HUMAN RIGHTS DEFENDER
OF THE REPUBLIC OF ARMENIA

ANNUAL REPORT

2008

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Raoul Wallenberg Institute
of Human Rights and Humanitarian Law

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ANNUAL REPORT

ON
THE ACTIVITIES
OF THE REPUBLIC OF ARMENIA'S
HUMAN RIGHTS DEFENDER
AND
VIOLATIONS OF HUMAN RIGHTS
AND FUNDAMENTAL FREEDOMS
IN THE COUNTRY

2008

YEREVAN 2009

Quotes from Sufi Writings

One day the students of Abu-Vistam came to him and complained about Satan. “Satan is stealing our faith,” they said. The Sheikh summoned Satan to inquire about this. Satan said: “I do not have the power to force people to do things they don’t want. I am too pious and fearful of God to dare to do that. Men and women renounce their faith over trivial matters; I am gathering pieces of faith that they are throwing away.”

Sheikh Mouzamed

“While doing everything you can to win someone else’s favor, don’t miss the chance to re-discover yourself.”

Mirza Halib

Watch out! They remain in power...

1. Citizen A.S. is brought **handcuffed** to a pre-trial identity parade (see Illustrative Case 2, page 113).

2. K.T., the RA Special Investigation Service's investigator for serious crime, confiscates **a (cattle farm) property registered to E.Sh.,** stating that the **true owner** of that property was M.M., who was accused of criminal activity (see page 115).

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AN ALTERNATIVE INTRODUCTION

"If the natural progress of our state had not been waylaid for some 600-700 years, we would most probably have become the driving force behind the values that are so widely espoused by Western democracies today."

From an interview with the RA Human Rights Defender in *Hayastani Zrutsakits* weekly newspaper (25th July, 2008)

Armen Harutyunyan, Human Rights Defender of the Republic of Armenia is our guest today. Mr. Harutyunyan, can we say that social, political and economic affairs [in our country] have followed a relatively natural path of development?

Not unlike many other parts of the former Soviet Union, Armenia did not escape distortions of its political-economic system. And if we still dream of building a country based on the rule of law, with respect for human rights standing at its core, then we need to eliminate such distortions. We have a skewed political system, the economy is built on monopolies, and this undermines the legitimacy of the country's capital assets. What has emerged is an oligarchic system in which people own businesses not by virtue of a free market economy, but by virtue of "appointments" by certain "institutions." The result is that all the political and economic resources have become concentrated in the government – any system of checks and balances is rendered ineffective. Such a government puts the people in a dilemma: if you want to be well-off, then you should be prepared to become part of this system; but if you want to live in harmony with your own principles, then you should be prepared to live your life in misery. This is a dangerous system. It alienates and 'disqualifies' all those individuals who otherwise should have been key architects of the country's future. At the same time, the road is clear for those who are willing to violate ethical norms to obtain their 'throne' and the system expends all efforts to perpetuate the power it already has. This results in government and society becoming alienated from each other and it doesn't matter who is in power – whether they are Armenian or not. This is precisely the threat posed by the post-soviet oligarchic system: the society becomes alienated from its own government. Formally, authority belongs to the people but in reality the government, which embodies that authority, is as alien as it would have been under the rule of foreign conquerors. It is beyond reasonable doubt that the purpose of state-building is to create a pluralistic political system and sound market-based relationships – not to build restaurants and cafes for personal profit.

In this country we tend to identify the interest of the government with that of the state. Doesn't this mean that we are travelling along a mistaken and dangerous path?

In this country we tend to accept a completely erroneous conceptual framework – even high ranking officials and academic professors use it. But this confusion of certain concepts – including the concept of the state, the government and the opposition – is absolutely unacceptable. It is common for people to think that the State and the Government are the same things; they equate state-oriented and power-oriented activities. However, these two, per se, are different and it is our responsibility to recognize that difference. If we put it in perspective, we can say that both the government and the opposition form equal parts of the same political system – that is, both contribute to the building of the state. The statement that "the Government always does the right thing for the State" is not always true – just as it is untrue that "whatever the

Opposition does is bad for the State." Moreover, true state-building processes should mean that a country has an opposition which is critical of the government and the ruling political power. For that reason our Parliament has created special institutions. Among others, these include the institution of the Human Rights Defender, the Constitutional Court, and the Office of the General Prosecutor. And these institutions should neither be part of the government nor part of the opposition. They must be and must remain state-oriented institutions. However, it is not uncommon to meet officials, who, mistakenly, assume that those who criticize the government criticize the state. There is a lesson to learn here from Turkey (and please note that I am not giving an example from a 'developed [western] country' with established democratic traditions): at present, Turkey's Prosecutor's Office is taking legal action against the ruling party as it claims that the party is demolishing the foundations of their state.

Returning to the Office of the Human Rights Defender, we can say that it is the Government's 'opponent' – the authorities can use it to look at themselves from a different angle so that they can improve the way they run the country. Remedies to relevant problems, however, must be sought through proper channels, including the prosecutor's office and the courts. But when even these two avenues are viewed as extensions of government, then it becomes difficult to ensure effective protection of human rights.

Summarizing, I repeat again that we have such bodies, such institutions, and they must unflinchingly fight for the defence of the state and statehood. They might have approaches which do or do not coincide with those of the government, but the same can be said of the opposition parties.

To what extent are western democratic values also the values of our own people? And, generally speaking, are we ready to make these values our own given the ethnically specific mindset our people?

Recently some people – among them some who consider themselves serious professionals – made statements about Armenians being Asian people, while others claim that Armenian are Asians with a European past – they say that the Soviet Union made European traditions part of our daily lives.

Before making such bold statements, it is worth studying the political and legal heritage of this nation. Above all, we need to ascertain which values are rooted in Armenian civilization – only then can we make deductions about whether there are elements of Western or Asian value systems prevalent among us. We should also bear in mind that European civilization is not a uniform civilization either – there are only very broad concepts that are shared. Indeed, at first sight, the countries of Europe – including Italy, Germany, Sweden and others – seem to be strikingly different from each other. But the common tie is that they all rely on the concepts of "individualism," respect for human rights, and established norms of civil society. "Individualism" means that the individual does not become a homogenous part of society but rather maintains his personality. Oriental civilization, on the other hand, is founded on hierarchical principles, making individuals become homogenous parts of their communities.

So, we need to consider what has been passed down to us from the middle ages – from the medieval Armenian states? Both in Cilicia and 4th century Artsakh, under King Vachagan, we can detect that the state was built on elements of parliamentarianism. In the 4th century King Vachagan adopted a special law to regulate tax collection in Artsakh. Once ready, the draft law was sent out to local communities where people convened meetings to discuss it. Then, when the

King had the approval of his people, he convened a larger pan-state assembly and passed the law. By the way, the assembly was facilitated by a group of soldiers – a procedure that emerged in Europe more than 800 years later.

Similarly, in 1204 the Armenian Church convened the Assembly of Sis in Cilicia to pass a regulatory constitution. But because the quota of the representatives was not met the constitution was not passed until 30 years later. In addition, the Catholicos then requested that the nobility give their consent to the Constitution in written form. We can also cite the Code of Law by Mkhitar Gosh and by Smbat Sparapet.

These indisputable facts lead us to believe that if the natural progress of our state had not been waylaid for some 600-700 years, we would most probably have become the driving force behind the values that are so widely espoused by Western democracies today. Instead, we had to live under the rule of oriental people, surrounded by them, and so their values have also been absorbed into our own value system. Distinguishing what is 'ours' and what is 'theirs' is a particularly difficult task today. Thus, the democratic values promoted by Europe, including respect for human rights, the decentralization of government, and a type of communal organization that does not demean the individual, are also our own values – they are close to our hearts. So, it is important for us to build a state that is in harmony with this vision. If we borrow values from elsewhere, we cannot expect to gain any sympathy from future generations – indeed, the governing system will be rejected by those generations because it will be alien to them.

You may have noticed that every country in Europe employs its own approach to make democracy work within its own borders. It is perilous to automatically adopt their approaches for our country – this would create an extremely dangerous situation in which a good concept is stripped of its underlying ideology. And that may lead some to think that 'European values' are not really for us.

So, it is vital that we discern which approaches can be appropriately used in our country to ensure respect for human rights. The most recent constitutional amendments, particularly, were aimed at achieving this goal. It is not our objective to change the concepts available; we are simply trying to identify new methods.

What kind of relationship is there between the individual and the system in a state where there is effective political governance?

Here too we make serious conceptual mistakes: one thing that we need to understand very clearly is that what is important is the system and not the individual (in power). There are no irreplaceable people. We can learn that lesson from other countries. For example, no single person has done as much for France as General de Gaulle – they say of him that "he raised the sword of a defeated France and put France back on the list of victorious countries." But that same de Gaulle resigned after he conducted a poll and saw that he lacked the desired level of his people's support. And, interestingly, that was not a binding poll. The point of this example is that individuals should not be idealized and relied upon for everything.

The British rejected the political leadership of Churchill; after World War II, he lost the general elections. At that time people did not think that he was the right person to rule the country – the country needed a new leader.

It is an absolute and incontrovertible truth that the primary function of a state is to form and support an effective and flexible government system, in which each person ideally knows what

he or she is expected to do. Statespersons or sovereigns can by no way be placed outside or above that system.

It is regrettable that this mentality has not yet become part of our political governance culture; corresponding mistakes are repeatedly being made.

The protection of human rights relates solely to the interests of the individual. Why is this issue so central in the modern world's government administration systems?

Nations, like individuals, have two instincts: passivity [accepting new circumstances] and a fighting spirit. Traditionally, we Armenians are a fighting nation; but as the distribution of power has become increasingly unequal over time, we have switched to becoming more adaptable. Both of these instincts appear in us today.

It is the mission of any true 'people's government' to promote a fighting spirit by forming citizens who can fight for their rights, even though the same government may be made uncomfortable by these very citizens. This is how a self-appointed government differs from a government imposed by outsiders. Indeed, it is in the interest of foreign imposed governments to develop adaptability and indifference among the population in order to ensure the longevity of their power. Thus, here also serious conceptual and methodological issues arise. The questions are the following: What are the qualities that we are encouraging in our citizens – fear, or maybe passivity? If that is the case, then it is difficult to see how these human qualities could safeguard a future for the country. By and large, this remains a strategic issue: the power and future of the state depend on the type of citizens it has.

So, we should not get frustrated when citizens raise issues or complaints. We should realize that this is the path that promotes the development of our system and country.

By Gohar Sardaryan

PART 1
MAIN AREAS OF THE HUMAN RIGHTS DEFENDER'S ACTIVITIES

1.1. Dealing with Complaints and Complainants
1.1.1. Analysis of Complaint Statistics

From January 1 to December 31 of 2008 the Human Rights Defender of the Republic of Armenia received 4,090 complaint applications from 5,806 people, of which 1,227 were written complaints (including 58 group complaints brought by 1,774 applicants) and 2,863 were oral complaints. During this period adequate settlement was achieved for 122 complaints filed with the Human Defender's Office, as a result of which the infringed rights of 429 were restored. Overall, the rights of some 6,526 people were restored during the reporting period. As many as 6,097 of these restored rights were secured when the RA Constitutional Court recognized the complaint brought by the RA Human Rights Defender which requested that certain provisions of the *RA Law on State Pensions* be deemed unconstitutional.

Table 1 shows the average number of complaint applications filed to the Human Rights Defender's Office in 2007 and in 2008.

Table 1: Complaint Applications received for 2007 and 2008

	Total		Monthly Average			
	2007	2008	2007	2008	difference	% change
Total	3,697	4,090	308	341	+33	110.7 %
Written complaints	1,101	1,227	92	102	+10	111.1 %
Oral complaints	2,596	2,863	216	239	+23	110.6 %
Number of complainants	5,764	5,806	480	484	+4	100.8 %

Table 1 reveals that the average number of complaints filed to the RA Human Defender's Office each month has risen by 10.7% since 2007. The number of written complaints has increased by 11.1%, and the number of oral complaints has increased by 10.6%, while the number of complainants has increased by 0.8%.

Table 2 shows that in 2008 complaints alleging human rights violations were received from all of Armenia's regions (*marzes*).

Figure 1. Distribution of Complaints

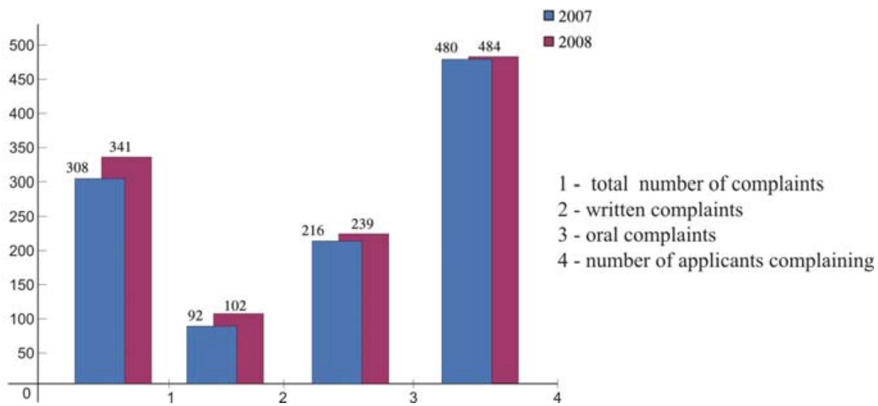


Table 2: Written Complaints by RA Administrative Region

		2007		2008	
	Region (*Marz*)	Number	%	Number	%
1.	Yerevan	725	65.8	795	64.8
2.	Shirak	48	4.4	68	5.5
3.	Lori	75	6.8	49	4
4.	Kotayk	59	5.4	67	5.5
5.	Ararat	41	3.7	37	3
6.	Gegharkunik	29	2.6	45	3.6
7.	Syunik	23	2.1	23	1.9
8.	Aragatsotn	22	2	23	1.9
9.	Armavir	21	1.9	42	3.4
10.	Tavush	19	1.7	22	1.9
11.	Vayots Dzor	11	1	13	1
12.	Unknown[1]	28	2.6	43	3.5
Total		1,101	100	1,227	100

As in 2007, the greatest number of written applications was submitted to the Office in 2008 by the residents of Yerevan. According to the Table, the number of applications received from the city of Yerevan, as well as from the *marzes* of Shirak, Kotayk, Gegharkuik, Tavush and Armavir, increased in 2008. At the same time, there were fewer complaints from the *marzes* of Lori and Ararat. These statistics indicate that there it is necessary to establish representative offices of the Human Rights Defender in Armenia's regions.

[1] Includes the complaints in which the citizens did not identify their addresses.

Figure 2. Written Complaints in 2008 by RA Administrative Region

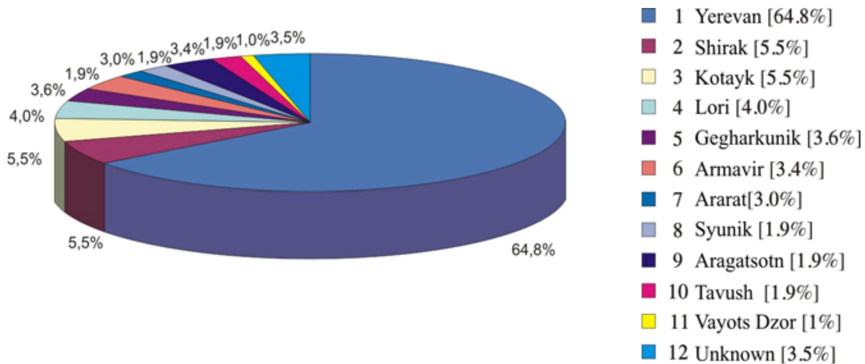


Table 3 details decisions that were made in response to written complaints submitted to the Human Rights Defender's Office in 2008.

Table 3: Decisions Made In Response to Submitted Written Complaints

		2008	
	Decision	Number	%
1.	Accepted for consideration	517	42.1
2.	Possible remedy explained	128	10.4
3.	Forwarded to other bodies for consideration	37	3
4.	Consideration rejected	406	33.1
5.	Complaints withdrawn from consideration at the request of the complainants	24	2
6.	Consideration still in progress at year end (31st December 2008)	115	9.4

As in previous years, the Defender's Office received complaints against non-governmental bodies (organizations and individuals), complaints lacking the name and address of the complainant, complaints not constituting violation of human rights (as deemed by the Defender), and complaints that made no request to restore some violated human right. Thus, these 406 complaints were rejected according to due legislation (i.e. the *Law on the RA Human Rights Defender*, Article 7 Part 2, Articles 9 and 10). When a submitted complaint was rejected, the complainant received an explanation about the relevant legislation under which that complaint was considered. Where complaints challenged the grounds or lawfulness of court decisions, the Office explained that the Defender is not lawfully permitted to intervene in independent court proceedings.

Almost half of the complaints submitted to the Office were handed to the Defender or his authorized representatives in person. This occurred during visits to the regions, government

institutions and organizations, as well as during visits of citizens to the Human Rights Defender's Office. The counselling of citizens via a telephone hotline also encouraged this trend.

As in previous years, some people who made oral complaints refused to their provide name and address because they feared the consequences of submitting a [written] application. Such instances were duly covered in the RA Human Rights Defender's 2007 Annual Report.

Figure 3: Decisions Made in Response to 2008 Complaint Applications

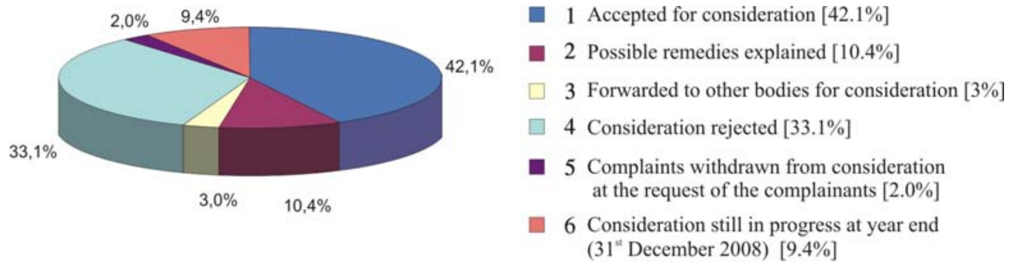
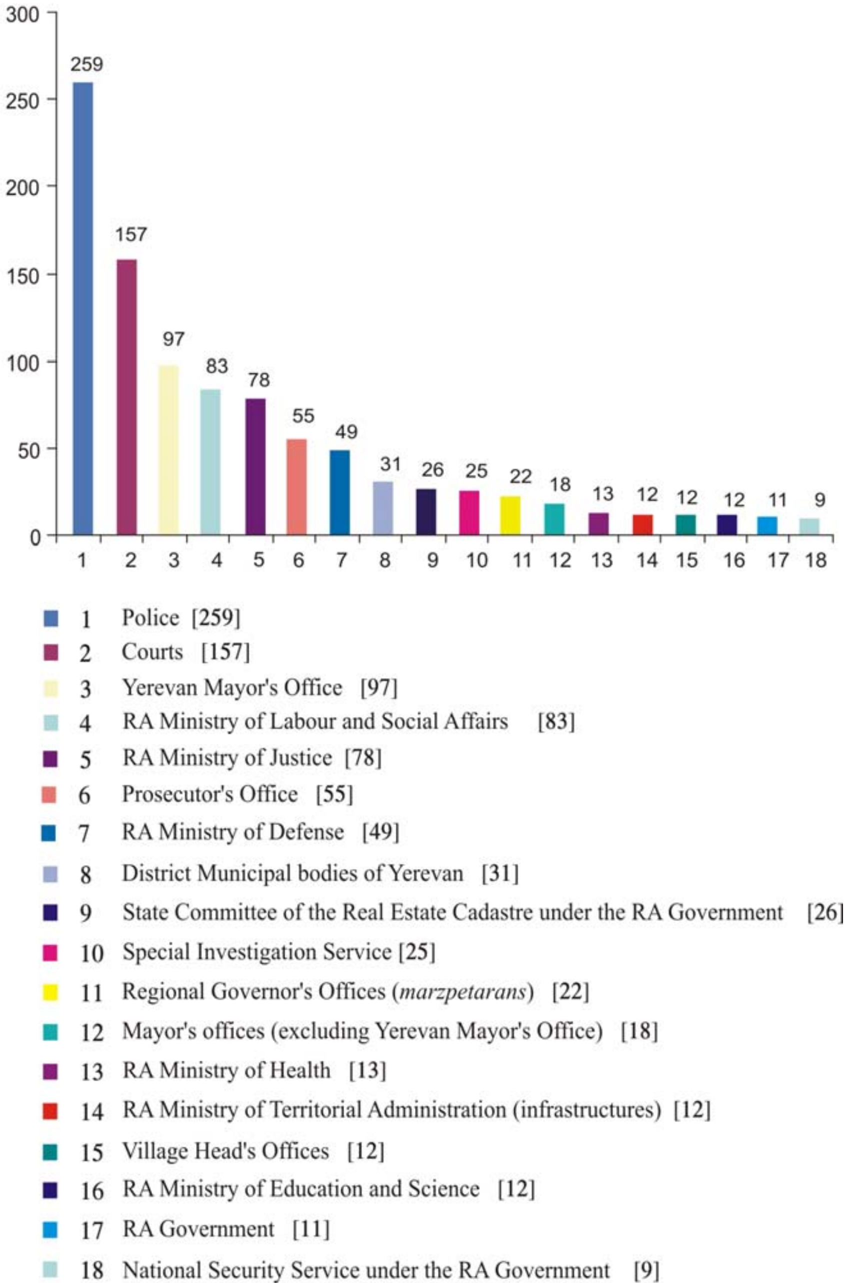


Table 4
Written Complaints against Public Bodies in 2008

	Name of the public agency	2008
1.	Police	259
2.	Courts	157
3.	Yerevan Mayor's Office	97
4.	RA Ministry of Labour and Social Affairs	83
5.	RA Ministry of Justice	78
6.	Prosecutor's Office	55
7.	RA Ministry of Defence	49
8.	District municipal bodies of Yerevan	31
9.	State Committee of the Real Estate Cadastre under the RA Government	26
10.	Special Investigation Service	25
11.	Regional Governor's Offices (*marzpetarans*)	22
12.	Mayor's offices (excluding Yerevan Mayor's Office)	18
13.	RA Ministry of Health	13
14.	RA Ministry of Territorial Administration (infrastructures)	12
15.	Village Head's Offices	12
16.	RA Ministry of Education and Science	12
17.	RA Government	11
18.	National Security Service under the RA Government	9

Table 4 shows that the greatest number of complaints was filed against the police, the courts, and Yerevan Mayor's Office.

Figure 4. Written Complaints against Public Bodies in 2008



It should also be noted that the number of written complaints received in 2008 includes complaints of alleged human rights violations in connection with the February 19 Presidential Election and subsequent developments. Indeed, one of the main areas of activity of the Human Rights Defender during the reporting year was following up allegations of election rigging that were submitted to the Human Rights Defender's Office and commenting on the aftermath of the disputed election.

On the 2008 Presidential Election Day, the Human Rights Defender's Office remained open all day and, depending on availability of resources, followed up scores of accusations about illegal procedures. In particular, the Office followed up complaints about: the distribution of *Form N 9* to citizens at certain election campaign headquarters and the subsequent group transportation of these citizens to polling stations; instances of physical assault against proxies of the presidential candidates; ballot box stuffing at polling stations; instances of voting for a different person; instances of adverse propaganda; the presence of more than one proxy of a presidential candidate at polling stations; instances of physical assault against chairmen of electoral commissions and other violations. The Human Rights Defender undertook relevant measures; for example he alerted law enforcement bodies and asked them to do everything in their power to prevent such actions and hold the lawbreakers responsible.

The Human Rights Defender's Office was particularly busy following the events of March 1 (2008). During this period, the Office received about 60 applications regarding:

a) groundless charges against those accused, and the political motives for those charges;

b) holding of people in custody at police stations in violation of legal requirements; violation of arrest procedures and periods;

c) failure to ensure availability of a defence lawyer to persons held in detention (as required by the RA Criminal Procedure Code);

d) the unlawful restriction of freedoms and personal protection of those participating in the events held on Yerevan's Northern Avenue.

1.1.2. Advice

One of the RA Human Rights Defender's duties is to provide citizens with advice. According to the *RA Law on the Human Rights Defender*, the Human Rights Defender should provide mandatory and discretionary counselling.[2] In 2008, the Human Rights Defender provided mandatory advice for 534 cases. The advice was provided according to the cases and formats set out in the *RA Law on the Human Rights Defender*:

1. Advice about challenging a court decision, judgment or verdict or the grounds of a court verdict (Article 7, Part 1, Paragraph 2 of the Law);
2. Advice about remedies available for defending the rights and liberties of the applicants (Article 11, Part 1, Clause 2 of the Law);

[2] Cases, format and analysis of mandatory and discretionary advice by the Human Rights Defender are presented in greater detail in the *2006 Annual Report of the Human Rights Defender* (pp. 17-18).

3. Advice that clarifies the relevant legal procedures under which the complaints are considered if a decision was made to reject a complainant's application (Article 11, Part 2 of the Law).

In 2008, discretionary advice was provided by the Human Rights Defender at public meetings, organized at the Human Rights Defender's Office. Such advice was also provided via telephone and during trips into the field by the Defender and his staff.

Advice given by the Defender generally dealt with the same set of issues as the previous year's advice. New issues needing advice were those related to electoral processes and these are covered in greater detail in the *Ad Hoc Public Report of the Human Rights Defender of April 25, 2008*.

Advice provided by the Human Rights Defender in 2008 can be classified into the following human rights fields and areas:

Primarily, the Human Rights Defender provided advice for those complaining about the violation of civil, political, social and economic rights.

A large number of complaints in the area of respect for civil, political and economic rights related to the unlawful restriction of civil and certain political rights during the Emergency Rule declared in the aftermath of the March 1 events. Although the 'state of emergency' was declared only in the city of Yerevan, the restrictions (restriction of the freedom of assembly, restriction of the right to free movement) that were imposed by the Decree of the RA President, were also extended to other towns and cities in Armenia.

Other complaints in this area included allegations of torture or cruel, inhuman or humiliating treatment, violation of the right to freedom and personal protection, arbitrary arrests and detention, and the failure to ensure access to defence lawyers (advocates) for those in custody. (There were also reports of instances when, although formalities were observed and a defence lawyer (advocate) was involved, in reality s/he was not allowed to meet with his/her client or, although s/he was involved in the case, it was in violation of legal requirements.) A number of complaints received from the detainees alleged violations of the right to fair trial.

The Human Rights Defender's Office also provided explanations on other matters related to civil and political rights. In particular, the following points were clarified for citizens: certain articles of the RA Electoral Code; the holding of peaceful unarmed rallies as permitted by the RA Constitution; the conducting of site examinations under the rules of the *RA Criminal Procedure Code*; provisions on the implementation of operational investigation activities and on the employees in charge of the implementation of these activities (of the *RA Law on Operational Investigation)*; provisions of the *Law on Police*, *Law on Police Force;* provisions on rendering first aid to persons with bodily injuries in cases provided for by RA law; restriction of the use of special means (substances) by the police; liability if the used quantities of these means (substances) exceed permitted levels.

A significant amount of advice related to issues in the area of social-economic rights, such as welfare pensions, refugee housing, rights of those with disabilities, refunds of deposits made with the USSR Savings Bank, and the violation of property rights. Citizens were also advised about entitlement to pensions and benefits, eligibility for part-time pension benefit, the terms and conditions of entitlement to those benefits, as well as issues related to the receipt of pensions by a third party with Power of Attorney.

In October 2007, the RA Human Rights Defender submitted an application to the Constitutional Court of Armenia requesting that the compatibility of Article 73 Part 2 of the *RA Law on Pensions* with Article 42 Part 3 of the *RA Constitution* be reviewed. The Defender also submitted another application requesting that the compatibility of Article 47, Parts 3 and 4, of the same Law with Article 18 of the RA Constitution be reviewed.

The provisions of the *RA Law on State Pensions* in question stipulate how a pensioner's working years and pension payments should be calculated as well as which documents certify how many years they have worked.

By its decision N SDO – 723 of January 15, 2008, the RA Constitutional Court declared that Part 2 of Article 73 of the RA *Law on State Pensions* was void. Parts 2 and 3 of Article 47 were also declared void by decision N SDO-731 of January 29, 2008, since they contradicted Articles 18 and 37 of the RA Constitution.

On July 21, 2008, the Human Rights Defender sent a letter to the State Social Insurance Service, part of the RA Ministry of Labour and Social Affairs, in which he requested information about the number of citizens whose rights had been reinstated as a result of the decision of the Constitutional Court. In response, the Deputy Head of the State Social Insurance Service sent a letter (N 04/5774) on August 4, 2008, informing that the Service had made recommendation N 03.1141 on February 13th to honour the written requests of 6,097 citizens requesting reinstatement of their rights.

The Human Rights Defender received a number of complaints dealing with the concerns of people with disabilities. These included changes in the state-assigned disability groupings and the benefits provided.

A housing study highlighted that the right to adequate living conditions, including adequate housing as guaranteed by the RA Constitution, remain a particularly sensitive issue among RA citizens. It is a particularly serious problem for the people who live in old decrepit buildings. In 2008, some of these citizens were provided with new apartments. Others will be provided with apartments in accordance with the specified schedule.

The Human Rights Defender's Office received more than 150 complaints alleging violations of citizens' property rights. In his office, the Defender hosted residents of buildings located in the "pull-down zone" on Proshyan and Lalayan streets. In particular, he clarified the provisions of the *RA Law on Property Alienation for Public and State Needs* and what kind of legal recourse was available to the complainants.

The Human Rights Defender had previously made a number of recommendations concerning the *RA Law on Property Alienation for Public and State Needs;* however, only some of these recommendations were acknowledged, which may be why the violation of citizens' property rights continues.

The Human Rights Defender also gave advice relating to the *RA Land Code*. In particular, advice concentrated on issues related to the allocation of state or communal property land for construction purposes and the granting of property rights for these lands. Advice was also provided in situations where, based on a procedure established by the RA Government, land can be leased to third parties without a tender. For a number of applications, the Defender suggested that the relevant clauses of the RA Civil Code be consulted.

Some complaints submitted to the Defender's Office inquired about procedures for challenging activities of the Real Estate State Cadastre (under the RA Government) and its

representative offices. The Defender's Office familiarized these complainants with the legal provisions pertinent to their problems and clarified the procedure for appealing against the activity (or inactivity) of the mentioned bodies.

The refund of deposits made with the USSR Savings Bank was another big issue raised in the complaints. Particularly, many applications received asked for clarification on refund procedures for their Soviet savings.

Refugee housing was another central issue of complaints. However, in some cases refugee families remained on housing improvement waiting lists without considering whether the RA Government standards and criteria truly applied to their situations.

The second group of complainants that received advice from the Human Defender's Office was concerned about the rights of military servicemen and the rights of those involved in criminal proceedings. These consultations can be further broken down into a number of subgroups.

First, advice about courses of action available for the defence of civil rights and liberties was given to those complaining about the authorities failing to commence criminal proceedings following a reported crime or when they decided to discontinue criminal proceedings in a case.

The second subgroup of complaints consisted alleged violations of individuals' rights and liberties during pre-trial examination by criminal prosecution bodies and by the courts during the judicial review of the pre-trial proceedings.

Third, information was provided to citizens about the activities of the Independent Commission created under the *Decree of the RA President on the Parole Release and Replacement of the Non-served Part of the Sentence*.

Advisory consultations also clarified legal provisions governing military service in the RA Armed Forces, activities (or inactivity) of the military commissariats, and the rights of servicemen and the members of their families.

A number of applications dealt with civil and legal matters. The complainants were strongly opposed to settling these matters through the courts, preferring instead to bring their cases to the attention of public agencies that have no authority to deal with them.

The Human Rights Defender Office also provided advice related to applications about naturalization of persons, issue of passports, and the respect of rights and liberties of RA citizens living abroad – all of which were related to their military records.

The third main area of advice given to citizens outlined international remedies available for the defence of human and civil rights and liberties. Citizens complained of alleged violations of their rights by RA courts, which, they believed was evident from the verdicts, judgments and decisions issued by those courts. The Human Rights Defender stated that, according to Article 7 of the RA *Law on Human Rights Defender,* the RA Human Rights Defender had no authority to intervene in court proceedings. According to Part 1 of Article 10 of the same Law, the RA Human Rights Defender shall not consider any complaints for which settlement should be sought at court and shall discontinue consideration of a complaint if the complainant files a court application after the consideration of his/her case commenced.

The relevant citizens were advised of the possibility of applying to the European Court of Human Rights within six months after the RA Court of Cassation's final ruling if they were unhappy with the outcome. When necessary, the applicants were also informed about the detailed

procedures and terms and conditions involved in bringing a complaint to the European Court of Human Rights.

1.1.3. Hosting Public Meetings

In his attempt to establish better communications with the public and to respond to their needs and problems promptly and effectively, the Human Rights Defender paid special attention to hosting meetings for the general public. During the reporting period, the Defender hosted 175 visitors in his office. And by sending advance notice of his visits to respective communities of Armenia, the Human Rights Defender arranged to meet with people in their respective communities. The meetings were a means by which the Defender could collect written applications from people whose requests called for additional inquiries or inspections.

During these meetings, people received explanations as to why certain applications were ineligible for consideration and were informed about the correct procedure and timeframes for the consideration of their applications. Applicants were also warned that if their applications were beyond the Human Rights Defender's jurisdiction, they would most probably be rejected at the time of submission. Nevertheless, some insisted on submitting such applications. These meetings also afforded the Human Rights Defender the opportunity to give advice.

Generally, the Human Rights Defender's Office followed the established procedure for hosting public meetings. In 2008, however, the Defender also took action to detect and address instances of human rights violation more promptly and efficiently. The Defender's Office greatly relied on the use of the Internet to achieve this objective.

1.1.4. Visits and Quick Response Measures

In 2008, as in previous years, visits of the RA Human Rights Defender or his representatives were instrumental in effectively monitoring the activities of various public agencies. Visits were organized to investigate specific complaints filed by citizens, while other visits were organized at the initiative of the Human Rights Defender. The main purpose of the visits was to become familiar with the problems of the citizens and provide advice about how they could remedy their situation through relevant legal frameworks and mechanisms. The Human Rights Defender also appeared on local TV broadcasting stations, *Lori* and *Gala*.

The Defender's 2008 visits established that problems encountered in previous years persist. These included the problems faced by old peoples' homes and a number of prisons, the inadequate condition of some military buildings, and the declining numbers employed in the prison and social care sector.

During a visit to *Goris* prison, under the RA National Security Service (NSS), the Defender discovered that the facility lacked a dentist because the vacant position was difficult to fill due to its meagre salary. Thus, inmates with toothache had to rely on the use of painkillers, which, of course, could only temporarily relieve their condition.

A visit to *Sevan* prison, under the RA NSS, revealed that clean water supplies had remained a major issue for the institution. The water supply pipeline, passing through nearby hills, was dated and damaged and its rehabilitation required major financial investment. This meant that during the day running water was available for only a few hours, according to a strict schedule, but even this water was not safe or suitable for drinking. At the time of the visit, renovation was underway in the prison cells and the renovation of the canteen had been completed.

A visit to *Vanadzor* prison, under the RA NSS, revealed that the facility lacked a physician. But this appeared to be the only problem it had at that time – rooms for short and long-term visitors, the prison cells, and the canteen were all found to be in adequate condition.

During a visit to the *Lori Marz Psycho-neurological Inpatient facility* CJSC, the Human Rights Defender's representatives discovered that one patient had been taken into custody on the basis of a letter (N 4938, dated 20th October 2008) signed by Ispriyan, Head of the Investigation Department of Lori *marz*, even though there was no court ruling to do so.

According to Article 459 of the *RA Criminal Procedure Code*, a person that has committed a crime and poses a threat to the public can be placed into custody in a psychiatric clinic if it can be proved that he or she bears diminished responsibility for the crime. But such placement can only be done if there is court approval of an investigator's substantiated decision. However, as mentioned above, the person was placed into custody in a psychiatric facility without court approval. In this and similar cases – when visits helped disclose instances of human rights violations – the Human Rights Defender acted on his own decision to proceed with the examination of such cases, taking into account Article 11 Part 4 of the RA *Law on Human Rights Defender*.

During a visit to one military unit located in the Lori Marz, the representatives of the Human Rights Defender documented that the room temperature in one of the wards of the medical wing was below normal even though, at the time, four soldiers were being treated at the facility for acute viral respiratory diseases. The Office of the Defender prepared statements about this and other cases and subsequently posted them on the official webpage of the RA Human Rights Defender.

In 2008 the RA Human Rights Defender and his staff members visited the prisons of *Nubarashen, Vardashen, Yerevan-Kentron,* and *Artik*, including the *Inmates Hospital* (all administered by the RA NSS). They met with the detainees, including people held in connection with the events of March 1-2, 2008, who complained about the charges being brought against them, claiming that were politically motivated and, therefore, unjustified. They argued that since they did not commit any acts that are punishable by law they were simply political prisoners. The representatives of the Human Rights Defender explained that factual evidence for the charges would be heard in court and that the Human Rights Defender did not have any authority to intervene in the court system and procedures. The Defender's representatives also explained that at the current time the responsibility of the Human Rights Defender was to examine whether there were instances of human rights violation of those in prison and send any revelations and recommendations to the respective bodies.

It should be noted, however, that the Human Rights Defender several times publicly declared his opinion about those imprisoned in connection with the March 1-2 events: he stated that the Republic of Armenia might lose those cases if there is an appeal to the European Court of Human Rights.

Illustrative Case 1

On 2nd April 2008, the Working Group created at the initiative of the RA Human Rights Defender visited the *Nubarashen* Prison (of the RA NSS) and met with 12 individuals on hunger-strike, who were being held in connection with the events of March 1-2. They informed the representatives of the Human Rights Defender that they had decided to go on hunger-strike after national TV reported them to be criminals – they thought they were victims of political persecution. The Defender's representatives documented that those on hunger-strike remained under the due supervision of medical personnel and had no complaints about the prison staff.

Illustrative Case 2

On 23rd June 2008, the RA Human Rights Defender and his Working Group visited the *Yerevan-Kentron* and the *Vardashen* penitentiary facilities of the RA NSS, where they met and had private conversations with National Assembly MPs Hakob Hakobyan, Myasnik Malkhasyan, Sasoun Mikaelyan, as well as with Ararat Zurabyan, Alexander Arzumanyan and former Deputy Prosecutor General Gagik Jhangiryan. Almost all of them stated that they were angry and aggrieved at the baseless charges being brought against them, their illegal imprisonment, and the unfounded investigations into their family members and relatives.

In 2008, the RA Human Rights Defender received a large number of written and oral complaints and applications. He considered the Quick Response approach to be the most effective way of solving these problems. Taking into account information obtained, this approach ensures that measures are promptly taken to halt violation of human rights as quickly as possible. When a quick response is necessary, the Human Rights Defender calls an impromptu staff meeting and recommends the formation of a group to immediately visit the places where the alleged violations were reported to have taken place. The Quick Response groups are composed of the Human Rights Defender's staff that have human rights expertise in the particular area reported.

There were many cases when citizens applied to the Human Rights Defender's Office on non-working days or during the night. In such cases, the Human Rights Defender personally took charge of the situation, forming Quick Response units from his staff and sending them to police detention centres where arrested persons were being held, to areas where mass events were taking place, or to the relevant prisons and military bases.

Representatives of the Human Rights Defender's Office were present at almost all mass and non-mass public events, including rallies, marches and demonstrations, irrespective of the time when they were taking place. In some cases they even contributed to the creation of an atmosphere of tolerance between rally participants and police officers.

A few examples of how cases were dealt with by using the Quick Response approach are presented below:

Illustrative Case 1

On 14th October 2008, the Human Rights Defender's Office received an alert that private **H.Kh,** on mandatory military service at a RA Ministry of Defence military unit located in Ijevan, had inflicted injuries on his wrist with a razor a few days earlier. The Human Rights Defender sent the Quick Response Team to the military unit the same day to visit the injured soldier and

check his health condition and find out what had happened. This case is presented in greater detail under the Section on *Rights Related to Military Service.*

Illustrative Case 2

On 4th May 2008, Melanya Arustamyan, Hakob Hakobyan's attorney, visited the RA Human Defender's Office and informed that her client had been on hunger-strike for a seventh consecutive day and wanted to meet with the RA Human Rights Defender. Melanya Arustamyan also notified the Office that her client had serious health problems and needed to see a doctor without delay. Representatives of the Human Rights Defender's Office immediately informed the prison's director, after which Hakob Hakobyan's personal doctor was invited to visit him. The next day (5th May 2008), Staff from the Human Rights Defender's Office visited the *Yerevan-Kentron* prison and met with Hakob Hakobyan.

Illustrative Case 3

On 14th October 2008, the Human Rights Defender sent a Quick Response Team to visit the intersection of Tumanyan and Mashtots streets [Yerevan] after he received an alert that the police were trying to prohibit a peaceful march, which was informing citizens of an upcoming (sanctioned) rally. There were approximately 50 people participating in the march; they claimed that they believed they were doing nothing wrong or illegal. However, the police officers were insisting that the march should not be allowed. The organizers told the Quick Response Team that police officers in civilian clothes had taken away their loudspeaker and had then proceeded to try and forcefully remove people from the site. After a while, the police allowed the march but without a loudspeaker since this was a violation of Armenian law. The participants asked the police not to interfere with the march; nevertheless, some 50 police officers pushed and pulled the people to force them to enter the area of Northern Avenue.

These events were duly documented by the Human Rights Defender's representatives and the RA Human Rights Defender once more appealed to the RA Police to act within the limits of the RA Constitution and its laws and not to restrict the constitutional rights of RA citizens.

Illustrative Case 4

A telephone call to the Human Rights Defender's Office on 17th October 2008 informed that the intercity and inter-regional buses were not running as normal. Members of the Quick Response Team of the Defender's Office visited the town of Abovyan and documented the following facts:

Bus numbers 260, 261 (from Abovyan to Yerevan) were arriving in Yerevan without passengers, but were taking passengers from Yerevan to Abovyan. In addition, people standing at the bus station reported that, for the whole day, the public bus drivers had refused to take them to Yerevan because of instructions from their route controllers. The Human Rights Defender called on the relevant public authorities to ensure normal operation of public transport in order to respect provisions of the RA Constitution that guarantee people's right to free movement.

Illustrative Case 5

On 25th November 2008, citizens M.H. and others informed the Office of the Human Rights Defender in writing that, as participants of the Karabakh liberation war, they were staging a three-day hunger strike from 26th November 2008 and would be camping in the area next to the chapel of the *Yerablur* Pantheon. Their demands read “Not a single inch!” and “Recognize Artsakh as an inseparable part of Armenia.”

Staff employees of the RA Human Rights Defender visited the *Yerablur* Pantheon on November 27th and met hunger-strikers M.H., H.A., S.M. and V. M. They reported that on 26th November police officers had dismantled their tents and at 11p.m asked them to stop their protest and take away their posters. The following morning (November 27th) they were invited to Malatia station of the Yerevan City Police Department, where the police handed them back their tents and suggested they continue their protest at a different venue.

In answer to the questioning of the representatives of the Human Rights Defender, the police officers stated that force had not been used and that they had removed the posters of the strikers because they were fixed on the walls of the chapel.

The next day (November 28th), M.H. again called the Human Rights Defender’s Office and reported that the police had ousted them from the chapel area by force. An employee of the Human Rights Defender’s Office returned to the Yerablur site and witnessed that police were blocking the entry of the hunger-strikers to the area of the *Yerablur* Pantheon and thus the hunger-strikers were forced to continue their protest in the area adjacent to the road running into the *Yerablur* Pantheon.

Illustrative Case 6

On 21st November 2008, RA National Assembly MP Zaruhi Postanjyan applied to the RA Human Rights Defender informing that a group of police officers were not allowing a peaceful march in the streets of Yerevan. She said that she was going to join the march together with a group of other people and informed that it was planned to start from the building of the RA Foreign Affairs Ministry.

In defending their actions, police officers said that the event gathered more than 100 citizens, which, under effective legislation, required that the city’s Mayor’s Office be notified prior to the event. However, staff of the Human Rights Defender’s Office who visited the venue documented that only some 50 citizens were participating in the event.

1.2. Cases with Positive Outcomes

The RA Human Rights Defender’s decisions have no binding power; the Office of the Human Rights Defender is not a substitute for other institutions through which citizens can seek legal recourse to restore their rights. Moreover, the Defender’s decisions have no power to terminate the effective legislation of public bodies – decisions are entirely advisory in nature. Thus, instances of individuals and citizens having their rights restored serves as the main indicator of how effective the Human Rights Defender’s work is.

In 2008, there were 122 cases of people having their rights restored due to the work of the Defender’s Office (this figure includes restored rights from group applications and from

applications still under consideration from the previous year). A few examples below reveal how the Human Rights Defender's intervention led to a positive outcome.

Illustrative Case 1

A Yerevan resident applied to the Human Rights Defender's Office informing that on the basis of RA Government Decision No.682 (25th October 2000) and the decision of the Mayor of Yerevan of 2006, they had been allocated a 4-room apartment at 43 Arzoumanyan Street in the Ajapnyak district of Yerevan to replace their decrepit apartment (#58) at 23 Shinanarneri Street. The applicant complained he and his family could not occupy the new property because the Yerevan Mayor's Office had erroneously listed the names of his deceased grandmother and mother in the lease contract, and this meant that they could not get their contract validated by a notary. The contract had been sent back to the Mayor's Office for correction, but the applicant said that the Mayor's Office had done nothing about it for approximately seven months.

The Human Rights Defender requested that the Mayor of Yerevan clarify the case and suggested that prompt measures be taken to settle the matter. In response, the Chief of Staff of the Yerevan Mayor's Office sent a letter on 6th June 2008 informing that the text of the applicant's lease contract would soon be considered. On 30th July 2008 the Chief of Staff of the Yerevan Mayor's Office wrote a letter to the Human Rights Defender in which he included a copy of the lease contract signed with the members of that family and copies of property registration certificates relevant to the contract.

Illustrative Case 2

H.M., a resident of the village of Dzoraghbyur, filed a complaint stating that although he had worked for *Avtotransport* Industrial Association from 1969 to May 1978, when he reached pension age and applied to the Yerevan Mayor's Office for certification of his work, his request was turned down.

The Human Rights Defender asked the Mayor of Yerevan to clarify the case. The Chief of Staff of the Yerevan Mayor's Office sent a message confirming that H.M. had applied to the Mayor's Office on 7th March 2008 for a reference statement about his employment with the *Avtoransport* Industrial Association from 1969 to 1978. After this, the citizen was issued with the relevant documents to confirm that period of work.

Illustrative Case 3

A Yerevan resident informed that since 1998 he has been suffering with a rare incurable Wilson-Konovalov disease. He stated that *Penicillamin* was the only medication that could be used to effectively control his condition but this drug is not imported into the Republic of Armenia. Before 2007, the Ministry of Health provided him with the necessary drug supplies from the United States, imported in the form of humanitarian aid. However, the humanitarian aid was discontinued and for more than a year he had received neither drugs nor a clear response from the Ministry about what was happening.

In response to an inquiry by the Human Rights Defender, the RA Minister of Health confirmed that the drug *Penicillamin/Cuprinil* had been made available to the RA Ministry of Health through humanitarian aid supplies but that the donor organization informed that the manufacturing of that drug had been discontinued. The Minister also stated that due to a rise in

the number of patients suffering from the Wilson-Konovalov disease in 2008, the Ministry was taking steps to procure supplies of this medication from abroad and distribute them free of charge to patients suffering from the disease.

On 9th April 2008, the RA Ministry of Health provided 400 pills of Cuprinil (250mg) to the complainant and informed that it would further assist the patient where possible.

Illustrative Case 4

In his application addressed to the Human Rights Defender, citizen K.Kh. informed that he the issuing of his passport had been denied because he did not have an apartment. He informed that at that time he was living in a house on Rustaveli Street in Yerevan.

The Human Rights Defender made inquiries into the matter by contacting the Passport and Visa Department of the RA Police. The Head of the Passport and Visa Department of the RA Police notified by Letter No.25/01-14987, dated 10th March 2008, that a RA passport was issued to K.Kh, with a record of his actual address made in it. He also informed that that particular citizen collected his passport from the passport desk of the Central Police Station of Yerevan City Police Department on 21st March 2008.

Illustrative Case 5

Citizen G.M. applied to the Human Rights Defender's Office informing that he and members of his family were registered at Arshakunyats Street in Yerevan, where the building in which they had been living for years was in a dangerous condition. He stated that, based on a contract he and the members of his family had signed with the Yerevan Mayor's Office, they were eligible to receive new housing accommodation in the building to be constructed in place of the old one as long as they remained in the old building until it was finally demolished. The citizen complained that his name was absent from the waiting list on February 19 2008 even though he had registered much earlier on 29th April 2007. The citizen had been told that the removal of his name from the list had been done in accordance with a decision of the Yerevan Mayor's Office.

In response to the inquires made by the Human Rights Defender, the Head of the Passport and Visa Department of the RA Police informed in writing that the building in question had been demolished and the area's management assigned to the Yerevan Mayor's Office. It was also stated that the registration of citizens at that address would remain valid until their housing issue was finally resolved. In addition, the letter explained that G.M.'s and R.K.'s names had been accidentally deleted from the registration records of Yerevan's Erebuni district passport desk at the time of voter list checks. Consequently, the registration of G.M. and R.K. at the mentioned address on Arshakunyats Avenue was restored.

Illustrative Case 6

Citizen A.H. brought a complaint to the RA Human Rights Defender, in which he informed that the Investigation Department of the RA Police, Yerevan Division, had involved him as a witness in criminal case No.56200206. The complainant stated that on 29th January 2008 the senior investigator decided to take charge of his house and other property located in the town of Berd, Tavush region. The applicant complained that since he was solely involved in the case as a witness, he could bear no liability for the actions of the accused and that the control of his property was a violation of law.

With respect to this complaint, the RA Deputy General Prosecutor confirmed that, at the investigator's decision, the property of A.H. had been put under police control since he was a witness in a case relating to the negligence of medical personnel at the *Berd Hospital CJSC*, where patient K.A. had died of complications in the gynaecological department. Following a review of the circumstances of the criminal case, the prosecutor supervising the pre-trial investigation of the accused instructed that the illegal decision to take charge of the witness's property be annulled and that he be informed about it immediately; the matter was successfully resolved.

1.3. Review of Draft Legal Acts

Reviewing draft legal acts is an important part of the Human Rights Defender's work. According to Clause 42 of the Decree of the RA President # NH-174-N of 18th July 2007 *On Establishing a Procedure for the Organization of the Activities of the RA Government and other Government Administration Bodies Reporting to the RA Government*, all draft laws pertinent to the field of human rights and liberties shall be sent to the Human Rights Defender for review. Thus, during the reporting period the Defender's Office reviewed in detail draft laws that were submitted to the Office. One way it did this was by holding workshops, with the authors of the draft legislation participating. In some cases, the Human Rights Defender made his personal recommendations on the draft legislation. It should be mentioned, however, that some of the draft legal acts that were brought to the attention of the Human Rights Defender were not truly related to the field of human rights and liberties.

A number of the RA Human Rights Defender's recommendations on draft legislation are presented below:

1. The draft *Defence Law* was submitted to the RA Human Rights Defender by the RA Ministry of Defence and the Defender made a number of substantial recommendations and remarks about it. In particular, the Defender recommended introducing a clear definition of the term "*war*", using interpretations available from international law sources. The draft used expressions *"declares war"* or "in the case of declaring war," which assume that certain restrictions will emerge, including those in the field of human rights. The Human Rights Defender also commented on separate articles of the draft law.

2. The RA Minister of Justice requested that the Human Rights Defender review the following draft laws: The *Draft Law on Amending the RA Judicial Code*, the *Draft Law on Amending the Law on Prison service*, the *Draft Law on Amending the Law on the Service in Charge of the Compulsory Implementation of Judicial Acts*, the *Draft Law on Amending the Law on Police*.

2.1 With respect to the *Draft Law on Amending the RA Law on Police*, the Human Rights Defender recommended to add the words *"and then within 24 hours to the prosecutor"* after the words "all cases when police officers use firearms must be reported up the line" in Part 3 of Article 32 of the Law.

2.2 At the same time, taking into account Article 77 of the *RA Law on Legal Acts* and the format in which draft legislation is generally analyzed before it is approved by the RA Ministry of Justice, the RA Human Rights Defender also recommended introducing a relevant change in

the *RA Law on the Tax Service*. The Defender proposed editing Clause 4 of Article 34 of that Law (*"The head of the tax authority or the official replacing him shall immediately report all cases of bodily injuries and deaths caused by the use of physical force, special means and firearms to respective health and prosecution authorities")* so that it would read: **"If physical force or special means have been used [an officer or employee] shall immediately report up the line. The head of the tax authority or the official replacing him shall immediately report to respective health and prosecution authorities about all cases of bodily injuries or deaths.**

If firearms have been used, a tax officer shall report up the line and to the prosecutor."

3. With respect to the *Draft Decision of the RA Government on Approving the Internal Regulations of Military Disciplinary Isolation of the RA Ministry of Defence*, the Human Rights Defender concluded that the Draft lacked clarity and overlooked important points; he proposed a number of changes and amendments. In particular, the comments of the Defender were related to provisions regarding the destruction of alcoholic beverages, gambling cards and other prohibited items, the allocation of a personal bed to arrested or detained persons, the determination of where and when an arrested or detained persons can smoke, and other provisions. The Defender made recommendations for amending the questionable provisions and eliminating flaws; he also underscored that the draft required further improvement and editing.

4. With respect to the *Draft Law on Making Amendments to the RA Customs Code* and the RA Civil Code, the Defender stated the following: **"Changes and amendments to the draft should be made in such a way that persons who have imported vehicles into the Republic of Armenia – which are now under investigation, have deleted or re-printed motor or gear-box identification numbers, or possess other attributes of potentially illegal shipping – should be allowed to use, own and even get rid of those vehicles (if a record is made in the relevant documents)."**

5. The RA Police submitted for review the *Draft Decision of the RA Government on Escorting Arrested and Detained Persons*. The Human Rights Defender commented on that Draft stating that certain provisions of it needed to be edited and drafted in clearer language. The Defender also concluded that the provisions were not logically consistent. In particular, it was not clear whether the escorting units are set for an indefinite or definite period of time. The Defender also noted that greater detail was needed about the body that oversees the organization of the escort units, checks the accompanying documents, and supervises the service of the escort guards at the scene. The Human Rights Defender also made a few other proposals and recommendations regarding other flaws in the text of the Draft Decision.

6. The RA Ministry of Health submitted the *Draft Law on Making Amendments to the RA Law on Psychiatric Assistance* to the Human Rights Defender. A number of flaws and omissions that had already been identified were analyzed and commented on by the Defender. He also stated in his comments that the proposed Draft contained provisions that conflicted with other legal stipulations and that certain provisions lacked clarity and needed re-wording.

7. The Chief of Staff of the RA Government submitted to the Human Rights Defender a package of *Draft Laws on Making Amendments to the RA Law on Military Service, on Making Amendments to the RA Law on Education and on Making Amendments to the RA Law on Higher (Tertiary) and Post-graduate Education*. In regard to these, the Human Rights Defender had no fundamental objections or remarks.

However, with respect to the *Draft Law on Amending the RA Law on Military Service,* the Human Rights Defender did state that if the Law were adopted, it would contribute to the

significant deterioration of the legal status of a certain group of people. Thus, the Human Rights Defender made a number of comments and recommendations. In particular, he suggested redrafting the Law to ensure that retroactive application of the new provisions would not detrimentally affect the rights of university students, enrolled in bachelor's or graduate level studies before 1st January 2009, who had been granted military service deferral.

8. The Human Rights Defender's Office reviewed the *Draft Laws on Amending the Electoral Code of the Republic of Armenia, on Amending the Draft Law on the Prosecutor's Office of the Republic of Armenia, on Amending the Law on Special Investigation Service, on Amending the Law on the Human Rights Defender and on Amending the RA Law on the Notary System.* The Defender concluded that these draft laws and legal acts were aimed at depriving a certain group of people of their legal immunity. If adopted, the drafts would annul the current requirement that the right to start legal proceedings against prosecutors and employees of special investigation departments be reserved solely for the RA Prosecutor General.

Concerning the abolition of certain provisions of the RA Electoral Code, the Human Rights Defender expressly stated his disagreement with provisions that would deprive candidates running for the RA presidency, RA National Assembly, and heads of local authorities and local councils of their legal immunity. The Defender stated that these laws, if adopted, could be manipulated to exert adverse pressure on unwanted candidates. The Human Rights Defender also stated that during the preparation of the draft laws, due consideration had not been given to the specific nature of the status of the relevant persons (especially from an anticorruption viewpoint.

The Human Rights Defender showed no support for the *Draft Laws on Making Amendments to the Electoral Code of the Republic of Armenia* and *on Making Amendments to the RA Law on the Human Rights Defender* and stressed that these drafts were due to be mailed to the Venice Commission for review.

The Council of Europe's Venice Commission issued an opinion statement about the *RA Draft Law on Making Amendments to the RA Law on Human Rights Defender* at its plenary session on October 17-18, 2008. It stated:

"Immunity for the office of the Human Rights Defender (ombudsman) including his or her staff is one of the key guarantees of independence of this institution, giving it a capability to play its special role in a democratic society governed by rule of law. If in such a society any institution is to enjoy the immunity, the Ombudsman is certainly the one. Owing to its tasks of conducting a special kind of examination often resulting in strong criticism of the authorities, the institution becomes a likely target of attacks motivated by political and other interests."

9. The RA Human Rights Defender's Office also reviewed in detail a package of proposals entitled *Making Amendments to the RA Electoral Code*. The Defender made a number of recommendations; in particular, he proposed changing Part 6 of Article 111 of the *RA Electoral Code* so that it more clearly defines the requirement for obtaining the Central Electoral Commission's consent on extending a period of detention. The Defender also recommended that provisions relating to responsibilities arising from the violation of the *RA Electoral Code* be revised. He also made comments on other articles and then sent his package of recommendations on the *Draft Law on Making Amendments to the RA Electoral Code* to RA Prime Minister and the Standing Commission of the RA National Assembly on State and Legal Issues.

10. Regarding the *RA Draft Law on Making Amendments to the RA Criminal Code*, the Defender commented that the Draft Law lacked any rationale for the changes. Moreover, the Defender commented that it was unclear why the introduction of a new *corpus delicti* was being proposed since Article 235 of the Code already defined responsibility for the acquisition, sale, transportation, and preservation of items referred to in the same article. Thus, the Human Rights Defender recommended that the content and rationale for a new *corpus delicti* in the Code be revised.

11. The RA Ministry of Justice sent the *RA Draft Laws on the State Service Conducting Expert Examination of Legal Acts*, *on Amending the RA Law on Legal Acts*, *on Amending the RA Judicial Code*, and *on Amending the RA Law on International Treaties* to the Human Rights Defender for review. He expressed the following opinions:

11.1 Regarding the *Draft Law on the State Service Conducting Expert Examination of Legal Acts*, the Defender stated that it was difficult to understand why the scope of RA Government authorities was limited to establishing procedures and the terms and conditions of organizing training courses for Service employees. The Defender also stated that it is unclear from Clause 3 of Part 1 of Article 6 of the Draft Law which medical conditions would permit an employee to be downgraded in his/her office. With respect to Article 16, the Defender proposed replacing the word "body" with the word "Service." The Defender also made other recommendations related to a number of flaws and omissions and stated that the Draft required further improvement and editing.

11.2 The Human Rights Defender made relevant recommendations on the *Draft Law on Amending the RA Law on Legal Acts*, stating that the text of the *Draft Law on Amending the RA Law on Legal Acts* required further improvement.

11.3 Article 1 of the *Draft Law on Making Amendments to the RA Law on International Treaties* suggested improvements to Article 49 of the *RA Law on International Treaties*. However, the content of Article 1 of the Draft Law was found to be more relevant to Article 38 of the *RA Law on International Treaties*, and thus the Defender suggested that the text of the mentioned draft Article be used to amend the latter.

12. The RA Ministry of Justice submitted the *Draft Law on Amending the RA Criminal Code,* and the Rationale for approving it, to the Human Rights Defender. However, the Defender suggested that the Rationale failed to offer sufficient grounds for the introduction of such an amendment. He advised that the Rationale should be based on an analysis of specific realities present in Republic of Armenia; only then would changes and amendments be justified.

13. Regarding the *Draft Law on Amending Article 16 of the RA Law on State Registration of Legal Entities,* the Human Rights Defender stressed that the Draft imposed restrictions on the rights of the founders and restricted the state's ability to promote a framework which would benefit individuals and their capacity to act as full members of society and, thus, make use of their constitutional rights. The Human Rights Defender also drew attention to the fact that such a restriction might be found to conflict with provisions of the *RA Criminal Code*. Overall, the RA Human Rights Defender concluded that the *Draft Law on Amending Article 16 of the RA Law on the State Registration of Legal Entities* may lead to violations of human rights.

14. The Office of the RA Human Rights Defender also reviewed the *RA Draft Law on the State Service of Representing the Interests of the Republic of Armenia in the European Court*. The Human Rights Defender commented that the Draft required additional consideration on

procedures for setting up selection commissions (for Service staff) and appealing decisions of the commissions. The Defender also made recommendations regarding other flaws and omissions identified in the document.

1.4. Communications and Public Outreach Activities

Annual Reports from previous years have discussed the importance of public outreach activities, including outreach to mass media, for Armenia's Human Rights Defender's Office. These reports stressed that the ongoing staging of public outreach activities has contributed not only to the transparency and awareness of the work of the Human Rights Defender's Office but has also helped to improve the public's general awareness of human rights issues and the mechanisms for defending those rights.

The success of various public outreach and information dissemination activities depends on the availability of technical, human, financial and other resources. Although availability of these resources did not change in 2008, it is undeniable that, despite some reservations, cooperation between the Office and mass media outlets has been a success over the last three years. This is best evidenced by the fact that all developments in the area of human rights in Armenia are accompanied with local and foreign media coverage about the stance of the Human Rights Defender and his activities.

However, much remains to be done in order to attain a more adequate response to the opinions expressed by the Human Rights Defender. A number of different factors can account for this inertia: a general failure to understand the uttermost importance of human rights and their pivotal role in personal, institutional and political interests and a weak human rights culture within Armenia's government are just two reasons that could be mentioned. Sound cooperation between the government and the media is important if a better human rights culture is to be pursued in the country. Thus, even though many high ranking officials have recently been calling for tolerance and speaking about the need to improve the country's media framework, there are still big strides to be made in this area. Indeed, currently, plurality of opinion is only achieved via printed and internet media; but Armenia's TV audience significantly exceeds the total number of the readers of printed newspapers, journals and Internet news.

Both local and international organizations – and more recently a few high ranking officials – have pointed out how biased news coverage is on Armenia's Public TV. Nevertheless, biased news coverage continues to be the 'tradition'. In this respect, it is appropriate to detail one instance of Public TV's coverage of the Human Rights Defender's activities:

On 25th April 2008, the Office of the Human Rights Defender issued an *Ad Hoc Public Report* dealing with the events of March 1-2 in Armenia. At a later date, the RA Prosecutor's Office and the RA Ministry of Justice issued documents entitled '*Disagreements*', in which they tends to to discredit the Office and accuse it of error. Although Armenia's Public TV channel did not cover the Defender's *Ad Hoc Report* in its broadcasts at all, it did in numerous broadcasts draw attention to criticisms of the Defender by the RA General Prosecutor's Office and the Ministry of Justice, and these were interspersed with negative comments and interpretations from various officials.

A number of local and international organizations have claimed that the broadcasts of Armenian Public TV are one-sided, heavily politicized, intolerant and occasionally even anti-Semitic. Thus, the media recently published the findings of a survey conducted by the BBC World Service.

The BBC World Service conducted five days of research into Armenia's Public TV at the request of the OSCE Yerevan Office. When presenting the findings, Michael Randall, Projects Manager for Europe and CIS, noted that Armenia's implementation of its PACE commitments also depended on the work of Public TV. He recognized the huge potential for Public TV to become a leader in the field of TV broadcasting but stated that the realization of that potential depended largely on political will and attitudes.

The report prepared by the BBC pollsters stated that Public TV had too much air time given to programs ordered by the government and programs about various government agencies. According to Randall, air time could better be used for other types of broadcasts and programs and announced that the BBC was ready to help in this matter. The BBC pollsters also mentioned that the audience watching Public Television had significantly decreased during the first half of 2008.

(Source: www.lragir.am, 18th October 2008)

It is beyond the Human Rights Defender's authority to comment on the activities of private TV broadcasting companies. However, the National Commission for TV and Radio Broadcasting is obliged to ensure that provisions in the license contract awarded by the Commission and other relevant laws are followed. Nevertheless, the Commission did not fulfil this responsibility since it failed to prevent violations of these provisions by H1 (Public TV) and other broadcasting companies. In conclusion, there is no framework in place to ensure diverse opinion and this in turn leads to escalating tensions and an atmosphere of intolerance in society.

Although Armenia's mass media framework is neither established nor neutral, the media still has a crucial impact on improving the efficiency of any institution since it helps form public opinion about that institution. Because the Human Rights Defender's Office does not yet have sufficient resources to conduct a professional survey in this area, this report cites the findings of a poll conducted in 2007 and 2008 by *Hayastani Zrutsakits* newspaper.

The first poll, published in the newspaper's August 3, 2007 issue, was conducted among 1,053 randomly selected citizens who answered the following question: *"Who would you approach if your civil rights were violated?"*. The respondents' responses are listed below:

1.	No one	27%
2.	**Human Rights Defender**	**16.2%**
3.	Criminal authorities	15.3%
4.	Court	10.2%
5.	Newspapers	8.3%
6.	Human rights activists	5.9%
7.	TV	3.7%
8.	Police	3.4%
9.	Prosecutor's Office	2.5%
10.	A National Assembly MP	1.7%

11. RA President	1.4%
12. An opposition party	1.4%
13. Constitutional Court	1.4%
14. RA Government	1.1%

The second poll, conducted among 944 randomly selected citizens and published in the newspaper's June 20, 2008 issue, asked respondents the same question as above. The responses were as follows:

1. Human Rights Defender	**32%**
2. No one	24%
3. Criminal "authorities"	16%
4. Newspapers	15%
5. Law enforcement bodies	6%
6. TV	3.5%
7. A National Assembly MP	3.5%

The poll seems to indicate that the trust of the Armenian public toward the Office of the Human Rights Defender has significantly improved. In 2007, the largest response group (27% of the respondents) lacked trust in any authority, while the second largest response group (16.2%) said they were prepared to apply to the Defender. However, by 2008, 32% of the respondents – the largest group – said they would apply to the Human Rights Defender if their rights were violated.

It is worth elaborating on this by discussing in greater detail the factors that have brought the public's attention to the Human Rights Defender's Office. Before that, however, it is important to make some comments about the data above since, in our opinion, it reveals dangerous trends in today's society. In particular, it is alarming that a large group of respondents (the third largest group) stated that they would rather entrust the protection of their rights to criminal authorities than national law enforcement bodies – a fact that has not skipped the attention of local media. Moreover, recently a few MPs have raised this issue in the National Assembly, criticizing a number of TV broadcasting companies for shooting drama serials and soap operas in which the criminal fraternity is presented in a positive light.

It is commendable, of course, that MPs are concerned about the quality of TV air time, but it is likely that their concern would have been more fruitful if it had been directed towards improving the rating of law enforcement bodies or changing the [negative] attitudes of the population towards the system. For, if the country's law enforcement authorities took note of how public opinion changed about them, the plots and main characters of TV soaps would also change.

More evidence of the growing interest in the Human Rights Defender's Office can be seen in the number of visits to the Human Rights Defender's official webpage. According to the statistics, the number of visitors to the site in 2008 grew 30% from the previous year, reaching 98,376 (compared to 75,211 in 2007). The number of visitors to the site peaked in March 2008, reflecting the notorious developments of March 1, 2008.

The Public outreach activities of the Human Rights Defender in 2008 are presented below:

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

The dynamic and consistent work of the Human Rights Defender in 2008 has led to the doubling of media publications and TV broadcasts about that work. Nevertheless, the heightened interest of the media and TV towards the activities of the Human Rights Defender in 2008 was, to a large extent, linked with the pre- and post- Presidential Election developments and their direct connection with the country's human rights record.

The activities of the Human Rights Defender and reports about the most important cases he has dealt with were consistently posted on his official website. Thus, in 2008 the website highlighted 60 cases in the Section entitled "*Case No*", and posted 80 information bulletins in the *News* Section. The Office also issued more than 80 press releases, providing clarification on a number of issues and giving additional materials to the reporters.

In 2008, the Human Rights Defender prepared and disseminated statements in which he strongly condemned ongoing cases of reporters being intimidated – he urged law enforcement bodies to take steps to deal with this by exposing those who break the law in this way. Otherwise, he warned, freedom of speech and plurality of opinion in the country would be seriously threatened. Notwithstanding the massive correspondence and statements exchanged between the Defender and the law enforcement bodies, to date, the lawbreakers and their "patrons" remain unexposed.

Many of the abovementioned press releases, and others highlighting different sets of issues, were printed in the press and broadcast on TV and radio programs. Unlike the Public TV broadcasting companies mentioned above, Internet-based news agencies and printed media opted for a broader coverage of the Defender's activities.

2. Daily Monitoring of Human Rights Publications in Local and Foreign Media

The study, analysis and verification of accuracy of the data and information highlighted in the media publications and reports of local and international human rights organizations remained an important objective of the communication and public outreach work of the Office of the Human Rights Defender in 2008. As a result, the Defender was constantly updated about news publications in local and foreign media, major events in the human rights field, and statements made by Ombudsmen of other countries and international human rights organizations.

The Armenian press was generally good at providing up-to-date news coverage, which was used by the Office of the Human Rights Defender to initiate quick response measures where the Defender's intervention was required. From media publication analysis in 2008, the Defender, at his discretion, initiated investigations into more than a dozen cases, organizing visits to the sites mentioned in the reports and conducting different studies.

Daily media monitoring allowed the Human Rights Defender's Office to continue archiving materials dealing with human rights issues, classifying them by the area of law in question. In 2008, the Office took steps aimed at improving links with human rights and media organizations, something which had begun in 2006. During the reporting period, the activities of the Human Rights Defender were also discussed in printed and electronic news bulletins, periodicals, and journals of international human rights organizations.

3. Press Conferences and Interviews with the Human Rights Defender and His Staff

As mentioned above, press conferences can significantly contribute to the transparency and openness of the Human Rights Defender's activities. Press conferences provide a conducive environment for reporters to ask additional questions to the Human Rights Defender, be updated about his activities, and be informed of his stance on human rights issues that are of special interest to the public. The RA Human Rights Defender held a number of news conferences in 2008, attracting reporters from almost all of the country's media outlets. During such press conferences the Defender's Office shared available statistics, information about the *Ad Hoc* Public Report, and other materials with reporters.

4. Activities Aimed at Raising Public and Legal Awareness of Human Rights

Given the very low level of people's awareness about their rights and fundamental freedoms and their reluctance to defend their rights before public bodies, it was considered vital to address public awareness in the field of human rights and legal matters. People's low awareness level and passivity can foster instances of corruption by public agencies since they are easily able to violate the rights they are called to protect. Some in society – due to their low awareness of human rights or their deliberate use of illegitimate means to protect their rights – cause significant damage to democratization processes and the establishment of the country's rule of law. Thus, it is the duty of the Human Rights Defender to increase public knowledge about fundamental human rights and social liberties. Today television continues to be the main source of information for many people and plays an important role in forming public opinion.

A quarterly bulletin on the activities of the Human Rights Defender was published in 2008 with the support of UNDP and was widely disseminated among the public.

The *RA Law on the Human Rights Defender* has been translated into two languages. It is still important to print this legislation for relevant stakeholders and accompany it with comprehensive commentary.

5. Official Website of the Human Rights Defender

The official website of the RA Human Rights Defender is continuing to be an important tool for organizing public outreach activities. In 2008, the Human Rights Defender's Office, realizing the increasingly important role of the Internet in Armenia, paid much attention to posting materials on its website and the use of electronic channels to disseminate information. There were twice as many postings in the *News* section of the website in 2008 than in 2007.

In the *FAQ* section, website visitors can access information concerning the authority and powers of the Human Rights Defender, the procedures for applying to him/her, and other matters. Specific cases that are posted on the website respect the confidentiality of the applicants and are an important source of information for the media. Access to additional information was provided to reporters who requested it from the Office.

1.5. Cooperation with Non-governmental Organizations (NGOs)

The RA Human Rights Defender has always demonstrated his willingness to establish effective links and cooperation with NGOs. Recognizing the importance of NGOs in the country

for establishing civil society and strengthening democracy, the Human Rights Defender continued his close cooperation with cultural, charitable, regional-patriotic, ethnic, environmental, human rights, children's, women's, refugees', disabled persons' and other NGOs.

Although there are more than 4,000 active NGOs in Armenia, their role in forming a civil society in the country is, for various reasons, not yet adequate. It should be noted, nevertheless, that a number of NGOs active in Armenia understand their social responsibility and make every effort to implement the tasks and objectives they have committed themselves to.

The cooperation of the Human Rights Defender with NGOs is particularly important in terms of being aware of problems and developments in Armenia's regions. It is not accidental that when the Human Rights Defender visits the regions, he always meets first with representatives of NGOs, listening to them and the problems they raise. Only after that does he meet with local administrators of those regions (*marzes*); he questions them about the problems raised by the NGOs and seeks their explanations. It has already become something of a tradition that at the end of every regional visitation, the Defender speaks to the reporters and briefs them on questions that he believes the regional administrators did not give a satisfactory answer to.

1.6. International Cooperation

In 2008, the RA Human Rights Defender's Office continued its consistent cooperation with international organizations. It was particularly important for the Office to carry on its collaboration with a number of international organizations' representative offices in Armenia, including OSCE, UNDP, USAID and the European Union, with minor changes to general cooperation priorities. The Defender's Office also cooperated with human rights organizations in other countries and established new partnerships.

During the reporting period, the RA Human Rights Defender and his staff participated in numerous conferences, workshops and other international events. At these meetings they made arrangements to organize exchange programs, strengthen the role of the Human Rights Defender in international human rights organizations, and to establish other forms of cooperation.

1.6.1 Participation of the RA Human Rights Defender in Conferences, Assemblies and Workshops

As in previous years, the RA Human Rights Defender actively participated in a number of international **assemblies, conferences and workshops,** including the Paris Assembly on the *Prevention of Torture in Detention Facilities in Europe*, joint Steering Committee Meeting in Strasbourg during the joint EU and Council of Europe *Workshop on Promoting Human Rights Culture in Ukraine and the South Caucasus, the 19th Annual Meeting of the Armenian Bar Association in New York* (as a special guest speaker), the *Dublin Conference on the Local Protection of Human Rights and Strengthening of Independent National Institutes,* where the RA Human Rights Defender also met with Mr. Thomas Hammarberg, Council of Europe Commissioner for Human Rights.

Due to the effective cooperation established between the Venice Commission and Armenia's Human Rights Defender's Office, the RA Human Rights Defender participated in the 76th Plenary Session of the Venice Commission, which reviewed the RA Human Rights Defender's and the Venice Commission's conclusions on draft changes to the *RA Law on the Human Rights Defender* and the *RA Electoral Code*.

At the invitation of the Swedish Government, the RA Human Rights Defender also participated in the *Stockholm Conference on Systematic Work for Human Rights*, which brought together more than 120 participants representing COE member and non-member countries and NGOs.

1.6.2 Participation of RA Human Rights Defender's staff in Seminars, Workshops and Training

During 2008, the staff of the Human Rights Defender participated in a number of conferences, exchange and training programs in Armenia and abroad. Two members of staff went on a study trip to the Spanish Ombudsman's Office as part of the *Project on Promoting Human Rights Culture in Armenia* (administered jointly by the EU and the Council of Europe); two staff members participated in the *Conference on Strategic Communication Planning and Project Development for Ombudsmen's Offices and Other Human Rights Organizations,* held in St. Petersburg, October 8-10. The staff of the Human Rights Defender' Office also participated in: a seminar on *Freedom of Speech*, held in May in Kishinev; a seminar entitled *The OPCAT in the OSCE region: Importance and Activities*, held in Prague jointly by OSCE and the OPCAT Research Team from Bristol University; a workshop called *The Websites of the Council of Europe as a Tool for the Work of National Human Rights Institutes*, organized in Strasbourg by the Council of Europe's General Commissioner for Human Rights. Two members of staff also went on an exchange visit and study trip to the Office of the Children's Ombudsman of Lithuania. Two others participated in a training course organized at the Raoul Wallenberg Institute of Human Rights and Humanitarian Law, and as part of the *Peer to Peer* project, four staff members went on a study trip to Italy's Human Rights Defender's Office.

1.6.3 Cooperation with Foreign and International Organizations

The *Peer to Peer* Project, jointly implemented by the Council of Europe and the European Union is an example of successful cooperation established between the Office of the Human Rights Defender and the Council of Europe. The purpose of this project is to strengthen institutional capacities of the independent human rights national bodies and to raise public awareness about human rights issues in countries where the project is implemented through providing publicity about potential human rights risks or currently identified human rights issues. As part of this project, four employees from the RA Defender's Office went on study trips to Council of Europe member countries.

On 8th and 9th December 2009, the RA Human Rights Defender's Office, within the framework of cooperation established with the Council of Europe, organized a *Workshop-*

Seminar in Yerevan on Article 6 of the European Convention of Human Rights. Those participating in the workshop included staff from the RA Human Rights Defender's Office, the RA Ministry of Justice, the RA Constitutional Court, and the RA Cassation Court. The workshop discussed issues relating to the fair trial of individuals, particularly taking into account the judicial reform agenda.

1.6.4 Twinning

To strengthen the capacity of the Human Rights Defender's staff in the area of cooperation strategy development and other areas elaborated in last year's Report, the Defender's Office made appropriate arrangements as part of the *Twinning Project*. Twinning and TAIEX are two projects implemented in Armenia within the framework of the European Neighbourhood Policy. The purpose of these projects is to improve the organizational and functional capacities of public agencies, bringing them into line with European standards. The Project Bid submitted by the RA Human Rights Defender was deemed to fit with the goals and objectives of the *Twinning Project*. The project narrative was in its preparation phase in 2008. The cooperation established between Armenian and European experts resulted in the development of a *Model Twinning Project Description* which was submitted to the European Commission for approval. In previous stages, a number of EU countries submitted project bids on the basis of the Project Description Document; and so within the next 18 months the Human Rights Defender shall be cooperating with one or two counterpart Offices selected from EU member states.

1.6.5 OPCAT

According to an amendment to the *RA Law on the Human Rights Defender*, the Human Rights Defender shall be the Independent National Preventive Mechanism referred to in the Optional Protocol to the Convention against Torture (OPCAT) and Other Cruel, Inhuman and Degrading Treatment or Punishment (see Article 6.1 of the *RA Law on the Human Rights Defender*). Following the legal amendment, the Defender's staff set about developing a framework for cooperation with NGOs. The office organized a number of meetings with NGO representatives and held workshop-seminars with international experts participating. So far, the parties have considered the format of collaboration and outlined the scope of future activities.

1.6.6 UNDP

As in previous years, the Human Rights Defender's Office continued to successfully cooperate with various agencies of the United Nations Organization. The Defender's Staff have actively contributed to projects implemented by the UN. Collaboration comprised of organizing workshops and seminars in educational, research and project assistance areas. It should be noted that UNDP, in close cooperation with and financial support from the Raoul Wallenberg Institute of Human Rights and Humanitarian Law, has been implementing a 3 year capacity strengthening

project in the Human Rights Defender's Office. The project has focused on strengthening the internal administration of the RA Human Rights Defender's Office, developing a 2009-2012 Strategic Plan for the Human Rights Defender's Office, strengthening the capacities of the Documentary Centre at the Defender's Office, and raising public awareness about the activities of the Human Rights Defender.

The UNDP Armenia Office has helped to promote the work of the Office through: the preparation of reports on the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment and reports on labour law; publication of booklets, brochures and posters describing the activities of the RA Human Rights Defender.

To ensure the further success and sustainability of the work of the Office of the RA Human Rights Defender a staff member has been invited to participate in the preparation of the 2009-2013 UN Development Assistance Framework (UNDAF) for Armenia. This participation has contributed to the identification of a number of priorities for cooperation in the areas of democratic governance and human rights, including participatory processes, the fight against corruption, and the strengthening of the Office of the RA Human Rights Defender (enabling him to effectively protect and promote human rights).

1.6.7 OSCE

The Human Rights Defender's Office continued its broad trust-based cooperation with the OSCE Yerevan Office. On 6th October 2008, the Head of the OSCE Yerevan Office and the RA Human Rights Defender signed an agreement to improve democratic control of the armed forces. To implement the agreement, the Human Rights Defender's Office is about to set up a joint expert group which will analyze the current legislation for military disciplinary action and compare it with international criteria to identify existing gaps and flaws. The group will then, based on their findings, send a report to the Armenian government to recommend changes in the legislation.

The OSCE Yerevan Office also assisted the Human Rights Defender's Office with the translation of the 2007 Annual Report of the Human Rights Defender.

1.6.8 NATO

In February, 2008 the RA Human Rights Defender hosted a delegation of the NATO Individual Partnership Program (IPP) and Planning and Review Process (PRP). During the meeting the parties considered constructive approaches of establishing cooperation and exchange of experience with the respective NATO divisions. The parties also covered issues related to the protection of the human rights in the military forces of Armenia.

During the year the Defender also met with the NATO delegation headed by the Special Envoy of the NATO General Secretary, Mr. Robert Simpson.

Within the framework of USAID's Mobilizing Action Against Corruption project, the RA Human Rights Defender's Office organized a number of seminars and workshops, which attracted participation from international experts.

In 2008, the RA Human Rights Defender hosted delegations of other international organizations and heads of diplomatic missions accredited in Armenia. In particular, the RA Human Rights Defender hosted OSCE delegations, including the OSCE Acting Chairman Ilka Kanerva, Ambassador/Head of the OSCE Yerevan Office Mr. Sergey Kapinos, Co-chair of the OSCE Minsk Group Anjey Kasperchik and Chairman of the OSCE Parliamentary Assembly, Goran Lenmarker.

During these meetings the parties discussed issues related to the 2008 Presidential Election and post-election developments in Armenia, including the level of human rights protection achieved in the country.

The *Ad Hoc Public Report of the Defender*, published on 26th April 2008, was discussed at a meeting with officials from foreign embassies and other representatives of international organizations.

The Defender also met with PACE President Lluis Maria de Puig to discuss the events of March 1-2. In particular, they discussed imprisonments and criminal proceedings that followed the March 1-2 events, the work of the National Assembly's temporary commission, and the progress being made toward implementing PACE Resolutions 1620 and 1690. The Human Rights Defender shared materials he had received over recent months, including complaints and information about his meetings with the imprisoned MPs.

On 29th September 2008, a 5-year cooperation agreement was signed between the Ombudsmen of St. Petersburg and Armenia, whereby the parties committed, within the scope of their authorities, to support and promote democratic and constitutional foundations of a rule of law country, to foster the development of a civil society, to disseminate information and knowledge on human rights issues, and to develop and implement projects in the area of human rights.

On August 11-18, the RA Human Rights Defender hosted the Children's Ombudsman of Lithuania. The latter visited Armenia to study issues related to the protection of children's rights. The meeting resulted in an agreement between the RA Office and the Lithuanian Children's Ombudsman Office to work together to promote the protection of children's rights in Armenia.

Within the framework of a professional development exchange program, employees of the RA Human Rights Defender's Office visited the Lithuanian Republic October 12-18 and studied the work carried out by the Children's Ombudsman of Lithuania and partner organizations.

1.7. Expert Council

According to Article 26 of the *RA Law on the Human Rights Defender*, the Human Rights Defender may decide to establish an Expert Council, consisting of knowledgeable and experienced professionals in a given area of human rights law in order to provide advice and assistance to the Defender's Office. Most members, who are invited to serve on these Councils on a voluntary (unpaid) basis, are representatives of NGOs. Councils met more than 10 times in 2008 since there was a variety of human rights issues about which expert advice was required.

The Expert Councils primarily considered the following issues:

- Issues relating to the freedom of information, the mass media, and pending legislative changes in that field. Together with the Director of the Yerevan Press Club and Director of the *Noyan Tapan* News Agency, the experts discussed issues related to the performance of reporters' professional duties and freedom of speech.
- At the Human Rights Defender's initiative, meetings were held with representatives of more than 10 NGOs in order to discuss joint measures that could be implemented in response to incidents that may take place on the 2008 Presidential Election Day. As a result of the meeting, it was agreed to exchange information regarding possible problems and to use the resources available to the Defender's Office effectively. Due to this, a number of incidents that took place on the Election Day were documented and illustrated in the Human Rights Defender's *Ad Hoc* Public Report.
- Issues related to the exploitation and environmental protection of the Teghut mine were discussed with the *President of the Association for Sustainable Human Development* Karine Danielyan and representatives of other NGOs. During the meetings the Human Rights Defender expressed his readiness, within his jurisdiction, to support the causes pursued by environmentalists.
- Issues related to the creation of the Independent National Preventive Mechanism referred to in the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment: in 2008 the RA Ombudsman's Office was recognized as an OPCAT national body. The Office organized more than 10 meetings with NGOs that have been particularly active in this field. A few of them were selected to contribute to the work of the national body on a regular basis.
- Issues related to the March 1st trials of individuals: the Defender had many meetings with the defence lawyers of persons detained, arrested, or convicted by courts. Some of these attorneys are members of one of the Defender's Expert Councils. The meetings of this group concentrated on Criminal Procedural Law and the Human Rights Defender sent letters to relevant bodies and held press conferences.

The RA Human Rights Defender always expressed his willingness to organize meetings and workshops and act within his jurisdiction to contribute to the resolution of the issues raised by the Council members.

In conclusion to Part I, *The Main Areas of Activity of the Defender,* it should be noted that the 2008 Financial Report on the Activities of the Staff of the Human Rights Defender was submitted to the Ministry of Finance on 6th February 2009 in accordance with the procedure established by law.

PART 2
HUMAN RIGHTS VIOLATIONS ARISING FROM LEGISLATIVE ISSUES

Legislation is one of the most important ways of securing human rights, provided that it is faithful to principles of legal certainty and justice and sensitive to the developmental needs of society. These are the criteria by legislation can be judged good or bad. If these principles are not upheld, then vague or multiple interpretations of laws as well as gaps and flaws in the legislation make infringements of human rights unavoidable.

This part of the Report analyzes legislation that leads to human rights violations, according to their various groups. However, legal provisions on human rights of the armed forces personnel are covered separately under Part 4 of the Report (‘Rights of Special and Vulnerable Groups’) so that they can be comprehensively and consistently addressed within the context of law enforcement and practice.

2.1. Civil and Political Rights
2.1.1. Prohibition of Torture

The prohibition of torture has a special role in guaranteeing human rights and fundamental freedoms. This principle is stated in Article 5 of the *Universal Declaration of the Human Rights* (1948), Article 7 of the *International Covenant on Civil and Political Rights* (1966), Article 3 of the European *Convention on Human Rights* (1950), as well as Article 17 of the RA Constitution, according to which: “No one shall be subjected to torture, inhuman or degrading treatment and punishment. Those arrested, detained or imprisoned shall be entitled to humane treatment and respect of dignity.” The purpose of this legal provision is to guarantee respect for everyone’s dignity and physical protection. Previous reports have already mentioned that the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment* (OPCAT), a key document in the effective prevention of global torture, was ratified by the RA National Assembly and came into force on 22nd June 2006. Within a year of ratifying the Protocol, Armenia was obliged to establish a national mechanism for torture prevention. In particular, OPCAT Article 18(4) emphasizes the need to adhere to the Paris principles related to the status of national institutions for the promotion and protection of human rights. The RA Human Rights Defender’s Office was found to meet the main criteria applicable to the Independent National Torture Prevention Mechanism and capable of performing its functions in the Republic of Armenia. Thus, on 20th September 2007, the RA Government approved a Draft *Law on Making Amendments to the RA Law on the Human Rights Defender*, whereby the Human Rights Defender was declared to be the National Torture Prevention Mechanism referred to in OPCAT. The draft was passed by the RA National Assembly on 8th April 2008 and this new Article (6.1) came into force.

In general, torture prevention is duly addressed in various articles of Armenia's legislation, including the *RA Criminal Procedure Code* and the *RA Criminal Code*. However, complaints addressed to the Human Rights Defender suggest that the legislation is inadequately implemented by criminal investigation bodies. The December 2007 Report of the European Committee for the Prevention of Torture highlighted the need to bring law enforcement practices in line with the above principle of law. The RA Government was advised to take the necessary steps to guarantee that the greatest possible level of rights protection for arrested or detained persons is achieved.

The Defender received for review the *Draft Decision of the RA Government on Establishing Rules for Escorting Arrested and Detained Persons*. He suggested that the terms used in the Draft Law be reviewed and made a number of recommendations about: the status of the escorting unit; controlling how the escorting service is managed; and clarifying procedural rules.

The *Draft Laws on the Custody of Arrested and Detained Persons and on Making Amendment to the Penitentiary Code* of the Republic of Armenia were submitted to the RA National Assembly back in 2007. The changes were aimed at providing the necessary legal framework for the Human Rights Defender to freely enter penitentiary institutions and centres for arrested people. However, to date no changes have been made to the abovementioned laws.

2.1.2. Right to Fair Trial

The right to fair trial is enshrined in Article 6 of the European Convention on Human Rights, Article 19 of the RA Constitution and other RA laws and regulations. The right to fair civil and criminal trial is an important component in securing human rights and liberties; it guarantees protection and respect of human rights and contributes to the establishment of the rule of law.

On a number of occasions, the Human Rights Defender has mentioned that Armenia has yet to provide an adequate level of the right to fair trial. In his 2006 and 2007 Annual Reports the Human Rights Defender commented on amendments to the *RA Criminal Procedure Code* and the *RA Civil Procedure Code* (7th July 2006), after which changes were made to the conditions for admitting a cassation complaint. He also commented on Article 6 *of the RA Law on Advocacy* concerning the remuneration of lawyers and on provisions of the same Law that concern the eligibility of lawyers to bring cassation complaints based on their status of accreditation with the Cassation Court.

In particular, the 2007 Annual Report of the Defender highlighted that the conditions for admission of a cassation complaint into the Court of Cassation were incompatible with requirements of legal certainty and provided a fertile ground for arbitrariness in the actions of the Court. Moreover, the legislation regulating activities of lawyers accredited with the RA Court of Cassation lacks any provision for unpaid services to claimants by those lawyers, thus restricting the fundamental human right to access justice enshrined in the Constitution of Armenia and international treaties and agreements that the Republic of Armenia has signed. According to the case law of the European Court of Human Rights, although countries are not obliged to establish courts of appeal or courts of cassation under the *Convention for the Protection of Human Rights and Fundamental Freedoms*, if they do then they shall be responsible for ensuring that, based on Article 6 of the Convention, *all* parties concerned shall enjoy the same fundamental guarantees to fair trial.

The Human Rights Defender also made comments about *Order N-79A* of the RA Cassation Court Chairman, after which the license expiry dates of lawyers accredited with the Cassation Court were extended until 10th January 2009. The legitimacy of the Order was also disputed in the RA Administrative Court, which decided on 7th April 2008 to reject a request to rescind the Order. It reasoned that extension of license expiry dates may be included within the scope of the Cassation Court Chairman's authority to grant licenses. It should be observed, however, that such an interpretation implied that the RA Cassation Court Chairman has discretionary authority, which – as was justly decided by the RA Constitutional Court at a later date – violated the foundational pillars of the legal profession, including independence, self-management and equality of lawyers. It, therefore, indirectly affected the protection of human rights.

On 8th October 2008, the RA Constitutional Court decided (by *Decision No.SDO-765)* that the respective provisions of the *RA Criminal Code*, *RA Civil Procedure Code* and *RA Law on Advocacy* were in conflict with Articles 1 and 19 of the RA Constitution and, thus, declared them void. However, given that this decision might lead to a gap in current legislation and consequently threaten the progress of legal protection, the RA Constitutional Court decided that the abovementioned legal provisions should remain in force until 31st December 2008, giving the National Assembly the opportunity to bring legislation in to line with the Decision.

Another important principle related to the right to fair trial is ensuring that judges cannot be replaced. Part 1 of Article 14 of the RA Judicial Code provides for the non-substitution of a judge. Parts 3, 4, and 5 of Article 14 of the same Code, however, establish the practice of rotating judges – the judge of one court can be sent to serve at a different court of the same or higher instance for a period of up to 6 months. Such legislation not only directly affects the activities of the judicial authorities but also has an impact on the protection of human rights and the right to fair trial.

On 21st November 2008, the Human Rights Defender submitted an application to the RA Constitutional Court requesting that the compatibility of Parts 3, 4 and 5 of Article 14 of the RA Judicial Code with Part 1 of Article 18 of the RA Constitution be reviewed (the latter states that every person has a right to legal recourse in order to protect his/her rights and liberties in court and at other governmental bodies. A court which is formed by the RA Cassation Court Chairman sending judges of one court to other courts of the same or higher instance cannot be considered to represent a legal authority as, according to Part 2 of Article 94 of the RA Constitution, the powers of the courts and their administrative procedures are defined by the Constitution and other laws. Furthermore, Parts 3, 4 and 5 of Article 14 of the RA Judicial Code contradict the requirements of Article 6 (1) of the *European Convention on Human Rights*, according to which each person – when his/her civil rights and obligations are determined or charges are brought against him/her – is "entitled to a fair and public hearing within a reasonable time by an **independent and impartial tribunal established by law**."

The Human Rights Defender applied to the Constitutional Court about the compatibility of Part 3 of Article 14 of the RA Judicial Code with the RA Constitution on 21st November 2008 – before the RA Constitutional Court had made a decision – on the basis of an application by citizen A. Zalyan. In response to the Defender's query, the RA Constitutional Court announced *Decision No.SDO-782* on 2nd December 2008, according to which Parts 3 and 5 of Article 14 of the RA Judicial Code were declared inconsistent with the RA Constitution and thus void. Thus, the RA Constitutional Court agreed to consideration the RA Human Rights Defender's request to

consider the compatibility of Part 4 of Article 14 of the RA Judicial Code with Part 1 of Article 18 of the RA Constitution but declined to consider his request to consider Parts 3 and 5 of Article 14 of the RA Judicial Code. As a result of the application submitted by the RA Human Rights Defender, the RA Constitutional Court announced a Decision on 23rd December 2008 (*No. SDO-786*).

2.1.3. Right to Personal Freedom and Protection

The right to personal freedom and protection is an inalienable and fundamental human right which has an underlying principle the protection of personal freedom against arbitrary actions of the state. The Human Rights Defender received many complaints relating to this issue. In fact, the number of such complaints was higher than in previous years, giving rise to serious concern. It is commonly assumed that criminal proceedings require that human rights be limited. However, even though the fight against crime is important, it is unacceptable to overlook or violate the human rights and freedoms. Precisely because the enforcement of legal constraints is related to restrictions of individuals' constitutional rights and liberties, it is necessary to draft detailed legislation that guarantees the lawful and justified use of such constraints. Furthermore, for each actual case it is absolutely essential to decide how necessary it is to impose restrictions on the rights of a person via legal constraints. A core principle to be adhered to is that the goal of criminal proceedings should be achieved through the least possible restriction of human rights and freedoms. This principle is also strictly followed by the European Court of Human Rights: "Having regard to the place that the right to a fair administration of justice holds in a democratic society, any measures restricting the rights of the defence should be strictly necessary." (See *Van Mechelen and others against the Netherlands,* applications NN 21363/93, 21364/93, 21427/93, [1997], ECHR 22 (April 23, 1997), §58)

On a number of occasions the RA Human Rights Defender has reiterated that prosecutor's offices and the courts must commit themselves to conducting more detailed and impartial investigations into criminal cases, especially when they are about to impose preventive measures such as detention. Public officials' respect for legal provisions and guarantees is a pre-requisite not only for the protection of human rights and liberties but also for the solving of crimes and prompt, comprehensive, and objective criminal investigations.

The RA Human Rights Defender's 2007 Annual Report highlighted a number of gaps in legislation that might result in the violation of personal freedom and protection; however, to date nothing has been done to address those. In particular, Part 2 of Article 180 of the *RA Criminal Procedure Code* states that while investigating allegations of a crime, it may be necessary to obtain additional documents, demand explanations, and conduct searches in order to verify the legal grounds for opening a criminal case. If it is believed that there are sufficient grounds for suspecting a crime, authorities may detain and search persons, collect samples and conduct expert investigation. This means that detaining someone at a police station and searching him/her are considered lawful even in the preparation phase of criminal proceedings, which may lead to unnecessary limitations and abuses of human rights. Moreover, there is no legislation that protects against the unjustified use of such measures. On the contrary, Clause 2 of Article 17 of the *RA Law on Police* contains vaguely formulated provisions that oblige the police, in cases

provided for by law, to take into custody persons who have been brought into the police station, arrested, or detained.

2.1.4. Right to the Freedom of Information

The right to the freedom of information is not only an important constituent of a democratic society but also a vital precondition for the advance of democracy in that society. The right to the freedom of information – along with the right to the freedom of expression – fosters diversity, tolerance, and liberalism, without which the existence of a civil society would be highly doubtful.

On numerous occasions, the Human Rights Defender has noted that Armenia seriously underperforms in upholding freedom of information. The importance of this right cannot be overestimated, particularly in the context of the country's democratization processes. It can be undeniably stated that diversity of opinion is simply non-existent on TV broadcasting programs. On the other hand, in the press 'political pluralism' may occur, but it is often manifested in the form of abuse, which leads to an unhealthy climate in society.

On 23rd August 2006, the RA Human Rights Defender sent a letter (No.2-0240) to the RA Prime Minister in which he drew attention to certain problems relating to the enforcement of the *RA Law on the Freedom of Information* and called for a prompt solution since they were creating serious obstacles to the constitutional right of Armenian citizens to free information. In particular, he stressed the lack of legal procedures to provide information to third parties and the lack of a relevant authorized government body. All these issues were discussed in the 2007 Annual Report of the Human Rights Defender. Since 2006, the Defender has sent three letters to the Armenian Government appealing for the necessary measures to be promptly supplied.

According to Clause 1 of Article 10 of the *RA Law on Freedom of Information*, central and local government bodies, government institutions and organizations shall provide information or copies of information to third parties according to a procedure established by the RA Government. Although Armenia has adopted a *Law on Freedom of Information*, the RA Government has so far failed to establish a relevant procedure, as a result of which certain central and local government bodies continue to refuse to grant access to information requested by third parties, stating that the Government has not yet established a relevant procedure for providing the information. In addition, Clause 4 of Article 11 of the *RA Law on Freedom of Information* states that the refusal to grant access to information may be appealed to an authorized state body or to court; however, to date the RA Government has not established any such authorized government body.

In response to the letter of the Human Rights Defender, the RA Justice Ministry sent *Letter No.E-4629*, informing the Defender that the latest version of the *Draft Law on Making Amendments to the RA Law on Freedom of Information* had been recalled at the request of the RA Government since it had not been approved.

On 13th September 2008, the RA Government Chief of Staff sent a letter (*No.02.136/2549-08)* to the Human Rights Defender stating that at the session of the ministerial committee on state and legal matters (held 7th August 2008), the RA Minister of Justice was tasked to submit to the Staff of the RA Government a new *Draft Law on Freedom of Information*. Subsequently, on 17th

September 2008, the RA Minister of Justice sent the *RA Draft Law on the Freedom to Receive Information* as an attachment to *Letter E-3986*.

The *Draft Law on the Freedom to Receive Information* was discussed on 23rd October 2008 at the research centre of environmental law at Yerevan State University. The participants concluded that the current *Law on the Right to Freedom of Information* was generally compatible with respective international norms and thus the need for a new law was unjustified. Nevertheless, the participants agreed to organize a new forum on the matter to consider the shortcomings of the current legislation. This issue still needs to be addressed.

To ensure the enforcement of the constitutional right to information access, guaranteeing the media's freedom, independence and diversity is crucial. Following the constitutional changes of 2005, the RA Constitution was supplemented with a new Article (83.2), according to which it is necessary to create an independent regulatory body to ensure the freedom, independence and diversity of broadcasting media. The Article states that half of the members of the independent regulatory body shall be elected for a six year period by the RA National Assembly and the other half shall be appointed for a six year period by the RA President. According to the transitional provisions of the RA Constitution (Article 117, clause 11), incumbent members of the independent body shall remain in office until the expiry of their period of service referred to in the *RA Law on Television and Radio*. Upon the expiry of their term in office or upon premature termination of their service, vacant positions shall be filled by nominees of the National Assembly and the RA President.

In order to bring current legislation in line with the Constitution, on 26th February 2007 the RA National Assembly adopted the *Law on Television and Radio* and the *Law on Making Amendments to the Regulations of the National Commission on Television and Radio*. Based on the changes, the National Commission on TV and Radio shall consist of eight members (instead of nine), and four members of the Commission shall be appointed by the RA President and the other four by the RA National Assembly (instead of all being appointed by the President). By ensuring the equal participation of the RA National Assembly and the RA President in the Commission's formation, these changes represent important progress in guaranteeing the media's freedom, independence, and diversity. The National Assembly's Standing Commission on Science, Education, Culture, Youth Affairs and Sports, organized discussions (1-3 December 2008) on the *Draft Law on Television and Radio* and the *Draft Law on Making Amendments to the Regulations of the National Commission on Television and Radio.* The discussions included the participation of the Special Representative of the Council of Europe's General Secretary.

On numerous occasions the Human Rights Defender drew the public's attention to the fact that the latest changes to the *RA Law on Television and Radio,* which postponed until 2010 the date of the next tender for granting TV and Radio Broadcasting Licenses, were essentially a step backwards and inconsistent with the European Court's Decision about *A1+* TV company.

In his 2008 *Ad Hoc* Public Report the Defender expressed his disappointment that certain media channels tended to escalate tension and hatred through the use of abusive and aggressive language and narrow-minded reporting in the aftermath of the notorious March 1 events. The most striking example of unacceptable media reporting was demonstrated by Armenia's First Public TV channel (*H1*). In particular, Armenia's Public TV showed complete ignorance of the *Decree of the RA President on Announcing a State of Emergency* and the requirements of Article 28 of the *RA Law on Television and Radio,* which require that political bias in broadcast

programs be prohibited. Just as important as these legal provisions is the role of the National Commission on Television and Radio, an independent regulatory body assigned with the task of supervising the activities of television and radio companies. However, the Commission apparently failed in one of its major tasks since it allowed violations of the above legal provisions by *H1* (Public TV) and other private broadcasting companies. The media broke the law during the state of emergency by covering reports on the presidential poll. This created a discouraging atmosphere for the establishment of trust and diversity of opinion, disorienting the public and resulting in confusion and polarization. However, it should be mentioned that during the last 5-6 months there have been some positive developments towards ensuring broader coverage in the work of Public TV.

The events surrounding the Gyumri Independent News Channel (GALA TV) before and after the 2008 presidential election gave rise to serious concerns about freedom of speech and diversity of opinion. The tax authorities inspected the GALA TV Company and declared deliberate tax evasion, leading the Mayor of Gyumri to request that GALA TV's equipment be removed from the TV Tower (owned by Gyumri Mayor's Office). It is not appropriate to discuss here how justified the charges of tax evasion were; it is assumed that this was a possibility. But the most disconcerting fact is that the declaration of tax evasion and other violations immediately followed GALA TV's criticism of the authorities and, according to media reports, broadcasts of the opposition's rallies from Liberty Square in Yerevan. Thus, serious doubts arise about how well protected freedom of speech is in the country.

The cases described in this section are aimed at showing how legislative flaws also affected law enforcement practices. Indeed, in 2008 there were, regrettably, new reports of assaults against journalists while they were performing their professional duties. This threatens the full implementation of the rights to freedom of speech and information in Armenia.

For example, Gohar Veziryan, a reporter from *Chorrord Ishkhanutyun* daily newspaper, was assaulted by police lieutenant Arayik Petrosyan. The latter hit her, casting her to the ground. Two other police officers sprayed tear gas in her eyes. (This incident was captured on video and has been widely seen on TV.) Such cases deserve outright condemnation not only because of the abuse of law by police officers but also because to date no one has been held responsible for such violations. The Human Rights Defender has made many statements about the issue and called on law enforcement bodies to be more consistent in their efforts to deal with assaults against reporters, bringing the lawbreakers to justice.

A number of statements of the Human Rights Defender on the matter are presented in Annex I of this Report.

2.1.5. Right to Vote and to be Voted For

This section deals with various issues related to Armenia's Electoral Code:

1. The existence of independent and impartial election commissions is an important prerequisite for the adequate administration of electoral processes. Although the provisions of the RA Electoral Code for establishing electoral commissions were positively evaluated by international organizations, election observers noted that in reality the 2007 Parliamentary and 2008 Presidential elections highlighted a need to review them.

The Code of Good Practice in Electoral Matters approved by the Council of Europe's Venice Commission emphasizes that only transparency, impartiality, and freedom from politically motivated manipulation shall guarantee the proper administration of electoral processes from the pre-election period to the final vote count. The Explanatory Report of the Code recommends that only states in which administrative authorities have a long-standing tradition of independence from political authorities should entrust election administration to those administrative authorities (i.e. the respective Ministries of Internal Affairs). However, in states that have little experience of holding democratic elections, it is recommended that electoral commissions be established by parties represented in the respective national parliament. It is this approach that has been adopted in the RA Electoral Code. Nevertheless, past experience shows that even this policy for the formation of election commissions does yet ensure proper administration of election processes.

A proposed solution is to form a new hybrid model that combines both of the above electoral commissions models; administration of the election process could be entrusted to administrative authorities and these administrative authorities could be supervised by observation commissions that are established by party representatives running for National Assembly and candidates running for presidency.

2. According to Part 12 of Article 40.2 of the RA Electoral Code, the recounting of ballots by district electoral commissions shall finish by 2p.m. of the fifth day following the election; thus, due to these time constraints, it is not possible to honour all requests for ballot recounts. According to Clause 8 of Article 40.8 of the Electoral Code, a district electoral commission shall perform the recount of votes from registered requests on a rolling basis. However, this gives rise to additional problems.

These problems might have been avoided if the Electoral Code had a provision stating that while the district electoral commissions should carry out recounts from received requests on a rolling basis, they should honour the requests of all candidates who have requested a recount of ballots or give priority to the requests of candidates who received a high number of votes. Other alternatives to address this problem may also be discussed.

3. Before the February 2007 Amendment of the RA Electoral Code, the exercise of voting rights by RA nationals living abroad was supported by RA embassies and consulates in foreign countries under a relevant procedure of the Electoral Code and the Central Electoral Commission. However, these provisions were abolished when the February 2007 Amendment came into force. Thus, the possibility of voting while abroad, via embassies and consulates, was eliminated – the grounds for this were that elections should only be held within the territory of the Republic of Armenia.

This restriction of voting rights of Armenian nationals living abroad conforms to the requirements of the European Convention's Protocol 1 (Article 3). The Explanatory Report to *The Code of Good Practice in Electoral Matters*, approved by the Council of Europe's Venice Commission, acknowledges few countries in the world grant voting rights, or even the right to be elected, to their citizens residing abroad. The Code does not go as far as to specify particular requirements with respect to voting from abroad; it remains an option about which each country must decide.

The RA Human Rights Defender's Office believes that the limitation of Armenian nationals' voting rights (including those who are abroad on business or as migrant workers) whose

permanent residence is in the Republic of Armenia (but who happen to be abroad at the time of the election) is problematic. This is a particularly important issue since tens of thousands of Armenian nationals are temporarily living abroad as migrant workers (their families continue to live in the Republic of Armenia). The Republic of Armenia continues to be of vital interest to those migrant workers and, therefore, it is justifiable that they should be able to vote while abroad.

4. Article 20 of the RA Electoral Code establishes procedures for conducting election campaigns. In particular, it establishes principles of fairness, balance and impartiality, which the media is required to observe in its coverage of election campaigns. Nevertheless, the way the 2008 Presidential election campaign was covered on TV and Radio revealed that stricter criteria for news coverage is required in order to improve how the campaign coverage process is regulated.

Under the *RA Law on the Regulations of the National Commission on Television and Radio,* TV and Radio broadcasters that violate legal requirements shall be liable to pay fines defined by Law. In particular, the Law states that:

"Article 79. The broadcasting of a program that contains election or referendum campaign materials in a period during which such broadcasts are prohibited by effective RA legislation shall incur a fine in the amount of 500 times the minimum salary.

Article 80. If political or other campaign materials are shown on TV without displaying a scrolling line reading "political advertisement" or "election campaign broadcast," and if equivalent radio broadcasts fail to announce such words less than three times during the broadcast, they shall incur a fine in the amount of 100 to 200 times the minimum salary."

According to Article 91 of the same Law, a license issued to a TV or radio broadcasting company can be terminated for a number of reasons. One of these is when a company continues to violate procedures even after having paid two administrative fines in that year.

Given the importance of pre-election media campaigns and the impact they can have, as well as the need to enforce election campaign procedures, it is reasonable that TV and radio broadcasters be stripped of their licenses not only when they repeat violations after two administrative fines but also if they continue to violate procedures after just one administrative fine (if it was imposed as a result of a breach of election campaign rules).

Furthermore, the National TV and Radio Commission may be passive towards broadcasting companies' violations of election campaign procedures, failing to hold the lawbreakers legally responsible. In this case candidates running for elections may wish to resort to legal recourse by challenging the Commission inactivity in the RA Administrative Court. Thus, according to Article 81 of the RA Administrative Code:

1. Examination conducted by the Court, as a rule, must be limited to one hearing and not be subject to deferment.

2. The preparation and hearing of the cases shall be carried out within reasonable periods of time, except where other periods are established for the trial of and decision-making on separate cases under the present Code."

The term "reasonable" may lead to various interpretations as to what constitutes a reasonable period for the preparation and hearing of cases in the Administrative Court – it may result in a denial of the right to use TV and radio media for campaign purposes. The RA Defender's Office recommends changes to RA legislation on elections and referendums in order to establish prompt

consideration periods (for example, "within 7 days of receiving the application") in the Administrative Court.

5. According to Part 6 of Article 111 of the RA Electoral Code, candidates nominated for the National Assembly (on proportional or majoritarian lists) may only be detained and subjected to administrative or criminal investigation with the consent of the Central Electoral Commission. It seems that the legislator's intent was to protect candidates during election periods from politically motivated intervention by government bodies and officials.

However, this provision has lead to various interpretations. One such interpretation suggests that it does not apply to cases when the detention period of an individual is extended due to a court motion. In one case, detention of an individual was extended before he could be registered as a candidate in the National Assembly elections. In this case no approval of the Central Electoral Commission was sought. This interpretation appears to be inconsistent with the original purpose of the legal provision.

Thus, it is necessary to make relevant changes to the RA Electoral Code so that the requirement of obtaining the Central Electoral Commission's consent is more clearly defined. (This refers also to instances when persons are taken into detention before they could be registered as candidates.)

6. Article 13^1 of the *RA Law on Citizenship* defines the concept of dual citizenship – a person who is a national of more than one country is considered to be a holder of dual citizenship. A person shall be considered to hold dual citizenship in the Republic of Armenia if, apart from RA citizenship, s/he has citizenship in another country. According to Part 4 of the same Article, a person who holds dual citizenship in the Republic of Armenia is entitled to the same rights and bears the same responsibilities as RA citizens unless international treaties or RA legislation state otherwise.

Based on these provisions, the RA Electoral Code has established a procedure that enables holders of dual citizenship to exercise their voting rights. In particular, Part 7 of Article 2 of the RA Electoral Code states that Armenian citizens who are also citizens of another country and who are registered in the Republic of Armenia may vote under a procedure established by the RA Electoral Code. (Those who are Armenian citizens and also citizens of another country but are not registered in the Republic of Armenia are not entitled to vote.).

With respect to the passive voting rights of Armenians with dual citizenship, Part 3 of Article 65 of the RA Electoral Code states that Armenian citizens who also are citizens of another country cannot be nominated or registered as a RA Presidential candidate. Likewise, according to Part 5 of Article 97 of the *RA Electoral Code*, Armenian citizens who are also citizens of another country cannot be nominated or registered for RA National Assembly elections. The RA Electoral Code, however, does not stipulate such limitations with respect to local government elections.

Thus, according to the RA electoral legislation, persons holding dual citizenship have active voting rights (provided that they are registered at a residential address) but they do not have the right to be elected in national elections. Such a situation is in conflict with the Council of Europe's *Code of Good Practice in Electoral Matters*.[3] This joint opinion of the Venice Commission and the OSCE/ODIHR suggests that if a country adopts a principle of dual

[3] This is the joint opinion of the Venice Commission and OSCE/ODIHR on the Amendments to the RA Electoral Code of 26th February 2007.

citizenship, then the rights of persons who are holders of dual citizenship should not be inferior to the rights enjoyed by other citizens.

Therefore, the RA Human Rights Defender's Office considers it necessary to review the legal provisions that regulate electoral rights of dual citizenship holders in the Republic of Armenia.

7. The RA electoral legislation establishes the forms and types of election campaigns. However, the legislation fails to explain what is meant by the term "election campaign." In addition, provisions of the RA Electoral Code on the violation of election campaign rules give rise to various interpretations about the implementation of those provisions. For example, the law fails to stipulate what responsibility should be borne by those entities that breach the election campaign rules.

Election and referendum campaigns can be conducted via mass media, organization of pre-election public events (including pre-election assemblies, meetings with the electorate, pre-election public discussions, disputes, rallies, marches and demonstrations), publication of printed materials, and dissemination of video- and audio recordings.[4] It should be noted, however, that Clause 6 of Article 18 of the *RA Electoral Code* stipulates a limited list of the form of election campaigns, whereas, according to Article 2 of the Code, election campaigns can take any other form not prohibited by law.

While the *RA Electoral Code* acknowledges the right of RA citizens, political parties and political party alliances to carry out election campaigns for or against any candidate or political party, it also delimits those who are not eligible to conduct such campaigns. Such people and groups include: central and local government authorities, as well as their employees (in the course of their professional duties), members of the Constitutional Court, judges, employees of the RA Police and RA National Security Service, employees of prosecutors' offices, persons serving in the military, charitable and religious organizations, foreign citizens and organizations, as well as members of election commissions.

According to a number of articles of the Electoral Code (sub-clauses 4 and 5 of Part 1 of Article 76, sub-clauses 2 and 3 of Part 1 of Article 103, sub-clauses 4 and 5 of Part 1 of Article 125), the registration of a candidate and political party (political alliance) candidate lists shall be cancelled if it is established that the such persons have violated the rules for conducting election campaigns or are using other financial means apart from funds gathered through election campaign fundraising.

Within this legal framework, it is unclear exactly who should be held responsible for violation of election campaign rules when the candidate, political party or political alliance was unaware of the violations. The RA Human Rights Defender's Office believes that in such circumstances it would not be justifiable to hold candidates, political parties or political alliances running for election responsible. To prevent further controversy over the matter, it is recommended that rules be adopted to only allow campaigning by those (including RA citizens, political parties and political alliances) who have been authorized to do so by the candidate, the political party or the political alliance running for election. Candidates, political parties or political alliances should not bear responsibility for campaigning that is conducted by without their consent.

[4] Clause 6 of Article 18 of the *RA Electoral Code*

Unacceptable ways of running election campaigns should also be mentioned. *The RA Electoral Code* states that during an election campaign candidates are not allowed, personally or in other way, to give (or promise) citizens money, food, securities, and goods or provide (or promise to provide) services free of charge or at discount prices (Article 18, Part 7).

We consider that this legal prohibition has good grounds. Nevertheless, it is necessary to note that candidates running for election generally ignore this rule and engage in prohibited activities – not as candidates running for election but as RA citizens doing charity to others. Article 3 of the *RA Law on Charity* states that charity is the **voluntary and non-commercial provision of goods or moral aid (or their provision free of charge or at discount prices) not prohibited by law** by individuals and non-profit organizations for the implementation of objectives of Article 2 of the Law. However, according to *the RA Law on Charity* the particular provision of material or moral aid **(or their provision free of charge or at discount prices) may not be prohibited by law.** This means, that the requirement of the *RA Law on Charity* is simply ignored when the candidates (political parties) interpret their course of action as charity. In order to prevent this in the future there seems to be a need for introducing a new provision in the Electoral Code, according to which candidates and parties shall not have the right to engage in charity from the moment of their registration as candidates to the moment of official publication of the election results.

In our opinion, it is also necessary to introduce a legal provision that prohibits candidates/political parties in the pre-election period from receiving 'support' in the form of free or discount services and works.

It is also necessary to clearly set out in the law that all the lotteries related to the elections and other risk-associated games must be prohibited during the election campaign period.

8. Article 21 of the RA Electoral Code stipulates procedures for the use of campaign posters and other materials. In particular, Part 2 of Article 21 of the RA Electoral Code states that heads of local authorities shall, within 5 days of the start of the election campaign, designate special places within the community for the display of campaign posters. And these spaces must be accessible for voters.

However, the *RA Electoral Code* fails to enumerate places where campaign posters should not appear by law. The Human Rights Defender's Office assumes that campaign posters should not be put on memorial, historical, and cultural buildings or architectural monuments. Furthermore, controversy has raged over the issue of whether it was permissible by law to display campaign posters on central and local government administration buildings.

Given that Article 18 (Part 4) of the RA Electoral Code prohibits central and local government bodies – including their employees during professional duties – from engaging in election campaigns or disseminating campaign materials (irrespective of what the content of the materials is), it would be logical to propose that the Code include a new requirement that bans election campaign posters from central and local government administrative buildings. Heads of local authorities, however, may allow campaign posters to be displayed on private buildings, provided that they have made sure that the owners of those buildings have nothing against it.

In addition, the RA Electoral Code states that each polling district must have no less than one spot available for displaying posters (Article 21, part 2). It is clear that this provision should be redrafted to read that 'one' is the least number of spots that can be made available. Thus, it

seems preferable to reword the provision like this: "There must be at least one such [campaign poster] spot in each [polling] district." .

Part 2 of Article 21 of the RA Electoral Code deserves still further attention since it states that heads of local authorities shall, within 5 days of the start of the election campaign, designate special places within the community for the display of campaign posters. The question is why this should be done "within 5 days of *the start…*" since, in practice, campaign posters are displayed immediately after the launch of election campaigns. In our view, it makes sense to amend the stipulation so that the heads of local authorities be responsible for designating such places 5 days *before* the start of election campaigns. Furthermore, in practice campaign posters are displayed everywhere and not just in the specifically designated places. Although this constitutes a violation of election campaign procedure, the parties engaged in the campaign are not held responsible. Thus, it makes sense to delegate the authority of displaying election campaign posters to local government authorities, who shall in turn ensure the proportional exhibition of competing candidates' posters (as required by the law) and retain the right to remove posters that are displayed in wrong places.

Finally, Part 7 of Article 21 of the RA Electoral Code states: "Dissemination of anonymous printed campaign materials is prohibited. When anonymous or falsely printed campaign materials are discovered, the informed electoral commission shall take measures to prevent such activities and request the relevant bodies to put an end to the violations." If it is the responsibility of an informed electoral commission to take measures **to prevent** the above-mentioned activities, then why should it need to bring the issue to the attention of the respective authorized bodies – how can their intervention be solicited **to prevent** something that has already occurred? More important, however, is that in order to prevent dissemination of anonymous or falsely printed campaign posters as well as the confusion it causes, candidates, political parties, and political party alliances running in the election should first make the master copy available to their registering electoral commission so that it can verify the content before printing.

9. According to Article 22^1 of the RA Electoral Code "Candidates occupying political or discretionary positions or candidates holding civil service posts shall conduct the election campaign based on general principles subject to restrictions referred to in this Article:

1) Campaigning while carrying out official duties and abusing official positions for personal gain in the elections are forbidden."

At the same time, according to Part 1 of Article 78 of the Code, "From the moment of registration, those candidates running for the office of RA President who hold civil service offices or work for local governments shall be relieved from their professional duties and have no right to take advantage of their official position. The RA President, or the person who is Acting RA President, and the Chairman of the National Assembly shall continue to perform their duties even if they are nominated as candidates for RA President, but they shall not take advantage of their official position."

However, campaigning of candidates who hold political offices remained one of the most controversial and disputed experiences of the past presidential election. The Human Rights Defender's Office, therefore, recommends that these provisions of the law be redrafted with greater clarity and precision in order to avoid such situations in the future.

10. The running of Election Campaign Headquarters also received criticism. Electoral legislation does not regulate the activities of election campaign HQs in any way, giving rise to

further controversies. In particular, there is still a need to address, for example: how election campaign HQs raise funds, the scope of their activity, when they can be set up, and how long they function for. These issues, and the pressing need to prevent further confusion, mean that legislation addressing these gaps is urgently required.

11. According to Part 4 of Article 25 of the RA Electoral Code, the Code shall stipulate a maximum amount of financial contributions to election campaign funds. Contributions which exceed this level, as well as … shall be transferred to the state budget. However, it is unclear from this Article whether the entire sum will be transferred to the state budget or simply the part which exceeds the permitted maximum level.

12. There is also a need to review provisions concerning liability for the violation of RA Electoral Code requirements. The law refers to three types of legal responsibility that may arise: liability under the Electoral Code, as well as administrative and criminal liability.

According to the *Convention on Standards on Democratic Elections, Electoral Rights and Freedoms in the Commonwealth of Independent States*, violations of election campaign rules and conditions by candidates, political parties and political alliances, as well as violations by the mass media should incur legal consequences, as regulated by law.

Article 139 of the RA Electoral Code addresses such issues – it defines thirty-one violations of electoral legislation. However, a number of the Article's provisions are poorly worded, including provisions on: coercion of voters, intervention in electoral processes, intervention in the regular electoral process by members of electoral commissions or employees of the central and local government authorities, and intervention in the regular campaigning process.[5] The vague wording of these provisions may become problematic when it comes to enforcement, especially since they provide much leeway for authorities to be subjectively selective in deciding what responsibility is to be borne for alleged violations.

13. Analysis of the Electoral Code reveals that Part 2 of Article 23 of the Code and Part 5 of Article 57 of the Code are in conflict. According to Part 2 of Article 23 of the Electoral Code, the publicizing of exit poll results is prohibited until voting has finished; thus, it is permissible to hold exit polls on the Election Day, but their results cannot be made publicly available any earlier than 8p.m. on the Election Day. However, Part 5 of Article 57 prohibits questioning of voters *in any form*, which means that exit polls are not even a possibility.

14. In order to avoid disputes about the exercise of the right to vote, as well as to remove inconsistencies from the RA Electoral Code, there is a need to review the wording of Article 46 and Article 60 of the RA Electoral Code. In particular, Part 1 of Article 46 states that those citizens who are found to be in the **voting room** at 8p.m. but have not yet voted retain the right to vote. Article 60 states that the chairman of the district electoral commission shall prohibit voters from entering the polling station at **8p.m.**, after which s/he shall allow those persons who are in the **polling station** to vote…

According to Article 16 of the Electoral Code "A polling station shall be set up in a polling district. A polling station cannot be set up in buildings which belong to central and local government authorities, military schools, military divisions and health institutions. Polling stations can be set up at detention centres. Polling stations shall be as close as possible to the buildings and houses located in that polling district."

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[5] Joint Recommendations of the Venice Commission and OSCE/ODIHR on the electoral law and election administration in Armenia, December 2003.

Article 47 of the Code states that voting shall take place in a furnished room, with one furnished room provided at each polling station. The room must be as spacious as possible and meet certain criteria – for example, it must allow members of the district electoral commissions, and other persons who have the right to be present at the time of voting, to concurrently carry out their work unhindered. Furnishing of the voting room should be finished at least 24 hours prior to the start of voting.

The above statements show that a 'polling station' is a facility in which voting is held, whereas a 'voting room' is a specific space within that facility in which the actual voting takes place. Thus, the fact that one Article allows those citizens who have not yet voted but are in the *polling station* at 8p.m. to vote and another Article allows only those who are in the *voting room* at 8p.m. to vote could lead to disputes. It is proposed that this inconsistency be eliminated from the legislation by clearly stating in the law who has the right to vote after 8p.m. – i.e. all those in the polling station or only those in the voting room.

15. According to the RA Constitution, the procedure for conducting referendums and elections for RA President, the RA National Assembly, or local government bodies shall be established exclusively by RA legislation (Part 7 of Article 83.5). Furthermore, Part 3 of Article 2 of the RA Electoral Code specifies that the electoral right of citizens shall be regulated by the RA Constitution and that Code. However, procedures for a number of processes relating to the exercise of voting rights are defined by the RA Central Electoral Commission, while certain relations related to the elections of local government bodies are regulated by the *RA Law on Local Government*.

Attention also needs to be given to the provisions of the *RA Law on Local Government Administration*, which regulate certain relationships arising at the time of elections of local government bodies. These provisions, particularly, conflict with provisions of the RA Electoral Code that detail requirements for candidates running for local governments. Thus, Article 7 of the *RA Law on Local Government Administration* specifies that citizens who have lived in that community for at least ***one*** year, can be elected as heads of local authorities and members of administrative councils. Article 24 of the same Law states that "Each citizen of the Republic of Armenia who has reached the age of 25, is eligible to vote and is considered to have resided in a given local authority district for at least **one** year, is entitled to be elected as head of that local authority. A head of a local authority must have secondary vocational or higher education." On the other hand, Article 122 of the RA Electoral Code states that:

1. Any citizen of the Republic of Armenia who has reached the age of 25, has been registered for at least the last **two** years at a residential address in a particular local authority district – or in the case of municipal local authorities, in the city of Yerevan – as well as persons mentioned in Article 2 of this Code shall be entitled to be elected as head of a local authority.

2. Any citizen of the Republic of Armenia who has reached the age of 21, has been registered for at least the last **two** years at a residential address of a particular local authority district – or in the case of municipal local authorities, in the city of Yerevan – as well as persons mentioned in Article 2 of this Code, shall be entitled to be elected as a member of an administrative council."

The above shows that the RA Electoral Code requires that candidates running for election as a local authority head or as a member of an administrative council *be registered at a residential address in a particular district for at least the last two years*, while the requirement of the *RA Law*

on Local Government Administration is that a person has lived in that district for one year – and not necessarily the year just passed. Secondly, the *RA Law on Local Government Administration* specifies that: *citizens* who are considered to be residents of the relevant district may be elected as head of that local authority or as members of the administrative council (Article 7); persons who are eligible to vote in Armenia and are considered to be residents of the relevant local authority can be elected as head of that local authority (Article 24). But the RA Electoral Code (Article 122) also reserves the right to persons referred to in Article 2 of the Electoral Code to run in local government elections (those who are registered at a residential address in that community and actually live there).[6]

Thirdly, the *RA Law on Local Government Administration* states that the head of a local authority must have secondary vocational or higher education (Article 24), whereas there is no such equivalent requirement in the RA Electoral Code.

Part 2 of Article 3 of the *RA Law on Legal Acts* states that a legal act shall not be inconsistent with any other legal act of equal or superior legal power. While Article 24 of the same law does establish which legal act shall apply if there is a conflict found between them, such inconsistencies in legal texts are unacceptable – it is preferable that such inconsistencies are eliminated. In our view, the above-mentioned Article of the *RA Law on Legal Acts* must serve merely as a temporary transitional tool, providing solution to conflicts that exist among various pieces of legislation. However, it should never serve as an excuse for failing to address inconsistencies in legislation.

16. According to Part 7 of Article 33 of the RA Electoral Code, members of a higher status electoral commission have the right to participate, with an advisory vote, at the meetings of lower status electoral commissions and to be present at the polling station on Election Day if they have been required to do so by the chairman of the respective electoral commission.

There is a need to address the wording used in this Article. First of all, the Article uses the expression "if they have been required to do so by the chairman of the respective electoral commission," which assumes that the requirement of the supervisor (chairman of the commission) must be implemented. However, in the same Article it is written that a member of the commission **has the right** to participate, with an advisory vote, at the meetings of lower status electoral commissions. It is questionable how the exercise of the right of one entity regulated by a legal act can be limited or depend on the will (requirement) of another entity regulated by the same law. In other words, it is unclear whether a member of a higher status commission *has the right* to participate at the meetings of lower status commissions or whether s/he is obliged to participate when *tasked* to do so by the chairman of the respective commission. Secondly, the wording of the Article obscures whether the exercise of the right of a member of the commission depends on the "task" assigned by the chairman of the commission or not.

17. According to Part 1 of Article 31 of the RA Electoral Code, for the purpose of organizing and holding elections a three-tier electoral commission system shall be set up in the Republic of Armenia. This will include the Central Electoral Commission, Regional Electoral Commissions and District Electoral Commissions.

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[6] Such an approach is justified as Article 104 of the RA Constituion states that: "Local self-governance is the right and capacity of a community...to solve issues of local importance." At the same time, Article 104.1 states that a community is the populace of one or more than one residential areas. This populace may include nationals of the Republic of Armenia, foreign nationals and persons who lack a citizenship status.

Part 2 of Article 52 of the RA Electoral Code, however, seems to be inconsistent with the above Article. According to Article 52, in facilities that have the authority to detain persons, elections shall be prepared, organized and held by the heads of those facilities, in line with the provisions of the present Code and the procedure established by the Central Electoral Commission. This clause offers no explanation as to what the role of a District Electoral Commission will be in a detention facility if the elections there are "prepared, organized and held" by the heads of those facilities. Moreover, during election periods, the Code authorizes the heads of those facilities to prepare voter lists of persons held in detention, with the participation of a member of a Regional Electoral Commission.

It should also be noted that the RA Electoral Code, the RA passport regulations and RA Government Decision No.821 (25th December 1998) on *Approving a Passport Format for RA Citizens*, fail to stipulate that the names of the detainees shall be removed from district voter registration lists. In our view, this is inconsistent with Part 2 of Article 10 of the Electoral Code, which states that a person's name can appear on only one district voter registration list. Therefore, we would recommend that the detainee voter lists be prepared based on the same principles as those prepared for police officers who are absent from their district because they are serving in another district on Election Day. For example, paragraphs 4 and 5 of Part 3 of the Article 10 of the Electoral Code state that:

"At least four days prior to voting, by 2p.m., the RA Police shall submit to the head of the authorized body or to the heads of its territorial representative offices the list of police officers assigned to duty in polling stations on the voting day, providing the citizens' surname, name, patronymic (if the patronymic name is mentioned in the passport), date of birth and registered address.

Based on this list, the head of the authorized body, or its territorial representative office, shall remove the names of these police officers from the district voter registration lists and shall, in accordance with the requirements about voter lists referred to in Article 11 of the Code, make an additional list of police officers who will be voting at that polling station, after which s/he will sign and seal each page of that list and, two days prior to the election, send it to the chairman of the district electoral commission along with the final voter list."

In a similar way, four days prior to the election, heads of detention facilities should be requested to prepare and submit to the relevant authorized body data on detainees held in their custody. The authorized body could then remove the names of the detainees from the district voter registration lists, prepare separate lists, and send them at least two days before Election Day to district electoral commissions at detention centres.

18. Article 41 (1)(17) of the Code states that the Central Electoral Commission shall register political parties and groups nominating candidates for RA President. However, the task of the commission is not to register political parties that nominate presidential candidates but to register the presidential candidates nominated by those political parties. Recent changes to the Electoral Code have stripped groups of the right to nominate presidential candidates; thus, to bring the above mentioned provision in line with Article 66 of the Code, it should read: "shall register self-nominated and political party nominated candidates for RA President."

19. According to Part 7 of Article 25 of the RA Electoral Code, if a candidate or a political party uses financial means other than what is available through election campaign funds for their election campaign, the court may, at the request of the Central Electoral Commission,

revoke the registration of that candidate or list of candidates submitted by a political party. It is unclear, however, why should this happen at the request of the Central Electoral Commission, when candidates running for National Assembly on majoritarian lists and those running for head of local authorities or administrative councils are registered by Regional Electoral Commissions. It is more logical that a complaint about the use of financial means other than what is available through election funds should be filed by the Regional Electoral Commission.

20. While listing the powers of the Central Electoral Commission and Regional Electoral Commissions, the Electoral Code fails to specify some important points relating to proxies. Firstly, it does not state that the Central Electoral Commission should issue proxy certificates, in quantities defined by law, to proxies of political parties and party alliances running for seats in the National Assembly. Secondly, it does not state that Regional Electoral Commissions should issue proxy certificates, in quantities defined by law, to candidates on majoritarian lists running for seats in the National Assembly. Presently, the Code specifies that the Central Electoral Commission shall issue proxy certificates, in required quantities, to candidates running for RA President (to then be distributed to the proxies of the presidential candidates) (Article 41, Part 1, clause 16), and likewise that the Regional Electoral Commission shall issue proxy certificates, in quantities defined by law, to candidates running for head of local authority or membership in local administrative councils (Article 42, clause 14).

21. In addition to the above recommendations, below are some suggestions for removing technical errors in the RA Electoral Code:

- The word “elections” in Part 6 of Article 7 should be replaced with the word “voting”.
- The positions of “July and January” should be swapped in Part 6 of Article 9.
- The word “bodies” should be added after the words “local government” in Part 5 of Article 10.
- In Article 13 Part 1, instead of words “holding in detention” should be written “having authority to hold in detention”.
- In the second sentence of Part 2 of Article 26, the order of the words “inspection audit” should be swapped; in the same sentence the word “party” should be added before the word “alliances”.
- In the third sentence of Part 2 of Article 26, the words “first instance court” should be replaced with the words “court of general jurisdiction”.
- In Paragraph 3 of part 3 of Article 37, the word “district” should be deleted from the expression “having certificates to work in the district electoral commissions”.
- In clause 4 of Part 3.1 of Article 38, the word “electoral” should be added after the word “regional”.
- The punctuation sign «`» should be deleted after the words “National Assembly” in clause 28 of Part 1 Article 41.
- In clauses 3 and 4 of Part 1 of Article 42, the words “poll station” should be replaced with the words “polling station.” The third sentence of clause 14 of the same Article should be reworded as: “…shall issue proxy certificates, in quantities defined by law, to candidates running for election as heads of local authorities and members of administrative councils.” The enumeration (‘Part 1’) should be removed since the Article has no second part.

- In Part 2 of Article 53, after the words "commission member for organizing voting with a mobile ballot box" the following should be added: "if there is an inpatient healthcare facility in the polling district".
- To remove the word "voting" from the expression "one voting ballot paper" in Part 1 of Article 56.
- Part 2 of Article 18 states that "Nationals of the Republic of Armenia, political parties, political party alliances (hereinafter referred to as parties) are entitled…"; however, elsewhere in the text the Code interchangeably used "political parties" and "political parties and political alliances", which means the above-mentioned term is not being inconsistently.
- The second sentence of Part 4 of Article 40 states that: "This clause shall not apply to the decisions of the Regional Electoral Commissions concerning the election to the National Assembly on a majoritarian list and the election to posts of *local government heads* and members of administrative councils." It should be noted that the RA legislation does not use the term "head of local government body" – it should read "head of local authority."

2.1.6. Right to the Freedom of Peaceful and Unarmed Assembly

According to Article 29 of the RA Constitution, each person has the right to conduct peaceful and unarmed rallies. According to Article 43 of the RA Constitution a number of fundamental human rights and freedoms enshrined in the Constitution, including the right to conduct peaceful and unarmed rallies, may be restricted by law if such constraints are required in order to achieve national security, public order, crime prevention, protection of public health and morals, constitutional rights and freedoms, and the dignity and good reputation of others in a democratic society.

In order to ensure that this constitutional right was enforced, the Armenian Government adopted the *RA Law on Conducting Meetings, Rallies, Marches and Demonstrations* on April 28, 2004. Although the law is generally in harmony with the provisions of the Constitution and requirements of international law, on 17th March 2008 a number of questionable changes were introduced. One such change stipulates that public events may be prohibited by an authorized body "if, there is reliable information that the participants aim to violently overthrow the constitutional order, incite ethnic, racial or religious hatred, advocate violence or war, or threaten national security, public order, public heath, public morals, or the constitutional rights and freedoms of others" (Clause 3 of Part 4 of Article 9).[7]

The legislation of a number of European countries, including *France, Germany, Romania, Latvia, Lithuania, Estonia, Finland and Hungary*, as well as the European Convention on Human Rights and other international documents, allow similar restrictions. However, as rightfully mentioned by the OSCE/ODIHR Expert Panel on Freedom of Assembly, limitations on these grounds are only acceptable if threats are real and imminent.

The restrictions in question have also been discussed by the European Court of Human Rights, which stated that the effectual exercise of the freedom of peaceful assembly "does not depend merely on the State's duty *not* to interfere." Indeed, such a negative approach conflicts

[7] The text of this provision was reworded in the version of the Law which was adopted on June 11, 2008.

with the content and purpose of Article 11 of the Convention since the protection of the right to freedom of assembly sometimes demands that the state employ positive measures. With respect to public events for example, the Convention requires that states be responsible for providing some guarantees that gatherings remain peaceful. However, even though Member States are responsible for providing measures to ensure the peacefulness of state-sanctioned assemblies, these measures cannot, nevertheless, be regarded as absolute guarantees. Restrictions are always possible. However, in a democratic society these restrictions should not impinge on the right to the freedom of assembly. The government is responsible for the use of measures, not for the final outcome, and this implies that the government must have a wide range of measures available (Cases Ezelin, 37; Vogt, 64; Platform "Artze fur das Leben" 32).

Some grounds for restricting the freedom of assemblies are also provided in the *Guideline Principles of Peaceful Assemblies* prepared by the OSCE/ODIHR Expert Panel on Freedom of Assembly. In particular, the Guideline states that **ensuring public order, health and morality, protecting other people's rights and freedoms, and maintaining public and national security** may be grounds for imposing restrictions on the right to free assembly. At the same time, the Expert Panel commented that the uncertainty associated with the concept of "public order" may not justify the prohibition or forced dispersal of peaceful assemblies.

Indeed, neither the theoretical danger of public disturbances nor tension in society can be regarded as valid grounds for the prohibition of peaceful assemblies. Thus, preventive constraints applied to the freedom of assembly in cases where there are potentially minor instances of violation must be deemed as inadequate measures. In addition, each individual case of violence must be considered in the light of a particular legal case by imposing detention or by court trial and via preventive measures (Stankov and the United Macedonian Organization Ilinden v. Bulgaria (2001) Paragraph 94).

Regarding the protection of the rights and freedoms of other persons, the Expert Panel noted that: "The regulatory authority has a duty to strike a proper balance between the important freedom of peaceful assembly and the competing rights of those who live, work, shop, trade, and carry on business in the locality affected by an assembly. Mere disruption, or even opposition to an assembly, is not therefore, of itself, a reason to impose prior restrictions on it. Given the need for tolerance in a democratic society, a high threshold will need to be overcome before it can be established that a public assembly will unreasonably infringe the rights and freedoms of others."

Thus any restriction on the freedom of assembly should not damage the fundamental nature of the right. Political ideology or the prevalence of a certain system of religious beliefs cannot justify the use of preventive or punitive sanctions to restrict the freedom of assembly.

Despite this, another recent change to the *RA Law on Conducting, Meetings, Rallies, Marches and Demonstrations*, imposes an unacceptable level of restriction on the exercise of human rights. The amendment proposes that "where mass public events escalate into mass disturbances and result in human causalities, it shall be permissible to impose a temporary prohibition on mass public events until the circumstances of the crime and the persons who committed the criminal offence are revealed" (Article 13, part 6). Therefore, if even just one person is to blame for such acts, there are sufficient grounds for the authorities to apply such restrictions. But this would automatically limit others' exercise of their constitutional right to the freedom of assembly. In our view, this is unacceptable and incompatible with the spirit of the European Convention on Human Rights and the case law of the European Court of Human

Rights. In particular, the European Court of Human Rights stated that: "An individual does not cease to enjoy the right to peaceful assembly as a result of sporadic violence or other punishable acts committed by others in the course of the demonstration, if the individual in question remains peaceful in his or her own intentions or behaviour" (see Ezelin v. France (1991), Ziliberberg v. Moldova (2004)). Moreover, the above Article is incompatible with the principle of individualism, as it stipulates that constraints be applied not only towards the lawbreaker but also towards those who simply intend to exercise their constitutional right to gather freely.

Furthermore, there is a need to analyze these restrictions in the light of Article 3 of the RA Constitution, according to which: "A human being, his/her dignity and fundamental human rights and freedoms are of absolute value. 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 itself be limited by the direct application of fundamental human and civil rights."

With respect to this issue, the RA Constitution permits two types of restrictions on fundamental rights and freedoms (including the right to freedom of assembly): the first restriction is used under normal conditions if it is deemed necessary for the protection of national security, public order, crime prevention, protection of public health and public morality, protection of constitutional rights and freedoms, and the dignity and good reputation of other people (Article 43); the other is applied in a state of emergency or war. In particular, Article 44 of the Constitution states that during a state of emergency or state of war certain rights and freedoms of humans and citizens may temporarily be restricted to the extent that is proportionally required by the current situation and to the extent defined by international treaties on deviations from constitutional commitments in times of emergency.

According to Part 2 of Article 43 of the RA Constitution, restrictions on fundamental human rights and freedoms cannot surpass the scope of international treaties adopted by Armenia. The European Court of Human Rights' Decisions, which form the basis of its case law, communicate its stance on what it considers to be acceptable mechanisms for preventing violence during assemblies and restricting the freedom of assembly.

It is also worth noting several other provisions of the *RA Law on Conducting, Meetings, Rallies, Marches and Demonstrations*, which authorize the police to take action during public events. In particular, Part 2 of Article 8 of the Law states that it shall be the responsibility of the Police to ensure maintenance of public order during mass public events and to remove, by use of force, any lawbreakers. Thus, during a peaceful and unarmed public assembly, the Police are obliged to remove lawbreakers from the scene in order to maintain the peacefulness of the event. Moreover, the Law authorizes the Police to: disperse an assembly if that assembly is accompanied by legal violations; and ask the assembly's organizers to end the gathering. If the organizers refuse to do so, the Police shall have the right to stop the public event by force.

Thus, the legal grounds and potential mechanisms necessary for ensuring order during public events already exist. This is probably why the National Assembly on 11th June 2008 declared Part 6 of Article 13 of the *RA Law on Conducting Meetings, Rallies, Marches and Demonstrations* null and void.

2.2. Economic, Social and Cultural Rights

2.2.1. Right to Work

In his 2006 and 2007 Reports, the RA Human Rights Defender gave detailed attention to legislative flaws that conflicted with the right to choose work. The Reports also commented on progress being made towards meeting commitments made by the Republic of Armenia under international treaties. Furthermore, the Reports recommended a review of certain provisions of the RA Labour Code, including provisions that relate to the grounds for terminating an employment contract without advance notice and provisions that stipulate the terms and conditions of terminating employment contracts. These changes were necessary to bring the Labour Code in line with the requirements of the Reviewed European Social Charter. Nevertheless, the relevant changes to the Labour Code were not made in 2008.

2.2.2. Right to Social Security

Violations of Pension Rights

According to Article 47 of the *RA Law on Pensions*, if a person lacked an employment record book or his/her book lacked relevant information or s/he lacked other documents referred to in the law to prove his/her length of employment, the length of his/her employment should be verified by archive documents or, if such documents were unavailable, through the courts. According to the same Article, when a person had a proven record of employment that already qualified him/her for a pension (i.e. 25 years of work with social security payments), s/he could not approach the courts for verification of the length of his/her employment record; only in cases when the unverified part of a person's employment record affected whether the person was eligible for a pension could the court provide verification, as long as the disputed period was not more than 10 years (Parts 3 and 4 of Article 47).

According to Article 73 of the *RA Law on State Pensions*, pensions paid to beneficiaries before the new Law came into force should have been recalculated by taking into consideration length of employment (proven by documents included in the individual's pension files), the amount of the basic pension referred to in Articles 17-19 of the Law, the value of one year's social security payments and the pensioner's individual pension index. If the recalculated pension was lower than the pension paid under the scheme in effect before the new Law came into force, then the person would be entitled to the pension calculated under the old scheme. If additional documents were submitted, the respective authorities had to recalculate a new pension.

As this problem was affecting many in society and was related to the protection of constitutionally guaranteed social security entitlements, the RA Human Rights Defender brought an application to the RA Constitutional Court in October 2007 requesting that the compatibility of Part 2 of Article 73 of the RA Law on State Pensions with Part 3 of Article 42 of the RA Constitution be considered. In another application he also suggested that the compatibility of Parts 2 and 3 of Article 47 of the same Law with Article 18 of the RA Constitution be reviewed.

The Constitutional Court's Decision of 15th January 2008 (No.SDO-723) concluded that Part 2 of Article 73 of the RA Law on State Pensions was in conflict with Part 3 of Article 42 of the

RA Constitution. In addition, Decision No.SDO-731 (29th January 2008) declared that Parts 2 and 3 of Article 47 of the *RA Law on State Pensions* contradicted Article 18 and 37 of the RA Constitution and thus declared those parts void.

Compensation for Injuries, Professional Illnesses or other Health Concerns incurred during the Course of Professional Duties

In 2008, the RA Human Rights Defender continued to receive complaints that disability pension benefits, to which persons with professional injuries are entitled for a period approved by the Social Medical Examination Commission not been authorized because of the termination of the employer's business. The Human Rights Defender also mentioned this issue in his 2006 and 2007 Reports.

On 31st July 2007, the Defender sent a letter (1-0651) to the RA Prime Minister, drawing his attention to Clause 16 of RA Government Decision No.570 (15th November 1992). This legislation requires that if a company is liquidated or goes out of business, compensation shall be paid by that company's legal successor or, if no legal successor exists, by the national social security agency (from state budget funds). Article 1086 of the RA Civil Code, in force since 1999, stipulates that the amount of compensation payable to a person for harm caused to his/her health or his/her life by a legal entity that is in the process of liquidation, shall be in line with **the procedure provided by the law or other legal acts** and be paid to the victim. However, an enforcement procedure has not yet been developed – neither in the form of a law nor as a government decision. Instead, the RA Government passed a Decision on 11th November 2004 whereby it revoked clause 16 of RA Government Decision No.579 (15th November 1992). As a result, many citizens lost the right to claim compensation to which hitherto they had been entitled. The letter that was addressed to the Prime Minister was forwarded to the Minister of Labour and Social Affairs. The Minister responded by saying that he had raised the issue in 2007 as he understood its importance. He suggested the inclusion of an *RA Draft Law on Mandatory Social Security against Accidents at Work and Professional Illnesses* in the Government Activities Program, and established 30th June as a deadline for the completion of this task. The Defender was advised that the abovementioned Draft was being developed and that when it was ready it would be submitted to interested parties, including the Human Rights Defender, for discussion and further coordination.

By another letter, the Human Rights Defender suggested that the Minister of Labour and Social Affairs keep him informed of developments in this area. Consequently, Letter No.1/11-1816 of 1st August 2007 informed the Human Rights Defender that the *RA Draft Law on Mandatory Social Security against Accidents at Work and Professional Illnesses* had been submitted to the RA Government.

To address the issue raised by the Human Rights Defender, in 2008 the RA Prime Minister organized a roundtable discussion with representatives from the RA Central Bank, the RA Ministry of Labor and Social Affairs, and the Human Rights Defender's Office. The participants decided that there was a need to divide into groups all the issues addressed in the *RA Draft Law on Mandatory Social Security against Accidents at Work and Professional Illnesses* and consider those groups separately. After a second meeting, held at the RA Ministry of Labour and Social Affairs, a transitional legal solution was found to ensure that compensation for professional injuries arising after 1st August 2004 was secured. In addition, it was recommended that a new Draft Government Decision be developed or that relevant changes be made to RA Government

Decision No.579 (15th November 1992). During the discussion it was also agreed that a procedure for the capitalization of organizations' financial assets be developed. It was decided that, in cooperation with the Central Bank, the idea of mandatory social security contributions against professional accidents and professional illnesses be developed – and only then should a new draft law be prepared.

The Human Rights Defender is continuing to closely follow the steps being taken to solve this problem.

2.2.3. Right to Property

There has been an increase in the number of complaints from individuals who own property in the areas that have been officially recognized as areas of 'primary public interest'. These people claim that the compensation they were offered was lower than the market rate for their property.

This issue has received attention in previous annual reports of the RA Human Rights Defender. Part 3 of Article 10 of the *RA Law on the Alienation of Property for Public and State Needs* states that the owner of property being alienated or a person who has economic rights to the property being alienated have the right to submit written objections and suggestions as prescribed by law, while the procurer has the right to negotiate with the owner of the property being alienated or with the person who has economic rights to the property's alienation in order to attain a contractual agreement with them. However, the applicants claimed that the procurers refused to consider their concerns and negotiate an amount of compensation since the procurers said that they were simply representing a construction company.

Furthermore, back in 2006 – before the *Law on the Alienation of Property for Public and State Needs* was adopted – the Human Rights Defender had argued that the bearer of a state need should be the State and not a local authority or an organization. Although the State may assign implementation of the alienation process to an organization or even to an ordinary person, these implementing agents cannot act as parties to a property alienation transaction. Indeed, the rights of the owners of an alienated property and the rights of others who have economic rights to the alienated property cannot be properly protected if the party signing an alienation contract is not the State. This proposal of the Human Rights Defender has yet to be endorsed even though the majority of property complaints are related to compensation issues.

The opinion of the Human Rights Defender on the *Draft Law on the Alienation of Property for Public and State Needs* is presented in Annex 7 of the 2006 Annual Report.

Legalization of Structures Lacking Authorization

A procedure for the legalization and use of unregistered (unauthorized) structures (hereinafter referred to as the Procedure) was established by RA Government Decision No.912-N on 18th May 2008.

Section 2 of the Procedure stipulates that a decision about the legalization of previously unauthorized structures shall be made 30-60 days after the citizens' request was submitted. Part 4 of the Procedure sets out terms and conditions for the further disposal of legalized unauthorized structures built on the state or community land (after these lands were recognized the property of the state or the communities), establishing a 30 or 60 day period for decision-making after admission of citizens' requests.

Section 2 of the Procedure regulates the process of legalization of unauthorized structures that are built on the land of citizens or other legal parties; the relevant decision-making shall take place 30-60 days after the citizen's request was submitted. Part 4 of the Procedure sets out terms and conditions for the disposal of unauthorized structures built on state or local authority land that had been legalized (after these lands were officially recognized as state or local authority property); the relevant decision making shall also take place 30-60 days after the citizen's request was submitted.

RA Government Decision No.731-N (18th May 2006) established a procedure for the registration of the State's or local authority's property rights to unauthorized structures built on land owned by the state or local authorities. Clause 2 of the Procedure states that heads of local authorities, the Mayor of Yerevan, and District (*Marz*) Governors outside the administrative territories of local authorities shall, under Clause 2 of Article 188 of the RA Civil Code, decide whether unauthorized structures built on state or local authority land should be declared state or local authority property. The plan of the land area occupied by the unauthorized structure shall be attached to this decision.

Clause 3 of the Procedure establishes a process for registering the rights. But neither RA Government Decision No.912-N nor RA Government Decision No.731-N specify time periods within which a decision recognizing the state's or local authority's rights to unauthorized structures should be made; they also lack a timescale for entering that decision into state registration records. Thus, citizens complain that applications for the legalization of their previously unauthorized structures, which they file to the authorized bodies, are not properly processed. Although representatives of the authorized bodies may visit the sites and take measurements, decisions on granting or refusing the citizens' applications do not follow for months. In reply to their application, people often only receive notification that the rights of the state or local community to their property have not been yet recognized, and thus the alienation of that property was not possible.

Letter No.1-0370 of 11th February 2008 addressed to the Minister-Chief of Staff of the RA Government recommended that changes be made to Government Decisions Nos. 731-N and 912-N so that a timescale within which citizens or legal parties are entitled to receive a decision on legalization is stipulated. However, this problem remained unsolved in 2008.

Comments on Unregistered Structures Built in the Demolition Zone

Following the adoption of the *RA Law on the Alienation of Property for State and Public Needs*, the RA Government further adopted Decision No.1529-A (20th December 2007), which vested the Mayor of Yerevan with the power to grant ownership of land plots and structures (not

covered by ownership documents) in the government appropriated demolition zone to their users, provided that these land plots and/or unauthorized structures formed a natural extension of their legally owned *houses* and had been at their continual disposal prior to 15th May 2001.

A review of this Decision revealed certain flaws. It transpired that residents of *apartment buildings* in the zone subject to alienation had also previously built (unauthorized) balconies, kitchens and other structures in order to improve their homes. Thus, to avoid potential discrimination, the RA Human Rights Defender recommended an amendment to RA Government Decision No.1529-A so that residents of apartment buildings in the alienation zone would be granted the same opportunities as residents of private houses.

The Mayor of Yerevan sent a letter to the Human Rights Defender on 4th September 2008 to inform that the *Draft RA Government Decision on Making an Amendment to the RA Government Decision No.1529-N of 20th December 2007*, which suggested relevant changes to Clause 1 of the RA Government Decision No.1529-A of 29th December 2007, had been circulated. The Mayor also attached the Draft Decision, which had a new clause 1(b) stating that in the government appropriated demolition zone the Mayor of Yerevan, under the relevant procedure, *shall grant ownership of unauthorized extensions (structures) to apartments owned by the users of these unauthorized extensions (structures), provided that the extensions are within the designated boundaries of the registered property and have been at the continual disposal of their users since before 15th May 2001.*

In another letter to the Human Rights Defender (dated 28th Ocotber 2008), the Mayor of Yerevan stated that the relevant minsitries had commented on the *Draft Government Decision On Making Amendments to the RA Government Decision No.1529-N of 20th December 2007.* In particular, the letter referred to the expert opinion of the RA Ministry of Justice, which concluded that the problem should be regulated by the *RA Law on the Status of Individual Residential Houses in Yerevan with Missing Documents* and RA Government Decision No.912-N (18th May 2006) on *Approving the Procedure for Establishing Legal Ownership and Disposal of Unauthorized Structures*. Thus, the adoption of a new Decision was deemed to be unnecessary.

In view of this, and at the recommendation of the RA Prime Minister, the above Draft Decision was removed from circulation via the RA Government Chief of Staff's Letter 02/13.2/3370-08 of 17th October 2008.

It should be noted that Article 1 of the *RA Law on the Status of Individual Residential Houses in Yerevan with Missing Documents* allows *citizens without the original construction documents or property certificates of their house to establish legal ownership rights to it and any extensions, as well as to the land on which these houses were built.* Article 2 of the same Law regulates relations arising from the establishment of legal ownership rights to land areas up to 300 square metres in excess of the lawfully owned land designated for house construction and its maintenance and/or extensions.

The above legal provisions mean that the *RA Law on the Status of Private Residential Houses in Yerevan with Missing Documents* fails to regulate relations arising from the alienation of unauthorized structures built in non-residential areas next to apartments, which exceed the area of the apartment buildings but are within the boundaries of the land designated for the building's use and maintenance.

It should also be mentioned that Clause 25 of RA Government Decision No.912-N (18th May 2006) *On Approving the Procedure for Establishing Legal Ownership and Use of Unauthorized Structures* requests that fees be paid in order to grant legal ownership of the structures; however, RA Government Decision 1529-A (20th December 2007) authorized the Yerevan Mayor to alienate these structures at no cost to the citizens. We conclude, therefore, that differential treatment of residents with the same status may be regarded as discrimination. Hence, there is a need to re-examine the issue and make the relevant changes to Government Decision No.1529-N (of 20th December 2007).

Urban Development Legislation

It should be noted that legislation regulating urban development activities has many gaps. It is often difficult to differentiate what the District Municipal Halls and Yerevan City Hall should be responsible for in preventing legal violations. This is especially true when complaints relate to the prevention or demolition of unauthorized construction and the effects related to those.

The Human Rights Defender's previous Annual Reports have highlighted the many flaws that exist in the legislation that regulates urban development activities. For example:

According to sub-clause (b) of clause 1.13 of RA Presidential Decree No.NH-727 (6th May 1997) the Mayor of Yerevan, within the scope of his/her authority in the area of urban planning and regulation of residential properties and utilities, shall "…take measures to prevent unauthorized construction, dismantle unauthorized structures and eliminate the effects of unauthorized construction."

According to Part 6 of Article 26 of the *RA Law on Urban Planning*, the Mayor of Yerevan shall be responsible for monitoring urban planning activities in the city of Yerevan.

According to Article 26.1 of the *RA Law on Urban Planning*, prevention of unauthorized construction, dismantling of unauthorized structures and elimination of the effects of unauthorized construction via administrative remedies shall be the responsibility of the head of the municipal district in which these structures are located.

Clause 5.1 of Part 1 of Article 37 of the *RA Law on Local Government Administration* stipulates that the head of a local authority shall, by relevant legal measures, prevent and terminate construction of unauthorized urban and utility structures and ensure the elimination of the effects of such construction.

The inconsistencies that exist among the abovementioned legal acts means that when public officials address such issues they often treat similar cases in an arbitrary and subjective way. For example, a group of residents from Building 16, Arsyaknuyants Street, Yerevan, complained to the RA Human Rights Defender about the inconvenience caused them by nothing being done about the effects of an unauthorized construction. Considering that the inactivity of the relevant employee at Yerevan City Hall amounted to a violation of human rights, on 27th June 2008 the Human Rights Defender decided sent a recommendation to the Mayor of Yerevan suggesting that the employee concerned receive disciplinary action. However, the Mayor of Yerevan's First Deputy responded with a number of explanations, among which he advised the Defender that, according to requirements of Part 3 of Article 26.1 of the *RA Law on Urban Planning* and clause 5^1 of Part 1 of Article 37 of the *RA Law on Local Government Administration*, preventing and demolishing unauthorized construction as well as dealing with its effects were the responsibility of local authorities in the Municipal Districts. Nevertheless, numerous similar cases in the

Human Rights Defender's portfolio indicate that persons who built unauthorized structures were under the administrative responsibility of the City Hall, which took legal action to eliminate the effects of the unauthorized construction.

The Mayor of Yerevan, taking into account Article 11 and 26.1 of the *RA Law on Urban Planning*, Part 3 of Article 37 and Part 1 of Article 85 of the *RA Law on Local Government Administration*, clauses 1.13 and 1.15 of RA Presidential Decree *No.727-NH (6th May 1997) On the Public Administration of Yerevan*, and the requirements of RA Government Decision No.624 (12th October 1998), announced Decision No.3762-A, which tasked the Urban Planning and Land Inspection Department of Yerevan City Hall to dismantle the 16 unauthorized garages located in front of building 2/3 Moldovakan Street, next to Kindergarten No.259 and School No.164, in Yerevan's *Nor Nork* district.

However, according to the residents, this action constituted a breach of Article 9 of the RA Administrative Violations Code. Under this Code (Article 254), before such a Decision was announced, a statement should have been prepared and a relevant commission should have considered the case with the participation of those who breached the law (Article 278), and then these persons should have been given an opportunity to legally affirm their rights (Article 267). Moreover, the Decision should have specified a deadline for the elimination of the relevant effects of those unauthorized structures and afforded the owners the opportunity to appeal the Decision within a prescribed period.

According to verbal comments made by the assistant to the head of the *Nor Nork* municipal district hall, the respective employees of the municipal district hall prepared a statement in line with the requirements of Article 154 of the RA Code on Administrative Violations. Afterwards, the statement was considered at the meeting of the commission held on 19th August 2008. The residents participating in the meeting asked to postpone the meeting so that they could prepare and submit relevant documents and arguments; the Commission postponed the session until 26th August 2008.

Clearly, the Yerevan Mayor's Decision of 21st August 2008 was inconsistent with legal requirements (the RA Administrative Code) since it was announced without an investigation into the alleged violation. Furthermore, by demolishing the 16 garages on the same day, the Mayor denied the owners the opportunity to appeal the Decision at court, and thus these citizens incurred critical losses.

It is hard to imagine that these 16 garages were built in one night – or even in ten; therefore, their unauthorized construction must have been due to the inactivity of the relevant employees at the City Hall and Municipal District Hall. Moreover, the residents claimed that these employees visited the construction site when they were building the garages and did not ask them to stop or dismantle the structures.

2.2.4. Right to Live in a Healthy Environment

Consideration of legislative flaws that lead to human rights violations should necessarily start with issues related to Lake Sevan. Such matters are regulated by the RA Constitution, the *RA Law on Lake Sevan* (2001, HO-190), the *RA Law on Approving a Coordinated Annual Project for the Restoration, Preservation, Reproduction and Use of Lake Sevan* (14th December

2001) (HO-276), and other legal acts. It is difficult to overestimate the strategic importance of Lake Sevan in terms of the ecosystem's natural development and the sustainability of the country's natural resources. In 2008, a proposal making changes to the *RA Law on Approving a Coordinated Annual Project for the Restoration, Preservation, Reproduction and Use of Lake Sevan* caused an outcry.

The specialized staff members of the Human Rights Defender's Office visited the town of Sevan (Gegharkunik region) to familiarize themselves with the problems of Lake Sevan first hand. They met with the Mayor of Sevan town and the lawyer employed by the Town Hall. The ensuing discussions helped to clarify that the alienation of land on the shores of Lake Sevan was still a pressing challenge for the community.

According to Sevan's Mayor and the Town Hall's lawyer, land on the shores of Lake Sevan was within the administrative boundaries of Sevan's Local Authority, as stated by a RA Government approved chart of Sevan. The Town Hall acquired the property (usage) rights to these areas and appropriately registered those rights. However, at a later date the Government announced another Decision in which the shores of Lake Sevan were assigned, along with the right to carry out (registered) construction works, to the *Sevan National Park* state non-commercial organization (SNCO).

To date, however, registration formalities have not been completed. Furthermore, although the shores of Lake Sevan belong to the Sevan Local Authority and have a registration certificate, it was the SNCO which leased these lands for construction purposes. The State Cadastre, subsequently, registered the rights which arose from the lease of shore lands for construction purposes, but this was inconsistent with legal requirements.

Thus, without having properly registered its own rights, the Sevan National Park SNCO is assigning rights to third parties. Part of the fees generated is paid into the state budget while the other part is used for their own needs.

Furthermore, according to RA Government Decision No.766-N (13th May 2004) (which has been declared void except for Part 2 of Clause 6 and Clause 7 – see RA Government Decision No.812-N, 31st July 2008), construction works in areas of Sevan National Park that are below an altitude of 1908m should be limited to the building of temporary structures. These temporary structures should be built in accordance with the building norms established by RA legislation, including RA Government Decision No.896 (24th September 2001) on *Approving the Procedure for Building Temporary Structures*; in addition, property plans should incorporate landscape maps and urban planning documentation.

However, the construction companies that won the tender announced by SNCO are erecting permanent buildings in areas below 1908.0 m, without coordinating the plans with the Town Hall and without obtaining permission for performing architectural planning and construction work. This subsequently gives rise to new problems.

There were cases when Town Hall employees requested construction companies to terminate their unauthorized work but the companies showed a construction permit issued to them by the Gegharkunik region Governor's Office. This permit should have been granted, however, by the head of Sevan's local authority (under the *RA Law on Urban Planning*) since the site was located within the boundaries of Sevan's local authority.

There are about 400 unauthorized structures built on the shores of Lake Sevan. The Town Hall has tried to clarify the future of these buildings by sending letters to the Government. However, the Government has yet to take steps to remedy this situation.

In an effort to protect the constitutional rights of Sevan's local authority, the RA Government announced Decision No.927-N (30th May 2002), according to which profit generated from business in Sevan National Park shall be used to meet the organization's official goals, while 30% of rent generated through lease of land shall be transferred to the respective budgets of Gegharkunik region's local authorities. However, the head of the local authority stated that such sums were yet to be transferred to their budget.

It is important to understand what the goals of a National Program would be. By size, Lake Sevan is the second largest freshwater lake in the world. It is the only source of cheap fish, energy and freshwater in the Republic of Armenia. Given Armenia's geographical position and the regional developments affecting it, there is a need to be more far-sighted by evaluating the situation much more carefully. There is a constant threat of an economic blockade and, if that occurs, then many companies in the above fields will simply cease to function and the country will have to rely on its own power and resources. Hence, the present attitude that Lake Sevan can be exploited for business profit and for developing tourism is not consistent with the national and environmental interests of our country. Given that the economic and environmental importance of Lake Sevan, it is necessary to strictly enforce legislation that concerns Lake Sevan's conservation.

Another concerning issue related to living in a healthy environment is how Yerevan has become a hub of urban planning and development. This is particularly relevant because the RA National Assembly is considering the RA Draft Law on the City of Yerevan and a number of related ideas. Issues of particular concern include the rapid growth of urban construction in recent years, the quality of these "achievements," and the violations of human rights that took place in order to ensure that these "achievements" were made. In many instances construction companies seriously breach urban planning and environmental norms and laws and decisions of relevant authorities often remain on paper. In this context it seems meaningless to speak about the protection of individuals' rights.

The 2007 National Security Strategy of Armenia identified that a favourable environment is an important national value. However, this seems far from reality. Some experts have commented that the density of construction work in Yerevan (especially in the city centre) has turned the city into an environmental disaster zone: over recent years, Yerevan has been stripped of two thirds of its green area, leading to major losses in the air's self-cleaning capacity; the city is undergoing desertification at a rapid pace; and ozone levels at close-to-ground level exceed permissible limits by 2.2 times, according to the evaluation of 38 undersigned environmental organizations. The evaluation has also been incorporated in the 2007 UNDP Environmental Protection Report.

Uncoordinated construction work in central Yerevan has resulted in rapid growth in traffic and completely ruined the central part of Yerevan. In addition, Yerevan's seismic risk has also increased. According to specialists, this is not just due to the fact that the city is located in a seismic zone, but also that construction work violates seismic rules and fails to use up-to-date engineering geological maps. This opinion is also shared by Robert Yadoyan, Head of the Laboratory of the Geology Institute of the National Academy of Sciences. According to Mr. Yadoyan, in order to prepare seismic maps for new buildings and structures, building companies

often use 30 year old data, or rely on the data of neighbouring buildings. Moreover, if one considers the great amounts of hollow space under the central part of Yerevan, then it is clear that the negligence of the builders may be very costly for the residents of those buildings. Such concerns became real when a transport junction under construction near the *Russia* retail centre accidentally collapsed and had to be redesigned.

During recent discussions on seismic security at the National Assembly, a representative of the seismic security centre, Rafayel Baghdasaryan, stated that they had no idea where the seismic maps had disappeared to, mentioning that they were never delivered to the seismic centre. One of the participants of the discussion aptly said that “we are living on a box of explosives.”

It is also appropriate here to remember 1988’s devastating earthquake and its tragic consequences for the Armenian people and the country. Although it is now the seventh year that public bodies have been paying attention to issues of seismic security, there have not yet been any positive changes. Could it be that the devastating and tragic consequences of the earthquake failed to teach us a lesson?

PART 3
ANALYSIS OF HUMAN RIGHTS VIOLATIONS BY PUBLIC BODIES

In 2008, as in previous years, complaints filed against the actions of law enforcement bodies – including the police, the prosecutor's office, courts, sectors of the justice system, and prisons – remained prominent. Moreover, the number of applications filed against these bodies further increased in the wake of March 1-2.

It should also be noted that the reporting period was marked by a regrettable 'development': according to numerous citizens, employees were subjected to politically motivated dismissals even though the relevant paperwork looked legitimate. Regretfully, cases of such dismissals were reported not only from the public sector but from the private sector as well. Of course, it is possible that the dismissals in question were legally sound – that is for the courts to decide. What concerns the RA Human Rights Defender's Office is the way that the law has been indiscriminately applied.

Illustrative Case 1

Citizen A.Sh. filed a complaint to the Human Rights Defender's Office stating that in 2004, after winning a contest announced for the position, she was hired as a senior specialist in the Regional Policy Analysis Department of the RA National Assembly Staff's Local Government Administration Unit. Due to the long-term diplomatic appointment of her husband, she stepped down from the post for three years on the condition that, under Article 47(1) of the *RA Law on Diplomatic Service*, she would be given an equivalent job on her return. Her temporary resignation was approved by H. Kotanyan, the National Assembly's Chief of Staff.

When she returned to Armenia in June 2008, she submitted a written application to Mr. Kotanyan, requesting that she be placed in an equivalent job. She claimed Mr. Kotanyan and the National Assembly's Head of Human Resources Department, V. Khachatryan, persuaded her to wait. But they refused to put this in writing. Citizen A.Sh. claims that the approach of the abovementioned officials stems from the political views of her husband R.Kh. and said she had little hope that she would be reinstated. This particular complaint is being investigated.

Illustrative Case 2

At the request of applicant-complainant Karine Harutyunyan, a reporter for *Zhamanak Yerevan* newspaper and former employee of Gladzor University, the Human Rights Defender's Office sent a representative to her unfair dismissal court hearing. Ms. Harutyunyan was challenging her former employer under a number of provisions of the RA Labour Code and the RA Civil Code, claiming that she was dismissed for her political views. The decision of the Yerevan Kentron-Nork Marash general jurisdiction court is still pending.

As mentioned above, it is disturbing that the number of such dismissals is growing and affecting not only employees of public agencies and organizations but also those in private businesses and non-governmental organizations. For example, it is worth mentioning how events surrounding the *Bjni Mineral Water Plant CJSC* have developed since November 2007: on 10th October 2008 the Administrative Court decided that four billion Armenian Drams should be

seized from the *Bjni Mineral Waters Plant CJSC* and within the same month the CECD Service had inventoried and seized the plant's assets. Since it was deemed that the plant could no longer operate, production stopped on 23rd October and the plant was closed down.

The public agencies' discriminatory approach in these matters, which also occurred to similar businesses working under similar conditions, is unacceptable. It is quite possible that the Bjni Plant had engaged in activities which constituted a violation of law. But it is not the Human Rights Defender's responsibility to analyze the factual basis of the legal allegations; the ombudsman's concern is that the law be applied with equal stringency towards all business operators.

The complaint brought by the employees of the *Bjni Mineral Waters CJSC* and the Human Rights Defender's response are covered in the Section *Service for Compulsory Execution of Court Decisions*.

3.1. RA Police

In 2008, the RA Ombudsman's Office received 187 complaints against the police, of which:

- 137 were accepted for consideration
- 15 were denied consideration but applicants received advice about the relevant avenues of legal recourse available to them
- 10 were forwarded to other bodies
- 25 were denied consideration
- None were withdrawn at the request of complainants
- None were still being investigated

The majority of complaints challenged police actions, including: people taken to various police stations without good reason; failure to follow the Criminal Procedure Code requiring that criminal proceedings start only after persons are informed of the circumstances of the crime; testimonies taken from the accused under coercion and threats; failure to issue passports at the citizens' requests.

In 2008 there were far more written and oral complaints filed against the police than in previous years. However, the majority of complaints were communicated orally because many applicants feared the repercussions. Although many of them claimed that they were subjected to violence and torture, they refused to make written complaints. Sometimes they even refused to provide their names and last names as they thought that might lead to the further aggravation of their situation. This bears witness to the fact that there is an unhealthy atmosphere in society, which, in many instances, is caused by the unlawful actions of the police.

As in previous years, there were complaints claiming that the police, after receiving a report of a crime, drafted statements or reports in order to proceed with the case without providing further information to those who reported the crime. However, in such instances, Article 181 states that the one reporting the crime should receive copies of such decisions, as well as further clarification about how that decision could be challenged. The Human Rights Defender discussed this issue in the previous years' reports. Although the practice of handling cases on the basis of a statement has largely been abolished, there were still complaints about this in 2008.

In response to inquiries into the matter by the Human Rights Defender, heads of police pointed to Order 12/354 of the RA General Prosecutor and Minister of Internal Affairs (in 1999), according to which certain reports on crimes are to be reported to heads of police and recorded in the duty station's data registry. However, the Order of the RA General Prosecutor and the RA Minister of Internal Affairs is incompatible with requirements of the RA Criminal Procedure Code. Thus, the Human Rights Defender suggested that the RA Chief of Police review and consider terminating Order 12/354. The following was sent in reply:

"Yerevan's Police Department, regional (marz) Police departments and offices under their authority were instructed to act in line with the requirements of Article 181 of the RA Criminal Procedure Code when considering reports on crimes."

The Human Rights Defender's recommendation to terminate the Order was basically acknowledged. In addition, he was informed that according to clause 187 of the RA Government Decision 1440-N *On Approving the Measures of the 2008 RA Government Activities and Priorities*, within two months of the adoption of the new Criminal Procedure Code a "coherent procedure for admitting, registering, and recording applications and reports on crimes, dealing with other violations and incidents, and taking further action" was envisaged.

As in previous years, in 2008 the Human Rights Defender received complaints claiming that the police held people in custody without reason and subjected them while they were there to cruel, inhuman treatment and torture.

Furthermore, by investigating various cases, the Human Rights Defender discovered that police actions violated requirements of the RA Criminal Procedure Code. For example, according to Part 2 of Article 137 of the Code, an individual detained pre-trial may not be held in facilities where arrested persons are being held, except when his/her transferral to other detention centres is not possible because transport is unavailable. But inspection of the registries of arrested and detained individuals in the RA Police Vagharshapat office (Armavir region) and the Vanadzor office (Lori region) revealed that in many cases detained persons were held in the same facilities as arrested persons – and in violation of the periods referred to by law, sometimes being held for up to 9 days.

Owing to the exchange of correspondence between the Human Rights Defender and the RA Chief of Police, an administrative investigation was conducted in the second half of 2008. This unprecedented collaboration attests to the positive relationships developing between the RA Human Rights Defender's Office and the RA Police. Copies of the administrative investigation's findings have been sent to the Defender – so far, he has received 10 such letters.

Complaints filed against the police that are particularly noteworthy are discussed below.

Illustrative Case 1

In his application to the Human Rights Defender, citizen S.A. stated that on 7th March 2007 his nephew H.I. was arrested by officers of the RA Police Department for the Fight Against Organized Crime. At the time of arrest, H.I. was inside a BMW-X5 car, the registered property of S.A. Following H.I.'s detention, the car was kept by the body conducting the criminal proceedings at the RA Police Department for the Fight Against Organized Crime. The applicant further reported that after an almost six-month long pre-trial investigation, the murder accusations were unable to be sustained and the charges for the murder of Sh.H. by H.I. were dropped, as were the criminal proceedings and prosecution.

S.A. claimed that he had applied several times to the RA General Prosecutor's Office, including to H.Sardaryan, the investigator in charge of the pre-trial examination, requesting the return of his car. He had pointed out to the relevant employees that the car was not recognized as material evidence in the crime and that the criminal proceedings against H.I. had been dropped. However, S.A. noted that there had been neither a clear response nor the return of his car.

On 14th February 2008, the RA Deputy Prosecutor General replied in writing to the Human Rights Defender's inquiries into the case, informing that the case had been reviewed and a respective memo, requesting the return of the car to citizen S.A., had been dispatched. However, about six weeks later, citizen S.A. submitted a second application to the RA Human Rights Defender stating that RA Police Department for the Fight Against Organized Crime was complicating the process of returning his car, notwithstanding the memo of the Deputy Prosecutor General. Moreover, the applicant noted that a similar memo suggesting the return of the vehicle had also been dispatched by the General Investigation Department of the RA Police, since the murder case of Sh.H. had been forwarded to the General Investigation Department of the RA Police for further pre-trial investigation.

Having examined the application with its attached documents it was concluded that there were sufficient grounds to claim that the rights of citizen S.A. had been violated as a result of the actions (inactivity) of the RA Police Department for the Fight Against Organized Crime. Furthermore, such violations are criminal actions under Article 183 of the RA Criminal Code since they constitute an instance of gaining unlawful control of a car, or other means of transport, without the purpose of confiscating it. Considering the fact that the arbitrary actions of officer of the RA Police Department for the Fight Against Organized Crime resulted in the lawful requirements of the RA General Prosecutor's Office and the RA Police General Investigation Department being deliberately denied, the RA Human Rights Defender recommended that an order requesting the return of the car to its rightful owner be issued and that disciplinary action be taken against the officer who committed the violation. The car was subsequently returned to S.A., while the Head of the RA Police Department for the Fight Against Organized Crime was dismissed.

Illustrative Case 2

Citizen A.G. filed a complaint to the Human Rights Defender, stating that at about 10 a.m. on 28th February 2008, after he had parked his car on Yerevan's Sayat Nova Street, the car was taken by the Transport Police to a compound for ticketed cars. According to the applicant, the Transport Police failed to issue him with an official notice of violation before they drove the car to the compound. He also said that he had left his wallet with some money in it in the car's glove compartment.

In response to this complaint, the RA Human Rights Defender contacted the commander of division No.1 of the RA Transport Police to make inquiries. In reply it was stated that the car, owned by M.G., had been ticketed by the Transport Police and held in the compound because the driver A.G. had parked it in a "no parking" zone and failed to correct his traffic violation even after being warned by the police. The Defender was also informed that an internal service investigation was underway to discover what happened to A.G.'s wallet that was left in the car. It was also noted that the car would be released from the compound once ownership documents had been supplied.

On 15th April 2008, A.G. informed the Human Rights Defender's Office that after the intervention of the Human Rights Defender the car was returned to him.

During the year, complaints were also received about the actions (or inactivity) of the Passport and Visa Department of the RA Police and the employees working in passport sections of Police stations. Some of these cases were successfully settled after the RA Defender's intervention.

Illustrative Case 1

Citizen M., a resident of building No.17 in Yerevan's 16th District, filed a complaint to the RA Human Rights Defender, in which he/she claimed that the passport section of Mashtots Police Office in Yerevan had refused his/her request to register him/her at that address even though he/she was the rightful owner of the apartment. Following the letters of the Defender, the head of the Mashtots Office of the Yerevan Police Department informed the Defender (by letter 42-899) that resident M. had been granted registration at the relevant address.

Illustrative Case 2

A resident of Gegharkunik Region (*Marz*) G.H. filed a complaint to the Human Rights Defender's Office, claiming that on 15th February 2008 her daughter had been issued an RA passport but that the passport section in Sevan town police office was refusing to put an 'exit stamp' in it (entitling the holder to exit RA territory) without the formal consent of her husband. The woman explained that her husband was gravely ill and unable to walk to the notary's office to give his consent as required under the established procedure. Following the involvement of the Human Rights Defender, the applicant's daughter was invited to the RA Police Passport and Visa Department on 23rd September 2008 to receive the relevant exit stamp.

The Human Rights Defender paid detailed attention to the infamous brawl at the *Odnoklassniki* cafи. The incident, on 23rd September, led to A.B. being taken to hospital, where he remained unconscious and passed away on 29th September. On 23rd September a citizen visited a police station and confessed his guilt, saying that he had beaten A.B. and caused his death. Many say, however, that the perpetrator of this murder is someone else – they even mention concrete names. To quell the public's doubts on this matter, it is vital that a detailed pre-trial investigation take place so that the crime's instigator is identified. Or, if the hearsay surrounding this case is groundless, then a relevant well-substantiated statement must be issued.

We are most deeply grieved, however, by the unlawful behaviour (including use of violence, torture, and mass arrests) by police officers during the events of March 1-2 in 2008. The Human Rights Defender highlighted these and other important issues in the *Ad Hoc Report* and expects to receive responses to the issues he raised from the relevant bodies.

Citizen Complaints Related to the Events of March 1-2

The Human Rights Defender received many complaints about violations by police officers on March 1-2, accused them of political persecutions of citizens, groundless charges and detentions at police stations, mass arrests and failure to supply legal advice.

Moreover, opposition activists continued to organize small scale non-official events on Northern Avenue (e.g. the so-called "political strolls") for the six months following March 1st and the Human Rights Defender's Office received complaints about police interfering with those events. The Defender was able to make relevant statements about this via the Office's quick response procedure. There were many instances when arguments between police officers and opposition activists escalated into beatings, disorder, mutual verbal abuse, and the taking of persons to police stations. Some complainants attached video-materials to their applications as proof of the unlawfulness of the Police's actions.

It was thought to be standard procedure to take the organizers of Northern Avenue's "political strolls" to police stations in order to "check documents" (the word "document" was used by police officers to refer to the identification process). Not only did the police officers verify the identity of opposition activists but they also took fingerprints and made them write statements – and only after that, after a few hours of detention, were they allowed to go. There appear to be no reasons that can justify this line of action by the Armenian police; the Human Rights Defender has issued statements criticizing this unlawful approach.

The Human Rights Defender's Office also received complaints from the lawyers of individuals whose charges were related to the March 1 events. They claimed that the charges brought against their clients were in violation of the principles of the Criminal Procedure Code. In particular, they claimed that the charges were based entirely on the testimonies of police officers involved in the cases (either as victims or witnesses).

The Human Rights Defender's staff monitored such cases and arrived at similar conclusions. It is necessary to accept that a comprehensive and objective investigation of these criminal cases required that testimonies and statements also be solicited from other eyewitnesses and persons for the very simple reason that in these cases the public and the police officers were opposing parties. Thus, it was absolutely necessary that testimonies of other eyewitnesses were sought and given the same treatment as police officers' testimonies.

It is also worth noting the issue of telephone tapping. In the period following September 2008, even though pre-trial investigations were unfinished and cases were not yet in court, the media published transcripts of wiretapped telephone conversations of a number of opposition representatives (warrants had been issued by the courts according to legal procedure). A conspicuous case was the tapping of Alexander Arzumanyan's telephone conversations (former foreign minister and chief of Levon Ter-Petrosyan's election campaign HQ). It is necessary for the body carrying out the investigation into this to identify who accessed the wiretapped (confidential) material and how they did it.

Some of the most salient complaints related to the events of March 1-2 are discussed below:

Illustrative Case 1

In a complaint to the RA Human Rights Defender, citizen S.E. stated that his/her brother was arrested on 1st March 2008 at 10:00a.m. from the area of Northern Avenue and was then transported to Yerevan's Kentron District Police Station. Later the same day he was transferred to the police station of Yerevan's Malatia-Sebastia District, where he was held, in violation of law, until 5th March. He was charged under Articles 316.2 and 225 and a decision was made to detain him as a 'precautionary measure'.

In response to the case, the Chief of Yerevan's Police Department informed the Human Rights Defender that citizen A.E. had been transferred from the Kentron District Police station to the Malatia-Sebastia Police station at 11.00a.m. for resisting a police officer in Liberty Square on the morning of 1st March, while (on the same day) S.E. had been taken to the RA Special Investigation Service Office at about 1p.m. for questioning and had then been released. The Department Chief also stated that on 2nd March 2008 S.E. was charged under Article 225[1] (2) and Article 316 (2), on 5th March a decision was made to detain him as a precautionary measure, and on 11th April 2008 the part of the S.E,'s case relating to Article 316(1) was sent to the Kentron and Nork Marash District's Court of General Jurisdiction.

Taking the above into account, consideration of this complaint was terminated.

Illustrative Case 2

Citizen A.O. stated in his complaint to the Human Rights Defender that on 1st March he was taken to Yerevan's Kanaker-Zeytun District Police Station from the area adjacent the *Sil Plaza* department store. The applicant claimed that the chief of the Criminal Investigation Unit of that police station verbally abused him, denied him access to a telephone to call to his parents, and denied him access to a lawyer. A.O. also claimed that the statements of various people who were delivered to the police station at the same time were deliberately prepared at different times of the day at the instructions of A. Abrahamyan and that the CIU chief pressured his employee into writing a statement that said citizens were detained "for resisting the police" rather than "on suspicions of resisting the police."

Regarding the application filed by A.O., the head of Yerevan's Police Department informed the Defender that A. O. had been taken to Yerevan's Kanaker-Zeytun Distrcit Police Station at about 8:50a.m. on 1st March 2008 for showing resistance to police officers at Liberty Square. After the relevant information pertaining to his case was prepared, he was taken at 11:30a.m. to RA Special Investigation Service Office for questioning and was later released. The Department chief also noted that the claim of the applicant regarding mistreatment could not be verified with any evidence.

Illustrative Case 3

Citizen N.Ch. filed an application to the Defender complaining that at about 2p.m. on 2nd March he was in the area of the Railway Station when four police officers approached him, kicked him in the legs, pulled him into a police car, and took him to the Yerevan's Kentron District Police Station.

In response to the Defender's inquiries about N. Ch., the Head of the Yerevan Police Department informed him that the registries of Kentron District police station and other police stations had no records of N.Ch. for 2nd March 2008.

Illustrative Case 4

In his/her application, citizen T. M. stated that on 26th March 2008 he/she was taking a stroll on Northern Avenue when at about 6:15p.m. police officers approached him/her, made him/her get into a car and transported him/her to the Kentron District Police station, where s/he stayed for about 3 hours. After that s/he was transferred to the Nork-Marash District Police Station and was released at 1:50a.m the next morning.

With respect to T.M.'s application, the head of the Yerevan Police Department informed the Defender that on 26th March 2008 at 6:30p.m. T.M. was asked to go to the Kentron police station. When, however, it transpired that the citizen lived in Yerevan's *Nor Nork* district, it was decided to transfer him/her to that district's police station and question him/her for 'identification purposes'. The police officers had asked T.M. whether he/she had any questions or complaints and had advised him/her to put any complaints in writing. The response to the Defender also mentioned that T.M. left the police station at about 8:15p.m. the same day.

The police did not start open a case against T.M. and found that there was no need to prepare other documents and T.M. submitted no written complaint or other document to the police. Consideration of this complaint was terminated.

Illustrative Case 5

RA National Assembly MP Zaruhi Postanjyan wrote to the Defender complaining that on 25th August from 10:30a.m. till 12p.m. about 100 individuals wearing police uniforms and civilian clothes attacked peaceful sit-in strikers in Yerevan's Northern Avenue. The attackers pulled and tore apart posters and announcement boards, carrying away the pieces. They also seized a petition and threatened R.K., the person responsible for collecting signatures for the petition. The applicant also claimed that the officers and attackers provided no explanations to her or the other protestors as to what the legal grounds for their actions were. In particular, the peaceful participants of the sit-in strike were not warned about the administrative and criminal procedure laws relating to the confiscation of property. According to the applicant, the police actions amounted to a violation of the human right to freedom of assembly and information – something that the RA Constitution and European Convention on Human Rights guarantee.

In letter No.10/3-2-2434, the RA Police responded to inquires made by the Human Rights Defender. The letter stated that the actions of the police officers were aimed at restoring public order and were supported by the written complaints of a group of citizens. In particular, residents and business managers from No.6 Northern Avenue made joint appeals to the RA President, Prime Minister, Prosecutor General, Chief of Police and Human Rights Defender, in which they complained of constant noise (which continued through the night) and the unhygienic conditions stemming from the regular assemblies and strikes on that spot. Thus, the police officers restored and established public order in the mentioned area. It was also stated that the allegations of citizens being beaten lacked any evidence.

Illustrative Case 6

Citizen Levon Zurabyan complained in an application that at 8:30p.m. on 2nd October 2008 people were beaten and verbally insulted by police officers in Northern Avenue. Some attempts were made to expel the crowd, which resulted in a few bodily injuries. It was also claimed that the police officers were also drunk.

In response to the Human Rights Defender's inquiries into the matter, the head of the Yerevan Police Department informed him that on 2nd October 2008 between 5 and 10:30p.m. an officer of the State Guard Service, tasked with guarding public order in and around Liberty Square, was asked a number of times by tourists and citizens passing by to ensure their free movement through the Avenue. The written response also stated that police officers had made lawful requests to those gathered in the area but received verbal insults toward police officers and

high ranking officials in reply. According to the police, some threw bottles full of muddy water at police officers and the situation escalated into chaos. Despite these developments, the police officers maintained their restraint and, jointly, managed to ensure public order and movement of citizens through the Avenue, without having to rely on the use of force. Concerning the allegation made in L.Z.'s application about police using force to move people down the Avenue toward Liberty Square, the Yerevan Police Department stated that Liberty Square is at the upper part of Northern Avenue and not the downward end and that in any case that part was fully fenced off because of ongoing construction work. The Yerevan Police Department also denied that the police officers had been drunk or that they had used force against the citizens.

Strikingly, many complaints protested about the unlawful behaviour of police officers. However, it was almost always impossible for the Defender to verify these claims since the authorities responsible for dealing with such allegations constantly denied any wrongdoing on the part of the police.

3.2. RA Prosecutor's Office

During the reporting period the Human Rights Defender's Office received 42 complaint-applications challenging the actions and inactivity of the RA Prosecutor's Office, including those of the regional and military prosecutor's offices. Out of these applications:

- 26 were accepted for consideration 4
- were denied consideration but applicants received advice about the relevant avenues of legal recourse available to them
- 3 applications were forwarded to other bodies for consideration
- 9 applications were not accepted for consideration
- None were withdrawn at the request of complainants
- None were still being investigated

In a number of applications applicants stated that the violation of their rights resulted from the inadequate performance of prosecution authorities in their constitutionally inscribed obligation to supervise the process of criminal investigation and prevent unlawful actions by pre-trial investigation bodies. Although the Human Rights Defender is not entitled to do so, applicants often requested that he take control over the lawful course of the pre-trial investigation and assume judicial authority.

Illustrative Case 1

In his/her application, A.T. informed the RA Human Rights Defender that under Article 327 of the RA Criminal Code criminal case No.4600205 was proceeding against his/her son A. (born 16th October 1980) for evading military service in the fall of 2004. The applicant claimed, however, that his/her son had been issued a Russian passport on 20th February 1995 (and was therefore exempt from RA military service).

In response to the Defender’s inquiries in to the matter, the head of the Passport and Visa Department of the RA Police stated that A. did indeed hold Russian citizenship and not Armenian. The Kotayk Region (*Marz*) Investigation Office of the RA Police Criminal Investigation Department subsequently decided (16th August 2008) to close the case No.49200205 and discontinue criminal prosecution of A. since there was no *corpus delicti* in his actions.

This case is a glaring example of how the officers of the prosecutor’s office and the police of Armenia inadequately performed their duties. The prosecutor of the Kotayk Region Investigation Office of the RA Police Criminal Investigation Department and his supervisors, whose responsibility it was to oversee the lawfulness of the pre-trial investigation of case No.49200205 by checking details with the RA Police Passport and Visa Department, decided to clarify whether A. held Russian citizenship only four years after the case had been opened and only after the Human Rights Defender had become involved. Only after that did they contact the consulate of the Embassy of the Russian Federation to inquire when and on what grounds A. and his parents had been granted Russian citizenship.

It should also be mentioned that the Prosecutor’s Office mostly sent timely replies to inquiries made by the Human Rights Defender – there is just one case for which no clarification has been supplied (for 7 months).

Illustrative Case 2

Defense attorney I.P. informed the RA Human Rights Defender in writing that she had taken over the defense of A.M. on 2nd March 2008. Earlier the same day she had met with A.M. in a temporary detention cell, where he had told her that at about 7:30a.m. on 1st March 2008 he was taken to Kentron District Police Station and then transferred to the Mashtots Police station and then transferred to an arrested persons’ cell.

In her complaint, I.P. claimed that the statement of A.M.’s arrest was prepared at 12:50a.m. on 2nd March 2008, in violation of the requirements of Chapter 17 of the RA Criminal Procedure Code. After 4p.m. on 4th March A.B., the investigator of the case, brought charges against A.M. under Articles 225(1), 225(2) and 316(2) of the RA Criminal Code. The mentioned decision, which had been signed by V. Harutyunyan, was submitted to A.M. but he refused to sign it. The defense attorney also informed the Defender that she had requested the immediate release of A.M. since the permitted 72 hours of lawful custody had expired. According to I. P., despite these violations, investigator A.B. brought a court motion requesting A.M.’s further detention. He personally signed the motion, thus violating the requirement of Article 195 (2) of the RA Criminal Procedure Code. At about 8p.m. on 4th March 2008 the court decided to grant the detention motion brought by the investigator. The mentioned decision, however, was appealed at the RA Court of Appeals.

In addition, the I.P. stated that on 12th March 2008 her client underwent an identity parade with witness A.A. According to the applicant, during the parade investigator G.M. did not record the testimony of A.A. Moreover, he left the room briefly (which was not recorded in the relevant documents) and then 15-20 minutes after that, investigator A.B. barged into the room and pressured the witness to testify against A.M. by saying that he saw him committing the crime.

As early as 25th March 2008, the Human Rights Defender recommended that the RA General Prosecutor check the accuracy of the facts stated in the complaint and provide further clarification. So far, however, the Prosecutor General has failed to respond to this inquiry. The RA Human Rights Defender further sent two formal notices to the RA Prosecutor General. To date, there has been no response.

The Human Rights Defender declined to consider a few applications against the prosecutor's office while for others he provided advice about avenues of legal recourse available to applicants. Generally such cases were those applications that challenged the process of collecting evidence and companied about groundless charges.

A host of other applications claimed that the RA General Prosecutor's Office did not properly respond to citizens' applications and, in some cases, failed to consider applications at all, thus violating Article 27.1 of the RA Constitution. The procedure for filing complaints against the Prosecutor's Office's employees to their supervisors is only a paper-based formality; in reality the complaint-applications challenging actions of certain employees of certain divisions of the prosecutor's office end up with those very employees. Thus, the complaints are in the hands of those employees about whom the citizens originally complained. In such conditions any further talk of 'efficient legal protection' becomes meaningless. Moreover, this practice shatters the trust of citizens towards the Prosecutor's Office and encourages them to seek alternative ways of solving the problem.

In 2008, communication between the Human Rights Defender's Office and the offices of the Prosecutor and Special Investigation Service – in contrast to the RA Police Office, the RA Ministry of Defense, and a few other government agencies – was unsatisfactory. This was so, primarily, not because these bodies failed to respond to the Defender's correspondence but because they failed to respond clearly to the questions raised by him and failed to take respective action. There is an expectation that these bodies will respond to both the formal part and the contextual part in such correspondence – after all these bodies have the duty to act for the benefit of individuals and society. In the end, each and every public officer must strive to ensure the right of individuals to efficient legal defense.

3.3. Special Investigation Service

The RA Special Investigation Service (SIS) was established following the adoption of the *Law on Special Investigation Service* on 28th November 2007, according to which the SIS is vested with the exclusive right to carry out pre-trial criminal investigations into charges brought against senior officials of the legislative, executive and judicial authorities, persons employed by the special state service who are exploiting their office or committing other crimes, as well as persons who are charged with criminal offences under electoral law.

In 2008 the Human Rights Defender's Office received 18 complaint-applications challenging the activities of the SIS, out of which:

- 11 applications were accepted for consideration
- 3 were denied consideration but applicants received advice about the relevant avenues of legal recourse available to them
- None were forwarded to other bodies for consideration

- 4 applications were denied consideration
- None were withdrawn at the request of complainants
- None were still being investigated

It is noteworthy that the majority of these complaints were communicated verbally. As already mentioned, this can be explained by people's fear of public bodies and, particularly, of the police, as well as by their fear that the filing of a written complaint may have adverse effects on them.

Complaints against the SIS indicate that employees of the Service made people testify under threats and torture, coerced them to write down false testimonies, and violated requirements of the RA Criminal Procedure Code on conducting investigations.

When the Human Rights Defender tried to follow-up complaints, the relevant officials kept denying the allegations referred to in the applications. However, under RA legislation, the Human Rights Defender does not have the power to pursue disclosure of factual circumstances by any other means.

Applicants also complained that they were accused of crimes and placed in detention as a precautionary measure, as well as being coerced to provide false testimonies against others.

Illustrative Case 1

In a complaint-application to the RA Human Rights Defender, citizen G.A claimed that SIS officers and the police forced him to give false testimony against M.M. and others by using physical and psychological pressure. According to the applicant, he sustained serious bodily injuries as a result of the beatings. He also stated that since he had testified under coercion and threats, his testimonies should not be regarded as legitimate evidence in court.

The replies sent by SIS Office were short and succinct, with little attention being paid to the need for clarification on the issues in the complaints – responses merely stated that the allegations of complainants did not correspond with reality. The replies are, thus, unconvincing and disturbing.

Illustrative Case 2

Defense attorney I.P. filed an application to the Human Rights Defender's Office in which she stated that her client A.S. had been brought handcuffed to an identity parade, thus constituting a violation of Article 221(3) of the RA Criminal Procedure Code as well as being a substantial breach of accepted investigation procedures. Article 221(3), however, states that: "A person subject to identification should be brought before the identifier together with at least three other persons of the same sex, who look and are dressed as similar as possible."

In reply to the Human Rights Defender, the SIS Chief stated that the accused (A.S.) had been brought to the identity parade by T.Kh without handcuffs; however, when he was recognized by the witness as the person who had hurled verbal abuse and stones at police officers performing their duties at the intersection of Grigor Lusavorich and Paronyan streets during the public disturbances of 1st March 2008, he purposefully raised his hand to show the handcuffs which had been deliberately hidden under his long-sleeved shirt – a fact that was included in the identity parade records.

The following also deserves special consideration:

On 1st and 2nd of July 2008 the media published materials uncovering a special investigation ordered on 5th March by Andranik Mirzoyan, SIS Chief and a 2nd level justice advisor. The full text of the investigatory assignment was also published.

Thus, it was revealed that on 5th March 2008, guided by Article 191 of the RA Criminal Procedure Code, A.G. Mirzoyan tasked the Prosecutor of Vayots Dzor region (H.S. Palyan), the Prosecutor of Gegharkunik region (V.T. Margaryan), and the Prosecutor of Aragatsotn region (H.H. Zakoyan) with conducting operational-investigation procedures and interrogations within the framework of criminal file No.62202608, which had been opened under Article 225(3) and Article 235(2) of the RA Criminal Code in connection with the 1st March 2008 mass disorders in the area of the Yerevan Mayor's Office and streets of central Yerevan. The title of the SIS Chief's communication was "Request for Investigation under Article 191 of the RA Criminal Procedure Code". Apparently, he was referring to part 3 of Article 191 of the Criminal Procedure Code which stipulates that in cases when it is necessary to carry out investigations in different places, the investigator shall have the right to perform these activities personally in those places or to delegate the implementation of them to the local investigator or to the local investigation office.

The jurisdiction of the SIS Chief is set out in Article 16 of the *RA Law on Special Investigation Service*. Given part 26 of Article 6 of the RA Criminal Procedure Code and the rationale of the *RA Law on Special Investigation Service*, the SIS Chief is also vested with the powers of the head of an investigation department referred to in Article 193 of the RA Criminal Procedure Code. Thus, under part 2 of Article 193 of the *RA Criminal Procedure Code*, the SIS Chief did have the authority to issue such a request, but to the local investigator or to the local investigation office and not to the prosecutor of Vayots Dzor. Notwithstanding his use of the word "please" in the second paragraph of the letter, the communication cannot be viewed simply as a request for the prosecutor's assistance. This is evident from its title and especially its last sentence. Moreover, the RA Criminal Procedure Code does not even provide for the possibility of making such requests to prosecutors. In addition, according to Article 5 of the RA Constitution, central and local government bodies and their officials have the authority to engage in activities for which they have a respective mandate under the Constitution and county's laws.

The exact content of the ordered investigation has sparked differing opinions. However, it is inconceivable how the general investigation into the relevant criminal cases could have been clarified by asking questions such as "did the rally participants realize that Armenia's instability could benefit other states?" or "were their protests against the Russian presence in Armenia?". Similarly, it is difficult to see how gathering information on and confiscating property owned by family members of the leaders of Levon Ter-Petrosyan's election campaign centres and other individuals who participated in the rallies, as well as the questioning of car and minibus drivers who provided transportation to rally participants, could solve the crimes being investigated.

One document, attached to the file of Case No.62202608, caused both surprise and embarrassment – there was a letter signed by K.T., SIS investigator for serious crime, that was sent to the head of the regional Ashtarak office of the RA Real Estate State Cadastre. The message read: "Enclosed is the decision to confiscate a private cattle farm located on the Echmiadzin highway of the town of Ashtarak. The property is registered to E.Sh. but is actually

owned by M.M., who is accused in criminal case No.62215908, the investigation of which is being handled by the SIS."

The investigator clearly violated provisions of the RA Constitution and the RA Criminal Procedure Code – it is unquestionable that within the framework of one criminal case the property of a third party with no connection to the case can not be confiscated for the sole reason that the property was actually owned by the person accused of the crime.

3.4. Courts

In 2008 the Human Rights Defender's Office received 16 complaints challenging the judgments, verdicts and decisions of courts. Out of 16 complaints:

- None were accepted for consideration
- 2 were forwarded to other bodies for consideration
- 3 were denied consideration but applicants received advice about the relevant avenues of legal recourse available to them
- 11 applications were denied consideration

3.4.1. Monitoring of Court Hearings and Court Activities

The purpose of monitoring court hearings was to reveal violations of court procedures or gaps in the court administration which may lead to violation of human rights.

The behaviour of a judge during a trial should in no way raise doubts about his/her impartiality. However, the entry and exit into a courtroom of judge and state prosecutor through the same door (as in the Court of General Jurisdiction in Kentron-Nork Marash districts of Yerevan, judge R. Apinyan) would cause an objective observer to have doubts about the impartiality of the justice administration.

At another hearing at Yerevan's Criminal Court (judge M. Mnatsakanyan), the observers from the Human Rights Defender's Office observed how the lawyer of one particular defendant was bringing motions to the court and mentioning in each of them (as he/she also did in the defense speech) that his/her client was brought handcuffed to an identity parade, which constituted a violation of Part 3 of Article 221 of the RA Criminal Procedure Code, according to which "a person subject to identification should be brought before the identifier together with at least three other persons of the same sex, who look and are dressed as similar as possible". At the trial the lawyer also mentioned that his/her client had received a gunshot wound in his foot but had not received medical aid for 5 days. If this allegation had been verified then it could have been concluded that the right of the accused to receive medical aid was infringed.

The staff of the Human Rights Defender also investigated the **decisions of courts that imposed detentions and extended detentions on persons accused in the March 1-2 criminal cases**

to see how they complied with the European Convention on Human Rights and the case-law established by the European Court.[8]

After studying the court decisions about the type of precautionary measures applied to a number of persons accused in criminal case No.62202608 (handled by the RA Special Investigation Service), the following conclusions were made:

1. Chapter 2 of the RA Criminal Procedure Code defines concepts such as lawfulness and equality before law and court, and a fair contest in criminal trials. From this perspective, the decisions studied did not visibly reveal the grounds and reasons stated in the defense and prosecution motions. Moreover, in many cases the court based its decision on the arguments stated in the motion of the pre-trial body, without due consideration of the motions of the other party. Nevertheless, a court trial must be 'competitive' in nature and continually ensure equality between parties (i.e. the prosecutor/police and the detained person). The detainee shall have the right to be present, if need be, together with his/her lawyer, and state his/her arguments.

In *Garcia Alva v Germany* the applicant was denied access to the investigation file, which contained testimonies of a police informer. The European Court decided that based on Article 5(4), the court had to meet the requirements for fair trial under Article 6. In particular, the detainee should have been given the opportunity to study the findings of the prosecution and present his comments about them. The European Court held that though it was still possible that certain information had to be kept secret "in order to prevent the suspect from tampering with evidence and undermining the course of justice. However, this legitimate goal cannot be pursued at the expense of substantial restrictions on the rights of the defense." Thus, the information necessary to determine whether detention was legitimate had to be provided to the defense lawyer according to due legal procedure.

2. In many cases covered by the monitoring study the detention motions brought by the investigation bodies were repetitive, consisting of mere narrative. These motions typically stated that the accused "took part in illegal mass meetings organized by Levon Ter-Petrosyan, a runner-up presidential candidate in the 19th February 2008 Presidential Election, and a group of his supporters, and, being directly guided and influenced by them, participated in the creation of mass riots on March 1-2 in the city of Yerevan, which were accompanied with large-scale violence, fighting, arson, destruction and damage of public and private property, looting, armed resistance to representatives of the authorities, use of weapons, explosives, and other articles and items adapted to serve as weapons as well as murder". Generally, the decisions of the courts to impose detention as a precautionary measure or to extend the period of detention relied purely on the mentioned grounds of the prosecution's motions, whereas the court hardly ever made any reference to defence's motions. The decisions, moreover, were based on the above-mentioned general statement and failed to identify the concrete actions of a particular accused person. For example, one court overlooked the arguments of an accused and his defense lawyer who objected to the prosecution's motion on the grounds that the charges were baseless and that the accused did not participate in acts of arson but simply threw a police uniform out of a car (decision of the Kentron-Nork Marash court on applying a precautionary measure of detention to A.K., 12th March 2008).

[8] This was briefly covered by the Defender at a press conference on July 11, 2008.

It should also be noted that although court decisions often contained the wording “after hearing the defendant”, no part of the defendant’s speech was cited in the decisions (see also decisions of 7th March and 30th May 2008 to impose detention on Arthur Manveli Margaryan and extend the detention period of Arthur Manveli Margaryan; the decision of 15th March 2008 to impose detention on Hovhannes Ashoti Mkhoyan). There were even, however, decisions that did not even contain that phrase (see the decision of 10th March 2008 of Kentron-Nork Marash district’s Court of General Jurisdiction to impose detention on Arthur Lyoviki Petrosyan).

The concluding parts of the court decisions often contained the following statement: “if the accused is released from detention, he/she may hide from investigation bodies, impede the course of the pre-trial investigation or court trial, commit criminal acts, and evade criminal responsibility and the serving of his/her sentence”. With regard to this conclusion, however, the court rarely considered the arguments of the defense and did not go through every point of their arguments. Moreover, such a statement is nothing more than a quotation from the RA Criminal Procedure Code, which is repeated in all the decisions without further justification.

Thus, it seems that the principle of fair contest was not operating since the court only deemed the arguments of the prosecution to be well grounded.

In the case of *Patsuria v Georgia,* the European Court decided that the national court, instead of performing its duty to give convincing grounds for the extension of the detention of the individual, based its decision on prescribed and abstract circumstances. The Court found that the decision of the national court violated the rights of the applicant under Article 5(3) of the Convention.

In the case of *Dolgova v Russia,* the European Court held that the national court decisions to extend the detention of the applicant had no true connection with her personal circumstances. The Court of General Jurisdiction used the same summary formula to extend the detention of all the 39 defendants, although the defense had asked for individual consideration of each detainee’s situation (see paragraph 49). The Court held that this approach was inconsistent with the rights guaranteed under Article 5(3) of the Convention.

While the RA Criminal Court of Appeals’ decisions did include excerpts from defense complaints, they still focused on “the nature and gravity of the alleged criminal act (i.e. that the person was being charged for a serious crime that was punishable by imprisonment from 5 to 10 years), which increased the likelihood that the defendant would evade criminal responsibility; thus, there were sufficient grounds to believe that if the defendant were released from detention, he would commit a criminal offence, and therefore, in order to prevent this and maintain public order, detention was necessary.” (See the 20th March 2008 Decision of the RA Court of Criminal Appeals regarding the Judicial Review of the 10th March 2008 Decision of Yerevan’s Kentron-Nork Marash Court of General Jurisdiction to impose detention on A.B.).

There are decisions in which the court’s grounds for imposing precautionary detention are that “the maximum sentence for the offence is imprisonment that exceeds one year” (see the 10th March 2008 Decision of Yerevan’s Kentron-Nork Marash Court of General Jurisdiction to impose detention on A.P., or 12th March 2008 Decision imposing precautionary detention on A.K.).

In the case *Ilijkov v. Bulgaria* (26 July, 2001), the detention of the applicant was justified by the gravity of the crime. The national courts were built on law and practice that assumed that detention should be applied for offences whose maximum punishment exceeded a certain

threshold (according to the law which was effective in June 1995, this was a 10 year prison sentence, which afterwards became a 5 year prison sentence). The European Court of Human Rights decided that any system of prescribed preliminary detention was inconsistent with Article 5(3) of the Convention.

Thus, courts have to be particularly careful to justify each point of a detention or remand in order to make sure that time spent in detention does not exceed reasonable limits. For each case, the concept of what is reasonable varies; it is, therefore, impossible to make abstract assessments. (W. v. Switzerland, 26 January 1993)

3. The next finding from the Defender's staff's court case monitoring was that events being described in the prosecution's motions were often vague. For example, "...he refused to respect the lawful requirement of police officers from Yerevan's Shengavit police station, who were patrolling the area and wished to inspect the car; he refused to allow officers to inspect the baggage compartment of the car; he created confusion and resisted the representatives of authorities performing their duties."

Such wording gives rise to a number of questions: who were the police officers that were patrolling the area (their names, last names, titles and so on)? What were the grounds for requesting an inspection of the car's baggage compartment? (It should be noted that according to Article 6 of the RA Criminal Procedure Code, the concept of "living place" also incorporates a privately owned car, as well as the personal office of an individual and his/her company car.) In most cases, the investigation's motions failed to specify the place and/or time of an alleged criminal act and the identity of the police officers.

4. It should be noted that from the very beginning, detention was the only precautionary measure enforced by court; alternative measures, including the use of bail, were not used.

According to the criteria of the European Court of Human Rights, when a person is brought to a "legally assigned court or other official", it shall be the responsibility of the judge or other official to consider under Article 5(3) the grounds for continuing to hold the person in detention as well as the grounds of the defense to release the person. The court has decided that continued detention in a particular case may be justified only in cases when there are "clear indications of a genuine public interest which, notwithstanding the presumption of innocence, outweighs the right to liberty" (*Punzelt v. the Czech Republic, Patsuria v. Georgia*). Thus, arguments used to justify detention must be relevant and sufficient in order to prove that detention has not been unfairly continued and does not conflict with Article 5(3) (*Wemhoff v. Germany,* 27th June 1968). Subsequently, it is presumed that release of a person is preferred unless there are serious reasons to justify continued detention – and these grounds must remain valid for the entire course of pre-trial proceedings.

In the case Patsuria v. Georgia the court held that the national court, while it was considering continued detention of the applicant, needed to have serious grounds not only to show that there were "reasonable doubts" but that there were also other elements relevant to public interest (see, inter alia, also Lavents v. Latvia, 11.28.2002).

The European Court held that the reasons for detention must be decided for each case separately, based on the merits of the particular case (*Punzelt v. the Czech Republic*). The Court noted that in the initial phases of a case the national court has the right to assume reasonable suspicion that the defendant committed the crime – and this is a legitimate basis for extended

detention. However, after a certain period of time this argument is no longer considered sufficient for continuing to hold a person in detention (Neumeister v. Austria, 27th June 1968).

In the case *Patsuria v. Georgia* the court held that neither at the time of considering a detention on remand nor at the time of extending the detention did the national courts consider the use of other precautionary measures and such an oversight by the national courts was another indication of the ignorance of the requirements of Article 5(3) of the Convention (see Dolgova v. Russia, 20th March 2006, paragraphs 47, 48 and 50).

In *Dolgova v. Russia* the Court emphasized that when a decision has been made as to whether a person will be released or held in detention, it shall be the duty of the authorities to consider alternative measures for ensuring her appearance at court (Dolgova v. Russia, 23rd April 2006, paragraph 47).

Grounds on which release from detention can be declined and still be acceptable in the context of Article 5(3) include failure to appear at a trial, tampering with the course of justice, the threat of new offences being committed by the defendant, and the need to ensure public order. The risk that the defendant will not appear at a court trial cannot exclusively depend on the severity of the pending punishment.

Moreover, the risk that a defendant's release from detention shall result in him obstructing the course of justice must be grounded (StogmЪller v. Austria, 10th November 1969); the risk cannot be generalized – there must be evidence to justify the claims that such a risk exists. Furthermore, the threat that a new offence will be committed needs to be shown to be real by paying due attention to the history of the defendant and his/her personal characteristics. There is also a need to clarify whether any previous convictions of the accused are comparable with the case in question (in terms of type of crime and its seriousness).

With respect to assessing the threat to public order, the Court held in various cases that such grounds for extending detention can only be taken into consideration in extreme circumstances. It is insufficient to consider merely the gravity of the crime. This justification for detention can only be used in cases when a judge, or other official with the right to decide about detention, bases his/her decision on clear facts that demonstrate that the release of the accused would lead to public disorder (*Letellier v. France*).

In our view, at the time of considering detention or extension of detention, the courts of Armenia must abide by the criteria set out in the Convention and the decisions of the European Court of Human Rights, otherwise, if and when these cases are appealed to the European Court, they will be recorded as human rights violations and shall damage the international and financial standing of the Republic of Armenia, thus, also having an impact on national security.

In regard to assigning alternative precautionary measures, Part 6.3 of PACE Resolution 1609 states that: "The same lack of judicial independence is also reflected in the fact that the courts do not appear to question the necessity of keeping people in detention pending trial and generally respond favorably to requests by the prosecutors without properly weighing up the grounds for this, as required by Article 5, paragraph 3, of the European Convention on Human Rights."

It should be noted, however, that in the last months of 2008 there were instances when the RA courts granted motions for bail as alternatives to extending detention. Thus, on 28th November 2008, the RA Court of Cassation considered the cassation complaint of accredited lawyer Ara Zohrabyan, advisor to *Pizza di Roma* restaurant cashier A.Gh, against the 1st July detention decision of the Criminal Court of Appeal. The RA Court of Cassation held that the

Criminal Court of Appeal's decision should be declared void and that the case should be remanded back to the same court for renewed investigation.

Yerevan's Kenton-Nork-Marash Court of General Jurisdiction decided on 9th June 2008 to partially grant the investigator's detention motion, extending the detention of Anush Ghavalyan by 20 days. The court also declined to grant the motion of A. Ghavalyan's legal advisor to use bail instead of detention. This decision was further appealed to the RA Criminal Court of Appeals, which decided on 1st July 2008 not to review the appeal.

During 2008, RA courts also passed verdicts of acquittal on cases related to the events of March 1-2. On 3rd October 2008 the Criminal Court of Appeals affirmed the 4th July 2008 verdict of Kentron-Nork Marash Court of General Jurisdiction court, which recognized Hamlet Daviti Abrahamyan not guilty under Article 316(1) of the RA Criminal Code and acquitted him. In addition, the court decided to lift the precautionary detention of H. Abrahamyan and immediately released him from the courtroom.[9]

Protection of Lawyers

The Human Rights Defender also received complaints from lawyers, whose concerns related to the protection of their rights and the external constraints imposed upon exercising those rights. Some of these complaints were not considered by the Human Rights Defender, since according to Article 7 of the RA *Law on Human Rights Defender*, the Defender has no right to intervene in court proceedings. For example, one complaint dealt with the behaviour, actions or inactivity of a judge which led to the infringement of the rights of his/her client. In this particular case the Human Rights Defender decided to dismiss consideration of the complaint.

Some advocates complained in their applications that courts refused to provide them with documents or information. These complaints were accepted for consideration by the Defender and relevant decisions and responses were later made. For example, a lawyer informed the RA Human Rights Defender that he/she applied to Yerevan's Criminal Court requesting permission to access materials of his/her client's criminal file and allow him/her to make photocopies; however, to date he/she was denied the right to access and copy the case materials. The RA Human Rights Defender requested that the Chairman of Yerevan's Criminal Court provide information about this complaint. The judge of this court, K. Ghazaryan, responded to the Defender stating that the lawyer had not gone to the court to collect the materials (as legal procedure requires). Then, the applicant informed the Human Rights Defender that he/she had already collected the relevant copies from the criminal case file. Thus, the problem raised in the application was solved and the rights of the lawyer were reinstated.

In the second half of 2008 there were reports of lawyers formally involved in criminal cases leaving courtrooms in protest.

The September issue of *Pastaban*, the monthly magazine[10] of the RA Chamber of Advocates, posted an editorial entitled *They have given a challenge to lawyers* by the Chairman of the RA Chamber of Advocates, Ruben Sahakyan, in which he stated that the number of complaints from lawyers against the courts had recently grown. The Chairman wrote that "investigations by the Board of the Chamber have established that the complaints, to a large extent, were well grounded

[9] See www.court.am
[10] www.pastaban.am

and that they arose from certain judges' arbitrary actions that seriously violated the most basic rights of the parties in the trial. The consequence of this is that not only the applicants and defendants think they are unprotected but that the lawyers feel the same way too, finding themselves in deadlock with no way of restoring the infringed rights." He also mentioned that "The RA Prosecutor's Office has launched a new campaign against defense lawyers. The employees of the Prosecutor's Office think it's their right to reprimand defense lawyers and make remarks which are neither appropriate nor relevant. Moreover, they dare to speak publicly about this on the media.... They have opened criminal cases against two defense lawyers and the pre-trial bodies, overlooking the law, have assumed the role of judge… The employees of the Prosecutor's Office seem to have "forgotten" that they are only one party in a trial. They are still governed by the old Soviet era – they believe that they have a competitive advantage over the defense and thus if they are speaking on behalf of the system, they are entitled to submit ultimatums to the Chamber of Advocates." In the final paragraphs of the editorial, the Chairman stated that "The Board of the Chamber is ready to withstand this challenge and promises support to all those advocates who will take balanced and lawful steps to defend their infringed rights."

According to the webpage of the RA Cassation Court, on 28th October 2008 Yerevan's Kentron-Nork Marash Court of General Jurisdiction accepted the criminal case being brought against defense lawyer Mushegh Shushanyan, who was charged under Part 1 of Article 343 of the RA Criminal Code with disrespectful attitude toward court, failure to follow the instructions of the judge, and for leaving the courtroom without the chairman's permission during a trial in which he was representing the defense.[11]

The concerns and conclusions of the Chairman of the RA Chamber of Advocates are worrying – particularly when viewed from the perspective of ensuring the right to fair trial.

3.5. The Real Estate Cadastre State Committee under the RA Government

In 2008 the Human Rights Defender's Office received 26 complaints challenging the activities of the State Cadastre, of which:

- 19 were accepted for consideration
- 1 was denied consideration but the applicant received advice about the relevant avenues of legal recourse available to them
- None were forwarded to other bodies for consideration
- 5 applications were denied consideration
- None were withdrawn at the request of complainants
- 1 was still being investigated

In 2008 the majority of applications complained about the following activities (inactivity) of the RA State Committee of the Real Estate Cadastre and its district offices: refusals to register property for various reasons, refusals to register rights recognized through enforced court

[11] www.court.am

verdicts, refusals to register rights if discrepancies were found between previous and newly collected property measurements (taken for the registration of the property right), and refusal to grant adequate information.

It is worth examining in more detail Cadastre refusals to register rights that had been endorsed by court verdicts on grounds that the verdict did not comply with a particular law.

Illustrative Case 1

A resident of Yerevan filed a complaint stating that a court verdict of 2nd February 2007 (by the RA Civil Court of Appeals, Marash district office of the RA Real Estate State Cadastre) requested to register his/her property rights. S/he went to the cadastre office a number of times to request that his property registration be completed; however, his/her request was refused on the grounds that the land at the mentioned address was occupied without a lawful permit and was used with unauthorized construction, whereas according to RA Government Decision No.719-N of 7th April 2005, registration of property rights shall be denied for urban land that is occupied without permission. The Cadastre office also informed in writing that the verdict of the court was inconsistent with Articles 20 and 43 of the Law on State Registration of Property Rights and Article 188 of the RA Civil Code.

Taking into consideration that the person was involved in a compulsory process of execution, a letter was sent on 2nd April 2008 to the RA Chief Enforcement Bailiff to request clarification on the non-application of administrative procedure referred to in Article 72 of the RA *Law on Compulsory Execution of Court Decisions.* In response, the head of the Marash district office of the RA State Cadastre sent a copy of letter No.171 dated 18th March 2008 in which he stated that the applicant's rights to the property were formally registered.

Illustrative Case 2

A resident of Yerevan filed an application to the RA Human Rights Defender claiming that the Erebuni district office of the State Committee of the Real Estate Cadastre refused to formally register his/her property on the grounds that he/she could not provide an official plan of the property, which the applicant claimed did not exist. S/he had inherited the property from his father, who had been issued Certificate 2-83, dated 27th January 2008, by the Armenian Republican Union of Gardeners' Consumer Cooperatives for a plot of land with an area of 670 square metres, with a half-built structure on it. S/he claimed that the cadastre office's refusal to register the property was unlawful particularly because the office did not refuse to register the rights of other citizens in similar situations and with property found in the same locality.

The citizen also complained at the Yerevan Mayor's Office, where s/he was informed that the master-plans for the Nor Kharberd region were unavailable and thus, in the absence of such plans, the Erebuni district office of the Real Estate State Cadastre was still authorized to register property rights. It can be concluded that the arbitrariness of two government agencies resulted in this particular applicant being unable to register his/her right to property which was legally bequeathed to him.

In order to clarify these matters, the Defender made inquires with the Mayor of Yerevan and the Erebuni district office of the State Committee of the Real Estate Cadastre. Consideration of the case is still in progress.

3.6. Bodies of the RA Ministry of Justice
3.6.1. Service for the Compulsory Execution of Court Decisions

In 2008 the Human Rights Defender's Office received 41 complaint-applications against the Office for the Compulsory Execution of Court Decisions (CECD), out of which:

- 30 were accepted for consideration
- 6 were denied consideration but the applicants received advice about the relevant avenues of legal recourse available to them
- None were forwarded to other bodies for consideration
- 3 applications were denied consideration
- 1 was withdrawn at the request of the applicant
- 1 was still being investigated

As in previous years, so in 2008 the complaint-applications against the CECD Service referred to the late execution of court acts, unnecessary delays, and inadequate and varying interpretations of the court decisions. The RA Human Rights Defender in his 2006 and 2007 reports drew attention to the fact that when the 'debtor' was a state body or public official, the administrative responsibility mechanism used by the compulsory execution enforcers was inactive.

There were many cases when the RA State Committee for the Real Estate Cadastre refused for months, or even years, to register rights established by lawful court decisions; instead of handing the relevant case to law enforcement bodies, the compulsory execution enforcers continued to make lengthy inquiries to certain offices of the Cadastre about the court decision, giving reasons why the decision should not be enforced.

The following complaints reveal the scope of activity (inactivity) of the State CECD Service.

Illustrative Case 1

A resident of Yerevan stated in his/her application to the RA Human Rights Defender that according to the 3rd October 2008 verdict of the RA Civil Court of Appeals, a sum of USD 1,662 was to be exacted from M.P. in favour of G.E. He/she had handed the writ of execution to the CECD Office but the writ's requirements had not been implemented by then. In addition, he/she stated that the three cars owned by M.P., although they had been confiscated, were not being tendered for auction.

Thus, the Defender wrote to the RA Chief Executive Bailiff to requested clarification on this matter. Consideration of the complaint is in progress.

Illustrative Case 2

An applicant mentioned in his/her complaint to the RA Human Rights Defender that on 18th April 2006 the Arabkir and Kanaker-Zeytun district Court of First Instance had decided to authorize the confiscation of a sum of money equivalent to USD 2,200 from N.Gh. in his/her favour. The citizen complained that the verdict of the court had not been enforced and asked for the assistance of the Human Rights Defender in the matter.

The Head of the Yerevan Office of the RA CECD Service stated in a letter dated 9th January 2007 that on 24th May 2006 the Office ordered a search of N.Gh. and his/her property, as a result of which no property or financial means were found that could be paid to the creditor. If, at a later date, such means are found, the enforcement of the execution order shall be resumed. A later letter by the enforcing bailiff informed the Defender that the execution order had been enforced – the money owed has been paid to the creditor. The complaint was withdrawn from consideration.

Illustrative Case 3

A resident of Yerevan stated in his/her application to the RA Human Rights Defender that he/she had been issued an execution order for the enforcement of the verdict of the RA Civil Court of Appeals (22nd February 2007). He/she complained that although the execution order was submitted to the CECD on 15th March 2007, no steps had yet been taken to ensure enforcement of the court verdict..

The head of the Yerevan Office of the CECD Service stated in a letter (dated 30th August 2007) that, according to the execution order issued by the RA Civil Court of Appeals on 13th March 2007, the Yerevan Mayor's Office was legally obliged to fulfil its responsibility under clause 1.3 of a property sales contract (dated 6th February) and lease the plot of land in question to the applicant and grant him/her preferential right of purchase (plans were attached to the sales contract and were an indispensable part of that contract).

Enforcement proceedings were launched on 19th March 2007, and on 23rd March a decision was made to legally oblige the debtor to fulfil certain obligations. On 12th June a note was sent to the Yerevan Mayor's Office for further clarification but no reply followed. On 19th August a second note was sent and this time received a reply – it stated that the architecture and urban planning section of the Yerevan Mayor's Office had discussed the issue with the applicant and suggested that an equivalent 10-15 square metre area of land be granted to him for construction purposes in an area outside inner ring of Yerevan centre. Later the Yerevan Mayor's Office suggested that the applicant settle on a tri-partite compensation scheme, according to which the building company would allocate an equivalent living space to him in an apartment block to be built in the area or, otherwise, to pay the financial compensation.

However, according to the applicant, no such offers had been made. Thus, 14 months after the court verdict was announced, the staff of the CECD Service had failed to take any steps to ensure that the execution order was enforced and completed within the specified period; they showed no regard for the requirements of Article 72 and 72.1 of the RA Law on Compulsory Execution of Court Decisions.

The Defender's examination of the citizen's application established that the head of the Yerevan CECD Office, through his neglect of the requirements of the *RA Law on Compulsory Execution of Court Decisions*, had contributed to the Yerevan Mayor's non-compliance with the court verdict. In particular, the compulsory execution bailiff:

- took no measures to enforce the execution order in a timely, complete, appropriate way;
- failed to apply administrative penalties against the Mayor of Yerevan (an official person) for deliberate failure to fulfil the decision to be enforced via the compulsory execution procedure (Article 72 of the *Law on the Compulsory Execution of Court Decisions*);

- failed to request that law enforcement bodies charge those persons deliberately failing to enforce the court verdict.

Therefore, the failure to implement the compulsory execution duties prescribed by law resulted in the rights of citizens to fair trial – referred to in Article 19 of the RA Constitution and Article 6 of the European Convention on the Human Rights and Fundamental Freedoms – being violated. The Human Rights Defender concluded that the actions (inactivity) of the Yerevan CECD Office constituted a legal violation. Nevertheless, still no steps were taken to ensure that the court verdict was enforced.

As a result of considering citizens' claims that execution orders are not enforced when the 'debtor' party is a representative of a central or local government, the Human Rights Defender wrote to the RA Minister of Justice suggesting that he study nine enclosed complaints and take necessary action to eliminate the legal violations. He also requested that he be kept informed of developments. In his letter of 4th June 2008, the RA Justice Minister informed the Defender that by Instruction No.1972 of 3rd June an internal investigation was underway and that the findings of that investigation would also be passed on to him.

The RA Chief CECD Bailiff reported, in a communication dated 13th September 2008, that two of the nine complaints had been successfully settled. In particular, upon the order of the RA Chief of Police (No.1954-A, dated 28th August 2008), citizen V.M. was reinstated as inspector of the RA Police Goris Registration Inspection Team, which had been the requirement of execution order No.03-176 issued by the RA Civil Court of Appeals. In addition, it was stated that the State Committee of the Real Estate Cadastre had registered the rights of a citizen arising from a court verdict – i.e. the state registration of the property of L.Gh. was finally recognized on 15th August 2008. The message also noted that the Defender would be kept informed of any more developments in the enforcement of the court decisions of the remaining seven complaints.

Illustrative Case 4

483 employees of the *Bjni* Mineral Water Plant CJSC and the company's lawyer filed an complaint-application to the RA Human Rights Defender in which they challenged the actions of the representatives of the CECD Office. They complained that on 23rd October 2008 the bailiff (enforcer) of the CECD Office, without required authorization from the RA State Revenues Committee, entered the Yerevan warehouse of *Bjni* Mineral Water CJSC and its manufacturing plant in the town of Charentsavan with a team of bailiffs (enforcers) and individuals wearing unidentifiable uniforms and black masks, sealed the office space, and seized the rolling stock of the company. As a result, the employees faced forced redundancy.

In reply to the Defender's inquiries, the RA Chief Enforcing Bailiff wrote:

"According to the Execution Order No.VD/0551/08, issued by the RA Administrative Court on 4th October 2008, state budget dues of AMD 4,067,201,600 and state fines of AMD 81,344,032 were to be confiscated from the *Bjni* Mineral Waters CJSC. Thus, on 20th October 2008 the Kotayk regional CECD office launched enforcement proceedings No.07-807/08. The CECD Service is guided by the *Law on Compulsory Execution of Court Decisions* and, particularly, by Article 4 and other relevant provisions. Articles 43 and 44 stipulate that bailiffs (enforcers), in order to execute enforcement activities, have the right to make confiscations, evictions, settlements, as well as to enter freely into the creditor's premises. Taking into account Article 21(3) of the abovementioned law, the RA Chief Bailiff (Enforcer) issued Order No.899

on 23rd October 2008, which established a team of bailiffs (enforcers), guided by the above-mentioned legal provisions, to carry out stock taking activities in Yerevan and Charentsavan and seize and sequestrate the property owned by the creditor. Thus, it is deemed that the debtor's complaint about the intrusion of the bailiffs (enforcers) is groundless. As regards the part of the complaint in which the party challenged the closure of the company by CECD officers, please note that the operation of the Plant was stopped by Order No.149 (dated 22nd October 2008) of the Chief Executive Officer of the *Bjni* Mineral Waters Plant."

The Defender was also advised that the Bailiff's decision to sequestrate the debtor's property, dated 20th October 2008, entailed that no restrictions be applied to the assets of the company other than alienation. The rolling stock owned by the company and part of the manufactured products were seized only after the company's chief executive officer had issued the above mentioned order. Presently the compulsory enforcement activities are in progress.

In another communication to the RA Chief Bailiff the Human Rights Defender stated the following:

"In your letter No.2555, dated 20th November 2008, you failed to answer the question about who the persons were that were wearing masks. According to Article 29(1) of the *Law on Compulsory Execution of Court Decisions,* "at the time of performing his/her duties, a bailiff shall wear a uniform with distinguishable signs and an emblem. The descriptions of these uniforms, as well as the rules of wearing and dispensing uniforms shall be established by the RA Minister of Justice." You also clarified that the CECD Service employees were guided by the RA Chief Bailiff's Order No.899 of 23rd October 2008, which was issued to set up a team of bailiffs in pursuance of Article 21(3) of the *RA Law on Compulsory Execution of Court Decisions*. However, I would assume that the guiding provisions should be those set out under Article 34(3) of the Law: "In order to effectively carry out proceedings that require complex and extensive enforcement activities, a bailiff (enforcer) team may be created at the decision of the head of the regional (Yerevan) office of the compulsory execution body. The leader of the team for compulsory execution of court decisions shall be appointed by the head of the regional (Yerevan) office of the Compulsory Execution Service." Since it is Article 34(3) of the RA *Law on Compulsory Execution of Court Decisions* that regulates the effective carrying out of proceedings requiring complex and extensive compulsory execution, in my view Article 21(1)(3) is not applicable to this particular situation."

The Human Rights Defender asked the RA Chief Bailiff to provide further clarification on these issues and forward to him a copy of Order No.800 of 23rd October 2008. Consideration of the complaint is in progress.

It is important to also cover in this section communication between the Human Rights Defender and RA Minster of Justice on issues pertinent to the provisions of a legal information database in Armenia. The Defender wrote to the Justice Minister on 2nd October 2007 to inform him that he had filed an application to the RA Constitutional Court to request that Article 47(2) "If a proven record of length of employment qualifies a person for social security pension (i.e. 25 years), then he/she may not go to court to seek affirmation of his/her length of employment" and Article 47(3) "Only the years of employment that are needed to qualify a person for social security (pension) may be affirmed by court, provided that that part of employment does not exceed a period of 10 years" be declared incompatible with Articles 18 and 37 of the RA Constitution and, therefore, null and void. The Constitutional Court confirmed that the above

provisions were incompatible with Articles 18 and 37 of the RA Constitution and thus declared them null and void (Decision SDO-731, 29th January 2008).

However, the second sentence of Article 47(1) "*if a person lacked an employment record book or his/her book lacked relevant information or s/he lacked other documents referred to in the law to prove his/her length of employment, the length of his/her employment should be verified by archive documents or, if such documents were unavailable, through the courts*" is identified as an unconstitutional provision in the version of the Law which is accessible through the legal information database. Giving the fact that the Legal Information System is managed by the *Official Publication CJSC* of the RA Ministry of Justice, it was recommended that respective corrections be made.

The Minister of Justice replied on 3rd June 2008 stating that according to paragraph 2 of Article 67(5) of the *RA Law on Legal Acts,* the RA Minister of Justice undertakes the formal incorporation (integration) of the laws and legal acts of central and local government agencies. According to the same Article, "incorporation" implies that changes and amendments that have been made to legal acts shall be incorporated into the legal acts in which they were made. A Decision of the RA Constitutional Court is not an act which envisages a change or amendment to a legal act and it is not stipulated by law that revised legal acts should make reference to the decisions of the Constitutional Court or other courts that declare a legal act or a part thereof invalid. And, if the RA Ministry of Justice had published the legal act in violation of the mentioned requirements, then, based on Article 67(8) of the Law on Legal Acts it should have been declared a void publication. The same is true about the official *ARLIS* legal information database which is accessible through the Internet."

On 28th June 2008 the Human Rights Defender sent another letter to the Minister in which he noted that according to Article 103 of the RA Constitution: "Decisions and conclusions of the RA Constitution are final and enter into force from the moment of their publication." Also, according to Article 11(3) of the *RA Law on Legal Acts* (hereinafter referred to as the Law) "The Constitutional Court of the Republic of Armenia shall only make **normative**, individual or procedural decisions." According to Article 2(3) of the Law "A **normative legal act** is a **formal written document,** which has the purpose of defining a legal norm or norms or **to terminate the effect of those norms a**nd is adopted by the people of the Republic of Armenia – its central and local government bodies within the scope of their authority and circumstances and by the due procedure established in the RA Constitution and laws." A legal act is considered a **normative** act, if it contains at least **one legal norm.** According to Article 71(1)(3) "The effect of a legal act shall be terminated if **that legal act is declared void.**" At the same time, according to Article 74(1)(2), "A legal act shall be null and void if it has been declared as incompatible with the RA Constitution **by the RA Constitutional Court**."

According to Article 70 (2)(4) "Changes to legal acts shall be made **through the termination** of their separate sections, chapters, parts, clauses or paragraphs." It is clear from the above that the effect of a legal act shall be terminated if that act is declared void by a decision of the RA Constitutional Court. In addition, the change of a legal act implies that these legal acts can also be terminated. Subsequently, according to paragraph 2 of Article 67(5), the RA Justice Minister should ensure official incorporation of legal acts and a change cannot be considered a legal act if it is published in violation of laws and bylaws and fails to incorporate corollaries referred to in Article 67 (8) of the *RA Law on Legal Acts*.

Taking the above into account, the Defender recommended making the relevant changes to the RA Legal Information Database. However, this recommendation seems to have been so far overlooked.

The Human Rights Defender also dealt with a complaint brought by the *National Renaissance* ("Azgayin Veratsnund") political party against the State Registry of Legal Entities – another agency incorporated within the RA Ministry of Justice. A member of the board of the *National Renaissance* party, Simon Grigoryan, and others signed a petition to the RA Human Rights Defender in which they stated that as a result of the party's congress held on 5th December 2007, an official record of the party's restructuring was made in the RA State Registry of Legal Entities. The restructuring led to the *National Renaissance* party merging with the *Ramkavar-Azatakan* Party. However, the applicants claimed that only 5 members had participated in the party's board meeting, whereas according to clause 8.5 of the organization's constitution, a board meeting's decision can only have authority if there is a quorum of two-thirds of the members present (i.e. in this case, 6 members). Thus, the applicants claimed that a number of provisions of the *RA Law on Political Parties* had been violated.

In response to the application, the RA Human Rights Defender sent a letter to the State Registry of Legal Entities asking for clarification and a list of board members of the *National Renaissance* party, including copies of documents that had been submitted for the purpose of registering the political party's reorganization.

A reply, dated 5th August 2008, stated that for the purpose of registering the political party's restructuring, documents referred to in Article 23(2)(a) of the *RA Law on the State Registration of Legal Entities* were submitted. The message advised that the responsibility for the accuracy of the submitted documentation rested with the party submitting those documents. With regard to the number of persons included in the party's board, it was stated that after the original registration of the party (the original application for registration on 16th December 2005 was signed by **9 members**), the political party had the right to convene regular or ad hoc congresses to change the number of board members without any need to inform the registering body of this – only changes to the charter, to the program, or a change of the party's chairman are subject to registration.

On 29th September 2008, the Human Rights Defender issued a decision that recognized there had been an instance of human rights violation and that there was a need to take measures to reverse this. The Defender recommended annulling the RA Ministry of Justice registration of the political party's reorganization the on the basis of provisions in the *Law on Administration principles and administration management*.

In a written reply (dated 14th October 2008) to the Defender's comments, the Head of the State Registry of Legal Entities stated that in order to register the party's reorganization they had requested, as stipulated by law, submission of records of the party's congress on reorganization and not the decision of the party's board on convening a congress. Hence, the registry had no liability to check the accuracy of the documents that were not required by law.

As a result of an examination of the documents provided by the Ministry of Justice's State Registry of Legal Entities, it was established that the registry did not fulfil the requirements of the *RA Law on State Registration of Legal Persons*. In particular, according to clause 1 of the mentioned Article, the state registry, on the day of admission of the documents, shall make a note of the application with the signature of the person who submitted the documents and shall make a

record in the document admission registry. Based on the communication of 5th August 2008 from the Justice Ministry's State Registry of legal Entities, the mentioned requirement of the law was not upheld in documents shared with the Human Rights Defender's Office.

When the documentation was examined, it transpired that one of the absolute requirements of the mentioned law was not observed in the registration procedure. In particular, according to Article 15(2)(b) of the *RA Law on the State Registration of Legal Entities*, the documents must refer to the date when they were prepared. However, the mentioned requirement was not followed by those who prepared the records of the 2nd congress of the *National Renaissance* Party.

According to Article 15(6) of the *RA Law on the State Registration of Legal Entities*, documents that fail to meet the mentioned requirement shall be returned without further consideration. A document that fails to meet a requirement of the Article is sufficient **grounds for declining state registration.**

According to a media announcement about the 2nd congress of the *National Renaissance* Party, which the state registry shared with the Human Rights Defender's Office, the congress should have been held at the "Government Conference Room, 2 Melik-Adamyan Street, Yerevan." However, records of the party's congress indicate that the congress was held at "58 Tskhakhotagortsneri Street, Yerevan." The agreement on the parties' merger was achieved on 20th November and was signed by the chairman of the *National Renaissance* party without the prior consent of the party's congress.

According to Article 25(1) of the RA Law on the Registration of Legal Entities, the responsibility for the accuracy of documents submitted to the state registry shall be borne by the party submitting those documents. According to Article 11(3) of the same Law, a regional office of the state registry shall verify the founding procedure of the organization as well as the completeness of the submitted documents and their compatibility with legal requirements. Since the registry failed to perform that function, the party's reorganization was registered in violation of legal requirements. This provides sufficient grounds for the administrative authority that passed the act, as well as for its supervisory body and/or court, to void the unlawful administrative act in accordance with Article 63(2) of the *RA Law on Administration Principles and Administrative Management*.

Havign had further discussions with Simon Grigoryan, a member of the board of the *National Renaissance* party, the Human Rights Defender recommended that the RA Minister of Justice deal with the violation and void the administrative act that registered the party's reorganization. He also recommended that the Minister consider reprimanding the officials of the state registry who had demonstrated incompetence in their professional duties.

The Minister of Justice responded by acknowledging that the minutes of the 2nd congress of the *National Renaissance* party contained no indication of the date when the congress took place – a requirement of Article 15 of the *RA Law on State Registration of Legal Entities*. The Minister stated that in such circumstances the date of the minutes should be recorded as the date when the congress was held. It should be noted, however, that the state registry has no authority to make such assumptions under the existing law.

With respect to the Human Rights Defender's remark that media announcements said the venue of the Congress would be the Government Conference Room at 2 Melik-Adamyan Street whereas the address mentioned in the minutes was "58 Tskhakhotagortsneri Street," the Justice

Minister stated that this could not be regarded as grounds for declining the registration since in theory it is possible that a congress which is taking place at one venue is moved to another for some reason. Obviously, such comments distorted the original intent of the arguments of the Human Rights Defender. The Defender did not mention that the congress started at one venue but then finished at another; his argument related to the confusion of addresses – i.e. the event was to start at one address but according to the minutes started at a different location.

The Human Rights Defender had argued that the relevant documents should have contained the signature of the official making the submission and the submission date, but they did not. In reply, the RA Ministry of Justice replied that a "signature approval sheet" was attached to the application – and that contained all the relevant records. However, if according to the Justice Ministry, the documents were accompanied with signatures, which formed an indispensable part of the document package, what were the grounds for not sharing a copy of this with the Human Rights Defender's Office? Thus, it transpired that without any good reason to justify such an act, the registration documents had been separated from what should have been an 'inseparable' part of the documentation.

In his decision, the Defender had emphasized the circumstances in which the merger took place on 20th November 2007 – that the agreement was signed by the chairman of the *National Renaissance* party without the consent of the party's congress. The RA Ministry of Justice replied by stressing that the unification agreement between the *National Renaissance, Dashink and HRAK* parties was signed by their leaders on 20th November 2007 and then confirmed by the *National Renaissance* party's congress on 5th December. However, it should be reiterated that the party's congress violated sub-clause 7.7(h) of the party's constitution.

In order to deal with the abovementioned violations, the Human Rights Defender sent a recommendation letter (No.1-0671, dated 11th February 2009) to the RA Prime Minister. Consideration of this case is still in progress.

3.6.2. Penitentiary Facilities

In 2008, 18 complaints were filed against the penitentiary facilities (functioning under the jurisdiction of RA Ministry of Justice), out of which:

- 6 were accepted for consideration
- 7 were denied consideration but applicants received advice about the relevant avenues of legal recourse available to them
- 1 was forwarded to other bodies for review
- None were withdrawn at the request of complainants
- None were still being investigated

Defense of the rights of detained and imprisoned individuals are a key focus of the Human Rights Defender's activity – particularly their right to adequate living conditions, protection from violent and humiliating acts, timely and adequate medical aid, have contact with the outside world, and freely exercise other rights provided for by law.

Inspection of prisons indicates that the living standards inside – including sanitary conditions, temperature regime, humidity, as well as the provision of medial aid to prisoners – are far from meeting international standards. The Human Rights Defender highlighted these issues in his 2006 and 2007 Annual Reports and believes that the reports have been instrumental in facilitating positive changes. In particular, the partial renovation of Sevan prison has been completes and Abovyan prison has been fully renovated.

During regular visits to penitentiary facilities the representatives of the Human Rights Defender viewed cells for regular prisoners and those detained pre-trial. Their reports revealed: some prisons lacked decent standards due to overcrowding; cells for pre-trial detainees were generally in much worse shape than those for regular prisoners; there were posters about prisoners' rights displayed in prison cells and corridors.

The *Yerevan-Kentron* prison, although functioning under the jurisdiction of the RA Ministry of Justice, is still located in the premises of the RA National Security Service. This jail is used for both pre-trial detention and imprisonment. Although the persons held in this jail said they had no complaints about their conditions, the risk remained that the RA National Security Service may interfere in some way.

There were few complaints from prisoners in 2008 about prison conditions or violations of their rights by the prison administration. This does not mean, however, that all the complaints against the penitentiary facilities dealt with similar issues. Some complaints did challenge the inappropriate conduct of prison employees who conducted searches of prisoners in cruel, inhuman and humiliating ways. Some applicants, however, refused to disclose the names of such prisoners as they believed this would only aggravate their cellmates' condition. This is becoming an increasingly common practice and puts more pressure on the people who have already suffered from such treatment to refuse to report it to the relevant bodies.

Moreover, mistrust develops between prisoners and administration because the "up the line" complaint procedure has been ineffective. This conflicts with Article 18 of the RA Constitution, according to which: "Everyone shall be entitled to effective legal remedies to protect his/her rights and freedoms before judicial as well as other public bodies."

The examples below reveal the scope of prison staff's professional incompetence.

Illustrative Case 1

In August 2008, the employees of the Human Rights Defender's Office visited the *Penitentiary Hospital* in response to an alert by A.B, who had claimed that the prison administration had unjustifiably imposed disciplinary measures on him.

The Human Rights Defender wrote to the Head of RA penitentiary facilities to seek clarification. The department head informed that the prison's employees had found prohibited items on A.B.'s hospital ward, including 6 forks, 1 *Nokia* cell phone charger, headphones for a *Nokia* cell phone, and glass objects. However, A.B. explained that the items had entered the penitentiary hospital with another inmate who was being treated there and that all the items, except the cell phone charger and headphones, were intended for joint use. A.B. and other inmates were subjected to disciplinary measures.

In response, the Human Rights Defender suggested that the prison administration launch an Internal Service Investigation and hold legally responsible those officers who allowed the mentioned articles into the ward.

A note sent to the Human Rights Defender notified that an inquiry was underway in order to ascertain how the prohibited items entered the penitentiary facility and who the employees who facilitated that process were. The note also stated that an Internal Service Investigation would be launched if necessary.

In our view, if the prison employees had adequately performed their duties, it would have been possible to prevent the prohibited items from making their way onto the hospital ward and, thus A. B. and others would not have been subjected to disciplinary action.

Illustrative Case 2

Citizen M.G. applied to the Human Rights Defender's Office claiming that his/her son S.G., born in 1978 had died on 6th August 2008. He/she stated that his/her son was serving a prison sentence at Kosh penitentiary facility and had no record of disciplinary issues. The applicant reported that on 1st August 2008 his/her son experienced acute pain in the area of the appendix, which he reported to the prison administration. His complaints were dismissed. However, his pains did not subside and on 5th August he was finally transferred to the Penitentiary Hospital, where he underwent surgery. The surgery had serious complications and thus M.G.'s son was transferred to Nor Nork Hospital, where he later died.

In response to his inquiries into the matter, the Defender received letter No.2/16-08 from the Deputy Prosecutor General, A.A. Tamazyan, who stated that the RA General Prosecutor's Office had prepared and sent case materials to the RA Police General Investigation Department for further investigation and a decision about a further course of action. The preparation of the case materials had been supervised by the RA General Prosecutor's Office.

Illustrative Case 3

On 26th December 2008 employees of the Human Rights Defender's Office visited the Penitentiary Hospital and met with G.K. The latter was transferred from Nubarashen prison, where he was held on remand. His face still had signs of bruises and scratches. When asked by the Human Rights Defender's representative how he had sustained the injuries, G.K. replied that he had fallen over and bruised himself.

The RA Human Rights Defender has often observed that persons held in pre-trial detention are violently treated; however, some of them avoid openly speaking about this because they are afraid of the repercussions. This observation applies not only to those whose detentions followed March 1st events but also to other individuals held on remand or serving criminal sentences. This is evidence of the unhealthy atmosphere in prisons and points to the existence of structural problems within the system.

Illustrative Case 4

Stepan Voskanyan, defense lawyer of Grigor Voskerchyan who was being held on remand in Nubarashen prison, told the media on 23rd December 2008 that his client had been beaten by prison officers. The same day, the Human Rights Defender's Office received an alert from

lawyer Inessa Petrosyan that her client Gevorg Manukyan, held on remand in the same prison, had been beaten and that she was denied the right to meet with him.

Representatives of the Human Rights Defender were tasked with visiting Nubarashen penitentiary, where they met with detainees Grigor Voskerchyan and Gevorg Manukyan. Mr. Voskerchyan claimed that at 10:00 a.m. on 23rd December duty officer Tatul Hakobyan came into the prison cell together a number of unknown officers to conduct a search of the cell. Other inmates were asked to vacate the cell, but he was allowed to stay since he was of more senior age. While conducting the search, one of the officers involved in the operation asked him about his charges and then slapped him heavily in the face and kicked him in his right leg. As a result of the injuries, G.V.'s health condition seriously deteriorated and he was not able to appear in court for his hearing. Gevorg Manukyan, the other detainee, told the Defender's representatives that he had already met with his attorney. However, he refused to speak about the beatings, claiming that he had not yet consulted his attorney about the legality of such discussions.

The Human Rights Defender deplores and condemns such violence, considering them to be manifestations of intimidation and torture. Based on the information provided by G.V. he recommended that the RA Minister of Justice launch an Internal Service Investigation and discipline the perpetrators of the violence.

It should be noted that the RA Ministry of Justice's first reaction was to adamantly deny G.V.'s allegations of beating even though no Internal Service Investigation to fully examine what had happened had been launched. Significantly, on that same day the Human Rights Defender discussed issues related to the use of violence in prisons at a meeting held with the President of Armenia. The President, acknowledging the importance of the issue, recommended that the Minister of Justice and the Assistant to the President on Legal Issues conduct an Internal Service Investigation to follow up the alarming reports. The Human Rights Defender agreed to participate in those procedures.

Thus, the public body responsible for investigating these claims was only prepared to ensure the full performance of its duties when it received instructions from the country's President. This proves the deeply structural nature of the problem.

It causes great concern that the staff of the Human Rights Defender received calls from other detainees accused in March 1 cases, including Armen Khurshudyan, Gevorg Manoukyan and many others. Such complaints indicate the strained environment of RA prisons, but they are continually denied by the relevant authorized public body (in this case the RA Ministry of Justice) and it is virtually impossible to corroborate these claims through prosecution bodies.

Inspections by the Defender's staff also revealed cases when prison officers threatened the inmates – that if they made statements about beatings and torture, then their cell mates would have "to pay the price." It is unclear what was meant by this phrase but clearly the fear syndrome is used to hold others back from speaking out about violent treatment in the prisons.

This is a brief picture of the situation that prevails in Armenia's prisons, which for us at least is deeply disturbing and deplorable.

3.7. RA Government National Security Service

The Human Rights Defender's Office received six complaints against the Office of the National Security Service (NSS), out of which four were accepted for review. However, at a later date two of these cases were denied further consideration since no elements of human rights violations were found, and the other two were forwarded to other bodies for examination.

Illustrative Case 1

Citizen L.Gh. applied to the Human Rights Defender stating that a number of NSS employees visited the house of her husband's parents and told them that their son V.M. should present himself to the NSS Office. Thinking that there was some kind of misunderstanding, V.M. went to the NSS on 15th May, where he was immediately arrested. The applicant claimed that her husband had been unjustifiably charged of a crime and was still being held in detention.

In response to inquiries made about L.Gh.'s complaint, the Head of the NSS Investigation Department informed the Human Rights Defender that criminal case No.58202508 against V.M. had begun on 28th April on the basis of Article 308(1) of the RA Criminal Code, since V.M. as an employee of the NSS operational-technical service had abused his official position for his own interests and against the interests of the service, which in turn resulted in damage to the interests of the State. The case was being investigated by the NSS Investigation Department. The message also stated that the pre-trial investigation had established sufficient evidence of V.M.'s participation in the crime so that he was duly arrested on 15th May in accordance with Article 129 of the RA Criminal Procedure Code, and official charges were brought against him on the 17th May. He was charged under Part 1 of Article 38-308 of the RA Criminal Code and the same day the Kentron-Nork Marash Court of General Jurisdiction sanctioned precautionary detention (remand).

Consideration of the application was dismissed since no human rights violations were revealed.

Illustrative Case 2

Citizen G.K. complained to the Human Rights Defender that his/her sons A.S and S.S. had been subjected to persecution by law enforcement bodies for their political views. In particular, he/she claimed that, for no apparent reason, a search was conducted in the apartment legally owned by A.S.'s wife L.B. on 26th February and that during the search the original ownership documents for the apartment were confiscated.

To clarify the issues raised in the citizen's application, the Human Rights Defender sent a letter to the Head of the NSS. The latter wrote to the Defender informing him that the law enforcement bodies concerned had a search warrant that had been issued by the Yerevan Criminal Court on 26th February 2008 in connection with criminal case No.58200698 being investigated by the NSS. It was also stated that as a result of the search some documents that were pertinent to the investigation had been confiscated from the apartment; however, documentation of apartment ownership had not been taken. The message also claimed that a copy of the search warrant's statement had been given to A.S.'s wife L.B. In addition, the Defender was informed that A.S. had first been arrested on 6th May under criminal case No.58202508

being investigated by NSS Investigation Department's probe and that A.S. was charged under Part 1 of Article 38-308 of the RA Criminal Code. The same day, the Kentron-Nork Marash Court of General Jurisdiction sanctioned precautionary detention (remand). Moreover, from the moment of A.S.'s arrest, and during the entire period of the investigation, he had access to a defense counsel, who was present with him during all the necessary procedures. The decision to hold him on remand was conditioned by the special complexity of the criminal case, as well as by the need to ensure a completely objective investigation.

Taking into account the above details, consideration of the complaint was dismissed.

3.8. RA Ministry of Defence

In 2008, the Human Rights Defender's Office received 49 complaints against the Ministry of Defense, out of which:

- 21 were accepted for consideration
- 2 were denied consideration but applicants received advice about the relevant avenues of legal recourse available to them
- 3 were forwarded to other bodies for consideration
- 1 was withdrawn at the request of complainant
- 15 were still being investigated

As in previous years, the complaint-applications received in 2008 concerned: conscriptions by military commissariats in violation of legal requirements; ungrounded refusals to enter a person's records into military registries or delete them from those registries; inaccurate medical reports about the health of draftees by military medical commissions; lack of care for servicemen recruited for compulsory short-term military service; conscription of persons with medical records disqualifying them from military service.

The complaints brought against the Ministry of Defense are analyzed in the section on the Rights of Armed Forces Personnel.

3.9. RA Ministry of Territorial Administration (Infrastructures)

In 2008 the Human Rights Defender's Office received 15 complaint-applications against the RA Ministry of Territorial Administration (Infrastructures), out of which:

- 9 were accepted for consideration
- 1 was denied consideration but the applicant received advice about the relevant avenues of legal recourse available to them
- None were forwarded to other bodies for consideration
- 3 were denied consideration
- None were withdrawn at the request of complainant
- 2 were still being investigated

The complaint-applications against this Ministry mainly concerned unsolved housing issues and inadequate control over the functioning of water supply companies.

Illustrative Case

A man, who used to be registered at 10 Mayisyan Street, Apartment 10, Yerevan, informed the Human Rights Defender that in 1983 the abovementioned property, where he was living with his brother and sister, was demolished for area improvement purposes. In 1995, the Executive Committee of the Spandaryan District Council of RA Deputies decided to allocate a one-room (studio) apartment to his sister and consider his and his brother's housing issue upon the availability of relevant apartments. However, the applicant complained that this matter had not been revisited since then.

The applicant had been to different bodies to request that either an apartment or a land plot (for the purpose of housing construction) be made available to him. His requests, however, were turned down because his entitlement to a new apartment was considered upon the availability of a relevant apartment, whereas land plots were allocated through tenders and auctions.

Taking into account that RA Government Decision No.684 (dated 25th October 2000) *On Providing Financial Compensation or Housing Accommodation to Citizens whose Housing Space was used for State and Public Needs* covered only the **period between 1987 and 1991,** the Human Rights Defender sent a letter (dated 6th October 2008) to the Deputy Prime Minister suggesting options for solving the applicant's housing issue (and attached to his letter a copy of the decision of the Executive Committee of the Spandaryan District Council of RA Deputies No.16/142, dated 19th March 1995).

That letter was then forwarded to the Yerevan Mayor's Office, which provided detailed information and also noted that according to RA Government Decision No.42 (of 13th March 1997) *On Establishing the Inventory of the Property Stock under the Municipalities of Yerevan*, the housing stock registered on the balance sheets of Yerevan housing companies, including openings of residential apartments and non residential areas, had been assigned to the municipalities under the discretionary powers provided for by Article 7 of the RA *Law on Real Estate*. According to that decision, the public residential housing stock, except for buildings used by public administration bodies, was assigned to the municipalities. The municipalities allocate apartments upon the availability of housing stock and on a rolling basis for individuals on waiting lists.

When the RA Housing Code was annulled on 4th October 2005 by the *Law on Annulling the RA Housing Code,* the abovementioned processes were stopped. No framework or procedure has yet been developed to allocate new housing or pay financial compensation to citizens who were deprived of their housing as a result of the government appropriation program in the city of Yerevan in 1987.

Thus, on 10th December 2008 the Human Rights Defender wrote to the RA Deputy Prime Minister (responsible for RA Territorial Administration) suggesting that he solve the housing problem of the applicant by making a relevant amendment to RA Government Decision No.683 (dated 25th October 2000).

3.9.1. Migration Agency

In 2008, the Human Rights Defender's Office received 12 complaint-applications against the migration agency, out of which:

- 7 were accepted for consideration
- 1 was denied consideration but the applicant received advice about the relevant avenues of legal recourse available to them
- None were forwarded to other bodies for consideration
- 2 were denied consideration
- None were withdrawn at the request of complainant
- 2 were still being investigated

Complaints against the Migration Agency mostly concerned the housing issues of refugees.

Illustrative Case

A resident of building No.8, Arzni Health Resort No.1, Kotayk region, told that she and other refugee families had been living at Arzni Health Resort No.1 since fleeing Azerbaijan. She said that in 2003 her name had not been included on a waiting list for housing purchase certificates as she was temporarily away from home at that time. She later applied to the Migration Agency of the RA Ministry of Territorial Administration, where she was told that her name would be included in an upcoming list.

In response to inquiries made by the Human Rights Defender, the Governor of Kotayk region confirmed that the applicant, living at the Arzni Resort House, had been absent from the country at the time of the 2003 refugee census and, consequently, her name had not been included on a waiting list of persons entitled to housing purchase certificates. The Defender was also told that her name was now included on an additional list of persons waiting for the relevant certificates.

3.9.2. State Water Committee

In 2008, the Office received and considered 2 applications that complained about the State Water Committee's inadequate supervision of water supply and sewage disposal companies and respective violations of consumer rights. Under the Soviet system water supply and wastewater disposal pipelines were laid adjacent to each other. Since the infrastructure has not been changed since then, pipe corrosion and other problems cause sewage to mix with drinking water, resulting in outbreaks of infectious diseases in different localities of the country.

Illustrative Case

An applicant informed the Human Rights Defender that in 1997, because of a difficult financial situation, he had sold his 3-room apartment in Yerevan and bought a house with a plot of land in the village of Darbnik. In 2001 the artesian well built at the edge of his land started to leak badly, gradually flooding the applicant's plot of land. The applicant complained that the public agencies had failed to take any measures to rectify the situation and consequently his

house became cut off from all types of utilities. He noted that his house has now been in that state for seven years and that the leaking water has turned his land into a swamp.

According to the citizen, in 2002 he sought help from the Head of Darbnik's Local Authority, who told him that he should take his problem to the State Water Committee. In 2003 he wrote a letter to the RA President and to the Ministry of Environmental Protection. They then referred his complaints to the RA State Water Committee. In 2004 the State Water Committee tasked the Masis Water Users Union of Ararat region with the dismantling of the dilapidated water well and with drilling works for a new pressure well. The Union replied that in order to undertake such works, capital investments of AMD 15 million would be required – a sum which it could not afford. In 2005 the citizen applied to the Governor of Ararat region; in 2006 he applied to the Territorial Administration Minister, who forwarded his letter to the Governor's Office of Ararat region. In 2008 he applied to the RA Prime Minister, who then also forwarded his letter to the Governor's Office in Ararat region. The Governor's Office forwarded his letter back to the Head of the applicant's Local Authority, who repeated his inability to solve the problem.

In response to the Human Rights Defender's inquiries into the matter, the Minister of Territorial Administration (RA Deputy Prime Minister) informed the Defender that in order to solve the problem he had suggested that the State Water Committee (of the RA Ministry of Territorial Administration Ministry and the RA Ministry of Finance) bring the issue to the attention of the Millennium Challenge Account Armenia Foundation, a non commercial organization.

In a letter dated 13th September 2008 the State Water Committee informed the Defender that the repair of Darbnik's artesian well would be implemented within the framework of the *Rehabilitation of the Ararat Valley Drainage System,* part of the Millennium Challenge Account's Armenia Program.

3.10. RA Ministry of Education and Science

In 2008 the Human Rights Defender's Office received 12 complaint-applications against the Ministry of Education and Science, out of which:

- 6 were accepted for consideration
- 1 was denied consideration but the applicant received advice about the relevant avenues of legal recourse available to them
- 1 was forwarded to other bodies for consideration
- 1 was denied consideration
- 2 were withdrawn at the request of complainant
- 1 was still being investigated

In the conclusion to its Armenia Report, the European Committee of Social Rights, with reference to other sources, remarked that Armenia's educational system faces a number of problems in terms of accessibility and effectiveness, including absenteeism and dropouts due to the financial situation of the students' families. The Committee, referring to information provided

by other sources, reported that due to the lack of teachers in village schools, the inequality between urban and rural schools had been markedly growing.

Access of vulnerable groups to tertiary education is an important issue that needs to be addressed. A number of things will help to attain this goal: the effective use of a standardized examination system for those leaving secondary schools and going on to university; an increase in the number of government sponsored fellowship programmes in universities; a wider range of benefits within paid education; the waiving of tuition fees for students from socially vulnerable families, irrespective of their grades.

There have been cases when persons who graduated from government-accredited private universities claimed they were denied access to jobs in the public sector. There clearly is a lack of governmental control over accreditation of private universities; most private universities open their doors to anyone who wants a degree. Thus, we assume that there is a need to apply more stringent accreditation criteria towards private universities and conduct entrance examinations to these universities via standardized examination centres.

Illustrative Case 1

Citizen N.Sh., and 15 Iranian students who also signed the complaint-application, informed the Human Rights Defender that they were accepted to study at the Yerevan State Conservatoire in the academic years 2005/2006 and 2006/2007. At the time of admission they were told that after 5 years' study, they would be awarded a "Professional Diploma" (but no contract was signed with the applicants). The students complained that they were later told that they would no longer receive a Professional Diploma but that they would now be studying within a two-tier degree system [undergraduate and postgraduate]. In addition, to qualify for the undergraduate degree they would have study for 5 years; if they chose to study for just 4 years, they would only qualify for a certificate.

In response to inquiries made by the Human Rights Defender, the RA Education and Science Minister stated that all tertiary education institutions were required to sign contracts with their students. On 3rd October 2008 the RA Education and Science Ministry contacted the Yerevan State Conservatoire, which said that it had signed contracts with its students – the text of the contract had been made available to all applicants in advance, including the foreign applicants (the Iranians), together with the admission announcement and the tertiary school license with its attachments. The contract, in particular, stated that upon completion of the 5 year course the students would be awarded a bachelor's degree, and this was signed by the students and Deputy Rector. At the same time, the Rector of the Conservatoire recognized that some clauses of the contract signed with foreign students (10 students from Iran) on 1st September 2005 were inconsistent with the *RA Law on the Tertiary and Post Graduate Education;* nevertheless, the contract did not demand higher tuition fees or stricter study requirements for the foreign students. According to the Rector, the students had made no complaints or recommendations to him with regard to the signed contracts. He stated that if they had, then the administration would have made appropriate amendments within the scope of RA laws.

The students that were accepted to the university for academic year 2005/2006 orally informed the Human Rights Defender that the Rector's Office of the Conservatoire had started to make amendments in order to restore their rights and that they had no further complaints. As for

the students that were accepted for the 2006/2007 academic year, only two of them did not have contracts. However, the parties have agreed to settle the issue by mutual agreement.

Illustrative Case 2

L.T., a refugee living in Yerevan, stated in his/her application to the Human Rights Defender that the administration of school No.77 had refused her daughter D.T., an ethnic Georgian, enrolment in the school's classes that were taught in Russian.

On 13th September 1993 Armenia ratified the International Covenant on Economic, Social and Cultural Rights, Article 13(3) of which states that: "the States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions". In addition, according to Article 26 of the *Universal Declaration of Human Rights*, parents have the right to choose the kind of primary education they want for their children. Thus, the Mayor of Yerevan was asked to clarify why the citizen's request had been declined.

In response, the Head of the Education Division of the Yerevan Mayor's Office informed the Defender that, in line with clause 2 of Order No.1218-N (of 7th January 2007) of the RA Minister of Education and Science *On Amending Order No.619 (of 25th August 2003) of the RA Minister of Education and Science,* the student of the mentioned school might continue her education in the 1st class of the Russian language section of the school as chosen by her parent.

3.11. RA Ministry of Health

In 2008 the Human Rights Defender's Office received 13 complaint-applications against the RA Ministry of Health, out of which:

- 8 were accepted for consideration
- 2 were denied consideration but the applicants received advice about the relevant avenues of legal recourse available to them
- 1 was forwarded to other bodies for consideration
- 1 was denied consideration
- None were withdrawn at the request of complainant
- 1 was still being investigated

The complaints against the Ministry of Health were related to citizens being refused free medical aid and medication despite the government sponsored free medical aid scheme.

It should be noted that significant progress has been made towards general clinic services being accessible to all sectors of the population – for example, the provision of free antenatal/obstetric care is to be applauded. However, there are still many urgent problems in the area of clinical medicine. One such issue is the provision of free medical services to socially vulnerable groups as part of the government sponsored free medical aid scheme and the difficulties these people face in actually obtaining this aid. Another issue is that health

institutions do not properly organize the medical examination process of those being drafted into military service, which leads to long queues in doctors' clinics and often to a lengthy procedure (whereas it is possible to finish the examination of each draftee on the same day).

Illustrative Case 1

A resident of Yerevan informed the RA Human Rights Defender that, although she had a Russian passport, she had been living in Armenia for years and was receiving her pension under the laws of Armenia. She complained that she was refused free government-sponsored dental aid at the *Diadent* dental clinic, being told that persons holding passports of other states are not included on the list of socially vulnerable and special groups established by Government Decision No.318-N (of 4th March 2004) *On the Free Medical Aid and Services Guaranteed by the State* and, thus, she could not make use of such benefits.

In reply to an inquiry by the Human Rights Defender, the RA Minister of Health expressed his willingness to support this particular citizen and help her gain access to free dental aid in line with national laws. The Minister suggested that free dental aid for the applicant could be organized under clause 8 of the Minister's Order No.935 (of 25th December 2007), according to which "the government-sponsored free dental aid and dental prosthetic aid to people who are not included in the socially vulnerable and special groups can be provided on the basis of a referral letter issued by the Ministry of Health." He asked for the woman's contact details (address, telephone number) so that a Ministry employee could call and invite her to the Ministry and issue a referral letter for her to obtain the necessary medical aid.

Illustrative Case 2

An Ijevan (Tavush region) resident informed the Defender that her 15 year-old son had been suffering from a mental disorder from an early age. She noted that the boy's condition was getting worse and that he was becoming potentially dangerous. She applied to different government bodies and nongovernmental organizations seeking long term medical treatment and care for her son in any of the available psychiatric clinics; however, there was no response.

In response, the RA Ministry of Labour and Social Affairs said there was no effective procedure for admitting children with mental disorders to medical clinics or hospital. To solve this problem, the Ministry sent a letter to the RA Ministry of Health and, as a result of their joint consideration of the issue, a decision was made to establish a psychiatric clinic for the treatment and care of children with mental disorders in respective medical clinics. The RA Ministry of Health further stated that henceforth "a practicing psychiatrist may refer a minor with mental disorders to the Nork "Psychiatric Medical Centre." However, he also informed that the health system of Armenia did not have the amenities to offer long-term inpatient care to minors with mental disorders.

Having sent a follow-up letter to the RA Ministry of Health, the Defender was subsequently informed that, as an interim solution to the problem, the boy was now hospitalized in the Nork Psychiatric Clinic in Yerevan.

Considering the problem of providing treatment for minors with mental disorders, the Minister issued Order No.963-A (of 9th July 2008), requesting that an 8-bed children's psychiatry department under *Armash Medical* be established. The clinic has already applied for a license to

provide psychiatric assistance to children and will be open to receive patients once licensing formalities have been completed.

3.12. RA Ministry of Labour and Social Affairs

3.12.1. RA State Service for Social Security

In 2008 the Human Rights Defender's Office received 84 application-complaints against the RA Labour and Social Affairs Ministry, which also included complaints against separate agencies operating in the Ministry's system. Out of them:

- 50 were accepted for consideration
- 22 were denied consideration but the applicants received advice about the relevant avenues of legal recourse available to them
- None were forwarded to other bodies for consideration
- 7 were denied consideration
- 1 was withdrawn at the request of complainant
- 3 were still being investigated.

The Human Rights Defender's 2007 Annual Report provided detailed coverage of rights related to Social Security Services (Section 3.14). Some of the problems highlighted there have been solved, others are being considered, but there still others that have not yet received attention from policymakers.

A host of complaint-applications submitted to the Human Rights Defender criticized the procedure for determining the eligibility of families for welfare benefits. For example, a rise in the basic pension and/or additional social security payments for years of work previously uncounted caused the overall family vulnerability index rating to drop, which meant that many families that had previously been entitled to family allowance no longer qualified. It seems that the policymakers failed to take account the fact that the state pays welfare benefits to vulnerable and poor families in order to raise their living standards, not to lower them.

Complaints criticizing the activities (inactivity) of the regional Social Security Offices have persisted with citizens complaining that their names had been removed from family allowance beneficiaries' lists without proper notification.

State benefit to large families with many children is another important issue worthy of attention. According to RA Government Decision No.1896-N (of 28th December 2006), if a child is born to **parents eligible for family welfare allowance,** the government shall provide one-time financial aid of AMD 35,000 for each child born in the family and AMD 200,000 for the third and subsequent children born after 1st January 2007 *(clause 1, sub-clause g).* According to the same Decision, the amount of extra financial aid to families which are registered in the family welfare allowance system **but are not eligible for welfare allowance and have a welfare rating above zero** shall amount to AMD 7,500 and AMD 200,000 respectively (*sub-clause h*).

Thus, under the procedure established by this RA Government Decision, families are entitled to claim a one-time allowance of AMD 200,000 for the birth of the third or consecutive children

if they are registered in the welfare system. However, if they are not registered for some reason, including being unaware of the system, they shall not be eligible.

Back in 2007 the Defender drew the relevant bodies' attention to this issue, leading to positive changes – RA Government Decision No.1530-N (of 27th December 2007) voided the requirement that only those families registered in the welfare system were eligible to claim one-time allowance benefits for third and consecutive births.

However, this step forward did not fully eliminate problems in this area. Thus, Decision 1530-N (of 27th December 2007) established that one-time family allowance benefits shall be paid to families with three children, including adopted children. Nevertheless, there were cases when regional Social Security offices, making reference to clause 6 of the Decision, refused to pay one-time family allowance benefits for the birth of a third child, stating that although it was the third birth in the family, the actual number of children in the family was two. Thus refusal of the benefit was based on the abovementioned Decision, according to which existence of two other children was considered to be a legal requirement for a claim.

The following complaints help to form a picture of the type of complaints that were filed to the Human Rights Defender's Office in this sphere.

Illustrative Case 1

An applicant, 61, informed the Defender that he was a pensioner living in the Gegharkunik region with his wife, who was also a pensioner. He stated that he was included in the family allowance program in 1994 and had regularly collected benefits until 2008, when he was told that he no longer qualified for the benefits as a rise in his pension benefits had lowered his vulnerability index rating, putting it one point below the qualifying threshold established by the Government. The citizen informed the Defender that he had no other sources of income and was making ends meet with his pension.

As a result of a letter from the Human Rights Defender to the relevant authorities, the applicant's family was reinstated on the list of immediate aid beneficiaries in the third quarter of 2008.

Illustrative Case 2

An applicant informed the Defender that they had had a third birth in their family in October 2006, after which they applied to the regional office of the Social Security service to collect the one-time family allowance of AMD 300,000 to which they thought they were entitled under current laws. However, the request was declined because they were told that at the time of the application they had only two children in their care (the family had lost their third child in the Sochi plane accident of 2006).

The Human Rights Defender made inquires into the matter and contacted the RA Labour and Social Affairs Minister to recommend that he take relevant steps to resolve the problem. In response, the Minister informed that according to RA Government Decision No.110-N (of 12th January 2006, sub-clause 35(a)), which amended clause 6 of RA Government Decision No.1896 –N of 28th December 2006, the number of children born to a family is decided by taking into account the number of children, included adopted or step children, who are living with the married couple and/or single mother. (The mentioned clause had come into effect on 25th January 2007.). He thus argued that the refusal to pay the one-time family allowance of AMD 300,000

for the birth of a third child to this particular family was well-grounded and complied with the principles of current legislation since, according to Decision 1530-N (of 27th December 2007) the married couple did actually have less than 3 children in their care.

Many complaints that were brought against the State Social Security Service challenged failures by the Social Security Fund to include previously uncounted years of employment which had now been affirmed by a court decision into the overall employment record. The Fund's policy was based on Article 47 of the *RA Law on Pensions* and was covered more extensively in Part 2 of the present Report.

Some complaints against the State Social Security Service also disputed the enforcement of RA Government Decision No.793-N (of 29th May 2003). The Decision establishes a list of professions and professional activities in the fields of education and culture that are eligible for partial pension benefit schemes for long-standing service. According to the Decision (clause 3) partial pension benefit schemes apply to teachers of technical and vocational schools, colleges, labour reserve training facilities and *other types of professional-technical (vocational) schools and colleges*. This latter provision gave rise to various interpretations since there is no bylaw to clarify which institutions qualify as "*other types of professional-technical (vocational) schools and colleges*".

Illustrative Case 1

A group of applicants from Yerevan informed the Human Rights Defender that from 1979 to 1992 they worked in the training centre No.6, which functioned under the national education department of Yerevan's Myasnikyan district. According to the applicants, the centre was considered an educational institution collaborating with secondary schools and organizing teaching of various subjects included in the curricula of secondary schools. The centre offered industrial training classes (once a week) to 8th - 10th grade students of secondary schools of the Myasnikyan district. The quarterly grade points of the students were then entered in the students' educational achievement reports by the administration.

The applicants, when they reached the age eligible for the partial pension benefits scheme, applied to the RA Ministry of Labour and Social Affairs requesting that they be included on the list of beneficiaries covered by the scheme. However, their request was declined on the ground that RA Government Decision No.793 (of 29th May 2003), which established a list of professions and professional activities in the fields of education and culture that were eligible for partial pension benefits did not include the type of work that they had done.

The Human Rights Defender sought clarification from the Ministry of Labour and Social Affairs as to what the legal grounds were for refusing to include vocational training centres in Annex 3 (*Other types of professional-technical (vocational) schools and colleges*) of RA Government Decision No.793-N (of 29th May 2003). In response, it was stated that the issue was regulated by the relevant Government Decision and that the Service had no authority to elaborate on that list.

The Human Rights Defender has now applied to the Government suggesting relevant amendments to Government Decision No.793-N; thus, this complaint is still in the process of being handled.

Illustrative Case 2

An complainant from the Gegharkunik region wrote to the Defender about problems with his pension recalculation. The applicant had been awarded a bravery medal for his service during World War II (1941-1945). This period, according to a relevant decision by the Government of Armenia, counts towards a person's personal employment record. After the end of WWII, the applicant continued to work on a collective farm. He retired at pension age (60) and had been receiving a pension since then. The applicant approached the State Social Security Fund to request that his years of work in 1942-1950 be included in his employment record. The Fund refused. The first instance court of the Gegharkunik region confirmed that he had indeed worked for the Tsovazard collective farm from 1942-1949 (decision of 19th May 2005). But even after that the State Social Security Fund refused to count this period of employment into his pension calculation.

Following a decision of the Constitutional Court [on the *Pension Law*] the infringed right of the applicant was restored.

Illustrative Case 3

A group of pensioners informed the Human Rights Defender that for various reasons they were unable to collect their monthly pension from the *VTB Armenia* Bank (formerly *Armsavingsbank* CJSC) within 12(15) days. This was a problem since after that prescribed period any unclaimed pensions are refunded to the RA State Social Security Fund (the Fund has now become the RA Social Security State Service, part of the RA Ministry of Labour and Social Affairs).

The Defender's investigation revealed that the mentioned deadline had been established by a change made on 31st October 2005 to the contract (signed 28th November 2001) between the Fund and the Bank. This amendment stipulated that payment should be available to beneficiaries for 12 days from the time the monthly pension was deposited into their accounts at the bank's branches (this period was later extended to 15 days) and that any unclaimed amounts should be refunded to the Fund within 3 days after those 12(15) days.

However, according to the *RA Law on State Pensions* (Article 55), monthly pensions should be paid over the consecutive month at the place of actual residence of the beneficiaries (a beneficiary also has the right to collect the pension from the bank providing payment). In fact, RA Government Decision No.793-N (of 29th May 2003) *On Ensuring the enforcement of the RA Law on Pensions* (Annex 1, clause 1), states that pension payments are to be given to beneficiaries at the place of their actual residence or , if the beneficiary submits a written request, at the office of the intermediary bank

In our view, the change introduced into the contract by the Fund and the mentioned Bank, which stipulated that pension benefits be claimed within 12(15) calendar days, restricts the right of beneficiaries to collect due payments for a month as provided by the *RA Law on State Pensions* (Article 55). Moreover, according to the RA Civil Code (Article 438, part 1) any contract must be consistent with laws effective at the time of signing and/or with rules (orders) established by other legislation.

Any delay in pension payments, for whatever technical reasons, is simply unacceptable. During 2008 the Human Rights Defender's Office sent two letters to the RA Government about the matter. However, no changes have yet been made.

3.12.2. Social–Medical Examination Commission

In 2008 the Human Rights Defender continued to receive many complaint-applications about the fact that even though the Social Medical Examination Commission (SMEC) had approved the complainants' eligibility for benefit payments owed for lasting disabilities sustained during performance of professional duties, they were unable to collect the money because the relevant company (obliged to pay) was no longer in business. It should be noted that this issue was addressed in the 2006 and 2007 Annual Reports of the Human Rights Defender and in Part 2 of the present Report.

Illustrative Case

A resident of the town of Vanadzor informed in her application to the Defender that she had worked for a manufacturing company for 46 years, during which she sustained a disability while performing her professional duties. Although the SMEC assessed that her disability was in the Second Class category, she could not collect compensation because the company had been liquidated.

The Human Rights Defender also received complaints in which applicants communicated their dissatisfaction with the functioning of SMECs. They claimed that although their health continued to decline, the deterioration was not acknowledged by SMECs and that their requests for a higher disability class were rejected by the Commission without reasonable explanation.

Illustrative Case

An applicant informed the Defender that he had had been sick since 1976 and was regularly taking treatment for various illnesses. He had undergone 6 operations in that time and after surgery in 2005 he was issued a Class 2 disability. However, in 2007 his disability was downgraded to Class 3, although he claimed there had been no tangible improvements in his health condition.

In response to the Defender's inquiries into the matter, the RA Ministry of Labour and Social Affairs clarified that the applicant had applied to SMEC No.5 for medical re-examination on 17th July 2007 as the period for which his disability class had been confirmed had expired. The Commission forwarded the applicant's medical file to the relevant agency's examination division for advice, as required by RA Government Decision No.276-N (clause 16) (of 2nd March 2006). Taking into account the agency's objective medical findings and counsel and in line with Government Decision No.780-N (clause 285), Yerevan's No.5 SMEC issued the applicant a Class 3 disability on 3rd September 2007 – "a mixed form of chronic disease accompanied with frequent attacks; renal amilodioze in the protein uric stage; and first degree chronic kidney failure". The examiners also established first degree restrictions of the applicant's ability to live self-sufficiently and his capacity to work.

On 6th November.2007 the agency's examining council of physicians did not suggest changes to the decision of Yerevan's No.5 SMEC, basing its decision on RA Government Decision No.780-N (of 13th June 2003), which stated that the mentioned disabilities qualify a person for Class 3 disability (clause 28).

This example shows that citizens' decisions to file such complaints and claim violations of their rights seems to stem from their lack of access to relevant information and counselling regarding the reasons for SMEC refusals.

3.12.3. State Labour Inspectorate

There were a few complaints in 2008 lodged against the RA State Labour Inspectorate. These complaints argued that the Inspectorate had imposed administrative fines on companies for no good reason and demonstrated lack of action in the case of unlawful dismissals.

Illustrative Case

The managing director of a private company brought a complaint to the RA Human Rights Defender stating that a team from the RA State Labour Inspectorate had conducted an inspection of his company on 7th August 2008 according to a warrant that had been issued by the Inspectorate on 1st August. The applicant mentioned that the team conducting the inspection documented that five employment contracts were signed in violation of the requirements of the RA Labour Code (Article 84, part 1). The mentioned violation, according to the *RA Administrative Violations Code* (Article 169, part 5) leads to an administrative penalty of AMD 50,000 for each contract. However, three of the mentioned contracts had been cancelled on 12th January 2008 and the forth on 30th June 2008. Thus, at the time of inspection only one employment contract was valid; the inspectors ignored the fact that under the *RA Administrative Violations Code* (Article 37) an administrative fine can be imposed no later than two months after the date of infringement (or in the case of continued and lasting infringements within two months of the last infringement).

On 29th September 2008 the Head of the RA State Labour Inspectorate clarified in writing that decision No.628 (of 7th August 2008) of the RA State Labour Inspectorate's regional office in Yerevan, which had imposed the administrative fines on the managing director of the private company, had been annulled by senior administration. The administrative court decided on 26th September 2008 that the fine to be levied should have been AMD 50,000 and subsequently notification was sent to the RA Treasury requesting that the person be refunded AMD 200,000 from the AMD 250,000 he had paid as a result of erroneous public administration.

3.13. Yerevan Mayor's Office

During the reporting period the Human Rights Defender's Office received 97 complaints against the RA Mayor's Office, out of which:

- 61 were accepted for consideration
- 10 were denied consideration but applicants received advice about the relevant avenues of legal recourse available to them
- 3 were forwarded to other bodies for consideration
- 14 were denied consideration
- None were withdrawn at the request of complainants
- 9 were still being investigated

The majority of applications filed against the Yerevan Mayor's Office complained about the Mayor's Office's failure to: prevent unauthorized construction; eliminate the detrimental impact of such construction; legalize land plots and structures that had been used by the applicants for years; provide information to third parties; prevent cutting of trees; prevent the implementation of construction work that violates building standards. In 2008 there was also a surge in applications complaining about the sub-market price compensation offered for applicants' property in the government appropriated demolition zone. These issues were duly covered in previous reports of the Human Rights Defender and more detailed coverage of these issues was also provided in Part 2 of the present Report.

Some applications claimed that communal yards and play areas in front of apartment buildings were alienated and assigned to third parties for construction purposes, with no due regard for the requirements of the *Law on Urban Planning* and RA Government Decision No.660 (of 28th October 1998) *On Establishing the Procedure for the Notification of Planned Changes to the Environment and Participation of the Public in the Process of Discussions and Decision-making on Announced Urban Planning Projects and Designs*.

In addition, the Human Rights Defender continues to receive applications reporting difficulties arising from trying to register property rights for the first time. The Defender covered this problem extensively in his 2007 Report (Section 3.15). In particular, the Report underscored that the initial registration of property rights by the state was a flawed process – ownership rights were denied if cadastral mapping identified up to a 20% discrepancy between the measurements of the cadastral office and the measurements referred to in the submitted documents. This, however, goes against the RA Land Code (Article 64, clause 2), which stipulates that ownership be registered in such cases. The arbitrary approach of the Yerevan Mayor's Office and the State Committee of the Real Estate Cadastre resulted in scores of citizens enduring adverse consequences.

On 18th January 2008 the Deputy Head of the State Committee of the Real Estate Cadastre notified in writing that, according to the requirements of the *RA Land Code* (Article 64, clause 2), the title deeds of owners to lands used and claimed by them shall be acknowledged through first-time state registration if the discrepancy between cadastral measurements and measurements in the submitted documents made *up to* 20% of the claimed land and if they complied with other requirements of the same article. According to clause 1 of that Article, the alienation of state or

local authority controlled land, including via the granting of ownership rights, shall be implemented by the heads of those local authorities and, in the case of Yerevan, the city Mayor.

On 21st January 2008 the Chief of Staff from Yerevan Mayor's Office notified in writing that since the Yerevan Mayor's Office had not received formal notification about the completion of cadastral mapping, which was a legally binding precondition for finalizing the process of first-time registration of title deeds, the applicants were asked to purchase the land plots at their cadastral value through a direct sales procedure.

In his letter of 11th February 2008 the Human Rights Defender focused the attention of the cadastral authorities on RA Government Decision No.867 (of 31st December 1998), which established a procedure for first-time registration of ownership rights after cadastral mapping works were complete (clauses 8 and 9). Thus, the standard procedure should be as follows: if cadastral mapping reveals that the actual size of the land used by owners (or users claiming ownership) exceeds the size mentioned in the claim documents, the cadastral office shall report this to heads of local authorities responsible for the area within which that land is located (or to the city Mayor in the case of Yerevan). The latter shall follow the decision-making procedure outlined in RA Government Decision No.867 (of 31st December 1998) (clauses 5-7).

Adoption of the *Law on the Status of Houses with Missing Ownership Documents in the city of Yerevan* (10th June 2008) was undoubtedly a positive development. Article 2 of the Law states that in the city of Yerevan, state-owned land areas (including those in the demolition zone) exceeding lawfully owned land that is designated for houses and their maintenance by up to 300 square metres shall be considered the property of the person, provided that it was at their disposal since before 15th May 2001. In addition, visits of Human Rights Defender's staff to various regions of the country have helped to identify that similar problems exist in the regions and that it is possible to address them in the same way.

It is also worth noting in this section the decisions of the Yerevan Mayor's Office in response to requests for and notification about political rallies in the city of Yerevan. After the 1st March 2008 events, the Yerevan Mayor's authorized representative prohibited more than 90 requests to sanction the holding of peaceful meetings, rallies, marches and demonstrations. Most of these decisions were based on official statements by the RA Police or the RA National Security Service that claimed extremist groups supporting the organizers of the rally were ready and willing to create provocations, including conflicts with the law enforcement bodies, and would be trying to turn the rally into mass disorder with the aim of violently overthrowing the country's constitutional order. However, **the credibility of and justification for such statements seem doubtful because despite prohibitions by the Mayor's Office, the rallies, marches and meetings took place and passed without incident.**

The following cases reveal the type and scope of complaints brought against the Yerevan Mayor's Office.

Illustrative Case 1

A group of residents from building No.56, Teryan Street, Yerevan, informed in their application to the Defender that *Nushikyan Association Ltd* was building a 5-storey building next to their apartment block even thought the company had only been given planning permission for a 4-storey building. Through the course of the preceding year applicants had solicited a number of written assurances from the Yerevan Mayor's Office to ensure that "changes to the building

design were not considered appropriate." The residents also applied to court (Court of First Instance in Yerevan's *Kentron-Nork Marash* district), which based its verdict of 27th December 2007 on the Yerevan Mayor's Office's written communication.

However, the applicants were still concerned that the reinforced concrete column had not yet been dismantled. And, although construction work was frozen between November 2007 and February 2008, it resumed in March, when the applicants were told that the construction work was going ahead in accordance with new design documents. However, nobody had heard of such plans and so they sent an enquiry to the Yerevan Mayor's Office. No reply was given.

On 31st July 2008 the First Deputy of the Yerevan Mayor wrote the following to the Human Rights Defender:

Thee master plan of the hotel-office complex being built by the *Nushikyan Association Ltd* – between Nikol Aghbalyan School, 54 Teryan street, and the residential building at 19 Aghayan Street – was approved by the Mayor's Office on 31st October 2006 and a construction permit was issued on 8th November 2006. At a later date, changes were introduced to the architectural plans and the construction was re-negotiated with and approved by the Mayor's office on 1st February 2008 (No.50-05/2-961-86). According to the new plans, the building would have a basement, 5 floors, and loft space. Thus, construction work was being implemented within the scope of the approved documents. As regards providing information to the citizens, *Nushikyan Association Ltd* originally posted a placard about the building under construction, which all interested parties could see and read.

However, discrepancies were found between the information provided by the Yerevan Mayor and a letter (No.SH-25.2485, dated 27th June 2008) from the Head of RA Urban Planning Inspectorate, which stated: "All the necessary documents for the construction of a four-storey hotel-office building (with loft space) have been issued in line with established procedures. On 12th January 2008, Yerevan's chief architect issued an architectural planning proposal (No.50/2-25989-06) to make changes to the master plan of the half-built hotel-office building that would allow the construction of a five-storey building (with loft space) instead of the original four. Adhering to effective procedures, the building company ordered the new planning documents and started construction on the building's 5th storey. Construction work was halted while the relevant changes to the plans were being finalized."

However, the letter failed to specify any reason for allowing the construction of the building's 5th floor, which was particularly troubling since full implementation of the architectural planning proposal would take the perimeters of the building onto state-owned land. Given the inconsistencies between the data provided by the two different sources, the letter of the Head of the RA Urban Planning Inspectorate (part of the RA Ministry of Urban Planning) was forwarded to the Mayor of Yerevan and the Mayor was asked to clarify the discrepancies within 20 days. The Mayor failed to reply within the specified period and so on 10th October 2008 the request was reiterated and the Mayor was asked for a prompt reply. After still no response, another letter was sent to the Mayor on 29th October asking him to respond to the inquiry immediately and explain why he had not answered the previous requests.

After comprehensive consideration of the application and the failure of the Mayor to respond to the Human Rights Defender's correspondence, it was concluded that the Mayor had violated the following principles of law:

1) According to the *RA Law on the Human Rights Defender* (Article 12, Part 1, Clause 3), "within the scope of an investigation into a particular complaint, the Human Rights Defender is authorized to obtain clarification from central or local government bodies or their officials and employees, excluding courts and judges."

2) Part 4 of Article 12 of the same Law states that: "documents or information requested by the Human Rights Defender shall be made available to him as soon as possible – within thirty days of the query's receipt, unless other periods are specified."

3) According to the *RA Administrative Violations Code* (Article 206.8) "Failure to reply to a query made by the Human Rights Defender within a specified period or failure to make the required materials available to him/her within a specified period shall be liable to a fine of 20-times the minimum salary."

Moreover, the Yerevan Mayor's failure to respond to the queries of the applicant (the residents of the apartment building) is a violation of the *RA Law on the Freedom of Information*, according to which "each person has the right to access information he/she is seeking and/or to make inquiries from the person in charge of that information in order to gain access to that information by due legal procedure" (Article 6, part 1). Furthermore, the applicant and other residents of the building were not informed by Yerevan's chief architect that changes were made to the master plan of the building or that construction of the new 5th storey was approved by Decision No.50/2-25989-06 of 12th January. This failure constitutes a violation of Government Decision No.660 (of 28th October 1998) *On Establishing the Procedure for the Notification of Planned Changes to the Environment and Participation of the Public in the Process of Discussions and Decision-making on Announced Urban Planning Projects and Designs.* According to that decision, "regional or local government administration bodies shall inform the public about urban development projects and designs that have been submitted for approval within 3 days and notify how they can familiarize themselves with the relevant documents, including the time and venue of the materials' publication, display and discussion" (clause 4).

On 10th October 2008, the Human Rights Defender issued a Decision stating that the activities of the City Hall were a violation of human rights and sent a copy of that decision to the Yerevan Mayor. Once again, the Mayor's Office failed to make any response to this Decision (as required by the *RA Law on the Human Rights Defender)* within the abovementioned 20-day deadline.

Illustrative Case 2

An applicant informed the Defender that on 28th November 2007 he had had the opportunity to present his problem to the RA Prime Minister, who in response issued relevant instructions requesting that a land area of 1,200 square metres, designated for housing construction, be provided to him and his brothers in exchange for the land of 2,900 square metres that they had been leasing in the area of *Dalma* gardens. He claimed that Kh. Vardanyan, Head of the RA Regional Management and Local Government Administration Department, and G. Melkumyan, Chief of Staff of the Yerevan Mayor's Office had considered the instructions of the Prime Minister but had taken no action to implement them.

In response to the inquires of the Human Rights Defender, the Mayor sent a letter on 1st September 2008 informing him that the Mayor's Office had mediated talks between the applicant and the owner and the latter had promised to help. The Yerevan Mayor was asked to keep the

Defender informed about the progress of the negotiations and the steps being taken to solve the problem. Consideration of the complaint is still in process.

Illustrative Case 3

A group of Yerevan residents informed the Defender that since 3rd April a garage, 5-6 metres in length, was being constructed on a pedestrian pathway, blocking access to the closest bus station, grocery store and main street (as a result, residents had to walk an additional 600-1000 meters to reach the street). It was noted that closure of the path might be seriously problematic in emergency situations. The staff of the Human Rights Defender had telephone conversations about the issue with Yerevan Mayor's Office, Yerevan's Arabkir Municipality District Office and Arabkir Municipality District Police Office. However, no steps were taken to prevent construction of the garage.

The Yerevan Mayor clarified that a statement on implementing unauthorized construction had been made on 7th April 2008 to the person concerned and, based on the decision of the Yerevan mayor of 25th April 2008, the person had been fined AMD 400,000 and held responsible for taking measures to eliminate the structure and any detrimental impact it had. The imposed fine was fully paid by G.L. but the garage, covering of 20 square metres, was not removed from in front of the building. Thus, the case was further taken to court (Kanaker-Zeitun Court of First Instance) on 8th October 2008.

Illustrative Case 4

A Yerevan resident wrote to the Defender complaining that for years his/her apartment had shared a common wall with the building's 10,000 kilowatt electric power distributor. He/she stated that he/she had complained about the harmful impact of the generator many times to various government bodies, before finally the Mayor's office decided (decisions of 23rd May 2006 and 28th April 2007) to designate a 39 square metre area at 10 Zakyan street for the power distributor in accordance with Plan No.87-11. However, the applicant complained that the Kentron District Office of the Real Estate Cadastre had refused to register the decision because a certain person had installed and was running a retail kiosk in that area without permission.

In response to the Human Rights Defender's inquiry into the matter, the Chief Architect of Yerevan confirmed on 2nd October 2008 that according to the mentioned decisions of the Yerevan Mayor, the land user should have registered with the respective district cadastre office within 30 days of notary approval. This was not done, however, due to a retail kiosk built in the designated area. Since the retail kiosk has now been removed and taking into account that the periods established by the Yerevan Mayor are still valid, it is advised that that the Armenian Power Grid CJSC request that the Yerevan Mayor's Office extend the relevant deadline. Thus, consideration of this complaint has been completed.

Illustrative Case 5

Owner of building No.3 Abovyan Street, Yerevan, applied to the RA Human Rights Defender stating that:

According to Government Decision No.1047-N (of 8th July 2004), the area next to house No.5 on Abovyan Street was assigned to a private company for the implementation of investment and building projects (permission given by the Yerevan Mayor on 20th August 2004). While

digging at the construction site, the builders came too close to his/her house and exposed the building's foundations. The company had dug as deep as 10 metres, which created a real danger of collapse for his house, No.3 Abovyan Street. Moreover, access to his house had been blocked as a result of the the building company's construction work. As far as he knew, the area was going to be used for an 18-storey building. This would be a violation of urban planning norms since between 2 or 3-storey buildings there must be a gap of at least 15 metres (SNiP – 2nd July 1989, clause 2.12) and in the case of 4-storey buildings that gap must be 20 metres – a rule that was not being followed in this particular construction project.

The applicant stated that in 2006 he/she had asked the Yerevan Mayor's Office to alienate a portion of adjacent land to him/her, presented the relevant maps, and stated his/her willingness to purchase that land. However, he/she was told that the sale of the land could only take place via auction. Then, in 2008, he/she was informed by the Mayor's Office that the land in question had been assigned to a third party for construction purposes in 2004. The applicant also attached to his/her application copies of statements made by the RA Urban Planning and RA Emergency Situations Ministry, which revealed that the construction work lacked relevant planning documents and that there was a real danger of the applicant's building's collapse.

On 3rd June 2008 the applicant (A.M.) submitted a complaint to the Chief of the RA President's Supervisory Service. Since the Chief of the Service had made no response after 45 days, he/she decided to write to the President of Armenia to complain about the violation of his/her property rights and the failure of the Chief of the RA President's Supervisory Service to respond to his/her complaint. Following that, he/she received a letter (dated 21st July 2008) from the Head of the First Department of the RA President's Supervisory Service. However, according to the applicant, this reply failed to clarify any of the issues raised in his/her complaint and made no comment, positive or negative, about his/her infringed property rights.

The Human Rights Defender has sent inquires to the RA Presidential Chief of Staff and the Yerevan Mayor. The case is still being considered.

Illustrative Case 6

A Yerevan resident, A.Z., informed the Defender that on 11th April 2008 he/she had written to the Yerevan Mayor to request a copy of the decision of the Mayor's office relating to his/her notification to hold a public event in Republic Square on April 9th. However, the authorized representative of the Yerevan Mayor refused to provide such information.

In response to an inquiry into the matter by the RA Human Rights Defender, the Mayor of Yerevan informed the Defender on 15th April 2008 that according to the *RA Law on Administration Principles and Administrative Proceedings*, access to materials that have been considered in administrative proceedings can only be provided to participants of those proceedings (Article 39, clause 1). Moreover, on 1st April 2008 the secretarial bureau of the Yerevan Mayor's Office had registered an application (No.4 in the registry) by a private company that announced the company's intent to organize an unprecedented international balloon festival in Yerevan, 8th - 13th April, called *The Coloured Sky of Yerevan Event.* The authorized representative of the Yerevan Mayor had stated no objection to the event. Since, under the *RA Law on Conducting Meetings, Rallies, Marches and Demonstration* citizens and legal persons have the right to hold non-populous events without notifying an authorized body, no decision had been made to acknowledge the notification of the party who had submitted it.

The applicant complained that he/she considered the letter of 15th April by the authorized representative of the Yerevan Mayor's Office unlawful and for this reason was requesting compensation of damages. On 20th August the Yerevan Mayor's Office clarified in writing that their reply to the applicant's request was in conformity with effective legislation: the applicant had requested from the Mayor's Office a copy of a decision or other legal document acknowledging the receipt of the event's notification; he had not requested any further 'information'. Thus, the Mayor's Office claimed that the person's application (No.212 of 1st April 2008) had asked for a concrete document issuing from the relevant administrative proceedings and not for information.

On 29th October 2008 a copy of the verdict of Administrative Court VD2583/05.08 was forwarded to the Human Rights Defender – the court held that the actions of the Yerevan Mayor did not respond to the plaintiff's application, registered as No.143 and dated 3rd February 2008, and were therefore unlawful. The Administrative Court demanded that the Yerevan Mayor's Office allow the plaintiff to familiarize himself with materials in the relevant administrative portfolio and make copies, photocopies or reference statements of these documents at his discretion. The Court also demanded that the Mayor's Office pay the court fees of AMD 4000 to compensate the expenses of the plaintiff.

3.14. Regional Administration and Local Government Administration Bodies

This section of the report deals with complaints brought against the regional administration bodies, including regional governor's offices (*marzpetarans*), local self-governing bodies, Yerevan's municipal offices, and other town and village halls in Armenia (excluding Yerevan City Hall).

The majority of complaints against governor's offices, rural administration offices and Town Halls of smaller towns came from the "earthquake zone" and mostly related to: housing, land distribution and land use issues; unfair distribution of state or donor financed apartments in the disaster zone, unwillingness to consider additions to families in rehabilitation projects; failure to include homeless people on registration lists and similar issues, including infringement of employment and social benefit rights. Housing issues continue to remain the most salient problem. There are families that lost their homes in the 1988 earthquake who are still living in dangerous buildings or temporary shelters.

3.14.1. Regional Governor's Offices (*Marzpetarans*)

In 2008, 22 complaints were brought against the Regional Governor's Offices (*marzpetarans*), out of which:

- 15 were accepted for consideration
- None were denied consideration but applicants received advice about the relevant avenues of legal recourse available to them
- None were forwarded to other bodies for consideration
- 4 were denied consideration
- 3 were still being investigated

Illustrative Case 1

Two applicants from the town of Chambarak, Gegharkunik region, informed the Defender that they had been living as refugees in a dormitory in Chambarak since 1997. They complained that they had been asked to vacate the premises because the dormitory building had been allocated to the RA Ministry of Defence. Although they had written to the RA President and the Governor of Gegharkunik, their situation had not yet been resolved.

In response to inquires made by the Human Rights Defender, the Governor of Gegharkunik region informed the Defender that the complaints of the applicants had been studied and discussed with the Mayor of Chambarak. It transpired that the dormitory building had not been allocated to the RA Ministry of Defence but that it was simply undergoing certain repairs and thus remained under the control of the Town Hall. The only potential change may be to room numbering and this was deemed to be an inadequate reason for asking the applicants to vacate their dormitory rooms. Moreover, the Mayor of Chambarak promised to allocate new apartments to the applicants as soon as they became available.

Illustrative Case 2

According to one applicant, he/she had been living in the Engineering College dormitory in the town of Abovyan (Kotayk region) as a refugee. He/she had been issued a purchase certificate for an apartment and had found an apartment to buy. The applicant claimed that 60% of the apartment's sale price had been paid by the Governor's Office to the owner/seller; however, 40% remained. It was also stated that he/she had signed a contract with the Governor of Kotayk region, which stipulated that the alienation of his/her privatized dormitory room may only be given as a donation to the local authority or the state. The applicant's concern was that because he/she had young children in the family, simply giving away the property that he/she owned was not an option, while the Governor's Office was refusing to finalize the transaction through a return and acceptance act. As for the new apartment, he/she reported that it was bought at the beginning of 2007 and yet the seller of the apartment still had not been paid the remaining 40% of the apartment's price.

In response to the Human Rights Defender's inquiries into the matter, the Governor of Kotayk region informed the Defender that the dormitory room in the Engineering College was handed over to the Migration Agency of the RA Ministry of Regional Administration and that the

remaining 40% of the apartment's price had now been paid. Thus the problem was successfully resolved and handling of the application was complete.

3.14.2. Yerevan Municipal District Offices

The Office received 31 complaints against the municipality district offices of Yerevan, out of which:

- 19 were accepted for consideration
- 4 were denied consideration but applicants received advice about the relevant avenues of legal recourse available to them
- None were forwarded to other bodies for consideration
- 6 were denied consideration
- 1 was withdrawn at the request of the complainant
- 1 was still being investigated

The complaint-applications against the municipal offices mostly raised issued related to: substandard public administration; failure to prevent instances of ongoing illegal construction; improvement of housing conditions; failure to grant property tax concessions to the financially insecure; and garbage disposal and other issues.

Illustrative Case 1

A Yerevan resident informed the Defender that he had been appointed legal guardian of his wife L.L., who had been recognized as incapable of work by decision of 21st December 2007 of the Trusteeship and Guardianship Body under Yerevan's Arabkir Municipal District Office. The applicant stated that together with his wife he had been living in the Arabkir district in an apartment that was not their own property. He owned a 3-room apartment in Yerevan's Davitashen municipal district but wanted to sell it and buy the apartment where he was now living with his wife so that he would be better able to take care of her and pay for her treatment. The applicant claimed that he had made several attempts to obtain permission from the Trusteeship and Guardianship Body to sell the apartment which he owned in the Davitashen district. However, his requests were turned down (orally) for unsatisfactory reasons.

The Human Rights Defender asked the Head of the Davitashen Municipal District to explain the legal grounds for the Trusteeship and Guardianship Body's refusal. The latter sent a letter to the Human Rights Defender on 31st July 2008 stating that citizen Gh.L. had not submitted the necessary paperwork. Subsequently, the applicant submitted all the required documents and the Trusteeship and Guardianship Body made a decision – Gh.L. gained permission to sell his 3-room apartment in Davitashen.

Illustrative Case 2

A.S., an applicant from Yerevan., along with 20 neighbours, informed the Defender that after his/her son had perished on 20th January 1990 in the Karabagh war, the family, in memory

of their son, planted a rose garden next to their house at the intersection of A. Khachatryan and Gyulbenkyan streets, complete with a water fountain and bust of the young man. In March 2005 a retail kiosk was placed right in front of the rose garden. However, after the neighbour complained, the former Head of the Municipal District demanded that the kiosk be removed. In 2006 there was another attempt to erect the same retail kiosk next to the garden, but it was again prevented. Three days after the elections of the new Head of the Municipal District in 2008, the kiosk reappeared, this time being erected at the entrance to the garden, blocking the view of the garden and monument. The applicants stated that they had complained to the Head of the Arabkir Municipal District and the Yerevan Mayor's office, but there had been no resolution of the matter.

The Human Rights Defender's inquiries clarified that the owner of the kiosk had obtained a legally valid construction permit from the Yerevan Mayor's Office and the Arabkir Municipal District Office. After the kiosk had been dismantled, the owner had sought remedial action through court and on 5th April 2007 Yerevan's Arabkir and Kanaker-Zeitun Municipal Districts' Court confirmed the conciliation agreement reached between citizen L.H. and the Arabkir Municipality District Office, after which the person was allowed to install the kiosk in the area. However, the Arabkir Municipal Office had sent multiple applications to the Yerevan Mayor's Office requesting that a different spot for kiosk be provided. At present the retail kiosk has been removed from the area.

Illustrative Case 3

A resident of the Yerevan's Avan Municipal District informed the Defender that according to a Decision by the Soviet District Council Executive Committee (Yerevan, 25th April 1994), he/she was granted ownership rights to an apartment that district. In 2008 he/she noticed a mistake in the ownership certificate that had been issued to him/her – although the first page of the certificate indicated that he/she was the sole owner of the apartment, the last page stated that the apartment had shared ownership. Thus, on 11th September 2008, the applicant requested that Avan district office of the State Committee of Real Estate Cadastre make the relevant correction in the ownership document and submitted the 1994 Decision granting ownership of the apartment and the apartment ownership certificate. In order to process the request, the district cadastre office asked for a reference letter from the Avan Municipal District Office to identify the parties involved in the 1994 privatization transaction. The applicant visited the Avan Municipal District Office the same day, where an employee told him/her that the processing of his/her request was only possible if he/she brought a letter from his/her condominium bureau to confirm that he/she had no outstanding communal payments.

However, because the applicant's outstanding payments (from numerous years) amounted to AMD 140,000, he/she stated that he/she was unable to immediately settle the debt and asked the Chief of Staff at the Avan Municipal District Office to make an exception and issue the reference letter required at the cadastre office. This request was turned down.

In follow up to the complaint-application, the Human Rights Defender sent a memorandum to the Head of the Municipal District Office. The latter replied that it had not received a written request by G.P., the resident in question (letter No.30/01-1397, dated 25th November 2008). After the applicant submitted a written request, the Avan Municipal District Office finally granted his/her request.

Concerning the fact that the letter remained unanswered, the Head of the Avan Municipal District Office admitted that it had been an instance of inadequate functioning of the respective department and said the responsible officer had been issued with a strict verbal warning.

3.14.3. Municipal Town Halls

During the reporting period the Human Rights Defender's Office received 18 complaints against town halls, of which:

- 11 were accepted for consideration
- 1 was denied consideration but the applicant received advice about the relevant avenues of legal recourse available to them
- None were forwarded to other bodies for consideration
- 3 were denied consideration
- None were withdrawn at the request of the complainant
- 3 were still being investigated

The RA Human Rights Defender tasks his staff with regularly visiting all the administrative regions of Armenia. These trips include meetings with the mayors of Armenian towns and representatives of non-governmental organizations active in those towns, with whom they discuss issues of concern to the local residents.

This year marked the 20th anniversary of the 7th December 1988 earthquake. The process of providing housing to families that lost property in the earthquake has been slow – there are still thousands of homeless families in the disaster zone (especially in the town of Gyumri) who are living in temporary lodgings, shacks and large industrial containers, without access to basic amenities. Each year the Government kindles hope in these people – that they would finally receive normal housing accommodation – and then it announces extensions of project implementation periods. Some applicants have also complained about the Government's Apartment Purchase Scheme, which issues funding certificates to the homeless so that can buy a house. Complaints concerned the amounts awarded by the certificates – people claimed that the sums were well below market prices and they thus refused to collect the certificates.

Illustrative Case 1

L.G., an applicant from Gyumri, informed the Defender that on 28th September 2005 the RA Court of Civil Appeals had denied the appeal complaint of Gyumri Town Hall that requested him/her to vacate the area (hut) he/she occupied without valid permission. The court's decision was based on the fact that Gyumri Town Hall was suggesting that he/she move into an apartment that was dilapidated and unsuitable for living and that many who had lost their homes in the earthquake were already living there.

The applicant complained that to date Gyumri Town Hall had failed to improve his/her living conditions. Moreover, he/she mentioned that the land around where he/she was staying had been made available to third party owners, who started construction projects in violation of urban planning and safety norms, thus, violating his/her rights and endangering his/her health and the

life of his/her family members. According to the applicant, two construction projects were already underway in the area and if the third one started too, then the only path leading to his/her lodging would be cut off. He/she also mentioned a recent accidental wall collapse that had crushed hut No.101/031 and caused three deaths. Despite this, the mayor's office permitted implementation of the construction projects.

In response to the Defender's inquiries about the applicant's complaint, the Gyumri Mayor stated that, based on the applicant's request of 9th March 2004, and in accordance with RA Government Order No.432 of 10th June 1999, he/she had been registered on a list of families in need of housing and as a single-parent family was entitled to a one room apartment and the privileges prescribed under clause 15.

Since the earthquake period the citizen had in fact been living alone in a temporary hut erected at the intersection of Teryan-Sundukyan streets. Within the framework of the Gyumri Development Program, the area next to the town's central street had been designated for urban planning. Thus, the citizen had been asked to leave his/her hut in that area and sign a lease contract for AMD 20,000 per month for a different apartment. However, the citizen had declined the offer. In order to prevent accidents and causalities, construction work in the respective area has been halted at the Mayor's request until the problem is resolved. Thus, the application is still being dealt with.

Illustrative Case 2

An applicant from the town of Byureghavan, Kotayk region, informed the Defender that she used to live in Dormitory No.2 of the town, together with her husband. Her husband had worked for the town's bottle manufacturing company for 20 years, after which (on 15th October 1997) he was given the room in the Dormitory. She said that for the last four years they had been living in the Russian Federation, but still regularly paid rent for the apartment. The rooms of the Dormitory had not been previously privatized because the building was in emergency condition and at that time the dormitory was registered as the property of Byureghavan Town Hall. After returning to Armenia, the couple learnt that a process of privatization of the Dormitory's facilities was underway. However, they were asked to pay USD 8,000 for the apartment, otherwise they were threatened with expulsion.

In reply to inquires made by the Human Rights Defender into the matter, the mayor of Byureghavan refuted the details mentioned by the complainant, stating that S.M.'s family had not been living in the mentioned rooms of the dormitory since 2000 and the rent had not been regularly paid. He mentioned that the apartment order which had been issued by the chairman of the trade union of the *Hayapaki* bottle manufacturing company was void of power, since the dormitory building had been owned by Byureghavan's municipal local authority since 9th July 1997 (RA Government Decision No.253) – but the date on the apartment order was 15th 1997. By the decision of the Council of the Byureghavan municipal local authority, the disputed rooms were auctioned off as a "No.1 two-room apartment." The auction was properly advertised in *The Republic of Armenia* daily and the apartment was sold via auction on 30th July 2007 on the basis of best offer. The applicant and her family did not bid in the auction; however, if they had made a bid, under the regulations of the auction commission, priority would have been given to them. Consideration of the complaint has ended.

3.14.4. Village Halls

12 complaints were received against village halls, of which:

- 7 were accepted for consideration
- 2 were denied consideration but applicants received advice about the relevant avenues of legal recourse available to them

Complaints against these village administration offices were largely related to the land disputes arising from map discrepancies made during first-time registration of property deeds.

Illustrative Case 1

An applicant from the village of Kakhakn (Gegharkunik region), the majority whose residents are refugees, informed the Defender that since 1992 there had been two waves of land privatization, but then the process had been stopped, leaving a great number of the village residents unable to claim deeds for their lands. In 2003, however, the village residents discovered that the Government had designated 30 hectares of arable land [for privatization purposes] to the Kakhakn local authority. A respective package of documents was delivered to the regional Governor's Office, but the process was not started.

In order to clarify the matter, the Human Rights Defender's Office wrote to the Governor of Gegharkunik region, who stated that according to the *RA Land Code,* ownership of land found within the administrative boundaries of a given local authority is granted by the Head of that local authority, with the consent of the Council (Article 65, part 1). Furthermore, he stated that the Head of the Kakhakn local authority had not delivered to him any documents requesting distribution of unclaimed land from families who had not benefited from previous land privatization.

The Defender sent a further inquiry to the Head of the Kakhakn local authority, who replied that under the RA Land Code the land privatization should have been finished by July, 2003. He further stated that the village administration had not been informed about a further change to the Law on 20th June 2006, whereby the privatization process had been extended until 30th June 2007. The former Head of the local authority had not distributed the lands, while the new Head had not received applications for the land. The Human Rights Defender's Office was also advised that the Head of the Village Office of Kakhakn local authority had applied to the National Assembly with a request to provide a legislative solution to the problem. Until the issue of privatization is solved, the applicants are being allowed to rent the land.

Illustrative Case 2

A resident of the village of Artsvanist, Gegharkunik region, informed the RA Human Rights Defender that he had bought hay barn No.6 in his village via an auction organized in line with Government Decision No.340 (of 8th June 1992) and had been living there together with his family and parents since 1993. He noted that he was enrolled in welfare programs and had no land deeds or other income to pay for his family's living. He further stated that next to the barn there was a plot of land which he had been cultivating, the proceeds of which he had been using to make ends meet. The applicant stressed that he had been cultivating the land for 14 years;

however, without his knowledge the office of the village administration chief had secretly privatized it.

With respect to this application, the Governor of Gegharkunik region clarified on 3rd June 2008 that the issue raised by the mentioned applicant from the village of Artsvanist had been studied numerous times. He claimed that the complaint of the applicant was not based on any solid evidence and did not correspond to reality. He also attached to his letter a statement of the Head of the local authority (dated 28th May 2008), which stated that the mentioned citizen owned arable land (1.15 ha), a hay field (0.29 ha), and a plot of land (0.20 ha) adjacent to his house and that he was also engaged in the fishing business.

In response to the ‘clarification’ provided by the local authority head, the citizen wrote again to the Defender (3rd July 2007) protesting that the information was incorrect – that he had never been given ownership of the land next to his house. Moreover, he complained that because the Head of the village had refused to issue him a relevant document about the hay barn which he had bought via auction in 1992, he had never been able to formally register his property.

In order to investigate the problem first hand, representatives of the Human Rights Defender visited the village and the disputed area and discussed the issue with the Head of the village in his office. The latter agreed to issue a property document in the required form. Subsequently, on September 8th the village head notified the Defender’s office that the land dispute had been solved via an agreement with the applicant – he would continue to cultivate the land next to his house by renting the plot from the local authority.

Illustrative Case 3

A.A., a resident of the town of Abovyan, Kotayk region, stated the following in an application to the RA Human Rights Defender:

On 13th April 2007 he bought via auction a 7,000 square metre plot of arable land in the Norgyugh community (Kotayk region). According to the applicant, a portion of that land was secretly sold to a third party by the Head of Norgyugh local authority and they proceeded with falsifying the land master plan of the land, changing its borders, so that he/she was left with just 2,500 square metres.

The Human Rights defender contacted public bodies and agencies to make inquiries. From an examination of the materials in the cadastral file and relevant correspondence, it was revealed that the borders of the citizen’s property had indeed been changed. In a letter dated 9th June 2008 addressed to the Head of Norgyugh local authority, the Governor of Kotayk region also stated that the borders of the 0.7 hectare land belonging to the applicant had been changed. The Head of Norgyugh local authority was asked to make readjustments to the land borders on the basis of the master plan which had been attached to the alienation contract and was an indispensable part of it. A copy of that letter was delivered by the applicant to the RA Human Rights Defender.

Since the citizen has now taken the case to court, consideration of the complaint by the Defender has ended. It should be noted that the Kotayk Prosecutor’s Office brought charges against the head of Norgyugh local authority on 20th June 2008 for forging and falsifying official documents (Article 314 part 1 of the Criminal Code). The pre-trial investigation of the case was assigned to Abovyan’s police investigation department and the investigation is now underway.

Illustrative Case 4

Citizen L.M. informed the Human Rights Defender in writing that in 1975 the Gardeners' Union of the *ArmElectro* Industrial Union allocated him/her 500 square metres of land in the village of Nor-Kyurin, Ararat region. When the land deeds were being re-registered and the master plan of the land was being drawn up, for reasons unknown to him, L.M.'s land was annexed into the land of his neighbours N.M. and H.M. He applied to the Masis Office of the RA State Committee of the Real Estate Cadastre to request that the mistake be rectified and that he be registered as the rightful owner of the land deeds.

The Head of the Masis Office of the RA Real Estate Cadastre responded by insisting that, in line with the requirements of RA Government Decision No.867 (of 31st December 1998) *On Establishing a Procedure for the First-time Registration of Real Estate in Areas Where Mapping is Finished*, the mapping of the gardening lands had been done by a duly licensed organization, together with the Head of the Office of Nor-Kyurin village. However, they did not incorporate L.M.'s land into the map. The Cadastre Office also recommended applying to the Office of the Head of the Nor Kyurin village to request the status and location of the land in question.

With respect to L.M.'s application on 9th November 2006, the Deputy Head of the State Committee of the Real Estate Cadastre stated that the applicant's property rights may be registered if documents proving ownership are provided, including the membership card of the Gardeners' Union and the master plan of the land approved by the head of the local authority via relevant legal procedures. The applicant subsequently complained that the Head of Nor-Kyurin's local authority was refusing to issue the master plan of the land.

The Human Rights Defender sent an inquiry letter to the Head of Nor-Kyurin local authority (Ararat region), M. Grigoryan, asking him to clarify the reasons for refusing to provide the master plan of the land to L.M. Since the village Head failed to reply, the Defender sent a reminder, suggesting that the Head reply to his letter immediately and explain why he had not responded to the first letter. However, he still did not respond.

Thus, L.M.'s property and information rights were infringed due to the failure of the Head of Nor-Kyurin local authority to make available to him a master plan of the land in his possession. The applicant was unable to exercise rights referred to in Article 1, Protocol 1 of the *European Convention on Human Rights and Fundamental Freedoms*, according to which: "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law."

Thus, taking into account the complaint's outcome and the requirements of the *RA Law on the Human Rights Defender* (Article 15, part 1, clause 1), the Human Rights Defender declared in a Decision on 8th December 2008 that the rights of citizen L.M. had been infringed due to the actions of the then Head of Nor-Kyurin local authority. The latter was recommended to make sure that the relevant master plan be made available to L.M.

PART 4
RIGHTS OF SPECIAL AND VULNERABLE GROUPS

4.1. Rights Related to Service in the Armed Forces

According to the RA Constitution, the RA Armed Forces shall be under civilian control (Article 8.3). Successful enforcement of this principle, elaborated in the *RA National Security Strategy Paper* and a number of other documents, should trigger a process by which mechanisms for defending human rights penetrate the Armed Forces. With this in mind, programmes of cooperation with international organizations have been updated to incorporate provisions that foster the development of existing capacities of civilian control and human rights protection in the Armed Forces, as well as other similar provisions. The RA Human Rights Defender has also participated in these processes. At the beginning of 2007 the position of 'adviser on issues related to the armed forces and armed forces personnel' was created within the RA Human Rights Defender's Office and was filled in November of the same year.

A review of international experience in this field indicates that the Ombudsman institution appears to be the one of the most effective control mechanisms at agency level, interagency level and public level. Therefore, the RA Human Rights Defender has been keeping a sharp eye on developments in this field, paying close attention to how legal action is being used to protect rights, conducting research and analysis of law enforcement practices, and following up on these through written recommendations.

Efforts aimed at improving the level of human rights protection in the armed forces and promoting civilian control mechanisms were continued in 2008. The scope of the Human Rights Defender's activities included not only the focal area of armed personnel's rights, but was also expanded to embrace other areas of rights protection related to military service. Previously, rights violations were mostly considered in relation to the functioning of the RA Ministry of Defence. This year, however, consideration also included analysis of the functioning of other related central and local government bodies. And, concurrently, the range of planned visits to various agencies became much broader. In particular, representatives of the Human Rights Defender paid more frequent visits to RA Police Forces, including Military Police offices and Military Police disciplinary centres that function under the RA Ministry of Defence.

There has been progress in promoting international cooperation and studying international experience and practice. During the year, the Human Rights Defender had meetings with high ranking NATO delegates, discussing issues related to the inclusion of the Human Rights Defender in the Armenia-NATO cooperation as part of NATO's *Individual Partnership Action Plan*. The parties agreed on relevant guidelines for establishing cooperation with the respective NATO divisions. Moreover, a more practical framework for cooperation was achieved with the OSCE Yerevan Office – the parties signed a Memorandum of Understanding, through which the OSCE shall provide expert assistance to the staff of the Human Rights Defender when investigating disciplinary action applied in the RA Armed Forces.

The Human Rights Defender's Adviser on Issues Related to the Armed Forces and Armed Personnel took part in the presentation of a *Handbook on the Rights and Freedoms of Armed Forces Personnel,* prepared by the OSCE Office for Democratic Institutions and Human Rights. According to the Defender's instructions, the Adviser also arranged an initial plan of cooperation with the OSCE Office. The *Handbook on the Rights and Freedoms of Armed Forces Personnel* is considered to be a key set of guidelines in this area. The Defender's Office also established contact with the Office of the Defence Attachn of the US Embassy. In addition, the staff of the Human Rights Defender went on a tour of the US-European Command Headquarters in order to gain and exchange hands-on experience in the area of protecting the rights of armed forces personnel.

As a result of its work, the Human Rights Defender's Office has identified the following issues pertaining to protection of rights in the military:

1. In his 2007 Annual Report, the Human Rights Defender identified that a low level of legal awareness was one of the main impediments to the disclosure and prevention of human rights violations in the armed forces. Particularly uninformed groups included privates conscripted for mandatory (short-term) service and junior officers. It appeared that nothing had been done to address this problem. The legal orientation of youth before their conscription is not properly handled. Conversations with some soldiers revealed that although the secondary school syllabi included a course *Preparing for the Military,* it was often skipped or even if conducted, it still failed to provide adequate information about armed personnel's rights and responsibilities. Consequently, citizens are unaware of how to protect their rights before and during the military call-up. They join the armed forces with a distorted picture, formed from what they have heard others saying, and this contributes to a situation in which relations in the armed forces are beyond the scope of regulatory frameworks. This, in turn, results in infringements of rights and spates of violence, which on some occasions have had tragic consequences. Therefore, the ongoing protests of families and relatives of soldiers, who died during their military service, should not be surprising.

However, senior officers' low level of legal awareness is even more disturbing. This problem is particularly troublesome in connection with senior officers whose military career was shaped on the battlefield – their approach may appear threatened by properly educated officers and servicemen on compulsory service, leading to mistrust and mutual hostility. Moreover, these commanders have no real appreciation of human rights issues in the armed forces, considering that such issues are of secondary importance.

During a scheduled visit to the Syunik region, the representatives of the Human Rights Defender met with servicemen of the RA Ministry of Defence's Sisian military unit. Some of the soldiers there said that they had been in the army for 8 months but had not yet been granted any leave. However, they stated that other soldiers who had arrived later had already been sent home on leave. One of the officers at the military unit confirmed the soldiers' comments. The servicemen also mentioned that the selection process of who should go on leave was discretionary – in their unit the commander had randomly selected someone from the line and decided to send him home on leave, without even asking that particular soldier whether he had been home recently or not.

To further investigate the problem, representatives of the Human Rights Defender talked to Colonel T.P., commander of the military unit. He stated that as the commander of that military unit he was in charge of deciding matters of leave (who, when) – if he wished, he could decide to deny leave to lazy or undisciplined soldiers. He also added that it was not possible to give leave to soldiers who had been in the army for less than 8 months (contrary to what the soldiers had told).

The conversation with the military unit commander raises many concerns. Comments he made about the protection of human rights were indistinct and in some aspects completely off-key. It was concluded that the visit provided sufficient grounds to consider that this particular military unit had the potential risk for human rights violations and that regular monitoring of it should be implemented.

In some cases, certain military commanders' unlawful actions, which seriously violated the rights of armed forces personnel and even resulted in tragic results, can be attributed to their low level of legal awareness.

A representative of the Human Rights Defender who visited the RA Defence Ministry's Ashtarak military unit, reported that G.A., the unit's commander, had subjected a soldier to public beating in order to "educate" him because the soldier had left the unit for a few hours without his permission. He was then going to force the soldier to clean the toilet but in order to evade that the soldier injured himself by slashing his wrists. It is noteworthy that at a later date, in an interview given to one newspaper, the commander of that unit did not refute the allegations – in fact, he mentioned that the cleaning of toilets was also a type of punishment. A month after this incident, no criminal proceedings had begun.

The Human Rights Defender sent a note to the RA Defence Minister suggesting that measures be taken to clarify the circumstances of the incident and hold the officer responsible. In response, the Ministry informed that it had decided not to press criminal charges against G.A. due to his excellent service record and performance of professional duties after the incident. Instead, G.A. received a warning from the RA Deputy Defence Minister.

Thus, a military commander whose behaviour resulted in one of his soldiers inflicting bodily harm on himself failed to bear criminal responsibility for his actions. Undoubtedly, such incidents only feed distrust towards the armed forces – among draftees, their families, and society in general. Naturally, a draftee or his parent who hears of such occurrences would prefer to use all legal (or illegal) means of avoiding military service. The draftees and their families believe they have no guarantees that a military commander would not rather act 'at his discretion' to settle scores with soldiers who break disciplinary rules rather than pursue the proper legal methods of punishment – and do that without having to face discipline for his unlawful actions.

A low level of legal awareness has also resulted in reports of servicemen's legal rights being violated.

The team visited a military unit in Ijevan after receiving a call for help. They discovered that a few days before the reported incident a solider on mandatory short-term service had asked his commander to give him a short period of leave so that he could participate in his sister's wedding party, adding that his sister would be leaving for the Russian Federation immediately after the wedding. The commander of the military unit turned down the request and the young man, unable to reconcile himself with the decision, attempted to harm himself.

In connection with this incident the Military Police office of Tavush region began collecting material evidence. It transpired that at the verbal request of a military police officer, and without prior notification, the youth was sent for forensic-medical examination, accompanied by an officer from his military unit. According to the soldier, the military police officer of Tavush region, Captain E.M., convinced him during the examination to sign two blank sheets of paper, explaining that those would be attached to his file.

During a telephone conversation with Captain E.M., a representative of the Human Rights Defender inquired about this procedure and was told by E.M. that the soldier in question had had psychological problems and was being supervised by the military police on a regular basis. This supervision required regular meetings with the soldier, but since this was not possible due to time constraints, they asked him to sign the blank sheets of paper so that they could fill them out at a later date and attach them to his supervision log.

In response to this explanation, the Human Rights Defender sent a letter to the Head of the Military Police Department of the RA Ministry of Defence Ministry, proposing that an Internal Service Investigation be conducted and measures be taken to hold the officer responsible for his violation of legal norms. In reply, the Head of the Military Police Department confirmed that E.M. had violated supervisory procedures and stated that he had now been made liable for this disciplinary violation.

2. As in the previous year, this reporting year was also marked by complaints challenging the inactivity of the military commissariats.

Dissatisfaction with the work of military commissariats was related to the way medical examination and check-ups were conducted at the time of conscription. In fact, doctors conducting medical check-ups for the military commissariats issued medical statements to draftees that varied from medical statements issued by other medical clinics. As a result of these doctors' subjective approach, young men who otherwise would have been considered unsuitable for military service for health reasons were conscripted. During their military service, however, their health condition continued to deteriorate, sometimes developing into serious health problems and causing premature termination of military service.

In other cases draftees who had been granted a deferral for health reasons were found to be suitable for military service by successive medical commissions, even though their health condition had not improved during the deferral period. This discrepancy between the decisions of medical commissions can be accounted for by changes made to the list of medical conditions attached to the RA Defence Minister's Order No.378, of 30th March 2006, *On the Procedure for Medical Examination of Military Conscripts and Military-medical Examination of Armed Forces Personnel*. It should be mentioned, however, that this Order and its relevant annexes was unavailable to citizens. As a result, some of them chose to challenge medical commission decisions in court since they (wrongly) believed that they should have been granted a deferral for the medical conditions they had.[12]

Complaints relating to the flawed process of registering discharged servicemen in the armed forces reserve – and the respective violations by military commissariats – were covered in the Human Rights Defender's 2007 Annual Report. The Report especially highlighted problems associated with alternative military service. This problem has also received much attention from

[12] The Vanadzor office of the Helsinki Citizens Assembly also highlighted the issues relating to military conscription. A copy of the organization's monitoring report was submitted to the Human Rights Defender

international human rights organizations and in 2008 the staff of the Human Rights Defender conducted further studies so that it would be in a better position to issue recommendations on the issue.

These investigations revealed that persons who refused to carry out mandatory military service – in the armed forces or in alternative service – bore a punishment for their crime in accordance with law; however, when they were released they were denied registration in the military reserve forces until they reached the age of 27, because, according to the *RA Law on Conscription to Armed Forces,* enlistment and registration in the military reserve force shall be open to persons under 27 years of age who have not been conscripted to the armed forces or other forces (Article 24, Part 1, Clause 3). Thus, persons who refused to serve in the regular army or carry out alternative service, after serving their criminal sentence, cannot be registered in the military reserve force until they reach the age of 27.

The importance of this is that there is a direct link between registration in the military reserve forces and the following: issuing of a military record book; registration and re-registration at the place of residence; extension of a passport expiry date; and the issuing of an 'exit visa stamp' in Armenian passports to permit travel outside the country and other issues. Consequently, some people are being denied the opportunity to exercise their constitutional rights and it appears that during the reporting period no steps were taken to provide a legal solution to this problem. Only after the intervention of the Human Rights Defender did it become possible to solve these problems, which especially affect individuals from various religious groups.[13]

Analysis of the activities of the military commissariats attests that they quite often postpone the issuing of military record books for no good reason. According to military commissariats, the processing of applications that request military record books for persons in the military reserve forces is only possible after the announcement of a new military draft, since it is then that the processing of the registries begins. However, it appears that people cannot collect their military record book months after the specified time. This seriously interferes with their rights to free movement, work and other constitutional rights. There were cases when a request for the issuing of a military record book was turned down for ridiculous reasons.

For example, Deputy Military Commissar of the Mashtots District, who was the acting military commissar at that time, refused to issue a military record book to a person who was registered in the military reserve forces because, according to him, he had run out of blank books. Although there were some stored in the safe of the military commissar, the safe was locked. He mentioned that the commissar had left a limited number of blank military record books before leaving, so when these had been used, the applicants had to wait until the commissar was back, which was not for another month. The problem was solved only after the Human Rights Defender intervened.

3. In his 2007 Annual Report, the Human Rights Defender commented on the *Disciplinary Regulations of the Armed Forces* which were approved by RA Government Decision No. 247 of 12th August 1996. The Defender noted that according to the RA Constitution, cases, procedures and conditions of subjecting a person to disciplinary action cannot be established by an RA Government bylaw (Article 83.5, clauses 1 and 2). Furthermore, it was mentioned in the Report

[13] For more details refer to the *Section on Alternative Military Service*.

that the *Disciplinary Regulations of the RA Armed Forces* failed to define categories of disciplinary breaches. As a result, similar breaches might possibly be treated in different ways, thus causing discontent among personnel. However, this problem has not been addressed during the reporting period.

These concerns seemed to have been shared by servicemen, who mentioned during conversations with the Defender's team that disciplinary action and encouragements were often used at the discretion of their military commanders and largely depended on the attitude of the commanders toward a particular serviceman. From conversations with military commanders too it was clear that they also were unhappy with disciplinary actions that had been imposed on them as a result of Internal Service Investigations arising from reported accidents in their military units. Representatives of the relevant authorities, without going into details of what happened, often "reveal" bogus infringements in the actions of the military commanders, including "did not exercise adequate supervision" and "did not give adequate explanation".

For example, if a soldier on mandatory short-term service accidentally injures himself in action, while he is on duty, then it is assumed that the officer responsible for the military duty station, the deputy commander responsible for working with the soldier, and the commander-in-chief all share responsibility for the incident. Moreover, even though training administration registries have been properly filled out, an officer in charge of the military duty station may still be held liable for "failure to exercise adequate supervision" if he momentarily took his attention away from a solider who at that moment accidentally injured himself. But how can an officer, for 15 days, all day long, constantly keep his attention on the 10-15 soldiers under his control? And the same problematic reasoning applies to the deputy military commander – although he might be quite far away from the place of the accident, he still bears liability "for not giving adequate explanation" despite the fact that the training process had been properly organized and he had no power or ability to prevent the accident from happening.

Thus, due attention should be paid to preventing the use of unjustified disciplinary action, especially since this has a direct effect on promotion within the ranks of the armed forces. The agency level bylaw of the RA Ministry of Defence establishes that military servicemen who have been held liable for disciplinary violations, can only be promoted by rank or in duty after their disciplinary action has been completed. This implies that disciplinary action imposed as a result of an incomplete service examination or the arbitrary decision-making of a supervising command officer may complicate promotion within the ranks of military officers and contribute to the formation of negative attitudes towards service in the armed forces.

Taking into account the above, the Human Rights Defender has tasked his staff with carrying out relevant studies in this area, the findings of which shall be presented in the form of an *Ad Hoc Report*. As already mentioned, the OSCE Yerevan Office has been supporting the staff of the Human Rights Defender in conducting these studies.

4. In the course of the reporting year the Human Rights Defender's Office also received complaints relating to the social security status of military servicemen and their families.

Some complaints pointed out that families were stripped of their welfare entitlement when medical commissions failed to recognize a link between the disease developed in the course of military service and the death of the citizen (who was that family's breadwinner).

Illustrative Case

A Yerevan resident informed the Defender in her complaint-application that in 1992, while her husband was fighting in the Karabagh War, he sustained a wound and spent lengthy periods of time in various clinics for treatment. On 20th January 2000, the Shengavit Social Medical Examination Commission (SMEC) assigned her husband a Class 1 disability for a period of 2 years, mentioning that the grounds for their decision were that her husband "sustained the injury at the time of defending the borders of Armenia." Her husband died on 9th December 2000, due to double fibrocavernous tuberculosis, and in 2002 her family was enrolled into a pension scheme to which families of military servicemen were entitled. They received pension benefits until 28th October 2007.

A quality control review initiated by the RA Ministry of Defence, and implemented by the Medical Social Examination Agency's expert examination unit on 7th November 2007, decided that the decision of Yerevan's SMEC No.7 – which had established that the cause of her husband's death was linked to his military service – should be annulled. The review concluded that the death of her husband was not caused by the wounds he suffered at the time of military service and, thus, the benefit allowance was discontinued.

In response to an inquiry from the Human Rights Defender, the Ministry of Defence stated that the *Draft Law on Amending the Law on Social Security of Military Servicemen and Their Families* had been forwarded to stakeholder ministries and agencies for consideration. If the draft is considered and made law, 148 family members of military service personnel (and persons that are considered equal in their status to military personnel) shall be entitled to pension benefit schemes.

Other applications raised the housing issues of military servicemen and their families.

Illustrative Case

Y. T. from Ararat region informed the Human Rights Defender that she moved to Armenia from Russia in 1983 after marrying her husband. She said that as a young couple they settled down in the village of Avshar, her husband's birthplace. In 1992 her husband M.T. perished in action, while defending the borders of the Republic of Armenia. On 1st June 2002 the RA President awarded (post-mortem) a *Medal for Bravery* to her husband.

The applicant stated that she had been living in Armenia for about 25 years but did not have any property. After her husband died, she continued to live in the dilapidated house of her mother-in-law. She applied numerous times to the Head of Avshar village, requesting that her name be included on a list of families waiting for housing improvements, to which she believed her family was entitled because her husband had died defending the country. The village head, however, had humiliated and offended her in every possible way, refusing to process her applications.

She applied to the RA Prime Minister, and then to the Governor of Ararat region and the RA Defence Minister. The Head of the RA Defence Ministry's Military Personnel Social Protection Department informed in a letter (dated 9th April 2007) that as family of a perished soldier-liberator, the Ararat region Governor's Office had enrolled her in a Defence Ministry list of persons approved for housing improvements. Thus, it was stated that the RA Defence Ministry's housing commission would consider her housing issue and inform her about any developments.

In response to a letter from the Human Rights Defender (30th July 2008), the RA Defence Minister sent letter No. PN/510-545, in which he stated that the applicant, as a widow of a perished soldier-liberator, was enrolled under rolling number No.78 in the list of families entitled to improvement of their housing conditions. And it was stated that, based on the RA Government Decision No.947-N (of 16th July 2005), the RA Defence Ministry's Housing Commission would consider the housing issue of the applicant at one of its upcoming sessions in 2008. The Human Rights Defender wrote another letter (dated 19th August 2008) asking the Defence Minister to update him about the decision that was taken at the session of the Ministry's Housing Commission.

In a follow-up letter (No.PN/510-607), RA Defence Minister S. Ohanyan confirmed that an investigation into Y.T.'s housing issue had established that her family of three (herself, her daughter and son) were living in an apartment in the village of Avshar, Ararat region, which used to be the property of her mother-in-law. After the latter's death, half of the property (2 rooms and 1,000 square metres of land) passed to the applicant's son (the son of the perished soldier-liberator M.T.) based on her mother-in-law's will. The living space at the disposal of Y.T. was found to meet the requirements for housing conditions. Thus, the request for housing improvement of the applicant was subject to refusal under RA Government Decision No.947-N (of 16th July 2005) but would be considered at the Defence Ministry's Housing Commission Session to be held in the last 10 days of September. On 20th November 2007, the Human Rights Defender's Office asked that the RA Defence Ministry keep them informed about the final decision made by the Commission.

Consequently, the RA Defence Minister informed the Defender's Office that the RA Defence Ministry's Housing Commission had considered Y.T.'s application of 30th September 2008, according to which they re-examined her living conditions and decided to allocate her AMD 4,090,000 for the purchase of a 1-room apartment for herself and her daughter (Record Statement No.3) – they concurred that the applicant's assertions that the 2-room apartment was the property of her son and that her daughter and herself did not own an apartment were true. It was also established that the house was decrepit and in emergency condition.

According to the conclusion of *Armseismshin and KP Research Institute OJSC,* the house owned by the applicant's son was in 4th degree emergency condition. This constituted grounds for the RA Defence Ministry to review the applicant's housing issue and allocate her non-refundable state assistance of AMD 4,090,000 in order to buy a 2-room apartment. After the death of the woman's mother-in-law, the registration records of the house where they were living were not updated because the perished soldier's brother was out of the country.

Consideration of this complaint-application has resulted in a positive settlement.

5. The annual reports of the RA Human Rights Defender have provided consistent coverage of the exercise of freedom of conscience and religion in Armenia and the conscientious objection to serve in the armed forces. It has also been noted numerous times that Armenia does not properly adhere to the obligations it committed itself to in the area of freedom of conscience and religion. Thus, the Parliamentary Assembly of the Council of Europe's (PACE) Resolution No.1361 (2004)1 stated that Armenia's established period of 42 months for alternative service was excessively long, and suggested a 36-month period instead. PACE Resolution No.1532 (2007) repeatedly stressed Armenia's commitment to adopt a law in the area of alternative

military service that is commensurate with European standards and to grant amnesty to prisoners of conscience.

This issue received attention from *Amnesty International*, which in its 18th January 2008 Report (54/003/2008) highlighted incidents of violence against the *Jehovah's Witnesses* in Armenia. In particular, the report emphasized the excessively long and punitive nature of Armenia's alternative military service. (Alternative service is managed by the RA Ministry of Defence – according to the law, the Ministry is responsible for coordinating service in the armed forces and in alternative service, which it does via territorial military units or services.)

During the reporting year the RA Human Rights Defender and his representatives had a number of meetings with representatives of the *Jehovah's Witnesses* and human rights organizations to discuss challenges and problems associated with the establishment of Armenia's alternative military service. The Human Rights Defender also helped to solve a number of problems. In particular, he helped to obtain registration for a number of persons from the *Jehovah's Witnesses* who had already served a prison term for their objection to serve in the military because their rights to be registered at their residential addresses, obtain 'exit stamps' in their passports, and be issued with military record books were being challenged by district commissariats.

However, such episodic solutions can only temporalily address the discrepancies existing between law and practice. Indeed, as of 1st November 2008 there were 80 citizens from the *Jehovah's Witnesses* imprisoned in Armenia for their objection to serve in the armed forces. If adequate conditions were created for switching to alternative military service, then it would be possible to engage these people in useful public work and, at the same time, allow them to practice their own religion. Therefore, Armenia needs to be determined in its efforts to find a final solution to this problem to ensure that it lives up to its international commitments.

The competent Armenian officials met with representatives of the *Jehovah's Witnesses* and expressed willingness to adapt the legal framework for military service. For example, a letter from the RA Defence Minister stated that the government was prepared to discuss with them how effective legislation could be cater for the religious beliefs of the *Jehovah's Witnesses*. After studying the arguments of the *Jehovah's Witnesses* for objecting to join the alternative military service, as well as the approaches of international organizations on this matter, the Human Rights Defender's Office also presented its opinion and suggested possible solutions.

One of the main concerns of the *Jehovah's Witnesses* religious organization was the prescribed period of alternative military and labour service. As mentioned above, relevant PACE resolutions and the reports of a number of human rights organizations have also commented on this issue.

According to *the RA Law on Alternative Service*, the period of alternative service shall be 36 months, while labour service shall be 42 months (Article 5). The same Law also states that a citizen conscripted into alternative military service shall be sent, in due order of law, to alternative military service units and join their personnel. Moreover, it states that the internal service regulations for the armed forces shall also apply to alternative military service, except for those provisions that relate to the military duties of bearing, storing, keeping, and using arms (Article 16, Parts 1 and 3). The above implies that a conscript on alternative military service has the same scope of responsibilities as a conscript on regular military service, except for some responsibilities that are also excluded from the service of other categories of military servicemen

due to the nature of that service (for example, cooks, drivers and so on). Subsequently, the period of alternative military service should be equal to the period of military service in the armed forces – i.e. 24 months. As for the 42 month period envisaged for alternative labour service, it should be noted that there are no precise international criteria to determine whether this could be considered as a punitive period or not. However, the fact that the duration of the alternative labour service is twice as long as the duration of regular service in the armed forces is already disturbing. Therefore, it seems appropriate to shorten the period of alternative labour service by at least 6 months – especially since the Ministry of Defence appears to have no serious objections to that.

The draftees who belong to the *Jehovah's Witnesses* explain their refusal to sign up for alternative labour service by the fact that the service is managed and supervised by divisions of the RA Ministry of Defence. For example, the conscription to alternative labour service is conducted by military commissariats, or the RA Defence Ministry's Military Police Department pays regular inspection visits to the institutions where the alternative labour service is being performed, requesting the alternative service personnel to line up and so on. In addition, some recruits expressed complaints that uniforms for alternative labour service personnel had been supplied by the RA Ministry of Defence.

According to Article 18 of the *RA Law on Alternative Military Service*, the party responsible for the implementation and supervision of alternative labour service shall be the head of the institution where the alternative labour service is being performed. However, Article 14 of the same Law states that conscription to alternative service shall be organized and supervised by an authorized Defence body of the RA Government. Indeed, the RA Ministry of Defence justifies its regular inspection visits of the Military Police as an implementation of Article 14 and claims that the purpose of such visits is to verify that alternative service personnel are actually at the places where alternative labour service is being conducted.

Taking this into account, the Human Rights Defender's Office recommends that changes be made to the legislation so that the responsibility for processing alternative service applications and the subsequent implementation and supervision of alternative service be given to an authorized RA labour and social security body. Thus, rather than registering alternative service personnel in the registries of the military reserve force, which is the current requirement of the *RA Law on Military Service,* it is possible to envisage a registry for citizens who have carried out alternative military service that is accompanied by a new type of record book to be established by law (in contrast to the regular military record book).

Regarding the uniform of alternative service personnel, it must be stated that it is significantly different from regular *rank and file* uniforms and has been duly described in Annex 2 of RA Government Decision No. 940-N (of 25th June 2004). According to Article 18 of the *RA Law on Alternative Service*, the head of the institution where alternative service is being performed shall ensure provision of food, uniform, underwear and so on. However, to avoid any potential conflict on the issue, it seems wise to assign the implementation of the entire scope of alternative service activities to an authorized labour and social security body of the RA Government.

A major complaint from representatives of the *Jehovah's Witnesses* is that alternative service personnel are mostly denied the opportunity to attend religious services and keep religious literature since the servicemen spend all their time within the area of their duty station. They

believe that this infringes their religious rights and suggest that alternative service personnel be allowed the opportunity to return home at the end of the working day and at weekends in order for them to participate in religious meetings.

According to Article 1 of the *RA Law on Alternative Service*, alternative service substitutes mandatory military service – it is only different in that it excludes the bearing, storing, keeping and use of arms and is implemented in both military and civil institutions. Thus, according to the above provision, alternative service partly changes the constitutional obligation of a citizen to contribute to the nation's defence due to his/her (religious) beliefs; however, alternative service personnel should be entitled to the same scope of rights and liberties as armed forces personnel. Analysis of the legal framework relating to service in the armed forces shows that, as an encouragement within the 24 month service period, servicemen on mandatory short-term military service are entitled to one period of leave (except in special cases). If alternative service personnel are allowed more frequent leave, it appears that a person conscripted in the ranks of armed forces – serving in a more complex and dangerous environment – is disadvantaged, which certainly contradicts principles of equality. For this reason, a solution could be to develop a flexible procedure, whereby alternative service personnel could be allowed to briefly visit the closest church or meeting venue once a week and then return to the place where they are performing their alternative service.

It should be noted that during the reporting period, the RA Human Rights Defender actively participated in discussions about legislation governing the armed forces' operation and law enforcement practices. The Human Rights Defender studied and made recommendations on the drafts of a number of legal acts, including the *Draft Law on Amending the RA Law on Military Service*; the *Draft Law on Amending the RA Law on Preparation of the Conscription Process and Conscription into the Armed Forces*; the *Draft Law on Amending the RA Law on Military Police*, the *Draft Government Decision on Establishing Internal Regulation of the Disciplinary Isolation Centres of the RA Ministry of Defence*.

In particular, the RA Human Rights Defender has voiced his concern over changes to the *RA Law on Military Service*, which would affect the interests of certain groups of people. According to Part 1 and Part 3 of the *Draft Law on Amending the RA Law on Military Service*, students enrolled in undergraduate university programs before 1st January 2009 who had been granted military draft deferment, shall be liable to military conscription upon the completion of their undergraduate studies. However, according to the *Bologna Declaration* and the *RA Law on Higher and Postgraduate Professional Education* (Article 9), a 2-tier educational system shall be established in the Republic of Armenia. Part 4 of Article 14 of the same Law stipulates that admission to second-tier educational programs shall be based on the grade points earned during studies in the first-tier program (i.e. undergraduate studies). In order to make the mentioned clauses more precise, the RA Minister for Education and Science issued Order No.1193-N, which established criteria for competitive admission into the Master's programmes of Armenia's tertiary institutions. The priority order of these criteria is as follows:

- grade point average or qualitative point average earned during previous studies;
- grade point average or qualitative point average earned for professional subjects;
- availability of published research and/or thesis papers or pending publications of such papers, as well as [conference] presentation of these papers;
- grade point average or qualitative point average earned for non-professional subjects.

This reveals that the transition to Master's programmes does not involve a new admission process but is based on the grades and achievements of undergraduate programs and is, therefore, a continuation of that education. Moreover, there is no requirement for those graduating from undergraduate programmes to take exams for Master's enrolment. Therefore, a student who has been granted deferment of mandatory military service should automatically qualify for extended deferment if he/she is accepted into a Master's level programme, including those of universities abroad. (The above statement should also extend to those studying at inter-state (inter-governmental) universities.) Thus, if the abovementioned Draft became law, the situation of students enrolled in undergraduate programs would become tangibly worse – it would be a violation of the principles of educational continuity and order as well as learner's development, as set out in the *RA Law on Education* (Article 5, Part 2).

Taking into consideration the above, the Human Rights Defender suggested that the Draft Law be modified so that the right of students (enrolled in two-tier university programs before 1st January 2009) to deferment of military service is not violated by the retroactive effect of the law. The Draft Law has been sent back to the RA Ministry of Defence for amendment.

As in previous years, in 2008 the staff of the Human Rights Defender received complaints about violations of human rights under the *RA Law on Citizens Who Have Not Performed Their Mandatory Military Service in Violation of the Established Order*. These complaints mostly dealt with the territorial military commissariats' flawed administration in processing applications referred to in the Law.

The Human Rights Defender viewed the demographic and human rights aspects of the Law positively and welcomed the fact that the Law contributes to the mitigation of corruption risks within law enforcement bodies. However, he also recommended that the competent agencies consider extending the scope of the law to include those that evaded military service and reached the age of 27 after 31st October 2007. The Defender's recommendation was based on the applications and proposals of citizens as well as on the fact that age limitations run counter to principles of equality referred to in the Constitution. Otherwise a person who turned 27 before 31st October 2007 is covered by the Law and can be registered in the military reserve force after making a relevant payment, whereas a person who turned 27 just one day later on 1st November 2007 is not covered by the Law. The Human Rights Defender's recommendations also took into account the fact that regular updates of the periods covered by the law may foster undesirable expectations – individuals may try to escape military service since they will be assured that at a later date they can make a payment and evade legal responsibility. The Human Rights Defender suggested preventing this via flexible legal measures.

As mentioned above, in response to complaints, some of the Defender's recommendations were targeted at addressing infringements arising from legislation.

Illustrative Case 1

At the start of the year, when annual leave schedules were being planned, G.M., who was then serving in the armed forces, asked the commander of his military unit to grant him his annual leave in April. However, the commander of the military unit, knowing that G.M.'s contract would expire at the end of August and that G.M. was not planning to extend it, requested that his leave be scheduled for October. G.M. was told that he would get compensation for the unused leave days, as stipulated by relevant legislation. When his contract expired, G.M. was

paid AMD 32,000 for his unused leave – a sum which he considered to be unacceptable. He, thus, applied to the Human Rights Defender.

In response to the Defender's inquiry into the matter, the RA Ministry of Defence stated that the payment calculation for the applicant's unused leave days had been done in accordance with Article 30, Part 1 of the *RA Law on the Social Security of the Armed Forces Personnel and their Families*. According to that Article, armed forces personnel are entitled to financial compensation, which is to be paid from the state budget. According to clause 2 of the RA Government Decision No.778 (of 27th November 2000), the monthly compensation of a military serviceman is to be based on the rate payable for his position – his military rank and his length of service. Thus, the Ministry stated that: G.M.'s financial compensation had been calculated based on the above principle for the period of unused leave; the leave days had been calculated on the basis of Article 46 of the *RA Law on Enrolment into Military Service* for the year of retirement from service; and payment was made in accordance with the procedure referred to in the *Financial Compensation Regulations for Armed Forces Personnel*, which had been approved by an Order of the RA Defence Minister.

The Human Rights Defender objected in writing, stating that according to Article 46, Part 6 of the *RA Law on Enrolment into Military Service*, if a serviceman retires when his contract expires, compensation for the unused annual vacation shall be paid in accordance with the procedure and amounts established by law. This provision implies that these relationships are not subject to regulation via secondary legislation (bylaws). Nevertheless, the amount of financial compensation paid to G.M. by the Ministry of Defence had been determined on the basis of secondary legislation – Government Decisions No.778 (of 27th November 2000) and No.1554-N (13th December 2007), while the procedure had been determined under *Financial Compensation Regulations for Armed Forces Personnel,* approved by a respective Order of the RA Defence Minister. Thus, Article 46, Part 6 of the *RA Law on Enrolment into Military Service* had been breached.

In addition, it was considered unacceptable that a person enrolled in military service is entitled to paid leave *and* other additional payments (e.g. bonuses etc.) if he uses his annual leave during the period of his service, whereas a person seeking compensation for unused annual leave is entitled to just the missed days, which forms only a small part of what is potentially due. Moreover, the Human Rights Defender stated that the particular method of calculation was in conflict with effective legislation, since according to Article 46, Part 6 of the *RA Law on Enrolment into Military Service* and Article 30, Part 1 of the *RA Law on the Social Security of Armed Forces Personnel and Their Families* the concepts of "financial compensation" are not identical. Consequently, due to a lack of relevant legislative regulations, the Defender suggested that the matter be solved via the *RA Labour Code*, since according to Article 7, Part 7 of that Code, the employment (service) relationships of other state (special) services shall be regulated under the Labour Code unless otherwise established by the respective law. Article 170, Part 2 of the Code defines that financial compensation for unused annual leave shall be determined on the basis of that period's unused leave days.

Illustrative Case 2

Conversations with rank-and-file personnel in the RA Defence Ministry's Artashat military unit revealed that there were two single-parent soldiers there from Kapan and Maralik. This

meant that the *Law on Conscription into Armed Forces* had been infringed, since under that Law single-parent or parentless draftees are entitled to perform their military service in a military unit close to their place of residence. According to the Law, a military unit close to a place of residence is considered to be within 100 km of a draftee's registered residence (or his actual place of residence if he is not registered at any address). However, these soldiers from Kapan and Maralik were serving at a military unit (Artashat) that was more than 100 km from their homes.

It might have been possible to conclude that the mentioned servicemen were sent to the Artashat military unit because there were no military training facilities close to their places of residence and that they would be sent back to military units close to their homes once the 6-month training period was completed – except for the fact that the Law does not include exceptions for training units. Thus, the Defender requested clarification of this issue from the RA Defence Minister and requested that measures be taken to eliminate these violations. The RA Defence Ministry did indeed state that the mentioned servicemen were in that military training unit on a temporary basis and that they would be sent back to their main service stations at the end of the specialized training. However, in our view just stated, such reasoning conflicts with the *RA Law on Military Conscription* (Article 11, Part 7); this issue continues to be closely followed by the Human Rights Defender.

Illustrative Case 3

Yerevan resident, V.P., informed the Defender that in 2005 he had been accepted for study at the State Medical University (after M. Heratsi) and that his tuition fees had been waived. However, because he later lost this privilege due to the waiver being applied on a rotational basis, he missed the 2008 deadline for paying tuition fees and was removed from university lists on 24th September 2008 at the Rector's Order. Although he was restored to the university programme by the Rector's Order of 30th September (having paid tuition fees the day before), he had already lost his entitlement to military draft deferral. Before he was officially re-registered as a student, V.P. had not received a call-up from a territorial military commissariat, thus he had not (yet) evaded military service.

In a letter to the RA Minister of Defence, the Human Rights Defender noted that according to the *RA Law on Military Conscription* (Part 1, Clause 1 of Article 14) a deferral for mandatory military service is granted to full time students of tertiary institutions (including those enrolled in residency, internship and Master's programs). He also noted that according to the Law (Article 11, Part 3) based on the RA President's Decree, the rank-and-file military conscription and discharge is performed twice a year – in April-June and October-December. Thus, the Defender asked the Minister to clarify why V.P. had not been granted a draft deferral since, taking into account that both orders of the Medical University's Rector (the first one removing V.P. from the university and the second one restoring him) were made in September, V.P. had been a student at the time of conscription.

In response to the letter, the RA Defence Minister stated that V.P.'s case had been examined at the Ministry. He confirmed that their records showed that V. P. was dismissed from the university in 2008 for his failure to pay the first semester's tuition fee but that he was reinstated in the university by a subsequent Order of the Rector of the State Medical University (30th September) after he had paid the tuition fee. The Minister noted that although V.P. had lost his entitlement to draft deferral after he was dismissed from the University, he had now regained that

right under the *Law on Military Conscription* (Article 14, Part 1) and was now liable for conscription only upon his graduation. Thus, consideration of the complaint was successfully completed.

4.2. Rights of People with Disabilities

In 2008, legislation in the area of disabilities has not been changed in any significant way and thus the challenges related to education, employment, social security and a few other issues in this field remained.

The main legal acts regulating education for the disabled include the *Law on Education* (1999) and the *Law on Education of Persons with Special Needs* (2005). The legislation stipulates inclusive education; however, it specifies that inclusive education can be organized within schools that have special educational facilities. Such facilities imply the presence of qualified professional staff, accessible buildings, and the relevant infrastructure (e.g. slopes and ramps, special toilets adapted to the needs of the disabled) – if the issue of ramps has been solved to some extent, then bathroom accessibility remains an issue.

The abovementioned legislation also envisages in-house tutoring – a challenge still to be overcome since the quality and effectiveness of in-house education cannot be ensured when teachers are offered no extra payment for the service. The law also stipulates that the tuition fees of persons with Class 1 and 2 disabilities and disabled youngsters should be waived if they successfully pass entrance exams for secondary or tertiary vocational schools. Nevertheless, only a few young people with disabilities take advantage of this opportunity due to psychological pressure and the fact that curricula fail to take into account the needs of disabled people.

The legislation also envisages a number of privileges for employed individuals with disabilities. In particular, the RA labour legislation permits that individuals with disabilities may work part time, according to a relevant doctor's note. Moreover, the law stipulates that individuals with disabilities may only be allowed to work overtime if that work does not conflict with the doctor's note – the involvement of the disabled in overtime, weekend, or night-time work is only possible with their consent and if this type of work is not prohibited by their physician's statement. A shorter working week – not exceeding 36 hours – is also established for those with the Class 1 and 2 disabilities. In addition, a probationary period of work should not apply to persons with disabilities, and if they are as equally qualified and productive as other staff, then disabled persons should not be subjected to redundancy during periods of job cuts.

Employers of the disabled can take advantage of the salary refund program and other encouragement mechanisms available – an employer can claim a portion of the salary paid to an employee with a disability from the state budget (but this cannot exceed the minimum salary). This program is regulated within the framework of the RA Government Decision No.996-N of 13th July 2006 *On Establishing the Remuneration Order, Amount and Conditions for Facilitating Job Placement of Non-competitive Individuals*. At present the minimum salary is set at AMD 25,000, but will rise to AMD 30,000 from 1st January 2009.

RA tax legislation also envisages encouragement mechanisms for employers of disabled persons. According to Article 38 of the *RA Law on Profit Tax* "when determining a taxpayer's

taxable profit, that taxpayer's gross income shall be adjusted to take account of 150 percent deductions of salaries and wages paid to each disabled employee."

However, in spite of these special provisions, the issue of employment is still a serious challenge for those with disabilities. Introduction of a quota system may significantly contribute to a rise in the number of employed persons with disabilities, while studies have also shown that many with disabilities would rather work than receive generous benefits.

Concerning access to buildings, it should be noted that even though new mandatory construction norms came into effect on 1st January 2007, many buildings still do not comply with them. The reason, perhaps, is the absence of effective control mechanisms or (in some cases) that designs had been approved before the standards came into force.

Despite these challenges, the Republic of Armenia's legal framework governing the protection of the rights of people with disabilities is mostly in line with international standards and requirements and in harmony with the lawful interests of disabled persons. Moreover, on 17th November 2007 the Prime Minister signed Paper No.2006-2015 – a *Strategy Paper for the Social Protection of Disabled Persons,* the purpose of which is to ensure access, equal rights and opportunities for persons with disabilities in all areas of public life as well as facilitate the education and involvement of children with disabilities in society. It is aimed at utilizing public-private social partnership principles and at ensuring public education and awareness on disability and disability issues. The Strategy Paper details challenges in all areas of life and outlines objectives and the relevant steps needed for their implementation.

While this Strategy Paper is welcomed, it should be noted that effective enforcement mechanisms will be needed to make it happen. Moreover, the deadline for the Strategy's implementation was set as 2015, but it makes sense to define a one or two year timescale for the achievement of each objective. There is also a need to identify which bodies will be responsible for the implementation of these objectives, as well as liability procedures in the case of non-implementation or inadequate implementation. These things will ensure more coordinated and successful implementation of each objective.

The *UN Convention on the Rights of Persons with Disabilities*, which has been signed but not yet ratified, may also contribute to positive changes in the country.

4.3. Rights of Refugees

Complaints filed to the Human Rights Defender's Office by refugees concerned almost the same set of issues as previous years' complaints, which indicates that such problems have not yet been fully solved. The majority of complaints were related to refugees' housing issues, improvement of their living conditions, and social security.

To gain an overall picture of the situation in the country, a team from the Human Rights Defender's Office conducted a survey in 29 settlements that are densely populated by refugees. Despite the issues mentioned above, the survey revealed no grave violations of human rights.

Jraberd village, Aragatstotn region, is home to refugees from Azerbaijan. The village does not have a post office or telephone exchange – in general, communication services are poor quality. Households cannot afford to buy fuel for heating purposes. The village is not covered by transport routes – people have to walk 4 km to the next village to do their shopping. Due to the

lack of public transport routes, people are unable to deliver complaints to the relevant bodies. Refugees in the Gegharkunik region face similar challenges.

In the Kasakh village, Kotayk region, there are about 30 refugee families that have settled in the area of the correctional labour camp. M. Avanesyan, together with his/her two children and minor grandchildren lives in miserable conditions in building No.20's basement. Their lodging has no access to light and lacks basic amenities. The team of the RA Human Rights Defender found that the housing conditions of this family were way below normal living conditions; the house was found in appalling sanitary conditions that were dangerous for the health and wellbeing of the family.

The survey conducted by the Human Rights Defender's Staff indicated that the public bodies responsible for solving refugee issues tend to misrepresent the reality that refugees face. They periodically report glowing success stories of refugee integration and naturalization. Given the wider situation in the country, it seems that these officials either fail to fully gauge the force of their words or deliberately mislead the public and international organizations. Furthermore, the survey revealed cases where the naturalization of refugees had been achieved via bargain or blackmail – e.g. "if you take up Armenian citizenship, we will give you the legal right to own the apartment built by international donors". After the 'transaction' is done, the future of the refugees is left to fate.

On 7th and 8th November 2008 refugees had a chance to share their concerns about their problems at a national consultation on *Strengthening Refugee Protection Capacities in Armenia*, organized by the Migration Agency of the RA Territorial Administration Ministry and the Office of the United Nations High Commissioner for Refugees. They noted recent achievements and analyzed flaws existing in Armenia's refugee protection framework. The participants – including nongovernmental organizations dealing with refugee issues, representatives of competent RA Ministries, and the media – set out detailed recommendations for the full integration of refugees (encompassing both social and economic aspects). The majority of participants mentioned that the lack of a government programme to address the spiritual, political and economic needs of refugees. Bushra Halepota, the UN High Commissioner for Refugees, wrote to thank the participants of the consultation on 22nd December 2008, noting that the proposals outlined by the working groups will serve as the groundwork for developing further action plans to provide legal, social and economic integration of refugees in a sustainable way.

It should be noted that accommodation issues continue to dominate refugees' concerns. To date, 400 families in Armenia's regions are unable to use their Apartment Purchase Certificate awards to buy apartments because of changing prices in the real estate market. At the same time, 1000 more families are still waiting to be issued with Apartment Purchase Certificates. In Yerevan alone, 1,100 families are included in the 2009 Priority List. It is expected that they will finally obtain houses during the year. Those refugee families that were not included in the 2009 Priority List can expect, at best, to be covered by the 2010-2012housing program.

Furthermore, while Armenia is still struggling to fully address the problems of refugees from Azerbaijan (resulting from the Karabagh war), a new challenge is emerging for the government and international organizations: a surge of new asylum seekers from Iraq (943 people), Iran, Georgia (117 people), Turkey (Kurds) and other places (overall 1,588 people) has occurred. The final status of these people will be clear after Armenia adopts the *RA Law on Refugees and Asylum Seekers*. It is clear, however, that unlike 1988-1992, the state is not able to provide

temporary lodging to these new refugees and this, in turn, makes it more difficult for the employees of the Human Rights Defender's Office to keep track of them. The only thing that is certain is that these refugees are unable to obtain information from the state and have settled down in various parts of the country – sometimes in the houses of relatives or friends, sometimes in rented apartments.

The staff of the Human Rights Defender's Office have actively participated in seminars and conferences on immigration and refugee law. On 20th and 21st November 2008 the UN High Commissioner for Refugees in conjunction with the Migration Agency of the RA Territorial Administration Ministry held a seminar for relevant public agencies entitled *Refugees: Immigration in the Context of the European Court of Human Rights and the Future*. The seminar, run by judges of the European Court, facilitated discussion about Armenia's asylum laws and practice, European asylum laws, and the requirements for granting asylum. Experts from the Netherlands, Finland and Great Britain shared their countries' experience in receiving asylum seekers, expelling illegal immigrants, managing the voluntary return of asylum seekers, and handling human rights issues that arise from the use of compulsory measures. Judges of the European Court of Human Rights – Alvina Gyulumyan and Jan Sikuta – delivered presentations on the structure of the European Court of Human Rights, the Court's accessibility, and procedural and competency issues in the area of asylum law. The representatives of the Human Rights Defender's Office also had the opportunity to share their views on problems relating to Armenia's immigration and refugee laws, which had been flagged by complaint-applications sent to the RA Human Rights Defender.

The staff of the Human Defender's Office also helped refugees and NGOs dealing with refugee issues by giving advice about administrative and judicial avenues of legal recourse available. Due to the Office's monitoring of the refugee situation and measures taken, the number of refugee complaints in 2008 significantly decreased. In fact, some refugees have addressed letters of gratitude to the Human Rights Defender for the help they received from the Office.

The staff of the Human Rights Defender's Office regularly participated in discussions of relevant legislation, especially discussions about the Draft *RA Law on Refugees and Asylum Seekers*, which has been in process for many years now.

4.4. Children's Rights

In any society, respect for human rights begins with a right attitude towards and treatment of children. A society in which children are truly cherished will ensure its children's liberties and dignity, thus creating an environment favourable for revealing their natural faculties and preparing them for a rich and fruitful life.

Protection of children's rights involves a complex and comprehensive process, which requires participation of their parents and family members as well as society and **the state, including the entire state system.** International conventions and national legislation declare a child's right to enjoy, without discrimination, protection from family, society and State, as required by his status as a minor. In any State protection of children's rights requires coordinated activities and collaboration among the mentioned persons.

Armenia's commitment to protect children's rights can be viewed from two perspectives. First of all, as a country member of a number of international organizations, the Republic of Armenia has ratified important international and regional human rights instruments containing provisions on children's rights. In addition to these, the country has also ratified a number of conventions on children's rights, including the **UN Convention on the Rights of the Child (1989), The *Hague* Convention on the *Civil* Aspects of Child Abduction (1980), The Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (1993), The Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children (1996)** etc.

In line with its international obligations and commitments, the Republic of Armenia has adopted a number of laws and bylaws and also made relevant changes to legal acts in force. For example, Armenia has adopted the *2004-2015 National Programme for the Protection of the Rights of the Child* etc. Although the mentioned legal acts are not flawless (they contain certain inconsistencies and lack enforcement mechanisms), they clearly bear witness to the state's readiness to take steps aimed at the protection of children's rights.

Undoubtedly, the existence of laws that protect children's rights is a positive development; however, enforcement of these very laws lags far behind. There are a number of national and local agents active in the field, including: the National Committee for the Protection of the Rights of the Child; children's rights divisions under the Regional Governor's Offices and the Yerevan City Hall; trusteeship and guardianship bodies functioning under the local government offices and so on. Nevertheless, our studies indicate that officials' non-implementation or inadequate implementation of their responsibilities leave children unprotected and their rights infringed. It is in this respect, then, that much remains to be accomplished in this area of human rights.

In the course of 2008 the Human Rights Defender received 11 complaint-applications raising children's rights issues, which can be grouped into the following categories:

a) **There were difficulties enforcing court decisions that granted alimony.** This included: failure to pay alimony on time; concealment of real income; departure [of a parent] to another country; failure of bailiffs (enforcers) to use all legal avenues available to enforce execution of court decisions; failure of bailiffs to act promptly and, in certain instances, their blatant inactivity.

It is conspicuous that bailiffs in charge of compulsory execution of court decisions are efficient in enforcing other decisions of the court (for example, those requesting someone's expulsion) but remain quite passive when court decisions are related to children's interests.

Illustrative Case

In her application to the RA Human Rights Defender, citizen A.G. noted that a court had decided that 16% of her former husband's monthly earnings should be paid as alimony to her for the benefit of her minor child (until the child reached the age of consent). Her ex-husband (A.A.) made payments for a few months and then left Armenia. When he returned two years later, he refused to pay the outstanding alimony debt that had accumulated during that period. The applicant complained that the Service for Compulsory Execution of Court Decisions had ignored her requests and failed to take measures to collect the outstanding amount.

The Human Rights Defender contacted the RA Chief Bailiff and drew his attention to the provisions of Article 101 of the *RA Family Code*. According to Part 3 of that Article "The amount of unpaid alimony shall be determined by the Bailiff of the Service for the Compulsory Execution of Court Decisions, taking into account the level of alimony prescribed by the court." Part 4 of the same Article stipulates that "The unpaid amount of alimony shall be determined on the basis of the earnings and/or income of the liable person for the period during which alimony payments were not collected from him/her. If the person liable for alimony did not work during that period, or if he/she does not supply documents proving his/her earnings and/or income, the outstanding amount of alimony shall be determined on the basis of the minimum salary and shall amount to double the amount of the minimum salary at that time in the Republic of Armenia."

In response to the Defender's inquiry, the RA Chief Bailiff stated that AMD 408,000 had been collected from A.A. and paid to A.G. Consideration of the complaint has been completed.

b) The next set of complaints concerned **separated parents exploiting their rights to see their children.**

It is well known that the RA legislation is based on the principle of parental equality, which often **runs counter to the interests of children** when parents are separated; a parent who lives separate from the family, mostly after divorce, easily exploits his/her right to meet and interact with the child, to the **detriment of the child's interests.** It might be initially concluded that judicial practice in this area has **developed in the wrong direction.** The courts, in order to uphold the principle of absolute parental equality, establish orders for divorced and separated parents that allow each parent to meet and interact with the child (including taking the child home, spending the whole day with him/her) three times a week so that the child's contact with both parents is equal. **This situation interferes with the parents' main task, the child's education and upbringing, since it does not allow the guardian parent to effectively allocate time for the child's proper upbringing. The court overlooks the fact** that a parent who lives separately from the child usually sees him/her for 'leisure' purposes – typically there are no educational or rearing goals. (And here we are just talking about those separated parents who do not have behavioural issues or a negative influence on the child.)

When there is no effective procedure for ensuring meetings and interactions of an estranged spouse with their child, court decisions that require such meetings shall be enforced by **the Service of Compulsory Execution of Court Decisions.** Thus, a child's meeting with his/her parent may even take place against the child's will.

There is no agency that is officially empowered to control the behaviour of a parent (who is granted the right to meet and interact with his/her child by the court) and his/her impact on the child's education at the time of their interactions. This means that nobody monitors or controls how the child's upbringing is impacted by this situation. Moreover, the guardian parent's assertions that the interactions have a negative impact on the child are not taken seriously because it is assumed that such comments stem from adverse feelings toward the ex-spouse.

The Trusteeship and Guardianship Body, whose action is required in such court proceedings, must study all the details of the problem in advance and be prepared to answer any possible questions. However, the body often reveals bias towards one of the parents rather than pursue its responsibility to protect the child's interests.

Illustrative case

Yerevan resident N.D. informed in her application to the Human Rights Defender that she had left her husband's house with her two juvenile children and went to live with her parents. During that time, V.A., the father of the children was able to meet with the children any time he wanted to. However, one day, without informing her or the school administration, V.A. took the children from school to the place where he was living. Her requests to give back the children were refused. In fact, she was not even allowed to meet with her children.

Although the Trusteeship and Guardianship Commission of Goris Town Hall had considered it right to assign guardianship of the children to their father, the Court of General Jurisdiction assigned guardianship to their mother. The father appealed this verdict at the RA Court of Civil Appeals, which led to a review of the guardianship and alimony aspects of the case. The mother complained that pending the court trial, she applied to get permission to meet with her children from the relevant bodies, including the regional Governor and the respective division of the regional police department. However, her requests were dismissed.

The Defender contacted the Mayor of Goris, drawing the latter's attention to Clause 6 of the *RA Government Decision No.922 of 22nd June.2006 on Voiding the Government Decision No.111 of 13th March 2000 on Establishing the Regulations of Trusteeship and Guardianship Bodies*, which states: "The Trusteeship and Guardianship Body shall defend the rights and interests of children when those rights and interests are violated, health and life is threatened, one or both parents fail to fulfil (or inadequately fulfil) their duty of providing proper upbringing and education, parental rights are being abused". The Defender asked the Mayor to clarify what measures were being taken by the Trusteeship and Guardianship Body to arrange meetings of the complainant with her children.

In response, the Goris Mayor informed the Defender that at negotiations were now underway between the parents of the children to find a prompt solution to the problem. He promised to advise the Defender of the outcome in the nearest future.

c) Another cluster of applications challenged **the activities (inactivity) of the Trusteeship and Guardianship Bodies** – especially the appropriateness of their decisions in assigning guardianship of a child to one of the parents and other related decisions and conclusions. With respect to these complaint-applications, the applicants were advised that they had the right to challenge decisions of Trusteeship and Guardianship Commissions at court.

It should be noted again that defence of children's rights has always been at centre of the Human Rights Defender's attention. As well as investigating the small number of complaint-applications submitted, the Office takes the initiative to study and analyze the RA legislation operative in this area and make clear recommendations concerning its improvement. The first results of this work were presented in the *2008 Ad Hoc Public Report of the Human Rights Defender on Certain Issues Relating to Children's Rights in RA Legislation*, published by UNICEF and the Eurasia Partnership Foundation. Of course, the report provided only partial coverage of the problems existing in this area of human rights. Indeed, this is a very broad field and embraces a whole range of issues; thus there is a need for in-depth analysis and comprehensive solutions. Our activities in this field will continue.

The staff of the Human Rights Defender regularly visit various care and educational institutions for children, as well as women's and minors' prisons, in order to get acquainted with the situation and conditions and identify existing problems.

Finally, it should be noted that in the near future a position for an officer responsible for children's rights issues will be opened in the Human Rights Defender's Office. The staff has studied the experience of different countries in this area, including the activities of the Children's Ombudsman of the Republic of Lithuania.

4.5. Rights of Ethnic Minorities

In 2008 there were no written complaint-applications concerning violations of the rights of ethnic minorities – an unprecedented occurrence. As in previous years, the Defender and his staff actively cooperated with 24 nongovernmental organizations, representing 11 ethnic minority communities. Moreover, two heads of ethnic minority communities are members of the Expert Council advising the Human Rights Defender.

Due to the relations that have been developed between the leaders of ethnic communities and the Human Rights Defender's Office, as well as the advice that was given to them, the leaders of these communities were empowered and enabled to independently solve some of the problems they were facing. The Defender or representatives of his staff participated in all events organized by ethnic minority communities and relevant events organized by international organizations (EU, COE, OSCE) in Armenia and abroad.

The COE Expert Commission arrived in Armenia on 24th September 2008 within the framework of preparing a monitoring report. Members of the commission had private meetings and interviews with eleven leaders of ethnic minority communities and discussed with them issues pertaining to Armenia's implementation of European Charter requirements. At present the topics of these confidential consultations have not yet been publicized. On 26th September the Expert Commission delegation participated in a workshop dedicated to European Language Day (organized by COE, OSCE Yerevan Office and Yerevan State Linguistic University), in which leaders of ethnic minorities also participated. Those giving reports presented the achievements that have been made towards implementing the requirements of the European Charter and outlined existing controversies in this area.

For a number of years Armenia has been supporting the cultural development of its Yezidi, Russian, Kurdish and Assyrian minorities. For example, some schools in Armenia provide language instruction for ethnic minorities; Armenian scholars have devised an alphabet for the Yezidi language and prepared other instruction materials. The eleven ethnic minorities of Armenia run offices where their community leaders and teachers have established cultural centres and organize language courses. The government allocates annual financial aid to the communities of ethnic minorities. Each year the staff of the RA President and the Ministry of Culture tour throughout Armenia to participate in the festivals and exhibitions of all ethnic minority communities. Yezidi, Assyrian and Georgian communities have been assigned air time on public radio for broadcasting programs in their languages. The radio and TV broadcasting in Russian is prevalent and meets the requirements of the Russian community and other Russian speaking communities.

ArmenAkob, a private TV company, broadcasts a series called *The Ethnic Minorities of Armenia*. The author and presenter of the program is a member of the Defender's Expert Council, H. Tamoyan, who also presents programmes in Yezidi. *Avetis* TV company provides regular coverage of minority issues and broadcasts programs for the minorities. Those ethnic minority communities that choose not to run TV and radio programmes watch programmes in their native languages on satellite TV, made available via Greek, Jewish, Polish, German and Ukrainian embassies.

All the ethnic minorities run their own media and publish newspapers, journals and booklets. Cultural and educational challenges faced by the ethnic minorities are associated with insufficient funding from the government and a lack of qualified personnel. There is also an Azerbaijani community in Armenia which, for obvious reasons, has a more low-key profile. Their safety and security in Armenia is fully guaranteed.

In contrast to previous years, ethnic minorities actively participated in social-political life – a positive sign of their integration into the community. It should not be prematurely concluded, however, that all the problems of ethnic minorities have been solved. Nevertheless, the problems which affect them (e.g. housing, family life, social-economic) also affect a large portion of ethnic Armenians – the solution to such problems relates to how Armenia's economic situation will improve.

In 2008, the staff of the Human Rights Defender received just two complaints from the representatives of ethnic minorities. One was filed by L. Tetriashvili, a refugee from Azerbaijan with a Georgian background, whose problem has now been successfully solved. The second came from an ethnic Greek Armenian citizen, E. Triandafilova, who complained about the employees of Vanadzor Town Hall asking her to vacate the house where she has been living since 1988. Consideration of the application is in process.

CONCLUDING REMARKS
A Review of Problems in the Political System

A System of Checks and Balances

On various occasions I have argued that the protection of human rights in Armenia is challenged by flaws in the system. In these concluding remarks, I shall briefly analyze these challenges in an attempt to reveal the heart of the problem. At the outset, it should be mentioned that the problems we face today have existed since the nation's independence – the building of our state was on a wrong path of development from the very start. That is not to say that today's government should not be held accountable for current problems, but it does mean that they cannot be held responsible for the actions of their predecessors (as some seem to suggest). In any case, it is not my purpose here to analyze the impact these problems have had on us; my goal is to analyze what caused them. This is a challenging task. Undoubtedly, tomes of research papers could be written on this topic, and my analysis certainly cannot be exhaustive. Nevertheless, it seems beneficial to shed some light on the roots of the kind of problems that are presented in this Annual Report.

First of all, I must underline that the authoritarian (this is what I call a semi-free regime) nature of today's political system permeates the whole system – it is pertinent not only to the government but also to the majority of opposition parties. Today's society has a huge demand for democratic parties instead of democratic slogans; Armenian society today is much more prepared for democratization than the Armenian political system is. Such a situation inevitably impacts the extent of the country's human rights protection.

The *Human Rights Watch* and the *Freedom House* published their annual human rights reports in mid January. The reports of both organizations classify countries into three groups: free, semi-free, and non-free. Armenia, for example, is classified as a semi-free country, while Azerbaijan is classified as a non-free country. In my view, this classification can be modified to the following: 1. Democratic countries; 2. Authoritarian countries; 3. Totalitarian countries.

It is true that an authoritarian regime is more liberal than a totalitarian one. However, the difference is no reason for accepting it. While totalitarianism is a political regime in which the governing authorities try to mould citizens into humble, obedient creatures, authoritarianism prohibits the voicing of certain ideas and views. Totalitarianism dictates the official view to everybody; authoritarianism censors other views. Totalitarianism uses brainwashing to get the "truth" into people's minds – it requires meekness and submissiveness, it is possible to hide in silence; authoritarianism, however, requires the full consent of the people. A totalitarian regime simply ignores people (their thoughts and lives), whereas an authoritarian regime is cruel and intolerant towards opposition. Totalitarianism demands complete submission, while authoritarianism still requires partial submission.

The "ideological education" of the totalitarian regime is aims at preventing and paralyzing thinking by deeply inculcating certain notions into the consciousness of people. The main purpose of totalitarianism's "ideological education" is to inspire in humans a feeling of complete powerlessness, helplessness and dependence on the state. The state's 'monologue' inspires awe and demonstrates its own omnipotence.

And what have these attempts to subjugate the human consciousness led to? People were humiliated and unable to lead full lives, but, nevertheless, they refused to be shaped into malleable and controlled beings. The humanity of human beings has remained invincible despite the huge arsenal that has been used against it. The human spirit fights against such regimes, otherwise it is doomed to live in pretence, being denied intellectual, moral and spiritual food – Homo sapiens under totalitarianism is bankrupt, exhausted and desolate. His trust in things and people is totally crushed. He is simply guided by the motto "we must survive", which justifies his sacrifices and self-denial as well as his willingness to accept the meagre benefits offered by the system. Is there a need to even ask whether such a human being lives a fulfilled life? This is anti-civilization! But we have been unable to jettison this Bolshevik culture in the post-independence years.

It is not the task of Armenia's Human Rights Defender to decide whether the people of Azerbaijan should be content with their lack of freedom. However, it is my deepest conviction that 'partial freedom' is unacceptable for the people of Armenia. The Republic of Armenia has no alternative for building a free society. Without further delay, we must say "goodbye" to our totalitarian heritage, regardless of how difficult that may be for us. We need a persistent and decisive spirit to eliminate our Bolshevik legacy.

The time has come to draw the line between business and power. The time has come to form political and economic groups that act independently yet cooperatively. The time has come to bid farewell to the oligarchic system; free market capitalism has been successful in solving these problems, but feudalism hasn't. Only in such circumstances can human rights prevail and only then will 'separation of power' cease to be a mere formality. Otherwise, if the system takes a different path of development and tolerates the same person as a political leader and a businessman, we will be locked in a feudal system, albeit legalized and institutionalized by the 21st century. In this case, the only possibility for protecting human rights exists on paper. Moreover, a person who is left out of decision making processes has no opportunity to influence developments in the community's life, which leads to a society that is fraught with unrelenting accidents, disruptions and disasters. Indeed, today we are feeling the impact of mistakes that were made in the past as well as those that are currently being made.

Issues that can be ably addressed by a civil society include protection of human rights and liberties, provision of security, and protection of private property. Associative life freely develops within a civil society with more people rallying around mass movements, political parties, personal convictions, and beliefs. This results in the decentralization of government power, contributes to the formation of a self-governance model, ensures cooperation between the majority and the minority, and, at the same time, helps to avoid social conflicts by reconciling their differing positions through open negotiation.

What are the attributes of a civil society? First of all, society's means of production are freely owned so that there is economic diversity – a state in which the government has no control of the distribution and redistribution of economic resources and does not impose decisions in this field. Second, a civil society is also characterized by ideological and political diversity.

The understanding of legal culture among Armenia's population has reached its nadir: people do not value knowing what their rights and responsibilities are – it is more important for them to know what is allowed or not allowed by the country's leadership. It has become common for people to hope that they will have someone in authority to make fair and true

decisions for them rather than to seek legal recourse to protect their rights through courts. In other words, it is the rule of a person and not the rule of law that prevails. It is exactly this tradition that must be eradicated.

In this respect, the issue of governance is closely intertwined with the concept of freedom. Freedom is an inviolable part of human nature, but it can only be fully realized under a system of real balances. All other forms of governance – from anarchy to tyranny – are one or another form of an overbalanced system.

We have not yet defeated the slave in us – the slave left behind by the totalitarian regime. In this respect, I would like to quote from a well-known book: “Pharaoh was holding our people in slavery, but my heavenly father gave freedom to the people, leading them out from the house of slavery and sin. But does this mean that people have become free? I am telling you, that no. And this is because the Pharaoh is dwelling in each of us, making us the slave of lust, violence, greed, envy and selfishness – in other words, the slave of sin. And it is not merely enough to get out of Egypt. It is important that the Egypt gets out of us.”[14] If we paraphrase this, we shall have the following: It is not enough that we have departed from totalitarianism. It is important that totalitarianism departs from us.

In his revealing psycho-analysis of the Russian government, C. Jung writes the following about its structure: “All peoples have archetypes of Leaders and Fools. And it is only in Russia that these two stand so close to each other that it wouldn’t surprise me if one day a Fool becomes the Leader here.” [15] This scenario is brilliantly presented in the *Heart of a Dog* by M. Bulgakov.

The current RA Constitution establishes a number of mechanisms for the division of power – the enforcement of which can significantly limit the potential for arbitrary decisions from the authorities. But, regretfully, our totalitarian legacy creates substantial inertia towards this. Post-Soviet countries are attempting to establish presidential or semi-presidential systems, but what they are actually producing are *de facto* super-presidential systems. They are trying to establish parliamentarianism, but what emerges is a dictatorship of the parliamentarian majority. As a result, a key element of democracy is being forfeited: the principle of ensuring the interests of the minority. The minority must have the chance to make its voice heard and persuade the majority through dialogue.

From this perspective, Armenia must have a multi-centred political system, with two or more power centres that have their separate political and economic wings. These centres of power act as balancing centres, which means that neither of them is in a position to exert one-way pressure on the governing institutions. In this respect, it should be noted that when we speak of “balance” here we mean the balance between the state and society, between society’s “power centres”, between the components of the political system and the real balance among the branches of power.

The feeling is that we have not yet learnt in Armenia to maintain stability through a system of balances. Stability in Armenia is maintained through a system of overbalances. The task of today’s governing system has not changed – it is still liberalization of relationships between the authorities and the individual, the authorities and society, and the authorities and the opposition.

[14] See Марк Арен. “Реквием по Иуде”. М., 2006, с. 52-53

[15] See ”Общество и политика (современные исследования,поиск концепций). ”Под ред. В.Ю. Большакова С-Петербург, 2000., с. 102.

This problem must be thoroughly addressed. The entire social system must be based on the principle of ensuring and protecting human rights. The Ombudsman is merely a link in that system. Although it is an important link, it cannot replace the entire system.

In the post-independence period, the state has become bureaucratic and oligarchic – decision-making processes are focused entirely in government circles, thus restricting the possibility of establishing public control over them. In this context, the main issue faced by post-Soviet Armenia is that social stability has not yet been achieved through balancing power in such a way that constitutionality becomes the legal regime regulating relations between state and civil society. Of course, attainment of this goal is more difficult in Armenia, than say in the Baltic States because Armenia's modern history has been immersed in the totalitarian tradition, which has deeply affected our mentality. However, you do not need to be a political scientist or a legal expert to understand that only a system of checks and balances can create an environment in which human rights and liberties will be truly guaranteed.

Thus, the greatest threat to the Republic of Armenia is indifference. There are two options we can pursue: (a) a system of checks and balances – civil society – with its associated protection of human rights and progress; (b) a system of overbalances – an indifferent society – with deadlock and where human rights are just an empty formality.

Opportunity and Law as Elements of an Individual's Value System

Having a system of checks and balances is a law of nature. At some point, political and legal minds decided to apply it to state building since they believed in the power of that system to guarantee human rights and freedoms. However, respect for human rights requires a certain culture and tradition – it is not necessarily true that Locke's theory of "separation of powers" and Montesquieu's "natural and inalienable rights" must be proclaimed and applied.

So, what do we value most in our society? Do we value enjoyment of our rights, or do we value the "opportunities" – even when these are legally prohibited? For Armenia's entire post independence period the answer to this question is unanimous: opportunism. However, history teaches us that real progress has only been possible in those nations that preferred law to opportunism. Unfortunately, thus far, Armenian society has been unable to ensure the prevalence of "Law" over "Opportunity."

In the 18th century's absolute monarchy of the Emperor of Prussia, Frederick the Great, there was a land dispute between him and one of his subjects, a farmer, who persistently refused to sell his land to the Emperor. So the Emperor complained to the courts; and he lost his case. After that, Frederick the Great inscribed on the upper part of his coat of arms: "Thank God that there are fair judges in Germany." He was a powerful statesman but he did not deliberate for one second about whether he should choose opportunity or law. History knows other contrasting cases too: when Porfirio Dias came to power in Mexico in 1911 after the Mexican Revolution, his motto was "everything to my friends, law to my enemies."

We could say that Armenia has been applying the 'Porfirio Diaz principle' in its post-independence period and this has led to the formation of today's oligarchic elite. Today, 18 years after announcing its independence, Armenia faces a property legitimization crisis. Of course, a

system based on social injustice has crises as its natural outcome. Nevertheless, history shows that no oligarchic regime has endured for long. The oligarchic elite must abide by the rule of law and return some of what it has taken from the people via transparent taxation. This will reduce corruption and form a middle class that enjoys a dignified life. Otherwise, sooner or later, society will take what is rightfully due to it. We are suggesting a compromise that will result in the formation of free civil economic relations and also keep the country away from turmoil. Any discourse about protection of human rights is empty if there is no established rule of liberal economy. Thus, we have reached the point when we have to replace the culture of seeking "opportunities" with the culture of seeking "law."

A Repressive System

Today's government has inherited from the former Soviet regime a repressive mechanism which has had a crippling effect on social relations. It is absolutely vital that we abandon this approach without further delay.

Today the pillars of this repressive system are the Prosecutor's Office and the Special Investigation Service. This is evident from the activities of the Special Investigation Service and the flood of complaints inundating the Human Rights Defender's Office. For example, people complain that they are coerced to testify against third persons. Or, another vivid example of the use of the repressive mechanism is the so called "actual property ownership" statement of investigators. As inheritors of the repressive Soviet apparatus, these bodies have maintained their 'professionalism' in placing the individual's interests below the state's interests and have acquired no expertise in the area of ensuring the rule of law. This unprofessional behaviour is burdensome for us all, and not least for the entire government administration system, which we might even say is being 'held hostage' by this lack of professionalism.

The Fear Syndrome

It is apparent that the repressive system has maintained an atmosphere of fear in our society. It may seem that controlling the State is much easier under conditions of fear, but we know from history that fear is surmountable. In fact, people living in fear are dangerous – in the first place for the State.

Frequently, people are intimidated with threats like: "you, your brother, your husband, your son or daughter, or your father will be arrested and investigated" and so on. In these circumstances people are put under huge pressure to stay silent – they know that they are unprotected. They know that the threats breathed could materialize. Such threats are often used by staff from the Prosecutor's Office and Special Investigation Service. So, citizens come to us and ask for help, afraid to reveal their identities. One cannot expect people in the face of such fear to act as heroes – for they know that only they are likely to bear the consequences for their actions.

What can people do to protect themselves in such circumstances? What is the best course of action? Should they go to the Police? Should they go to the National Security Service or to court? These questions have no easy answers.

Today, any talk that a free society exists in Armenia is meaningless. A dialogue between the government and the opposition is insufficient for concluding that there is freedom of speech in the country. The fact that people are afraid is very disturbing. Fear is one of the most serious problems that we still need to overcome.

Right to Fair Trial

A great number of problems faced by Armenia are related to the independence of the judiciary. Armenia has implemented judicial reforms and has introduced relevant changes to its legislation. Court buildings have been furnished with up-to-date equipment and judges participate in training courses. However, this alone cannot be considered grounds for announcing ‘positive changes’ in the system, especially since studies conducted over the last three years have revealed an unacceptably low level of trust in the population towards the courts.

Of course, it takes time to strengthen democratic traditions, and mistakes may also be made. Nevertheless, democracy can be strengthened and the judicial system improved only if there is a firm commitment to establishing democracy. It is in the best interests of the country’s development that a transition be made from the repressive political governance model (formed over the last 18 years) to a democratic governance model. In this respect, the most important objectives to be achieved include a genuine separation of powers and the implementation of a system of checks and balances.

The Manifestation of One-sidedness

The government’s one-sidedness, which became particularly evident during the period 1st - 20th March 2008, also gives cause for serious reflection. During that 20-day period the only opinion that everybody had access to was the government’s – which was surely the “best way” to add fuel to the fire and breed further discord in society. In any case, and especially in the aftermath of the tragic events, the government missed the opportunity to foster reconciliation in the public and calm their emotions by providing diverse media reporting. Instead, we were all victims of a one-sided “brainwashing” campaign.

The Government and the Individual[16]

Another important human rights concept is rule of law. This is a very complex and challenging concept – I know of 70 different definitions! One of the simplest states the following: a rule-of-law state is a state in which a person can predict with great certainty how the

[16] This section quotes Marek Novinski

state will respond to his/her actions. For example, if I have done this, then the response of the state will be that – and only that. If I have done action (inactivity) A, then the state will respond with action (inactivity) B, and not with actions C or D. This is what distinguishes a rule-of-law state. Such laws governing relations between the state and the individual are clear and unambiguous – a scenario in which an individual will not know how the bureaucrat's will response to his actions is excluded.

In connection with this, we can recall an episode from the history of India:

The British rulers had prohibited the boiling of salt. In disobedience, 10 Indians came, sat down by the seashore, and started to boil salt. The police came and arrested them all. The next day one hundred Indians came and sat down by the seashore and started to boil salt. The police came and arrested them all too. The following day ten thousand Indians came and started to boil salt by the seashore. The response of the British was to suspend the law. Why did they do that? Apparently because they did not have enough space for ten thousand people in their jails. Everybody was boiling salt. Arresting one and releasing another was not an option – it would run contrary to the principle of the rule of law, and Great Britain was surely a rule of law country.

Now how would have this same issue been addressed in a communist country? The first day the police would have come and beat all ten people, arresting six and letting the other four go. Other people would have started thinking: "Who the hell knows why they released them?" Then, to make others afraid, the police would have arrested three other people who hadn't even been at the seashore – it didn't matter whether these people had boiled salt or not. If the state wants to send me to jail, it will send me to jail. If it wants to set me free, it will set me free. And all this would have happened for the basic reason that a communist country is not a rule of law country. A rule of law is required for the protection of human rights.

For Man or at Man's Expense?

After decades of Soviet rule and then 18 years of independence, we have inherited a system of administration that does not operate for the people – it operates at the people's expense. There is no society where conflicts do not exist. But those in disagreement must be 'competitors' not enemies whose only goal is to annihilate each other. The time has come to search ourselves, to stop shirking responsibility for mistakes. Both the Government and the Opposition should commit themselves to reinstating respect and tolerance in society – without these qualities respect for each other's rights is an unattainable target. Let us learn lessons from the words of people who dedicated their entire lives to their people.

"Armenia's destruction is more attributable to the sins of the Armenian people than the invading enemies who attacked the country from time to time. Armenians are reaping the harvest of their unaccommodating past." (Garegin Nzhdeh).

ANNEXES

Annex 1

Public Statements of the RA Human Rights Defender
Condemning Acts of Continuing Violence against Journalists in 2008

22/08/08

During the last 15 days there have been reports of journalists being intimidated and facing interference in the performance of their professional duties. Gayane Tamamyan, reporter of [Public TV's] *Haylur* news program was subjected to violence on 29th July. Gagik Hovakimyan, administrative director of *Haykakan Zhamanak* daily newspaper was assaulted on 1st August and Lusine Barseghyan, a reporter from *Haykakan Zhamanak* on 11th August.

The RA Human Rights Defender calls on law enforcement bodies to take prompt action to reveal the perpetrators of these crimes and hold them fully responsible for their actions. Taking into account the fact that the assaulted journalists can describe the full details of the scenes and share photos of the [alleged] perpetrators and their car registration plate numbers, the Defender is hopeful that the crimes will be investigated relatively easily if all the necessary steps are taken. Otherwise, these incidents pose a threat to diversity and freedom of speech in Armenia.

20/08/08

In the evening of 18th August, Hrach Melkumyan, Acting Head of the Yerevan Bureau of *Radio Liberty*, was subjected to attacks and beating in Yerevan city centre. He links the assault against him with the performance of his professional activities.

Acts of violence against journalists have become more frequent recently. I have appealed to the law enforcement bodies numerous times to be more diligent in catching the perpetrators of the crimes since such incidents threaten the establishment of freedom of speech in our country.

My position has not changed – this way of expressing disapproval about what a reporter has said or written is simply unacceptable, irrespective of what the content was.

18/11/08

On 17th November, at about 8p.m., three unidentified persons attacked Edik Baghdasaryan, President of the *Investigative Journalists* nongovernmental organization and editor of *Hetq*, an internet-based newspaper. The RA Human Rights Defender made a public statement on 18th November 2008:

"We have witnessed assaults against journalists for many years. Numerous times I appealed to the law enforcement bodies to be as diligent as possible in catching the perpetrators; however, we still do not know who these perpetrators were. These incidents speak about an extremely dangerous trend developing in the country that seriously threatens the realization of freedom of speech in the country. Once again, I am making an appeal to the law enforcement bodies, asking them to take the steps necessary to expose the perpetrators of these crimes and hold them responsible for their actions. Otherwise, I believe that senior police administrators will have to seriously consider how competent their high ranking investigators of operational investigation bodies are."

Annex 2

Public Statement of the RA Human Rights Defender Regarding the Incident Reported at Nubarashen Prison

Stepan Voskanyan, defense lawyer of Grigor Voskerchyan who is being held on remand in Nubarashen prison, told the media on 23rd December 2008 that his client had been beaten by prison officers. The same day, the Human Rights Defender's Office received an alert from lawyer Inessa Petrosyan that her client Gevorg Manukyan, held on remand in the same prison, had been beaten and that she was denied the right to meet with him.

Representatives of the Human Rights Defender were tasked with visiting Nubarashen penitentiary, where they met with detainees Grigor Voskerchyan and Gevorg Manukyan. Mr. Voskerchyan claimed that at 10:00 a.m. on 23rd December duty officer Tatul Hakobyan came into the prison cell together a number of unknown officers to conduct a search of the cell. Other inmates were asked to vacate the cell, but he was allowed to stay since he was of more senior age. While conducting the search, one of the officers involved in the operation asked him about his charges and then slapped him heavily in the face and kicked him in his right leg. As a result of the injuries, G.Voskerchyan's health condition seriously deteriorated and he was not able to appear in court for his hearing. Gevorg Manukyan, the other detainee, told the Defender's representatives that he had already met with his attorney. However, he refused to speak about the beatings, claiming that he had not yet consulted his attorney about such discussions.

The Human Rights Defender deplores and condemns such violence, considering them to be manifestations of intimidation and torture. Based on the information provided by Grigor Voskerchyan he recommended that the RA Minister of Justice launch an Internal Service Investigation and discipline the perpetrators of the violence.

The RA Human Rights Defender has brought to the attention of the competent bodies the following issues:

a) Coverage of the court hearings by reporters.

The reporters must be able to cover court hearings independently and not be forced to use the prepared materials that are made available to them.

b) Courtroom access of defendants' relatives.

Many of the defendants' relatives were not able to enter the courtroom as the seats in the courtroom were occupied by police officers wearing civilian clothes.

Annex 3

OPINION STATEMENT

On the Indictment against A. Arzumanyan, M. Malkhasyan, S. Mikayelyan, H. Hakobyan, G. Voskerchyan, S. Sirounyan and Sh. Harutyunyan under Criminal Case No. 62215908, in the RA Special Investigation Service Probe.

The probe into criminal case No.62215908, conducted by the RA Special Investigation Service, commenced in the wake of March 1-2 (2008) events in the city of Yerevan against Alexander Arzumanyan, Myasnik Malkhasyan, Sasoun Mikayelyan, Hakob Hakobyan, Grigor Voskerchyan, Souren Sirounyan, and Shant Harutyunyan (all seven held on remand). Pre-trial investigation of the case was completed in September 2008 and judicial authorities completed their examination of the case materials on 25th November. An indictment was prepared on 26th November 2008 and approved on 1st December by K. Piloyan, 1st Class Justice Counsellor, Senior Prosecutor with the RA General Prosecutor's Office.

We have reviewed the criminal indictment against military serviceman K. Hayrapetyan, whose case was separated from the abovementioned criminal case. On 19th January the court concluded that K. Hayrapetyan was guilty of perjury charges and sentenced him to one year's imprisonment; he was taken into custody straight from the courtroom.

A text of the indictment against the other seven was made available by the lawyer of M. Malkhasyan. According to it, Karen Hayrapetyan testimony against M. Malkhasyan and his driver Arman Shahinyan was used to press charges against both. However, during the court trial and during his meeting with a representative of the Human Rights Defender, K. Hayrapetyan flatly denied having testified against the two men.

Pages 31 and 32 of the mentioned indictment state that: "...witness Karen Hayrapetyan testified that on 23rd February 2008 he agreed to participate in the rallies held in Liberty Square for a daily sum offered to him by co-villager Sis Karapetyan and stayed there overnight in the small tent located next to the tent with the sign *Aparan*, together with Sis Karapetyan. Driver of Myasnik Malkhasyan supplied food to people who were staying overnight in the *Aparan* tent. Myasnik Malkhasyan often visited them, but stayed only the night of 29th February and morning of 1st March. Sis Karapetyan, who received money from the rally organizers, paid him three thousand drams each day. Either on 25th or 26th February M. Malkhasyan arrived at Liberty Square and told his driver that he had some things in his car that needed to be unloaded and stored in the tents. The driver opened the baggage compartment of the black *GAZ 31-10* car, revealing that it was full of 75-85 cm long wooden rods. These rods were unloaded and piled up in the *Aparan* tent. On 1st March at about 06:00 a.m. he noticed that police officers were arriving at the Square. Seeing the approaching police units, people in the Square raised the alarm, and then he saw Myasnik Malkhasyan, who was standing next to the tent, shouting orders to resist and attack the police. After that, people pulled out wooden and iron rods and jumped at the police. Equipped with a wooden rod, Myasnik Malkhasyan joined the fighters, but he himself, frightened of the developments, left the scene." (Volume 28, pages 60-63, 79-81)

The indictment also contained the following details: "Karen Hayrapetyan has rejected his pre-trial testimony in order to deliberately keep Arman Shahinyan away from criminal liability. He has also announced that he had never been interrogated and had never testified and that the testimony included in the criminal case was not his own and was not written by him. However, the court-assigned examination concluded that the notes contained in the interrogation statements were written by Karen Hayrapetyan and that all signatures had been done by him. Thus, charges were brought against Karen Hayrapetyan according to Part 1, Article 338 of the *RA Criminal Code* for perjury and he was found guilty by the court." (Volume 28, pages 228-237).

It is not our purpose here to analyze the indictment, especially since the trial is not yet complete. However, we must speak out about the statement's violation of Article 21 of the RA Constitution. The indictment prepared in November refers to a guilty verdict against K. Hayrapetyan that did not (yet) exist in November. According to Part 1 of Article 21 of the RA Constitution, a person charged with a criminal offence is considered innocent unless his/her guilt is established by court in accordance with legal procedure (i.e. a lawful court verdict that has come into effect).

Annex 4

Press Release
Defender's Public Announcement about Trail Monitoring Processes

Monitoring has revealed shallow arguments put forward by the prosecution and the court's tendency to endorse the prosecution's position. My internal convictions are closer to the positions of the defence – and that is natural since such actions by the Prosecutor's Office and the Special Investigation Service, especially when that creates 'ownership' of the institution, must be balanced by the Human Rights Defender. I welcome release on parole. I welcome amnesty. And I think in this particular situation declaration of an amnesty is much more appropriate.

Nevertheless, taking into consideration that the *Case of the Seven* is already in court and that that very case may become a benchmark for how the country will develop, I have decided to avoid being subjective and am determined to be more professional: I will abstain from interfering with the independence of the court (under the case law system of the Strasbourg Court, opinions expressed at the time of trial may be viewed as interference with judicial independence and an attempt to start an alternative process) and instead establish regular monitoring of the trials and issue statements based on the conflicting opinions of the prosecution and defence parties as well as on the stance of the judge.

I appeal to all institutions of civil society and the media to establish the same level of professionalism via regular monitoring. This is an opportunity for all human rights organizations and the media by their consistently professional activity – without staging shows – to achieve serious results in the area of defending human rights.

RA HUMAN RIGHTS DEFENDER
ARMEN HARUTYUNYAN

Annex 5

Analytical Study

Of Court Decisions that Imposed Detention and Remand as Precautionary Measures against Persons Accused in March 1-2 Related Criminal Cases to Examine How they Corresponded with the European Convention on Human Rights and the Case-law Established by the European Court

After studying the court decisions about the type of precautionary measures applied to a number of persons accused in criminal case No.62202608 (handled by the RA Special Investigation Service), the following conclusions were made:

1. In many cases the court based its decision on the arguments stated in the motion of the pre-trial body, without due consideration of the motions of the other party. In many cases the detention motions brought by the investigation bodies were repetitive, consisting of mere narrative. Generally, the decisions of the courts to impose detention as a precautionary measure or to extend the period of detention relied purely on the mentioned grounds of the prosecution's motions, whereas the court hardly ever made any reference to the defence's motions. Nevertheless, **a court trial must be 'competitive' in nature and continually ensure equality between parties. In *Garcia Alva v Germany* the applicant was denied access to the investigation file, which contained testimonies of a police informer. The European Court decided that based on Article 5(4), the court had to meet the requirements for fair trial under Article 6.**

2. The next observation is that the descriptions of events related to a particular defendant were not precise. The descriptions were relevant to the general, and not the particular situation. For example, almost all the motions contain the following statement: "took part in illegal mass meetings organized by Levon Ter-Petrosyan, a runner-up presidential candidate in the 19th February 2008 Presidential Election, and a group of his supporters, and, being directly guided and influenced by them, participated in the creation of mass riots on March 1-2 in the city of Yerevan, which were accompanied with large-scale violence, fighting, arson, destruction and damage of public and private property, looting, armed resistance to representatives of the authorities, use of weapons, explosives, and other articles and items adapted to serve as weapons as well as murder." This means that, instead of specifying what a particular person had done, the pre-trial body made general statements, which provided no clue for discerning the concrete actions of the individual.

3. The concluding parts of the court decisions often contained the following statement: *"if the accused is released from detention, he/she may hide from investigation bodies, impede the course of the pre-trial investigation or court trial, commit criminal acts, and evade criminal responsibility and the serving of his/her sentence".* Such a statement is nothing more than a quotation from the RA Criminal Procedure Code, which is repeated in all the decisions without further justification.

In the case *Patsuria v Georgia* the court held that neither at the time of considering a detention on remand nor at the time of extending the detention did the national courts consider the use of other precautionary measures and such an oversight by the national courts was another indication of the ignorance of the requirements of Article 5(3) of the Convention (see Dolgova v. Russia, 20th March 2006, paragraphs 47, 48 and 50). The European Court decided that the national court, instead of performing its duty to give convincing grounds for the extension of the

detention of the individual, based its decision on prescribed and abstract circumstances. The Court found that the decision of the national court violated the rights of the applicant under Article 5(3) of the Convention.

4. In many instances the court skipped consideration of alternative precautionary measures, although it had to consider these measures. It would be a different issue if the court had issued detention statements after duly considering alternative measures, but it did not.

In *Dolgova v Russia* the Court emphasized that when a decision has been made as to whether a person will be released or held in detention, it shall be the duty of the authorities to consider alternative measures for ensuring his/her appearance in court (Dolgova v Russia, 04.23.2006, paragraph 47)

In his 2006 and 2007 Reports, the Human Rights Defender highlighted flaws that were identified during such analytical studies. Unfortunately, his comments have not been duly acknowledged by the respective bodies, resulting in the continuation of defective practice, which we believe is unacceptable.

Annex 6

Address of the RA Human Rights Defender on the Occasion of the International Human Rights Day and the 60th Anniversary of the Universal Declaration on Human Rights

Today we might speak of two distinctly different revolutions that took place in the last century: the Bolshevik Revolution and the ongoing Human Rights Revolution. The former 'triumphed' but it is now, hopefully, in demise. The latter, the Human Rights Revolution, is continuing its march into the world – although it is not always triumphant, it is accompanied by optimism and the hope of achieving at least some of its goals.

The Universal Declaration was the outcome of unprecedented consensus, achieved in times of extreme political tension and conflict. It is a document that has shaped modern perceptions of human rights, including the universality of fundamental human rights. The Declaration has been translated into more than 360 languages and the day of its endorsement is commemorated each year with the *International Day of Human Rights*. The authors of the Declaration had diverse cultural backgrounds and intended to make the Universal Declaration a joint vision of a fairer and more peaceful world. The Declaration was the first international instrument to be built upon the basic tenet that human rights and fundamental freedoms must be accessible to everybody everywhere in the world, and it was inspired not by victorious revolutions or national-liberation movements but by peaceful discourse around an international conference table. For decades, it has defined criteria for fundamental and universal liberties and rights.

The content of the Universal Declaration has shaped various UN conventions that enunciate civil, political, social, cultural, and economic rights. It is also the basis of two UN conventions on human rights. Due to the commitment of the international community to the Universal Declaration, almost all of these rights have become norms of international law. The Declaration has served as the foundation upon which successive international treaties and regional human rights conventions have been built. Indeed, many countries have transcribed the rights articulated in the Declaration and the abovementioned conventions into their own constitutions and national legislation. The Constitution of Armenia also reflects the influence of these provisions.

The values propagated by the Declaration are clear and precise. Article 1 states that all people are equal and free, since human dignity unites us all. It also emphasizes the rationality of human actions and the duty to treat others fairly in a spirit of brotherhood. Article 2 of the Declaration proclaims that human rights are universal not because they are recognized by nation states or the international community but because they belong to all mankind. These rights must be accessible to any person, under any circumstances, in any place. This concept is further elaborated in Article 7, which states that all persons are equal before law and have the right to protection from any form of discrimination.

The struggle for democracy and human rights has been going on from virtually the first day of the creation of the world; and each loss in this battle has had a destructive impact on the world. But since we are still here, we reaffirm our commitment to build a better and fairer world for humanity.

What do I mean when I say “democracy”? In my understanding, “democracy” is a comprehensive normative concept and is based on two constituent principles. The first principle of democracy is that of popular sovereignty, which is implemented through regular free elections: people elect representatives to represent their views. This aspect of democracy is ensured by majority rule and the legislature, which has a crucial function of serving as a forum for people’s representatives. This is the formal notion of democracy.

The second aspect of democracy concerns how it is expressed through a value system. The most important democratic values include division of power, rule of law, and independence of the judiciary, which are then further translated into values such as morality and justice, peaceful public life and security, reasonability and conscientiousness. This is the supreme aspect of democracy – the prevalence of democratic values.

Both aspects – the formal notion and the practical expression – are necessary for democracy. A society cannot be deemed democratic if its people are not sovereign nor if its legislature and executive power do not represent the people. A society with no separation of power, no rule of law, no independence of the judiciary and no respect for human rights and fundamental values cannot be deemed a democratic society. A society where the majority denies the rights of the minority cannot be called democratic.

The notion of democracy is rich and complex. Democracy cannot be measured in just one dimension; there are multiple dimensions that need to be taken into account. It is anchored to the principles of rule of law and division of power, and these are centred on core concepts of human rights. The tenet that democracy depends on the will of each and every individual is incontrovertible. Even the majority cannot go against this rule, for the power of the majority is in the hands of individuals, and this democracy has its own internal morality. Society shall cease to be democratic, then, if these rules are not followed.

Today, post-Soviet societies are faced with a tough choice: to strike a balance between the power of the state and the freedoms, activities and initiatives of the individual or to proceed with the authoritarian model and exacerbate the growing gap between the people and the government. Thus far, the use of government bureaucracy for selfish corporate interests has not been uncommon. But this only widens the gap between the people and the government; it fails to serve as a guarantee for the protection of individuals’ civil rights. Viewed from this perspective, the main problem of post-Soviet countries has been their failure to learn how to use a system of checks and balances (when the state and civil society are both governed by constitutional principles). Thus far, stability in post-Soviet countries has been achieved through overbalancing certain elements in the power system (and it makes little difference which elements).

All this shows that the issue of governance is closely tied to the concept of freedom. Freedom is an inviolable part of human nature, but it can only be fully realized under a system of real balances. All other forms of governance – from anarchy to tyranny – are one or another form of an overbalanced system.

RA HUMAN RIGHTS DEFENDER
ARMEN HARUTYUNYAN

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REPUBLIC OF ARMENIA
HUMAN RIGHTS DEFENDER

№ 2-0433

"25" 12 *2008.*

For the Attention Of:
Mr. Sozari Soubari
People's Defender of the Republic
of Georgia

Dear Mr. Soubari:

I have received a complaint-application from R. Tatoyan, *President of the Union of Yerkir Nongovernmental Organization for Repatriation and Settlement*, in which the applicant has expressed his deep concerns with respect to the trials of Vahagn Chakhalyan, leader of the *United Javakhq* political movement, activist Gourgen Shirinyan, and their family members.

Mr. R. Tatoyan has also stated that the investigation and trial proceedings are being conducted with serious violations of human rights.

I refer to our mutual agreements in kindly asking you to monitor these trials and ascertain whether human rights – set out in international treaties that Georgia has also accepted – are being respected.

May I take this opportunity to wish you a Happy New Year and Merry Christmas.

Sincerely,

A. Harutyunyan

**HUMAN RIGHTS DEFENDER
OF THE REPUBLIC OF ARMENIA**

56A Pushkin Street, Yerevan 0002, tel: 53 02 62,
Email: ombuds@ombuds.am

№ 2-0384

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For the Attention of:
CHAIRMAN OF THE RA CONSTITUTIONAL COURT
Mr. G. HARUTYUNYAN

From Applicant:
RA HUMAN RIGHTS DEFENDER
A. HARUTYUNYAN
56a Pushkin Street, Yerevan

Respondent:
RA NATIONAL ASSEMBLY

APPLICATION

This is to request that the compatibility of Parts 3, 4, 5 of Article 14 of the *Judicial Code of the Republic of Armenia* (21st February 2007, HO-135-N) to Part 1 of Article 18 of the RA Constitution be examined.

Parts 3, 4, and 5 of the *Judicial Code of the Republic of Armenia* stipulate that by a decision of the Chairman of the Cassation Court, a judge can be sent to serve at a different court of the same or higher instance for a period of up to 6 months.

In our view, Parts 3, 4, and 5 of Article 14 of the Judicial Code of the Republic of Armenia fall short of the requirements of Part 1 of Article 18 of the Constitution of the Republic of Armenia for the following reason.

According to Part 1 of Article 18 of the RA Constitution, every person has a right to legal recourse in order to protect his/her rights and liberties in court and before other governmental bodies. .A court which is formed by the RA Cassation Court Chairman sending judges of one court to other courts of the same or higher instance cannot be considered to represent a legal authority as, according to Part 2 of Article 94 of the RA Constitution, the powers of the courts and their administrative procedures are defined by the Constitution and other laws. A court which is formed on the basis of a decision of the Chairman of the Cassation Court cannot be considered a court formed on the basis of law.

Furthermore, Parts 3, 4 and 5 of Article 14 of the RA Judicial Code contradict the requirements of Article 6 (1) of the *European Convention on Human Rights*, according to which each person – when his/her civil rights and obligations are determined or charges are brought against him/her – is "entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

Based on the above and with due regard for Clause 1 of Article 100 of the Constitution of the Republic of Armenia, I herewith request a review of the compatibility of Parts 3, 4 and 5 of Article 14 of the Judicial Code of the Republic of Armenia with Part 1 of Article 18 of the RA Constitution.

RA Human Rights Defender

A. Harutyunyan