



# **A N N U A L R E P O R T**

## **ON THE ACTIVITIES OF THE RA HUMAN RIGHTS DEFENDER AND ON THE VIOLATIONS OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN THE COUNTRY DURING 2012**

**Yerevan 2013**

*The annual report has been prepared based on the information obtained from the complaints addressed to the RA Human Rights Defender, analysis of the legislation, on the credible and unjudged publications, the reports of international and legal organizations, as well as from interviews with experts of the sphere and human rights defenders.*

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# **HUMAN RIGHTS DEFENDER'S STAFF OF THE REPUBLIC OF ARMENIA**

## **THE OMBUDSMAN'S STAFF STRUCTURE**

In 2012, with support of the OSCE Yerevan office, the Ombudsman's regional offices were founded in six regional centers of the Republic in Vanadzor, Gavar, Ijevan, Gyumri, Eghegnadzor and Kapan. Currently, the Ombudsman staff has 5 departments, namely the Department of Civic and Political Rights, Department of Criminal Procedural Rights, Department of Foreign Affairs, and the Department for Reception of Citizens and Correspondence of the office. Moreover, the office of the Ombudsman has 3 advisors specializing in the following fields: children's and refugees' issues, women's and environmental defense issues, and issues of people with disabilities and children. The Ombudsman also has two deputies.

## **APPLICATION STATISTICS**

The Ombudsman and his staff provided legal service to 7,395 individuals. 557 complaints out of 999 that were within the Defender's powers were resolved in favor of the applicant, resulting in the restoration of rights for these people. Compared to 2011, the number of cases ensued increased by 39 percent and the number of cases with positive developments increased by 38 percent. The summary of the applications statistics by state bodies and regions is presented in the Annex.

In 2012, 31 decisions were made on human rights violations perpetrated by state bodies.

## **116 HOT-LINE AND RAPID REACTION SERVICE**

The Defender's Hot-Line service worked twenty four hours and provided legal consulting to citizens and in case of necessity the Ombudsman's representatives were present on the scene and provided support. In 2012, the Hot-Line received 1,219 alarms. Rapid reaction was most implemented in cases when a person was brought to the police department without any ground by law enforcement bodies and was subjected to violence. Rapid reaction support was provided to citizens during demonstrations, or meetings, and other mass events in cases when there were problems with the police. Generally, 145 rapid responses were implemented and 1,074 legal consultations were given.

## **APPLICATIONS TO THE RA CONSTITUTIONAL COURT**

During 2012 the RA Human Rights Defender submitted a number of applications to the RA Constitutional Court, as a result of which:

- Should an administrative offence be committed, a citizen can no longer be arrested by the prosecutor's sanction and kept for up to ten days,
- Individuals can obtain a warrant given by the foreign country notary to receive pension,
- Organizations can effectively appeal the decisions of the Financial System Mediator in court,
- Tax arrest institute can be applied only in case of consumption of other resources,

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- The application of the provisions' retroactive force aggravating a person's legal situation, as well as non-legitimate cases of restricting a person's right to appeal to court were prevented,
- The procedure of rejecting the application of the administrative court was clarified, and
- Legal position was accepted on a number of legal provisions, in particular, on the applicability of their retroactive effect.

## **LEGISLATIVE PROPOSALS AND REPORTS**

During 2012, the Ombudsman submitted about 60 legislative proposals aimed at human rights defense, which were mostly accepted by the project initiators. Proposals include the following:

- In the corresponding decision of the Government, providing special signs and parking areas for vehicles transporting children with disabilities, as a result of which parents are no longer fined.
- On the draft of the RA new Criminal Procedure Code, improving the procedure of interrogation and confrontation in the presence of juveniles, providing detainees' right to receive free medical examination and consultation, judicial depositing of the defendant's confession evidence, etc.
- On the RA draft law on making amendments in the RA Civil Procedure Code and the RA Administrative Procedure Code with the aim to be exempted from criminal liability in the future; provision of the right to refusal from testimony about her, her husband and close relatives by a person participating in a case; the clarification of the procedure to require proofs by the court; elimination of restriction to appeal some court acts, etc.
- On the RA draft law on "Making amendments and supplements to a number of laws of the Republic of Armenia": freezing the property by tax authority without court decision, elimination of non-legitimate authority to seize things, elimination of prohibition to be engaged in any other kind of business for people who have alcohol production license, etc.
- On the RA Electoral Code: the replacement of stamp institute in the identification document with the institute of inking of fingers, the clarification of the requirement of permanent residence in RA in the last five years, provision of disabled people's right to vote, etc.
- The Ombudsman studied a number of other draft laws, among which are: the RA draft law on "Family violence", the RA draft law on "Equal rights and opportunities of men and women", the draft law prescribing amendments and supplements to the RA law on "The Alternative military service", about which a number of suggestions were also made.
- The Ombudsman presented the annual report and 4 public ad-hoc reports. The Ombudsman presented in details the violations and problems in a special ad-hoc report recorded during the parliamentary elections. There were other reports on the implementation of convention against torture in the RA, realization of International Convention of political and civil rights, as well as on Children Rights Convention by the RA.

### **“ANTI-DISCRIMINATION” DRAFT LAW**

In October 2012, the Ombudsman staff initiated to process the RA «Anti-discrimination» draft law, considering the vicious phenomenon of discrimination and the importance of activities aimed at its prevention. In the project preparation process the staff involved international experts provided by the EUAG, as well as the potential of a number of NGOs. Besides, preliminary agreements have been

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reached with the OSCE/ ODIHR and the European commission against intolerance to review the project in the completed form and to give their expert conclusion.

## **ANNOUNCEMENTS**

During 2012, the Ombudsman made several dozens of announcements on judicial shortcomings, violations of rights of people with disabilities, women, socially vulnerable groups, children, refugees, as well as of pensioners.

Based on the requirements of the RA legislation and international norms, the necessity for the defense of human rights and freedoms, and guidance from precedential decisions of the Human Rights European Court, the Ombudsman called upon the RA Police in March of 2012 to allow peaceful demonstrators in Mashtoc Park to set up a tent.

On April 5, 2012 the Ombudsman appealed to the President of the RA National Assembly with an open letter expecting the President's assessments and positions for 8 servicemen killed in the armed forces on September 30, 2011 concerning the existence and absence of violations of each case, as well as possible political and legal support to successors of the victims by the RA National Assembly.

Referring to the package of legislative amendments presented by the RA Government on June 5, 2012 and accepted by the RA National Assembly, by which the annual bill on increase in water outlets from Lake Sevan was up to 320 million cubic meters instead of 170 million cubic meters, the Ombudsman called upon all the competent state bodies to implement each procedure of making decisions by maintaining the law steadily, i.e. by organizing public hearings.

## **VISITS TO PENITENTIARIES, MILITARY UNITS AND OTHER CLOSED INSTITUTIONS**

The Ombudsman and his representatives, in cooperation with a number of NGOs, made 151 visits to penitentiaries, police departments, detention centers, disciplinary isolators, military units, psychiatric hospitals, orphanages, special schools, retirement homes, boarding facilities. During the visits, a number of concerns were discovered and revealed. For instance, during investigations and preliminary investigations, there were cases of torture as well as other instances of physical and psychological ill-treatment during the interrogations by police officers against people who were brought or invited to the police departments. There were cases of people's improper examination when accepting them to closed institutions, cases of keeping hunger-strikers in being subjected to cruel and inhumane conditions, the widespread issue of overcrowding in penitentiaries, etc. As a National Prevention Mechanism (NPM), Torture and Violence Prevention Department of the Ombudsman staff and Experts' Council on Prevention of Torture under the Human Rights Defender conducted about 136 visits to closed and semi-closed institutions with the aim to uncover and prevent cases of torture or other cruel treatment or cases of punishment (penitentiaries, police departments, detention centers, disciplinary isolators, military units, psychiatric hospitals, orphanages, special schools, retirement homes, boarding facilities). Some institutions were visited two, three or even more times. Among the main issues that were revealed as a result of visits are: keeping the arrested or invited people in police departments for more than three hours as envisaged by law, exceeding 72 hours of keeping people in detention facilities as envisaged by law, the demonstration of physical and psychological ill-treatment by police officers towards people who were arrested or invited to police departments during the preliminary investigation

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and investigation; the improper external examination when being adopted to detention facilities, penitentiaries and Military Police prisons; overcrowded cells in penitentiaries; in some cases keeping people in punishment cells who went on hunger-strike because of the insufficient conditions of penitentiaries; the medical service isn't regulated and doesn't comply with the standards of the RA Ministry of Health in the defense units, as well as in psychiatric hospitals, orphanages, special schools and retirement homes.

## **COOPERATION WITH CIVIL SOCIETY**

Professional discussions were organized for the entire study of legislative drafts presented to the Ombudsman, as well as for the solution of a number of systemic problems available in the spheres of vulnerable groups' defense, in particular, on the drafts of new codes of criminal, civil, administrative proceedings, on the necessity to process the "Anti-discrimination" draft law, on "Freedom of conscience and religion", on a family violence workshop for Gyumri kindergarten employees, on the Government decision concerning Water Outlets from Lake Sevan. The aim of the discussions was the collection of opinions of NGOs and civil initiatives on the problems mentioned above, with the aim to include them in the package of legislative amendments proposals suggested by the Ombudsman. In this way, the cooperation with NGOs also strengthens, making it more effective, and the presented proposals also express the positions of the representatives of civil society, thus involving them in the solution of systemic problems.

State bodies and NGOs initiated disputes and highlighted a number of systemic issues. Thus, after highlighting the issue of providing apartments for orphanage graduates, the Prime Minister touched upon the issue during the successive session of the Government, indicating that a new concept was processed to provide the orphanage graduates with apartments, as the Government is obligated to provide the latter with residential areas. Moreover, several dozens of hostel-type apartments are being built in the industrial building on Tbilisi highway 3 in Yerevan.

As a result of meeting with environmental activists, the Ombudsman formulated a precise position concerning the legality of pavilions located in Mashtoc Park due to which, the Ombudsman's staff was actively involved in the occurring processes, as well as in the struggle of the environmentalists. With an announcement, later during different interviews and speeches the Ombudsman expressed his position on the illegality of prohibition of putting up a tent, and the Ombudsman's Rapid Reaction Group carried out control over the legality of the policemen activities in case of each alarm, recording and highlighting all the violations. The discussion on juvenile justice was attended by 25 juvenile offenders, who came to the Ombudsman's office to get acquainted with it and the Ombudsman's activities, as well as to receive answers to the questions and concerns. As a result, a number of issues on juvenile justice were communicated.

Meetings were organized with young representatives of national minorities, refugee women, pupils of school N194 and students of the Yerevan economic college. During the meeting the Ombudsman staff activity was presented to them, how to apply to the Ombudsman, generally they touched upon human rights issue and discussed a number of highlighted issues.

An Olympiad was organized dedicated to human rights on the International Human Rights Day. During the Olympiad, a moot court was held and the winners were awarded with certificates and prizes, thus promoting awareness of human rights and defense means for the participants.

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On June 1, an event was organized for schoolchildren during which graduates of about 7 Yerevan schools were invited by the Ombudsman staff to become acquainted with the Ombudsman's activities, partake in a discussion on children's rights, and to view the Ombudsman's showing of a film on human rights.

The Ombudsman presented a report on children's rights defense to the UN children's rights committee. The report demonstrated the problems available in 8 spheres of children's rights defense and proposals on their solution. The concluding observations on the report will be submitted by the committee in May of this year.

## **2012 RA NATIONAL ASSEMBLY ELECTIONS**

During the RA National Assembly elections of 2012, the Human Rights Defender's 116 Hot-Line worked 24 hours both during pre-election period and on the day of elections. Overall, the Ombudsman received 310 alarms on electoral rights restoration. During the pre-election campaign, 106 alarms were received (64 from Yerevan, 42 from other regions). On the Election Day, 204 alarms were received (114 from Yerevan, 90 from other regions). Regarding the alarms received, the Ombudsman's Rapid Reaction Groups provided legal support in 119 cases. Guided by Article 17 about the Human Rights Defender, the Ombudsman constructed an ad-hoc report on the RA National Assembly elections on May 6, 2012.

## **LETTERS OF AGREEMENT**

Letters of agreement were signed with a number of organizations; in particular, in July 2012 Karen Andreasyan and OXFAM in Armenia Country Director, Margarita Hakobyan, signed Memorandum of Understanding, establishing a wide scope of cooperation between the regional offices of the Human Rights Defender and the civil centers founded by Oxfam in Vayoc Dzor, Syuniqu, Shirak and Tavush Marzes. Within the scope of the 6 year large-scale cooperation, the parties will cooperate in the areas of making propositions addressing current legislation gaps having adverse impact on the human rights situation in the country, development of and fundraising for joint initiatives on addressing civic, political, economic and social rights of the population in the capital and other regions of Armenia with a particular focus on establishment of cooperation between the Ombudsman Office's regional offices and OXFAM in Armenia's civic centers (CC) set up in Vayots Dzor, Syunik, Shirak and Tavush regions, as well as implementation of campaigns promoting legal awareness.

As a result of active cooperation with another organization, the women's support center of Tufenkian foundation, support is provided to women who are victims of domestic violence in cases where the solution to the subjects' problem is out of the Ombudsman's competence, joint measures are also taken with the foundation.

In June of 2012, the Human Rights Defender and the representative of the UN High Commissioner for Refugees of the office in Armenia signed a letter of agreement. Within the scope of the agreement the offices conducted the cooperation towards the solution to a number of issues on the refugees' rights defense in Armenia. With the support of the UN High Commissioner for Refugees the RA Human Rights Defender's staff launched a program in 2012 aimed at increasing the legal awareness of

refugees and asylum seekers in the sphere of human rights and freedoms, as well as the implementation of methods of their rights defense.

As a result of cooperation with the Swiss Embassy, a project aimed at the increase of public awareness on domestic violence in Lori, Shirak Marzes, as well as in Yerevan. The analysis of the survey implemented at the beginning and end of the project showed that the number of applications addressed to the Ombudsman increased during 6 months and that the awareness of the role of police increased in such relations.

In 2012, the Human Rights Defender and the Mission Director for Armenia for the United States Agency for International Development (USAID) signed a Memorandum of Understanding. Within the framework of the Memorandum, USAID will provide technical assistance to strengthen the institutional capacity and improve visibility of the Human Rights Defender's Office (HRDO), its regional offices, and constituent departments.

In October 2012, the Human Rights Defender and the UN Resident Coordinator/UNDP Resident Representative signed a Memorandum of Agreement, due to which the cooperation between the two institutions strengthened more in the field of human rights defense. Within the framework of the memorandum, the Ombudsman staff will provide expert consultation and examination to UN agencies on human rights and fundamental freedoms, in addition to supporting the UN office in Armenia to involve human rights issues in the UN projects and process general human rights strategy. According to the memorandum, the UN office in Armenia will provide information to the Human Rights Defender's staff with the aim to clarify the joint primary issues and cooperation fields.

## **INTERNATIONAL COOPERATION**

In 2012, the Ombudsman staff and partner international organizations, namely the European Union, the UN, the OSCE office in Yerevan, the USA Agency for International Development, the Europe Council, the Armenia representation of Counterpart International, the UN and Ombudsmen's offices of other countries implemented a number of projects aimed at human rights defense and promotion and at the strengthening of the Ombudsman staff capacities.

In particular, in 2012, with the financial support of the European Union and OSCE Yerevan Office a project launched on «The RA Human Rights Defender's capacity building during elections». As a result of the project launching the Ombudsman's staff representations were founded in 6 regional centers of the republic, in particular, in Vanadzor, Gavar, Ijevan, Gyumri, Eghegnadzor, Kapan and a broader and more effective rapid response was implemented. With the foundation of regional offices the Human Rights Defender's staff became more available to residents of regions and began to support human rights defense and promotion more effectively.

In 2012, with support of the Embassy of the Swiss Confederation, the project on “Increasing legal awareness of domestic violence victims and accessible justice” the aim of which is to restore the rights of children and women who are victims of domestic violence in Armenia, as well as to inform women and children on possibilities of their rights defense in case of domestic violence, including on the obligations of police, prosecution and other state bodies. This project, which lasts 6 months, was carried out in Yerevan and other regions and it involved many beneficiaries who were victims of domestic violence.

In the current period with financial support of the Embassy of the Federal Republic of Germany the Ombudsman staff launched the project on “Provision of legal support to victims of torture and ill-treatment in penitentiaries”, in which itinerant lawyers were involved, who provided legal support to people who were victims of torture and ill treatment in penitentiaries.

With support of the UN High Commissioner for Refugees, from 1<sup>st</sup> July 2012 the RA Human Rights Defender's staff launched a project aimed at raising legal awareness of refugees and asylum seekers in the sphere of human rights and freedoms, as well as implementation of methods of their rights defense. In December 2012, two projects were primarily approved with the British Embassy to Armenia aimed at promotion of Torture prevention national mechanism and the activity of the Council for the Prevention of Torture, as well as at the development of participation of media representatives in political and civic life.

Like the previous year, in 2012, the Ombudsman's staff and the United Nations Children's Fund (UNICEF) continued their active cooperation. With the support of UNICEF children's rights defender of the Ombudsman staff took part in pre-session working-group meeting of the UN Children's Rights Committee, which took place on December 8-12, 2012. In 2012, with cooperation of UNICEF the mechanism was processed of informing the Ombudsman staff more effectively about cases of children's rights violations, as well as the project was implemented on “Promotion on children's rights in Armenia: RA Human Rights Defender's staff reinforcement” to submit to the Ministry of Foreign Affairs in Norway.

Furthermore, UNICEF supported the Ombudsman staff in the English translation of the report submitted to the UN Children's Rights Committee. During the year, the two offices organized joint events, such as the International Day of Children's rights and other meetings.

The European Union Advisory Group (EUAG) submitted to the Ombudsman's staff proposals and policy guideline within the framework of the project, in particular, on the prevention of torture in penitentiaries, the procedure of application discussion, as well as EU-Armenia Human Rights dialogue and in the sphere of cooperation with the UN Treaty Bodies. Moreover, EUAG had an active contribution to the anti-discrimination draft law prepared by the Ombudsman's staff.

In 2012 the Counterpart International (hereinafter, CI) continued its consistent support to the Ombudsman's staff, by which public awareness was carried out on the works implemented by 116 Hot-Line of the Ombudsman's staff and Rapid Reaction Groups, the CI also provided proposals on the staff legal status, as well as strategic and annual work-planning.

2012 was most important by the promotion of cooperation between the Ombudsman staff and the UN Treaty Bodies. In particular, the Ombudsman's staff submitted ad-hoc reports to the UN Committee against Torture on the implementation of Convention against Torture in RA, to the UN Human Rights Committee on the implementation of International convention of the UN political and civic rights by the RA, as well as to the UN Children's Rights Committee for the pre-session working group meeting which took place from 8 to 12 December in 2012 on the implementation of Children's Rights Convention by the RA. All the submitted reports are available in the official web-site of the staff.

## **INTERNATIONAL MEETINGS**

In 2012, the Ombudsman and his staff took part in a number of conferences, training courses and other international meetings during which agreements were reached relating to exchange of experience and

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increasing the role of the Ombudsman in international human rights structures. In particular, in 2012 the Ombudsman took part in a workshop on “Freedom of speech and European Convention on human rights” in the Hague during which 5 reports of European Convention on Human Rights were discussed, in particular, the right to freedom of speech.

In April 2012, the Ombudsman took part in the session of European Ombudsmen Institute in Florence. Within the framework of the session the Ombudsman, together with members of the European Ombudsmen Institute, discussed the results of studies and scientific researches in the sphere of civic rights, the provision of scientific support to the Institutes of local, regional, national and international Ombudsmen, provision of exchange of experience of national, European and international level. During the meeting they also discussed the cooperation with the UN Human Rights High Commissioner, Council of Europe (CE) Commissioner for Human Rights, European Council, European Ombudsman and other international organizations.

Moreover, the French Human Rights Defender invited the Ombudsman to take part in the sixth workshop of the Mediterranean Sea Ombudsman Association entitled «Increase of the Ombudsman's role» which took place in Paris in June 2012. During the meeting they touched upon the Ombudsman's powers, Ombudsmen's functions in the sphere of vulnerable groups' protection, works implemented towards human rights education, as well as mechanisms of cooperation and strengthening of the ties of MOA members.

In September 2012, the Ombudsman had a meeting with representatives of the UN Human Rights High Commissioner office of Geneva during which they touched upon the general condition of human rights in Armenia, the reported positive developments and the available challenges, the main achievements of the Ombudsman staff, as well as they disputed upon provision of political support to the National Prevention Mechanism. The RA Human Rights Defender expressed his willingness to cooperate with the office of the UN High Commissioner for Human Rights to provide information and consultation in the sphere of human rights and to cooperate with the UN Treaty Bodies within the framework of the capacity building of the institute and the solution of human rights systemic issues.

Foundation of journalists in Bolivia invited the Ombudsman to take part in the professional discussion on the development of journalism in University educational programs in October 2012. The discussions concerned laws of mass media, media ethics, multimedia/online journalism, and investment of a system for illustrating modern social issues important for journalists (gender, racial, national, religious, etc).

The representatives of the Ombudsman staff participated in the European national prevention mechanism (NPM) project organized by the Swiss NPM, in the French Ombudsman's invitation of a workshop entitled “The role of Ombudsmen in good management and strengthening of human rights defense” which took place in Paris, workshop on “Anti-discrimination: the last tendencies and challenges” organized by the European Convention against racism and intolerance in Strasburg, “The ninth NPM workshop” which took place in Belgrade by the invitation of the European Council. In September, some employees of the Ombudsman staff took part in « Cooperation of the EU Eastern Partnership Countries Ombudsmen» meeting which took place in Poland, forum on freedom of assembly organized by the OSCE democratic institutes and human rights office (ODIHR) in Vienna, and Irish OSCE Chairmanship. In December 2012, some members of the Ombudsman's NPM Council made a cognitive visit to health and social care institutions of Madrid within the framework of the European Union TAEX Project.

## **OBSTACLES FOR THE OMBUDSMAN'S ACTIVITY**

There is lack of material and financial capital in the Ombudsman's staff. In 2014, a minimum of 65 million drams is necessary to implement the activity of the Ombudsman and his staff to the same extent. In 2012, the deficit amount was supplemented by international partners.

# MINISTRY OF DEFENSE OF THE REPUBLIC OF ARMENIA

## SUMMARY

The Ministry of Defense of the Republic of Armenia conducts supervision over recruitment for compulsory military service and performance of military round-ups, ensures the implementation of legislative requirements in the field of defense of the armed forces, conducts general and partial military mobilization, within its jurisdiction ensures the social protection of military servicemen and their family members, as well as persons equal to military servicemen, etc.

The problems revealed and the achievements registered during 2012 in the area of responsibility of the RA Ministry of Defense (hereinafter referred to as the Ministry) are presented below, though not exhaustive.

## CURRENT PROBLEMS AND SHORTCOMINGS IN THE SHPERE

- During 2012 about 400 cases were revealed in regards to violations of code rules and statutory relationships made by military servicemen.
- The military servicemen called up for military service with health problems generally were not informed that the military service is contraindicated for them.
- Around 1000 complaints were received in regards to decisions made by the Central Military Commission of the Ministry. This evidences the fact that during the military recall the medical commissions didn't succeed in the effective organization of thorough medical examination.
- In certain cases military servicemen called for a military service with health problems received commands incompatible with their health condition and had to execute the command.
- In the military units cases of provision of non proper medical service were revealed.
- Some officers of the RA Armed Forces expressed a wish to prematurely settle their agreement on the military service, but the supreme commander staff has unreasonably delayed the signing of their reports.
- The problem of provision of housing conditions for the military servicemen remains unsolved.
- Certain cases of manifestation of disrespect towards citizens by military servicemen were revealed.
- Certain cases were registered, when decisions of the Central Military Commission of the Ministry were not provided to people according to established procedures.
- The officers of the Military Police of the RA Ministry of Defense while carrying out their functions abuse of their official position.

## POSITIVE DEVELOPMENTS REGISTERED

- The RA Law “The Military Disciplinary Code of the Armed Forces of the Republic of Armenia” was adopted in the year of 2012.
- According to official data in 2012, compared to previous years, the number of death cases in the armed forces has decreased.

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- Prophylactic and preventive measures were carried out with the aim of preventing violations of code rules and statutory relationships made by military servicemen.
- In 2012, 157 military servicemen were provided with housing. In cases of the lack of housing conditions the Ministry provided monetary compensation to military servicemen for rented premises.

## GENERAL ANALYSIS

According to data provided by the Ministry around 400 cases were revealed in regards to violations of code rules and statutory relationships made by military servicemen during the year of 2012. The Ministry reported that prophylactic and preventive measures are being carried out in cooperation with law enforcement bodies with the view of preventing similar violations in the future, particularly by means of conducting anonymous surveys in military units, studies carried out in regards to materials published by the Mass Media or NGOs, as well as by performing investigations and other means. It is also commendable that in order to prevent such phenomena the Ministry conducts various workshops and lectures on human rights. Although investigations were conducted in regards to violations of code rules and statutory relationships, and the guilty were subjected to disciplinary responsibility and comprehensive measures were implemented by the Ministry to prevent this problem, nevertheless, the number of above-mentioned cases evidences that consciousness of military duty and honor, duty of steady performance of military discipline requirements and personal dignity of military servicemen continues to remain incomplete.

Such an atmosphere only promotes to non maintenance of military discipline rules. The RA Law “On the Military Disciplinary Code of the Armed Forces of the Republic of Armenia” adopted in 2012 clearly defines that all groups commanders (heads), officers and sub-officers are responsible for strengthening military discipline and statutory regulations, therefore strengthening of discipline and statutory regulations is the direct responsibility of the command staff of military units.

The issues in regards to the rights of military servicemen with health problems remain unsolved. Thereby, according to the Order 175-10, 26.02.2010 of the RA Ministry of Defense, in case an ordinary soldier on individual basis is declared compatible for non ordinary service or is declared compatible for service with limitations it is mentioned in the decision of the Central Military Commission which means of service are contraindicated for a person (for instance, activities requiring great physical strain, prolonged impact of exposure or moisture, night shift, etc.). That is, during the temporary mandatory military service a military serviceman subjected to non ordinary service or to ordinary service with limitations and examined by the Central Military Commission, should receive the appropriate decision of the Central Military Commission in order to be informed about the means of service which are contraindicated for them. Military servicemen undergo expertise by the Central Medical Committee before the military service. Moreover, the Central Medical Committee submits a written conclusion on the servicemen’s health conditions in case they are declared compatible for service or are compatible with certain limitations or are compatible for non ordinary service.

According to the 2nd paragraph of the Article 23 of the RA Constitution, everyone shall have the right to become acquainted with the data concerning him available in the state and local self-government bodies. The RA HRDI submitted a proposal that before proceeding to actual military service, military servicemen with health problems should get acquainted with the decision related to them, and the

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means of service contraindicated for them should be clearly mentioned in the decisions. No measures yet have been taken by the Ministry regarding the proposal.

During the year of 2012, 1000 complaints were registered in regards to decisions made by the Military Commission of the RA Ministry of Defense. As a result of a re-expertise the Central Medical Commission changed its decision in 42 cases. Such number of complaints is extremely disturbing, as it evidences about the non efficiency of medical commissions and/or about the lack of public confidence. The Military Commissions of the RA Ministry of Defense do not conduct their studies with the sufficient transparency for the public. As the specialists of the area state, there is a lack of distinct mechanisms of identification and elimination of shortcomings of the area.

In 2012, 6 soldiers died during their military service because of health problems. Among them there were soldiers compatible for non ordinary service as well as soldiers compatible for ordinary service with certain limitations. According to the Ministry, a separate registration is carried out for such soldiers, and a strict control is set over them by the commanders. Even during physical trainings their activities are supervised by the medical staff. But the Ministry also reported, that based on the necessity of maintaining the combat readiness of the military unit, sometimes there are cases when the command has to accept military servicemen compatible for non ordinary service or compatible for the ordinary service with certain limitations with a view of solving certain problems (providing necessary supervision over their health condition). Realizing the importance of the combat readiness of the military unit for the security of the Republic of Armenia, nevertheless, it is defined by the Articles 43 and 44 of the RA Constitution the cases and grounds, when certain fundamental rights and freedoms of citizens may also temporarily be limited in military or emergency situations. Despite the key grounds of the mentioned articles, the RA Constitution prescribes several rights that are not generally subject to any restrictions. The Article 17 can serve as an example for the above stated, according to which no one should be subjected to torture or to inhuman or degrading treatment or punishment. It is not casual that soldiers compatible for non ordinary service or compatible for the service with certain restrictions are provided with such status, as it is a consequence of health problems of the latter. Therefore, accepting such people into the military service with a view of solving certain problems even for the security of the state or, as the Ministry states, based on the necessity of maintaining the combat readiness of the military unit, and ignoring the fact that such activities are contradicted for their health may be considered as a cruel and/or inhuman treatment towards them, which, regardless of the importance or substantiation of the situation, directly contradicts the RA Constitution and is inadmissible in a democratic society. Meanwhile, the death cases of the 6 soldiers during their military service because of health problems evidence that proper medical supervision is not conducted towards the referred people.

It is disturbing that, according to the information provided by the Ministry, during the year of 2012 no cases of improper medical care were registered in the military units of the RA Armed Forces. However, contrary to the above stated, several medical experts were subjected to disciplinary sanctions as a result of investigations conducted on the occasion of death cases of the 6 soldiers during their military service because of health problems. According to the specialists of the area, this proves that, however, there were registered cases of implementation of improper official duties by doctors.

During 2012 there were also cases registered when some officers of the RA Armed Forces expressed a wish to prematurely settle their agreements on the military service, but the supreme commander staff has unreasonably delayed the signing of their reports. The Ministry substantiates this with the process

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of examination of grounds and reasons of release, as well as with the possibility of taking measures for their solution. The Ministry also reports that in certain cases delays may be caused by the lack of personnel for the positions of the military servicemen who expressed a wish to prematurely settle their agreements on the military service. It is noteworthy that the Ministry is thoroughly studying the servicemen's concerns and/or complaints; however it should be implemented within the shortest and reasonable timeframe rather than in months. Meanwhile, taking into account the fact that military service is a selective job for officers, therefore not meeting a person's legal requirement to prematurely settle their agreement is unacceptable. Such situation actually is equal to forced labor which is prohibited by the RA Constitution and international standards.

The problem of provision of housing conditions for the military servicemen still remains unsolved. It is noteworthy that in many cases the Ministry provides monetary compensation to military servicemen for rented premises. However, the implementation of military housing inventory and its provision is not still clearly regulated. The improvement of housing conditions of officers serving in frontier military units is still alarming.

Complaints were reviewed concerning disrespectful attitude towards citizens by military servicemen demonstrated by offensive remarks and threats. In response to our query the Ministry reported that in such cases appropriate measures envisaged by the Military Disciplinary Code were taken towards offenders, criminal proceedings were instituted, and the latter were subjected to disciplinary and criminal liability. We consider, that measures should be undertaken for the elimination of demonstration of disrespectful attitude towards citizens by military servicemen, as such cases are not only a violation of the requirements of the RA legislation but also actually imperil the public trust and reputation towards the whole system. Continuous tutorial measures should also be undertaken.

There were cases registered when the provision of decisions of the Military Commission or the Medical Commission required by the inductee was delayed or not provided. As a result citizens initially do not have an opportunity to appeal to higher authorities or court to appeal the decisions of the Commissions. The right to effective legal protection of a person enshrined in the Constitution is not protected as a result. Besides, in regards to the matter the Ministry reported that the decisions of the Medical Commission are being provided only due to a soldier's requirement. The Medical Commission being an administrative body, according to the Article 59 of the RA Law "About the Foundations of Administration and Administrative Proceedings", after adopting the written administrative act it should be submitted to the proceedings participants within three days, regardless of whether participants have requested the administrative act or not. Therefore, such practice concerning the submission of decisions of Medical Commissions contradicts the requirements of the RA legislation and only contributes to public distrust towards their decisions.

The officers of the Military Police of the RA Ministry of Defense while carrying out their functions abused their official position. Moreover, several complaints were studied concerning the investigative actions carried out by the RA Military Police officers, in particular, with a view of obtaining information in regards to cases of applying mental and physical pressure by the latter towards citizens.

## **RECCOMENDATIONS**

- Take harsh measures to ensure the maintenance of strict discipline and the statutory order by everyone in the military units, as well as subject to responsibility the commanders of military

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units in case of drawbacks and/or violations revealed in pursuance of the requirements of the RA Law “The Military Disciplinary Code of the Armed Forces of the Republic of Armenia”.

- Take measures to properly inform the soldiers compatible for non ordinary service and soldiers compatible for ordinary service with certain limitations about the means of services contraindicated to their health conditions before proceeding to the military service.
- Elaborate specific mechanisms with the view of increasing the efficiency of the services of medical commissions, as well as for the elimination of shortcomings.
- Eliminate the practice of giving assignments incompatible with the health conditions of the soldiers.
- Pursue the conduction of proper medical services by the medical staff of military units of the RA Armed Forces, and impose strict liability in case of any drawbacks revealed.
- Take measures for maintaining reasonable time frames to prematurely settle the agreements on the military service requested by the military servicemen.
- Pursue to the solution of the problem of ensuring housing conditions for the military servicemen.
- Take preventive measures for the cases of ill-treatment demonstrated towards citizens by the military servicemen.
- Take measures for maintaining the procedures of providing inductees with the decisions set by the Central Medical Committees.
- Pursue to the prevention of abuses demonstrated by the Military Police, and subject the offenders to responsibility.

# MINISTRY OF JUSTICE OF THE REPUBLIC OF ARMENIA

## SUMMARY

The Ministry of Justice ensures state registration of civil status acts, notary activities, and state registration of legal entities functioning within the Republic of Armenia. The Ministry of Justice provides the mandatory enforcement of the judicial acts that legally entered into force, the judicial expertise, the provision of administrative proceedings, and etc. The Ministry supervises over the civil status acts registration bodies, legitimacy of the penitentiary service activities, as well as provides the statutory authority to initiate disciplinary proceedings against judges.

The biggest problem and shortcoming of the human rights protection in the Republic of Armenia during 2012 relates to the right of fair trial and in particular to the injustice and illegalities within the judicial system. Besides the mentioned general issues, other problems revealed and achievements registered during 2012 within the authority of the RA Ministry of Justice (hereinafter referred to as the Ministry) are presented below, though not exhaustive.

## CURRENT PROBLEMS AND SHORTCOMINGS OF THE SPHERE

### *The Courts*

- Numerous cases of injustices and illegalities in the judicial system are disturbing.
- Numerous are cases where upon existence of basis for subjecting the judges to disciplinary liability, the Council of Justice initiated disciplinary proceedings and as a result, there were instances of not subjecting the judges to disciplinary proceedings.
- A number of cases were recorded when the judicial acts appealed to the RA Cassation court by court were not subjected to detailed review by the court and as a result, the existing judicial errors were not eliminated. Hence, the rights of persons for independent and impartial trial were violated. Such policy seriously hampers the universal application of the law, its proper interpretation and the progression of right.

### *Penitentiary Institutions (hereinafter referred to as PIs)*

- There are a number of unsettled problems in the Penitentiary Institutions concerning the elimination of their overcrowding, ceasing the distribution of expired medication, elimination of the abuse of responsibility and corruption of the PI employees in regards to food bundle receiving. There are additional problems as well that have not been noted here.
- The problem of the absence of rooms for visits and rooms for long visits in the RA MoJ “Yerevan Kentron” PI is also concerning.
- The problems of separate cells for hunger strike announced inmates and convicts, as well as absence of minimal sanitary hygienic conditions are also unsettled. In general, the rights and responsibilities of hunger strikers are not regulated by the Legislation.
- In Pis, essential violations were revealed in regards to the food quality, quantity, as well as diversity of prepared dishes for inmates and convicts.

- The medical examination and medical service out of PI, as well as the applications of the convicts to be transferred to RA MoJ “Hospital for Convicts” are never followed up by the administration of the PI, which are based on mercenary motivations.
- Numerous complaints were received on the duration and availability of obtaining Republic of Armenia citizenship passports by inmates and convicts, as well as complaints on violations of administrative terms by the PI administration.
- There is a need for immediate clarification of the list and criteria of the diseases incompatible with the sentence given.
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***The Notary Offices and the Civil Acts Registration Office (hereinafter referred to as Civilian Registrar’s Office)***

- Numerous complaints were received on the established illegal practice by the notary offices in the Republic of Armenia, in accordance to which, as a result of ratification of the validity of the signatures on the documents their copies were not kept in the notary offices. Hence, people were again forced to make respective payments.
- Civilian Registrar’s Office authorities, in a number of cases, illegally required mandatory notary licenses, which are in violation with the law.
- There are number of cases where queues and crowding were formed in the Notary and Civil Act Registration Agency offices. The rates for notary services are still being not clarified which in its turn contribute to the corruption.

***The Compulsory Enforcement Service of the Judicial Acts (herein referred to as JACES)***

- It is disturbing that in accordance to the established illegal practice, the defined two-month timeframe for instituting enforcement activities by the service is not maintained.
- Numerous cases are due to the inconsistent operation of the JACES employees. The requirements of the court decisions legally entered into force are not being implemented, relevant steps are not being undertaken in regards to discovering debtor physical entities under investigation, the requirements of the court acts legally entered into force, but are intentionally not being implemented. As a result, the relevant persons guilty are not subjected to liability.

**POSITIVE DEVELOPMENTS REGISTERED**

- The 2012 – 2016 strategic plan and the action plan of the Republic of Armenia legal and judicial reforms were approved by the RA President.
- Within the framework of the 2012-2016 RA Legal and Judicial Reforms Strategic Plan, drafts of changes in a number of legal acts were elaborated by the RA MoJ.
- Employee trainings and qualification tests were conducted for the improvement of the quality of the service of the notary and civil acts registration offices.
- Civil acts registration office departments’ electronic governing system amending activities, as a result of which civil acts registration, provision of references and copies of acts are done electronically.

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- In order to ensure awareness of the citizens, in 2012, panels and guidelines on each civil acts registration type procedure and list of documents were developed by the Ministry, which are to be installed in all the regional departments and RA MoJ Civilian Registrar's Offices starting from 2013.
- In October 8, 2012 the RA draft law "On Amendments and Changes in the Republic of Armenia Alternative Military Service Code" was elaborated by the RA MoJ.

## GENERAL ANALYSIS

The problems of the implementation of the right to a fair trial and in particular the injustice and illegalities in the judicial system still remain unsettled in the Republic of Armenia. In regards to the solving of the mentioned grave problems within the framework of the RA Legal and Judicial and judicial changes strategic plan law drafts to amendments and changes in a number of legal acts are to be developed by the Ministry. According to the Defender's assessment, this project is that mechanism of judicial reforms, which can resolve the most painful issue for the society: absence of justice. Namely, the reforms on proceedings and basis of subjecting a judge to a disciplinary procedure, the increase of the efficiency and availability of the prosecution activities, as well as the implementation of changes aimed at advance of other spheres of the legal system can serve real basis for the improvement of that system and sphere. In accordance to the expected changes for ensuring guarantees of fairness in the disciplinary proceedings, the Council of Justice shall not be endowed with the following two powers simultaneously: a) initiation of disciplinary proceedings, and b) making the decision of the penalty for the disciplinary proceedings.

The concentration of the power of initiating disciplinary proceedings and as a result to that the responsibilities of penalty to them in one body's hands significantly reduces the objectivity and fairness of that proceeding. Hence, during 2012, 9 disciplinary proceedings were initiated against judges by the RA Minister of Justice, out of which due to the mediation of the RA Minister of Justice 4 judges received fines by the Council of Justice, 3 disciplinary proceedings by the order of RA Minister of Justice were fired, and 2 cases of disciplinary proceedings are in progress. Nevertheless, merely the implementation of such actions cannot effectively improve the current judicial system. Further, the number of the judges subjected to disciplinary proceedings does not reveal the real quantity of the violations in the sphere. It should be added that in accordance to the Statute of the RA Ministry, among its objectives are also the provision of the power for the implementation of the disciplinary proceedings against judges, which is directly envisaged in the Article 155 of the RA Judicial Code, according to which, the Minister of Justice has the right to initiate disciplinary proceedings against the judge and chairman of the first instance and appellate courts. It should be added also that it is not by chance that in accordance with the order of the RA President "On the Ratification RA Legal and Judicial Improvements 2012-2016 Strategic Plan, Action Plans based on It and Working Group of It", the aim of which is the settlement of the problems that the judicial face, the main responsible body is considered to be the Ministry. At the same time, the Ministry elaborates legislative initiative in order to make innovations in the sphere and to solve the problems identified. Hence, the latter should take initiative in order to implement new mechanisms in the sphere and for identifying unsettled problems, which states the direct connection between the Ministry and the judicial issues defined by RA HRDI.

It is still disturbing that the acts appealed to the RA Court of Cassation by the courts of appeal and administrative courts as a rule, are not reviewed thoroughly and mainly stay unchanged. Moreover, more frequent are cases when a judge in Armenia makes illegal decree or decision, as not always does the Court of Appeal quash this apparent illegal decision, and not always does the Council of Justice subject the judge to disciplinary proceeding. As a result, the right of individuals for independent and

impartial trial is violated, as well as this kind of policy hampers the universal application of the law, correct interpretation and progression of right.

The Defender as National Preventive Mechanism, during its activities in 2012, restated the issues of elimination of the overcrowding in the penitentiary institutions, exclusion of expired medication distribution, provision of visits, as well as the issue of establishment of legal relations between the prisoners and the administration.

RA MoJ “Yerevan – Kentron” penitentiary institution, in general, miss the long-term visit rooms, which is a result of unsatisfactory building conditions. The Ministry, in regards to this problem, informed that the inmates are provided with the opportunity to have visits in the rooms allocated for long term visits in other penitentiary institutions in Yerevan. The fact of not having rooms for long visits in penitentiary institutions hinders the application of the right of inmates for long visits and cannot contribute to the correction of such people. In penitentiary institutions, a number of various issues were recorded in regards to food bundle receiving, visit arranging, airing the cells and other cases. Some penitentiary institutions still have housing and living conditions considered insufficient. The Defender never raised the position that such systematic violations can only be eliminated by the legislative initiative, through establishing relevant discipline and criteria.

Extremely disturbing is the absence of separate cells for the hunger strike announced inmates and convicts, and sometimes absence of the minimal sanitary and hygienic conditions. The absence of separate cells for inmates and convicts on hunger strike can lead to cruel, inhuman or degrading treatment. An example of the above stated is when other convicts are having their meals in front of the person who is on hunger strike. Moreover, there are no legal acts defining the rights and responsibilities of individuals on hunger strike.

Despite the fact that the penitentiary department is constantly controlling food quality, quantity as well as variety of meals given to the inmates and convicts in penitentiary institutions, as a result of service exams by the Ministry in “Nubarashen”, “Vardashen” and “Hospital for Convicts” penitentiary institutions five penitentiary employees were subjected to disciplinary penalties, as well as RA MoJ Penitentiary Department was tasked to take appropriate measures to eliminate violations revealed during the service exams. The above stated testify that despite the measures undertaken by the Ministry, systematic changes aimed at elimination of the mentioned problems were not undertaken in order to settle them fully.

It is disturbing that numerous complaints received by the convicts from RA MoJ PIs state that their applications for having medical examination and medical service out of PI, as well as the applications for transfer to RA MoJ “Hospital for Convicts” are never followed up by the administration of the PI. The applications of the inmates and convicts for undergoing treatment at civic medical institutions or at “Hospital for Convicts” penitentiary institution should be thoroughly investigated and analyzed by the Medical Service Department of the Penitentiary Department, and if necessary, the inmates and convicts needing immediate treatment should be transferred to civic professionalized medical institutions or to the “Hospital of Convicts” PI. Problematic is the fact that currently, the exact criteria according to which the applications should be reviewed by the Medical Service Department of the Penitentiary Department are missing.

The complaints addressed to the Defender raised the issues of the timeframes and accessibility of obtaining the Republic of Armenia citizenship passport by the convicts and imprisoned. In accordance to the point 39 of the appendix 5 of the 311-N decision of the RA Ministry of Justice “On Approval of the Republic of Armenia Ministry of Justice Penitentiary Institutions Structural Division Activates Procedures” of December 18, 2009, the passport issuing of the convicts who are citizens of the Republic of Armenia, however do not have passport is carried out by the Department as defined by the legislation. Nonetheless, the exact timeframes for passport issuance by the RA MoJ Penitentiary Institutions administration to the convicts and inmates is not defined. Of extreme concern is the fact that though the activities of the RA MoJ penitentiary institutions in issuing passports for the above-

stated individuals is a form of administrative proceedings, the maximum term for the administrative proceedings (30 days) stipulated by the Law “On Administrative Principles and Administrative Proceedings” is not preserved either. The same law also envisages that shorter than 30 days or a longer duration can also be defined by the law.

Still unclarified and needing to be defined is the list and criteria of illnesses incompatible with the punishment, as well as the problem where the convicts with grave illnesses are not presented to the Medical Commission of the Ministry in order to be dismissed from the punishment, which does not stem from the nature RA Government N825-N decision of 2006. For the settling of this crucial issue, the Ministry elaborated on the RA Government draft decision “On Amending and Changing the RA Government N825-N Decision of May 26, 2006”. The elaboration of such a document by the Ministry is welcomed, however, for the solution of the abovementioned urgent problem, the draft has not yet been submitted to the RA Government.

In 2012, a number of complaints addressed to the Defender raised the issue of established illegal practice by the notary offices in the Republic of Armenia, and as a result of ratification of the validity of the signatures on the documents, their copies were not kept in the notary offices. Meanwhile, part 1 of Article 43 of the RA Law “On Notary” defines that the number of copies of the documents ratified or approved are decided upon by the individuals who applied for those services, however they should have at least two copies, one of which is kept at the Notary Office. In response to the Defender’s note, the Ministry informed that they agree with the Defender’s position and are taking specific measures for elimination of the drawbacks in regards to the preservation of the documents by the notary offices. Nevertheless, the interviews by the Defender’s staff with the rights defender bodies on the issues in the sphere suggest that the above-stated issue remains unsettled. Within the framework of the problems raised by the HRDI of importance is the May 11, 2012 reply of Ashkhen Harutyunyan addressed to Yuri Hayrapetyan, where among other information was also stated. “The copy is not preserved when ratifying the validity of the signature”, which itself testify that since 2011, the above-stated issue has not received a relevant solution. Additionally, complaints were also received on the different payment amounts of the same transaction by the notary offices functioning in the Republic of Armenia. As a result to the HRDI Rapid Response, employee visits confirmed the existence of this problem and there were cases where the service price list was in the notary’s office. Furthermore, the prices on those pricelists once again provide discretion opportunities for notaries. During the visits, cases of crowding were also revealed. Of extreme concern is the fact that RA Government N733 decision of 26.05.2011 does not clearly and specifically define prices for the paid notary services. Thus, for example in accordance with Part 2 of Appendix 1, in case of other real estate for the ratification of the agreements for each unit of real estate alienation (exchange, buy and sell, rent and other) the payment is from 10 to 15 times higher than the minimum wage. In other words, during this or a number of similar cases, the decision of the particular price charged for the services received remains under the discretion of the notaries.

Among unsettled problems in a number of cases, the illegally required mandatory notary licenses by Civilian Registrar’s Office authorities still remains unchanged. This requirement is in contradiction with the Article 23 of the RA law “On Administrative Principles and Administrative Proceedings” and the Article 5 of the RA Constitution. Procedures or other documents not stipulated by law and not related to the issue of the applicant were required by the Civilian Registrar’s Office territorial divisions. In order to solve the above stated problem, the Ministry prepared panels and guidelines (booklets) on each civil acts registration type procedure and list of documents were elaborated, which, however, are to be installed in all the Civilian Registrar’s Office territorial divisions and RA MoJ Civilian Registrar’s Office starting from 2013.

Aimed at raising the quality of the service provided by the Notary and Civilian Registrar’s Office, office-wide training was conducted, although they cannot completely solve the problem that the above stated institutions face. In order to solve these problems, the development of clear projects/programs

and organized discussions and implementation of other types of measures are absolutely vital. Aimed at increasing the number of Notary and Civilian Registrar's Offices, the Ministry conducted the notary's qualification exam. As a result, the number of notaries in Yerevan increased only by 2, and only 2 positions were added to Civilian Registrar's Office staff. It is alarming that due to these changes, it is impossible to eliminate the issue of queues and crowding, which exist in Notary and Civilian Registrar's Offices. In particular, the crowding and queues at the Civilian Registrar's Offices, as well as a number of cases where Civilian Registrar's Office bodies required illegally required mandatory notary licenses itself testifies the professional low level of the staff. At the same time, it is noteworthy that in accordance with Point 7 of the Ministry Statute, the Ministry's activities are not limited to Civilian Registrar's Office bodies operations professional overlooking but also include the ensurement of the activities of the Republic of Armenia State Registration of the Citizen Acts; control over the legality of the civic acts registration bodies, as well as development and improvement of policy, methodology, decrees of the state registration of the civic status acts. In order to reveal cases of violations and prevent them during the Ministry instituted check-up visits, interviews based both on the check-up visits and on citizen applications only 14 disciplinary proceedings were initiated against notaries in 2012, as a result of which 14 disciplinary penalties were conducted. The policy adopted by the Ministry, in regards to solving the mentioned issues, is welcoming. However, in practice, those are insufficient for raising the quality of Notary services and Civilian Registrar's Office bodies.

There still remain grave violations in the activities (or lack of activities) of JACES Service of the Ministry. Numerous complaints were addressed to the Defender raising the problem of the established practice of inconsistency by JACES Service with the defined two-month period. Realizing that the above stated practice is a result of a legislative gap, a suggestion was presented by the Defender to the Ministry to elaborate legislative initiative in making an amendment to the RA Law "On Mandatory Implementation of Judicial Acts" which will envisage relevant provisions in case of administrative proceeding suspension or postponement of enforcement actions. As a result, the two-month period defined by the legislation will no longer be violated. It is appreciated that as a response to the mentioned suggestion, the Ministry included it in the RA draft law "On Amendments and Changes in the RA Law on Mandatory Implementation of Judicial Acts."

Complaints were also received in regards to the inconsistent work of JACES Service employees related to the not obeying the legally entered into force decisions of the courts, implementing relevant steps in revealing the debtor physical entities who are under investigation, not recording the violations of the authorities who intentionally do not fulfill the requirements of the legal acts of the courts that came into force and not subjecting them to liability. The review of the complaints addressed to the Defender revealed that the immediate implementation enforcement document was transferred to the Erebuni regional division of JACES service, where within three days, enforcement proceeding was not initiated and immediate enforcement actions were not undertaken. Moreover, without any legal basis, the enforcement documents were referred to Kentron and Nork Marash divisions of JACES service. Moreover, the 07.23.2010 statement of the debtor on the property belonging to him and on the composition and quantity of property right existing in the case once again testify that the real estate in Yerevan based on co-ownership right belonged to the debtor. Thus, not legal activities of RA JACES employees when artificially and groundlessly delaying enforcement proceeding initiation, not implementing immediate enforcement activities resulted in arrest was not put on the property owned by the debtor, which provided opportunity for the debtor to alienate the above stated property as a consequence of which the rights of the creditor were violated. In 2012, in regards to the improper application of the responsibilities of JACES Service employees, 1 service examination was carried out in RA MoJ JACES Service as a result of which 1 mandatory enforcer was subjected to disciplinary liability. 8 references on violations were compiled which were sent to JACES service in order to eliminate the violations revealed. The Policy of subjecting to liability in the mentioned sphere cannot contribute to the prevention and/or elimination of the problems existing in the sphere.

## RECOMMENDATIONS

- Be consistent with the implementation of the events defined by the RA 2012-2016 Legal and Judicial Improvements Strategic Plan and strengthen the supervision over the judicial system, continue using the means defined by law in order to eliminate violations.
- In case of existence of basis for subjecting the judges to disciplinary liability, initiate disciplinary proceedings by the Council of Justice and as a result to them, subject the judges to disciplinary liability for ensuring objectivity and fairness of the proceeding.
- Initiate improvements aimed at proper realization of the responsibilities by the RA Cassation Court, detailed review of judicial acts appealed to the court and making legal decisions.
- Initiate effective measures for solving the issues in PIs in regards to food bundle receiving, elimination of overcrowding, airing of the cells, elimination of provision of outdated medication, provision of visits, absence of legal relations between the convicted and administration, as well as building long term visit rooms at the Yerevan Kentron Penitentiary Institution.
- With the relevant legal act, define the rights and responsibilities of the hunger strikers.
- Implement effective supervision over the food quality, quantity, and variety of meals given to the inmates and convicts in penitentiary institutions.
- Raise the medical service level provided to inmates and convicts at PIs and improve housing conditions.
- If necessary, the inmates and convicts needing inpatient treatment should be transferred to civic professionalized medical institutions or to the RA MoJ “Hospital of Convicts” PI.
- Undertake measures for defining clear timeframes for issuing passports by RA MoJ PI administration, in particular, for the document collection stage following the application of the convict.
- Undertake measures for ratification of the RA Government Decisions “On Changes and Amendments in the RA May 26, 2006 825-Ն Decision” and for effective usage of it in practice.
- Be consistent with the flaw of keeping the documents by the notaries.
- Aimed at raising the service quality of Notary and Civilian Registrar’s Offices, initiate special trainings and other various measures, as well as implement consistent and effective measures for preventing illegality, queues and crowding. Undertake measures for clearly defining the rates for notary service (RA Government 26.05.2011 733 Decision).
- Implement effective supervision over JACES employees and if need be, subject the guilty ones to liability.

# REPUBLIC OF ARMENIA POLICE

## SUMMARY

The RA Police is called to protect the human life and health, property, as well as other rights and freedoms, the interests of the society and state from criminal and other illegal actions.

The problems revealed and achievements registered during 2012 under the authority of the RA Police (hereinafter referred to as Police) are presented below, though not exhaustive.

## CURRENT SHORTCOMINGS AND PROBLEMS OF THE SPHERE

- A number of cases were recorded when the investigation and preliminary investigation bodies in order to extort testimony subjected people to cruel, inhuman and degrading treatment.
- In many cases the person was groundlessly “invited” to the Police Department, was kept against his/her will at the department and hence was factually deprived of liberty.
- A number of cases when the Police officers violated the regulations envisaged by RA Criminal Procedure Code in regards to the criminal case complaints were recorded.
- Complaints were received regarding cases when the persons arrested or brought to the Police departments were deprived of the right of having a lawyer.
- During 2012 separate cases were recorded when the Police officers impeded conduction of peaceful assemblies and installation of at least one tent during them.
- The complaints of the citizens in regards to groundless delaying of investigation by the RA Police officers were reviewed.
- Problems exist in the sphere of recognition and usage of the Convention travel documents given to refugees (refugee travel document).
- Proper attention is not provided for preventing the cases of election bribery, revealing them and bringing the guilty ones to liability.
- In some cases the timeframes for issuing RA citizenship passport envisaged by the RA Law were not maintained by the RA Visa and Passport Department and its regional subdivisions.
- Complaints were also received on disrespectful attitude towards citizens by the Police officers.

## POSITIVE DEVELOPMENTS REGISTERED

- The way of functioning of the Police during peaceful assemblies has essentially and significantly changed.
- During 2012 in a many cases the Police officers who violated the law were brought to liability.
- In accordance to the RA Chief of Police instructions, the practice of paying on spot the fine for traffic rules violations was eliminated.
- For public safety maintenance reasons cameras were installed at different intersections of Yerevan city.
- Measures were undertaken for the improvement of everyday activities of the Police subdivisions.

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- Starting from June 1, 2012 the electronic biometric passports and identification cards have been exploited in the territory of the Republic of Armenia.
- In order to comply the Convention travel documents provided to refugees with the established international standards the Police has prepared the RA Draft Law “On Making Amendments and Changes in the RA Law on Refugees and Asylum Seekers.”

## GENERAL ANALYSIS

In 2012 a number of complaints were received on the fact that investigation and preliminary investigation bodies in order to extort testimony subjected people to cruel, inhuman, as well as degrading treatment. In regards to the above-stated problems as a result of the visits initiated by the Torture Prevention Expert Council adjunct to the RA Human Rights Defender it was revealed that persons are mainly subjected to violence, when they are at the relevant Police subdivision. Taking into account that the studies disclose numerous cases when the arrested, brought to custody or persons who entered Police divisions are not being included in the registration books, in its relevant mid term reports presented by the RA Human Rights Defender a suggestion was proposed to strengthen the oversight at Police Departments, in particular through constant video-taping of the interrogations. In its suggestions in regards to the Republic of Armenia the UN Committee against Torture also highlighted the importance of video-taping of the interrogations. It is appreciated that during 2012 the Police officers recorded 1 case of torture and other violent, inhuman and degrading treatment exercised by the Police officers, in regards to which a criminal case was initiated by the RA Special Investigation Service; nevertheless, the mentioned number does not reflect the real essence and quantity of this problem in our reality. It is extremely alarming that the problems raised by the RA HRDI relating to the evidences of violence and torture by the Police officers have not been thoroughly studied and/or rapid measures were not undertaken for their review.

During 2012 the groundless and illegal practice of “inviting” individuals to Police departments was initiated, as a result of which they were being kept in the Police departments against their will and hence factually deprived of liberty. Due to the Defender’s Rapid Response Group interference dozen of cases were recorded, when, as a result of their intervention, the people “invited” to the Police were released from the relevant Police department. The law enforcement body’s employees refer to the Article 15 of the RA Law “On Operative Investigation Activity” to justify the practice of inviting people to Police stations, however the above stated article does not provide any mandatory obligation for the persons to accept the “invitation” to the department or subdivision. Realizing that the above-stated practice is implemented due to the low level of legal awareness of the population, the Defender issued a statement presenting the rights of the persons: based on the RA Law “On Operative Investigation Activity” if the people do not wish to, they can refuse to attend department or subdivision at each invitation of the law enforcement body representatives.

The issues in regards to the violation of the Police officers of the proceedings envisaged by the RA Criminal Procedure Code related to the citizen reports still remain unsettled. In 2012 cases were again recorded when during the examination of reports about crimes instead of making one of the three decisions envisaged by the Article 181 of the RA Criminal Procedure Code, the Police officers compiled a conclusion and simply registered the case in their database as a result of which the person was deprived of the right of appeal enshrined by the Article 185 of the RA Criminal Procedure Code

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because the mentioned article foresees the appeal and proceedings of the “decision” and not of the “conclusion”. Cases were also recorded when the timeframes for the examination of reports about crimes were also violated. In accordance to the Article 180 of the RA Criminal Procedure Code (“The Examination Procedure of Reports about Crimes”) reports about crimes must be considered and resolved without delay, and when it’s necessary to check the legitimacy of the reason for the initiation of prosecution and the sufficiency of the grounds, no less than in 10 days after their receipt. It is appreciated that in regards to the above-stated problems more than 10 Police officers were subjected to liability: disciplinary penalty, strict warnings, etc. Our main concern is the fact, that problem such these still exist in the Police which raises the issue of lack of professionalism of some employees.

In 2012 complaints were received according to which persons arrested or taken into custody were deprived of the right of having a lawyer. During the time when the record of the arrest was not compiled or the decision of preventive measures was not made, the competent Police officials for the above mentioned group of people failed to provide and guarantee the right of having a lawyer and receiving legal support. As a result of such actions, the rights of individuals envisaged by the Part 2 of the Article 20 of the RA Constitution were violated. In their reports concerning Republic of Armenia the international organizations also referred to the mentioned issue. Furthermore, the stated practice is in direct contradiction with the proceedings defined by the RA Court of Cassation case law. The mentioned decision clearly defines the status of person brought to custody and his following minimal rights: a) to know the reason of being arrested, b) to inform of being brought, c) to invite their lawyers, d) to remain silent. It is appreciated that the number of complaints in regards to this issue decreased and the fact that the individuals who hindered and/or did not provide the right of legal support to persons were subjected to liability by the Police. Nevertheless, urgent measures are needed to be implemented in order to eliminate this problem and unconditionally follow the proceedings and regulations defined by the RA Court of Cassation

Cases when RA Police officers did not provide and/or hindered the rights of individuals to peaceful assembly and having the right to install at least one tent during those peaceful assemblies which would not violate the rights of others were also recorded. The legal relations of organizing assemblies are regulated by the special law of the sphere, that is the RA Law “On Freedom of Assembly”. There is no explicit prohibition in the stated law on establishment of tents and other temporary structures during the meetings. Moreover, the provision of support by the Police during the peaceful meetings is provided by the law and is a state positive obligation. The above-mentioned approach is in compliance with the case law of the European Court of Human Rights, according to which the necessity of providing sufficient means which would ensure the rights to freedom of expression by the demonstrators lies in the essence of the right to freedom of assembly. The temporary nature of the assembly should not hinder the right of installment of neither tents nor other temporary structures. In the context of providing right to freedom of assembly the cornerstone approach of the ECHR regarding Article 11, is expressed in ensuring sufficient opportunity for the demonstrators in order to freely express their opinion. If the meeting does not cause great inconvenience to other persons, the authorities need to present lenient requirements when assessing the temporary nature of the assembly. The European Convention on Human Rights ratified by the Republic of Armenia is a living instrument and it should be interpreted in accordance with the development of society under the “modern day condition” shed of light. Therefore, the illegal restriction of the right to freedom of assembly and

installation of at least one tent during them does not only violate the RA legislation but also violates European Convention on Human Rights.

The complaints of the citizens in regards to groundless delays of investigation activities by the Police officers were also studied. These complaints, in general, referred to the needless length of interrogations. Such working methods seriously damage the trust of citizens to the Police system and to the decrease of their will to cooperate. In relation to this issue the Police stated that RA Police 7 officers were subjected to disciplinary penalty for conducting such actions.

There are still problems with the recognition and enforcement of the Convention travel document. In accordance with the Article 36 of the RA Law “On Refugees” and with the RA Government December 3, 2009 1417-N decision the right of issuing Convention travel document to refugees is granted to the RA Police adjunct to the RA Government. According to the current decision of the Government the travel document is considered to be an identification document of the refugee, the points of the content of which are printed in Armenian, English and Russian. Nevertheless, not all the Embassies recognize the document, as personal information presented there (surname, name, country, place of birth, gender) is written only in English, which in turn causes problems when presenting the travel document to the RA state authorities. As a result of such practice persons leaving the country with the Convention traveling document face problems when crossing the border.

During the 2012 Parliamentary elections the Police did not thoroughly analyze the wide spread issue of election bribery. In the pre-election period and on the Election day (Polling day) 102 cases of alleged election bribery were recorded by the Police. However, in regards to majority of those cases the decisions of rejection of criminal cases were made by the respective state bodies. The rejections were based on the absence of crime, and in case of only 8 complaints/reports criminal cases were filed. The mentioned gives raise to the concern that the Police within the stated sphere did not undertake sufficient measures to reveal cases of crime and subject the guilty ones to liability. The unnecessary long term of reviewing the above-stated cases is also of concern which hinders the collection of evidences and revealing of events. Therefore, it can be stated that the actions undertaken during the investigation and preliminary investigation were not productive.

On November 30, 2011 RA Law “On RA Citizenship Passport” was adopted. The Article 5 of the mentioned law clearly defines that the passport in the Republic of Armenia is provided (exchanged) within 15 working days after submission of the application or according to the wish of the citizen within shorter period of time for a fixed sum of money which is stated in the legal acts. However, in practice, certain cases were recorded when RA Passport and Visa Department and its regional subdivisions denied the application for a citizenship passport and the timeframes envisaged by the RA law was violated. As a reply to our note the RA Police informed that delay of providing RA citizenship passport was due to the lack of passports during the first term of 2012 and due to program and technical drawbacks of newly installed system. It is appreciated that the Head of the Passport and Visa Department issued a number of statements informing the society of the existence of the above-mentioned issues. However, in all cases the procedure defined by law should be maintained, and the obstacles arising should not hinder the passport obtaining process.

Numerous complaints were received during 2012 in regards to the fact that when exercising their functions the Police officers displayed disrespectful actions and attitude towards the citizens. As a reply to our inquiry in regards to this problem, the Police informed, that they recorded more than 10 such cases, as a result of which 2 officers were subjected to criminal liability, 5 officers were fired, 11

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officers were subjected to disciplinary penalty, and etc. The severe measures undertaken by the Police relating to these issues should be considered a positive improvement and a necessity, however this kind of cases seriously damage the respect and the trust of the society towards RA Police. HRDI considers that besides subjecting officers who violated the law to liability, systematic changes directed at raising ethics and professionalism of the officers are also needed to be initiated.

In 2012 Petros Gazaryan, the author of “Urvagic” programme on “Kentron” TV channel applied to the Defender and informed that during his journalistic activity he was threatened by the Police. The reason for this complaint was the video made by the Police and broadcast during the programme “On duty” on “Armenia” TV channel, which was the response of the Police to the criticism made by Petros Gazaryan in regards to that body. In the video the Police advised Petros Gazaryan: “...if you have, nonetheless, decided to settle a problem, choose a subject and a target appropriate to your knowledge and abilities otherwise you will bend from the seriousness of the issue”. When studying the above-stated complaint it was revealed that criminally prosecuted activities envisaged by the Article 164 of the RA Criminal Procedure Code were missing. However, taking into consideration that in accordance with the case-decision of the European Court of Human Rights it was established that undertaking such actions or even creating an atmosphere that will lead individuals to hesitate, fear for the implementation of their freedom of speech are unacceptable, thus the mentioned activities of the Police were not consistent with the policy adopted by the European Court of Human Rights. Hence, the Defender issued a statement regarding this problem after which other similar cases were not recorded.

## **RECOMMENDATIONS**

- In order to prevent violence and ill treatment towards persons arrested or brought it is necessary to raise the professional level of the Police officers and strengthen supervision over Police subdivisions, namely though constant videotaping of the interrogations.
- Activate supervision for the elimination of harmful practice of not initiating cases in regards to the complaints in accordance to the criminal-justice legislation.
- In practice, persons “invited” to Police stations, always should be informed about the volunteer bases of the process and their right of refusal in partaking.
- Measures should be taken in order to include in the special programmes and trainings for Police officers detailed information regarding the RA Court of Cassation decision and its regulations setting forth the need to prevent unreasonable, needless lengthy investigative actions, to guarantee the right to legal support of persons starting from the moment when they have been arrested or taken into custody.
- Pursue the preservation of the responsibility of the Police support during the peaceful assemblies, including the provision of at least one tent installment based on the international experience.
- Take appropriate measures to compile the Convention travel documents given to refugees with the requirements of the law and ensure its application.
- Implement necessary and efficient measures for preventing and/or revealing cases of election bribery.

- Undertake immediate measures if needed for preventing possible problems in regards to passport issuing and ensure the preservation of the duration for passport issuing defined by the RA Law “On RA Citizen Passport”.
- Implement special measures aimed at raising the professional level of the Police officers and their awareness of ethics rules and of respectful communication with the citizens.
- Refrain from indirect threatening of the individuals who are carrying out lawful journalistic activities.

# **REPUBLIC OF ARMENIA PROSECUTION AND SEPCIAL INVESTIGATION SERVICE**

## **SUMMARY**

The Prosecutor's office of the Republic of Armenia (hereinafter referred to as the Prosecution) implements criminal proceedings, controls over lawfulness of the inquest and preliminary investigation, supports the prosecution in court, overlooks the lawfulness of implementation of the penalties and other sanctions and etc.

In accordance to the RA Criminal Procedure Code the RA Special Investigation Service (hereinafter referred to as the Service) ensures preliminary and other investigation of criminal cases of the legislative, executive and judicial powers bodies head officials, of persons implementing state special services in regards to their complicity in the crime related to their official position or the crimes initiated by them, as well as investigation of criminal cases related to the election procedures.

The problems revealed and achievements registered during 2012 under the authority of the RA Prosecution and the Service are illustrated below, though not exhaustive.

## **CURRENT SHORTCOMINGS ANS PROBLEMS OF THE SPHERE**

### ***RA Prosecution***

- The problem of efficient supervision over investigation by and the actions of preliminary investigation bodies by the Prosecution still remains unsettled.
- The limitations and violations of the rights of the citizens, as well as abuse of authority due to the flaw of the prosecutorial supervision are disturbing.
- The fact that almost ten year old criminal cases of the deaths of soldiers in the army in peacetime remain either not completely and objectively revealed or not closed is highly disturbing.
- The issue of not preserving the defined ten day duration for examining the reports of crime by the investigation and preliminary investigation authorities remains unsettled.
- Sufficient measures were not undertaken for comprehensive, full and objective review of the cases of election bribery during Parliamentary elections.
- The fact that while solving the issue of preventive measures, the Prosecution always gives preference to presenting detention as a preventive measure to Courts is disturbing.
- Due to insufficient prosecutorial supervision a number of violations of the rights of detainees and arrested persons kept in the RA Police detention places were recorded.

### ***RA Special Investigation Service***

- The Service did not take relevant measures to study or did not study in depth the information in the notes addressed to him, as well as the information presented in the Media in regards to the ill-treatment by state officials.
- The Service did not take sufficient measures to ensure an effective preliminary investigation of the deaths of the 10 people killed on March 1.

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- In numerous cases of violations of the requirements defined by the RA legislation were recorded, namely the timeframes for the preliminary investigation defined by the law were not followed. Furthermore, in a number of cases the examination of overdue cases was initiated, however, the offenders were not subjected to any liability.
- In a number of cases recorded, the Service later referred/sent the cases undertaken to other agencies.

## **POSITIVE DEVELOPMENTS REGISTERED**

- More frequent are cases of the reference of the criminal cases initiated by the Prosecution to the Service, which ensures their more productive review.
- The Prosecution has elaborated drafts on making amendments and changes in a number of legal acts to bridge the legislative gaps of the sphere.
- In comparison with the previous year, during 2012 the number of the cases undertaken for review by the Prosecution has increased.
- Prosecution and Service provided transparency and publicity of their activities.

## **GENERAL ANALYSIS**

### ***RA Prosecution***

Within the powers granted by the Constitution and based on the law the Prosecution supervises over the legality of investigation and preliminary investigation. Nonetheless, the problem of prosecutorial efficient supervision over investigation and preliminary investigation agencies remains unsettled. The lack of supervision of Prosecution result in limitations and violations of the rights of citizens, as well as in the abuse of power by the investigation and preliminary investigation bodies. The complaints addressed to the Defender testify that there were cases when there were essential contradictions in the explanations of the persons stipulated in materials of the case. However the respective state bodies made a decision of “rejecting the criminal case based on the materials.” Thus, necessary investigation activities were not carried out. Meanwhile, the Criminal Procedure Code envisages that the body of criminal prosecution is obligated to undertake all measures prescribed by this Code for a comprehensive, full and objective investigation of the case circumstances. Therefore, in cases when it is impossible to reveal the circumstances of the case during the stage when only the materials are prepared, the body of criminal prosecution is obliged to make a decision based on the existing materials and information. In order to conduct comprehensive, full and objective investigation of the case circumstances when i.,e. certain contradictions are present in the explanations taken by the investigative body, the body of criminal prosecution has to initiate a criminal case, in the scope of which the legislative does not provide any limitations to implement all investigatory activities. While the practice in that mostly in such cases decisions of rejecting the initiation of a criminal case are made, based on the existing materials. The above-mentioned problems result violations of the interests and the rights of the citizens, particularly the right of receiving effective legal protection from the bodies of criminal prosecution.

Measures were undertaken by the RA Military Prosecution Office to reveal the cases of deaths in the armies and eventually bringing those who have been recognized guilty by the Court to criminal

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responsibility. Though to certain improvements undertaken, the complaints of the relatives of soldiers killed or deceased during their service in the RA Armed Forces within current year are disturbing. The complaints referred to the not comprehensive, full and objective investigation carried by the preliminary investigation body which was a result of improper supervision of the RA Military Prosecution. It is highly disturbing that almost ten year old criminal cases of the deaths of soldiers in peacetime remain unsolved or not closed. A number of case decisions of the ECHR clearly define, that, in case of death, the body of criminal prosecution is to carry out effective investigation within the possible short and reasonable timeframes. Moreover, the relatives and friends have reasonable concerns in regard to the investigation of those criminal cases, which have not been thoroughly studied by the respective bodies. The position of the RA HRD is that only full and objective investigation of the overdue cases (even ten year old ones) and restoration of social justice in these cases can raise the confidence towards the prosecution of death cases carried out nowadays and will prevent violence and deaths in the future.

There are still many cases when the investigation or preliminary investigation authorities violate the 10 day period of crime reports' examination procedure provided by the Article 180 of the RA Criminal Procedure Code. Moreover, sufficient measures were not undertaken by the Prosecution to prevent those cases, when instead of making one of the three decisions provided by the Article 181 of the RA Criminal Procedure Code, the Police officers compiled a conclusion and registered in the database as a result of which the person was deprived of the right of appeal enshrined by the Article 185 of the RA Criminal Procedure Code as the mentioned article foresees the appeal and proceedings of the "decision" and not of the "conclusion." Though the problem is a result of inefficient legislative regulation, such violation of the proceedings provided by the Criminal Procedure Code is impermissible. In order to prevent such violations it is necessary that the Prosecution implement effective and consistent supervision over the investigation and preliminary investigation bodies for maintaining the timeframes and procedures envisaged by the Code. In case the timeframes defined by the Code are violated, disciplinary proceedings and subjecting the guilty ones to liability is necessary. At the same time it is appreciated that with the adoption of new RA Criminal Procedure Code preliminary investigation bodies shall be granted with opportunity of more flexible and effective timeframes.

During the 2012 Parliamentary Elections numerous cases of election bribery were recorded. According to the information provided by the Prosecutor's Office only 7 from the above-mentioned cases were initiated whereas only the RA Police had received more than 70 alerts related to the election bribery. The above-stated testifies that necessary measures were not undertaken within the relevant timeframes under the supervision of the Prosecution, in particular, inquires to investigators, for the study of the cases activities provided by the Criminal Procedure were not implemented within the possible short timeframes. The above-mentioned hinders the prevention of such criminal actions and bringing the guilty persons to liability.

It is disturbing that while deciding upon a preventive measure, the Prosecution always gives preference to presenting detention as a preventive measure for to the Court. Whereas, RA Criminal Procedure Code provides other preventive measures except the detention. International practice, as well as the case-law of the ECHR, states the approach according to which detention must be viewed as a preventive measure and must be applied only in exceptional cases, when during the criminal proceedings the proper behavior of the accused cannot be ensured through other preventive measures

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defined by the Code. Detention as an exceptional case can also contribute to settling the issue of overcrowdings in PIs.

According to the statement of the citizens during the current year not in all cases was the Prosecution reported or effectively interfered in responding to the possible violations and torture at penitentiary institutions, although that function is strictly regulated in the Prosecution system. Also it is worth mentioning that in many cases as a result of not sufficient supervision of the Prosecution the rights of the detainees at the RA Police detention centers, namely illegal prolonging of the timeframe defined by the RA Criminal Procedure Code was allowed.

### ***RA Special Investigation Service***

During 2012 the Defender addressed the Service in regards to the ill-treatment by the public officials (violence), illegal keeping of persons in police departments and without any grounds illegally depriving them from liberty, however in response to the Defender's inquiries criminal cases were not initiated. From the position expressed by the Service it can also be concluded that the Service was not following the information in the Media in regards to the above stated issue and/or did not study it thoroughly, although Article 176 of Criminal Procedure Code states that mass media reports about crimes are reasons for initiation of criminal prosecution. It should be considered as a positive improvement that during 2012 the Service presented accusations against RA Police Central Department detectives on abusing official authority defined by the RA Criminal Code and for official forgery. Nevertheless, the Service has not presented enough consistency to study the statements on the violence acts by the officials, which is very important both in punishing the guilty one and preventing such cases in the future. Otherwise the purpose's of punishment as defined in the Criminal Code of RA which are: to restore social justice, to correct the punished person, and to prevent crimes, would not be satisfied.

The RA HRDI criticized the activities of the Service in regards to the ineffectiveness of the preliminary investigation related to the 10 death cases of March 1, 2008. The relatives and friends of the deceased persons believe that the Service did not carry out its functions effectively. In its Conclusion of the Republic of Armenia the UN Human Rights Committee severely condemns the State in regards to the above mentioned. The Conclusion made reference to the events of March 1, 2008 and stressed the importance of implementation of effective measures in order to reveal the law enforcement and governing authorities that used disproportional force and subject them to liability. It is appreciated, that about the above-mentioned cases review the Service presented information on the actions undertaken, nevertheless, it is disturbing that the preliminary investigation is being delayed and complete and final review of the cases is not being implemented.

In response to the preservation of timeframes defined by the law for the preliminary investigation of the criminal cases, the Service presented different grounds for the delaying it, namely expertise and professional review of the cases with particular difficulties that require public, large-scale operations for investigation. However, it is noted that already overdue cases were also taken under the Service proceedings. Moreover, violation of the timeframes does not provide the legal guarantees envisaged by the Constitution and the Criminal Code of Procedure which itself is already violation of law.

It should be considered as a positive improvement that during 2012 compared with the previous year's 193 proceedings the Service initiated proceedings of 204 criminal cases, which is 11 cases more. 62 cases of those were referred to the court with accusation conclusion, and 74 cases were referred to other agencies. Among the proceedings of the Service cases of criminal activities of SRC employees in

regards to property, economics and economical other activities, as well as criminal cases on state service, as well as cases the subject of which were RA MoD and AF representatives and RA Police officers were found. However, it is disturbing that the Service sent 74 cases to other Agencies, including RA MoD, Police and other agencies. RA Legislation guarantees impartiality of the Special Investigation Service and not being under the supervision of any Ministry, which based on the RA Criminal Procedure Code ensures the review of the criminal cases that include special subjects. Preliminary investigation bodies of other ministries are not entitled with such impartiality, hence reference of the cases to other authorities not always provide comprehensive, objective and full study of those cases. It is necessary to clarify that the cases studied by the Service should be closed by the latters as well as it is necessary to broaden the scope of the cases under the jurisdiction of the Service and if needs be provide opportunity to get cases from other investigation bodies.

## **RECOMMENDATIONS**

### ***RA Prosecution***

- Implement more strict and effective supervision over investigation and preliminary investigation legality before the adoption and entrance into force of the new RA Criminal Procedure Code.
- Be consistent with the decision of initiating a criminal case for the implementation of undertaken all measures prescribed by the Code for a comprehensive, full and objective investigation of the case.
- Implement effective supervision over preliminary investigation bodies in regards to reviewing the cases of soldiers who were killed or deceased during their service in the RA Armed Forces and be consistent in punishing the guilty ones in order to prevent such cases in the future.
- Initiate measures to reveal and/or close almost ten year are old criminal cases of the death of soldiers in peacetime.
- Implement effective supervision over the provision of the timeframes defined by the legislation by investigation and preliminary investigation bodies.
- During elections, taking into account the complexity and the hidden nature of the violations, respond to the violations within the possible short terms.
- View arrest as a preventive measure only in exceptional cases when other preventive measures cannot ensure the proper behavior of the accused during the criminal proceedings.
- Undertake measures of effectively using Prosecutor supervision mechanisms in the penitentiary institutions as well as eliminate the cases of violations of the rights of persons kept in the RA Police DCs.

### ***RA Special Investigation Service***

- Implement consistent policy for studying in depth all the cases of ill-treatment by the authorities.
- Implement necessary actions and operative investigation measures for comprehensive, full and objective investigation of March 1, 2008 criminal cases.

- Be consistent with the preservation of the defined timeframes of material preparation and preliminary investigation of the criminal cases. Implement operative measures for preventing such violations and in case of evidence subjecting the person to liability.
- Take initiative to enshrine by the legislation that the cases undertaken by the Service shall be closed by the latter instead of being referred to other relevant bodies, as well as broaden the scope of cases under the jurisdiction of the Service and provide opportunity that if needs be initiate proceedings of cases of other investigation bodies.

# **STATE REVENUE COMMITTEE ADJUNCT TO THE REPUBLIC OF ARMENIA GOVERNMENT**

## **SUMMARY**

RA State Revenue Committee providing state budget revenue collection, as well as tax and customs administration, provides services to taxpayers, upholds records of taxpayers, organizes the collection of taxes and other compulsory payments, deals with taxpayer appeals and subsequent decision making on such matters, implements the vested administrative offences' court proceedings, handles customs tariff implementation for the goods and vehicles transported through RA border, applies specified imports and exports regulations, customs clearance services, as well as the respective implementation of supervision and control.

The non-exhaustive list of the identified problems and achievements within the scope of responsibilities of the RA State Revenue Committee by the Government (hereinafter referred to as SRC) is presented below.

## **CURRENT PROBLEMS AND SHORTCOMINGS OF THE SPHERE**

- Multiple cases of tax authorities or customs officials being simultaneously engaged in business activities are very disturbing. A much more alarming fact is that in some cases, an SRC official (or a closely related person) has used their official position and the organization related to him and gained a competitive advantage over other economic entities within the same market.
- No clear and effective measures have been undertaken to measurably reduce the size of the shadow economy, especially when it comes to big business.
- In 2012, there have been numerous cases of tax authority staff extorting material property from taxpayers' offices without any reasons or explanations during the audit.
- As a result of not implementing alternative methods to achieve fulfillment of tax obligations, an extremely large number (around 5,700) of tax injunction decisions have been made.
- In the amendments to the legal acts regulating the taxation system, a number of unreasonable temporal requirements were introduced.
- Draft legislations on taxation and customs introduced by the SRC were not subjected to proper public debate with entrepreneur and other parties involved.
- There have been a large number of cases of violation of the rules of ethics and conduct with the companies by the tax and customs officers.

## **POSITIVE DEVELOPMENTS REGISTERED**

- As a result of amendments to the taxation legislature, the terms of the value added tax have been simplified alongside the calculation and payment of the excise tax for certain goods, the progressive income tax has been introduced, and the taxation system for the entities has been ameliorated.
- For the purpose of proper execution of the tasks, a number of measures have been undertaken, such as the analysis and study of the taxpayers' reports.

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- In 2012, the website of the taxation and customs services has been updated with the use of modern perspectives and technology.

## GENERAL ANALYSIS

The problem of tax authorities or customs officials being simultaneously engaged in business activities still remains unsettled. Provision 1 and 2 of Part 1 of Article 25 of the RA Law “On Customs Service” respectively define that customs officials shall not hold any other public position or perform paid work other than scientific, education and creative, including being engaged in business activities. Similar provisions are also defined in Points 1 and 2 of Part 1 of Article 3 of the RA Law “On Tax Service.” The legal limitations over the tax authorities and customs officials are developed for providing healthy competition in the economic sphere, as well as prevent corruption cases. The fact that tax authorities or customs officials are simultaneously engaged in business activities also leads to a conflict of interests. It is equally alarming when the relatives and friends of the mentioned agencies get engaged in business activities and it is not being effectively supervised by the authorized bodies of the sphere, which in its turn result in various violations of legislation. During the interviews initiated by the RA HRD Staff with the legal defenders and experts in 2012, numerous complaints were recorded on the above-stated problems.

The problem of shadow economy in 2012 in the Republic of Armenia remains unsettled. SRC is obliged to undertake measures that would bring shadow economy to controlled legal field, which will contribute to an increase of tax entries and will be able to make social costs, which have such a significant importance. According to our sources the shadow economy compiles about thirty-five to forty five percent (35-45%) of economy, and this number is quite a serious number. The main factors for shadow economy existence are corruption, tax field, numerous legislative gaps, improper functioning of the system and etc. Only after elimination of these factors will it be possible to reduce the shadow economy in the Republic of Armenia and following that, register significant economic growth in the country. Nevertheless, effective measures were not undertaken by the authorities responsible for the sphere, which is testified by the percent of the shadow economy.

Complaints were also received when during the audit without any reasons and/or explanations, the materials of the taxpayers, such as computers and so on were extorted by tax authorities. Such authority of tax inspection bodies can lead to groundless limitations of persons’ liberty of economic activities and ownership, usage, management and legate of property. Point “f” of Article 7 of RA Law “On Organizing and Conducting Audits” define, that individuals carrying out audit at any case can “take” substances that have direct relevance to the aims of the audit. Article 3 of the law defined that the aim of the audit is to clarify the trustworthiness of reports issued or presented to state bodies based on law and other legal acts in the sphere of activities of the business entity, implementation of state control over fulfillment of requirements of RA laws and legal acts and protection of property rights of the business entity. Hence, in case of absence of criteria, the persons implementing the audit can “take” substances even in cases when there is no reasonable doubt that the business entity has made a violation or that the mentioned substance can be of significant importance for the audit. It is also unclear based on which criteria it is decided whether the substance taken by the auditor hamper normal operation of the business entity or not.

The institute of freezing the taxpayer's property is envisaged by Article 30.2 of RA Law "On Tax". Only during 2012, tax authorities made about 5,715 decisions of injunction of property and financial means of taxpayers who have obligations. The RA Constitution and a number of international contracts define that everyone shall have the right to freely own, use, dispose of and bequeath the property belonging to him. Article 31 of the Constitution states that no one shall be deprived of property except for cases prescribed by law in conformity with judicial procedure. When reviewing the Republic of Armenia Constitution, it was revealed that the term "deprive" not only means cease of ownership, but also that such limitations, as a result of which the owner is deprived of the right to own the property belonging to him according to his will, using it according to the point and opportunity to manage it. And in accordance to provision of Paragraph 2 of Article 31 of the Constitution, the person can be "deprived" of his property only through judicial procedure and only in cases prescribed by law. Moreover, according to Article 30.2 of the RA Law "on Taxes", the duration of freezing of the property is 1 month and it is unclear what aim is pursued when defining 1 month for a decision of administrative body. It is necessary also to refer to the issue that the clear criteria, according to which the decision of freezing of the property is made by the tax inspection authority is not defined in the RA Law "On Taxes". Furthermore, the law defines that making that decision is the right of tax inspection authority. Hence, absence of clear criteria, as well as the will and/or assessment of the administrative body the decisions that limit (deprive) the rights of the property of individuals contribute to the formation of such a situation where abuse and discrimination are possible against persons. Regarding the requirements of the RA Legislation, in practice, the freezing of the property of a person by tax inspection was implemented without other means of consumption of tax liability. Taking into account all of the above-stated inquires and a number of complaints addressed to the Defender in order to solve this controversial problem, in 2012, the Defender presented an application to the Constitutional Court. In its decision, the Constitution Court stated that freezing of property only when other opportunities of tax liabilities were consumed and in highly controllable means. Hence, the freezing of the property by tax inspection can be implemented when all other means: penalties double penalties and other opportunities were consumed and are to be implemented only in case of judicial strict control. Some changes proposed for Tax legislation did not correspond to RA Legislation requirements. Thus, a specific date for the entry into force (January 1, 2013) was provided for the RA draft law "On Turnover Tax" and RA draft Law "On Amendments and Changes in the RA Law on Excise Tax". Meanwhile, RA Law "on Legislative Acts" state that normative legal acts that define the responsibilities for legal or physical entities as well as anyway worsen their situation come into force on the 10<sup>th</sup> day following its official publication, if those normative legal acts do not dime longer term or if other thing is not defined by the law. And in accordance to the RA Law "On Taxes" the change of tax rate, laws on new types of taxes, if they include the terms and conditions, worsen the operating of the taxpayers and come into force no later than 30 days after their official publication. It is not by chance that the abovementioned legal acts define such terms that can be reasonable for business entities. Hence, the deadlines of RA draft law "On Turnover Tax" and RA draft Law "On Amendments and Changes in the RA Law on Excise Tax" cannot be considered reasonable, thus causing useless complications for tax relations subjects.

The RA legislation define the legislative initiative elaborating body as a mechanism that informs physical and legal entities about that draft. The RA legislation stipulates that the body elaborating a legislative initiative in order to provide awareness of physical and legal entities in regards to that draft,

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it submits the draft to the assessing entities, and it handles the organization of public discussions. During 2012, systematic changes in legal acts that were regulating the tax sphere took place. Taking into consideration that that whole package of legislative changes referred to tax legal relations, before putting it into circulation, the SRC was to organize public discussions. However, proper discussions with NGOs and other interested parties were not organized and the comments and/or suggestions presented by the latter were not included. Complaints addressed to the Defender by a number of NGOs in regards to not organizing public discussions as well as on the proposed package come to testify the above-mentioned. In such cases, not only are the requirements enshrined by the RA Legislation violated, but also artificial obstacles are formed for raising public awareness. As a reply to RA HRDI inquiry, the SRC informed that informative events were being organized during 2012 (meetings, seminars) regarding the most urgent tax and customs topics. However, the mentioned informative events should be implemented for not only the most urgent topics, but also for tax and customs legislation administration as well. Furthermore, the mentioned events should have a continuous and stable nature.

It is appreciated that due to the changes of tax law in 2012, the tax relations in regards to the VAT were revealed, excise tax calculation and payment of certain products, progressive income tax system was introduced, as well as taxation system for entities was improved. However, it is noteworthy to mention that the changes were aimed at the development of business activities in the Republic of Armenia and elimination of obstacles. A number of complaints were studied by RA HRDI, which related to illegal limitation of persons' businesses by the tax inspection. For example, "Elagra" Ltd is deprived of the right to organize trade due to illegal activities and/or inactivity of the RA Government adjunct State Revenue Committee Ijevan regional tax inspection, namely without proper legal basis refusing the announcement for its establishment and registration of cash register machines. Whereas, the "Elagra" company is in consistence and obedience of all the requirements envisaged by the RA, current legislation on the procedure of organization of place for carrying trade, including requirements defined by the RA laws "On Taxes", "On State Boarder", "On Usage of Cash Registry Machines", "On Trade and Service." Such actions hamper the development of business activities in the Republic of Armenia. Several issues in regards to the tax and customs administration remain unsettled. In particular, complaints addressed to Defender related to the audit of business entities when the timeframes for audits envisaged by law were violated, the grounds for re-audit were missing, as well as in a number of cases the auditor did not follow point "d" of Article 8 of the RA law "On Organizing and Conducting Audits": not hinder regular works of business entity. The above mentioned and other issues related to the administration can seriously hamper the free development of business. Extremely disturbing are the complaints according to which rules of ethics and code of conduct with the persons by the tax and customs officers were violated. The mentioned is generally expressed through a display of disrespectful attitude. For example, insulting terms were voiced and when communicating with persons, the "you" personal pronoun was used, and etc. It is alarming that tax and customs service officers should contribute to the position they hold and to the development of supervision and respect over it, in practice, however, it happens vice versa. The violations of ethics and code of conduct result exactly in an adverse effect for society.

## **RECOMMENDATIONS**

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- Elicit cases when tax and customs authorities are also engaged in business activities and bring to liability the ones who violate the Legislation.
- Undertake clear measures to reduce shadow economy in the Republic of Armenia.
- Hence, in case of absence of criteria, the persons implementing audit can “take” substances even in cases where there is no reasonable doubt that the business entity has made a violation or that the mentioned substance can be of significant importance for the audit. It is also unclear based on which criteria it is decided whether the substance taken by the auditor hamper normal operation of the business entity or not.
- Elaborate legislative initiative to provide sufficient grounds for taking the substances from taxpayers’ workplaces only in cases of sufficient reasoning and/or grounds and define criteria based on which it is decided whether the substance taken by the auditor hamper normal operation of the business entity.
- Freeze the property by tax inspection only when other penalties, double penalties and other opportunities were consumed.
- When making changes in the tax sphere, legal acts should be guided with reasonable timeframes.
- Provide participation of Non-Governmental Organization when initiating public discussions of the draft laws.
- Undertake measures aimed at improvement of tax legislation, development of business activities in Armenia and elimination of current obstacles.
- Undertake measures to eliminate problems in tax inspection and customs service departments, at the same implement monitoring of tax and customs service workers in the sphere of preservation of ethics rules, and in case revealing violations apply liability measures.

# **THE STATE COMMISSION FOR THE PROTECTION OF ECONOMIC COMPETITION OF REPUBLIC OF ARMENIA**

## **SUMMARY**

The State Commission for the Protection of Economic Competition ensures appropriate environment for fair and free competition, prevents, restricts and distorts anti-competitive practices, supervises the implementation of the legislation on protection of economic competition. The effective performance of State Commission for the Protection of Economic Competition of its functions improves the protection of social and economic rights.

The shortcomings revealed and the achievements registered in the area of responsibility of State Commission for the Protection of Economic Competition (hereinafter referred to as the Commission) during 2012 are illustrated below, though not exhaustively.

## **CURRENT PROBLEMS AND SHORTCOMINGS OF THE SPHERE**

- The lack of real and perfect competition continues to remain the main problem leading to violations of social and economic rights of citizens.
- Studies in anti-competitive practices have been undertaken only in some sectors and the violations, that had been investigated and introduced to public by its own initiative, have often been only those of not essential and institutional level.
- The anti-competitive practices of numerous big businesses having dominant position have not been revealed and real and effective steps have not been taken for the formation of free economy.
- The public awareness and confidence on Commission's activities continues to remain on low level and the low number of complaints submitted to the Commission (total 28) is a clear evidence for that.

## **POSITIVE DEVELOPMENTS REGISTERED**

- The Commission together with its partners from EU member states has initiated various seminars and discussions aimed at the preparation of the draft law of RA Law on State Aid Control.
- Cases of anti-competitive agreement between numbers of economic entities have been revealed as a result of investigation carried out by the Commission in the area of state purchase in 2012.
- The Commission has organized and carried out an online survey through its official website aimed at the implementation of reforms in numerous areas.

## **GENERAL ANALYSIS**

During the interviews of the Defender's Staff and the legal advisors and experts of the sphere during 2012 numerous complaints were received in regards to the abuse of dominant position though hampering the entrance into market of new business entities. Based on the data presented by the

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Commission 2 cases of the abuse of dominant position though hampering the entrance into market of new business entities by business entities having dominant position (“Natali Farm” and “City Petrol Group” LLC), in regards to which the mentioned entities were subjected to liability. Nevertheless, it is extremely alarming that the Commission researches and reveals violations of Competition legislation of the Republic of Armenia based on the data of the previous year (2011). The above-mentioned testifies that the Commission has not undertaken sufficient measures for raising the level of economic competition in the Republic of Armenia, as in practice; there were numerous complaints in 2012 in regards to the abuse of dominant position though hampering the entrance into market of new business entities. Such anti-monopoly policy can not resolve the disturbing issues of the sphere and cannot promote economic freedom and free economic competition provision of the Republic of Armenia.

The violations of competition legislation in different markets and the existence of drastic changes in the prices of the goods still remain a disturbing issue. In regards to the question whether the Commission monitors for revealing the violation cases in the spheres, as well as supervising over the requirements of the legislation, the Commission informed, that it does not have legislative power to carry out monitoring. Instead, the Commission implements oversight (activities aimed at revealing cases of violations of the legislation and supervising over the prices in different markets), the result of which are evidences in the scope of the administrative proceedings in regards to the cases of violations of legislation. At the same time the Commission stated, that oversight is not a direct basis for initiating an administrative proceeding. State Commission for the Protection of Economic Competition Protection is equal to administrative bodies in its function, hence, in case of violation of competitive legislation the Commission files a proceeding in accordance to the Clause 1 of Article 30 of the RA Law “On Administrative Basis and Administrative Proceedings” based on the application, complaint of a person and with personal initiative. Thus, during the initiated administrative proceeding based on the application, complaining of the person the results of the oversights are the evidences aimed at detection of factual circumstances of that case. And taking into consideration, that in case of instituting proceeding with own initiative the oversight results can indirectly form basis for instituting own initiative administrative proceeding, and already implement the function defined by the legislation, the policy adopted by the Commission, based on which the oversight results can not form basis for instituting administrative proceedings, is unclear. Furthermore, such policy fully devalues the aim of oversight and the results obtained during it.

As a result of the research in the sphere of State purchase during 2012 a number of cases of anti-competitive agreements between medical facilities as well as between some business entities that carry out activities within the sphere of drug circulation were registered, and those entities were subjected to liability measures. Nevertheless, the measures undertaken by the Commission were not sufficient enough for revealing and preventing cases of anti-competition activities. It is important to note, that during 2012 the Commission initiated review of the procurement processes by elementary schools, orphanages, elderly people houses, boarding schools and a number of other institutions in order to reveal possible anti-competitive agreement cases by different business entities. However, all of those cases are still in progress and no business entity was subjected to liability yet.

The fact that only 28 complaint letters were presented to the Commission by the citizens and business entities during 2012 is alarming. Based on those complaints administrative proceedings were instituted in accordance to the point “A” of part 1 of the Article 30 of the RA Law “On Administrative Basis and Administrative Proceedings”. The mentioned testifies the lack of awareness and trust in the activities of the Commission, as in practice the problems and complaints of the sphere are relatively more.

## **RECOMMENDATIONS**

- Develop and implement anti-monopoly policy. Develop mechanism with the help of which the process of revealing cases of violations and their review will be based on the data of that year, thus ensuring the effectiveness of the activities of the Commission.
- Be consistent with revealing the cases of legislative violations of the sphere and undertake measures for instituting administrative proceedings on own initiative of the Commission based on the results obtained during the oversight data of the violations.
- Record the results of the oversight implemented by the Commission and make it available to public thus ensuring transparency and effectiveness of the Commission activities.
- Undertake necessary and effective measures for revealing and preventing cases of unfair competition.
- Raise awareness of society on the problems related to the economic competition and its authority in the scope of it.

# MINISTRY OF ECONOMY OF THE REPUBLIC OF ARMENIA

## SUMMARY

The goals and objectives of the Ministry of Economy of the Republic of Armenia are to promote the formation of innovation economy, to provide conditions for institutional development of competitive economy and to develop a system of consumer rights protection, as well as to participate in tourism and information technologies development and to reduce the disproportions of regional development. Besides, the Ministry of Economy is to participate in business, investments and export promotion, in creation of favorable and competitive environment for business as well as in development of sectors providing high-quality services.

The problems revealed and the achievements registered during 2012 in the field responsibility of RA Ministry of Economy (hereinafter referred to as the Ministry) are illustrated below, though not exhaustively.

## CURRENT PROBLEMS AND SHORTCOMINGS OF THE SPHERE

- The application of legislative and other mechanisms aimed at the development of small and medium entrepreneurship is not sufficient yet.
- There are a number of registered cases concerning the Licensing and Permits Agency's failure to take sufficient measures aimed at the prevention of the manifestations of differentiated approaches while providing licenses.
- Necessary measures have not been implemented to provide the development of traditional fields of economics and to protect them from disappearance.
- Numerous violations have been registered concerning the consumer product mandatory labeling requirements.
- The low level efficiency of implemented complex measures to ensure and protect the consumer rights is extremely alarming.
- A number of shortcomings have been registered concerning the failure to follow metrological rules and norms and technical regulations requirements.
- The state duty for nationwide broadcast of TV programmes which is defined by RA law "On State Duty", is also levied from TV companies that broadcast without actual usage of new digital technologies.

## POSITIVE DEVELOPMENTS REGISTERED

- During 2012 the Ministry has undertaken a number of measures aimed at tourism development.
- A number of economic entities which carried out violations in different sectors were subjected to liability.
- The Ministry has received 56 letters of gratitude from citizens for receiving appropriate response from "Hot Line" service.

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- The adopted state policy aimed at the development of information technologies is much appreciated.

## GENERAL ANALYSIS

The small and medium entrepreneurship (SME) development problems, especially those related to the disproportion of taxation continues to stay unsettled. Hence, as a result of undertaken reforms within the sphere, the point 2 of Article 4 of the RA law “On Turnover Tax” adopted in 19.12.2012 defines that turnover tax is applicable for taxpayers with previous calendar year revenues without VAT (hereinafter referred to as sales turnover) from the sale of all kinds of goods and provision of services (activities performed) not exceeding AMD 58, 35 million AMD. Article 2 of the RA law “On Small and Medium Entrepreneurship State Support” clearly defines the criteria in accordance to which the SME units in Armenia are classified according to the number of employees, namely a commercial organization or an individual entrepreneur is considered a micro SME enterprise if average annual number of its employees does not exceed 10 people while the net profit of the previous year or the assets' balance value at the end of the previous year does not exceed AMD 100 million; a small SME enterprise is considered to be the one whose average annual number of employees is not more than 50 people while the net profit of the previous year or the assets' balance value at the end of the previous year is not more than AMD 500 million; a commercial organization or individual entrepreneur is defined as medium SME enterprise if its average annual number of employees is up to 250 people and the net profit of the previous year or the assets' balance value at the end of the previous year does not exceed and AMD 1500 million and AMD 1000 million respectively. Based on the above-mentioned, the criteria for defining the minimum threshold of AMD 58, 35 million by RA law “On Turnover Tax” is not clear. Taking into account the fact, that the majority of enterprises in RA are small, the large part of burden of taxation falls on them. At the same time, benefits from the implemented reforms are not visible and the enterprises of that group always suffer, since the RA law “On turnover Tax” adopted in 2012 by the enforcement of its Article 2 is not fully applicable even to micro enterprises. Meanwhile, as an authorized body in this sphere, the Ministry has to create conditions for developing competitive economy and the elaboration of state support policy for entrepreneurship and enterprises in the sphere is one of its direct functions, which, according to the registered actual results, is insufficient.

According to the information provided by the Ministry, during the provision of licenses no cases of differentiated approach by Licensing and Permits Agency have been registered, meanwhile, according to the experts, during the organization of place for carrying trade unified approach has not been provided in the process of review and assessment of circumstances leading to the possible violation of other's rights and freedoms. Very often, the manifestations of selective approach in the sphere are not evident, so it is necessary to establish a clear mechanism to reveal them and to exclude the violation of the constitutional right of the individuals.

An encouraging fact is that, the Ministry continues to take measures aimed at the economic development of two traditional sectors, namely the gold and jewelry production. But it is of great concern that no measures have been taken for the development of other traditional sectors, which creates serious obstacles for the proportional economic development. While elaborating state support policy for entrepreneurship and the enterprises the Ministry is to properly pay attention to other traditional sectors of the economy such as carpet waving, winemaking, etc., which are neglected.

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In 2012 numerous cases of violation of products mandatory labeling requirements defined by RA Law continue to remain one of the current issues. During 2012 the State Inspectorate on Market and Consumer Interests' Protection revealed 16 cases of violation while conducting inspections aimed at revealing violations of non-food products labeling, usage and storage requirements and economic entities, who committed the violations, have been subjected to responsibility according to the provisions of Code on Administrative Offences (hereinafter referred to as the CAO). Hence, according the CAO provisions, economic entities, who committed violations, were given different types of orders, such as to cease or prohibited the sale of a product, to withdraw them it from the market, to inform the consumer about that and to take the product back, as well as to prohibit the usage of unchecked measuring instruments. The importance and necessity of controlling the implementation of product labeling requirements are due to the provision of the consumer's right to information.

Consumer rights and interests are stipulated by laws in Armenia, but in practice there are numerous cases, when these rights are violated by legal entities and individual entrepreneurs. The main gaps and/or shortcomings within the sphere of competence of the Ministry are related to the consumer rights protection and guarantees. In particular, the Ministry has informed of the absence of complaint letters for the services provided by economic entities. However, the practice of refusal to take the sold products back remains an ongoing problem (there are even cases, when the economic entities have posted notes on their points of sale announcing about not taking the products back). According to Article 517 of the RA Civil Code "the buyer shall have the right within fourteen days from the time of transfer to it of non-food goods, unless a longer time period has been declared by the seller, to exchange the goods bought, at the place of purchase and other places declared by the seller, for analogous goods of different size, form, overall dimensions, fashion, color, makeup, etc., making in case of difference in price the necessary re-accounting with the seller". Moreover, according to Article 16 of the RA Law "On Consumer Rights Protection", the buyer has the right to return the improper quality goods to manufacturer and demand the return of the monetary amount paid for the goods. These provisions, however, are not implemented properly in practice and are neglected by many economic entities. Taking into account the fact, that the Ministry is the responsible body in this sphere, it has to initiate the implementation of necessary complex measures in order to settle the above mentioned issue. An encouraging fact is that the information about Ministry's goals and functions, the legislation in force, as well as other information on consumer rights is posted in the Ministry's official web page, which aims to raise consumer awareness. There is also a "Hot Line" service, which has received 60 complaints during 2012 from consumers and consumer interests protection non-governmental organizations and all of them have been properly examined by the relevant inspection bodies operating within the Ministry. However, there is still a necessity to raise public awareness of consumer rights and interests and to inform of the provision of above mentioned service, as well as to take steps to provide the continuity of such measures and to promote the awareness of a wider range of citizens.

It is a matter of concern, that during the inspections of 2012 conducted by the State Inspectorate on Market and Consumer Interests' Protection (within the Ministry) on the compliance of technical regulations requirements and metrological rules and norms 304 violations were revealed at 211 economic entities. It means, that the Ministry has not taken sufficient measures aimed at the compliance of metrological rules and norms and technical regulation requirements by economic entities. The policy adopted by the Ministry to subject the economic entities that committed violations to responsibility is also not clear.

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A complaint letter has been addressed to the Defender concerning the amount of state taxation for broadcasting TV programs, namely the RA Law “On State Duty” adopted in 16.09.2010 by the force of its Amendments has defined state duty for nationwide broadcast of TV programmes with the amount of 20000-fold of the basic duty instead of the amount of 300-fold of the basic duty being in force beforehand. The above-mentioned amendment was due to the provision of TV programmes broadcasting license for the period of transition from analogue to digital broadcasting defined by RA law “On Television and Radio” The state policy aimed at the development of information technologies is an encouraging fact, but a serious problem arises in the above-mentioned case, because the payment of the mentioned tax is not relevant for the televisions which pay the tax for digital broadcasting but have not possibly implemented any activity aimed at the technical base change, the application of new digital technologies and the signal transmission. In this situation immediate measures have to be taken to correct the inaccuracies occurred, taking into account the legitimate interest of all TV channels.

## **RECOMMENDATIONS**

- To develop and launch clear and effective legal mechanisms for promotion and development of SME in the country especially by reducing the disproportionate heavy burden of taxation on economic entities.
- To provide unified approach while granting licenses and permits.
- To take effective measures for promoting the economic development of traditional sectors and to fill the gap of enterprises in the economy of the country.
- To take measures to increase the efficiency of proper control of food labeling requirements and its implementation.
- To take measures to effectively implement RA Civil Code and RA Law on “On Consumer Rights Protection” provisions related to consumer rights, to reveal the violations, to impose sanctions against offenders.
- To provide the continuity of taken measures aimed at raising awareness of wide range of consumers.
- To implement relevant measures in order to prevent the violations of technical regulation requirements and metrological rules and norms.
- To come up with legislative initiative for not levying the amount of 20000-fold of the basic duty for nationwide broadcast of TV programmes from channels which do not use digital technologies.

# MINISTRY OF AGRICULTURE OF THE REPUBLIC OF ARMENIA

## SUMMARY

The RA Ministry of Agriculture elaborates and implements the RA Government's economic policies in the field of agriculture, ensures the efficiency of agricultural development and implements the state policy in the sphere of food safety and conformity assessment, as well as of forestry management: conservation, protection, reproduction and use of forests.

The problems revealed and achievements registered during 2012 in the area of responsibility of RA Ministry of Agriculture (hereinafter referred to as the Ministry) are illustrated below, though not exhaustive.

## CURRENT PROBLEMS AND SHORTCOMINGS OF THE SPHERE

- Though in 2012 the agriculture sector was provided by loans at affordable interest rates, the fixed interest rates have not been actually kept imposing extra burden on farmers.
- In 2012 the Ministry failed to implement food safety and conformity regulatory monitoring by its own initiative, and started doing it only at the end of the year, though not sufficiently.
- The usage of slaughterhouses as places for the slaughter of livestock is not defined as legal requirement.
- The timeframes of UN Food and Agriculture Organization (FAO) "Support for Abattoir Development Project in Armenia" implementation were violated.
- Agricultural insurance institution is not available yet and that remains a key issue in the sphere.

## POSITIVE DEVELOPMENTS REGISTERED

- During 2012 the Ministry has carried out planned inspections, particularly in grain food market and administrative penalties have been imposed on a number of economic entities that violated the law.
- The 2010-2020 Sustainable Agriculture and Rural Development Strategy envisages the implementation of a project aimed to establish an insurance system in agricultural sector.
- With the assistance of the UN Food and Agriculture Organization (FAO) agreements have been signed with five organizations for establishing slaughterhouses/abattoirs in different regions of Armenia.

## GENERAL ANALYSIS

According to "Procedure of Subsidizing Interest Rates of Loans Extended to Agricultural Sector", approved by RA Government, 14% interest rate loans have been allocated to the agriculture sector for providing loans to economic entities of agricultural sector and the state has subsidized 4 percentage points of loans as a whole and 6 percentage points of loans for 225 higher poverty communities. According to complaints received by the Defender the interest rate subsidies of loans are not always kept at 8 or 10 percent as envisaged by the agreement and the farmer-beneficiaries have often been

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forced to pay 14% interest rate instead. Moreover, according to the complaints, these loans were short-term and such interest rate has imposed highly disproportionate heavy burden on farmers, which limited their freedom of choice of employment.

The State Food Security Service (hereinafter referred to as Service) established in 2011 within the structure of the Ministry, carried out planned inspections particularly in grain food market in 2012. An encouraging fact is that as a result of violations revealed at a number of economic entities producing cereals, administrative sanctions have been implemented against them as defined by RA “Code of Administrative Violations/Offences”. However, the Service has not informed of the inspections conducted in other sectors or of other registered cases of violation, if there is any, and of the measures taken to exclude such violations in the future. Then, it is of concern, that the Service has conducted food safety monitoring inspections exclusively on the basis of complaints, reports and other information and not by its own initiative, while the consideration of provisions of RA Law “On Food Safety” leads to an assumption, that the inspections should be carried out on the basis of the order of the authorized body for which no preconditions are prescribed by law. Despite the above-mentioned whole information provided by the Service, there is no case of raising any specific issue and no submission of recommendations for solutions as a result of inspections and monitoring carried out in Yerevan and in the regions.

Taking into account that the slaughter performed in yards is associated with hygienic risks, a chain of abattoirs must be established to prevent the sales of low-quality meat and to fully defend the consumers’ rights, in accordance with internationally accepted practice. An encouraging fact concerning this issue is that with the support of UN Food and Agriculture Organization (FAO) and the Greek Government, five agreements were signed with private companies in December 2012 aimed at the establishment of five modern abattoirs in different regions of Armenia, as well as aimed at the meat production compliance to the requirements defined by RA Law, despite the fact, that the project of “Support for Abattoir Development in Armenia” started by FAO was officially approved already in February 2009 by the Greek Government and was scheduled to be implemented within 3 years. The lack of chain of abattoirs makes the implementation of RA Law on “Veterinary Service” and the Government decision on “Farm Animal Slaughtering Procedure in Abattoirs” adopted on its basis impossible. And as the above-mentioned project is extended till August 2013, consistent approach is to be performed to ensure the full operation of five model abattoirs before the mentioned term.

A number of complaints concerning to the failure of implementation of livestock slaughter procedure requirements were received during 2012. Despite the existence of RA Law on “Veterinary Service” and the Government decision on “Farm Animal Slaughtering Procedure in Abattoirs” adopted on its basis, it should be noted, that the requirements of mentioned legal acts are not implemented in practice which can be conditioned by the Government Decision failing to define clear mechanisms and by the absence of Abattoir chain. The non-fulfillment of the livestock slaughter procedure requirements in abattoirs is also the result of low administrative penalties defined by RA Code “On Administrative Penalty”, while the cases of expired date meat sale, or the sale of meat of unknown origin, often encountered in practice, health and even life-threatening for the consumer. The livestock slaughter procedure requirements will not be of declarative nature if the implementation of slaughter in abattoirs is fixed as a legal requirement.

The operation of agricultural insurance institute and the adoption of adequate legal acts regulating the sphere still remain a serious problem. In response to our letter concerning this issue the Ministry informed, that the agriculture of the Republic of Armenia is a high risk area and for that reason does not represent any economic interest for insurance companies. According to the Ministry, “Agriculture Insurance System Operation Concept” project was elaborated back in 2008, which sets the main stage by stage approaches for insurance system operation in the sphere of agriculture. Moreover, relevant rating calculations have proved that the operation of insurance system in agriculture is possible only in case of at least 50% compensation (by state, other resources) of insurance payments. According to the

project of the Concept, the insurance payments calculated by price level of 2008 are estimated at more than AMD 50 billion and the compensation of insurance payments equal to this amount is not considered realistic in current status of solvency of economic entities. “Agricultural Risks Mitigation” which also assumes the support to agriculture insurance institution operation is one of the most important issues of RA Agriculture and Rural Sustainable Development Strategy 2010-2020 which is developed by the Ministry and approved by RA Government decision of N 1476, November 4, 2010. Based on the latter “The Implementation of Insurance Risks Assessment Program and the Implementation of Insurance Pilot Program in the sphere of Agriculture” is envisaged as part of measures aimed to ensure the implementation of RA Agriculture and Rural Sustainable Development Strategy 2010-2020. The timeframe for implementation of this measure is restricted from 2013 till 2020. “The Implementation of Project for the Development of Insurance System in Agricultural Sector” measure is also included in the Strategy Implementation Supportive Measures list which is scheduled to implement in 2017 and subsequent years. Despite the above-mentioned information provided by the Ministry, it is of concern, that the issue of agricultural insurance will remain unresolved during the next few years. Thus, the farmers are deprived of the opportunity of receiving relevant compensation for the damage caused by natural disaster. Besides, the Ministry’s position of not resolving this problem in 2012, regarding Armenia’s agriculture of high risk area, is not clear. Then, are there any guarantees, that after 2013 this sector will cease to be of high risk? Therefore the RA HRDI believes, that the problem is not there, but it is because of non efficient state policy in the sphere of agriculture, as the insurance process, in fact, always comprises risk-related issues. Moreover, this issue has also been raised in RA second and third periodic report on the implementation of International Covenant of United Nations’ Economic, Social and Cultural Rights according to which the agriculture of the Republic of Armenia continues to remain quite vulnerable, and particular emphasis had been placed on the issue, that the insurance of this sector can greatly contribute to the development of the agriculture, to guarantee freedom of choice of employment for the persons engaged in agriculture, because otherwise right to freedom of choice of employment for persons engaged in agriculture becomes vulnerable.

## **RECOMMENDATIONS**

- To promote a consistent policy to fix the interest rate of loans, and make them affordable which will ensure guarantees for farmers.
- To conduct regular inspections by its own initiative in Yerevan and in the regions in the field of food safety, in order to reveal the violations of legal standards, as well as to prevent them in the future.
- To take measures to fix the legal requirement of performing livestock slaughter in abattoirs which, as a result, will prevent the cases of expired meat sale or the sale of meat of unknown origin.
- To take measures to ensure the full operation of five abattoirs in prescribed period.
- To take measures for the development of agricultural insurance system. To develop mechanisms for the insurance companies aimed at the establishment of the institute and its normal operation, namely, to provide systematic state support to the insurance system.

# **THE MINISTRY OF NATURE PROTECTION OF THE REPUBLIC OF ARMENIA**

## **SUMMARY**

The goals and objectives of the Ministry of Nature Protection of the Republic of Armenia are to elaborate and implement policies aimed at the prevention or reduction of harmful environmental exposures, reasonable use and restoration of nature resources, supervision of environmental legal requirements implementation, the provision of framework governing the environmentally sound management of hazardous chemicals and wastes produced and used in Armenia, conduction of environmental impacts state assessment, etc.

The problems revealed and the achievements registered during 2012 in the area of responsibility of RA Ministry of Nature Protection (hereinafter referred to as the Ministry) are illustrated below, though not exhaustively.

## **CURRENT PROBLEMS AND SHORTCOMINGS OF THE SPHERE**

- The Ministry carried out numerous violations during the generation and transportation of hazardous chemicals and wastes.
- A number of complaints have been received concerning deforestation, air pollution, river water and fish poisoning, illegal hunting, seizure of timber, hazardous materials and wastes, toxic emissions.
- The Action Plan for the implementation of Aarhus Convention undertaken by the Republic of Armenia has not been actually carried out; in particular legal regulations concerning the sphere have not been completed.
- Proper measures have not been undertaken to resolve the issues concerning the hydro power plant water flows.
- There is no consistent policy of proper pursuit of violations in the sphere.
- There are a number of cases of environmental damage caused by economic entities as a result of absence of environmental impacts state assessment positive conclusion.
- The issues of developing clear criteria for environmental impacts assessment, as well as revealing environmental damage and imposing legal sanctions to offenders remains unresolved.
- The issue of current exploitation license of Teghut Copper-Molybdenum Mining Project continues to remain unresolved and numerous alerts have been received by the environmentalists related to this issue.
- The Ministry has not provided proactive approach to supervising the areas under its jurisdiction for revealing hunting cases in reserves and imposing sanctions.
- Public debates have not been properly organized on preparation of drafts of legal acts concerning the sphere and as a result, the public participation has often been just a formality.

## **POSITIVE DEVELOPMENTS REGISTERED**

*The annual report has been prepared based on the information obtained from the complaints addressed to the RA Human Rights Defender, analysis of the legislation, on the credible and unjudged publications, the reports of international and legal organizations, as well as from interviews with experts of the sphere and human rights defenders.*

- Measures have been taken to provide the public with information on issues of their concern.
- Clear criteria has been developed for the appointment of environmental state inspectors, in accordance with RA Law “On Civil Service”.
- Measures have been taken in order to ensure the conformity of legislation with the provisions of Aarhus Convention.

## GENERAL ANALYSIS

It is of concern, that the Ministry has not taken proper measures to reduce or exclude violations concerning to generation and transportation of hazardous materials and wastes. A number of environmental non-governmental organizations have expressed their dissatisfaction with the issue, in particular with the case of Norashenik and Voghji river, Syunik region, being polluted with toxic wastes from Zangezur Copper and Moibdenum Combine, which resulted in the company being fined a total of AMD 100 thousand. Such a policy is not based on obligations assumed by the Ministry according to which the latter is to provide and promote environmental protection and apply sanctions in case of violations.

A number of complaints on environmental issues were addressed to the Defender in 2012. The Ministry had informed, that it received a total of 115 complaint letters on deforestation, air pollution, river water and fish poisoning, illegal hunting, seizure of timber, hazardous materials and wastes, toxic emissions. It is of concern, that the Hot Line Service of the Ministry has registered a total of 54 calls, which may indicate lack of confidence and awareness of the functions of the Ministry if we take into account the number of environmental violations and abuses of current year. The forth session of the Meeting of the Parties to United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters alleged the non-compliance of national legislation with the provisions of the Convention, adopted decision IV/9a on this issue and submitted recommendations. For the implementation of decision IV/9a of the Meeting of the Parties according to decision of the Prime Minister of the Republic of Armenia an Interagency Commission was set up in 2011 which was to develop and implement an Action Plan based on recommendations of the Meeting of the Parties. A ten-point Action Plan was approved, but only some of them have been implemented, that is, Aarhus Committee recommendation has not been actually fulfilled. State government is not committed to its goals to protect the specially protected areas, to provide sound management of waste, to combat desertification, to improve the activities carried out by state bodies that perform environmental impacts assessment. Some examples are: failure to take steps to dismantle the entertainment center building illegally built in the center of Khosrov forest reserve; failure to stop unlawful activity of crushing and sorting complex in gold mine in the territory of “Sevan National Park”; the authorization of Getahovit hydropower plants construction, which will affect on microclimate of the reserve of Arjatkhlani. All of these issues are directly related to the competences of the Ministry and the latter does not take necessary measures for their elimination.

There are some issues related to water flow from hydropower plants. The allowed quantity of water is assessed based on existing quantity of water within the most dry 10 days period, while in case of drying rivers during the year it is impossible to assess this quantity. It addition, the construction of small hydropower plans affects agriculture significantly worsening the quality of the water and reducing its

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quantity. Meanwhile the above-mentioned issue is not taken into consideration before giving permission to construction.

According to the Ministry the latter cooperates with about 53 environmental non-governmental organizations but a closer cooperation has been established with 15 of them, as well as with Regional Aarhus Centers. However, numbers of non-governmental organizations have expressed their dissatisfaction with the failure of the Ministry to take pursue the violations revealed by them. That is, despite the established cooperation their current level is low.

According to data provided by the Ministry, the State Environmental Inspectorate conducted inspections in economic entities (except forest lands) in 2012 and as a result revealed 62 cases of environmental damage caused by their activities. However the Ministry did not examine the issues related to environmental damages caused by economic entities in case of absence of positive conclusion of environmental impacts assessment. Meanwhile, according to our sources, there have been cases, when economic entities, which did not receive the positive conclusion of environmental impacts assessment, caused severe environmental damage while carrying out their activities. More troubling is the fact, that the authorized state body often gives positive conclusion without carrying out the assessment. According to our sources a typical example of this is the cases of illegal tree cutting and construction carried out in Dilijan National Park by Opela LLC, for which the latter had no document or assessment conclusion.

There is still no clear criteria for environmental impacts assessment (hereinafter referred to as EIA). Revelation of environmental damages by conducting inspection, application of legal sanctions against offenders – these are issues that continue to remain unresolved. In 1996 the Republic of Armenia became a Party to Convention on Environmental Impacts Assessment in a Transboundary Context; however there are still no clear criteria for legal regulation of this sector. EIA procedures are submitted, however no reliable expertise can be carried out without an assessment being scientifically justified and its impact clarified by legal act. EIA is a document of expertise importance and value, while EIE (Environmental Impacts Expertise) is an administrative act, which is subject to the grievance procedure. State authorities are not obliged by law to conduct regular inspections in mining areas to find out peoples' health problems and the reasons causing them.

The issue of current license of Teghut Copper-Molybdenum Mining Project LLC continues to remain unresolved. The organization implements a new project meanwhile the license was issued for the management of previously submitted project, so the organization's current activities are not licensed. Environmentalists have raised the issue many times, but competent state bodies did not respond.

The Ministry informed that in 2012 no cases of hunting in reserves were registered by the State Environmental Inspectorate. The only case registered was related to the hunting in Khosrov Reserve and is in the process of criminal investigation. Failure to subject offenders to liability cannot contribute to identification and prevention of illegal hunting. The Ministry needs to be proactive in supervising the areas under its jurisdiction for revealing hunting cases in reserves and imposing sanctions as well as in taking effective measures in order to prevent such incidents.

According to information provided by the Ministry, public debates on draft regulation concerning the sphere have been organized and the draft is posted on the Ministry official website, moreover, first, they post on website the draft legislation then the revised edition with the recommendations submitted by stakeholders and in the last stage – the draft of the legal acts which will be submitted to the Government. However, according to the complaints addressed to the Defender, public participation is

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often just a formality and does not affect the decisions made. There are even cases when the stakeholders and/or organizations have no information about the public hearings organized by the Ministry and as a result, in many cases legal requirements are not implemented and also serious obstacles for public participation are created.

## **RECOMMENDATIONS**

- Undertake measures to exclude violation during the generation and transportation of hazardous materials and wastes.
- Resolve numbers of environmental issues, as well as to carry out activities for raising public awareness on Ministry's functions.
- Ensure consistent implementation of obligations assumed by the Republic of Armenia in accordance with the international conventions that have been ratified.
- Undertake proper measures to resolve the issue of water flow from hydropower plants.
- Deepen cooperation with all non-governmental organizations pursuing the issues raised by them.
- The Ministry, as an authorized body in the sphere has to ensure proper control in provision of economic entities with EIA positive conclusion, as well as to take measures to establish clear criteria for EIA.
- Develop clear criteria for EIA, as well as to reveal environmental damage and apply legal sanctions to offenders.
- Undertake measures aimed to resolve the issue of current licensing of Teghut Copper-Molybdenum Mining Project.
- Be proactive in revealing the cases of hunting in reserves, applying relevant sanctions, to exclude such cases in the future.
- Be consistent not only in properly organizing the procedure of public hearings on draft legislation, but in notifying preliminary the relevant entities.

# **MINISTRY OF ENERGY AND NATURAL RESOURCES AND PUBLIC SERVICES REGULATORY COMMISSION OF THE REPUBLIC OF ARMENIA**

## **SUMMARY**

The goals and objectives of the RA Ministry of Energy and Natural Resources are to ensure the provision of state policy for state technical control in the field of energy and energy consumption, to provide elaboration and implementation of state policy in the field of mining exploitation, to ensure the provision of mining exploitation, to support the efficient implementation of rational use of natural resources, their research and mining, to provide the state supervision in the field of mines exploitation and preservation and etc.

Public Services Regulatory Commission of the Republic of Armenia is responsible for the regulations in the sphere of public utilities. It's aimed at balancing the interests of consumers and regulated entities carrying out activities in the sphere of public utilities, creating same level conditions of activity for regulated entities, fostering the creation and development of competitive markets, as well as promoting the efficient use of resources excluding discrimination towards consumer or any regulated entity.

The problems and obtained acquisitions revealed in the field of competencies of the RA Ministry of Energy and Natural Resources (hereinafter the Ministry) and Public Services Regulatory Commission are illustrated below, though not exhaustive.

## **THE CURRENT SHORTCOMINGS AND PROBLEMS OF THE SPHERE**

### ***Ministry of Energy and Natural Resources of the Republic of Armenia***

- Many citizens expressed their concern over the frequent power fluctuation, its regular and short-term outages and the damages they may cause.
- It is alarming that no criteria for risk assessment and testing methodology based on risk were adopted during 2012.
- No proper public discussions were held with participation of beneficiaries over the occasion of recognizing as eminent domain of the frontier Qajaran village in Syuniq marz and 4 neighborhood regions of Armenia-Iran interstate highway.
- Because of the existing legislative gap the legal regulation of dangerous waste generation and transportation is not regulated which results in violations while their implementation.

### ***Public Services Regulatory Commission***

- Numerous cases of power fluctuation and failure have been registered in current year which also caused some financial losses for number of consumers.
- The absence of alternative laboratories for natural gas, water and energy meters in the Republic has caused certain problems for consumers.
- The measures taken for provision of 24-hour water supply service were not sufficient for full solution of the problem.

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- It is alarming that according to the resolution number 95-N passed by the Commission the provided natural gas data registration in the month when the metering failure occurred is calculated based on the average per day consumption in December, January and February of the year preceding the dismantling of the commercial metering device.

## **POSITIVE DEVELOPMENTS REGISTERED**

- On December 27, 2012 the corresponding 1568-N and 1569-N resolutions on “Verification of General Description of Criteria for Risk Assessment and Inspection Methodology Based on Risk Implemented by the State Energy Inspectorate under the RA Ministry of Energy and Natural Resources Staff” and “Verification of Inspection Check Sheets Held by the State Energy Inspectorate under the RA Ministry of Energy and Natural Resources Staff” went into force.
- It is highly appreciated that the Public Services Regulatory Commission constantly monitors the water system organizations’ activities through submitted quarter data analysis of the quality indicators of the services provided to the customers by the companies.
- It is appreciated that the Commission has enabled consumers to become familiarized with their rights through posting its resolutions on the Commission website, making regular clarifications in media as well as assisting the NGOs in publication of guides to consumer rights and responsibilities.

## **GENERAL ANALYSIS**

### ***Ministry of Energy and Natural Resources of the Republic of Armenia***

Many citizens expressed their concern over the frequent power fluctuation, its regular and short-term outages and the damages they may cause. Despite the fact that it is Public Services Regulatory Commission which is responsible for the regulations of public utilities sphere, according to subparagraph 2, Para 7 of the Ministry Charter, goals and objectives of the Ministry are to ensure the provision of state policy for state technical control in the field of energy and energy consumption. Taking into account the complaints related to the electricity we find that the Ministry should take such efforts which may improve and/or eliminate the existing problems in the sphere.

In response to our inquiry to the Ministry regarding the issues on observation of legislative requirements concerning mining exploitation raised by the mining companies we got the notice that no issue was raised and no recommendation was submitted. However, the same notice states that the Ministry has sued about 8 administrative proceedings based on the applications and complaints. This, however, means that complaints concerning the sphere and competency of the Ministry were filed, hence it is necessary to take certain measures, to carry out monitoring in order to eliminate the problems though few as they are.

In response to our inquiry concerning the procedure and criteria for the corresponding inspections in the sphere a notice was received that throughout 2012 in the scope of the inspectorial reforms adopted in the Republic of Armenia the State Energy Inspectorate elaborated and the RA Government on 6 December, 2012 adopted the corresponding 1568-N and 1569-N resolutions on “Verification of General Description of Criteria for Risk Assessment and Inspection Methodology Based on Risk

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Implemented by the State Energy Inspectorate under the RA Ministry of Energy and Natural Resources Staff” and “Verification of Inspection Check Sheets Held by the State Energy Inspectorate under the RA Ministry of Energy and Natural Resources Staff”. The drafts of the above-mentioned legal acts were adopted to ensure the safety rules defined by technical regulations and other statutes. The adoption of such legal acts and inspections carried out according to these acts is deeply appreciated, however, the above-mentioned acts were enforced on 27 December, 2012 thus it is still unclear how the corresponding inspections were carried out in this sphere throughout 2012 in the absence of the criteria for risk assessment and inspection methodology and procedure.

The issues regarding the exploitation of Qajaran open-pit mine still remain in the public spotlight. A number of applications and complaints concerning the above-mentioned issue have been filed to the Defender not only by private individuals but also by certain NGOs. The RA Government Decree number 627-N dated 28 April, 2011 declared as eminent public domain the agricultural lands (over 600 ha in total) of the frontier Qajaran village in Syuniq marz and other 4 regions in neighbourhood of Armenia-Iran interstate highway: namely Artsvanik, Sevaqar, Atchanan and Chapni which should be leased to Zangezour Copper Molybdenum Combine CJSC (ZCMC) for open-pit expansion and placement of burial grounds for hazardous waste. Whereas in order to get clarifications upon the raised question if there are lands belonging to the citizens by leasing or property right in the areas recognized as eminent domain we sent a range of requests to the Prime Minister of Armenia, which were later readdressed to the Ministry, however, no clear information was rendered in response. In the course of interviews with the lawyers and specialists of the field conducted in 2012 on the initiative of Defender’s staff numerous complaints were received on the fact that no proper public discussions with the participation of beneficiaries were held over the recognition of the frontier Qajaran village in Syuniq marz and other 4 regions in neighbourhood of Armenia-Iran interstate highway as eminent domain, and their positions were not considered.

Because of the existing legislative gap the legal regulation of generation and transportation of dangerous waste still remains not regulated which results in violations while their implementation. Particularly, the new Mining Code of Armenia does not recognize the existence of “mine dumps” and “toxic tailings” and in consequence this waste is omitted from the corresponding legal regulations and taxation field. The RA Law on “Environmental Impact Assessment” (as well as the Government Decrees regulating the field) does not define clear criteria for environmental impact assessment. Only the procedures of environmental impact assessment are presented. Whereas it is almost impossible to have reliable expertise without impact assessment which is scientifically grounded and clarified by legal act. The result of the environmental impact assessment is the document of expertise significance and value, and the document given in the result of environmental impact assessment is an administrative act.

### ***Public Services Regulatory Commission***

Numerous cases of power fluctuation have occurred in the current year which caused serious financial losses for a number of consumers. The Commission has not reported the number of applications and complaints with the request of compensation for damages caused by power fluctuation or failure, and the percent and period of their fulfilment. This means that these faults were not properly studied by the Commission.

The absence of alternative laboratories gas, water and energy meters in its turn causes certain problems for consumers. As being the only operating laboratory it can take the advantage of its prevailing position and charge high fees for meters testing and fixing. Besides, there is a lack of trust among the population concerning the objectiveness of the laboratory tests. Despite the circumstance that the Commission is not authorized to establish and operate the mentioned institutions, nevertheless, we consider that the Commission, as a specialized institution of the field, should have demonstrated initiative to voice the issue on establishment of private alternative laboratories. In 2012 the Commission didn't make any efforts towards the settlement of the mentioned problem.

The issue of 24-hour water supply continues to be of current importance. It is alarming that the processes which the companies providing drinking water supply services undertook towards improvement of population water supply moved on slowly. It is appreciated that the monitoring of water system companies' activities conducted by the Commission is consistent and is carried out through studying the submitted term data concerning the quality indicators of the services provided to the consumers by the companies and if necessary the Commission carries out ad hoc studies. However, the mentioned field still possesses certain issues, particularly, the issue of 24-hour water supply.

According to the resolution no 95-N adopted by the Commission to fix the rate of the gas provided in the month when the metering failure occurred they base on the average per day consumption of December, January and February of the year preceding the dismantling of the commercial metering device. In the mentioned case the resolution passed by the Commission imposes additional financial burden for natural gas subscribers simply because theoretically the consumption in December, January and February is much higher than in other months. Whereas before the Commission resolution number 411 from 07.09.2011 on making amendments and additions to the resolution number 95-N dated 08.07.2005 they based on the data of average per day consumption of the same month in the previous year. Thus we consider that the above stated amendment ignores the interests of consumer.

It is appreciated that the Commission familiarizes with their rights by posting its resolutions on Commission website, makes regular clarifications through media and assists NGOs in publication of guides to consumer rights and responsibilities. Throughout 2012 the Commission imposed penalties on several companies and organizations for violation of corresponding laws and resolutions. It is particularly appreciated that the Commission imposed penalty on "Armentel" CJSC after studying the case which we raised concerning "Armentel" CJSC. The company provided new telephone numbers with Yerevan area code outside the administrative territory of the city of Yerevan. However, the above-mentioned actions were not always sustainable, regular and comprehensive so it is appropriate to take measures which will foster the enhancement of population awareness and trust towards the Commission.

## **RECOMMENDATIONS**

### ***Ministry of Energy and Natural Resources of the Republic of Armenia***

- To develop and launch effective mechanisms in order to ensure provision of state policy for the state technical control in the sphere of energy consumption.
- The Ministry should undertake measurements in the scope of its competencies to carry out regular monitoring in order to raise the problems existing in the field as well as to prevent and eliminate the potential violations.

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- Throughout 2013 in the process of implementation of supervision measures should be taken to ensure the order prescribed by the RA Government Decrees number 1568-N and 1569-N dated 27.12.2012.
- To follow-up the settlement of the issues concerning exploitation of Qajaran open-pit mine by establishing an active cooperation with the parties and NGOs concerned.
- To undertake measurements towards clarification of the concepts “mine dumps” and “toxic tailings” stated in the Mining Code of Armenia in order to regulate them legally, also define clear criteria for environmental impact assessment by the field regulating legal acts.

#### ***Public Services Regulatory Commission***

- To ensure public awareness of the Commission competencies regarding the investigation and settlement of disputes arisen in consequence of power fluctuation and failure.
- To take measures towards establishing alternative laboratories for gas, water and energy meters.
- To increase the control over the water supply companies concerning quality provision of drinking water services.
- To make amendments in the resolution number 95-N adopted by the Commission stipulating that the recalculation of the gas provided should be done based on data of average per day consumption of the same month in previous year.
- To ensure equal conditions for population when providing utilities by public services through increasing public awareness of the field.

# **THE MINISTRY OF EDUCATION AND SCIENCE OF THE REPUBLIC OF ARMENIA**

## **SUMMARY**

The Ministry of Education and Science of the Republic of Armenia provides environment for the realization of human right to education, carries out scientific and technical activities aimed at the state, public and human security, promotes the principles of State Education Policy in educational institutions, as well as supervises the implementation of the State Program of Educational Development, the application of criteria for state education and the implementation of requirements of RA Law “On Language” and so on. In addition, the Ministry of Education and Science should ensure the right of national minorities to receive education and upbringing in their native languages in general education system.

The problems revealed and achievements registered during 2012 in the area of responsibility of RA Ministry of Education and Science (hereinafter referred to as the Ministry) are illustrated below – though not exhaustively.

## **CURRENT PROBLEMS AND SHORTCOMINGS OF THE SPHERE**

- There have been a number of corruption practices in general, middle level vocational and especially higher education system.
- Effective and sufficient steps have not been taken to renovate general education institutions and improve the heating system.
- In some cases, the complaints of the citizens and the information published in the press concerning the shortcomings of the Ministry’s activities have not been taken into consideration by the Ministry.
- It is of great concern that in some higher education institutions student representative bodies are politicized, which has an extremely negative impact on students’ interest.
- There are many unresolved problems in all general education schools concerning the complete implementation of Inclusive Education system.
- The problem of organization and proper conduct of competition of textbooks for general education schools at the beginning of the academic year continues to remain unresolved.
- It is of great concern that RA Government decision No 554 – N has not established places in respect of which tuition fees are fully refunded (free) by the State in the form of student benefit for 2012/2013 academic year in a number of educational institutions including the Faculties of Law and International Relations in Yerevan State University.
- There is a conflict between RA Government Decision No 597 dated April 26, 2012 and Article 6 paragraph provisions of the RA Law “On Higher and Postgraduate Professional Education”.
- There has been no solution for the issue of providing additional pay to the wages of persons having scientific degree.

## **POSITIVE DEVELOPMENTS REGISTERED**

- The RA Government approved the concept of “Sustainable School Food” program by Protocol Decision N 52 at its Session dated December 27, 2012 and as a result pupils of about 700 elementary schools in the country have been provided with food.
- The RA National Assembly has adopted in the first reading RA draft law “On Amendments and Changes in the RA Law On General Education” elaborated by the initiative of the Ministry.
- Today there are 98 general education schools in the Republic of Armenia providing inclusive education.
- RA Minister of Education and Science approved Textbooks Approval Procedure for submitting them later for necessary examination and use in general education and pre-school institutions by his order N 1014 dated 21.11.2012, and sent it to the Ministry of Justice for registration.

## **GENERAL ANALYSIS**

The measures taken to reduce the corruption in general, middle level vocational and especially higher education institutions are not sufficient. In 2012 The Ministry received 193 alert calls, 138 of them concerning to the above-mentioned problem - collection of money by parents' initiative for the Year end celebration, on the occasion of March 8 or April 7, sales of workbooks. Besides, the studies have shown, that pupils in a large number of education institutions of the country have been distributed (except textbooks) working (test) books, some additional educational materials for which money has been collected. The Ministry has given instructions to the regional administrations, general education institutions, as well as Yerevan municipality recommending to undertake measures in order to exclude any money collecting activities during the organization of March 8th or April 7th or “Last Class” celebrations or for distribution of textbooks or any additional material. An encouraging fact is that in some cases even disciplinary penalties have been imposed. However, despite the measures taken, the above-mentioned serious problem continues to remain unresolved.

The Defender has received complaints concerning the poor condition of schools, which is a serious obstacle to ensure the right to education and to organize its normal processes. The Ministry stated that the issue of renovation of state educational institutions is in the center of their attention. However, according to complaints received, the Ministry has failed to carry them out repeatedly mentioning the lack of resources as a justification. There are also cases, when the Ministry allocates funds to the same state educational institution to make renovations each year, while there are institutions where no renovation has been carried out since about 2-3 years. Despite the positive developments registered, however, a concerning fact is that in 2012 about 30 percent of general education schools (overall 450 schools, 28 of which in Yerevan and 422 – in different regions) is not provided with heating system. The latter is an urgent issue, since poor conditions interfere with the normal processes of education and cause the delay of lessons and even health problems of pupils, which is unacceptable. All these indicate the urgency of the issue, so the renovation and heating system in general education institutions should be regarded as primary task.

The study of the issues in the sphere indicates that the complaints of the citizens and the information published in the press concerning the shortcomings of the Ministry's activities have not been taken into consideration by the Ministry, whereas the same issues are examined if raised by any state body. That

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is, the supervision implemented by the Ministry in studying the letters of complaint on administration or in organizational activities is not sufficient. At the same time, the relations between the Ministry and civil society should be strengthened and effective cooperation should be established to resolve the mentioned problem.

The politicization of student representative bodies in some higher education institutions is one of the serious problems. The student representative bodies are to defend the interests of students and represent them in academic and teaching staff meetings. The politicization of student representative bodies excludes from the outset the independence and objectivity of this structure. Often there are situations, when members of student representative bodies, being also a member of a political party, use the provided opportunity for party propaganda and for defending the party's interests which has nothing to do with the interests of students and courses. It is quite unacceptable, as the student representative body should not be a politicized structure. It is a matter of concern, that the Ministry has never made clarifications on whether it has examined the complaints about the politicization of student representative bodies in various universities of the country.

The Education Development State Programme of the Republic of Armenia for 2011- 2015 envisages to provide effective mechanisms for developing the inclusive education, optimizing the special schools, identifying the special educational need for each child, assessing it and organizing the education taking into account the results of assessment. Encouraging fact is that the National Assembly has adopted in the first reading the draft law "On Amendments and Changes in the RA Law On General Education" developed by the initiative of the Ministry which envisages to complete the implementation of inclusive education. However, since 2011 inclusive education is applied only in 98 schools out of 1400 in the Republic of Armenia, while the above-mentioned program envisages expanding the opportunities of children with special needs, ethnic minorities and other vulnerable groups for receiving high quality basic education by creating opportunities for inclusive education in all general education schools till 2015.

The issue of preparation of legal basis for organization and conduct of competitions of general education schools' textbooks has got no final solution. The absence of the latter creates an obstacle for the development of high-quality education. An encouraging fact is that Textbooks Approval Procedure is in registration process by the Ministry of Justice. However, the system was due to be introduced till the beginning and not the end of new academic year. Elementary school pupils in over 700 schools of the country have been provided with food as a result of the measures taken by the Ministry. However, taking into account the fact, that the number of state schools in the country exceed 1400 it is far from being sufficient for the implementation of "Sustainable School Food" program.

According to RA Law "On Higher and Postgraduate Professional Education" Article 5, the state guarantees opportunities for citizens to receive free higher and postgraduate professional education on a competitive basis in state higher education institutions According to RA Law "On Education", Article 28, paragraph 6 the Government of the Republic of Armenia establishes a state-funded scholarship program for each year according to professions and educational institutions. The right to education, as well as the right to receiving an education on a competitive basis in state-funded higher and other professional education institutions, is enshrined by the Constitution and a number of international conventions. The Government Decision No 554 has established places for bachelor education program according to professions in respect of which tuition fees are fully refunded (free) and places in respect of which tuition fees are partially refunded (fee-paid) by the State in the form of student benefit for

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2012/2013 academic year in a number of higher education institutions. However, regardless of the Government's above-mentioned decision giving guarantees to receive free education, no state-funded place is provided for 2012/2013 academic year in a number of educational institutions including the Faculties of Law and International Relations in Yerevan State University. It is worth mentioning, that there has been similar problem during previous two academic years. That is, the citizen, who wants to take advantage of his rights enshrined by the Constitution, deals with a situation when in fact the right to receive free education on a competitive basis is not provided. So, taking into account the above-mentioned issues and the complaints addressed to the Ombudsman on this issue, the RA Defender of Human Rights applied to the Constitutional Court to determine the conformity of RA Government Decision No 554 and the Article 39 of the RA Constitution and clarify this controversial issue. In spite of the fact, that the Constitutional Court did not resolve this ongoing problem of the absence of state-funded places in educational institutions by its decision, it once again reaffirmed the importance of the right of the citizens to receive free education on a competitive basis, noting, that tuition fee is funded on a competitive basis by the results of current academic year for the students who entered higher education institutions and showed high performance, for socially vulnerable students as well as for students from close-border and high-mountainous settlements regardless of learning system.

According to Paragraph 1 of Article 6 of the RA Law "On Higher and Postgraduate Professional Education" the higher education institutions within the scope of their competence should organize, according to educational programs, the admission, educational process of applicants, including foreign citizens not holding citizenship. Meanwhile, complaints concerning to the failure to provide the requirements of this Article have been received. In particular, according to RA Government Decision No 597 dated 26.04.2012 the admission examinations are of unified, centralized and among universities. "Assessment and Testing Center" state non commercial organization arranges and holds the admission examinations. According to the Article 86 of the RA Law "On Legal Acts", "a legal act shall be interpreted according to the literal meaning of the words and expressions contained therein". That is, the study of above-mentioned provisions brings to a conclusion, that the higher education institutions within the scope of their competence should organize, according to educational programs, the admission, educational process of applicants, including foreign citizens not holding citizenship. It is worth noting, that according to Article 14 of the RA Law "On Legal Acts", Government Decisions of the Republic of Armenia should not contradict RA Laws.

The issue of providing additional pay to the salary of persons having scientific degree continues to remain unsolved. Thus, no sub-legislative act has yet been adopted to ensure the enforcement of Paragraph 3 of Article 19 of the RA Law "On Scientific and Technical Activities". The Ministry informed, that it had developed and put into circulation a new draft law "On Scientific and Technical Activities" with its package of relevant documents and had been submitted to the Government for consideration on October 16. It is of concern, that no sub-legislative act was adopted during 2012 to ensure the enforcement of Paragraph 3 of Article 19 of the RA Law "On Scientific and Technical Activities" and to resolve this problem, as well as the new draft law "On Scientific and Technical Activities" has not been even submitted to the National Assembly for debate. As a result, the provision of additional pay to the salary of persons having a number of scientific degrees remains unresolved.

## **RECOMMENDATIONS**

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- Promote a consistent policy of proper examination of the issues concerning this sphere and submitting solutions for them taking into consideration the information published in the press and the complaints-letters addressed to the Ministry, thus strengthening the communication between the Ministry and the civil society.
- Promote a consistent policy aimed at the registration of Textbooks Approval Procedure (followed by submitting them for necessary examination and use in general education and pre-school institutions) by RA Ministry of Justice and its introduction to the system.
- Develop and implement the most effective mechanisms to reduce the risks of corruption, as well as clear criteria for subjection to responsibility as enforcement measures.
- Take effective measures to ensure the implementation of inclusive education in all general education schools.
- To take measures in 2013 to resolve the issue of providing all general education schools of Yerevan and the regions of the Republic of Armenia with the heating system, to renovate the schools having poor conditions and to achieve the outcome envisaged by “Sustainable School Food” programme.
- Take measures for eliminating the problem of politicization of student representative bodies.
- Take measures for providing the right to free education in state higher education and other professional institutions on a competitive basis not only for socially vulnerable students and students from close-border and high-mountainous settlements, but also for all students, which is enshrined by the Constitution.
- Take necessary and effective measures to ensure the independence and autonomy of higher education institutions in accordance to RA Law on “Higher and Postgraduate Professional Education” Article 6, paragraph 1 provisions.
- Provide proper consistency to ensure the enforcement of Paragraph 3, Article 19 of the RA Law “On Scientific and Technical Activities”.

# STATE COMMITTEE OF THE REAL ESTATE CADASTRE ADJUNCT TO THE REPUBLIC OF ARMENIA GOVERNMENT

## SUMMARY

The main objectives of the State Committee of the Real Estate Cadastre adjunct to the Republic of Armenia Government the state recognition, guarantee and protection of rights to the property. Cadastre carries out state registration of rights, restrictions, usage of property (regardless of the property type) provides reliability, completeness, availability, modernity and publicity on the information on real estate rights and limitations, elaborates legislative and other legal acts drafts that are regulating the activities of the sphere, gives permission for the implementation of geodesic and cartographic activities and supervises over them.

In 2012 no vital and systemic shortcomings were recorded within the sphere of responsibility of the State Committee of the Real Estate Cadastre adjunct to the Republic of Armenia Government. Real Estate Cadastre demonstrated proper approach towards responding to Human Rights issues and improved its activity. Some revealed shortcomings and achievements registered in the field are presented below, though not exhaustive.

In 2012 State Committee of the Real Estate Cadastre installed the electronic registration of documents and applications of the state registration of rights and restrictions to property, which considerably improved the administration of real estate state registration.

The review of the complaints addressed to the RA Human Rights Defender reveal that due to the legislative gap in the RA Law “On State Registration of Rights to the Property” citizens face inappropriate difficulties when annulling the state registration of the right obtained on the basis of the contract. In particular, according to the 2b point of paragraph 3 of Article 35 the state registration of the right obtained on the basis of the contract can be annulled within the timeframe of contract operation based on the joint application of the contract parties. Nevertheless, in practice, there are lots of cases when the term of contract validity between the parties has already expired or the party has annulled the contract signed for an indefinite period informing on it the other party 3 months prior. In the mentioned case, according to the requirement of the above-mentioned Article, the state registration of the right reached on the basis of the contract is annulled based on the joint application of the parties. Meanwhile, according to the complaint-letters received, there were many cases when in case of the contract expiration or annulment of a contract signed for indefinite period, after properly informing the other party, the other party of the contract maliciously avoided submitting an application for annulment of the state registration or his/her location address is unknown. According to the clarification given by the State Committee of the Real Estate Cadastre, in such cases the problem can be solved through court. Thus, a situation is created when in accordance to the RA Civic Code in order to unilaterally annul the contract signed for an indefinite period of time a person is forced to apply to court for the annulment of the state registration right of the other party of the contract, which itself forms obstacles for the person. In order to settle the problem the Ombudsman applied to the State Committee of Estate Cadastre suggesting them to come up with legislative initiative which is currently in the stage of discussion. There were also complaints which referred to professionalism of some employees of the Cadastre. Thus, there was a case when in 1993a citizen was gratuitously allocated croft with the right to property

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in Ejmiacin. In 2012 according to the decision of the Mayor of Ejmiacin, the unauthorized detached house and the add-ons built on the land were recognized legal. However, when the citizen applied to the State Committee of Real Estate Cadastre to register the facilities, he was refused due to the reasoning that the land had been allocated to the citizen according to the decision of December 20, 1993, and as free land privatization process had been over at that time, currently it was necessary to submit the land purchase documents. Whereas, according to the RA Land Code of 29.01.1991 (invalid from 15.06.2001) and RA law on "Peasant and Peasant Collective Farms" of 20.02.1991 (invalid from 04.01.2007), in 1993 citizens were gratuitously allocated crofts (or ad-ones) as a property, except in cases prescribed by law. Accepting the Ombudsman's justifications the Cadastre carried out the state registration of the rights to property of the citizen's buildings located on his detached house. The cases of insufficient professionalism of the Cadastre employees are disturbing, as they damage public trust in Cadastre. It is also necessary to demonstrate proper consistency in regards to professionalism of the Cadastre employees, taking into account the fact that besides the above-stated case there were also complaints in the current year, when based on the information given by the State Committee of the Real Estate Cadastre, the RA Compulsory Enforcement Service of Judicial Acts put an arrest on real property belong to the respondent's children, which is forbidden by law.

## **RECOMMENDATIONS**

- To take measures towards making relevant amendments in Paragraph 3 of Article 35 of the RA law to provide the person's opportunity for annulment the state registration of the right reached on the basis of the contract in case of unilateral termination of the contract signed for an indefinite period.
- To take measures towards increasing some employees' professionalism of the State Committee of the Real Property Cadastre.

## APPENDIX 1

The number of people who applied to the Defender's Staff	7395
Written applications submitted to the Defender's Staff	2420
Oral consultations provided by the Defender's Staff	2375
Complaint-letters with positive solutions (by people)	557
Complaint-letters against the RA Courts	211

*By State Bodies dozens of cases taken for proceedings (total number 999)*

RA Police	184
RA Ministry of Labor and Social Affairs	181
RA Municipalities	173
RA Ministry of Justice	130
RA Ministry of Defense	103
RA Passport and Visa Department of the Police	58
RA Committee of Real Estate Cadastre	36
RA Ministry of Urban Development	16
Other bodies	118

*From 01.01.2012 to 31.12.2012 the quantitative image of written applications according to the administrative units*

Yerevan	1157
Lori	282
Shirak	272
Gegharquniq	175
Kotayq	117
Syuniq	85
Ararat	75
Tavush	73
Vayoc Dzor	51
Armavir	45
Aragacotn	37
Unaddressed	51
<i>Total</i>	<i>2420</i>

*From 01.01.2012 to 31.12.2012 statistics of complaints received from vulnerable groups*

People with disabilities	152
Prisoners	139
Elderly people	138

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Socially needy people	78
Children	45
Refugees	32
Military servicemen	27
Homeless people	23
Women	10
People subjected to repression	8
National minorities	5
Sexual minorities	2
Religious minorities	1
<i>Total</i>	<i>660</i>

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# **MINISTRY OF LABOR AND SOCIAL AFFAIRS OF THE REPUBLIC OF ARMENIA**

## **SUMMARY**

The RA Ministry of Labor and Social Affairs is responsible for the provision of social security and social assistance to persons with disabilities and the elderly, protection of employee labor rights, ensuring the realization of pension rights, elaboration and implementation of social security target projects and state policy for the spheres of public employment, and for the social security of family, women and children.

The problems and obtained acquisitions revealed in 2012, pertaining to the sphere of responsibilities of the RA Ministry of Labor and Social Issues (hereinafter the Ministry) are illustrated below, though not exhaustive.

## **CURRENT SHORTCOMINGS AND PROBLEMS OF THE SPHERE**

- A number of infringements occurred in the sphere of medical-social expertise in consequence of arbitrary evaluations made by the competent authorities.
- Even after the enactment of decision DCC number 1050 passed by the RA Constitutional Court the Ministry, the requirements related to receiving pensions with powers of attorney were not met for a certain period of time.
- Certain provisions of the RA Law “on State Pensions” were executed given own interpretation whereas neither the Constitution nor the legislation entitles to interpret the Law, especially to the detriment of the citizens.
- The issues concerning discovering beggar and vagrant children and providing them with shelter is still a pressing concern.
- No appropriate complex actions and programs which would lead to unloading the orphanages have been elaborated.
- It is essential to make certain legislative clarifications of regulations concerning the institute of guardianship and trusteeship, as well as the absence of guardians' and trustees' professional training and transparency of their activities.
- By adopting the Decree approving the 2012-2016 Strategic Plan for the Protection of the Rights of the Child in the Republic of Armenia, the RA Government repealed the 2004-2015 National Plan of the Republic of Armenia for Protection of the Rights of the Child. This implies a lack of consistency towards implementation of strategy programs for the rights of the child protection within the set period of time.
- No efficient actions were undertaken for establishment of trade unions.
- Certain cases when the employee was not given his/her copy of employment contract were stated.
- The issue related to employment of people with disabilities still remains unsettled.
- Complaints regarding cases where employers hire people without signing employment contracts, cases of employment without paid salaries, terminations from employment without

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reason, absence of final employment payments, and absence of pay for permitted leaves were logged.

- The list of a certain category of employees entitled to extended annual leave is not regulated. It does not include the employees of the RA NAS science sphere.
- Though the concept was designed, the issues on reimbursements paid for damages caused by professional diseases and employment accidents to employee's health and life and their regulations are still unsettled.
- In 2012, a number of complaints were received regarding the illegal termination of reimbursements paid to people for industrial injuries and the RA State Labor Inspectorate has not taken any measures to tackle this issue.

## **POSITIVE DEVELOPMENTS REGISTERED**

- In the framework of triple social cooperation, the Ministry actively collaborates with the Confederation of Trade Unions of Armenia.
- Three-level appeal system of resolutions passed by the MSEC was introduced.
- Monitoring and supervision were conducted to eliminate and/or prevent the stated violations in certain spheres of public social protection.
- Centralized database "Electronic Pension" was processed and launched.
- In order to exclude the discrimination towards the disabled, the RA draft law "On Rights and Social Integration of People with Disabilities" was designed and submitted to the RA Government.
- A project has been drafted with the intention to create a working group to tackle issues of vagrant and beggar children.
- In 2012, the first report on the UN Convention on the Rights of Persons with Disabilities (UNCRPD) was prepared in the Republic of Armenia.

## **GENERAL ANALYSIS**

Throughout 2012, the Defender received a number of complaints regarding the cases of arbitrary evaluation and corruption exercised by the competent authorities in the sphere of medical-social expertise. Infringements of a few million Armenian drams were exposed in the Department of Expertise of the Medical-Social Expertise Agency in the result inspections carried out by the Ministry. The mentioned violations are mainly the result of arbitrary evaluation. The reason we raised the issue of prevention of arbitrary evaluation is that the rights of numerous people are violated due to unjust decisions. In 2012, to clarify the acting criteria for determining the group of disability by the Ministry amendments and supplements were made to the corresponding RA Government Decree.

Particularly, it is intended to open provision of legal services, information and analysis, as well as expert departments in the Agency. Three-level appeal system was launched for the decision made in the result of medical social expertise. Welcoming similar actions performed by the Ministry at the same time we have to note that the problem is still pressing as the legal acts regulating the mentioned issues do not envisage criteria which can rule out arbitrary evaluative decisions.

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The legislative amendments to the pension sphere made in 2010 prescribe the order of pension payment only in case of possession of power of attorney notarized by the notary acting in the Republic of Armenia. The RA HRDI believes that the aforementioned requirement leads to restrictions of rights to social security, entitled by Article 37 of the RA Constitution, and it does not have objective and rational grounds. Moreover, the Ministry approved their created law enforcing practice according to which the powers of attorney notarized in the Member States of the International Treaties stipulating other procedures of document recognition, as ratified by the Republic of Armenia, do not serve as basis for pension payment in Armenia. In 2012, based on the Defender's appeal concerning the mentioned issue, the RA Constitutional Court in its decision DCC-1050 dated October 2, 2012 decided that such interpretation of the RA Law "On State Pension" does not comply with the Constitution requirements and clarified the order of receiving pension with the power of attorney according to which the citizen is entitled to get a power of attorney applying to the corresponding notary's office of his/her country of residence. In other words, the power of attorney rendered by the notary of the foreign country is valid for receiving pension and it is not a requirement for one to return to the Republic of Armenia at least once a year. Though the decision of the Constitutional Court came into force from the date of its announcement, the Ministry did not provide the enforcement of the order stipulated by the decision for nearly 2 months, thus again violating social rights of people. The Ministry made various comments upon its actions and/or inactions. However, in December, they informed us that the stated delays were conditioned by necessity of corresponding modifications made in the database. Thus, the database modifications took nearly 2 months.

Throughout 2012, the Defender received dozens of complaints related to the retroactive interpretation and enforcement of certain provisions of the RA Law "On State Pension" by the Ministry. The Defender filed a lawsuit to the Constitutional Court concerning the legitimacy of the enforcement of the mentioned provisions. The RA Constitutional Court, in its decision DCC-1061 concerning the following provisions of the RA Law "On State Pensions", namely Article 38 Clause 1, sub-clauses 1 and 2 the recalculation conditions of labor pension (recalculation with privileged conditions), Article 36, Clause 1, sub-clause 2 amounts of pension not provided by the fault of the unit assigning pensions shall be reimbursed for the entire past period when the person was entitled to a pension, Article 14, Clause 3, sub-clause 2 terms and conditions for granting of a partial pension (without counting towards the professional length of service the time period having worked simultaneously in more than one job) Article 29, Clause 2, sub-clause 6 the period of full-time study at educational institutions (other than general educational institutions), shall not exceed six years, defined that for lawful enforcement of the aforementioned norms and the issues related to protection of rights parties directly concerned with them shall be lodged to courts by persons, as the administrative body ex officio is not competent to interpret the norm of the law and form a legitimate law enforcement practice. Within this case, the Constitutional Court made special reference to the legal regulation stipulated by sub clause 2 of Clause 1 of Article 36 of the RA Law "On State Pension" and stated that within 6 months from adoption (19.03.12) of the aforementioned amendment it could not have been applied for those RA citizens who were temporary absent from the Republic of Armenia and were in consular registration in foreign country in compliance with the RA legislature.

The issue of vagrant and beggar children in Armenia is a topical matter which requires structural settlement. In 2012 the draft of the RA Government Decree "on Approving of the 2012-2016 Strategic Plan for the Protection of the Rights of the Child in the Republic of Armenia and repealing the RA

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Government Decree number 1745-N dated 18 December, 2003” and the schedule of actions for protection of the rights of the child were adopted. Whereas according to the plan passed by the RA Government Decree number 1745-N dated 18.12.2003 it was intended to establish 3 care centers for vagrant and beggar children until 2009, though later this issue on vagrant and beggar children lost its urgency as according to the statistics provided by the Police of the Republic of Armenia only 17 children were registered in 2012. The fact that the RA Government repealed the 2004-2015 National Plan of the Republic of Armenia for Protection of the Rights of the Child before its accomplishment and adopted another Decree approving the 2012-2016 Strategic Plan for the Protection of the Rights of the Child in the Republic of Armenia implies improper implementation of duties, inconsistency towards the fulfillment of program provisions within the set time period by the responsible state authorities of the field. Reasoning from above-mentioned and considering the issue of vagrant and beggar children urgent in Armenia we recommend the development of a distinct policy for improvement of socio-pedagogical, socio-psychological and other services necessary to provide to the children between 6 and 18 without parental care, begging, under the threat of deprivation of parental care, as well as children who found themselves in unfavorable and dangerous conditions for their growth and development.

The right of the child to an adequate standard of living and upbringing in the family is one of the most important guarantees of social development. Therefore, it is required to implement complex actions and programs leading to the unloading of the orphanages. In the framework of the effected reforms in the sphere of children’s rights protection, the RA Government declared the issue of unloading the orphanages in the Republic of Armenia as a priority issue in 2011. Welcoming the actions undertaken by the Ministry, we have to nonetheless state that even at this moment; an effective mechanism for unloading the orphanages has not been developed. The institute of foster families is widely popular in the international practice. Its purpose is giving the orphanage children to those families. Moreover, this solves the issues of orphanage children in foster families concerning the organization of their later life and welfare out of the orphanage facility. Whereas, for the lack of the factors encouraging the development of the institute of foster care in Armenia, the project for the development of this institute is implemented only with 20 families in total. The RA Government does not perform any significant and effective actions for promotion of the mentioned institute.

The current state of the guardianship and trusteeship institute in the Republic of Armenia is alarming. A number of complaints were received related to imperfect legal regulations of this institute's activities as well as the lack of professional training of guardians and trustees and transparency of their activities. Particularly, the guardianship and trusteeship body committees consist of 5-8 people who work on a voluntary basis. Thus, this is not their permanent job and they dedicate only 2 or 3 hours to efforts of tackling the issues of their community families and children who live under unfavorable conditions. The aforementioned circumstances cannot ensure the effective operation of the Committee. The Guardian Committee is obliged to protect the interests of children in court though the Committee members do not always possess the required legal skills and usually they provide only their physical presence during trial. With the exception of Civil and Family Codes of the Republic of Armenia, which enshrine the general and conceptual provisions regarding guardianship body and its activities, the requirements regulating the routine functions of the Committee and presented to its members are envisaged only in the Charter of this body. This Charter stands to be a deficient document to regulate such an important sphere. According to the law the mentioned committees and their members

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undertake all the duties and responsibilities; nevertheless, for the lack of appropriate resources, motivation and skills, the actions performed by them are not efficient. Similar work can be provided only by the specialized social services adjunct to the community. Considerable changes should be performed in this sphere to enhance the professional qualifications of the Committee and to increase the motivation towards the work they perform. It is also essential to make legal amendments to clarify the conditions presented to the Committee members and the functions performed by them.

In modern democratic societies, the role of trade unions is considered highly significant for safeguarding and protecting the labor rights of people. Though the acting legislation of the Republic of Armenia does not include provisions preventing the development of trade unions, the mentioned institute is not established in our society until now. Throughout 2012, the Ministry continued to collaborate with the Confederation of Trade Unions of Armenia and Republican Union of Employers of Armenia prolonging the term of the collaboration contract until 2015. However, only the workshops conducted on branch, regional and organization levels fail to ensure the development and activation of social cooperation. As an acting mechanism for the protection of employees' rights it does not promote the establishment of trade unions and their high role.

Article 85 of the RA Labor Code prescribes the procedure of conclusion of the employment contract. The study of application-complaints filed to the Defender revealed the issue that in the result of amendments made to the RA Labor Code the provision prescribing the responsibility where the employer allows the employee to start the work only after the employment contract is signed and the second copy of the contract is provided to the employee. The Defender suggested regulating this issue in a legal way so as to prevent the cases of arbitrary modifications of the concluded contract and/or other violations by the employer; however no steps have been undertaken until now.

The issue to ensure the provision of employment of persons with disabilities continues to remain unsettled. It is reasonable that the Constituent considers the support to public employment and social integration of persons with disabilities as positive duties of state. Similar provision exists also in the corresponding legislation of a number of democratic countries as well as in certain decisions of ECHR. The employment of persons with disabilities is one of the significant elements ensuring their social integration and self-dependency. Despite the fact that the RA acting legislation includes provisions ensuring guarantees for protection of right to employment of persons with disabilities, according to our resources, 65% of people with disabilities are under labor age and only around 21.4% or 22,700 people are considered employed, whereas only 9% is occupied with work activity. The mentioned information implies that the state has not taken the appropriate actions to improve and/or settle the issue of provision with employment of persons with disabilities.

In the current year, complaints related to cases when the employers hired employees without including employment contracts, did not pay wages, fired for no reason, without final payments, did not pay leave payment continued to be received. In response to our inquiry, the Ministry informed that 543 citizens applied to the Inspectorate with cases of violation of labor rights and administrative proceedings were appealed based on applications. In order to prevent and rule out the violations of requirements under the RA Labor Code revealed in the result of inspections, the employers were given binding recommendations and administrative penalties were imposed. Nevertheless, despite the actions taken, the noted structural issue has not been settled even to this moment in time. It is alarming that the violations of the labor legislation occurred in the field concern the persons with disabilities as well. The

Ministry's answer makes it obvious that it responded solely to private applications and did not conduct monitoring or inspection concerning the stated issue on its own initiative.

In application-complaints filed to the Defender an issue was raised that the list of certain category of employees who have the right to extended annual leave defined by the RA Government Decree number 1599 dated 11 August, 2005, does not include the employees of the science field of the RA National Academy of Science (hereinafter NAS), whereas the right of this leave is envisaged for persons teaching in educational institution implementing Secondary mainstream comprehensive, special and professional programs, as well as in institutions of higher learning. In response to our inquiry pertaining this matter the Ministry of Labor and Social Affairs informed that in the result of discussions held in the framework of the issue related to inclusion of the employees of the RA NAS science field into the mentioned list, in January 2011 the Ministry of Education and Science brought into legal force the draft of the RA Government Decree envisaging inclusion of the employees of the RA NAS science field into the list of employees who have the right to extended annual leave up to calendar 35 days. However, in 2011 the draft was removed from the discussion. According to the position announced by the Ministry, not granting of similar privileges is not a violation, as the conditions under Article 160 of the RA Labor Code stipulates the involvement of great nervous, emotional and intellectual strain and professional risk, whereas the above-mentioned article does not envisage the involvement of all conditions.

The issue concerning the reimbursement for damages incurred to health or life of employees as a result of industrial accidents and professional diseases continues to remain unsettled because of the absence of corresponding regulations in case of liquidation of the legal entity. For these cases, no organizations liable for reimbursement for damage or reimbursement system have been elaborated. The Ministry formerly informed that in cooperation with the Central Bank of Armenia they developed a concept of "Investment of Insurance System for Cases of Industrial Accidents and Professional Diseases in Armenia". In 2012, the Ministry informed that the supplemental version of the draft was discussed during the meeting of Standing Social Ministerial Committee which took place on September 27, 2012. As the result of the discussion, it was decided to discuss the draft in details once more and supplement it with the participation of concerned parties. However, that draft has not been adopted at this point and the issues related to the reimbursement for damages incurred to health or life of employees as a result of industrial accidents and professional diseases remain pressing. It is also unknown if the adoption of the concept may solve the issues of people who have not received reimbursement for the damages caused to their health before the adoption of the corresponding law. The fact that the concept, elaborated in 2011, was not adopted throughout 2012 on the excuse of supplementations is highly alarming.

The applications addressed to the Defender revealed that after the industrial accident, reimbursement for damage had been assigned to the employee, however, it was terminated by the employer reasoning that the citizen is empowered to receive an old age pension. Whereas Article 1078 of the RA Civil Code regulating the above stated issue does not envisage grounds for such termination. However, cases were registered when the RA State Labor Inspectorate administration referred to the civil case decision number 3-2004 dated 14.10.2005 made by the Court of Cassation and the verdict number 06-206 dated 13.01.2006 made by the RA Civil Court of Appeal, according to which the RA Cassation and RA Civil Court of Appeal declared the following position towards Part 1, Article 1078 of the RA Civil Code, that the reasons for reimbursement for damages to health are removed on the basis that the citizen

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reached the age entitling him/her to an old age pension. We find that the mentioned decision was applicable only in the scope of that certain case and cannot be exercised as a precedential decision. Moreover, the Court of Cassation in its decision from 27.12.2011 declared that the aggrieved shall not be deprived from the right to receiving the lost wages (income) and reimbursement for other damages in case of wages (or income) awarded for the employment after the causing of harm to their health.

## **RECOMMENDATIONS**

- Undertake measures for elimination of arbitrary evaluation by the competent authorities in the sphere of operation of medical-social expertise, maximum clarification of criteria for determination of disability group, provision of transparency of MSEC activity,
- Quickly respond to the RA Constitutional Court decisions which came into force and ensure enforcement of the positions and/or interpretations defined by the decision of the court in practice.
- Avoid the interpretation of norms of legal acts and establishment of law enforcement practice taking into account that it is within the exclusive competency of Judicial Power.
- Ensure consistency of implementation of strategy plans for children's protection within appropriate and prescribed period of time, as well as follow-up the solution of the issue concerning beggar and vagrant children.
- Involving the international practice to make the corresponding reallocations in the state budget and add the number of foster families in order to maintain the unloading of orphanages.
- Take the necessary actions to increase the efficiency of guardianship and trusteeship bodies activity and transparency.
- Undertake structural measures to foster the establishment of trade unions.
- Be consistent towards clarifications in Article 85 of the RA Labor Code targeted to rule out arbitrary modifications and/or other violations by the employer to the concluded contract.
- Undertake measurements to solve and/or improve the issues related to employment of persons with disabilities.
- On their own initiative to conduct monitoring and supervision targeted to increase the control over realization of requirements by employees under the labor legislation, as well as by means of exercising the equivalent requirements to prevent and/or rule out the cases of illegal employment, not payment of wages or for overtime work.
- As an authorized body of the sphere to take actions to include the employees of the RA NAS science sphere into the list of certain category of employees who have the right to extended annual leave defined by the Government Decree number 1599 dated 11 August, 2005.
- Take urgent measures for developing a law initiative for effective management of the issues related to reimbursement for damages incurred to health or life of employees as a result of industrial accidents and professional diseases in case of liquidation of the responsible organization.
- Undertake measurements for ruling out the cases of illegal termination of reimbursement for industrial injuries of employees.

- Conduct regular monitoring targeted to appropriate implementation of awarding pensions and allowances, organization of citizens' medical-social expertise in compliance with the requirements stipulated by the law in order to avoid the violations which occurred in 2012.

# MINISTRY OF HEALTHCARE OF THE REPUBLIC OF ARMENIA

## SUMMARY

The goals and objectives of the RA Ministry of Healthcare are public and every person's health protection, improvement, disease prevention, elaboration and introduction of programs to reduce the disability and fatality rate, safeguard the sanitary-epidemiological security of population, health protection of employees, provision of safe, quality and effective medicine produced or imported into the country, and etc.

The problems and obtained acquisitions revealed in 2012 in the sphere of responsibilities of the RA Ministry of Healthcare (hereinafter the Ministry) are illustrated below, though not exhaustive.

## CURRENT PROBLEMS AND SHORTCOMINGS OF THE SPHERE

- A number of unsettled issues exist related to low efficiency of monitoring and supervision of the procedure of co-payment reduction or its exemption which led to numerous cases of discrimination for which the authorities carried no responsibility.
- It is highly alarming that no quality control mechanisms for the medicine circulation and special authority regulating the issue have been introduced thus endangering many people's health.
- Numerous cases of medical unlawful activities were revealed. They were poorly determined because of the absence of code of medical ethics.
- The legal regulation of the term "medical error" continuous to remain unsolved hence a range of undesirable consequences were stated because of doctor negligence or erroneous medical intervention.
- It is alarming that the draft law "on Encouragement of Breastfeeding of Infants under Six Months of Age and Circulation of Artificial Milk Products" regulating the breastfeeding of infants under six months of age has not been adopted till today.
- No appropriate actions were undertaken to ensure the obligation of providing the people in vulnerable groups with free medication in compliance with the RA Law "On Social Protection of the Disabled People".
- The issue concerning the provision of medical services by means of innovative and expensive technologies for children between 0 and 7 prescribed by the state healthcare targeted programs has not been solved yet.
- The level of appropriate assistance to the application-complaints through "Hotline" service is low.

## POSITIVE DEVELOPMENTS REGISTERED

- Within the scope of combat against counterfeit drugs certain international treaties were signed, and training conferences were conducted.
- The quality and efficiency of the ambulance services have significantly increased.
- A range of medical interventions for children between 0 and 7 are performed free of charge.

*The annual report has been prepared based on the information obtained from the complaints addressed to the RA Human Rights Defender, analysis of the legislation, on the credible and unjudged publications, the reports of international and legal organizations, as well as from interviews with experts of the sphere and human rights defenders.*

## GENERAL ANALYSIS

According to our resources the corresponding Committee on co-payment reduction or its exemption recorded a number of not uniformed treatment cases when the authorities were not brought to responsibility. Thus the procedure of co-payment reduction or its exemption according to Appendix to the RA Government Decree number 318-N dated 04.03.2004 is executed on the basis of decision of the Committee created by the medical institution. The written protocol of the number of cases and the amount of money is sent to the Ministry. In response to the question we raised the Ministry informed that a number of supervisions were conducted in the corresponding organizations and no substantial deviations regarding the issue were revealed. Nevertheless, such deviation is considered to be a serious violation that requires immediate punishment of the perpetrator.

The provision of appropriate quality supervision of the medication circulating in the Republic and realization of the procedure prescribed by the RA Law “On Medicine” is still challenging. This issue is mainly visible through the circulation of expired medicine. Regarding the issue the Ministry informed that the quality supervision of the circulation of medicine in the Republic is occasionally conducted by the Committee created according to the Minister’s order, which is committed to expose the existing violations through market research. However, only occasional implementation of supervision of such an essential sphere is highly alarming. The lack of constant supervision leads to the existence of numerous violations in the sphere. Both the signed international treaties and conducted training conferences in 2012 by the Ministry in the framework of fight against counterfeit drugs are welcomed. However, the urgency of the issue suggests organization of Standing authority which will render an opportunity to perform regular quality supervision of the circulating medicine thus raising and preventing the current issues of the sphere.

The sphere of the healthcare of the Republic of Armenia does not stipulate code of medical ethics. The absence of such code in practice often has a negative effect on the establishment of adequate person-patient relationship providing medical aid and service and does not contribute to the creation of atmosphere of trust and respect. Moreover, in 2012 according to the information provided by the Ministry 173 complaints were lodged by the citizens regarding bad treatment performed by the doctors. However the absence of code of ethics in practice makes the respond to such complaints inextricable considering the impossibility of determination of the offence. We find that alongside with the other rules the exemplary code of medical ethics should include the requirement of medical confidentiality protection. The fact, that in 2012 the draft of the RA Government Decree “On Approving the Exemplary Code of Medical Ethics and the Exemplary Procedure and Functions of the Committees of Medical Ethics” was prepared by the Ministry, is welcomed. However it is highly alarming that the Decree has not been adopted by the Government and brought into force up to now.

In 2012 the Defender received a range of complaints pertaining erroneous medical intervention caused by doctor’s negligence or medical error which led to undesirable consequences. The Ministry asserts that such cases were not detected and as a precaution brings the ministerial order number 2283-A “On Approving the Temporary Procedure of Conduct and Admission of Children under 18 to Surgery Division, Exemplary Forms of Agreement or Rejection Sheets of Surgical Intervention”. The introduction of the term “medical error” to this field is essential and considering the international practice it is important to take actions towards its legal envision as its absence serves an obstacle for precise definition of the offence and imposing the corresponding sanctions on the person who

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committed the offence. Hence the Ministry should study the definitions of the term existing in the international practice and put into the RA legal system.

The international practice shows that providing of breastfeeding to infants under 6 months of age can contribute to not only reducing overall child mortality rate but also minimizes the probability of causes of respiratory infections and a range of other diseases. The World Health Organization (WHO) and the UN Children's Fund (UNICEF) determines 3 rules of infant and young child feeding: to breastfeed exclusively for the first six months and continue to breastfeed until two years if child wants, and give complementary foods (meals, pap and etc) to child from 6 months. Despite the availability of the draft law "On Encouragement of Breastfeeding of Infants under Six Months of Age and Circulation of Artificial Milk Products" it has not been adopted until now. Highlighting the urgency of the issue we find it essential to take instant measures towards adoption of the aforementioned law.

The Defender has received a range of application-complaints regarding the violated rights of persons with disabilities. According to Para 2, Article 2 of the RA Law "On Social Protection of the Disabled People" the disabled people of the Group I and Group II and the disabled children should be provided with the free medicines by the prescription, and the disabled people of the Group III - at 50% discount, if they don't use the right to receiving the medicines in the more privileged terms. Moreover, the RA Government Decree number 1717-N clarified the social groups of population entitled to receive free medicine and the diseases when the medicine is to be provided without charges. However, violations of the mentioned norms were stated which disclose the inconsistency of the Ministry in the mentioned field and absence of measures for prevention of corruption in many cases.

RA HRDI welcomes the policy adopted by the Ministry which provides a range of medical interventions, namely heart surgery, orthotics and prosthetics, lithotripsy for kidney stones, cochlear implant surgery, kidney transplantation for children between 0 and 7 on free basis. The latter are charged only the money for metal constructions used during the operation. Nevertheless, according to the information rendered by the Ministry the state targeted programs do not envisage provision of medical service with innovative and expensive technologies. In other words in case when health rehabilitation of children between 0 and 7 is possible only by means of such equipments the latter have to pay the fee despite the developed program. We find that this burning question should be settled in the shortest possible timeframes through rendering the adequate opportunities to children.

In the second half of 2012 the Ministry "Hot Line" service recorded 660 complaints regarding the limited number of state order, the treatment of patients, quality of medical aid and services, applicable procedure, prices for medical aid and services, money and other organizational questions. According to the information the Ministry rendered, only 10 of the complaints were reasonable. In the result certain healthcare workers received reprimand, stern reprimand and were even fired. It is alarming that such great number of application-complaints was received through "Hot Line" service and in the result of the studies only 10 out of the complaints appeared to be reasonable. It is implied from the above-stated that the Ministry fails to study the complaints or does not study them thoroughly which prevents the disclosure and elimination of the existing shortcomings.

## **RECOMMENDATIONS**

- Medical institutions should conduct monitoring aimed at uniformed treatment of appliers in case of co-payment reduction or its exemption and rule out any discrimination.
- Establish a committee which will constantly follow-up the turnover of counterfeit drugs imported or circulating in the Republic of Armenia and take measures to reveal them and impose the responsibility sanctions.
- Introduce exemplary code of ethics distinctly defining strict responsibility sanctions and follow-up the elimination of the atmosphere of impunity in the field.
- Take effective actions targeted at determination of the term “medical error” considering the criteria accepted in international practice of this field.
- Take urgent measures towards the adoption of the draft law “On Encouragement of Breastfeeding of Infants under Six Months of Age and Circulation of Artificial Milk Products” regulating the breastfeeding of infants under 6 months of age.
- Take appropriate actions aimed at unconditional realization of the provisions of the RA Law “On Social Protection of the Disabled People”.
- Elaborate a draft package targeted at supplements to the Child Health State Certificate Program as well as provision and implementation of any kind of consultation and medical intervention free of charge.
- Respond to the issues raised by “Hot Line” service callers by taking the adequate actions and thus eliminating the violations existing in the field.

# MINISTRY OF SPORT AND YOUTH AFFAIRS AND THE MINISTRY OF CULTURE OF THE REPUBLIC OF ARMENIA

## SUMMARY

According to the RA legislation the RA Ministry of Sport and Youth Affairs carries out the methodological management of sportsmen's physical trainings, develops the policy of the field of sports and youth affairs, conducts the campaign of the field of sports and youth affairs, etc.

The RA Ministry of Culture ensures the realization and protection of the rights of citizens to literary, artistic freedom and participation in cultural life and carrying cultural activities, as well as creation of conditions for the provision of free and accessible services and communication to cultural values.

Problems and achievements registered during the year of 2012 in the field of the responsibilities of the RA Ministry of Sport and Youth Affairs and the RA Ministry of Culture (hereinafter referred to as the Ministry) are presented below, though not exhaustive.

## CURRENT PROBLEMS AND SHORTCOMINGS OF THE AREA

### *Ministry of Culture*

- The Ministry conducted monitoring of the technical conditions of only the most endangered monuments, but the experience shows that other monuments are also in need of supervision.
- The problem of insufficient technical equipment of theatres remains unsolved.
- No sufficient measures were taken for the ensurance of equal development of the cultural life in all the regions of Armenia.
- The issue of making more accesible the buildings of cultural institutions for the people with disabilities is very concerning.
- No efficient measures were undertaken for the ensurance of the right of people with disabilities to participation in the cultural life of the RA.

### *Ministry of Sport and Youth Affairs*

- During the year of 2012, the Ministry performed only three events and not in all the regions of Armenia. The problem of employment and creation of workplaces for the youth remains practically unsettled.
- The socio-economic conditions of young families and the youth in the regions of Armenia are very alarming.
- In certain cases the citizens raised the problem of speculations and the transparency of the process of the state program "Affordable Housing for Young Families".
- The problem of construction of yard areas, playgrounds, football fields in the regions of Armenia is still actual.
- There is a lack of financial support to facilitate the sport life of the people with disabilities, as well as providing the latter with the opportunity to involvement in the sport life and participation of the sportsmen in Paralympics games.

The annual report has been prepared based on the information obtained from the complaints addressed to the RA Human Rights Defender, analysis of the legislation, on the credible and unjudged publications, the reports of international and legal organizations, as well as from interviews with experts of the sphere and human rights defenders.

## POSITIVE DEVELOPMENTS REGISTERED

- During 2012, 50 grants were provided through the online grant system operating in the framework of the state youth policy of the Ministry.
- With the view of renovation and restoration of the churches and other historic centers a series of measures were undertaken by the Ministry during 2012, particularly, conduction of monitoring of technical conditions of the monuments, restoration and renovation of the latter.
- With the view of cultural exposure, recognition, development, preservation, cultural cooperation of national minorities certain events were organized by the Ministry, particularly, art festivals, competition-exhibitions; the libraries were supplemented with the literature in the native languages of the national minorities.
- Distribution of the literature in 86900 examples to the libraries of the RA community and regional military units and Armenian foreign companies was carried out by the state support; and the National Library of Armenia was supplemented with the Armenian literature in 2353 examples delivered from abroad.

## GENERAL ANALYSIS

### *The Ministry of Culture*

During 2012 there were cases of non proper maintenance of historical and cultural monuments concerning mainly to rehabilitation activities carried out without the approval of the Ministry, land allocations from safety zone areas of monuments and illegal constructions carried out in these areas causing damages for the monuments.

Despite the fact that as a result of measures taken by the specialists of the Ministry the illegal activities were terminated, nevertheless, along with reacting to the illegal activities the Ministry should be also consistent to the maintenance of historical and cultural monuments by conducting monitoring of the technical conditions of not only the most endangered monuments but of all the monuments. It is very concerning that during 2012 in the framework of the state funded project "Preservation and Restoration of Monuments and Cultural Values" monitoring of technical conditions of 25 most endangered monuments was conducted, as a result of which rehabilitation activities were carried out only for the 17 monuments and over the other 8 monuments only examination was carried out.

The problem of non sufficient technical equipment of the State Pantomime Theatre, mainly the lack of its own territory remains unsolved. The Ministry had elaborated a draft law of the RA "On Theater and Theater Activities" where the key principles of state policy for the support to the theatric area were prescribed, but the project has not been accepted by the National Assembly so far. Despite the fact that joint operations are being carried out together with the Yerevan Municipality for the solution of the problem of allocation of a separate territory for the State Pantomime Theatre and there is a preliminary agreement of land allocation for the theatre in 2013, however the theatre still operates in the building of Yerevan Theatre of the Young Spectator. Meanwhile, for the solution of the problem only the willingness of the Ministry is not sufficient- effective means should be undertaken in practice.

It is noteworthy, that during 2012 the Ministry carried out several events for the development of cultural life in the regions of Armenia, particularly in Lori, Vayots Dzor, Shirak and Kotayk marzes. But it should be noted that sufficient measures were not taken by the Ministry for overcoming

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disproportionate allocation of cultural organizations in all the regions of Armenia, as well as towards provision of necessary material equipment and their renovation of the cultural organizations allocated in the regions.

It is concerning that all the cultural institutions are very old and are not adapted for the access of people with disabilities impeding their possibility to participate in the cultural life. As the Ministry states, the problem is being solved only in case the institutions are remodeled. Meanwhile, taking into account that not all the cultural institutions are under reconstruction but at the same time they are not providing platforms or other appropriate facilities we believe that it is necessary that the problem is solved regardless the fact whether the building is subjected to reconstruction or not. It is noteworthy, that the Ministry took certain measures for the insurance of such facilities in the cultural institutions, but it is necessary to provide all the buildings with temporary platforms or other appropriate facilities to ensure the right of people with disabilities to participation in the cultural life.

In the year of 2012 with the support of the Ministry people with disabilities partook in several events, particularly, in the "White Cane" 3rd International Charity Festival in Moscow, "Change the World for the Best" international children's 11-th festival in Crimea, Deaf 6th International Festival in Crimea and Kharkov, etc. But all those events took place abroad, and taking into consideration that the Ministry is not able to ensure the participation of a big number of disabled people in the events, such events should be organized in Yerevan, as well as in the regions of Armenia ensuring the participation of a big number of disabled people in the cultural life.

### ***Ministry of Sport and Youth Affairs***

The Ministry reported that the main priorities of the strategy 2008-2012 of the RA State youth policy was the creation of workplaces for the youth, but the Ministry took insufficient measures, and the problem of creation of workplaces for the youth remains practically unsolved. During the year of 2012 the Ministry carried out only three events for achieving positive results for the solution of the problem. One of the events was organized in Yerevan together with the Yerevan State University in the framework of the project "Establishment of modern university- labor market relations and enhanced cooperation" seminar-discussions in Yerevan. The other two were carried out in the framework of the project "Labor market" in Lori and Tavush regions. Meanwhile, such events should be carried out in all the regions of Armenia. It is also incomprehensible why such events are organized only in collaboration with the Yerevan State University and not with the other universities. Such events should also be continuous taking into account the importance of the above stated issue.

The socio-economic conditions of the youth and young families in the regions of Armenia are very concerning. There were no comprehensive measures undertaken for the improvement of the situation, particularly sufficient number of entertainment events were not organized for the youth in the regions. Disproportionate approach was demonstrated for the involvement of the youth of the regions and Yerevan in the events organized by the Ministry. The Ministry did not sufficiently expand its cooperation with various youth NGOs.

According to the decision N98 29.01.2010 of the RA Government the state target program "Affordable Housing for Young Families" was approved. As of December 31, 2012, 1011 credits were refinanced with the total contract amount of 7,598.7 milliard AMD, 507 of which with the sum of 4,606.8 milliard AMD was granted to Yerevan, and 504 credits with the sum of 2,991.9 milliard AMD was granted to the regions of Armenia. During the year of 2010, 187 credits were refinanced with the total contract

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amount of 1,541 milliard AMD, during 2011 – 469 credits with the amount of 3,435 milliard AMD and in 2012 – 355 credits with the amount of 2,622.7 milliard AMD. However, within the framework of implementation of the state program in certain cases the citizens raised the problem of transparency and abuse of the process of the Program.

The problem of construction of yard areas, playgrounds, football fields remains concerning. Although the problem is almost solved in Yerevan, however, it is still actual in the regions of Armenia. Hence, the Ministry, as a responsible body, in collaboration with the local self-government bodies should develop a policy for the solution of the problem, which will be an essential stimulus for the sports development in the country.

In 1994 the Paralympics Committee was founded in the Republic of Armenia, and so far it has participated in 8 Paralympics games. This competition held for the people with disabilities in Armenia is developed, and the sportsmen achieved a great success in the field. However, there is a lack of sufficient financial means to set off the sport life of people with disabilities, involve the latter in the sport life and create for them an opportunity to partake in the Paralympics games. The sport buildings are not adapted for the people with disabilities. It is noteworthy, that during 2012 9.000.000 AMD was granted to 4 NGOs operating in the framework of the state funded Project “Services Related to Sports for People with Disabilities” with the view of carrying out sport activities. Nevertheless, the state did not sufficiently ensure the development of the sports for disabled people and the involvement of the latter in the field of sports.

As a result of examination of complaints received and the interviews held by the staff of the Ombudsman with the human rights defenders of the field a problem was raised that the Ministry didn't take sufficient measures to ensure the public awareness on the projects elaborated and events carried out. This situation does not promote to the increase of the public confidence towards the Ministry.

## **RECOMMENDATIONS**

### ***Ministry of Culture***

- Take measures for conducting efficient supervision with the view of proper maintenance of historic and cultural monuments by conducting monitoring of the technical conditions of not only the most endangered monuments, but all other monuments as well.
- Take more effective measures in practice with the view of solving the problem of non sufficient technical equipment in the theatres and the problem of the building for the State Pantomime Theatre.
- Take measures to ensure the implementation of events for the development of the cultural life equally in all the regions of Armenia.
- Take measures for the adaptation of the buildings of cultural institutions for the access of people with disabilities regardless of the fact whether the buildings are subjected to reconstruction or not.
- Organize cultural events for the people with disabilities in Yerevan and regions with the view of involving the latter in the cultural life of the country.

### ***Ministry of Sport and Youth Affairs***

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- Establish comprehensible programs for the solution of the problem of employment of the youth and implement various events in all the regions of Armenia ensuring their continuousness.
- Establish uniform requirements and conditions with the view of providing housing for the young families within the framework of appropriate programs, ensure the oversight of the process and its transparency.
- With the view of promoting to the development of sports, in collaboration with the local self-government bodies, elaborate a policy for the improvement and construction of football fields and playgrounds in the regions of Armenia.
- Take measures for the development of sports for people with disabilities by increasing the funding and carrying necessary events, as well as expand the cooperation with appropriate organizations.
- Ensure the public awareness on the activities carried out by the Ministry, particularly on strategic priorities of the Ministry.

# **MINISTRY OF URBAN DEVELOPMENT OF THE REPUBLIC OF ARMENIA**

## **SUMMARY**

The Ministry of Urban Development of the Republic of Armenia is responsible for the formation of a favorable environment for life and for the consistent improvement of the quality of life of citizens through urban development means. The Ministry also ensures State control over the safety of people and the environment during construction and exploitation of facilities and fulfillment of legislative requirements by entities carrying out urban development activities, etc.

Problems and achievements registered during the year of 2012 in the field of the Ministry of Urban Development of RA (hereinafter referred to as the Ministry) are presented below, but not exhaustive.

## **CURRENT PROBLEMS AND SHORTCOMINGS OF THE AREA**

- Many complaints were received in regards to the organization of the process of providing apartments in disaster zone areas for homeless citizens.
- Various violations were registered in the field, mainly cases of unauthorized construction evidencing about the improper supervision and insufficient measures carried out by the Ministry.
- The problem of adaptation of premises for people with disabilities is practically neglected.
- Certain provisions of several legal acts regulating the sphere were interpreted to the detriment of legitimate interests of individuals.

## **POSITIVE DEVELOPMENTS REGISTERED**

- With the view of identifying the compliance of documents relating to the construction works and inventory of half-built buildings with legislative requirements a working group was set up according to the Order N240, 29.10.2012 of the Ministry, which carried out supervision over the construction of buildings.
- The draft law of RA “On Supervision and Control Over the Urban Development” is scheduled to put into circulation again.
- It is noteworthy, that the Ministry accepted the Defender’s suggestion, as a result of which drafts are being elaborated including the order N1923-Ն, 21.12.2006 of the RA Government and the order N108-Վ, 26.05.1998 of the RA Minister of Urban Development and the head of the department of the RA State Real Estate Cadastre to withdraw the word “aperture” used in the mentioned instruments, which will eliminate the various remarks on the issue.

## **GENERAL ANALYSIS**

As the Ministry reports, during the year of 2012 in the framework of the Project “Provision of Housing for Homeless People in Disaster Zone Areas”, as a result of examination of the documents of 2500 homeless families in Shirak, Lori and Aragatsotn regions, 1902 families out of 2222 project beneficiaries were provided with apartments. At the same time, as a result of completion of

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construction works of 608 apartments launching and 743 apartments currently under construction, the housing problem of 1351 families will be solved during 2013. Nevertheless, during 2012, 800 complaints were submitted by citizens in regards to the organization of the process of the project of providing apartments in disaster zone areas for homeless citizens. This evidences about the lack of transparency in the organization of the work of the Ministry and non cooperation with the civil society representatives.

During 2012 inspections were carried out by the appropriate divisions of the RA Ministry of Urban Development. As a result of these inspections cases of legislative violations were revealed in regards to inspections and coordination processes of allotment applications submitted by communities, subjecting to responsibility the officials afforded violations, provision of construction permits, as well as projects coordination processes. As the Marz Administrations of the Republic of Armenia state, only 82 cases of unauthorized construction were revealed in the whole territory of the country, which itself testifies about non efficient measures undertaken. Nevertheless, the revealed violations are only a part of abuses and shortcomings existing in the sphere. By necessity, inspections were conducted only in Hrazdan, Tsakhadzor, Abovyan, Eghvard and Kasakh communities of Kotayk marz, Eghegnadzor and Jermuk communities of Vayotz Dzor marz, Kapan and Goris communities of Syunik marz, Gavar and Sevan communities of Gegharkunik marz and Ijevan community of Tavush marz. No inspections were conducted in other communities, and it is very concerning that the Ministry failed to take specific measures to further prevent the revealed problems. Taking into account that the above stated issues directly relate to the Ministry as a regulating body, we believe that the Ministry should carry out proper supervision and specific measures to reveal various violations.

The Ministry reported, that its urban public inspectorate, in the framework of inspections carried out in urban development departments of Marz Administrations, as a result of inspections conducted by necessity in different communities of the country, recorded many cases when the heads of communities had approved projects not providing the norms of accessible urban environment for people with disabilities. Despite the fact, that administrative sanctions towards the offenders of law were applied according to the RA Code of Administrative Offences, however, the issue of non adaptation of constructed and reconstructed facilities for people with disabilities remains unresolved. Although the procedures of providing architectural assignment approved by the decision N1473-Ն, 29.08.2002 of the RA Government is considered an acting legal act aimed at ensuring accessible urban environment for people with disabilities, however, the Ministry reported that it did not have numerical data of facilities adapted for people with disabilities giving reason to believe that the Ministry had shown no consistency in proper execution of the order approved by the above mentioned decision.

Based on complaints submitted to the Defender, it was disclosed that there was a serious problem in legal certainty and different interpretations while using the words “basement” and “aperture” in practice. Thereby, according to Article 6 of the RA Law “On Apartment Building Management” and part 1 of the Article 224 of the RA Civil Code, structure owners of apartment buildings may hold with the right of common shared ownership the load-bearing structures, inter-floor coverings (ceilings and floors), basements of the building, the attic, technical floors, the roof, the land under the building, as well as entrances, stairs, staircases, elevators, elevator and other wells and ducts, mechanical, electrical, technical and sanitary devices and spaces serving more than one structure and designed for the unified and full service of the apartment building that are not deemed to be the property of other persons due to the procedure stipulated by the law. The RA Government, based on provisions defined by Articles 48

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and 49 of the RA Law “On Local Self- Government”, on 21.12.2006 adopted a decision N1923-Ն “About Defining the Identity of Non-residential Areas Located in Multi-residential Buildings”, which sub-point “a” of point 4 defines, that relevant communities due to their right to property are also gratuitously granted with the non-residential areas not mentioned in points 1 and 2 of the decision except the areas which are occupied by state government bodies or state non-profit organizations and their territorial subdivisions (including libraries, laboratories, notary offices, museums, communication offices, clubs, etc.) and civil registration departments. By studying the decision N1923-Ն and Article 6 of the RA Law “On Apartment Building Management” the RA HRDI raised the issue of compatibility of the mentioned legal acts, as well as the issue of various interpretations of problematic concepts and their compliance with principles of legal certainty. There were cases when the area (aperture) was located in the basement of a residential building, and in certain cases the non-residential area of the building was named a basement and in other cases – aperture. Taking into account the importance of the issue the Defender submitted a proposal to the RA Government to clarify the word “aperture” to avoid various interpretations. It is noteworthy, that the Ministry approved our proposal and drafts are being elaborated including the order N1923-Ն, 21.12.2006 of the RA Government and the order N108-Մ, 26.05.1998 of the RA Minister of Urban Development and the head of the department of the RA State Real Estate Cadastre to withdraw the word “aperture” used in the mentioned instruments. The issue of the adoption of the RA Law “On Supervision of Urban Development” and the Law “On Architecture” continuous to remain a problem. As the specialists of the sphere state regulations of certain relations in the urban development sphere are not possible due to delays of the adoption of the laws. By the adoption of the mentioned laws it will be possible to clarify and segregate the authorities of state bodies conducting supervision in the sphere of urban development and the local self-government bodies, as well as define the principles and procedures of the management of architectural activities and coordination of professional activities of architects. Meanwhile, as the Ministry states, the draft Law of the RA “On Supervision of Urban Development” will be put into circulation again, while the Law of the RA “On Architecture” was removed from the Ministry’s work plan according to the Order N134-U/3, 09.09.2011 of the RA Ministre of Urban Development due to the necessity of its complete revision. However, new public hearings haven’t been conducted on the new draft since 2011. Namely, steady activities were not carried out for the revision of the draft law foreseen by the above stated order.

## **RECOMMENDATIONS**

- Take efficient measures to strengthen the supervision over the proper organization of the process of providing apartments in disaster zone areas for homeless citizens.
- Strengthen the supervision for the compliance of urban planning documents with requirements of the legislation of the RA, as well as the performance of obligations of community heads preventing and eliminating consequences of unauthorized construction.
- Take efficient measures to ensure the accessibility of already constructed, newly built or reconstructed facilities for people with disabilities, as well as construction of pavements and streets ensuring accessibility for people in wheelchairs.

- Take measures to develop project drafts of setting amendments into the joint orders N1923-Ն, 21.12.2006 of the RA Government and the order N108-Վ, 26.05.1998 of the RA Minister of Urban Development and the head of the department of the RA State Real Estate Cadastre.
- Take measures for the adoption of the RA Law “On Supervision of Urban Development” and the Law “On Architecture”.

## **YEREVAN MUNICIPALITY**

*Problems and shortcomings concerning the activities of the Yerevan Municipality presented in the Defender Annual Report 2012 are also relevant to all other local self-government bodies.*

### **SUMMARY**

Local self-government bodies within their jurisdiction take measures to ensure the freedoms and protection of rights of citizens, carry out activities for creating conditions for people with disabilities in urban facilities of municipal/community significance, ensure the adaptation of public transport for people with disabilities, develop community projects for environmental protection, as well as carry out activities for suspension of unauthorized construction and elimination of unauthorized structures, etc. Problems and achievements registered during the year of 2012 in the field of the Yerevan Municipality (hereinafter referred to as the Municipality) are presented below, though not exhaustive.

### **CURRENT PROBLEMS AND SHORTCOMINGS OF THE AREA**

- In certain cases the Yerevan Municipality illegally forced citizens to pay money instead of providing the right to property free of charge in accordance with the law.
- In many cases, as a result of non-transparent administration of the Municipality, an unequal and discriminatory approach was displayed for mercenary reasons towards citizens wishing to install small kiosks.
- Issues related to unauthorized construction remain unsolved, which, among other consequences, impede the development of communities and are accompanied by manifestations of corruption.
- Though the Municipality carried out activities to increase the level of passenger traffic, however the existing problems are not completely settled.
- The issue of reduction of the number of children in several kindergartens was neglected.
- A consistent policy was not carried out for the development of effective mechanisms for the rapid reaction and elimination of cases of environmental pollution and deforestation.
- Appropriate measures were not taken by the Municipality for revealing social-utility issues and for their effective solution.
- The issue of adaptation of the public transport for people with disabilities remains unresolved.

### **POSITIVE DEVELOPMENTS REGISTERED**

- For the solution of the problem of adaptation of public transport for people with disabilities negotiations were held with a Chinese auto-factory, which proposed to fix elevators for the machines.
- The Municipality has adopted a policy according to which the operation of old minibuses of “Raf” and “Eraz” models was stopped.
- According to complied records, unauthorized constructions were demolished, the occupied community-owned lands were exempted from illegal possessors, and the premises gained their former appearance.

*The annual report has been prepared based on the information obtained from the complaints addressed to the RA Human Rights Defender, analysis of the legislation, on the credible and unjudged publications, the reports of international and legal organizations, as well as from interviews with experts of the sphere and human rights defenders.*

## GENERAL ANALYSIS

The Defender studied a number of complaints on illegal activities encountered in practice in regards to cadastral value of lands. Thereby, according to the complaint submitted to the Defender, the Municipality forced the citizen Vanik Araqelyan to pay the cadastral value of land with the sum of 2 000 000 AMD instead of providing the right to his property free of charge in accordance with the law. Meanwhile, according to point 2 of part 8 and point 2 of part 9 of the Article 64 of the RA Land Code, the land should be granted to the citizen free of charge according to the right to property. While the Municipality stance, that the issue is subject to regulation according to the decision N2093-Ն 24.11.2005 of the RA Government, is also illegal and does not correspond to the requirements of the RA legislation, as during the year of 2005 no amendments and additions were made to the Article 64 of the RA Land Code, while according to the decision N2093-Ն, 24.11.2005, the application of amendments and additions to the RA Land Code during 2005 was also ensured. Hereby, the citizen Vanik Araqelyan's right to property was violated because of the activities (inactivity) of Yerevan Municipality, on which the Defender had made a decision on the violation of human rights. Meanwhile, the Municipality has not given a legitimate solution to the problem so far. This issue was also raised in the course of interviews held by the Defender staff with the human rights defenders of the field during 2012.

As the Municipality reports, 7 applications were received for the installation of kiosks in the administrative districts of the city, 5 of which (related to press kiosks) received a positive solution. The key problem of the area is the manifestation of discriminatory attitude, as well as private, group or collective benefit. There are still complaints that the administration in connection with complaints on installation of kiosks is not transparent. For the prevention and/or elimination of such issues the municipality should undertake measures to reveal such cases and subject the offenders to responsibility or forward the revealed cases to the authorized state bodies.

The problem of unauthorized construction despite the fact that it is the most painful problem of the society remains still unresolved. There were many cases of unauthorized construction during 2012. Up to 361 records were compiled by the Municipality in regards to dismantling of unauthorized structures, illegal ownership of lands of the municipal property and bringing the premises to their former appearance. Despite the undertaken measures unauthorized construction is not still prevented which evidences about the inefficiency of the measures undertaken. Therefore the Municipality should undertake comprehensive preventive measures by coming up with proposals of prescribing more severe administrative responsibilities for the offenders of law. Legal stability as a regulatory means may be maintained only through a highly consistent policy. In addition to the above mentioned there are also corruption cases in the area: based on the complaints submitted to the Defender. In particular, in certain cases some Municipal officials being aware of unauthorized constructions did not undertake any preventive measures based on mercenary considerations. Such cases and the lack of efficient preventive measures are inadmissible.

It is noteworthy, that the Municipality takes certain measures to increase the quality of transportation service, as a result of which minibuses (reduced to 1000 units) are changing to buses. However, during 2012 such amendments were carried out only in 8 routes, which can not be considered sufficient for the solution of the problem, and the quality of public transport services remains insufficient. Besides, due to the policy adopted by the Municipality the operation of old minibuses of "Raf" and "Eraz" models

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should have been stopped. Nevertheless, there are still such old minibuses carrying out transportation services, which evidences about the lack of consistency of the Municipality towards the adopted policy. During the year of 2012 there were complaints received in regards to the exceeding number of children in the kindergartens operating under the jurisdiction of the Municipality. According to the word N 29-Ն, 26.01.2007 of the RA Ministry of Education and Science about the norms and density of the RA State and community pre-school educational institutions, the number of children in pre-school institutions (kindergartens providing pre-school educational programs and child care) can not exceed 30. In response to our inquiry on the issue the Mayor stated that the problem is in the agenda and the issue of the reduction of the number of children in groups is under consideration. However, the issue, being in the agenda of the Municipality, has not obtained a solution in practice.

During the year of 2012, 10 cases of illegal tree cutting were registered, as a result of which 6 trees were destroyed. Such cases are very worrying, as the environmental protection is the integral part of public policy which derives directly from the RA Constitution. According to the Municipality, in all cases notes were sent to the authorized bodies of the area – the Ministry of Nature Protection and local police departments, to take appropriate measures. However, according to the provided information, the offenders mainly were not revealed, and only in 2 cases administrative responsibility was applied. The fact that the Municipality did not provide enough consistency towards the solution of problems raised and forwarded to authorized bodies raises concerns. All this testifies about the lack of effective mechanisms for elimination and prevention of the above stated problems.

The Hot Line service operating in the Municipality and Yerevan administrative regions has received 2160 alarm calls during 2012. The majority of complaints was utility-living related issues under the jurisdiction of the Municipality. The rest of the complaints related to problems in regards to transportation means, unauthorized construction, to the field of education and healthcare, aid provision, sanitization, renovation of elevators, snow cleanup works, streets enlightenment, applications decline and other issues. The above stated complaints state about the improper management of responsibilities vested by the Municipality. There were also complaints received in regards to icicles hanging from roofs of buildings. This issue caused serious concerns as it might cause damage to the health of citizens, even result in death.

The adaptation of the public transport for people with disabilities is one of the main unresolved problems in 2012. It is noteworthy, that during 2012 the Municipality launched cooperation with the Chinese factory “HIGER-BUS”, which offered elevators fix ups for the automobiles of that model in order to make the public transport means available for people with disabilities. However, taking into account the fact that buses are still in warranty and that is the reason that the China's government has not given permission to the factory for the installment of fixtures in the buses, the RA HRDI considers to persuade the Municipality to be consistent to the cooperation reached for applying it in practice after the warranty period in the year of 2013. As for the establishment of appropriate conditions ensuring the free movement of people with disabilities in public and residential buildings and in adjacent areas, the Municipality urged to foresee them, as an obligatory condition, for design solutions of architectural tasks composed for drafting project documents of such premises and facilities. However, the above mentioned issues require development of such programs, which will bring to immediate solutions, and it is not accidental that the legislator has prescribed in the RA law “On Local Self-Governance in Yerevan” as a statutory authority of Yerevan Municipality the implementation of programs for the

adaptation of the public transport and urban facilities for people disabilities. Nevertheless, results evolving from requirements set out in the Constitution are not obtained during the year of 2012.

## **RECOMMENDATIONS**

- Take measures to issue the land located on street 8/8 Ervand Khochar, Yerevan to citizen V.Arakelyan free of charge according to parts 8 and 9 of the Article 64 of the RA Land Code, and find legitimate solutions in other similar cases.
- In equal conditions provide a unified approach towards citizens applied for the installment of a kiosk, and do not demonstrate a discriminatory approach in any other cases.
- Conduct monitoring for the detection of unauthorized constructions and with the view of subjecting the offenders to responsibility.
- Pursue to the implementation of programs aimed at increasing the level of passenger traffic.
- Take measures to comply the number of children in several kindergartens under the supervision of Yerevan Municipality to the permissible limit.
- Demonstrate a consistent policy to subject the offenders of the provisions of the urban and administrative legislation to responsibility.
- The Municipality should provide adequate consistency to the results of the solution of problems revealed and forwarded to authorized bodies.
- Increase the quality of emergency response to issues raised by citizens applying to the Hot Line service of the Municipality and administrative regions.
- Take effective measures to make the public transport means and the residential buildings available for people with disabilities.

# **MINISTRY OF TERRITORIAL ADMINISTRATION OF THE REPUBLIC OF ARMENIA**

## **SUMMARY**

The Ministry of Territorial Administration of the Republic of Armenia ensures the implementation and protection of rights of people with disabilities, development of a policy regarding issues related to the field of migration and refugees, safe use of water infrastructure, management of territorial administration, relationship between state and local government bodies, etc.

Problems and achievements registered during the year of 2012 in the field of the Ministry of Territorial Administration of RA (hereinafter- the Ministry) are presented below, but not exhaustive.

## **CURRENT PROBLEMS AND SHORTCOMINGS OF THE SPHERE**

- The issue of subsidy funds financial equalization of communities remains unresolved.
- Appropriate public debates were not conducted before submitting to the RA Government the package of legislative amendments relating to water removal from lake Sevan.
- The issue of providing housing, as well as improvement of housing conditions for refugees still remains unresolved.
- Living conditions of refugees living in temporary shelters not being under subordination of "Dormitory" SNCO of the State Migration Service of the Ministry are unfavorable.
- Conventional terms of travel documents were not extended by the Passport and Visa Department of the RA Police for the refugees towards whom the process of suspension or revocation of the status had been launched, as well as personal data of refugees were not registered in Armenian and Russian languages in the conventional travel documents.

## **POSITIVE DEVELOPMENTS REGISTERED**

- Several refugee families were provided with housing in the framework of projects carried out by certain international organizations.
- There were several cases revealed in regards to abuse of authorities delegated by the State or community heads.
- The Ministry elaborated the RA draft Law "On Making Amendments and Changes in the RA Law on Financial Equalization".
- Program budgeting investment was carried out in communities, involvement of grant and loan programs was made in communities via cooperation with European Union countries, as well as international organizations and bank facilities within the framework of the European Neighborhood Policy.
- During 2012, reduction of income difference between Yerevan and the regions and population outflow was registered, as well as increase of desire to live and work in the motherland.

## GENERAL ANALYSIS

The issue of subsidy funds financial equalization of communities remains unresolved, according to which, as the Ministry revealed, there are 33 communities with the population of more than 300 as of 01.01.2011 receiving subsidy less than the sum (3,500 million AMD) prescribed for communities with the population of no more than 300. The Ministry elaborated the RA draft Law “On Making Amendments and Changes in the RA Law on Financial Equalization” according to the Decision N77-N, 12.01.2012 of the RA Government about the establishment of priority issues and the RA Government action plan 2012. According to the draft communities with the population of less than 300, as well as communities with the population of more than 300 should equally receive a fixed amount of subsidy. It is noteworthy, that the draft law was submitted for the RA Government review; however it is not apparent on which basis the draft has not been approved so far and not forwarded to the RA National Assembly.

Appropriate public debates were not conducted before submitting to the RA Government the package of legislative amendments relating to water removal from lake Sevan. The Ombudsman held a professional debate on the issue with the participation of relevant state bodies and several NGOs operating in the field of environmental protection. As a result of the debate it was revealed that no public hearings were conducted in the process of adoption of the mentioned legislative amendments, hence the NGOs and other interested representatives of the society did not have an opportunity to express their own point of view before the adoption of the draft law and expect its inclusion in the draft law. The assurance of public involvement in the decision making processes on environmental issues, as a state obligation, is envisaged by the Aarhus Convention 1998 ratified by the Republic of Armenia, according to which each party should ensure public involvement in the early stage, when the observation of all the options is open, and public involvement may be effective. Disregard of procedural rules set during the decision making process in regards to the environmental issues is unacceptable, as a result of which the principles of access to information on the environment, the transparency of the decision-making process, as well as assurance of public involvement are violated.

In regards to housing conditions of the most vulnerable refugees deported from Azerbaijan in 1988-1992 it was revealed that 1172 families, 857 of which in Yerevan and 315 in various regions of Armenia, are still considered primary beneficiaries of the above stated program. During the past four years funding of the program was not envisaged by the RA State budget. Though since 2008 a budget request of 4 milliard AMD has been each year submitted to the RA Government by the Ministry State Migration Service, however the request was never satisfied, and the issue of the provision of housing conditions for refugees sheltered in Armenia has not been solved.

During 2012 the Ombudsman received many complaints in regards to the issue, that the regulation on “the working group established for the organization of the process of providing tour packages for settling refugees in temporary shelters” concerns only to shelters under subordination of "Dormitory" SNCO of the State Migration Service of the Ministry. While the issue of registering refugees, removing them from registration lists, as well as settling in other temporary shelters is regulated only according to discretion of the disposing bodies of the shelters and their owners. This may set unfavorable conditions for refugees living in temporary shelters not being under subordination of "Dormitory" SNCO of the State Migration Service of the Ministry. The UN Human Rights Committee has also

pointed out the importance of the issue of providing shelters for refugees in their report on the Republic of Armenia.

Meanwhile, conventional terms of travel documents were not extended by the Passport and Visa Department of the RA Police for the refugees towards whom the process of suspension or revocation of the status had been launched. One of the unsolved issues is non registration of the personal data of refugees in Armenian and Russian languages in the conventional travel documents. Despite the fact, that the authority of issuing conventional travel documents to refugees is vested to the RA Police, the Ministry, as the authorized body of the field, is obliged to ensure the implementation and protection of the rights of refugees. Taking into account the fact, that the State Migration Service of the Ministry is the authorized body ensuring the implementation and protection of the rights of refugees, as well as the body developing the policy in regards to migration and refugees related issues, it is logical that the Ministry should initiate the elaboration of efficient mechanisms for the solution of the above stated issues.

In 313 communities of 10 regions of Armenia supervision was conducted according to the Order N11 “About the establishment of the administrative supervision work plan 2012” approved by the Deputy Prime Minister of RA and the RA Minister of Territorial Administration on 30<sup>th</sup> of January, 2012. In the course of the supervision conducted there were certain cases revealed regarding the abuse of authorities entrusted by the state or community heads. For instance, violations of the requirements of publicity and transparency of the local self-government bodies activities, as well as the requirements of personal or internal legal acts adopted by the community heads and municipal associates, cases of not conducting supervision by a community head in commercial, public catering and household services field. There were also cases of selling alcohol and tobacco without permission, and no appropriate administrative sanctions were applied by the community heads. The above stated violations were widespread in regions and communities, but it is noteworthy, that appropriate measures were taken, and the offenders were subjected to liability.

## **RECOMMENDATIONS**

- Conduct efficient supervision and take specific preventive measures with the view of excluding cases of non implementation of authorities entrusted by the state or community heads.
- Take appropriate measures for the solution of the issue of providing and improvement of housing conditions of refugees, as well as create favorable conditions for refugees living in temporary shelters not being under subordination of "Dormitory" SNCO of the State Migration Service of the Ministry.
- As the authorized body of the sphere, take appropriate measures to ensure the applicability and compliance of conventional travel documents of refugees with the law requirements.
- Take efficient measures to solve the problem in regards to subsidy funds financial equalization of communities.
- The local self-government bodies should take measures in precincts to ensure the accessibility of the implementation of the right to vote for people with disabilities.
- As a law requirement, ensure public involvement in compliance with principles of publicity, transparency and accessibility of legislative amendments.

- Establish an efficient cooperation with the civil society and take urgent measures to exclude the activities and decisions making the information on the environment unavailable for the society.

# **MINISTRY OF TRANSPORT AND COMMUNICATION OF THE REPUBLIC OF ARMENIA**

## **SUMMARY**

The RA Ministry of Transport and Communication provides licensing services in the field of transport and communication in cases envisaged by law, maintains the public roads and ensures traffic safety, announces tenders for companies running interstate and inter-marz regular bus-route services, provides unified system of inter-marz regular bus-route services and etc.

The problems revealed and achievements registered during 2012 in the area of responsibility of the RA Ministry of Transport and Communication (hereinafter referred to as Ministry) is presented below, though not exhaustive.

## **CURRENT PROBLEMS AND SHORTCOMINGS OF THE SPHERE**

- Numerous of complaints were received in regards to the poor condition of roads, mainly the roads that connect village communities.
- In some cases the Ministry failed to properly supervise over the passenger transferring companies in regards to regular transfer service in accordance to the requirements defined by the RA legislation and has not undertaken sufficient measures for effective resolving of the complaints in regards to the violation of the route schedule.
- The issue of providing transport means to the persons with disabilities is still unsettled.

## **POSITIVE DEVELOPMENTS REGISTERED**

- In order to responding to the problems of Human Rights defense a constructive cooperation was developed between the Defender's Staff and the Ministry.
- An Amendment was made in the Governmental decision as a result of which the persons (parent, guardian or driver) transferring disabled children when parking the car in a banned place are not fined.
- The problem raised by the RA HRDI in regards to the limitations for passenger transfer with licensed taxis in "Zvartnots" airport in practice was eliminated.
- The state registration procedure of self-made transport means was defined as a result of which the process was clarified.
- In accordance to the preliminary established timeframe the Ministry carried out reviews in order to provide service defined by the regulations of the RA Legislation on regular passenger transfer by the transporters.
- During 2012 the inter-marz and inter-state regular passenger transfer route tender carried out by the Ministry of Transport and Communication was in accordance to the requirements stipulated by the RA legislation: under equal competitive conditions.
- The age limitation for transport means was eliminated, as a result of which during 2012 1960 legal entities were provided with passenger transfer license.

*The annual report has been prepared based on the information obtained from the complaints addressed to the RA Human Rights Defender, analysis of the legislation, on the credible and unjudged publications, the reports of international and legal organizations, as well as from interviews with experts of the sphere and human rights defenders.*

## GENERAL ANALYSIS

Many citizens raised the issue of poor quality of the roads. In particular, in extreme poor condition are the roads that contact village communities with each other, as a result of which sometimes even economic entities are not able to deliver their agricultural products to markets. Besides, in many cases proper consistency is not provided to the renovation activities of some highways of the country. As a result of which very often double renovative activities are implemented on the same road. In addition, as a result of the report published based on the research carried out by the World Economic Forum (WEF) experts, Armenia, along with other countries' in on the 80<sup>th</sup> position in regards to road condition. When carrying out its research the organization took into consideration the percentage of road traffic accidents are due to poor road quality, the safety of roads for the pedestrians and etc.

During 2012 a number of citizens in their complaints addressed to the Defender informed that Yerevan-Abovyan- Yerevan inter-marz route passenger transport was not initiated by the mini-busses number 259, 261 and 267 which belonged to "Tigran", "Smartsoft" and "Delux" Ltd.-s, which disrupts the implementation of established schedule and violated their provisions of the RA Law "On Automobile Transport". Only after double re-examination of the above stated the Ministry informed that by transport means provided by "Gagik Tsarukyan" Benevolent Fund at the beginning of March of 2012 carried out free of charge passenger transfer from Abovyan to Yerevan and back, as a result of which due to few number of passengers defined by the schedule the rolling stoke of route was implemented. At the same time, the Ministry stated, that in accordance to the RA Law "On Automobile Transport" relevant measures were undertaken in regards to the elimination of the registered violations. Meanwhile, the passenger transfer can not be considered as charity, as in accordance to RA Law "On Charity" the support that everyone can have, as charity should have specific direction: persons with disabilities, parentless children, unemployed, and families in relative need, victims of war and disasters, and etc. Hence, regular passenger transfer could not be considered as charity, however it could not be prevented wither due to the absence of state authorized body. In this case the RA Ministry of Transport and Communication has the authority to ban the activities of any organization carrying out regular citizen transfer (including a charity one), which did not win that right as a result of a tender.

Throughout 2012 there were 11 complaints lodged regarding changes in route timetables, 3 out of them concerned the irregular operation of regular interstate and shuttle routes. The studies discovered that those routes did not run in the mentioned period of time as their service terms had expired and no company submitted any application for the newly announced tenders. In the result the Ministry took a decision to announce the second tenders for provision of route-services. Whereas in such cases the Ministry has to take the adequate measures towards temporary solution of the emerged problem by its own means and should not delay it until the results of the second tender come out especially as the results of the tenders may be the same and the question on organization of regular interstate and shuttle route works may remain unsettled.

The tenders for organization of passenger regular transportation announced by the Ministry did not envisage provision of transport accessibility for the disabled as an obligatory condition, as the RA Government Decree number 762 from 16.08.2001 did not define such requirement and in consequence persons with disabilities are deprived from their right to free movement enshrined in the RA Constitution. The only way of realization of this right for the latter is to hire a taxi or use other services which are not always affordable for all of them. However, it is welcoming that the RA Government

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2013 activity program envisages making corresponding legislative amendments to the procedure of tenders for organization of regular passenger transportation itinerary. They will define transport accessibility for transportation of the disabled intended in the bus-route as a tender condition.

During 2012 the RA HRDI raised the question of elimination of fines that are imposed to parents or guardians transporting disabled children on their vehicles. Thus, in practice, the RA Traffic Police officers fine the parent, the guardian or the driver who transports the disabled child for stopping the car in the wrong place while transporting the disabled child. The course of the studies showed that it was the result of the gap existing in the Government Decree concerning the transporters of the persons with disabilities. The RA Government Decree number 1699-N dated 26.10.2006 defines that the signs stipulating privileges for use of vehicles covers only the vehicles driven by Group I and II disabled people or transporting these disabled people. In other words according to the provisions prescribed by this Government Decree the aforementioned privileges are not granted to parents or guardians of children with the status of “disabled child”. This raises serious concern from the point of children’s right protection as there are many such children in our society and in the result their right to free movement is illegitimately restricted. Taking into consideration the urgency of the matter the recommendation made by the Defender was accepted by the Ministry. It is welcoming that within limited time period the Ministry submitted a suggestion to the RA Government to extend the privileges envisaged for Group I and Group II disabled people approved by the RA Government Decree to parents or guardians of children with the status of “disabled child”. Despite baseless delays made by the Government concerning the discussion of the above stated suggestion, on 20 December, 2012 the Government passed a Decree where certain supplements were made to the decisions pertaining to the matter, hence settling the issue related to the parking availability and travel of the vehicles belonging to the transporters’ (parent or guardian) of children with “disabled child” status.

## **RECOMMENDATIONS**

- Undertake measures for properly implement renovation works of the roads namely village roads.
- Undertake measure in properly supervising over the activities of the organizations carrying out passenger transfer with regards to the procedure stipulated by the legislation.
- Be consistent towards adequate organization of traffic and if necessary to take appropriate temporary measures to settle the emerged question.
- To be consistent towards the implementation of the corresponding legislative amendments to the tender procedure for the organization of regular passenger transportation routes prescribed by the RA Government 2013 activity program.