case or is presented additionally.

The Cassation Court found that parties' right to be informed, and the court's obligation to inform parties, of the time and place of the court hearing under Article 78 of the Civil Procedure Code of Armenia are directly connected with the universal principle of everyone's equality before the law proclaimed in the

Armenian Constitution and the principles of adversarial proceedings and equality of arms stipulated by the Civil Procedure Code of Armenia.

The aforementioned principles can be fully implemented only if each party to the case is granted the opportunity to be present at the court hearing.

Therefore, it is the court's obligation to notify parties of the time and place of the court hearing, and the failure to honor this obligation is a "significant breach of procedure law" in terms of Article 227 of the Civil Procedure Code of Armenia.

Example 2

In its decision dated December 21, 2006, the Cassation Court of Armenia addressed another crucial matter connected with everyone's right to the peaceful enjoyment of his possessions, which is safeguarded by the Constitution of Armenia and Article 1 of Protocol 1 to the European Convention on Human Rights.

In its decision, the Cassation Court answered the question whether the State Committee of the Real Estate Cadastre had the right (under Article 43 of the Law on State Registration of Rights over Property) to deny registration of persons' rights arising out of administrative decisions.

The Cassation Court noted that the State Committee of the Real Estate Cadastre is a state body that only registers rights as they arise and, under Article 42 of the Constitution of Armenia, may not impose on persons obligations that are not prescribed by the Law on State Registration of Rights over Property or other laws of Armenia.

The provision of Article 43 of the Law on State Registration of Rights over Property, which defines the ground for denying state registration ("if documents filed for registration are not compiled in accordance with the procedure stipulated by law"), must be construed in line with the literal meaning of the expression and the words of which it consists, without altering, broadening, or narrowing its meaning.

The Cassation Court found that the act of checking whether "documents filed for registration are compiled in accordance with the procedure stipulated by law" should be limited to the "compilation," form, and content of each document, rather than a study of other documents not related to the ones filed for registration, demands to file additional documents, citing opinions or conclusions of other entities not prescribed by law, or the legal authority of other entities (including other administrative bodies).

Then, the Cassation Court addressed Article 43(2) of the Law on State Registration of Rights over Property, which prohibits refusal of state registration of rights over property on grounds other than those stipulated by the Law, including the ground of "inexpediency." Article 43(3) requires the refusal to cite the respective "violation of the law or legal act."

In this case, the legislature was referring to the "violation of the law or legal act" by the applicant, and this clause could not be construed otherwise. Moreover, Article 56 ("Certainty of Administrative Acts") of the Republic of

Armenia Law on the Fundamentals of Administration and Administrative Proceedings requires an administrative act to be worded in a clear and understandable manner. The content of an administrative act must be phrased in such a way as to make clear for the reader what right is granted, what right is restricted, what right the person is deprived of, or what obligation is imposed.

Paragraphs 1(c) and 1(d) of Article 62 of the Law on the Fundamentals of Administration and Administrative Proceedings provides that an administrative act is null and void, if it contains the following obvious grave mistakes: if it is not clear from the act what matter it regulates, or if the act imposes a clearly disproportionate obligation on the person affected by such act.

The Cassation Court noted that, in this case, the person that received the relevant administrative act saw "possible violations of law by another state body" as the ground for the refusal to register his rights over property.

It is not clear what matter is regulated by the administrative act made by the State Committee of the Real Estate Cadastre. Besides, the act imposes a clearly disproportionate obligation on the person affected by such act.

The Cassation Court concluded that the administrative act of the State Committee of the Real Estate Cadastre on denying registration of rights over property was null and void, and that, by incorrectly applying of Article 43 of the Law on State Registration of Rights over Property, the State Committee of the Real Estate Cadastre had violated the citizen's right to the peaceful enjoyment of his possessions, which is safeguarded by the Constitution of Armenia and Article 1 of Protocol 1 to the European Convention on Human Rights.

Example 3

In its decision dated December 21, 2006, the Cassation Court of Armenia addressed issues connected with the reasoning of judgments. The Cassation Court noted that, under Article 132(1) of the Civil Procedure Code, the reasoning of the judgment must cite the facts of the case established by the court, the evidence on which the court based its inferences, the arguments for rejecting certain evidence, and the laws and other legal acts that the court applied to enter into the judgment.

The Cassation Court emphasized that, in each case, courts must provide both factual and legal reasoning of their judgments.

"The legal reasoning of the judgment involves the selection and application of the relevant rules of substantive law towards established facts and legal issues, including the rule/-s based on which the court finds whether or not there is a disputed legal matter.

The judgment must not only cite the part of the substantive law that prescribes the rule to be applied, but also explain why exactly that rule must be applied."

The Cassation Court found that the appealed judgment of the Economic Court of Armenia was void of legal reasoning, which meant that it could not be lawful, persuasive, or authoritative.

Example 4

In its decision dated March 2, 2007, the Cassation Court of Armenia addressed the inconsistency between some provisions of the Civil Code and Article 23 of the Law on State Registration of Rights over Property.

The Cassation Court noted that one of the significant facts for the appeal was that there was no evidence in the case of the Civil Appellate Court properly notifying the parties of the time and place of the court hearing on August 3, 2006. The Civil Appellate Court had heard the case in their absence.

As to the grounds of the appeal, the Cassation Court noted that, under Articles 135, 301, and 563 of the Civil Code of Armenia, rights arising out of transactions with real estate are subject to state registration.

Article 449(3) of the Civil Code provides that the contract giving rise to rights subject to state registration shall be considered concluded at the time the right is registered.

Article 176(2) of the Civil Code provides that, if the right over real estate is subject to state registration, the ownership right of the purchaser arises at the time of such registration.

The logical analysis of these rules shows that, for a real estate purchase and sale agreement to be considered concluded, it is not sufficient for the parties to consent to all of the material terms by signing it and having it notarized.

A contract is deemed concluded when the rights arising out of the contract (i.e. the ownership rights over real estate) are registered. In such situations, the time of concluding the contract is the same as the time of the state registration of rights arising out of such contract.

The Cassation Court found a logical inconsistency between the aforementioned provisions of the Civil Code and Article 23 of the Law on State Registration of Rights over Property.

Under Article 9(6) of the Republic of Armenia Law on Legal Acts, in a sphere regulated by a code, all the laws of Armenia must be in conformity with the code.

The same principle is enshrined in Article 1(2) of the Civil Code, which provides that civil law rules contained in other laws must be in conformity with the Civil Code.

Article 86(2) of the Law on Legal Acts provides that, if a legal act is adopted for the enforcement of or in accordance with a legal act of the same or more superior legal force, then the former act shall be construed primarily on the basis of the rules contemplated by the more superior legal act. Article 86(1) provides that a legal act shall be construed in accordance with the literal meaning of the words and expressions contained therein, with due consideration of the requirements of the law and not altering its meaning.

In this decision, the Cassation Court also addressed the issue of state registration of rights over property within 30 days of executing the transaction. In its reasoning, the Cassation Court noted that, in terms of construing the literal

meaning of the expression "day (moment) of executing a transaction (concluding a contract)," the Law on State Registration of Rights over Property is inferior to and must correspond to the Civil Code of Armenia, and that the expression "within a 30-day period of concluding the transaction" found in Article 23 of the Law on State Registration of Rights over Property may be construed only in accordance with the literal meaning of the words contained therein based on Article 449(3) of the Civil Code, which has more superior legal force. Therefore, the Cassation Court found, based on the facts of this case, that the requirement on the 30-day period for applying for state registration of rights arising out of transactions with property did not have any legal consequences.

The Cassation Court found that courts or state bodies must not in any event construe the legislative inconsistency found in this case to the detriment of private persons.

In the final part of its decision, the Cassation Court also noted that the Shengavit District Subdivision of the State Committee of the Real Estate Cadastre, by denying the citizen's application to register ownership rights on the ground of not submitting the application within the 30-day period, had incorrectly construed Article 23 of the Law on State Registration of Rights over Property, which had led to its refusal to register a person's ownership right on a basis that was not prescribed by Article 43 of the same Law.

3.4.2. Monitoring of Delays in Court Proceedings and Violations of the Right to a Fair Trial

During 2007, a significant number of citizens requested the Defender to monitor their court proceedings and to render advice on the protection of their procedural rights.

Some violations of procedural rights mentioned in the 2006 Annual Report were addressed by the European Court of Human Rights in judgments against the Republic of Armenia. Due to the lack of proper notification, in the case of Nikoghosyan and Melkonyan vs. Armenia (judgment of December 6, 2007), the European Court of Human Rights found a violation of the Convention, because the applicants had not been notified in a timely manner and had been unable to participate in the court hearing. In the case of Harutyunyan vs. Armenia (judgment of June 28, 2007), the European Court of Human Rights found a violation of the right to a fair trial under Article 6 of the Convention. In another case examined by the European Court (Cheghlyan vs. Armenia), the friendly settlement reached indirectly proves that citizens, not having won even one civil case connected with the protection of their property rights in national courts over the course of five years, apply to international courts and, in the very first case examined by the European Court, the state enters into a friendly settlement, thereby admitting that human rights had been violated.

When proposing sanctions against judges to be applied by the President of Armenia, the Justice Council must treat all judges in the same manner: after the European Court's judgment in the case of Misha Harutyunyan vs. Armenia, the Justice Council should have considered sanctioning not only the first instance national court judge, but also the Criminal and Military Appellate Court and the Cassation Court judges that had made the same mistake in domestic proceedings. It was necessary to ensure the fair and equal application of law in relation to all the judges who had made mistakes in domestic proceedings leading to review by the Justice Council.

During 2007, similar to 2006 (see the "2.2.2. Right to a Fair Trial" section of the 2006 Annual Report of the Defender), a large share of the complaints against courts were concerned with violations of the procedure laws, such as unreasonable delays in proceedings, the failure to send the claim, judgment, ruling, or decision to the parties in due time, the failure to give parties due notice of the hearing, and the like.

A large number of complaints were received by the Defender in 2007 from citizens that had been deprived of judicial and other effective remedies of their rights and freedoms; interestingly, some of the unlawful restrictions had been applied by courts.

Generally, citizens that are given oral or written advice to apply to court openly express their mistrust in the judiciary. People complain of judicial acts which, in their opinion, instead of doing justice and restoring rights, complicate their claims and render impossible the restoration of breached rights.

Example 1

An applicant informed the Defender's Office that, during court proceedings, he had suffered and was suffering violations of his rights as a party and as a property owner. For 17 months, his apartment had been under lien, and the proceedings were taking too long, creating uncertainty and inflicting moral and material damage upon him. He asked the Defender to interfere and put an end to the arbitrary conduct of R. Nersisyan, judge of the First Instance Court of the Yerevan City Center and Nork-Marash Districts. At the Defender's instruction, a member of his staff looked into the files of the civil case and monitored the hearing. The applicant sent a letter of gratitude to the Defender for timely and adequate legal advice rendered at his instruction.

Example 2

A citizen asked the Defender for advice on the judicial remedies of his rights, support in restoring his rights, and monitoring of the court hearing of his claim in the First Instance Court of the Ajapnyak and Davitashen Districts of Yerevan. A representative of the Defender monitored the hearings, after which the applicant was informed of the available remedies. The applicant sent a letter of

gratitude to the Defender for legal advice that had enabled him to obtain effective judicial protection of his rights.

Example 3

An applicant asked the Defender to instruct his representative to monitor the applicant's nephew's criminal case hearings in the First Instance Court of the Arabkir and Kanaker-Zeytoun Districts of Yerevan (presiding judge M. Rehanyan).

The hearings were monitored at the Defender's instruction. The defendant, together with his lawyer, had asked the court to postpone the hearing by a week, as a serious accident required the lawyer to be away from the country. The defendant did not turn down the services of his lawyer and did not accept any of the new lawyers appointed by court. The judge postponed the hearing three times, each time by one day; then, he declared the start of the final court argument, during which the prosecutor tried to make a speech, which was constantly interrupted by the defendant's statements that there injustice was taking place, because he did not have a lawyer in the hearing. The judge, explaining Article 304 of the Criminal Procedure Code, said that the defense lawyer had failed to appear at three consecutive hearings and the defendant had not accepted a court-appointed lawyer, after which he gave the floor to the prosecutor for his speech. Once the defendant's relatives made noise in the courtroom and interfered with the hearing, not allowing the prosecutor to finish his speech, the judge left the courtroom and stated that the hearing would be conducted in camera. On the next day (i.e. on December 29), the applicant called the Defender's Office and said that the court had issued the verdict in his nephew's case, which had not been published for him and the other relatives, even though they had been in the courtroom until 6pm, the end of the working day.

Example 4

An applicant complained that, on February 13, 2006, without notifying him, the First Instance Court of the Yerevan City Center and Nork-Marash Districts (presiding judge V. Lalayan) had heard and granted the claim of the Yerevan City Police Department Traffic Police Unit to confiscate an 8,000-dram fine from him. The court had also issued an execution order. The applicant noted that he learnt about the judgment only from an officer of the Department for Execution of Court Acts. Whereas, had he been properly notified of the court hearing, he would have taken part in the hearing and either proven the Traffic Police Unit wrong or become convinced that he had indeed violated the traffic rules. However, there was already a final judgment that could only be appealed to the Cassation Court through the cumbersome process of engaging a lawyer with special accreditation.

Example 5

A citizen informed the Defender that a judgment of the Civil Appellate Court dated September 29, 2005, which recognized his violated rights, was not being executed. The Deputy Head of the Migration Agency of the Ministry of Territorial Administration had sent a letter indicating that the October 23, 2006 decision of the Civil Appellate Court, in which the Court explained its earlier judgment, required adding the applicant's name to the list of refugees in need of housing. This function is carried out by the relevant territorial social service agency in accordance with Government Decree 330 dated August 9, 1997 "On the Procedure of Recording and the Allocation of Residential Space to Refugees in Need of Housing in the Republic of Armenia." The applicant asked the Defender to help obtain execution of judgment 06-3370.

In both the first instance and civil appellate courts, the applicant had not requested to add his name to the list of refugees in need of housing, but rather, to restore his violated rights, i.e. to give him the house that he had not received because of having his name unlawfully removed from the list.

3.5. State Committee of the Real Estate Cadastre

In 2007, similar to 2006, the Defender received a number of complaints about the activities of the State Committee of the Real Estate Cadastre and its territorial subdivisions.

Most of these complaints were concerned with unreasonable refusals to register citizens' rights over real estate and other property rights, the failure to register citizens' rights recognized by decisions of the Yerevan Mayor or final court acts, incorrect measurements at the time of altering real estate ownership documents (leading to discrepancies between old and new measurements of buildings and land plots), the improper performance of the first-time state registration of rights over real estate, and violations of the legally-prescribed period for providing information or the complete failure to provide information.

A total of 39 complaints against the cadastre agencies were received during 2007, of which:

- 18 were admitted for review;
- 0 were given information about available remedies;
- 1 was forwarded to another body for review;
- 15 were not admitted;
- 0 had the review terminated at the applicant's request; and
- 5 were still pending review.

There are concerns over the cases in which the cadastre agencies fail to perform state registration of rights recognized or endorsed by court acts.

In some cases, the State Committee of the Real Estate Cadastre refuses to execute final court acts, arguing that they contradict the legislation of the Republic of Armenia.

The Cadastre Committee does not have the authority to evaluate final court acts. In those cases, it must either appeal against the judgment or perform the state registration. Otherwise, the failure to execute final court acts is criminally punishable under Article 353 of the Criminal Code of Armenia, which criminalizes an official's intentional failure to execute or the obstruction of the execution of a final judgment, ruling, or other decision of court.

Example 1

A resident of the City of Yerevan complained to the Defender about the unlawful conduct of the employees of the Zeytoun District Subdivision of the State Committee of the Real Estate Cadastre.

The citizen had requested the Zeytoun District Subdivision to perform state registration of and issue a certificate for his ownership right over a 688 square meter land plot recognized as his possession by a judgment of the First Instance Court of the Arabkir and Kanaker-Zeytoun Districts of Yerevan dated February 21, 2007. However, he had been denied on the ground of "failing to present the floor plan of the land plot approved in accordance with the established procedure." Considering that floor plans are issued by decision of the Yerevan Mayor, the citizen applied to the Yerevan City Administration, which informed him that, when there is a court act, a floor plan need not be issued.

Thus, one state body refused to issue the document demanded by another state body, as a consequence of which a citizen suffered a violation of his ownership right recognized by a final court act.

To clarify these matters, the Defender made inquiries with the Yerevan Mayor and the Chairman of the State Committee of the Real Estate Cadastre.

The case is still pending review.

Example 2

An applicant informed the Defender's Office that, on September 6, 2007, he had requested information on real estate from the aforementioned state body. Not getting a response within the legally-established five-day period, he visited the Shengavit District Subdivision of the State Committee of the Real Estate Cadastre on September 14, 2007, expecting an answer to his request; at the Shengavit District Subdivision, they told him to wait, but a response was still not given.

The Defender made an inquiry to clarify the matters raised in the application, to which the Head of the Shengavit District Subdivision of the State Committee of the Real Estate Cadastre replied in the following way: "On September 6, 2007, citizen M. requested information from the Shengavit District Subdivision of the State Committee of the Real Estate Cadastre on the property located at 40 Mirakyan Street. However, the information was provided to him with

a delay. The matter has been discussed in the State Committee of the Real Estate Cadastre, and a disciplinary sanction has been applied in respect of the employee responsible for providing the information."

Considering that the matter raised in the application had been resolved to the applicant's satisfaction, and the employee responsible for providing the information had been sanctioned, the Defender decided to terminate the review of the application in connection with the satisfactory solution of the problem.

Example 3

The review of an application lodged with the Defender by the director of a limited liability company (LLC) revealed that, subject to a purchase and sale agreement, apartments in a residential building had been sold to the LLC, which on May 23, 2006 had requested the Arabkir District Subdivision of the State Committee of the Real Estate Cadastre to perform state registration of the rights arising out of the purchase and sale agreement.

On June 6, 2006, the Arabkir District Subdivision denied state registration of the rights on the ground that "the developer had not acquired in accordance with the procedure stipulated by the legislation the ownership rights over the respective share of the land plot allocated for construction and maintenance of the residential building." Article 1(19b) of the Republic of Armenia Law on Amendments to the Land Code was cited as the basis for denial, which provides that "unsold apartments in a residential building (including still unfinished or semi-built apartments) may be sold only after the developer has acquired in accordance with the procedure stipulated by the legislation the ownership rights over the respective share of the land plot allocated (as rent or use) for the construction and maintenance."

The LLC director asked the Economic Court of Armenia to declare unlawful the refusal to register the LLC's ownership right arising out of the purchase and sale agreement and, as a result of its unlawfulness, to obligate the Arabkir District Subdivision of the State Committee of the Real Estate Cadastre to register the right. On July 31, 2006, the Economic Court granted the claim. The cassation appeals of the Chief of Staff of the State Committee of the Real Estate Cadastre were declared inadmissible by Cassation Court decisions dated September 27, 2006 and November 13, 2006. On September 27, 2006, the Economic Court's July 31, 2006 judgment became final.

Based on the July 31, 2006 judgment, the LLC director again requested the Arabkir District Subdivision of the State Committee of the Real Estate Cadastre to perform state registration of rights, but his request was denied.

Based on execution order 2104 issued by the Economic Court on October 26, 2006, execution proceedings were instigated on October 30, 2006, and it was decided to obligate the Arabkir District Subdivision of the State Committee of the Real Estate Cadastre to comply with the execution order. An employee of the Department for Execution of Court Acts decided on December 28, 2006 to apply an administrative

sanction (in the amount of 200 minimal salaries) in respect of S. Shahbazyan, the Head of the Arabkir District Subdivision of the State Committee of the Real Estate Cadastre; even after the sanction, the judgment was not executed.

On January 26, 2007, the Defender decided to find a violation of human rights by the conduct of the Head of the Arabkir District Subdivision of the State Committee of the Real Estate Cadastre. At the same time, the Defender sent a letter and supporting documents to the Prosecutor General, proposing to consider criminal sanctions under Article 353 of the Criminal Code of Armenia for intentionally failing to execute a final court act.

While materials were being developed, the LLC director paid the cadastre value of the respective share of the land plot and, based on receipt of payment of the cadastre value, obtained state registration of the LLC's rights arising out of the real estate agreement by decision of the Arabkir District Subdivision dated February 28, 2007.

In a letter to the Defender dated March 5, 2007, the Yerevan City Prosecutor informed that the Yerevan City Prosecution Office had prepared materials, the review of which resulted in a decision on March 5, 2007 to refuse the instigation of a criminal case.

To eliminate the causes of and preconditions for the violations discovered during the preparation of materials, the Yerevan City Prosecution Office drafted a letter to the Chairman of the State Committee of the Real Estate Cadastre.

A copy of the decision to refuse the instigation of a criminal case was attached to the letter addressed to the Defender. The decision read: "Based on the prepared materials, it has been found that S. Shahbazyan, the Head of the Arabkir District Subdivision of the State Committee of the Real Estate Cadastre, delayed the execution of a final judgment of the Economic Court of Armenia; however, his conduct did not have the intention of failing to execute the judgment or of obstructing its execution."

Clearly, the Prosecution Office did not find any intention in the respective official's conduct (or rather, inaction) over several months of not executing a final and lawful judgment, instead viewing them as a "delay" in execution.

Due to the arbitrary conduct of the cadastre employees, the citizen had paid the cadastre value of the land only to avoid further red-tape, in spite of the existence of a final court act under which no payment was due. (See also, for instance, Example 4 under Paragraph 3.5 of the 2006 Annual Report of the Defender.)

3.6. Bodies in the System of the Ministry of Justice

3.6.1. Department for Enforcement of Court Acts

The Department for Execution of Court Acts has an important role: the execution of judicial acts is an essential safeguard of everyone's right of access to justice and effective judicial remedies enshrined in the Constitution.

During 2007, the complaints against this Department were concerned with the failure to execute judicial acts or the failure to execute them in a timely manner, execution officials exceeding their authority, and other violations, similar to the ones reported in 2004, 2005, and 2006.

Though the Defender continuously applies his main "lever," which is the decision to find a violation and to suggest addressing it, the Department for Execution of Court Acts still fails to execute judgments in relation to debtors that are state or local self-government bodies or their officials. This issue was described in great detail in the Defender's 2006 Annual Report, emphasizing that when the debtor is a state body, the execution officials fail to exercise their legal authority, disregarding the principle of equality of all before the law.[17] As a consequence, some of the final court acts turn into a formality, which in turn undermines confidence in the judiciary.

Article 14 of the Civil Procedure Code provides that a court act that has become final shall be binding on all state and local self-government bodies, their officials, legal entities, and citizens, and must be executed in the Republic of Armenia territory. Moreover, Article 353 of the Criminal Code criminalizes an official's intentional failure to execute or the obstruction of the execution of a final court act. In some cases, execution officials do not inform law-enforcement agencies of the failure to execute final court acts.

Besides, under the Law on Compulsory Execution of Court Acts, all execution officials have the power to apply a penalty in relation to debtors that intentionally do not comply with the execution official's decision, using force against those obstructing the performance of lawful acts, and so on.

The legal provisions vesting such powers in execution officials are aimed at ensuring the inevitable and equal execution of court acts in respect of everyone, including state and local self-government bodies and their officials. Finally, it is important to consider that the Execution Department is responsible, if the execution of a court act is rendered impossible at the fault of the execution official, as well as for damage inflicted as a consequence of non-execution.

During 2007, a total of 41 complaints were received against Department for Execution of Court Acts, of which:

- 29 were admitted for review;
- 1 was given information about available remedies;

[17] See the 2006 Annual Report of the Human Rights Defender of the Republic of Armenia, Yerevan 2007, p. 92.

- 1 was forwarded to another body for review;
- 9 were not admitted;
- 0 had the review terminated at the applicant's request; and
- 1 was still pending review.

Below are some typical complaints of the activities (inaction) of the Department for Execution of Court Acts.

Example 1

A resident of the Town of Gavar (Gegharkunik Region) informed the Defender that an apartment, of which his debtor was a co-owner, had to be sold in a public auction in order for the proceeds of the sale to be confiscated in the applicant's favor, as required by a judgment of the Gegharkunik Region First Instance Court.

The applicant had wished to participate in the auction sale of the apartment. On April 2, 2007, he went to the Department for Execution of Court Acts to participate in the auction; there, an execution official had taken his bid and passport copy, but not the amount, explaining that the Head of the Gegharkunik Regional Division of the Department for Execution of Court Acts was missing. Then, the execution official told him that they would call him in a day or two for the payment. Later, the creditor found out from the Internet that, after the April 2, 2007 auction, the property price had fallen from 283,100 to 254,000 drams, against which he appealed to the Department for Execution of Court Acts, but the problem was not solved.

In response to the Defender's inquiry, the Deputy Chief Executor of the Republic of Armenia informed that the Gegharkunik Regional Division of the Department for Execution of Court Acts had been instructed to oversee the execution proceedings and to initiate a compulsory electronic auction to sell the apartment.

On June 13, 2007, the applicant informed the Defender that, owing to the Defender's intervention, his problem had been solved, i.e. he had purchased the apartment in an auction. The Defender decided on June 19, 2007 to terminate the review of the complaint.

Example 2

In his complaint, a citizen informed the Defender that the Civil Appellate Court of Armenia had decided on October 3, 2006 to obligate the Yerevan City Administration to discuss the applicant's request for land allocation and to allocate land in accordance with the procedure established by law. The court's judgment had become final.

Based on an execution order of the Civil Appellate Court dated March 2, 2007, a senior execution official of the Yerevan City Center and Nork-Marash Division of the Department for Execution of Court Acts had decided on March 7,

2007 to instigate execution proceedings and to obligate the debtor to perform certain acts.

Considering that the execution activities were not performed during the period stipulated by the Law on Compulsory Execution of Court Acts, the Defender sent a letter to the Chief Executor of Armenia on May 21, 2007 asking for an explanation.

In response, A. Yeremyan, the Head of the Yerevan City Division of the Department for Execution of Court Acts, wrote: "Considering that no information has been received about the execution of the judgment by the Yerevan City Administration, the Department for Execution of Court Acts asked the Yerevan City Administration on May 4, 2007 whether the judgment had been executed or not, but no response has been received."

Considering that over three months had passed since the instigation of execution proceedings and making the decision to obligate the debtor to perform certain acts, and the judgment was intentionally not being executed, the Defender decided to forward the citizen's complaint and the supporting documents to the Prosecutor General for review.

The Office of the Prosecutor General sent the application and supporting documents to the Yerevan City Prosecution Office for review. The Yerevan City Prosecutor sent a letter to the Defender informing that a 400 square meter land plot had been granted to the applicant as ownership at no cost for constructing a residential house by decision 2928-A of the Yerevan Mayor dated August 16, 2007 made on the basis of judgment 06-3326 of the Civil Appellate Court dated October 3, 2006.

In other words, the requirements of the final judgment of the Civil Appellate Court were complied with.

Example 3

A resident of the City of Yerevan sent a letter informing the Defender that, based on an execution order issued by the Civil Appellate Court on March 13, 2007, the Yerevan City Administration had to be obligated to honor its obligation under Paragraph 1.3 of the real estate purchase and sale agreement concluded on February 6, 2004, i.e. to make a decision on renting him, subject to a right of first refusal in the event of sale, the land plot corresponding to the floor plan that was an integral part of the aforementioned agreement.

The Defender inquired about the non-performance of execution activities within the period stipulated by the Law on Compulsory Execution of Court Acts, to which the Head of the Yerevan City Division of the Department for Execution of Court Acts replied that, on March 19, 2007, execution proceedings had been instigated (case number 01/02-1183/07), and the decision had been made on March 23, 2007 to obligate the debtor to perform certain acts.

The Head of the Yerevan City Division also informed the Defender that the Yerevan City Administration Department for Architecture and Urban Development

and the Legal Department (in letter 18-06/2-9366 dated June 14, 2007 and letter 07-h1119h dated June 19, 2007, respectively) had suggested resolving the matter of compensation to the applicant by means of trilateral negotiations: subject to the developer's consent, either to give the applicant a house in the residential building that was being constructed on the site, or to pay him monetary compensation.

When this reply was presented to the applicant, he said that he had not received any such offer.

Though the execution proceedings were instigated about nine months ago, no progress has been made towards executing the judgment.

The complaint is still pending review.

3.6.2. Penitentiary Institutions

During 2007, 12 complaints were received against penitentiary institutions of the Ministry of Justice, of which:

- 4 were admitted for review;
- 2 were given information about available remedies;
- 1 was forwarded to another body for review;
- 4 were not admitted;
- 0 had the review terminated at the applicant's request; and
- 1 was still pending review.

One of the key areas of the Defender's activities is the protection of the rights of persons held in pre-trial detention or serving imprisonment sentences in penitentiary institutions, with a particular focus on the adequacy of their living conditions, the prevention of torture and inhuman and degrading treatment, the exercise of the right to stay in touch with the external world, and safeguarding other rights of persons deprived of liberty in accordance with law.

During 2007, numerous complaints were received from persons held in penitentiary institutions, but most of them were against other state bodies, rather than the penitentiary institutions. Applicants complained of the detention conditions, inhuman treatment, and violations of their rights by the administration in only 12 of the complaints received. The other complaints and allegations were received during visits to penitentiary institutions.

Example 1

The Defender's staff visited the Goris Penitentiary Institution and met with a convict. During the private interview, he made allegations of a number of unlawful acts carried out by the administration of another prison, the Sevan Penitentiary Institution, including cruel and inhuman treatment. He said he had been moved from Sevan to the Noubarashen Penitentiary Institution, to which he was admitted with a broken right wrist and ribs. He tried to inform the

administration of his health condition, but did not get any attention. Moreover, he was later subjected to degrading treatment by authoritative criminals, after which he was transferred to the Goris Penitentiary Institution. There, too, according to his statements, they did not allow him to file any complaint by constantly turning down his requests for a pencil, paper, and envelopes. He claimed that his life was under threat, and that they had even threatened his family members. A study of the convict's personal file (page 63) showed that, back on June 11, 2007, a representative of the administration of the Noubarashen Penitentiary Institution had obtained statements from the convict, where he had reported the criminal conduct of the employees of the Sevan Penitentiary Institution, but since that time, nothing specific had been done; in other words, there was a crime report in his personal file, but the law-enforcement agencies had not investigated it. The convict said that he had made similar reports also to the Office of the Prosecutor General and the Penitentiary Department of the Ministry of Justice, but the problem had not been solved.

Based on the foregoing, the Human Rights Defender sent a letter to the Minister of Justice, who stated in his reply that the Penitentiary Department of the Ministry of Justice had received applications on July 25, 2007 and August 8, 2007 from a convict serving his sentence in the Goris Penitentiary Institution, in which he had asked for a meeting. The meeting was organized on August 9, 2007, and statements were obtained from the convict.

In the same letter, the Minister of Justice informed the Defender that the convict had reported that he had been groundlessly punished in the Seven Penitentiary Institution, after which they had requested to transfer him to a closed-type correctional institution for serving the remainder of his sentence.

The Minister also stated in his letter that the allegations made in the convict's applications had been investigated, as a result of which the allegations had not been proven, and it had been concluded that the convict's main purpose in lodging applications was to be transferred to a penitentiary institution that would be closer to his family home.

During the visit to the Goris Penitentiary Institution, the Defender's staff also reviewed the detention conditions. It was established that separate cells had still not been allocated for isolating convicts going on a hunger strike. Instead, convicts or pre-trial detainees going on a hunger strike were being placed in a punishment cell, the conditions of which were much worse than in ordinary cells. Besides, in this penitentiary institution with about 170 convicts and pre-trial detainees, there was only one room for long visits, which, in the Defender's opinion, falls short of the minimum standards.

In response to his letter, the Defender was told that, due to the limitations of physical conditions in the Goris Penitentiary Institution, one of the cells that had previously been a punishment cell was now being used to detain hunger-strikers. The ongoing renovation works in the penitentiary institution would also improve the conditions in that cell. Though the existence of only one room for long visits in

the institution was not an obstacle to making sure that long visits took place, the administration of the institution was going to allocate one more room for long visits in the context of the ongoing renovation works.

To monitor respect for rights and freedoms, the Law on the Human Rights Defender contemplates two main types of visits to state institutions:

- Visits based on a complaint regarding a violation of rights or freedoms; or
- Visits at the Defender's own initiative (*ex-officio* visits).

Article 12 of the Law on the Human Rights Defender provides that, after deciding to admit a complaint for review, the Defender or his representative may without any hindrance visit any state institution or organization, including pre-trial detention or sentence-executing institutions, and places for compulsory holding of persons, including places of deprivation of liberty, in order to review matters raised in the complaint and to accept applications from persons in such institutions.

Based on complaints addressed to the Defender, the Defender's staff visited also the "Hospital for Convicts" Penitentiary Institution.

Matters related to the possibility of waiving the remainder of the sentence for persons living with HIV were discussed with the Head of this institution and his deputy responsible for treatment. Under Armenian law, the obligation to serve the remainder of a person's sentence may be waived on the ground of health deterioration, if the person's disease is specified in the Government-approved list of diseases. The gravity of the disease is another important consideration. If the disease has not reached the degree of gravity indicated in the List, the convict shall continue to serve his sentence under medical oversight.

14 of the 460 convicts serving their sentences in the "Hospital for Convicts" Penitentiary Institution are living with HIV. After reviewing the conditions in the institution, the Defender's representatives initiated private meetings with the convicts; some of them filed written complaints, while others were given legal advice on the spot.

In other cases, convicts asked to meet with the Defender, to be transferred to a different penitentiary institution at the Defender's recommendation, to have the sentence reviewed, to appeal to relevant state bodies against the activities of the independent commission deciding on early conditional release, and other similar matters.

Since joining the Council of Europe, the Republic of Armenia has been persistently fulfilling its commitments, as illustrated by the large-scale construction work carried out in the penitentiary system at the initiative of the Ministry of Justice. There has been a strong effort to renovate the buildings of almost all the penitentiary institutions and to upgrade them to the international standards. There is significant progress compared to the past (for example, in the penitentiary institutions Vanadzor, Artik, and Vardashen). The Abovyan and Erebouni penitentiary institutions are currently being renovated and will be ready by the

beginning of 2008. Owing to the reconstruction and renovation work, it has been possible to avoid cell overcrowding, to create proper sanitary conditions by isolating the toilets within the cells, to ensure running water, and to achieve other change for the better. Considerable attention is paid to the creation of necessary conditions for organizing convicts' education, rest, and occupation. In any event, there is a continuous desire to improve the existing conditions, which, however, depends on the availability of financial and technical resources. In 2008, a new penitentiary institution in accordance with modern standards will be built in the Armavir Region.

3.7. Ministry of Defense

During 2007, a total of 17 complaints were received against bodies under the Ministry of Defense, of which:

- 9 were admitted for review;
- 0 were given information about available remedies;
- 2 were forwarded to other bodies for review;
- 2 were not admitted;
- 0 had the review terminated at the applicant's request; and
- 4 were still pending review.

This group of complaints raised issues like violations of law by military conscription offices in the drafting process, groundless refusals to register or deregister persons for military purposes, the issuance of erroneous opinions by military-medical commissions on the health condition of conscripts, uncaring treatment of regular military servants, misapplication of the Law on Citizens Who Have not Performed Regular Military Service in Violation of the Established Procedure, the conscription of unhealthy persons, early demobilization, and the like.

One of the obstacles to the discovery and prevention of violations of human rights in the armed forces of Armenia is the low legal awareness of military servicemen, as confirmed by visits to various detachments of the Republic of Armenia. The problem is rather acute among regular military servants. Many of them do not have any idea about their rights; those that do clearly avoid lawful remedies, such as the right to appeal. Due to the "non-statutory" (informal) culture that exists in the armed forces, soldiers perceive appeals "treason," which, in their opinion, would undermine their reputation among peers. Strangely, similar attitudes are found among the officers, as well. To some extent, this factor is also an obstacle to the work of the Defender's representatives.

There are some complaints of the application of the Law on Citizens Who Have not Performed Regular Military Service in Violation of the Established Procedure: according to some sources, the lawful representatives of Armenian citizens who have turned 27 or have acquired grounds to claim waiver or deferral

of compulsory military service in accordance with the established procedure apply to the military conscription offices, stating their willingness to pay the fees required by law, but the process is unreasonably delayed, including demands to submit documents not required by law or to obtain re-legalization of documents issued abroad, which violates the provisions of the 1961 October 5 Convention (Abolishing the Requirement of Legalization for Foreign Public Documents). The Convention provides that the existence of a certificate ("Apostille") is sufficient proof of the authenticity of documents (notarial, administrative, judicial, prosecutorial, and other documents) which have been executed in the territory of one Contracting State and which have to be produced in the territory of another Contracting State.

The work of military conscription offices is important, because they act as a bridge between the public and the armed forces, and their accountability affects public confidence in the armed forces.

Example 1

On April 10, 2006, a citizen informed the Defender that the Artik Military Conscription Office declared his son as "fit for military service" and drafted him to a detachment of the Ministry of Defense on June 5, 2000.

The applicant also informed that, on June 4, 2002, his son had been demobilized and enlisted in the reserve. At that time, another soldier had informed him that some officers had cruelly beaten his son in the detachment and, after he had lost his consciousness, they had transferred him to a military hospital. The applicant claimed that he had since noticed something strange about his son: the young man had become irritable, later developing a mental disorder that became dangerous for relatives and neighbors. The applicant also stated that he had asked the various competent authorities to find and punish the guilty ones and to assign a military pension, but all of his requests had been denied or ignored.

The Defender sent letters to the Detachment Commander, the Head of the Ministry of Defense Department for Social Protection of Military Servants, the Chairman of the Central Military-Medical Commission of the Ministry of Defense, and the Head of the Yerevan Garrison Military Hospital of the Ministry of Defense and carried out inquiries, which revealed the following.

In order to address the inconsistencies between the responses of various state bodies and to investigate the allegations, the Defender sent a letter to the Military Prosecutor of Armenia on June 26, 2006, together with the materials available, proposing to investigate the case and, in the event of finding a crime, prosecute the responsible ones.

The Office of the Military Prosecutor informed the Defender (letter 2706 dated September 12, 2006) that materials related to the application had been prepared at the Yerevan Garrison Military Prosecution Office. It was established that the son of the applicant had completed his service without any incidents, beating, or violence. When his term expired, on June 4, 2002, the soldier had been

demobilized and enlisted in the Artik Military Conscription Office. Later, he had developed signs of a mental disorder, and from March 27, 2004, had been registered at the Gyumri Psychiatric Center, where he received in-patient care.

The psychiatric forensic examination concluded that the applicant's son had paranoid schizophrenia, which had emerged after his military service, from March 2004, and was not related to any battering, and that allegations made by a person in this mental state could not be complete, credible, or truthful.

Based on the foregoing, the investigating authority decided on August 25, 2006 to refuse to instigate a criminal case on the basis of the prepared materials, citing Article 35(1)(1) of the Criminal Procedure Code of Armenia ("lack of a criminal offence").

Considering that the review of the complaint did not reveal a violation of human rights and fundamental freedoms by state bodies or their officials, and guided by Article 15(1)(2) of the Law on the Human Rights Defender, the review of the complaint was terminated.

During 2007, the Defender received complaints regarding violations by military conscription offices in the process of enlisting and registering persons in the reserve of the armed forces.[18]

Example 2

In a complaint to the Defender, a citizen informed that the Shengavit Military Conscription Office of the Ministry of Defense had refused to enlist him for six years, effectively depriving him of the possibility to receive a passport. He attached copies of a number of documents to his letter, including:

1. A letter from the Passport Department of the Police, confirming that the President of Armenia had awarded Armenian citizenship to the applicant; and

2. The application filed with the Shengavit Police Station for registration of the citizen (form 15).

The Defender decided on July 13, 2007 to find a violation of human rights in the actions (inaction) of the Shengavit Military Commissioner and to suggest punishing the official that committed the violation; this decision was sent to the Military Commissioner of the Republic of Armenia. The latter replied by informing the Defender that the applicant had been enlisted and the Shengavit Military Commissioner had been warned to prevent similar incidents in the future.

In order to address the systemic problem, the Defender will suggest that the Government amend the Law on Military Duty.

Example 3

A citizen informed the Defender that his son had shortsightedness from childhood, as confirmed by a document issued by the oculist of the district clinic back in 1994, referring the boy to Eye Clinic number 1, which had maintained out-

[18] For details, see the "Rights Related to Military Service" section of Part 2 of this Report.

patient surveillance of his son up to 2004. The applicant also informed that examinations later performed at the Malayan Eye Clinic had shown that his son's sight was 8.0, M 7.0 and 6.0, M 4.0: with such sight, a conscript is exempted from compulsory military service. The National Medical Commission disregarded all of this data and concluded at the time of the 2006 fall draft that the applicant's son was subject to conscription to the Armed Forces.

During military service, the young man's health had increasingly deteriorated; however, the detachment medical personnel had failed to take action, limiting their intervention to prescribing eye drops. Later, at the direct instruction of the Minister of Defense, the applicant's son had been transferred to the Central Clinical Military Hospital of the Ministry of Defense, where, too, the Head of the Eye Care Unit had performed the checkup superficially. The applicant claimed that both the oculist of the National Medical Commission and the hospital staff had acted in an obviously unlawful manner and filed illegal documents, based on which his son had been drafted to the army, despite his health condition, and sent to a detachment near the border.

The General Staff of the Armed Forces informed the Defender that the matter had been reported to colonel-general M. Harutyunyan, who had instructed the Head of the Military Medical Department of the Ministry of Defense and the Chairman of the Central Military Medical Commission to check the soldier's health condition and to carry out an internal investigation to establish the facts of the case. The letter also informed the Defender that, based on the checkup, the applicant's son had been declared "not fit for further military service" and had been demobilized to the reserve by Decree 327 of the Minister of Defense dated March 19, 2007.

To obtain a legal assessment of the unlawful conduct of the medical commission members, the Defender sent a letter to the Military Prosecutor of Armenia on March 21, 2007, requesting to verify whether the alleged unlawful conduct had taken place and to take legal measures.

In response, the Military Prosecution Office informed the Defender that they were currently preparing materials and would notify the Defender of the final decision.

Although no final decision was made, the problem raised by the applicant had been lawfully resolved in terms of establishing that his son was not fit for military service.

There are some cases in which military conscription offices try to conscript persons with refugee status.

Housing problems are faced by the families of deceased freedom-fighters. The Defender has received a complaint from such a family, which was resolved to the applicant's satisfaction.

Example 4

A resident of Vanadzor informed the Defender that his son had died while on sentry duty near the border in the Tavush Region. He was left to look after the son's wife and underage child. He said they did not have an apartment, although the state was obliged to provide an apartment to them, as a family of a deceased military servant. The applicant also informed the Defender that, while housing purchase certificates were being issued in the regions, he had not gotten one. He had applied to various bodies, but in vain.

The Defender sent a letter requesting the Vanadzor Mayor to clarify the matters raised in the complaint, to which the Mayor responded that, in order to address the housing issue of the family of the deceased serviceman, according to the procedure approved under Government Decree 947-N of June 9, 2005 "On the Provision of Financial Aid," the Vanadzor City Administration had sent the relevant documents on March 17, 2006 through the Lori Regional Governor's Office to the Ministry of Defense Commission Providing Assistance to Families in Need. In response to another letter of the Defender, colonel S. Harutyunyan, Department Head at the Ministry of Defense, informed that the applicant's son had died (killed by an enemy sniper) while on sentry duty. The applicant's family had been recorded in the waiting list of families without housing sent from the Lori Regional Governor's Office to the Ministry of Defense.

The aforementioned Commission, created by decree of the Minister of Defense, held a session to discuss ways of improving the applicant's housing conditions and decided to provide the applicant compensation in the amount of 4,162,000 (four million one hundred and sixty-two thousand) drams to purchase a two-room apartment, as per the tariff information received from the State Committee of the Real Estate Cadastre.

Internal reviews by the Defender's staff have shown a year-over-year decline in the number of complaints regarding the atmosphere in military units, especially problems in the relationship between soldiers and officers.

3.8. Ministry of Territorial Administration (Infrastructures)

During 2007, a total of 25 complaints against the Ministry of Territorial Administration were received, of which:

- 14 were admitted for review;
- 6 were given information about available remedies;
- 0 were forwarded to other bodies for review;
- 4 were not admitted;
- 0 had the review terminated at the applicant's request; and
- 1 was still pending review.

3.8.1. Migration Agency

The majority of complaints against the Migration Agency were connected with housing problems of refugees.

Example 1

A resident of the Hayanist Village (Ararat Region) sent a letter informing the Defender that he and his family, registered as refugees (certificate number 017581), had settled in the aforementioned village. There, he received an 800 square meter land plot and a semi-finished building, which he so far could not afford to complete.

In response to the Defender's inquiry for information on the matters raised in the complaint, the Head of the Migration Agency informed that, in 2005 and 2006, in the Hayanist Village (Ararat Region), with financing from the Norwegian Refugee Council, cottage-type houses had been built for 21 refugee families previously living in wagon-dwellings. The beneficiaries had been selected on the basis of the following criteria: being recorded as of August 1, 2003, and actually residing in wagon-dwellings.

During 2003-2006, employees of the Migration Agency, the UNHCR, and the Norwegian Refugee Council had carried out numerous assessments in Hayanist, none of which had shown the applicant to actually reside in a wagon-dwelling; moreover, he had never been recorded, and therefore, did not correspond to the beneficiary selection criteria.

Unlike him, his mother and younger brother (two persons), and his other brother (four persons) had been included in the list of beneficiaries, and two cottage-type houses had been built for them in Hayanist, because they had been actually residing in wagon-dwellings.

Example 2

The applicant, who was a refugee from Baku, lodged a complaint informing the Defender that, since 1995, he had been registered at a dormitory located at 8a Kievyan Street. In spite of a Government decree allocating the rooms in the dormitory to refugees from Azerbaijan and a promise by the Migration Agency to allocate room 56 to the applicant, the promise had still not been kept.

Considering that, during the last eight years, the applicant had resided in a room inside the zoological facility on the premises of the Physiology Institute after L.A. Orbeli, the Defender sent letters to the Head of the Migration Agency inquiring about the possibility of solving the applicant's housing problem.

The Agency Head informed the Defender that, although the applicant had been registered in the dormitory located at 8a Kievyan Street in 1995, when the dormitory was owned by the Governance School, a room had not been allocated to him. As for the allocation of room 56 of the dormitory to the applicant, it had been

privatized by Government Decree 775-A of May 15, 2004 to another refugee from Azerbaijan, who had actually been residing there.

Though the Agency had sent several letters to the Director of the Physiology Institute after L.A. Orbeli, informing him that a refugee from Baku (the applicant), residing in one of the rooms of the Institute, had been included in the Priority Housing Program approved under Government Decree 747-N of May 20, 2004, and asking the Director to allow the refugee to reside there until his housing problem would be resolved, no progress had been achieved yet.

Consequently, the Defender again requested the Head of the Migration Agency to solve the housing problem of the applicant in accordance with the procedure approved under Government Decree 747-N of May 20, 2004.

The complaint is still pending review.

3.8.2. State Committee of Water Resources

During 2007, one complaint against the State Committee of Water Resources was received by the Defender's Office.

A resident of the Getamej Village (Kotayk Region) sent a letter informing the Defender that water pipe number 1 from Arzni to Yerevan passed through his land plot, which was adjacent to his house. Decision 16 of the Nairi District Council Executive Committee dated October 21, 1982 had authorized the construction of a residential house at the required minimum distance from the water pipe in accordance with an approved plan, and the house was constructed. Due to a landslide several years ago, the water pipe had been seriously damaged; given the difficult landscape, the pipe could not be restored, and agreement was reached to install a temporary pipe beside the house, pending completion of the new plan, which was never finalized.

The landslide had resumed, and the pillars holding the water pipe had been broken and moved, leaving the pipe hanging in the air, threatening the applicant's and his family members' lives. He had made numerous requests to the Chairman of the State Committee of Water Resources to remove the water pipe, but nothing had been done.

In response to the Defender's inquiries and documents forwarded in connection with the citizen's complaint, the Chairman of the State Committee of Water Resources informed that experts of the Committee had inspected the relevant segment of the Arzni-Yerevan water pipe and examined the appropriate documents, as a result of which they had found that Decision 16 of the Nairi District Council Executive Committee dated October 21, 1982 had authorized the applicant to start the construction of his house in the Getamej Village and instructed the Chief Architect of the District, the Police Unit, and the District Council Executive Committee to provide the citizen with a plan and to monitor its correct implementation. Therefore, the house plan could not have been approved on October 19, 1982, especially because the plan contained a reference to the

construction permit. The submitted copy of the house construction plan, though indistinctly, was dated October 19, 1992. The available materials confirmed that the water pipe had been built in 1988, while the citizen failed to produce any document to prove that there had been agreement between his father and the Yerevan Water and Sewerage Company on the temporary installation of the water pipe beside his house.

The site inspection revealed that the house had been built after the installation of the water pipe, because, had the house been built first, it would have been impossible to transport the pipes near the house and to weld them.

The State Committee of Water Resources had been created by Government decree 92 dated February 9, 2001, and could not have participated in the aforementioned events.

Currently, the water pipe was state-owned; being on the balance sheet of the State Committee of Water Resources, it had been rented to the Yerevan Water and Sewerage Company. Under Article 1058(1) of the Civil Code of Armenia, damage inflicted upon a citizen's person or property, or a legal entity's property, is subject to full compensation by the person that inflicted it.

Based on the foregoing, the State Committee of Water Resources had made numerous offers to the citizen to move the water pipe at his own cost or, in case of not agreeing to this option and believing that the Yerevan Water and Sewerage Company had violated his rights, to file a claim to court.

Considering that grounds for terminating the review of the complaint were discovered during the review, i.e. there was a dispute on the date of building the citizen's own house near Arzni-Yerevan water pipe number 1, which could only be resolved by court, the Defender decided to terminate the review of the complaint.

3.9. Ministry of Education and Science

Complaints against the Ministry of Education and Science were connected with the Ministry's failure to respond to citizen's applications, the unilateral amendment of contracts by universities, the failure of the Ministry and the National Academy to process a number of academic papers, and the like.

A total of nine complaints against the Ministry of Education and Science were received, of which:

- 2 were admitted for review;
- 0 were given information about available remedies;
- 1 was forwarded to another body for review;
- 4 were not admitted;
- 1 had the review terminated at the applicant's request; and
- 1 was still pending review.

Example 1

A citizen informed the Defender that, due to the unhealthy atmosphere in the "Creative Workshops of Teachers" educational center, he had to transfer his daughter, a third-year student, to another school. He claimed that the Russian Language was taught in the aforementioned educational center using completely different textbooks. In the first year, they were using the "Russkaya Azbuka" textbook approved by the Ministry of Education of the Russian Federation, which had not been authorized as auxiliary literature; moreover, though foreign language teaching in the first year was completely prohibited, this educational center taught two foreign languages to first-year students. The applicant also informed that the educational center did not have proper physical conditions, as it was deprived of electricity and water.

To obtain information on the matters raised in the complaint, the Defender made inquiries with the Ministry of Education and Science of the Republic of Armenia.

As a result, the matters raised in the applicant's complaint were addressed in an inspection in the "Creative Workshops of Teachers" educational center from October 31 to November 3, 2006. The inspection revealed some deficiencies and instructed: a) the school management to revise and clarify the tuition payment and accounting process, and to carry out the educational activities in accordance with the procedure stipulated by law; b) the "Licensing and Accreditation Service" Agency of the Ministry of Education and Science to assess the conformity of premises of the educational center with the license terms; and c) the State Inspectorate of Education to carry out thematic inspections at the "Creative Workshops of Teachers" educational center during the last ten days of November 2007.

The Defender made another inquiry requesting information from the Minister of Education and Science on the timely performance and findings of the aforementioned instructions.

As a result of another letter by the Defender, the relevant committee inspected the "Creative Workshops of Teachers" educational center during December 1-7, 2006 with a view to assessing the educational process, compliance with the curriculum, course programs, annual academic timetables, and timesheets, the flow of students in accordance with the admission, transfer, and graduation procedures, fulfillment of the education quality requirements prescribed in the center's by-laws, and the selection and appointment of teachers and administrators in accordance with the Armenian legislation. Based on the findings of inspections, the State Inspectorate of Education issued an opinion containing recommendations for the management of the educational center, including a three-month deadline for reporting progress to the State Inspectorate of Education.

In his letter 2108-24/358 dated April 11, 2007, the Minister of Education and Science informed the Defender about progress towards the implementation of recommendations given in the opinion issued after the inspections at the "Creative

Workshops of Teachers" educational center, including a copy of the letter of the educational center director to the Minister of Education and Science.

Considering that the recommendations given to the management of the educational center on addressing shortcomings found during the inspections in the "Creative Workshops of Teachers" educational center by the Ministry of Education and Science on the basis of the citizen's complaint had been essentially fulfilled, the review of the citizen's complaint by the Defender's Office was terminated. The case was considered resolved to the applicant's satisfaction.

3.10. Ministry of Health

Complaints against the Ministry of Health were mainly concerned with the failure to provide free (government-subsidized) health care to socially-vulnerable persons, the groundless placement of persons in psychiatric institutions, compulsory treatment, and the like.

During 2007, a total of 14 complaints against the Ministry of Health were received, of which:

- 7 were admitted for review;
- 1 was given information about available remedies;
- 1 was forwarded to another body for review;
- 2 were not admitted;
- 2 had the review terminated at the applicant's request; and
- 1 was still pending review.

Example 1

A resident of the Jrvej Village (Kotayk Region) sent a letter informing the Defender of the following.

In 2001, officers of the Police of Avan and Nor-Nork Districts of Yerevan had transferred him to the Avan Psychiatric Clinic. He had been detained there against his will for 14 days, given cancerogenic injections, and tortured. He had requested the Avan Psychiatric Clinic and the Ministry of Health to provide to him copies of the following documents:

1. His consent for being transferred to a psychiatric clinic;
2. The complaints based on which he had been transferred to the Avan Psychiatric Clinic;
3. The legal bases for keeping him under out-patient surveillance for five years.

The applicant stated that all of his requests had been denied by employees of the Avan Clinic of the "Psychiatric Medical Center" Closed Joint-Stock Company, and that, for the last year, the Office of the Prosecutor General was refusing to instigate a criminal case.

Under Article 13 of the Republic of Armenia Law on Psychiatric Care, information on citizens' mental health is a medical secret. Such information may only be provided to the patient and his lawful proxy at their demand in the cases and procedure stipulated by law.

The citizen's complaint has been admitted for review. The Defender has requested the Minister of Health to comment on the matter.

The review is currently pending.

3.11. Ministry of Foreign Affairs

Complaints against the Ministry of Foreign Affairs were concerned with the failure to issue a statement on the basis of a power-of-attorney and the failure of an Armenian embassy and the Ministry of Foreign Affairs to take action to restore an Armenian citizen's rights violated in a foreign state.

A total of two complaints against the Ministry of Foreign Affairs were received.

Example 1

An applicant informed the Defender that his brother, who was temporarily residing in Moscow, had authorized him to obtain from the Ministry of Foreign Affairs a statement that he did not have conviction. Employees of the Ministry of Foreign Affairs refused to provide the statement, claiming that his brother, who resided in Moscow, could apply to the Armenian Embassy in Moscow and obtain the statement there.

The Defender's staff explained to the applicant his right to receive information under the Armenian Constitution and laws; in a telephone conversation with employees of the Consular Department of the Ministry of Foreign Affairs, the Defender's staff explained the legal effect of a power-of-attorney and the right of the person authorized by power-of-attorney to act on behalf of the person authorizing him.

Later, the applicant informed the Defender that the Ministry of Foreign Affairs had issued the required statement.

Considering that the review of the complaint revealed grounds for terminating the review (i.e. the applicant's violated right had been restored), the Defender decided on the basis of Article 15(1)(3) of the Law on the Human Rights Defender to terminate the review of the complaint.

3.12. Ministry of Environmental Protection

One complaint against the Ministry of Environmental Protection was received in 2007.

The Chairman of the "Bnapahpan" Association of Trade Unions sent a letter informing the Defender that, on February 2, 2004, a bilateral agreement of unlimited duration was concluded between the Ministry of Environmental Protection and the "Bnapahpan" Association of Trade Unions. However, the requirements of the agreement were violated: the Chief of Staff of the Ministry of Environmental Protection demanded the Association to free the space it occupied. On February 21, 2006, the Chairman of the Association found his office lock changed and his belongings unlawfully "seized." Besides, during an enlarged administrative meeting with the Minister of Environmental Protection, it was decided to organize a session of the trade union of the Ministry of Environmental Protection, and the heads of structural and separated units of the Ministry were instructed to organize a conference of the trade union of the Ministry by yearend.

After reviewing the materials available to the Defender in connection with the complaint and organizing a visit of the Defender's representatives to the building of the "State Service Hydrometeorology and Monitoring" State Non-for-Profit Organization on April 26, 2007 to examine the conditions of the relevant office, the Defender decided to find a violation of human rights caused by the aforementioned instructions of the Minister of Environmental Protection and the decision of the Chief of Staff of the Ministry of Environmental Protection to remove the Chairman of the "Bnapahpan" Association of Trade Unions from his office (at Government Building number 3, Republic Square, Yerevan, Armenia) and instead to offer him to move temporarily to an office in the building of the "State Service Hydrometeorology and Monitoring" State Non-for-Profit Organization. The Defender recommended to the Minister of Environmental Protection to refrain from giving similar instructions in the future or interfering in other ways in the activities of the "Bnapahpan" Association of Trade Unions, with the exception of cases prescribed by law, as well as to provide a permanent office to the Chairman of the "Bnapahpan" Association of Trade Unions in premises owned or lawfully leased by the Ministry of Environmental Protection, so that the statutory activities of the trade union could be organized in a favorable atmosphere.

However, the Ministry of Environmental Protection has not implemented the Defender's recommendations.

3.13. Ministry of Urban Development

One complaint against the Ministry of Urban Development was received in 2007. The review of the complaint revealed the following.

The applicant had been declared a family member of his mother by an April 3, 1989 judgment of the People's Court of the Leninakan City (Shirak Region).

Considering that the applicant's mother was the tenant of apartment 35 in building 44 of Haghtanak Avenue in the City of Gyumri (Gyumri is the new name

of the Leninakan), which had been destroyed in the 1988 earthquake, and that the applicant was a family member of his mother, he applied to the Gyumri City Administration on February 24, 2004 to include his name in the waiting list of families that lost their apartments in the earthquake and were urgently entitled to an apartment.

Based on the procedure approved under Government Decree 432 dated June 10, 1999 "On Approving the Procedure of Urgently Allocating Apartments to Citizens in the Earthquake Zone," whereby "residential space shall be allocated to citizens within the limits established by this procedure, but not greater than the number of rooms formerly occupied by the tenant and **his family members**," the Gyumri City Administration included the applicant's name in the waiting list of families that lost their apartments in the earthquake and were urgently entitled to an apartment from the housing stock built by the state in the frameworks of state-supported programs.

Based on the procedure approved under Government decree 309-N dated February 24, 2005, the citizen applied to the Shirak Regional Governor's Office to participate in the "Housing Provision through Housing Purchase Certificates" program, which sent his documents to the Ministry of Urban Development. The commission established by the Minister of Urban Development to organize the delivery of support reviewed his request and refused to grant a housing purchase certificate on the ground that the documentation package did not correspond to the procedure approved under Government Decree 432 dated June 10, 1999, paragraph 3 of which provided that "the recording of citizens urgently entitled to an apartment in the Earthquake Zone shall be performed by the head of the community in which they permanently reside," while the applicant had been registered and actually resided in the City of Yerevan before, at the time of, and after the earthquake, which under paragraph 12 of the procedure was a ground for removing his name from the waiting list of families that lost their apartments in the earthquake and were urgently entitled to an apartment.

Having reviewed the information obtained in connection with the complaint, the Defender found that the commission established by the Minister of Urban Development to organize the delivery of support, having exceeded its authority under paragraph 20 of the procedure approved under Government decree 309-N dated February 24, 2005 and having disregarded Government Decree 309-N and Government Decree 656-N dated May 18, 2006, had violated the applicant's rights.

The violation was due to the fact that paragraph 20 of the procedure approved under Government decree 309-N dated February 24, 2005 prescribed the functions of the commission established by the Minister of Urban Development, which included (sub-paragraph "c"), among others, the duty to check whether the documents of persons receiving support in the form of a housing purchase certificate complied with the conditions of providing support (including the condition that, prior to March 1, 2004 the person had to be recorded in the waiting

list of families that were urgently entitled to an apartment in the earthquake zone), rather than the power to check the grounds for inclusion in the waiting list.

The Minister of Urban Development claimed that the commission established him had not viewed the applicant as a beneficiary of the Housing Purchase Certificate program, because either he had been wrongfully recorded in the waiting list of families that were urgently entitled to an apartment in the earthquake zone or had owned an apartment that he had sold in order to artificially worsen his housing conditions, while support in the form of housing purchase certificates was being provided to persons that had still not improved their housing conditions and were residing in temporary dwellings: however, these claims do not flow from either Government decrees 309-N dated February 24, 2005 and 656-N dated May 18, 2006 or the functions vested in the commission by those decrees.

Consequently, the Defender found that human rights were violated due to the failure of the commission to recognize, as beneficiaries of the Housing Purchase Certificate program, citizens that prior to March 1, 2004 had been included in the waiting list of families that were urgently entitled to an apartment in the earthquake zone.

In order to restore the applicant's violated rights, the Defender suggested recognizing his right under Government decrees 309-N dated February 24, 2005 and 656-N dated May 18, 2006 by recording him in the waiting list of families that were entitled to support in the form of a housing purchase certificate.

The Minister of Urban Development responded on July 11, 2007 by telling the Defender that, according to information received from the Gyumri City Administration on June 20, 2007, the citizen had been removed from the Gyumri City Administration waiting list of families in need of housing, based on sub-paragraphs 12(a) and 12(c) of the procedure approved under Government Decree 432 dated June 10, 1999.

3.14. Ministry of Labor and Social Affairs

3.14.1. State Fund for Social Insurance

During 2007, a total of 64 complaints against the structures of this system were received, which were dealt with in the following manner:

- 28 were admitted for review;
- 27 were given information about available remedies;
- 1 was forwarded to another body for review;
- 5 were not admitted;
- 0 had the review terminated at the applicant's request; and
- 3 were still pending review.

The right to social security is enshrined in Article 37 of the Constitution of the Republic of Armenia as a constitutional right of citizens. Article 37 provides:

"Everyone shall have the right to social security during old age, disability, loss of bread-winner, unemployment, and other cases prescribed by law. The extent and forms of social security shall be prescribed by law."

The Defender receives a large number of complaints related to the procedure of providing family allowances. Applicants have complained about the lowering of the family eligibility score due to the introduction of a higher premium for each year of the base pension or length of service, which made formerly-eligible families no longer eligible for the family poverty allowance. Effectively, while the pension has increased by 1,000 drams, many citizens have lost entitlement to the family poverty allowance, which is much larger than the pension.

Under the Law on State Allowances, the purpose of providing a state allowance is to help improve the living standard of poor families and to partially compensate some expenses of the family or citizen. The Law defines the different types of allowances, one of which is the family poverty allowance. The Law provides that the family poverty allowance is assigned to a poor family that has a poverty score exceeding the family poverty allowance eligibility minimum. The "eligibility minimum" is defined by the Government. To this end, Government Decree 1896-N dated December 28, 2006 ("Decree on Defining the State Allowance Amounts for 2007 and Amending and Supplementing a Number of Government Decrees") has defined a family poverty allowance eligibility minimum of 33.00 points. Paragraph 24(a) of Government Decree 407 dated April 15, 2002 provides that payment of the family poverty allowance to a family shall be terminated, if the family falls below the family poverty allowance eligibility minimum due to change in the family structure or its material or housing conditions. A legitimate question arises: to what extent can a 1,000 dram increase in the pension improve the material conditions of the family, leading to the termination of the payment of the family poverty allowance.

In a large number of complaints to the Defender, citizens have alleged that, due to the lowering of the family poverty allowance eligibility minimum, they have become ineligible for the family poverty allowance, and cannot even receive the lump-sum cash assistance. In the majority of these cases, the Defender's interventions produce positive results, and citizens are included in the lists of beneficiaries of urgent cash assistance.

In many cases, citizens' rights have been violated, because the social agencies have failed either to properly justify or to notify the beneficiaries of the termination of the payment of allowances. Given the urgency of the matter and its extensive impact, the Defender sent a letter to the Government suggesting instructing the social agencies to properly justify refusals given to citizens.

In his reply, the Minister of Labor and Social Affairs informed the Defender that, taking into account the Defender's inquiries, it had been decided to propose amendments to the Law on State Allowances (pending the second reading in the parliament) to require written notification of the family about any refusal to provide the family allowance. The Ministry is currently developing mechanisms to

ensure the enforcement of the amended Law once it is enacted, including rules on the proper communication of allowance termination orders.

The state has paid great attention to natalism policies. To this end, paragraph 1(g) of Government Decree 1896-N dated December 28, 2006 defines the following amounts of lump-sum cash assistance: 35,000 drams if a child is born in a family that is entitled to the family allowance, and 200,000 drams for third and successive children born on or after January 1, 2007. However, there are still unresolved problems in this area.

One of the issues is that paragraph 1(h) of Government Decree 1896-N dated December 28, 2006 provides that cash assistance of 200,000 drams shall be paid for third or successive children born in families that are not eligible for the family allowance, but are recorded in the family poverty assessment system with a family poverty score that is higher than 0. Paragraph 6 of the same Decree defines the number of children born in the family as the number of unmarried children under the care of (living together with) a marital couple (single woman) and their children (including adoptive children and/or stepchildren).

Paragraph 8(b) of Government Decree 1530-N dated December 27, 2007 stipulates cash assistance of 300,000 drams for third and successive children born in families that are not entitled to the family allowance.

Article 13(2) of the Law on State Allowances provides that lump-sum child birth assistance is provided, if one of the adult members of the family has applied for it within six months of the child's birth.

In some cases, a third child has been born in the family, but only two children are actually under the care of the family. It becomes especially problematic, if the child was born after the adoption of Government Decree 1896-N dated December 28, 2006. Despite the fact that Decree 1530-N of December 27, 2007 does not require the existence of three children under the care of the parents (adoptive parents) in the family, the regional social service agencies refuse to grant the lump-sum assistance for the birth of the third child, citing paragraph 6 of the Decree and claiming that, in spite of the third child's birth, the family actually has only two children under its care.

During 2007, there were cases in which the third or fourth child was born in the family, but the regional social service agencies refused to grant the assistance, claiming that the family had applied for the amount after the birth of the child. The review of these complaints showed that the social agencies' decision not to grant the assistance was due to the fact that Government Decree 1896-N dated December 28, 2006 had amended Decree 110-N dated January 12, 2006 (on the procedure of assigning and paying family allowances and lump-sum cash assistance) to provide that urgent assistance is assigned for the third or successive child born in a family that is not entitled to the family allowance, if the applicant's family is recorded in the family poverty assessment system before the date of birth of the child and has applied within six months of such date, submitting the document stipulated by paragraph 35(a) of the same decree. This problem was

discussed between the Defender's staff and employees of the Social Support Department of the Ministry of Labor and Social Affairs.

A welcome development is that Government Decree 1530-N of December 27, 2007 has abolished the provision whereby the assistance for the third or successive child born in a family that was not entitled to the family allowance could be paid to the family only if the family had been recorded in the family poverty assessment system before the date of birth of the child.

Nevertheless, the third or fourth children of several families lodging such complaints during 2007 were born during the first half of 2007, which means that they cannot receive the assistance, as they would have to claim the assistance within six months of the birth of the child.

Based on the foregoing, the Defender has drafted a letter suggesting that the Minister of Labor and Social Affairs consider the possibility of providing the cash assistance for the birth of the third or successive children to families that were unable to claim the assistance during 2007 on the ground of not being recorded in the family poverty assessment system before the date of birth of the child, and would not be able to claim the assistance since the adoption of Government Decree 1530 of December 27, 2007, as they would have to claim the assistance within six months of the date of birth of the child.

Below are some typical examples of complaints against this system.

Example 1

In his letter to the Defender, a resident of the City of Vanadzor (Lori Region) stated that he had been included in the list of beneficiaries of the family allowance since 1997. He had regularly received the allowance, the payment of which had been later terminated on grounds that were unknown to him.

In response to the Defender's inquiry, the Head of the Lori Regional Social Service Agency stated that the family of a resident of the City of Vanadzor had been recorded in the Vanadzor Regional Social Service Agency with a family poverty score of 32.42, which is just below the Government-established eligibility minimum of 33.00. He also informed the Defender that the family's application had been reviewed by the Support Council with a view to granting urgent cash assistance to the family during the second quarter of 2007 on the basis of the Defender's proposal.

Example 2

A resident of the City of Yerevan sent a letter informing the Defender that his wife was disabled and had to stay in bed. He, too, had second-degree disability. The family did not have any sources of income and lived in social hardship. Despite the poor living conditions, they had not received the family poverty allowance during the last three years. The citizen informed the Defender that the

payment of his allowance had been terminated on reasons that were unknown to him.

In response to the Defender's inquiry, the regional social service agency informed that the applicant's family had received the family allowance from January 2002 to March 2005 inclusive.

The family had been reassessed on March 9, 2005, and due to the change of the average pension, resulting in a poverty score of 33.90, lost the entitlement to the family allowance from April 2005 (according to paragraph 1(b) of Government Decree 95 dated February 3, 2005, the eligibility minimum was 34.00 points).

The family was reassessed again on July 25, 2007 and got a poverty score of 32.67 (compared to the eligibility minimum of 33.00 points).

Considering the social conditions of the family, it was regularly granted urgent cash assistance.

After the Defender's intervention, the applicant's family was included in the list of families entitled to urgent cash assistance.

The review of complaints filed with the Defender has shown that, in some cases, families have been deprived of the right to receive the poverty allowance due to their failure to present a social card. In these cases, too, the problem was solved due to the Defender's intervention, and the families received not only the family allowance due for the whole period of termination, but also the lump-sum 20,000 dram assistance payable to families in connection with the admission of a child to elementary school.

Example 3

In a letter to the Defender, a resident of the Kotayk Region informed that his family comprised 13 members, including 11 children, of which six underage and five adults (of the five grown-up children, one was serving in the army and two had already been demobilized). The payment of the family allowance to his family had been terminated on the ground that they did not have a social card. As of the time of lodging the complaint, they had been unable to restore their right to receive the allowance.

In response to the Defender's inquiry, the head of the regional social service agency informed that the citizen had been deprived of the family allowance due to his refusal to receive a social card. In response to another letter of the Defender, the same official informed that the applicant's family allowance case, as per Government Decree 369-N dated March 1, 2007, had been submitted to the Ministry of Labor and Social Affairs on July 1, 2007, after which the family had been included in the payment lists for July 2007 and paid the allowance for 2005, 2006, 2007, as well as the lump-sum assistance payable in connection with the admission of one of the daughters to elementary school in 2005 (the total amount paid was 954,000 drams).

Example 4

A resident of the Haikashen Village (Armavir Region) sent a letter informing the Defender that, having learnt about the decision of the Constitutional Court of Armenia on social security cards, he had applied to the regional social service agency in accordance with the established procedure and requested payment of the family poverty allowance. The social agency had first refused him on the basis that he did not have a social card, and later, accepted his documents, but failed to process the case. The applicant also informed the Defender that he had not received the lump-sum child birth cash assistance for his twin children born in 2005. The applicant had seven children, five of whom were underage.

In response to the Defender's inquiry, the Minister of Labor and Social Affairs informed that the Ministry had initiated an administrative inquiry and would inform the citizen of its decision. For the time being, the family has been included in the poverty assessment system and is receiving the family poverty allowance.

Example 5

On behalf of a resident of Yerevan, her neighbors informed the Defender that she was a single retired woman born in 1925 and did not have a family or heirs. Two months earlier, she had broken her leg and been hospitalized. After the woman was hospitalized, the neighbors prepared all the required documents, but she was sent back home. At the time, she was in bed and did not have anyone to look after her. She asked the Defender's support to be placed in an old people's home.

In response to the Defender's letter, Deputy Minister of Labor and Social Affairs F. Berikyan informed that, on September 11, 2007, the woman had been referred to the Gyumri Home for Elderly People and Persons with Disabilities.

Example 6

A resident of the City of Yerevan sent a letter informing the Defender that, after his fourth child had been born, he had claimed the child birth benefit from the regional social service agency in accordance with the established procedure. At first, he had been denied on the ground of not having a social card. Later, he had submitted the document that was applied in lieu of the social card in accordance with the amendments to the Law on Social Security Cards, but was again denied on the ground that his family was not eligible.

The problem here is also connected with the fact that regional social service agencies do not properly notify citizens of their rights.

3.14.2. Medical-Social Examination Commission (MSEC)

The Defender has continued to receive collective complaints in connection with citizens' inability to receive compensation ordered by the MSEC during the period of disability for severe injury inflicted at work due to the termination of the activities of the employer organization. This issue was raised in the Defender's 2006 Annual Report, as well, but there has still been no legislative solution.[19]

To this end, the Defender has sent letters to the Government and the Ministry of Labor and Social Affairs, which have responded that a Law on Mandatory Social Insurance for Workplace Accidents and Professional Diseases had been drafted and, once circulated among the relevant agencies, would also be sent to the Defender for comments. However, there has been no practical progress in this area. In another letter, the Minister of Labor and Social Affairs informed the Defender that the draft Law was being refined.

Example

A resident of the City of Vanadzor informed the Defender that, while working in autocade 2981, he had suffered severe injury in 1968, for which compensation had been assigned to him. Up to April 2005, he had regularly received the compensation for damage inflicted to his health, but later, when the relevant factory was liquidated, the payment stopped. He had made numerous requests to various authorities, but all in vain. Finally, on October 12, 2006, the Ministry of Labor and Social Affairs wrote him a letter informing that the payments had been capitalized for the purpose of their payment in the future.

The Defender receives many complaints in which citizens complain of the MSEC, claiming that, in spite of the deterioration of their health condition, the MSEC fails to change their disability degree.

Example

A resident of the Town of Kajaran (Syunik Region) sent a letter informing the Defender that, as a consequence of injuries suffered in a car accident on July 5, 2005, the Medical-Social Examination Commission had recognized him as having second-degree disability. Recently, the MSEC had recognized him as having third-degree disability, even though his health condition had deteriorated since the last decision: his right hand did not function, he felt pain around his spinal cord, and could not sit or stand for long periods of time.

During the review of the complaint, the Head of the Medical-Social Examination Commission of the Ministry of Labor and Social Affairs informed the Defender that, on October 4, 2005, the applicant made his first application to

[19] See the 2006 Annual Report of the Human Rights Defender of the Republic of Armenia, Yerevan 2007, p. 54.

Medical-Social Examination Commission number 1 of the Syunik Region, requesting a medical-social examination to be performed in order to determine his degree of disability; as a result of the examination, the commission, based on the disability determination criteria in effect in Armenia, recognized him as having third-degree disability for a one-year period subject to revision on the basis of his general health condition. On February 15, 2006, the applicant reapplied to the aforementioned commission requesting another medical-social examination due to changes in his general health condition and submitted the necessary documents. Based on the assessment, Medical-Social Examination Commission number 1 of the Syunik Region recognized him as having third-degree disability due to severe injury inflicted at work, subject to revision after one year.

After the established term expired, the applicant made a third application to MSEC number 1 of the Syunik Region on February 28, 2007, which, based on paragraphs 28 and 31(b) of the procedure approved under Government Decree 780-N dated June 13, 2003, recognized the applicant's third-degree disability due to severe injury inflicted at work for an indefinite period.

Given the inconsistency between the information provided by the applicant and the official letter received by the Defender, the Defender asked the applicant to present the documents showing that he had second-degree disability.

There are important issues in relation to the State Fund for Social Insurance. Here, the main problem is connected with the determination of the length of service and its inclusion in the calculation of the insured period of service, retirement on privileged terms, and the refusal to assign a pension to persons that do not present a social card at the time of their initial registration.

Example 1

A resident of the City of Yerevan sent a letter informing the Defender that he had been convicted in 1949 and served his sentence during 1949-1953 in the form of construction work at the "Polivinylacetate" factory. After two years of work, he had moved to the Town of Kajaran, where he had performed construction work in a factory and mines for one year. He had made numerous requests to competent authorities to include his term of employment in the correctional labor institution in the calculation of his length of service, but had been told that it was impossible, because the statement issued by the penitentiary institution did not contain any information on his employment record.

During the Defender's review of the complaint, the Deputy Chairman of the State Fund for Social Insurance (SFSI) informed that the Mashtots Regional Center of the SFSI had been instructed to include the period from March 8, 1949 to April 11, 1953 (during which the citizen had worked in the penitentiary institution) in the calculation of his length of service and to recalculate the amount of his pension on the basis of the statement issued by the Penitentiary Department of the Ministry of Justice. As a result, the period of the applicant's employment in the

penitentiary institution during 1949-1953 was included in the calculation of his length of service and, under Article 53 of the Law on State Pensions, a pension premium of 19,228 drams was paid to the citizen in May 2007 for the missed period from March 1, 2006 to May 1, 2007.

Example 2

A resident of the City of Yerevan sent a letter informing the Defender that he had worked under radiation hazard for more than 33 years. When he had reached the legally-prescribed age, he had submitted the required documents to the Arabkir Regional Subdivision of the State Fund for Social Insurance on May 18, 2006, requesting privileged retirement, but his request had been denied on the ground that, under the Law on State Pensions, the entitlement to privileged retirement arises after 15 years of service, while the citizen's insured service as per the pension data was nine years.

The review of the documents presented by the applicant showed that the additional statement issued by the Physics Research Institute on the applicant's 6.5 years' service under radiation hazard had not been taken into consideration.

The Defender suggested finding a violation of human rights and taking necessary measures, but the State Fund for Social Insurance did not accept the Defender's suggestion.

Many of the complaints against the State Fund for Social Insurance are connected with the Fund's refusal to include service periods recognized by court in the calculation of the length of service. The Fund's main argument here is based on the restrictions stipulated by Article 47 of the Law on State Pensions, whereby "in the absence of the work-book, of appropriate records in the work-book, or of other documents required by law, the length of service is confirmed by an archive statement; in the absence of an archive statement, the length of service is established by court."

If the required (25 years') length of insured service is present, there is no need for the length of service to be established by court. The court may establish the missing part of the service term, but not more than 10 years (paragraphs 3 and 4 of Article 47).

Considering that the problem affects numerous citizens' constitutionally-safeguarded right to social security, the Defender requested the Constitutional Court of Armenia in October 2007 to determine the conformity of paragraphs 3 and 4 of Article 47 of the Law with Article 18 of the Constitution of Armenia.

Example

A resident of the Town of Armavir sent a letter informing the Defender that, from 1943 to 1951, he had worked in the Argavand Collective Farm. Based on his request, the village administration had issued a statement confirming this period of his employment, but the State Fund for Social Insurance had told him that the statement was not a basis for confirming his length of service. He had then

gone to court, which had established the fact that he had worked in the Argavand Collective Farm during 1943-1951; however, the State Fund for Social Insurance refused to include the employment period recognized by court in the calculation of his length of service. The Fund had sent him a letter informing that, according to the records in his work-book for pension purposes, his insured employment was 29 years, 1 month, and 28 days, and that his demand based on the court's execution order could not be met.

3.15. Yerevan City Administration

A total of 96 complaints against the Yerevan City Administration were received during 2007, of which:

- 59 were admitted for review;
- 15 were given information about available remedies;
- 2 were forwarded to other bodies for review;
- 14 were not admitted;
- 0 had the review terminated at the applicant's request; and
- 6 were still pending review.

During 2007, similar to the past, a large share of the complaints against the Yerevan City Administration were connected with land allocations, construction permits, the approval of construction plans, the legalization of unlawful construction, the non-recognition of citizens' lawful rights over decades-old buildings in the "expropriation zone," the failure of licensed companies to appraise property at its real market price, and other cases.

In the absence of clear legislation on urban development, it is often difficult to differentiate between the liability of the Yerevan City Administration and district municipalities for various violations, especially when the complaints are connected with the prevention and destruction of unlawful construction and the elimination of its consequences.

There are many complaints from owners of apartments in residential buildings against decisions to allocate to natural persons or legal entities the land plots adjacent to the buildings, which used to serve as leisure areas or playgrounds. There are also complaints about the non-enforcement of the Law on Urban Development and Government Decree 660 of October 28, 1998 "On the Procedure of Notification about Planned Changes in the Environment and Ensuring Public Participation in the Discussion of and Decision-Making on Published Urban Development Plans and Projects."

Some citizens have complaint about violations of Article 64(2) of the Land Code, when the applicants' ownership rights had not been recognized in cases of actual land use exceeding by up to 20% the land area specified by owners in the

real estate ownership documents as a result of the cadastre mapping work performed for purposes of the initial state registration.

To this end, many citizens have suffered because of poor administration by two state bodies: the Yerevan City Administration and the State Committee of the Real Estate Cadastre. The latter has deferred to the Yerevan City Administration the obligation to legalize land plots exceeding by up to 20% the lawful area used by owners; however, in some cases, the Yerevan City Administration either has claimed that the Cadastre has failed to provide information on land plots exceeding by up to 20% the lawful area used by owners, or has suggested that citizens directly purchase such land plots at their cadastre value.

Back in 2006, the Defender addressed the issues connected with the expropriation of privately-owned real estate for urban development projects in the City of Yerevan and the inadequacy of compensation paid to the owners of such real estate.

The issue arose again in 2007: Gevorg Cheghlyan, a citizen of Armenia, unsatisfied with the amount of compensation offered to him in return for the real estate expropriated from him, and having failed to obtain any results in domestic courts, had applied to the European Court of Human Rights on May 13, 2004. On April 12, 2007, the Government of Armenia reached friendly settlement with G. Cheghlyan on the compensation of US $150,000, and the applicant agreed to withdraw his application after getting the compensation. After the compensation was paid and the application withdrawn, the European Court of Human Rights struck out the case.

It is interesting to note that the domestic courts had obligated G. Cheghlyan to conclude a compensation agreement for US $47,018.

Based on the Defender's application aimed at preventing further violations of citizens' rights and restoring violated rights, the Constitutional Court of Armenia decided on April 18, 2006 (decision SDO 630) to declare that Article 218 of the Civil Code, Articles 104, 106, and 108 of the Land Code, and Government Decree 1151-N dated August 1 2002 were incompatible with the Constitution of Armenia.

As a result of the Constitutional Court's decision, the Law on Expropriation of Property for the Needs of Society and State was adopted on November 27, 2006. Based on this Law, the Government has to adopt a decision finding an extraordinary (prevailing) public interest in order to carry out expropriation.

Besides, citizens that had been evicted from their premises by virtue of court acts that had been adopted on the basis of the laws that were consequently declared unconstitutional may, in accordance with the April 18, 2006 decision of the Constitutional Court and Article 241.1 of the Civil Procedure Code, ask the courts to "reopen their cases in light of new circumstances."

The Defender had issued comments on the Law on Expropriation of Property for the Needs of Society and State, some of which were accepted.

Since the adoption of the April 18, 2006 decision of the Constitutional Court and the Law on Expropriation of Property for the Needs of Society and State, the number of complaints from citizens that have property rights in the areas declared "areas of extraordinary (prevailing) public interest" has declined.

Owing to a number of measures implemented by the Defender in 2007, a new practice has emerged: in many cases, the state bodies offer the citizens compensation in the form of proportionate space in a new or other appropriate building. Another positive trend is that, before expropriation, the state recognizes ownership rights of citizens over property that their families have owned for several generations, in spite of the undetermined legal status of property, which is located in the areas declared "areas of extraordinary (prevailing) public interest."

This attitude change is due to the intervention of the Prime Minister.

In a letter to the Yerevan Mayor dated March 23, 2007, the Human Rights Defender had informed the Mayor that, in the areas declared by Government Decree 108-N of January 25, 2007 as "expropriation sites" and in the Kond and Kozern neighborhoods, there were decades-old buildings with no clear legal status. Citizens' rights over such buildings were not recognized in accordance with the procedure stipulated by the Republic of Armenia Law on the Legal Status of Unauthorized Buildings, Premises, and Occupied Land plots, as the sites had earlier been identified as sites subject to expropriation.

In view of the interests of defending the residents' rights, the Defender requested the Mayor to inform what was being done to recognize the tenants' ownership title prior to the compilation of protocols describing the buildings and premises subject to expropriation (as had been done in the Kond and Kozern neighborhoods).

On April 16, 2007, the Yerevan Mayor sent a negative reply to the Defender's inquiry, stating that the Defender had not specified in his inquiry the exact neighborhoods included in the Yerevan City Development Plans, and that there were a number of sites in Yerevan with many buildings without a status. The Mayor also wrote that the issue in the Kond and Kozern neighborhoods of Yerevan was different from the issues of many other neighborhoods of Yerevan, because in Kond and Kozern, for several decades, no status had been granted to citizens' property for reasons that did not depend on them.

Unsatisfied with this reply, the Defender sent a letter to the Prime Minister of Armenia, attaching copies of the Defender's inquiry and the Yerevan Mayor's reply, and asking the Prime Minister to oversee the matter.

Owing to the intervention of the Prime Minister, the Yerevan Mayor informed the Defender in a letter dated July 30, 2007 that the Governing Board of the "Yerevan City Development Investment Projects Implementation Unit" (decision 96 of July 13, 2007) and the Yerevan Mayor (decision 2100-A dated July 16, 2007) had decided to create an inter-agency commission to address the problems of expropriation sites declared subject to an overriding public interest, especially in District 33, by reviewing the matters raised by the residents and

facilitating the measurement and inventory-taking of property in such sites. The work of the commission, with the engagement of six representatives of District 33, had already commenced in the form of measurement and inventory-taking activities, which were necessary to recognize the citizens' ownership right over property used by them for decades without any legal status.

The activities of the commission are still underway. Once the measurement and inventory-taking work is complete, the citizens' problems can be discussed and solved to the extent possible.

It has since been established that the Yerevan Mayor has adopted a number of decisions recognizing numerous citizens' ownership rights over the property used by them for several decades.

However, the problem still cannot be considered solved, because the relevant subdivisions of the State Committee of the Real Estate Cadastre deny state registration of the rights arising out of the Yerevan Mayor's decisions on the ground that "the Mayor's decisions contradict the legislation of Armenia."

The Human Rights Defender of the Republic of Armenia welcomes the measures implemented by the Yerevan Mayor at the Prime Minister's instruction to restore the property rights of citizens.

However, these activities have not addressed the recognition of the rights of the residents of apartments 2, 3, 5, 6, 7, 9, and 12 of building 41 on Yeznik Koghbatzi Street and the rights of the resident of house 39 on Yeznik Koghbatzi Street.

The Defender's Office has also received many complaints regarding the pre-expropriation appraisal of real estate.

Residents complain that the licensed companies appraising their real estate do not specify the real market price, as a consequence of which the compensation they receive is not sufficient to purchase an equivalent apartment at another place.

Some citizens residing in the areas declared "areas of extraordinary (prevailing) public interest" have concluded agreements to receive apartments of appropriate size in newly-constructed buildings in return for the real estate expropriated from them: the outcome of this scheme is closer to equivalence than the compensation offered on the basis of wrong appraisal of the market price by licensed companies. However, some citizens avoid the agreements on receiving apartments in newly-constructed buildings due to the lack of trust.

In any event, the expropriated assets are more valuable to the owner than their market appraisal. Therefore, the amount of compensation should be determined using not only the market price, but also the possibility for the owner to obtain similar conditions at another place.

Compared to the past, the Yerevan City Administration and its officials have improved their cooperation with the Defender's Office in preventing or addressing violations of human rights.

In a number of areas, working groups comprising staff of the Defender and the Yerevan City Administration have been created to thoroughly study and resolve problems raised by citizens in their complaints.

Below are some typical examples of such problems.

Example 1

A citizen informed the Defender that he had asked the Yerevan Mayor to inform him about the procedure and criteria by which organizations had been selected to implement urban development projects under Government Decree 909 dated June 17, 2004, whether or not those organizations had provided any guarantees, and if yes, then what guarantees they were.

He had also requested the State Tax Service of the Republic of Armenia to provide information on the taxes and social contributions paid by the "Yerevan City Development Investment Projects Implementation Unit" State Non-for-Profit Organization during 2004-2006. The applicant claimed not to have received any response to his aforementioned inquiries.

The Defender requested the Yerevan Mayor and the Head of the State Tax Service to comment on the issues raised in the citizen's complaint, citing Article 27(2) of the Constitution of Armenia, Articles 6, 8(1), and 11(1) of the Law on the Freedom of Information, and emphasizing Article 11(3) of the Law, which provides that, in case of refusing to provide the information requested in writing, the holder of the information must notify the party requesting the information within a five-day period, specifying the basis for such refusal (the relevant provision of the law) and the procedure of appealing against it.

The Head of the State Tax Service informed the Defender that the State Tax Service had sent a letter to the respective citizen on May 10, 2007 notifying him that the information requested by him on the taxes and social contributions paid by the "Yerevan City Development Investment Projects Implementation Unit" State Non-for-Profit Organization during 2004-2006 could not be provided, because it was a tax secret under Article 4 of the Law on Tax Service.

In response to the inquiry made with the Yerevan Mayor, the Director of the "Yerevan City Development Investment Projects Implementation Unit" State Non-for-Profit Organization informed the Defender that the response to the citizen's request had been sent on May 5, 2007 in letter 38/01-251 of the "Yerevan City Development Investment Projects Implementation Unit" State Non-for-Profit Organization.

Thus, the employees of the State Tax Service and the "Yerevan City Development Investment Projects Implementation Unit" State Non-for-Profit Organization had responded to the citizen only after the Defender's intervention.

Example 2

An applicant informed the Defender that, since 1951, his family had in good faith, openly, and uninterruptedly possessed a land plot of about 1,000 square

meters in the City of Yerevan, on which they had built without permission a small house and swimming pool. He had made numerous requests to the competent state bodies to privatize the land plot and the premises built without permission, all of which had been rejected groundlessly. Later, he had learnt that, by decision 1483-A of the Yerevan Mayor dated September 18, 2006, 530 square meters of the aforementioned land plot had been allocated to a different citizen for constructing a multi-apartment building.

The applicant also informed the Defender that, in December 2006, January and February 2007, and on June 22, 2007, he had again requested the Yerevan City Administration to legalize the disputed land plot and the premises built without permission. On February 15, at the Mayor's instruction, the Chief of Staff of the Yerevan City Administration had met with him; on February 23, the geodesist of the Yerevan City Administration had measured the land plot and prepared a drawing, which the applicant had submitted to the Secretary of the Yerevan City Administration Commission for Legalization of Unauthorized Buildings. Later, he had found out that, by decision 1683-A of the Yerevan Mayor dated June 20, 2007, another 600 square meters of the disputed land had been allocated to a different citizen. All the fruit trees, vines, and bushes that were there had been cut on July 29, 2007 without any permission.

The matters raised in the citizen's complaint were discussed in a working group comprising employees of the Yerevan City Administration; consequently, by decision 4416-A of the Yerevan Mayor dated October 25, 2007, the building (total surface area of 29.6 square meters) built by the applicant and the land plot allocated for the building (total surface area of 466.52 square meters) were sold to the citizen with his consent.

The applicant had informed the law-enforcement agencies of the illegal logging. It was explained to him that he has the right to file a court claim for damage compensation.

Example 3

A resident of the City of Yerevan informed the Defender that, by decision 1785-A of the Yerevan Mayor dated October 10, 2002 and decision 2412-A dated November 27, 2002 amending decision 1785-A, a 5 square meter land plot had been allocated to him beside building 34 on Tumanyan Street for lease for a seven-year term in return for the land plot earlier occupied by his booth at 24/1 Tumanyan Street for the purpose of moving his booth.

In accordance with decision 1785-A, the citizen had requested the Yerevan Center District Municipality (the body authorized by the Yerevan Mayor for such purposes) to conclude a land lease agreement, but his request had been groundlessly denied. Subsequently, he had sent a number of letters to the Yerevan City Administration and the Yerevan Center District Municipality, but the problem had not been solved.

The Defender made inquiries with the Yerevan Mayor and the Center District Community Head in connection with the issues raised in the applicant's complaint.

During the discussions in the working group created jointly with employees of the Yerevan City Administration, several options of compensation were proposed and studied with the participation of the applicant. However, agreement could not be reached on any of the options; moreover, decision 4505-A of the Yerevan Mayor dated October 30, 2007 repealed the earlier decisions of the Yerevan Mayor, by which a 5 square meter land plot ha been allocated to the applicant for a seven-year period.

Based on the foregoing, the Defender drafted a decision on finding a violation of human rights and a recommendation on how to address the violation.

However, it was established that the applicant had taken the disputed issue before court; therefore, the Defender decided on the basis of Articles 10(1) and 15(1)(3) of the Law on the Human Rights Defender to terminate the review of the complaint.

Example 4

The applicant and a number of citizens that signed the complaint informed the Defender that the roof of a shop beside their building, being at the height of the building backyard, had served as a playground for children.

The current owner of the shop, claiming that he was reconstructing the shop, had completely demolished the roof and "lifted" it by about a meter to the level of the windows of nearby apartments, as a consequence of which rainwater and melting snow would dampen the building walls, and the children would be deprived of the possibility to play in the area that was earlier designated as a backyard.

In response to the Defender's inquiry, the Head of the State Urban Development Inspectorate of the Ministry of Urban Development stated that the Yerevan City Administration had complied with all the legal procedures in issuing the architectural design papers and the construction permit and approving the plan for the reconstruction and expansion of the non-residential space in the building.

However, the site examination showed that, during the construction work, the developer had committed serious violations, which could have grave consequences in the future.

The Head of the State Urban Development Inspectorate forwarded to the Defender a copy of letter KN-23/2233 sent to the Yerevan Mayor on June 28, 2007 by the Minister of Urban Development, which clearly specified the violations committed by the developer, including the "lifting" of the building roof, the excessive expansion of the building towards the backyard, and so on.

The First Deputy Mayor of Yerevan sent a letter on July 18, 2007 explaining that the Urban Development and Land Oversight Department of the Yerevan City Administration had drafted decision 004071 finding administrative

infringements by the developer under Article 154 of the Republic of Armenia Code of Administrative Infringements, which had been submitted to the relevant commission for review.

Nevertheless, the residents had submitted photos clearly showing that the developer had put a fence around the building roof, depriving children of the possibility to play and adult residents of the possibility to rest in what used to be their backyard.

The complaint was then discussed by a working group comprising employees of the Yerevan City Administration and the Defender's staff. After deliberations, the group found that, by decision V-7/1 of the Yerevan Mayor dated July 24, 2007, the developer had been penalized in the amount of 400 minimal salaries for construction that deviated from the plan (construction on a state-owned land plot, exceeding the permitted territory, and lifting the roof by over 60 centimeters).

However, after ordering the administrative penalty, the Yerevan City Administration did not take measures to address the deviations from the plan.

Example 5

A group of residents of Yerevan informed the Defender that a multi-apartment building was being constructed in front of their buildings with significant violations of urban development and other rules, which would limit the natural light in their apartments.

In response to the Defender's inquiry, the Chief Architect of Yerevan, who is also the Head of the Architecture and Urban Development Department of the Yerevan City Administration, informed the Defender in his letter dated July 12, 2006 that, in order to ensure conditions for the operation of apartments in nearby buildings, assessments of the first three apartments most vulnerable in terms of insolation had been performed in accordance with the regulatory requirements, as a result of which the developer had made volume and spatial changes in the design of the South-Western section of the proposed building, which had been submitted to and agreed upon with the Architecture and Urban Development Department of the Yerevan City Administration.

Later, during the review of the complaint, it became clear that the developer had deviated from the plan, for which the Urban Development and Land Oversight Department of the Yerevan City Administration had drafted a protocol finding an administrative infringement and warned the developer to suspend the construction work and to bring it into line with the approved plan. Considering that the construction work had continued in violation of the approved plan, the Defender sent a letter to the Yerevan Mayor on June 19, 2007, suggesting taking appropriate measures to address the violations and to restore the violated rights of the residents.

In response, the Yerevan Mayor wrote on September 28, 2007 that, for deviations from plan number 18-05/k-276/1-263 dated October 11, 2006 in the

construction of the multi-apartment residential house by "Andranik and Friends" LLC in the area near Paronyan Street, the Yerevan Mayor had adopted decision 3160-A dated August 28, 2007 "Ordering the Developer to Address the Deviations from the Plan in the Construction of the Multi-Apartment Residential House by "Andranik and Friends" LLC in the Area near Paronyan Street (Demolishing the House) and Bringing the Building into Line with the Plan."

In paragraph 1 of the decision, the Mayor recommended to the LLC to address the deviations from the plan during a one-month period and to bring the building into line with the plan, while paragraph 2 instructed the Center District Community Head to address the deviations from the plan (by demolishing the building) in case the developer failed to demolish it within the one-month period specified in paragraph 1 and to claim the costs of such works from the Director of the LLC.

The responsibility for implementing the decision was delegated to the Center District Community Head and the Head of the Urban Development and Land Oversight Department of the Yerevan City Administration. The First Deputy Mayor of Yerevan was instructed to monitor the implementation of the decision.

During the review of the complaint, it was established that "Andranik and Friends" LLC had filed a claim with the First Instance Court of the Center and Nork-Marash Communities of Yerevan against the Yerevan City Administration, asking the court to declare null and void the Yerevan Mayor's decision 3160-A dated August 28, 2007 and to permit certain acts. The Yerevan City Administration filed a counterclaim against "Andranik and Friends" LLC asking the court to obligate the LLC to address the deviations from the plan and to bring the building into line with the plan.

The court decided on December 14, 2007 to reject both the LLC's claim and the City Administration's counterclaim. The Yerevan Mayor lodged an appeal on December 18, 2007.

Example 6

A citizen informed the Defender that, according to reports of licensed companies, the market price of his own house (147.6 square meters) expropriated for state needs was US $42,030.05.

A house next to his, located within the same expropriation zone, with a total surface area of 110.88 square meters, had been appraised by the same licensed companies at US $94,206.74 during the same time period, i.e. US $849.62 per square meter, which was four-fold the square-meter price of his co-owned real estate. Moreover, by decision 1161-A of the Yerevan Mayor dated June 25, 2004, the owner of the aforementioned (110.88 square meter) house had been granted, as the equivalent of about 13% of the compensation price, a 600 square meter land plot for building a residential house, whereas the applicant had not been offered any alternatives to cash compensation, in addition to having his real estate clearly undervalued by the same companies.

In connection with these matters, the Defender demanded the Yerevan Mayor on April 25, 2007 to provide copies of the aforementioned licensed companies' reports applied to determine the market price of the houses in question.

In response, the Director of the "Yerevan City Development Investment Projects Implementation Unit" State Non-for-Profit Organization sent the following letter:

"Having reviewed your letter to the Yerevan Mayor, we would like to inform you that all functions in relation to the applicant have been performed in strict compliance with the laws and other legal acts of the Republic of Armenia.

The applicant's own real estate was expropriated in accordance with the procedure stipulated by decree 950 dated October 5, 2001, which requires the compensation to be determined on the basis of a report by the respective licensed appraisal company."

The review of the complaint is still underway.

Example 7

171 residents of District 16 of the Ajapnyak Community of Yerevan addressed a letter to the Defender, informing him that they had jointly renovated the circular courtyard shared by residents of a total of ten buildings, including the planting of trees, the installation of an irrigation network and benches, and the provision of lighting.

The site was serving as a playground for children and a leisure area for residents.

They had lately been informed that, under the Yerevan Mayor's Decision 1821-A dated June 22, 2007, without consulting them, 20-square-meter land plots had been allocated to each of 21 residents of various buildings for the purpose of building garages. The allocation of land plots to 21 persons had violated the rights of residents of 340-360 apartments, as the construction of garages would deprive the residents of the possibility to rest in the area that they had improved and developed.

The Head of the Architecture and Urban Development Department of the Yerevan City Administration had responded to their letter by stating that, in terms of urban development concerns, the allocation of land plots was acceptable, because the garages would be built under a common plan, look the same, and be in the semi-basement, so as to prevent unauthorized and irregular development in the future.

Considering that the Armenian legislation prescribes a procedure for discovering, preventing, and suspending unauthorized construction, as well as punishing the party performing unauthorized construction, the Defender objected to the aforementioned reasoning of the Department Head and, with a view to preserving green areas and protecting the rights of residents to rest and of children to play, suggested revising the Yerevan Mayor's decision 1821-A dated June 22,

2007 on allocating 20-square-meter land plots 21 persons for the purpose of building garages.

The matter was discussed in a working group comprising employees of the Yerevan City Administration and the Defender's staff: its work resulted in the adoption of the Yerevan Mayor's decision 5681-A dated December 19, 2007 annulling decision 1821-A dated June 22, 2007 and decision 2883-A dated August 15, 2007, including the land plot floor plans issued on their basis and the agreements on granting land plot development rights.

Eventually, the violated rights of 171 residents were restored.

Example 8

A number of residents of the City of Yerevan informed the defender that, during 1988-1992, they had been deported from Azerbaijan and had settled in abandoned buildings 46, 48, 50, 52, 54, 110, and 112 on Aghbyur Serob Street in Yerevan, in which they were still living. In recent years, they had made numerous requests to the Arabkir Community Head to privatize the apartments occupied by them, but their requests had been denied on the ground that, from 1980, there was a plan to construct a highway connecting Aghbyur Serob and Babayan streets, which would pass through the area where they lived. The construction had not even started yet, but they were being told that there was still a plan.

The residents had been told that the aforementioned buildings were not in the balance sheet of any state body.

The citizens' housing issue was discussed in a working group comprising employees of the Yerevan City Administration and the Defender's staff.

As a result, the Yerevan Mayor sent letter 01/03-M-4402 dated December 19, 2007 to the Chief of Staff of the Government, Minister, informing the latter that the housing problem of the applicants' families could be solved by adopting a Government decree on assigning the relevant buildings to the "Yerevan City Administration Staff" state government institution, performing state registration of the property rights of the Republic of Armenia over the buildings, renting the apartments to the refugees (deported from Azerbaijan during 1988-1992) that actually lived there and had acquired citizenship of the Republic of Armenia, as well as local families with relevant registration in their passports, and delegating to the Yerevan Mayor the power to privatize them in accordance with the procedure stipulated by the Republic of Armenia Law on the Gratuitous Privatization of Apartments in the State-Owned Housing Stock.

It was also specified in the letter that, if the aforementioned suggestion were accepted by the Government, the Yerevan City Administration would submit a draft Government decree in accordance with the established procedure.

In order to solve the problem, the Defender, too, sent a letter to the Government, in which he expresses his support to the option proposed by the Yerevan Mayor.

Example 9

A resident of the City of Yerevan informed the Defender that, according to an ownership title certificate issued on September 4, 1995, he was the owner of a 186.7 square meter house and a 1,162.8 square meter land plot, which he was using for about 40 years.

During the initial state registration, the State Committee of the Real Estate Cadastre had sent a letter informing him that, on June 3, 2004, the relevant regional subdivision of the Committee had performed measurement of the aforementioned house and adjacent land plot, finding the actual surface area of the land plot to be 1,325.8 square meters, rather than 1,162.8 square meters, as mentioned in the ownership title certificate, which meant that he was using an additional 163.0 square meters of land, which was less than 20% of the land plot lawfully owned by him.

They had advised him to request the Yerevan Mayor to permit him to acquire the ownership title at no cost, as Article 61 of the Land Code provided that the land plot could be alienated by the Yerevan Mayor.

He had also been informed that, in the area in which his property was located, the initial state registration work had begun on November 9, 2005 and would continue until May 9, 2006.

During that period, he had sent applications to the Yerevan City Administration, which had informed him (response letters dated March 23, 2006, April 11, 2006, and May 6, 2006) that the issue of the additional 143.2 square meters of land used by him would be considered, if he agreed to purchase it directly at the cadastre value, disregarding the requirement of Article 64 of the Land Code, whereby unlawfully-used land, which is adjacent to and does not exceed 20% of the lawful land, shall be transferred to the ownership of the person using it at no cost.

The complaint is still pending review. The Yerevan City Administration and the State Committee of the Real Estate Cadastre have been requested to comment on the matter.

Example 10

The applicant informed the Defender that the District Council Executive Committee had decided on August 13, 1987 (decision 14/13) to allow her, as a veteran of World War II with a first-degree disability, to install a metal garage in the building backyard, which had later been documented under her husband's name. As the garage ownership had to be transferred to her name, she had dealt with the legalization issues.

Within the validity period of the Law on the Legal Status of Unauthorized Buildings, Premises, and Occupied Land plots (adopted on December 26, 2002), she had requested the Arabkir District Subdivision of the State Committee of the Real Estate Cadastre to recognize her rights over the garage. The Arabkir District Subdivision had prepared a floor plan and sent it to the Yerevan City

Administration; however, the Yerevan Mayor had decided on April 20, 2005 (decision 834-A, annex 5) not to recognize the ownership right over the building on the ground that it had been built after the enactment of the law.

The decision was made regardless of the fact that, back on July 31, 1998, the Center Subdivision of the Real Estate Cadastre had sent letter 2-3194 to the Yerevan Mayor informing him that a 17.7 square meter metal garage had been discovered in the backyard of building 2 on Gyulbenkyan Street, and submitted the documents necessary to determine its future status, which had not been done.

In letters to the Defender (03/4492h dated March 27, 2007, 01/04-13286h dated August 15, 2007, and 01/16407H dated December 29, 2007), the Yerevan City Administration had informed that documents on the date of installing the garage had not been found in the archives, and that the Arabkir District Subdivision of the State Committee of the Real Estate Cadastre had informed the Yerevan City Administration in its letter S/S El-1502 dated February 11, 2005 that the garage had not had any registration prior to May 15, 2001.

At that point, the Defender made objections on the basis of Government decree 1748-N dated May 15, 2003, which stipulated the procedure of reviewing applications and requests related to buildings and premises built without permission and state-owned land plots occupied or alienated (provided or acquired) in violation of the legislation of Armenia prior to May 15, 2001, and not registered prior to the entry into force of the Law on the Legal Status of Unauthorized Buildings, Premises, and Occupied Land plots. Paragraph 4 of the decree provides: "After the subdivision receives the floor plan of the real estate, the community head or, in case of property that is outside the administrative territory of any community, the relevant Governor or, in the City of Yerevan, the Yerevan Mayor through the relevant district communities, shall find out the construction date of the buildings or premises built without permission and, in the procedure and time period defined by the Law, make a decision on their future status."

In a letter to the Defender, the Head of the Arabkir District Community informed that the letter on the installation date of the applicant's metal garage had been issued in response to an inquiry by the Chairman of the Yerevan City Administration Commission for Legalization of Unauthorized Buildings, and that such letters are issued in one copy and sent directly to the Commission.

Nevertheless, the Yerevan Mayor informed the Defender in a letter dated December 29, 2007 that the letter sent by the Head of the Arabkir District Community could not be present in the archive materials that had served as a basis for decision 834-A of the Yerevan Mayor dated April 20, 2005.

It is worth noting here that the Yerevan Mayor tried to justify his decision by the fact that the Community Head's letter sent to the citizen on August 17, 2005 had been sent after the adoption of decision 834-A of the Yerevan Mayor dated April 20, 2005. Whereas, the Defender has still received no explanation as to why no inquiry had been made with the head of the district community on the installation date of the garage in accordance with the procedure approved under the

aforementioned Government decree. The Yerevan City Administration has not refuted the information sent to the Defender by the head of the district community about the fact that the letter on the installation date of the applicant's metal garage had been issued in response to an inquiry by the Chairman of the Yerevan City Administration Commission for Legalization of Unauthorized Buildings, and that such letters are issued in one copy and sent directly to the Commission.

A decision finding a violation of human rights in the actions of the Yerevan Mayor and suggesting to implement measures to address the violation has been drafted.

3.16. Regional Government and Local Self-Government Bodies

This section is dedicated to complaints against regional government bodies ("Marzpetarans" or "regional governors' offices") and local self-government bodies (Yerevan District Municipalities, city administrations (except for the City of Yerevan), and village administrations).

Complaints from Earthquake Zone residents accounted for a large share of the complaints against regional governors' offices and city and village administrations; most of them were concerned with housing, land allocation, and land use issues, including the unfair distribution of housing built in the Earthquake Zone with state funding or other resources, the indifference towards increases in the number of family members in Earthquake Zone rehabilitation programs, the failure to include homeless families in the waiting lists, and other similar issues, as well as violations of labor and social security rights.

Urgent housing problems remain unsolved in the Earthquake Zone. There are still families that have lost their apartments in the 1988 earthquake and are living in temporary dwellings ("domiks") or unsafe buildings.

Below are typical examples of complaints against regional governors' offices and city and village administrations.

3.16.1. Regional Governors' Offices

A total of 19 complaints against regional governors' offices were received in 2007, of which:

- 10 were admitted for review;
- 3 were given information about available remedies;
- 0 were forwarded to other bodies for review;
- 5 were not admitted;
- 1 had the review terminated at the applicant's request; and
- 0 were still pending review.

Example 1

The review of a complaint filed by a resident of the City of Gyumri (Shirak Region) and the supporting documents showed that the 1988 earthquake destroyed the applicant's two-room apartment, in which four of them had been living. In the frameworks of the state-supported program, the Shirak Regional Governor had decided on November 12, 2003 (decision 294) to allocate an apartment to the applicant's family and to issue an ownership title registration certificate.

It later became clear that, based on a contract between the Gyumri Mayor and another citizen dated July 9, 2002, the apartment had been allocated to the latter.

The Civil Appellate Court of Armenia decided on August 16, 2005 to annul decision 294 of the Shirak Regional Governor dated November 12, 2003 on allocating the apartment to the applicant and the ownership title registration certificate issued on its basis and to restore the rights of the other citizen and his family members over the apartment. Another judgment of the Civil Appellate Court dated December 11, 2006 had evicted the applicant and his three family members from the apartment in Gyumri and obligated the Shirak Regional Governor's Office to allocate an adequate apartment to the applicant's family, as a family that lost their house in the earthquake, in accordance with the procedure stipulated by law. The court had ordered to enforce the eviction after allocating an apartment to the family. However, the Civil Chamber of the Cassation Court of Armenia decided on May 18, 2007 to quash and strike out the part of the December 11, 2006 judgment of the Civil Appellate Court of Armenia concerned with the enforcement of the eviction after allocating an apartment to the respondent; the remainder of the judgment was upheld.

Considering the applicant's claim that the two-room apartment offered to his family by the Regional Governor's Office was in a poor condition, with broken windows, many deficiencies, and some other people living in it, the Defender admitted this part of the complaint for review and requested the Shirak Governor to comment on the issue.

The Shirak Governor informed the Defender that, based on the Civil Appellate Court's final judgment dated August 16, 2005, the Shirak Governor had decided on May 7, 2007 (decision 223) to allocate to the applicant's three-member family, as the equivalent of their old apartment, a two-room apartment that had been unlawfully occupied by another family for three years.

Both apartments had two rooms, were built by the Lincy Fund, and had been occupied by families since completion. Therefore, they were considered equivalent apartments.

The citizen has requested the Shirak Regional Governor's Office to privatize the aforementioned apartment to him, and the privatization process is currently underway.

Considering the foregoing, the Defender decided to terminate the review of the complaint.

Example 2

A resident of the City of Gyumri (Shirak Region) informed the Defender that, as a consequence of the 1988 Earthquake, he had lost his three-room apartment (apartment number 3, building 3a, Koshtoyan Street, Gyumri), in which five persons had been registered.

In 1992, his family had consisted of seven members, and a one-room apartment had been allocated to his daughter, who had a child with congenital disability. In 1992, the other five members of his family were included in the waiting list as a family eligible for a three-room apartment, and were number 625 in the list.

On February 27, 2004, he had resubmitted the relevant documents to the Gyumri City Administration, but the waiting list posted on the wall had specified two, rather than three rooms next to his family's name; moreover, his family had not been included in the Housing Purchase Certificate Program on the ground that he had not been registered in the waiting list before March 1, 2004.

In response to the Defender's inquiry on the issues raised by the citizen, the Gyumri Mayor informed the Defender that the applicant, as a citizen who had lost his house in the earthquake, together with his family members had been included in the waiting list as a family in need of a three-room apartment.

According to the procedure approved under Government Decree 432 dated June 10, 1999, the registration of citizens that lost their houses in the earthquake had to be performed by March 1.

In the process of the regular revision of the waiting list, the applicant had contacted the City Administration on February 27, 2004, but the documents presented by him on the number of persons and the technical condition of the building had not been endorsed by the seal of the Housing Union, as a consequence of which his registration in the waiting list had been performed after March 1, 2004.

As for the complaint about the removal of his family from the waiting list of families in need of three-room apartments, paragraph 16 of Government Decree 432 dated June 10, 1999 provides: "Residential space shall be allocated to citizens within the limits established by this procedure, but not greater than the number of rooms formerly occupied by the tenant and his family members."

As the Gyumri City Council Executive Committee had decided on May 1, 1992 (decision number 4) to allocate to the applicant's daughter (two persons) a one-room apartment (apartment number 59, building 18, Paruyr Sevak Street), the City Administration, based on paragraph 16 of the procedure approved under the aforementioned Government Decree, had registered his five-member family in the waiting list of families in need of a two-room apartment.

The applicant's family was currently number 297 in the waiting list of families in need of a two-room apartment and was entitled to the 29th paragraph of the list of privileges approved under the aforementioned decree.

In his letter, the Shirak Governor informed the Defender that the Government had decided in its session of December 21, 2006 to allocate a housing purchase certificate to the citizen as a matter of exception.

Considering that a housing purchase certificate had not previously been allocated to the citizen and the problem was solved to the applicant's satisfaction after the Defender's intervention, the Defender decided on January 26, 2007 to terminate the review of the complaint.

3.16.2. Yerevan District Municipalities

Compared to a total of 96 complaints against the Yerevan City Administration in 2007, 49 complaints were lodged with the Defender against the Yerevan district municipalities. These numbers are logical, because most of the powers connected with various issues in the City of Yerevan (land allocation, granting of construction permits, enforcement of legal requirements in relation to unauthorized buildings, and so on) are vested in the Yerevan Mayor.

Of the 49 complaints against district municipalities of Yerevan in 2007:

- 26 were admitted for review;
- 8 were given information about available remedies;
- 0 were forwarded to other bodies for review;
- 14 were not admitted;
- 0 had the review terminated at the applicant's request; and
- 1 was still pending review.

The complaints against district municipalities of Yerevan were mainly concerned with the maintenance of common areas in the buildings, the illegal occupation of common areas, the violation of others' rights as a consequence of unauthorized construction, the allocation of apartments, and other functions for which the district municipalities are responsible so long as the condominiums are not fully operational. The Defender's Office has also received complaints from citizens to whose applications district municipalities have not responded.

A number of complaints against the district municipalities were related to either matters lying outside their authority or matters for which the City Administration or other bodies providing public services were responsible.

Below are typical examples of complaints against the district municipalities.

Example 1

The review of a complaint revealed the following: in the process of construction work that was ongoing in apartment 18, which was next to the applicant's apartment, two citizens that were not the owners of apartment 18 had occupied the applicant's share of the common hallway without the applicant's

consent and, in breach of the required one-meter distance, were trying to install a door that would open towards the hallway.

In response to the Defender's inquiry, the Mayor of the Arabkir District Community informed that an administrative infringement protocol had been drafted and submitted to the relevant commission regarding the unauthorized movement of the door by one meter by the resident of apartment 18 into the hallway.

The review of the case is still pending.

A common feature of this and other similar complaints is that the local self-government bodies are apparently sending template letters to the Defender about "an administrative infringement protocol" having been drafted and "submitted to the relevant commission." By not overseeing the enforcement of the demand to suspend unauthorized construction, local self-government bodies effectively limit their intervention to the performance of their duties under Article 26 of the Law on Urban Development and Article 37[5] of the Law on Local Self-Government. On the background of their irresponsiveness and connivance, unauthorized buildings get built, registered, and later legalized in breach of the ownership rights of other citizens.

Example 2

A resident of the Shengavit District of the City of Yerevan informed the Defender that his neighbors, having unlawfully occupied 200 square meters of his space, were arbitrarily building structures without any urban development documents and permits.

Inquiries were made with the Yerevan Mayor and the Mayor of the Shengavit District Community in connection with this case.

The following response was received: "The construction works performed without appropriate documents have been suspended and an administrative infringement protocol has been drafted and submitted to the relevant commission."

The review of the case is still pending.

Example 3

In his complaint, a citizen informed the Defender that, on April 7, 2007, he had requested the Mayor of the Arabkir District Community to provide information about parking lots in the Arabkir District Community, but had not received a response. The applicant claimed a breach of his constitutional right to receive information and requested the Defender's support in restoring the right.

In response to the Defender's inquiry on the matters raised by the applicant, the Mayor of the Arabkir District Community of Yerevan informed the Defender that the Arabkir District Municipality had responded to the citizen's request for information about parking lots in the Arabkir District Community in its

letter 25/024-626/564 dated May 22, 2007. Later, the applicant sent a letter of gratitude to the Defender and asked him to terminate the review of his complaint.

The case was considered resolved to the applicant's satisfaction.

3.16.3. City Administrations

A total of 23 complaints against city administrations were received in 2007, of which:

- 14 were admitted for review;
- 0 were given information about available remedies;
- 0 were forwarded to other bodies for review;
- 5 were not admitted;
- 0 had the review terminated at the applicant's request; and
- 4 were still pending review.

Example 1

A number of employees of the Vanadzor Regional Social Service Agency sent a complaint informing the Defender of the following.

In accordance with Government Decree 928-N dated June 29, 2006, the Vanadzor Regional Social Service Agency of the Staff of the Lori Regional Governor's Office, including all of its staff positions and service areas, had been transferred to the Vanadzor urban community in the form of a separated subdivision of the staff of the local self-government body. Paragraph 3 of Government Decree 30-N dated January 18, 2007 and Decree 229-N dated February 22, 2007 provided that the employees occupying the existing positions in the regional social service agency, which was a separated subdivision of the Staff of the Vanadzor Mayor, were considered municipal servants from June 1, 2007.

The applicants complained that the Vanadzor Mayor had not issued orders recruiting the employees occupying the existing positions as municipal servants; rather, he had concluded employment contracts with some of them until September 1, 2007, groundlessly reduced the salaries of nine employees by about 20,000 drams each, and appointed a new head of the agency.

The Defender requested the Vanadzor Mayor and the Minister of Territorial Administration to comment on the matters raised by the applicants. In his request, the Defender expressed the following position:

"Government Decree 30-N dated January 18, 2007 amending Government Decree 928-N dated June 29, 2006 provides:

'In order to enforce the amendments to the Law on Social Assistance and to ensure that employees of regional social service agencies being transferred to the communities are appointed to the positions of municipal servants without a competition, the Government of Armenia hereby decides:…

1. To transfer the regional social service agencies (including their existing staff positions and service areas) of Ararat (Staff of the Ararat Governor's Office), Vanadzor (Staff of the Lori Governor's Office), Gyumri 1 and Gyumri 2 (Staff of the Shirak Governor's Office), and Jermuk (Staff of the Vayotz Dzor Governor's Office) to the Ararat, Vanadzor, Gyumri, and Jermuk urban communities, respectively, in the form of separated subdivisions of the staffs of the local self-government bodies….

3. To consider the employees occupying the existing positions in the regional social service agency, which is a separated subdivision of the Staff of the Vanadzor Mayor, municipal servants from June 1, 2007.'

Therefore, the employees occupying the existing positions in the Vanadzor Regional Social Service Agency of the Staff of the Lori Governor's Office should have been considered municipal servants from June 1, 2007, and their appointment to municipal service positions should have been ensured without a competition."

On the other hand, the Law on Municipal Service provides that "a municipal servant is appointed by the community mayor from among the winners of the competition."

The review of the case is still pending.

Example 2

A resident of the Town of Martuni (Gegharkunik Region) and 39 other residents that signed the complaint informed the Defender of the following.

Based on decision number 4 of the Government of Armenia and the Martuni Privatization Commission dated 1991, land plots in different areas had been allocated to residents of the Town of Martuni. From the site called "beside the Hospital," 0.04 hectare land plots had been allocated to each of 120 residents, which they were using to date.

Based on the aforementioned decision, documents confirming the land ownership titles had been issued in 1998 and registered by the state.

Disregarding all of the aforementioned documents, the land plots allocated to the applicants in the site called "beside the Hospital" had been mapped in 2005 as "land plots not subject to privatization, located in an area in which an urban development project was going to be implemented and a market was going to be built," thereby violating the applicants' right to property.

To learn more about the problem, some of the Defender's employees were dispatched by the Defender to Martuni, where they met with the Mayor, his deputy, the Chief Architect, and the Head of the Martuni Regional Subdivision of the State Committee of the Real Estate Cadastre to discuss the issues raised by the applicants in their complaint and possible ways of solving them. The Defender's employees recommended taking measures to safeguard the rights of the citizens.

In response to the Defender's letter, the Martuni Mayor informed that, at the stage of developing the general plan of the town and submitting it to the Government of Armenia for approval, the land plots allocated to the population of

Martuni during 1991-1996 either as "adjacent land plots" or for purposes of lease had been omitted from the mapping process and classified as "agricultural land plots" or "land plots for the construction of multi-apartment and industrial buildings."

Based on the requirements stated in the Defender's letter dated July 26, 2007 and the interests of the residents of Martuni, the Staff of the Martuni Town Administration prepared necessary materials, which were discussed in Community Council session number 8 of October 26, 2007, which decided to restore the citizens' ownership rights.

The matter was also discussed with the relevant units of the Gegharkunik Regional Governor's Office, the "Land Construction Design" Institute, and the Ministry of Territorial Administration.

In order to restore the residents' rights, the Martuni City Administration had requested the Gegharkunik Regional Governor's Office and the Government of Armenia to modify the functional classification of the reserve fund land plots of Martuni.

The review of the complaint is still pending.

Example 3

The review of a complaint lodged by a resident of the Town of Ashtarak (Aragatsotn Region) showed that, under decision number 9 of the Ashtarak City Council dated September 11, 1994, a 50 square meter land plot at the Mughni section of the Yerevan-Aparan highway had been allocated to the applicant for the purpose of building a 50 square meter shop. In 1995, after the shop had been constructed, a certificate of state registration of the ownership title had been issued. The owner had later built a 50 square meter unauthorized warehouse behind the shop and, on February 18, 2005, within the validity term of the Law on the Legal Status of Unauthorized Buildings, Premises, and Occupied Land plots, requested the Ashtarak Regional Subdivision of the State Committee of the Real Estate Cadastre to legalize the status of the warehouse. The Ashtarak Regional Subdivision had performed the necessary measurements during the established period and sent the documents to the Ashtarak City Administration. On August 3, 2005, after about six months of unreasonable delays, the Ashtarak City Administration had adopted decision 385, in which it refused to recognize the ownership rights of the applicant and 140 other citizens in the same condition, on the ground that they had failed to make the necessary payments.

In response to the Defender's inquiry, the Head of the Ashtarak Regional Subdivision of the State Committee of the Real Estate Cadastre informed the Defender that the applicant's description of the process of legalizing the status of his unauthorized building was accurate and forwarded documents supporting the complaint.

The review of documents sent by the Cadastre revealed that, on February 18, 2005, the applicant had requested the Ashtarak Regional Subdivision of the

Cadastre to legalize the status of his unauthorized building. The Ashtarak Regional Subdivision had prepared the sketch and floor plan in accordance with the established procedure and sent them to the Ashtarak Mayor (cover letter dated February 23, 2005) for his decision.

The Ashtarak Mayor presented copies of the Mayor's decision 385 dated August 3, 2005 and the letter sent to the City Administration by the Cadastre and explained that the applications of the persons mentioned in the decision had been denied due to their failure to make the payments stipulated by Article 8(4) of the Law on the Legal Status of Unauthorized Buildings, Premises, and Occupied Land plots (adopted on December 26, 2002). He also stated that, as stakeholders, the citizens themselves should have visited the City Administration, inquired about their documents, and made the necessary payments. They had failed to go the City Administration and make the necessary payments, which was the reason for the Mayor's decision.

It was clear from the Mayor's decision 385 dated August 3, 2005 that the requests of 148 citizens to legalize their unauthorized buildings and structures had been denied on the ground of their failure to make the necessary payments.

The ex-mayor of Ashtarak had violated human rights, because the refusal to recognize the rights of 148 persons, including the applicant, on the ground that they had failed to make the necessary payments did not correspond to the requirements of the Law on the Legal Status of Unauthorized Buildings, Premises, and Occupied Land plots (adopted on December 26, 2002).

The Mayor's explanation that the rights of 148 persons had not been recognized due to their failure to make the payments stipulated by Article 8(4) of the aforementioned Law was groundless, because Article 8(4) stipulates that, when submitting to the documents required by Article 8(3) of the Law to the regional subdivision of the state body filing the real estate cadastre, the applicants had to make payments to the relevant budget, while Article 8(3) provides that citizens or legal persons, base on the decision of the community mayor (the Mayor of Yerevan in the City of Yerevan) or, outside the administrative territory of a community, the relevant regional Governor to legalize buildings and structures built and/or land plots occupied without authorization, shall re-apply for state registration of rights to the regional subdivision of the state body filing the real estate cadastre and attach to the application the documents specified in sub-paragraphs a, b, c, d, e, and f of Article 8(3) of the Law.

Article 8(4)(2) of the Law provides that the applicants shall submit the receipts of payments made to the relevant budget in accordance with the established procedure for unauthorized buildings and structures, together with the documents stipulated by Article 8(3), to the regional subdivisions of the state body filing the real estate cadastre.

The Mayor's decision was not logical, because the citizens had to wait for the legalization decision to be made before making the payments, rather than make the payment not knowing whether or not the real estate would be legalized.

Moreover, the Mayor had 30 calendar days under Article 8(2) to make the decision, which he had not done, thereby committing another breach of the aforementioned Law.

Under Article 11(2) of the Law on the Legal Status of Unauthorized Buildings, Premises, and Occupied Land plots, the Law had a validity term of two years, which had expired on February 22, 2005.

The review of the complaint showed that the citizen had filed the application to legalize his unauthorized structure within the validity term of the Law on the Legal Status of Unauthorized Buildings, Premises, and Occupied Land plots; Article 78 of the Law on Legal Acts provides that the effect of a repealed legal act shall apply to matters arising prior to the date of repeal, unless the legal act whereby the law or other act was repealed provides otherwise.

On January 26, 2007, it was decided to find a violation of human rights in the actions of the ex-mayor of Ashtarak.

Considering that the matter had arisen before the expiry of the validity term of the Law on the Legal Status of Unauthorized Buildings, Premises, and Occupied Land plots, the Defender suggested to the Ashtarak Mayor, G. Tamazyan, restoring the applicant's violated rights by means of revoking the Ashtarak Mayor's decision 385 dated August 3, 2005 in respect of the applicant and to adopt an act restoring the applicant's rights in accordance with the requirements of Articles 7 and 8 of the Law on the Legal Status of Unauthorized Buildings, Premises, and Occupied Land plots (adopted on December 26, 2002), as in effect at the time of reviewing the applicant's initial request.

The Mayor partially acknowledged the violations committed by his predecessor, but informed the Defender that the previous decision could be reviewed and a new one taken only on the basis of a final decision of court.

Another citizen, who had the same status, requested the First Instance Court of the Aragatsotn Region to revoke the Ashtarak Mayor's decision 385 dated August 3, 2005 and to obligate the Ashtarak City Administration to legalize his unauthorized structure in accordance with the requirements of the Law adopted on December 26, 2002. The court had granted the claim. In contrast, a similar claim of the applicant has been rejected by the Economic Court of Armenia.

3.16.4. Village Administrations

A total of 13 complaints against village administrations were received in 2007, of which:

- 9 were admitted for review;
- 1 was given information about available remedies;
- 0 were forwarded to other bodies for review;
- 1 was not admitted;
- 2 had the review terminated at the applicant's request; and
- 0 were still pending review.

Example 1

A resident of the Village of Kanakeravan sent a complaint informing the Defender that he and the Village Mayor had concluded a 25-year lease agreement at a monthly fee of 7,000 drams for a 1.15 hectare land plot within the administrative territory of the community. He had obtained the certificate of state registration of the lease for the land plot in accordance with the established procedure. A year later, the Kanakeravan Village Administration refused to collect the lease fee for the land plot on the ground that a part of it had been privatized to a different person.

In response to the Defender's request to comment, the Kanakeravan Village Mayor confirmed that the Village Administration had indeed concluded a lease agreement with the applicant for a 1.15 hectare land plot, but it had later been established that the mappers had by mistake included in the applicant's land plot 0.6 hectares of arable land owned by another resident of Kanakeravan.

The Defender then filed another inquiry with the Chairman of the State Committee of the Real Estate Cadastre, asking whether any right of another citizen had been registered over the disputed segment of the land plot, and if yes, then when it had been registered and on what legal basis, the Deputy Chairman of the State Committee of the Real Estate Cadastre informed the following: "No other rights are registered in respect of whole or any part of the 1.15 hectare agricultural land plot leased by the applicant in the Kanakeravan Village of the Kotayk Region."

The Defender submitted these contradictory responses to the Kanakeravan Village Mayor, asking to clarify the situation.

The review of the case is still pending.

Example 2

A resident of the Artabuynk Village (Vayotz Dzor Region) informed the Defender that, in 1987, he had received a home-adjacent land plot, which he had been using, and for which he had an ownership (use) title certificate. The Village Mayor now wanted to take a part of his land plot in order to lay a road for his personal purposes.

The available remedies were presented to the applicant; in addition, he was told that he had the right to report violations of human rights to the Defender, but that the information submitted by him in the instant case did not indicate any violation of human rights.

PART 4.
RIGHTS OF SPECIAL AND VULNERABLE GROUPS

4.1. Rights of Persons with Disabilities

As mentioned in the 2006 Annual Report, the main problems refugees face in Armenia are in the spheres of healthcare, medical, social, and psychological rehabilitation, access to public education, transport, communication, employment, and social protection.

Nevertheless, there has been some progress in 2007 towards safeguarding the rights of persons with disabilities.

In March 2007, the Republic of Armenia joined the Convention on the Rights of Persons with Disabilities and its Optional Protocol. In the May 2007 parliamentary elections, moulds were used for the first time for blind voters or voters with sight problems. Though the Armenian legislation on the status of persons with disabilities is assessed by international organizations as rather progressive, serious problems still remain in practice.

Physical accessibility of public facilities for persons in wheelchairs or other persons with limited mobility still remains very low. There is almost no public transport adapted for persons with disabilities.

Due to physical inaccessibility and the lack of special programs, training aids, and experts, general public education and especially university education is not accessible for thousands of children and young persons with disabilities. A number of public general schools in Armenia provide inclusive education, but their number and availability of necessary materials are still far from adequate.

The majority of cultural facilities are inaccessible for persons with limited mobility. The social conditions of persons with disabilities, too, are far from adequate. Persons with first-degree disability receive very low pensions.

Employment is one of the most pressing problems: 92% of the able-bodied persons with disabilities registered in Armenia do not have employment.

Significant obstacles and difficulties exist in the health sector, as well.[20]

It is important to review the safeguards of the exercise of voting rights by persons with disabilities. As the amended Electoral Code prescribes the use of mobile ballot boxes only in hospitals for the exercise of voting rights of in-patients, persons with disabilities are effectively deprived of the possibility to vote in their homes.

In view of this problem, it is very important to safeguard the exercise of the voting rights of persons with disabilities by means of adapting the polling stations.

[20] Center for International Rehabilitation, Report on Armenia, 2007.

To this end, Article 16(5) of the Electoral Code has defined the obligation of local self-government bodies to implement the necessary measures in polling stations.

In spite of some progress made in 2007, a large share of the polling stations is still not adapted for persons with disabilities.

To assess the physical obstacles to the exercise of voting rights by persons with disabilities, the non-governmental organization "Unison" undertook to monitor the physical accessibility of polling stations in the City of Yerevan.

176 of the 442 polling stations in Yerevan and 3 regional polling stations (one in each of the Kotayk, Syunik, and Aragatsotn regions) were monitored. The conclusion was that 53.18% of the polling stations in Yerevan have obstacles in the streets or backyards. In the other cases, the main obstacles were the sidewalk access ramps (28.32%) and stairs (5.78%).

The monitoring also found that only six polling stations were fully accessible for voters in wheelchairs.

Effectively, staircase access ramps at the entrance are the main obstacle. Higher than 5 cm thresholds of access doors were another obstacle. Most of the polling stations were on the ground floor; many of the polling stations that were not on the first floor could easily be moved to the first floor.

As mentioned earlier, moulds were used for the first time in the May 2007 parliamentary elections for blind voters or voters with sight problems, enabling them to vote without assistance. However, the monitoring showed that the vast majority of the voters did not use this possibility, which may be due to the low level of their awareness.[21]

4.2. Rights of Refugees

The review of complaints on violations of the rights of refugees has shown that refugees continue to face the same social problems that they faced in 2006, including problems like housing, living conditions, and social security.

In 2007, there was some progress in the implementation of the program approved under Government decree 747-N dated May 20, 2004 ("On the Priority Housing Program for Persons Deported from Azerbaijan during 1988-1992"), solving the housing problems of some refugees. Nevertheless, a significant share of the complaints received in 2007, as in 2006, were concerned with the mismatch between the actual prices in the real estate market and the amount of cash assistance provided to refugees, which effectively has deprived the beneficiaries of the aforementioned Program of the possibility to acquire an appropriate house or apartment.

[21] Report on the Monitoring of the Physical Accessibility of Polling Stations, Unison NGO, June 21, 2007.

Besides, there has still been no progress in solving the housing problem of refugees living in administrative buildings, which had not been included in the list of beneficiaries of the Program approved under Government decree 747-N dated May 20, 2004 ("On the Priority Housing Program for Persons Deported from Azerbaijan during 1988-1992").

Government Decree 747-N provides that, in addition to general eligibility requirements, a specific requirement of eligibility for the Program is the actual residence of the refugee family in a temporary dwelling or wagon-dwelling ("domik") as of August 1, 2003 (the period of the survey carried out by the Migration and Refugee Department of the Republic of Armenia with the aim of determining the housing conditions and family composition of refugee families that have found shelter in temporary dwellings or wagon-dwellings ("domiks") in the territory of the Republic of Armenia).

The Defender has received a number of complaints from refugees in connection with the groundless conclusions made by employees of the Migration and Refugee Department during the aforementioned period of the survey.

The review of some complaints by the Defender's Office has shown that the surveys were not properly administered by employees of the Migration and Refugee Department that were checking the actual residence of refugee families during the period established by the aforementioned Government Decree.

The housing problems of all the refugees that were groundlessly omitted from the list of beneficiaries of the aforementioned program should be addressed.

The drafting of a Law on Refugees and Asylum by the Government of Armenia is an important measure in terms of safeguarding the rights of refugees. The Defender has produced an opinion on the aforementioned draft law.

Below are some comments on the provisions of the draft law.

The draft is an attempt at thoroughly regulating matters related to refugees and asylum-seekers and maximizing the effectiveness of mechanisms for the protection of the rights and lawful interests of this group of society. One of the chapters of the draft is dedicated to asylum procedures. Temporary protection is defined as a separate legal concept. The draft also contains safeguards of the rights of unaccompanied children under 16 and/or refugee children separated from their families. This is significant progress in the context of the legislative reform.

The Defender had made the following comments and suggestions on the draft law.

Article 3(1) of the draft prescribes the provision of asylum in case of a mass influx to citizens of foreign states and stateless persons that, due to the reasons specified in Article 6 of the draft law (Article 6 defines who is "a refugee"), have abandoned the territories of states bordering Armenia. While this rule applies also to "stateless persons," Article 6 of the draft law makes only "citizens of foreign states" eligible to apply for refugee status. There is misunderstanding here. While the right of temporary asylum is granted also to stateless persons, the same rule refers to another rule that may have legal

implications only for "citizens of foreign states." Based on the foregoing, the Defender suggested clarifying the definitions in order to avoid misunderstanding and differentiated treatment.

Article 7 of the draft law regulates matters related to the family members of a person who has refugee status, including their status.

The Defender highlighted a key omission: neither the extant law nor the proposed draft address the legal status of children born to the family members of persons that have refugee status: in essence, there is no provision on the legal status of refugee children of ages 14-18 whose parents (in the instant case, persons that were deported from Azerbaijan during 1988-1992) acquire citizenship of Armenia. This issue was addressed in great detail in the Defender's 2006 Annual Report. In view of the need for more clear legal regulation, the Defender suggested incorporating a separate provision on this matter.

Article 17 of the draft law provides that exceptional measures may not be applied in respect of refugees that were citizens of a foreign state when they got asylum in Armenia. Here, it is essential to clarify the term "exceptional measures" in order to understand to what extent their application would be acceptable for this category of persons.

The Defender also presented some other recommendations on the draft law.

4.3. Rights of the Child

During 2007, a special group of the Defender's Office regularly visited orphanages and schools with the aim of reviewing the living conditions of children in orphanages and the availability of proper conditions for their health, development, and social protection in line with the established criteria.

All of the institutions reported their satisfaction with adequate state funding and the availability of high-quality food. During the visits, the group was impressed by the cleanliness of the institutions, the quality of furniture, and the abundance of toys and age-specific activities in the bedrooms, playing rooms, and dining rooms. The institutions had rehabilitation rooms for children, with specialists to look after the children on a daily basis. There are some problems related to documents, especially the issuance of birth certificates. In many cases, parents do not provide the children's documents. Some children have simply not been registered at birth.

Unlike orphanages, the public education institutions for orphans and children left without parental care are in a very poor condition.

In special school number 3, for instance, five families are residing, three of which are families that lost their houses in the 1988 earthquake and the other two simply do not have anywhere else to live. The fact that they live in the school negatively affects the education process.

Special school number 18 is in an extremely bad condition, too: difficult children and children from socially-vulnerable families are referred to this school from various orphanages. Studies showed that the level of care in special schools did not meet the minimum requirements of child care and education. In response to the concerns raised by the Defender, the Ministry of Labor and Social Affairs informed that, by the end of 2007, some of the special public education institutions would be reorganized to boarding institutions for child care and protection, and others to general public education institutions.

In earlier reports, the Defender had mentioned the need to protect refugee children by prescribing a clear legal procedure for getting citizenship.

In terms of the legal regulation of the rights of the child in the sphere of employment, it was important to determine whether Article 17 of the Labor Code of Armenia, which prescribes the minimum age of admission to employment, was compatible with the Revised European Social Charter.

Under Article 7 of the Charter, which prescribes the right of children and young persons to protection, the Parties undertake "to provide that the minimum age of admission to employment shall be 15 years, subject to exceptions for children employed in prescribed light work without harm to their health, morals or education."

Article 32 of the Constitution of Armenia prohibits admission to permanent employment of children under 15 years of age. The terms and procedure of admitting them to temporary work are defined by law. The Constitution effectively sets a higher minimum age of admission to permanent employment, deferring to the legislature to define the procedure of admission to temporary employment for persons under age 16.

In contrast, the Labor Code defines 14 years as the minimum age of admission to employment, not specifying the nature of work (permanent vs. temporary): the Labor Code simply imposes an absolute ban on concluding an employment contract or employing persons under 14 years of age.

As for minors of ages 14-16, they may enter into an employment arrangement with the consent of one parent, adoptive parent, or guardian; however, the Labor Code once again does not specify the nature of permitted employment.

When interpreting Article 7 of the Charter, the European Committee of Social Rights emphasized that the prohibition of employment of children under age 15 applies to all the sectors of the economy. As for the exception permitted under Article 7 in relation to "light work," the Committee interpreted this reservation to imply the obligation of States Parties to the Charter to prescribe in the national legislation the specific assignments that may be given to children or to define the work that is considered "light work" in this context.

Thus, Article 16 of the Labor Code of Armenia should be amended not only to differentiate between "permanent" and "temporary" employment for persons under age 16, but also to define "light work." The Armenian legislation currently does not define "light work."

Consequently, Article 17 of the Labor Code of Armenia should be revised to clarify the minimum age of admission to employment and the nature of work for the respective category of persons, as well as to prescribe a list of "light work" that does not harm "their health, morals or education" in order to ensure the consistency of the labor laws of Armenia with the requirements of the Constitution of Armenia and the Revised European Social Charter.

4.4. Rights of National Minorities

In 2007, as in 2006, the review of complaints filed by members of national minorities has shown that the violations of their rights have had a generic nature and have not been connected with their status of national minorities.

During 2007, the Defender cooperated actively with about 24 organizations dealing with issues of national minorities. The Defender's Office has participated in all of the events organized by them, including the drafting of the "Shadow Report."

The Defender's staff has made regional visits in order to raise the legal awareness of national minorities. In the established framework of cooperation, community heads semiannually submit letters to the Defender on the current situation.

In the Resolution on the implementation of the Framework Convention for the Protection of National Minorities by Armenia adopted in February 2007, the Council of Europe Committee of Ministers invited the Armenian authorities to take the following measures: 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 of relevance to the protection of national minorities have an impact on the effective implementation of the measures adopted by the authorities.

The Committee of Ministers further noted that a general climate of tolerance continues to prevail in Armenia.

However, it was stated that "the presence of minorities and minority languages remains limited in the media and there remain legislative restrictions on the use of minority languages in public radio and television."

The Committee also noted: "Despite the efforts made to support the preservation of minority languages through education, some shortcomings continue to be reported with regard to teaching of minority languages. These shortcomings include insufficient availability of qualified teachers and textbooks for education in

minority languages, of pre-school education and substantial drop-out rates among students from some minority groups, in particular among girls and young women."

In its second report on Armenia, the European Commission against Racism and Intolerance strongly recommended "that the Armenian authorities pass, as soon as possible, a law on national minorities that fully takes into account relevant national and international legal norms, principles and concepts." ECRI further recommended "that the Armenian authorities continue to work with national minorities on the current draft law on national minorities and that it take into account their concerns and suggestions concerning this law in order to reach as wide a consensus as possible." However, such a law has still not been adopted; moreover, the drafting process has been suspended.

In its first report, ECRI had noted that Armenia had not yet made a declaration under Article 14 of the Convention on the Elimination of All Forms of Racial Discrimination by which it would recognize the competence of the Committee on the Elimination of Racial Discrimination to examine complaints by individuals or groups of individuals claiming to be victims of a violation of any of the rights set forth in the Convention.

To date, the Republic of Armenia has not made the aforementioned declaration.

Besides, ECRI had also recommended in its first report (2002) that Armenia ratify the European Convention on Nationality, the European Convention on the Legal Status of Migrant Workers, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, and the European Convention on the Participation of Foreigners in Public Life at Local Level.

However, the Republic of Armenia has still not ratified any of the aforementioned legal instruments.

ANNEXES

Annex 1

Round Table on the Cooperation between European Ombudsmen and the Council of Europe Commissioner for Human Rights

The Office of the Council of Europe Commissioner for Human Rights, jointly with the Greek Ombudsman, organized a round table on "The Cooperation between Ombudsmen, National Human Rights Institutions and the Council of Europe Commissioner for Human Rights" during April 12-13, 2007 in Athens.

The meeting was attended by ombudsmen of all the countries of Western and Eastern Europe and the CIS, heads of national human rights institutions, representatives of the leading international organizations in the field, and independent experts.

At the invitation of the Council of Europe Commissioner for Human Rights, the Human Rights Defender of the Republic of Armenia, Armen Harutyunyan, chaired one of the three working sessions of the Round Table ("The ombudsman as an independent source of information on the ECHR system and as a mediator for the citizens").

The round table addressed important topics, including a number of provisions stipulated by Protocol 14 to the European Convention on Human Rights:

1. Increasing the long-term effectiveness of the ECHR;

2. Ensuring the possibility to deal with cases within a reasonable period; and

3. The recommendations of the Group of Wise Persons to the Council of Europe Committee of Ministers on increasing the long-term effectiveness of the ECHR.

The round table set start to a new phase of cooperation towards the application of the standards of European law in Member States in accordance with the recommendations made by the Council of Europe in November 2006.

Annex 2

The Defender's Position on the Decision of the Public Service Regulatory Commission

On March 30, 2007, the Public Service Regulatory Commission of the Republic of Armenia adopted Decision 140-N, which requires a written contract and a personal identification document in order to sell advance-paid cards for cellular telephones.

The Defender considers that by making this decision on the basis of "in the interests of public order and national security," the Commission has exceeded the regulatory authority vested in it by law. Even if such a requirement is necessary in the interests of the public order and national security, the issue should be addressed by a law, rather than a decision of the Public Service Regulatory Commission.

Annex 3

Position of Armen Harutyunyan, the Human Rights Defender of the Republic of Armenia

In a complaint to the Defender, 161 residents of Khanjyan and Firdusi streets, the Tigran Mets Avenue, Hanrapetutyan lane, and the nearby area (collectively referred to as "District number 33") informed that the area within which their properties are located has been declared "an area of extraordinary (prevailing) public interest" by Government Decree 108-N of January 25, 2007, and that their properties will be expropriated "for needs of the state and society."

According to the information they have, the price per square meter of land in their area is US $1,500-2,000. The appraisal company "Alta Vip" has been selected to appraise the real estate in the area, but the applicants do not have any information on how their real estate will be appraised.

The land plots of many of the applicants are considered "occupied without authorization" and their buildings and structures "unauthorized" in spite of being built by their grandparents many decades ago.

Before the adoption and during the validity term of the Law on the Legal Status of Unauthorized Buildings, Premises, and Occupied Land plots, the applicants had submitted a number of requests to the competent authorities, but their rights had been recognized on various grounds (most typically, on the ground that they are located in an area that has been declared by Government decree "an area of extraordinary (prevailing) public interest").

In the district, there are also some refugees who 17 years ago exchanged their houses in Azerbaijan with houses owned by Azeris in Yerevan; however, the houses and land plots of these refugees, too, are being treated as unauthorized real estate, and their rights have to date either not been recognized or only partially recognized and registered.

The Human Rights Defender of the Republic of Armenia will be persistent in drawing the attention of the Yerevan Mayor to this issue and initiating revision of earlier decisions, which have refused to recognize the citizens' rights over buildings and structures built and land plots occupied without authorization.

The Defender considers that the precedent of the Kond and Kozern neighborhoods should be applied to recognize the rights of the residents of this area and other "expropriation" sites.

The problem can also be solved, if the citizens whose rights over unauthorized buildings, structures, and land plots in the expropriation site have not been recognized or registered are paid compensation in the same amount that will be paid to owners of real estate in the same site.

The Defender considers that the failure to recognize the rights of citizens over buildings and structures built and land plots occupied in the past without authorization in what are presently expropriation sites will amount to

discriminatory treatment prohibited under the Republic of Armenia Law on the Fundamentals of Administration and Administrative Proceedings.

The Defender's letter to the Yerevan Mayor, the Mayor's response, and the Defender's letter to the Prime Minister in connection with this issue may be accessed in the "Official Letters" section of the website www.ombuds.am

Annex 4

Regarding the Case of Gegham Sergoyan Brutally Murdered during Military Service

On May 24, 2007, the Human Rights Defender of the Republic of Armenia, Armen Harutyunyan, made an appeal to the Deputy Prosecutor General, Military Prosecutor of the Republic of Armenia, First-Category State Advisor of Justice A.M. Khachaturyan in connection with the case of Gegham Sergoyan brutally murdered on April 16 during military service in a radio communications battalion in the City of Stepanakert by Henrik Grigoryan, an officer of the same detachment. The Human Rights Defender strongly condemns this heinous crime and considers that such harmful practices undermine the spirit and efficiency of the Armenian Army.

The Defender's letter to the Military Prosecutor is presented below.

1-0414/07

№ _____

24 May 2007

REPUBLIC OF ARMENIA

HUMAN RIGHTS DEFENDER

56/a Pushkin Street, Yerevan 0002, tel. 539271
E-mail: ombuds@ombuds.am

FOR THE ATTENTION OF:

A.M. KHACHATURYAN
DEPUTY PROSECUTOR GENERAL
MILITARY PROSECUTOR
FIRST-CATEGORY STATE
ADVISOR OF JUSTICE
OF THE REPUBLIC OF ARMENIA

Dear Mr. Khachaturyan;

In a letter to the Human Rights Defender of the Republic of Armenia, citizen Robert Mirzoyan informed that his only son, Gegham Sergoyan, after graduating from the Marmarashen Village High School with excellence, had been admitted to Yerevan State Engineering University in 2002, which he had graduated in 2006.

During the 2006 spring draft, Gegham Sergoyan had been conscripted to the Armed Forces of the Republic of Armenia for compulsory military service: he

had initially been taken to the Communications Training Detachment in the Town of Artashat, and then, to the Radio Communications Battalion in the City of Stepanakert.

The applicant informed the Defender that, on April 16, 2007, he had been told that lieutenant Henrik Grigoryan, an officer of the same detachment, had shot at the face of the applicant's son from a distance of 15 centimeters with his "Makarov" army service pistol, and that the applicant's son had died after staying in the hospital unconscious for about 15 days.

The applicant also informed the Defender that he wanted the investigation and trial of the case to proceed in the Republic of Armenia, rather than the Republic of Mountainous Karabagh; to this end, he had asked for a meeting with the Military Prosecutor of the Republic of Armenia, but had been denied and told that the Military Prosecutor was too busy. The applicant claimed that the investigating authority had made a mistake in pressing charges under Article 104(1) of the Criminal Code of the Republic of Armenia, and that, instead, charges should have been pressed under Article 104(2), because the murder had been committed in aggravating circumstances.

Based on the foregoing, considering that such harmful practices undermine the spirit and efficiency of the Armenian Army, and relying on Article 12 of the Republic of Armenia Law on the Human Rights Defender, I hereby recommend that you directly oversee the investigation of the criminal case, instruct the relevant officials to carry out a complete, impartial, and multilateral investigation, and inform me of the outcome. At the same time, I ask you to personally meet with Robert Mirzoyan, the father of the victim, and to assure him that the case will be resolved fairly.

Best regards,  **A. HARUTYUNYAN**

Annex 5

Regarding the Termination of Actions that Had No Legal Basis

Residents of building 16 on Sisakyan Street in Yerevan sent a letter informing the Human Rights Defender that, by decision 2010-A dated July 4, 2007, the Yerevan City Administration had violated their constitutional rights and the procedure stipulated by Government decrees 682 dated October 25, 2000, 1070 dated November 6, 2001, 24-N dated January 16, 2003, 1261-A dated October 8, 2003, and 1559-N dated November 12, 2006.

The applicants requested the Defender's support in protecting their violated rights.

Considering that the application corresponded to the requirements of Article 7 of the Republic of Armenia Law on the Human Rights Defender, the Defender admitted the complaint for review on the basis of Article 11(1)(1) of the same law.

Exercising his authority under Article 12 of the Law on the Human Rights Defender, the Defender requested the Yerevan Mayor to comment on the allegations made by the applicants in their complaint.

On August 15, 2007, the Defender's Office was contacted by a resident of apartment 34 of building 16 on Sisakyan Street, who informed that employees of the Yerevan City Administration and the Ajapnyak District Municipality were evicting the residents from their homes without either a court decision or an execution order. It was established that there was no legal basis (a court decision) to evict the residents of building 16 on Sisakyan Street. The necessary measures were taken, as a result of which the eviction process was terminated.

On August 16, 2007, the residents of building 16 on Sisakyan Street again contacted the Defender's Office and informed that employees of the Yerevan City Administration PIU had started to dismantle their roof. A rapid response team went to the aforementioned site. It was established that, again, in the absence of the legal grounds required by the legislation, the building roof was being dismantled. G. Mazmanyan, the Head of the Real Estate Administration Department of the Staff of the Yerevan City Administration, and the Director of the Yerevan City Administration PIU explained that a fence was being installed around the building in order to ensure the security of the residents of the building and that, given the absence of construction materials, it had been decided to take some of the materials from the roof. Owing to the Defender's direct intervention, the dismantling of the roof, which had been initiated without a legal basis, was stopped.

On August 17, 2007, a letter of gratitude was received at the Defender's Office from the residents of building 16 on Sisakyan Street.

Annex 6

Issues Raised by the Defender during the Press Conference on September 25, 2007

1. Fair Trial

According to the judgment of the European Court of Human Rights in the case of Misha Harutyunyan vs. Armenia (judgment dated June 28, 2007), the Government of Armenia must pay EUR 4,000 to Misha Harutyunyan and punish those who are guilty. The European Court noted that the national courts had admitted the facts of torture, specifying that they had been applied to reveal the truth, which the European Court considered unacceptable. The Justice Council of Armenia applied a disciplinary penalty in respect of Lernik Atayan, the judge of the Syunik Region First Instance Court that had convicted Misha Harutyunyan, in the form of reprimand and a fine in the amount of 25% of his salary. However, this judge still continues to hear military cases.

Arshak Manukyan, Artak Nikoghosyan, Misha Mejlumyan, and other employees of the Military Police have been prosecuted and sentenced.

2. Expropriation

In the case of G. Cheghlyan vs. the Republic of Armenia, the European Court addressed some questions to the Government in January 2007.

In a letter dated March 16, 2007, the Government of Armenia informed the European Court of its intent to reach friendly settlement with the applicant in this case.

On April 12, 2007, the Government of Armenia reached friendly settlement with G. Cheghlyan on the compensation of US $150,000 to the applicant by April 23, 2007.

In a letter dated April 20, 2007, the applicant sent a letter informing the European Court that the Government of Armenia had fulfilled its commitments under the agreement.

After the dispute was settled domestically, the European Court of Human Rights struck out the case.

Conclusions

a) Starting from 2006, the Defender has voiced concerns over these two issues (fair trial and expropriation). Some officials have agreed with the Defender's assessments, while others have objected, despite the fact that the Defender's assessments are based on the review of citizens' complaints. Therefore, it did not come as a surprise that, after the European Court's intervention, the Republic of Armenia had to compensate the applicants in both of the aforementioned cases.

b) These problems are complex and should be examined comprehensively. The judgment of the European Court was positive in terms of restoring the violated right. However, the Defender has always advocated the solution of Armenian citizens' problems in the domestic framework in order not only to solve problems faced by specific citizens, but also to reinforce a trust-based harmonious relationship between citizens and the state.

c) In this case, the respondent is the Republic of Armenia, which means that the Armenian taxpayers are ultimately paying the amount ordered by the European Court.

3. Expropriation Zones: Legalization of Unauthorized Structures; Inadequacy of Compensation

Khanjyan and Firdusi streets, the Tigran Mets Avenue, Hanrapetutyan lane, and the nearby area of the City of Yerevan has been declared "an area of extraordinary (prevailing) public interest" and will be expropriated "for needs of the state and society."

The land plots of many of the residents are considered "occupied without authorization" and their buildings and structures "unauthorized." The residents have submitted a number of requests to the competent authorities, but their rights have been recognized on various grounds.

The Defender communicated his position to the Prime Minister of Armenia and the Mayor of Yerevan: the Defender considers that the failure to recognize the rights of citizens over buildings and structures built and land plots occupied in the past without authorization in what are presently expropriation sites, as well as the failure to treat them as owners for purposes of giving compensation will amount to discriminatory treatment, because in a similar situation in the Kond and Kozern neighborhoods of Yerevan, the ownership rights of the residents were recognized.

There are also serious problems in connection with the property appraisal arrangements: here, the residents complain about the appraisal of their property below its market value. The appraisal is performed by companies identified by the state, and if citizens wish to engage other appraisal companies, the latter generally refuse to appraise property located in "expropriation zones" out of the fear to have problems with state bodies.

This type of problem was raised in a complaint by a number of residents of Arami Street: they had been offered US $700 per square meter (while they claimed that the price per square meter of land in their area was US $1,500-2,000) or a promise, after two years, to get apartments near the Wine Factory (which, in their opinion, was not equivalent to the location of their property).

Summary

When the Prime Minister of Armenia intervenes directly, the aforementioned problems tend to be solved to the satisfaction of applicants. There is an ongoing discussion of the possibilities to recognize citizens' ownership rights

over unauthorized buildings possessed by them for several generations or to allocate an equivalent apartment instead of cash compensation for the expropriated apartment.

Though citizens are obtaining satisfactory resolution, and this progress reinforces the trust between citizens and the state, there are still problems in connection with the effectiveness of the system. Problems are being solved due to the direct intervention of one person, in this case the Prime Minister, rather than an effective system. The Defender remains of the opinion expressed in 2006: there are systemic problems in the area of human rights protection in Armenia, which means that systemic reforms are needed.

It is essential for the systemic reform to address the general social context: the time has come for clearly separating the business from the power, and shaping a political elite that cooperates, but does not overlap with the business elite. Unlike feudalism, capitalism has solved this problem. The aforementioned measures are necessary to ensure genuine respect for human rights and separation of powers. Otherwise, if the social practice deviates from this path, and the same person is a politician and a businessman at the same time, the country will be doomed to a feudalism-type social setup disguised by 21st-century institutional and legal systems in which human rights will be a mere formality.

4. Detention as a Preventive Measure

The Defender's Office receives a significant number of complaints regarding the application of detention as a preventive measure: the complaint statistics show a year-over-year increase in the number of these complaints, which is causing some concern. The Defender considers that, in the context of criminal cases, the prosecution office and courts should be more thorough and impartial in deciding whether detention should be ordered as a preventive measure.

While the fight against crime is important, it is no less important to preclude the detention of innocent persons.

Persons that complain against the prosecution office in connection with the application of detention as a preventive measure normally complain orally; some are even afraid of identifying themselves.

5. The Investigation of Levon Gulyan's Case

On May 12, the Defender sent a letter to the Prosecutor General of the Republic of Armenia in connection with the death of Levon Gulyan, who had earlier been invited to the Republic of Armenia Police General Department for Criminal Intelligence as a witness, requesting the Prosecutor to comment on the case and informing him that, given the heightened public interest in the case, the Defender expected the Prosecutor General to oversee the case directly with a view to ensuring its comprehensive, impartial, and complete investigation. The investigation of the case has been officially prolonged by another two months.

6. Freedom of Information

Back in 2006, the Defender sent letter 2-0240 to the Government, inviting the latter to pay attention to certain urgent problems that have arisen in the practice of applying the Law on the Freedom of Information and have seriously obstructed the exercise of citizens' constitutional right to receive information.

The problem is specifically with Article 10(1) of the Law on the Freedom of Information, which provides that "state and local self-government bodies, state institutions, and state organizations shall provide information or copies (photocopies) thereof in accordance with the procedures defined by the Government of Armenia." However, the Government has failed to define such procedures since November 15, 2003, the date on which the Law on the Freedom of Information came into force. As a consequence, some state and local self-government bodies refuse to provide the requested information citing the absence of the aforementioned procedures. Besides, Article 11(4) of the Law on the Freedom of Information provides that the refusal to provide information may be appealed to the competent state body or to court; however, to date, the Government of Armenia has not designated the "competent state body" for appeal purposes.

In September 2007, the Defender sent another official letter to the Government in connection with these issues.

7. Non-Execution of Court Decisions

There are numerous cases in which execution officers of the Department for Execution of Court Acts have not complied with the requirements of the Law on Compulsory Execution of Court Acts and the Law on the Department for Execution of Court Acts; in those cases, they have failed to take measures to ensure the timely, complete, and correct execution of court decisions and orders.

The execution officers' failure to fulfill their legal obligations results in violations of the right to a fair trial safeguarded by Article 19 of the Armenian Constitution and Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms

These problems arise mainly in cases when the debtors are state or local self-government bodies.

8. Severe Work Injury: a Legislative Gap

Paragraph 16 of Government Decree 579 dated November 15, 1992 provides that, in case of the termination of activities due to the liquidation or restructuring of an organization, damage shall be compensated by its successor or, in the absence of one, the social security agency with funding from the state budget. On the same matter, Article 1086 of the Civil Code of Armenia that entered into force in 1999 defines that, in 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 for the purpose of their payment to the

victim. However, there is still no law or government decree establishing such rules. Instead, the Government adopted a decree on November 11, 2004, repealing Paragraph 16 of Government Decree 579 dated November 15, 1992. Consequently, many citizens have been deprived of the right to receive the compensation due.

The Defender's letter to the Prime Minister dated July 31, 2006 on this issue had been referred to the Minister of Labor and Social Affairs. In his letter of October 25, 2006, the latter informed the Defender that, given the urgency of the matter, he had suggested that a draft Law on Mandatory Social Insurance for Workplace Accidents and Professional Diseases be submitted to the Government by end-June 2007 in accordance with the Action Plan Supporting the Implementation of the Government's Program for 2007. On August 1, 2007, the Minister also informed that the draft had been developed and submitted to the Government in accordance with the established procedure.

However, the Defender remains focused on this problem: on September 13, 2007, the Defender sent another official letter to the Government urging to take measures in this respect.

9. Construction of the Meghri-Shvanidzor-Verishen-Tsav-Kapan Road

Residents of the Tsav Village (Syunik Region) informed the Defender that the construction of the Meghri-Shvanidzor-Verishen-Tsav-Kapan road has violated their rights to property. During the construction, the developer company had unlawfully seized the land plots owned by the applicants, for which they had not received any compensation.

The review of the complaint is still pending.

10. Encroachments against Journalists during 2006

During 2006, there were cases of violence against journalists in Armenia, obstructing their professional activities and undermining the exercise of the right to freedom of expression. There were cases of setting cars on fire, beating, and intimidation.

The Defender strongly condemned such encroachments and made an official statement urging to law-enforcement agencies to be persistent in the investigation and prosecution of cases in which the professional activities of journalists are obstructed.

11. Cooperation with State and Local Self-Government Bodies

Compared to 2006, cooperation and working relations of the Defender's Office with all the state and local self-government bodies have become closer in 2007. While the cooperation has become closer, the review of complaints addressed to the Defender's Office shows that a large share of the population feels

marginalized from the state, and much remains to be done in the relationship between citizens and the state. Measures should be taken in the following areas:

- Making sure that public servants respect a code of ethics in their dealings with citizens;
- Strengthening the independence of and overcoming public mistrust in the judiciary;
- Ensuring the execution of the decisions and judgments of the Constitutional Court and the universal jurisdiction courts of Armenia;
- Addressing the legislative gaps and inconsistencies; and
- Improving the enforcement of laws and making sure that public servants strictly comply with legal requirements.

Annex 7

Brief Overview of the Press Conference on November 23, 2007

Police

During the press conference, the Defender voiced concern over the fact that the largest number of complaints is received against the Police. The Defender indicated that, during the first 10 months of 2007, his office has received 5,044 complaints. The second largest number of complaints is filed against the courts, followed by the prosecution office and the Yerevan City Administration. However, the Defender noted that there is a positive trend due to the cooperation between his office and the Police. The Defender informed the journalists that a complaint had been received against the Head of the Aparan Unit of the Police, who was subsequently penalized and had one of his officers fired in connection with the improper performance of official duties.

During a visit to the Noubarashen Penitentiary Institution, it was established that a citizen had been admitted from the Mashtots Police Station (in Yerevan) in battered condition. The Defender suggested to the Police Chief of Armenia conducting an internal investigation and punishing those guilty of the ill-treatment.

The Defender's Office has requested the Police Chief to comment on the beating of Narek Galstyan.

However, official responses to the aforementioned requests have still not been received.

During a regular visit, the Defender's staff found a violation in the Gavar Police Station: the police had detained a citizen unlawfully for over 10 days. The Police Chief of the Republic of Armenia was informed of this case.

Cooperation between the Human Rights Defender of the Republic of Armenia and the Council of Europe Commissioner for Human Rights

During the press conference, the Defender informed that, on November 6 and 7, at the invitation of the Council of Europe Commissioner for Human Rights, he had participated in the first discussion of cooperation between national human rights institutions and the Council of Europe Commissioner for Human Rights.

The purpose of the meeting was to create a new format of permanent cooperation between national human rights institutions in the Council of Europe Member States and the Commissioner, implying the possible involvement of national ombudsmen in the review of applications addressed to the European Court of Human Rights. The participants of the meeting considered the possibility of an initial screening of applications to the European Court and the option of national authorities solving the problems raised in the applications at the domestic level.

The aim is to have more problems dealt with domestically in order to alleviate the burden on the European Court of Human Rights. The Human Rights Defender of the Republic of Armenia intends to hold a discussion with the Chairman of the Constitutional Court of Armenia, the Minister of Justice, and the Chairman of the Cassation Court to consider recommendations to be presented to the Commissioner for Human Rights: "I have always been an advocate of the solution of as many problems as possible by our national institutions; it is important not only to restore human rights, but also to reinforce the logical connection between citizens and the state authorities," said the Defender.

An Appeal for Tolerance

Responding to the journalists' questions, the Defender stated that, if there are mass protests and universal violations of human rights in Armenia after the presidential election, the Defender will stand by the citizens. However, he reminded that the Defender will always function in the legal framework: "Such extremism may cause some to prefer that the Defender say nothing, while others may be interested in the Defender adopting an opposition stance. I believe everyone should know clearly that the institution of the Human Rights Defender has nothing to do with politics. We operate in the legal framework. We will respond to any issue in the legal field, but when there is a situation in connection with the political framework, we will refrain from political statements," said the Defender during the press conference.

The Defender then added that no society is free from conflict. The difference between democracies and dictatorships is that, in the former, conflicts are settled by means of tolerance and dialogue, which are the only ways to approach the truth and build a democracy.

"In dictatorships, it is the opposite. Extremism can do no good to our citizens and state." The Defender said he was against the Bolshevik principle that "whoever is not with us is against us" and appealed both the authorities and the opposition to be tolerant.

Annex 8

Regarding Article 301 of the Criminal Code of Armenia

On September 27, 2007, Member of the National Assembly Zaruhi Postanjyan requested the Defender to consider the compatibility of Article 301 of the Criminal Code of Armenia with Article 10 of the European Convention on Human Rights and the principle of legal certainty. In this respect, the Defender submitted an official request to the Venice Commission of the Council of Europe. At its 73rd plenary session on December 14 and 15, 2007, the Venice Commission discussed and approved the comments presented by its experts. The Venice Commission welcomed the precedent of a national ombudsman requesting it to comment on national law and adopted the following comments:

1. Article 301 of the Criminal Code of Armenia is compatible with the European Convention on Human Rights and the criteria established in the case law of the European Court of Human Rights.

2. The principle of legal certainty is not breached by Article 301.

3. Possible misapplication and misinterpretation of the law is not due to vagueness of Article 301.

The original English text of the Comments of the Venice Commission on this issue is available at www.ombuds.am

Annex 9

Decisions of the Constitutional Court of Armenia: an Overview

THE CASE REGARDING THE CONFORMITY OF ARTICLES 73 AND 75(3) OF THE LABOR CODE OF THE REPUBLIC OF ARMENIA WITH THE CONSTITUTION OF THE REPUBLIC OF ARMENIA, ON THE BASIS OF AN APPLICATION BY CITIZENS H. KHARATYAN, A. ABRAHAMYAN, AND A. GHUKASYAN

In the legislative regulation of the exercise of the right to strike … the Republic of Armenia … should take into account that:

a) The exercise of the right to strike is viewed in the context of the right of workers and employers to collective action and is directly connected with the emergence of collective labor disputes and the impossibility of solving them by collective agreements;

b) The right to strike is recognized "…**subject to obligations** that might arise out of collective agreements previously entered into";

c) Besides the stipulation in paragraph "b" and the restrictions prescribed by law, which are "necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals" (Article G, Part V of the Revised European Social Charter), the right to strike shall not be subject to any other restrictions or limitations, especially if they render impossible the exercise of the right to strike under such restrictions or limitations.

From this standpoint, Article 73 of the Labor Code of the Republic of Armenia does not define the legal concept of "a strike" by linking it with the exercise of the constitutional right to strike; rather, it prioritizes and emphasizes the impossibility of resolving a collective labor dispute in connection with the conclusion a collective agreement. According to the logic of Article 73 of the Labor Code, a strike may be lawful only in case if a collective labor dispute connected with the conclusion of a collective agreement, i.e. if a pre-agreement labor dispute, cannot be resolved. Throughout the term of a collective agreement, strikes are prohibited, even if the new dispute is related to a matter that is beyond the scope of the collective agreement already entered into. This wording has led to restrictions of the right to strike under Articles 60(2) and 75(3) of the Labor Code.

The substance of Articles 60 and 75 of the Labor Code prohibits strikes during the term of a collective agreement. In contrast, the Republic of Armenia has undertaken, by ratifying Article 6 of Part II of the Revised European Social Charter, without any reservations to recognize the right to strike in cases of conflicts of interest "…subject to obligations that might arise out of collective agreements previously entered into." To this end, a problem of constitutionality

arises in connection with the last paragraph of Article 60(2) of the Labor Code, which provides that "…organizing a strike is prohibited," and Article 75(3) of the Labor Code. These rules may not restrict the right to strike, if obligations under a collective agreement previously entered into are honored, and the dispute has arisen in connection with a matter regulated by the collective agreement stipulated by the Labor Code, which has not previously been addressed by a bilateral agreement. In such cases, the application of legal rules must be based on Article 6 of the Constitution, which provides: "If a ratified international treaty stipulates rules that differ from those stipulated in the laws, the rules of the treaty shall prevail." On the other hand, the Constitution clearly prescribes that "limitations on fundamental human and civil rights and freedoms may not exceed the scope defined by the international commitments undertaken by the Republic of Armenia" (Article 43(2)).

THE CASE REGARDING THE CONFORMITY OF THE LAST SENTENCES OF PARAGRAPHS 3 AND 4 OF ARTICLE 35, POINT "E" OF ARTICLE 49, PARAGRAPH 2, THE LAST SENTENCE OF PARAGRAPH 4 AND PARAGRAPH 5 OF ARTICLE 112 OF THE LAW ON THE RULES OF PROCEDURE OF THE NATIONAL ASSEMBLY OF THE REPUBLIC OF ARMENIA WITH THE CONSTITUTION OF THE REPUBLIC OF ARMENIA

… The legislature has interpreted the content of the concept "issues of organizing its activities," stipulated by part 1 of Article 62 of the Constitution, with the help of a provision of a law. When regarding this interpretation in the light of Article 5, Article 6 part 2, and Article 62 of the Constitution, it should be noted that this interpretation is not legitimate, since the power of the National Assembly to make decisions within its legal relations with other bodies is defined in the Constitution in an exhaustive way. The word combination "issues of organizing its activities" can not and must not provide in this case for a possibility of determining an obligation for the Public TV and Radio Company (point "e" of Article 49 of the Rules of Procedure); neither should it provide for a possibility of relieving the Public TV and Radio Company of its obligation stipulated by Law (paragraph 2 of Article 112 of the Rules of Procedure).

… The legislature has a special role in the democratic development of any country. The culture of parliamentarism is a culture of civilized pluralism and dialogue. It is first of all manifested when people exercise their governance through representative bodies. Approaches towards regulation of social relations and the legislature's open and public implementation of its oversight powers are the most important safeguards of establishing civil society…

Guaranteeing extensive transparency of the activities of the National Assembly, its bodies, and the deputies (also in the existing frameworks, which have become traditional) follows the constitutional principles of a democratic state

based on the rule of law and shall be supported with legislative and institutional grounds. At the same time, those grounds must be legitimate, elicit from the requirements of the constitutional principle of separation and balance of powers, and not breach the functional and structural independence of constitutional institutions.

… The Amendments to the Constitution of Armenia have set out new requirements for safeguarding the freedom and independence of the mass media. To safeguard such freedom and independence, the National Assembly, in particular, needs to conduct an integrated review of, and to bring into line with the requirements of the Constitution, the Law on Television and the Radio (adopted on October 9, 2000), the Law on Mass Information (adopted on December 13, 2003), the Law on the Rules of Procedure of the National Assembly, and the relevant provisions of other laws related to this issue.

… When addressing this issue, the National Assembly of the Republic of Armenia, following also the international commitments of the Republic of Armenia, should be primarily guided by Articles 27 and 83.2 of the Constitution, as well as the provisions of Recommendation R (96) 10 of the Committee of Ministers of the Council of Europe, its Explanatory Memorandum, and Recommendation 1641 (2004) 1 of the Parliamentary Assembly of the Council of Europe on Public Service Broadcasting.

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