



**HUMAN RIGHTS DEFENDER OF THE  
REPUBLIC OF ARMENIA**



**ANNUAL COMMUNIQUE**

**ON THE ACTIVITIES OF THE HUMAN RIGHTS DEFENDER OF THE REPUBLIC  
OF ARMENIA, AND THE STATE OF PROTECTION OF HUMAN RIGHTS AND  
FREEDOMS DURING THE YEAR 2017**

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## EU for Armenian Citizens: Promotion and Protection of Human Rights Project

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## INTRODUCTION

The Institute of Human Rights Defender in Armenia has been in the process of continuous formation and development since the day of its inception. It has been true for every Human rights defender in office. Such a development can only be achieved through consistent work: a work that is also called to ensure institutional development and public trust. It is due work according to such principles, that the Institute of Human Rights Defender in Armenia complies with the international requirements and standards of the Ombudsman's national institute. The institution has an "A" status, which indicates compliance with the Paris Principles, as well as of a high international reputation.

Any person implementing the defender's mission in the high office of the Human Rights Defender has the obligation to maintain and develop this valuable achievement. It should also be understood by every representative of the Defender's staff. The Human Rights Defender's activities were implemented with this particular fundamental motive also in 2017. Moreover, these activities have always been distinguished by the fact that those imply collaboration with state bodies, close collaboration with civil society and international institutions and partners in other countries. Labor efficiency also requires intolerance towards any infringement of rights and consistency in its elimination.

Nevertheless, human rights protection is full of challenges that are constantly changing and require new approaches to overcome each of them. At the same time, the protection of rights can be effective only if there is a clear and specific system of bodies and organizations dealing with the relevant issues inside the state. This, in its turn, implies clear separation of the functions of certain bodies or organizations, conditioned by their roles and issues. Each of them must have a legal status, which is specific to that particular body or organization and does not repeat those of the others.

The high mission of protecting human rights and freedoms, being one of the key areas of each country, is essential both for the development of the country and for the protection of every person.

According to the newly formed pan-European principles, the states themselves should take the possible steps so that every person can feel fully protected in his country. Therefore, the Ombudsman's institute is given a special importance as an independent actor of the system of the protection of rights and freedoms.

Nevertheless, the Human Rights Defender's Institute should be perceived as an entity, which adds on to the system of state institutions and, being above any ministerial interests, is called to promote the strengthening of the whole mechanism of protection of rights in the country, while actively working with civil society and international partners.

These fundamental ideas are to be the basis of the development of the entire rights protection system of the Republic of Armenia.

**SECTION 1. STRATEGIC DEVELOPMENT DIRECTIONS AND MAIN PRINCIPLES OF  
ACTIVITY OF HUMAN RIGHTS DEFENDER'S OFFICE**

**CHAPTER 1. NEW LEGAL FRAMEWORK FOR HUMAN RIGHTS DEFENDER ACTIVITY AND  
GUARANTEES OF INDEPENDENCE**

From March 2017, the RA Constitutional Law on the Human Rights Defender has come into force, which has strengthened the Guarantees of the activities of the Defender and his staff, and in some cases envisaged principally new legal solutions for effective work.

First, the basis of the new Law is the Constitution of the Republic of Armenia, which not only provides the constitutional right to everyone to receive the assistance of the Human Rights Defender, but also provides for new constitutional functions and high guarantees of independence in a separate Chapter.

Throughout 2017, the Defender's activities have been implemented in two main directions: individual cases, as well as on preventive activities. Moreover, this work has been carried out based on the scope of powers vested to the Human Rights Defender by the Law.

The first is to observe the protection of rights and freedoms and, in case of violations, promote their rehabilitation through discussion of individual cases. In all these cases, applying the individual approach, both the specific complaints and in the framework of procedures initiated by the office, the circumstances that testify to the alleged violation of the specific right were examined, measures required by the Law were taken to evaluate the fact of infringement and to take appropriate measures to recover it. Within the framework of this direction, permanent work has been carried out with citizens aimed at correcting the ways of solving the issues raised in the complaint<sup>1</sup>.

The second fundamental direction of the Human Rights Defender's work are the preventive activities of the Human Rights Defender. It has been implemented through periodic monitoring visits, suggestions for solving the issues revealed during those visits and promoting the implementation of these proposals, through conducting fact-finding works and more. Moreover, this direction also assumed individual work with citizens. New directions of work have been developed based on implementation of this function.

These two directions of work cannot exist one without another, they must be supplemented by one another. Only the simultaneous implementation of these directions can provide a real result, with the aim of excluding cases of violation of human rights and freedoms by any state or local government body or official.

During the above-mentioned activities, the focus has also been on strengthening the status of the Defender's Staff and further development of its capacities.

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<sup>1</sup> As the statistics show, the number of individual cases, which have received positive solution, has grown dramatically in 2017.

Examination or consideration of complaints addressed to the Human Rights Defender is not an end in itself. In addition to the procedure of discussions regarding specific situations, in each case they are analyzed with consideration to exclude the grounds for the infringement and to take action towards elimination of those grounds. Restricting only on discussions of individual complaints cannot ensure sufficient effectiveness of the work.

Particular emphasis was laid on the development of this direction of works in the new Constitutional law "On Human Rights Defender", based on the Constitution. With the new solutions, the importance of the Ombudsman's institution has been raised in the legal system of our country on the one hand, and, on the other hand, as we have mentioned, the absolute right of every person to apply to the Ombudsman has been recorded.

Of course, recording the issues in the field of human rights protection and simply reflecting those in the specific report, annual communique or any other report is not enough. The Human Rights Defender himself must have a legal opportunity to contribute to the solution of all these problems, as well as to the implementation of recommendations for their elimination.

Accordingly, new directions of the Human Rights Defender's activities have been developed in 2017. The new function reserved by the Constitution is to promote the improvement of normative legal acts related to rights and freedoms. Based on that, provisions of the Constitutional law allowed forming a new practice. It refers to drafting legislative acts and putting those in circulation, in order to present the fully finalized version of those acts to the body that should accept them, including the parliament. The main part of the developed and circulated legislative packages has already passed the stage of necessary discussions and is currently in the final stage of summarizing.

Considerable attention was paid to the prevention of torture and other forms of ill-treatment in terms of the activities of the Human Rights Defender. Particularly, through the status of national torture prevention mechanism, a clear separation was made between individual complaints and periodic or monitoring visits regardless of whether there is a complaint or not. This approach has made it possible to conduct visits to places of detention and to undertake fundamental screening regardless of existence or absence of a complaint or the application. This directly stems from the requirements of international experience. Moreover, the independent experts of the preventive mechanism (a psychologist, a sociologist, doctors, including psychiatrists) were also involved in the visits. The members of the Human Rights Defender's Advisory Board were also involved in the works of the Prevention Mechanism<sup>2</sup>.

One of the main directions of the Human Rights Defender's activities in 2017 is the protection of children's rights based on the solutions provided by the Constitutional Law, which was implemented through the relevant specialized subdivision. One of the most important aspects is protection of the rights of persons with disabilities, the fundamental implementation bases of which have been prepared during the reporting year – towards the new legislation to be adopted.

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<sup>2</sup> Detailed information on the activities of the preventive mechanism is presented in the relevant annual report for 2017.

One of the most important directions of work in 2017 was organization and implementation of trainings. This was done in all areas of human rights activities. Representatives of the Defender's Staff, as well as NGOs, journalists and international experts have participated in these trainings.

The work in all these areas would not yield results if there were no guarantees of independence based on Constitutional amendments and Constitutional law.

First, it was important to state at the level of the Constitutional law, that persons holding positions in the Defender's Office cannot provide explanations or be questioned regarding the Defender's decisions made based on the nature or analysis of the applications or complaints addressed to the Defender, as well as provide those to other persons without the written consent of the Defender. Moreover, this same requirement also applies to representatives of non-governmental organizations and independent experts working with the Human Rights Defender in the framework of the national mechanism for the prevention of tortures. This new solution is particularly important in terms of strengthening the confidence of the applicants.

Additionally, Article 332.1 of the Criminal Code establishes a separate criminal offense, which imposes criminal liability for obstructing the exercise of the Human Rights Defender's powers, including interference in any form in his / her activities, and starting from 2017, also forbidding entrance to any place to a competent person, acting based on the Defender's decision, connected to the execution of the powers of the Human Rights Defender.

The Constitution and the Constitutional law adopted on its basis have set serious guarantees for the Defender's financial independence for the first time.

First, according to Article 193 (4) of the Constitution, the State ensures adequate funding of the Human Rights Defender's activities. It should be specially mentioned, that the Defender's Institute is the only one in the Constitution for which such requirement is fixed.

Based on this, the Constitutional law has stated that the budgetary funding request (estimate) for the Defender and his staff for the upcoming year should be included in the draft state budget, and, in case of objection, should be submitted to the National Assembly of the Republic of Armenia together with the draft state budget. The Government submits to the National Assembly and the Defender the justification for objection of budgetary funding.

Furthermore, the amount allocated in the National Budget for the financing of the Defender and his staff, as well as for the Defender as a National Preventive Mechanism, cannot be less than the amount allocated for the previous year's state budget.

The law also requires special funding requirement for the activities of the Defender as a national preventive mechanism. The remuneration of independent experts of the Prevention Mechanism, unlike the previous Law, is made at the expense of state budget funds, from the funds allocated to the Defender's Staff for that purpose.

The Defender's cooperation with state and local self-governing bodies, as well as joint work with civil society is of extreme importance. As a result of joint efforts, this contributes to the restoration of the rights of the citizens. A practical closer collaboration practice has been

established with competent authorities, which allows operative exchange of information in everyday work. In almost every body, working groups or responsible staff are nominated, who regularly engage in working discussions with the Defender's staff aimed at ensuring the realization of rights.

The work with the National Assembly is the core of the Human Rights Defender's work. A close collaborative work is being done here both with parliamentary committees (such as parliamentary hearings, participation in separate sessions, etc.) and at the level of individual cooperation with the deputies. This working approach has an important role for the development of the Defender's Institute. Moreover, a new practice is the work of the Defender's Representative to the Parliament, who works with the Parliamentary Staff and experts of the Committees. This is aimed at strengthening institutional ties between the two institutions.

Based on the same principle the work with the Constitutional Court is also a key direction. Here, activities are carried out by presenting applications to the Constitutional Court, as well as by submitting amici curiae to the Constitutional Court in other cases connected to human rights or freedoms. The Institute of Defender's Representative operates in the Constitutional Court too. All this was possible thanks to high quality cooperation with the Constitutional Court.

As a new direction of work, cooperation with the European Court of Human Rights is important. The legal criteria developed by the European Court are a cornerstone for the development of the country's legal system. Therefore, one of the Human Rights Defender's primary tasks is to promote the introduction of these criteria in the country using all legal instruments provided by law.

An active work has been commenced with the Committee of Ministers of the Council of Europe in connection with the participation in execution of the decisions of the European Court of Justice.

A permanent connection is established with the United Nations High Commissioner for Human Rights, the United Nations Development Program, the United Nations Children's Fund and other institutions.

## **CHAPTER 2. TRANSPARENCY THE HUMAN RIGHTS DEFENDER'S ACTIVITIES AND WORK WITH THE CIVIL SOCIETY**

Highlighting the transparency and publicity of the RA Human Rights Defender's activities, a large-scale work has been carried out in 2017 to develop cooperation with the media.

First, a Public Relations Division was established in the Human Rights Defender's Office in 2017, which is to ensure the transparency of the Defender's activities through mass media. The official website of the RA Human Rights Defender, [www.ombuds.am](http://www.ombuds.am), the main goal of which is to raise public awareness of the role and activities of the Human Rights Defender, as well as to make the information more transparent and accessible, is being continuously improved. It

contains data on the structure of the Human Rights Defender's Staff, the functions of the subdivisions and the activities they implement, as well as on annual communiques and special reports. The news and official information on the activities of the Defender are also published on the website. In collaboration with UNICEF and Kaspersky Lab, the Human Rights Defender's Office launched in 2017 a website [www.children.ombuds.am](http://www.children.ombuds.am), dedicated to protecting children's rights. The main purpose of the website is to raise awareness on the children's rights and legal capacities of their protection.

In close collaboration with mass media, a practice has been introduced, in the framework of which reporters in specific areas are involved in trainings supported or coordinated by the Human Rights Defender. Additionally, an in-depth analysis has been undertaken in relation to specific aspects of journalistic work and the responsibilities of public authorities in this respect (this is further discussed in detail later in this report).

Another mission of the Human Rights Defender as a national Human Rights Protection Institute is close cooperation with representatives of the civil society. The main direction of the Defender's work is to promote the work of non-governmental organizations and to make their activities visible in state bodies. Highlighting this specificity of the activities, an extensive work has been carried out in 2017 with non-governmental organizations working in areas such as protection of women, people with disabilities, children, prevention of tortures, protection of human rights in the armed forces, and other areas<sup>3</sup>.

The new direction of the activities is visits of the Defender and his staff to provinces and especially villages. During 2017, a special attention was paid to border-side villages. During these visits, possibilities are being created to learn the problems of villagers directly and to take measures to contribute to their solution. Moreover, the complaints addressed to the Human Rights Defender and the issues raised in those are taken into consideration when developing the schedule of visits. This practice not only ensures accessibility of the Defender, but also promotes public confidence towards the Defender's Institute. These visits, depending on the nature of the issues in focus, are also attended by members of the Councils adjacent to the Human Rights Defender, or by other non-governmental organizations (e.g. "Shirak" non-governmental organization in Gyumri).

In 2017, sessions of the Advisory Council on the Prevention of Tortures adjacent to the Human Rights Defender were held, including with enlarged presence, with participation of representatives of the sectoral NGOs, independent experts and officials. During the sessions, the participants discussed the issues of protection of the rights of imprisoned persons, the forms and the procedure for completing medical examination protocols related to torture and ill-treatment in locations of detention of arrested and detained persons, issues related to the right of education of the mentioned persons and other problems.

In 2017, meetings of the Expert Council on the Rights of the Military Servicemen were also held, during which issues related to the health screening of reservists, issues regarding rights of

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<sup>3</sup> For details, see "Women's Rights", "Rights of Persons with Disabilities" and "Children's Rights", "Human rights in armed forces" sections.

pre-conscription civilians during the military registration process, and the rights of soldiers during the disciplinary proceedings were discussed along with other issues. Members of the council, representatives of the Ministry of Defense and of non-governmental organizations participated in the meetings.

In parallel with the development of the activities of the Human Rights Defender, the question of establishing councils in other areas is also being discussed.

Besides the council formats, other mechanisms of joint work have also been actively used. In particular, it refers to joint discussions, participation in training courses, participation in projects implemented by non-governmental organizations, their involvement in projects coordinated by the Defender's staff, and so on.

### **CHAPTER 3. STAFF OF THE HUMAN RIGHTS DEFENDER AND ITS ACTIVITIES IN SPECIFIC AREAS**

#### ***Structure of the Human Rights Defender's Staff***

After the adoption of the RA Constitutional law "On Human Rights Defender" and clarification of directions of the Defender's activities, the new structure of the Defender's Staff was set in 2017.

Two departments, as well as other subdivisions were formed:

- 1) The Department of Protection of Civil, Socio-Economic and Cultural Rights;
  - Division of Protection of Social-Economic and Cultural Rights;
  - Division of Protection of Child Rights,
  - Division of protection of the rights in public service organizations<sup>4</sup>;
- 2) Department for the Protection of Human Rights in the areas of Criminal Justice and Armed Forces;
  - Division of Protection of Human Rights in Criminal Court and Places of Detention<sup>5</sup>,
  - Division of Protection of the Rights of Soldiers and Members of Their Families.

The following were established as separate structural subdivisions:

- Division of Prevention of Torture and Ill-treatment,
- Center for Human Rights Research and Education<sup>6</sup>,
- Division of International Cooperation,
- Division of Public Relations.

In 2017, the provincial divisions in Shirak, Gegharkunik and Syunik marzes continued to operate as separate structural subdivisions.

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<sup>4</sup> Starting March 1, 2018 – Division of protection of rights in the area of entrepreneurship.

<sup>5</sup> Starting March 1, 2018 – Department of protection of rights in the area of criminal justice.

<sup>6</sup> Starting March 1, 2018 – Research and education center.

The number of applications and complaints received by the RA Human Rights Defender in 2017 has increased by about 1000 and reached the number of 6417 applications. In 2017, the number of draft legal acts, presented for provision of opinion, has increased dramatically. Thus, after the Constitutional reforms, 144 drafts were developed and submitted in 2017 to the Human Rights Defender's Office. In regard of 75 of them total 530 remarks and recommendations were made.

The total number of positively solved cases has been increased more than twice (detailed statistics is presented as an annex).

### ***Defender's activities in separate areas:***

#### ***Contributing to improvement of normative legal acts and their application practices***

There has been a number of drafts of Constitutional Laws, Codes and new or substantially modified laws of high importance. As an example, the RA Law “On Freedom of Information”, the Constitutional Law “Judicial Code of the Republic of Armenia”, the RA Law “On Making Amendments and Addenda to the Family Code of the Republic of Armenia”, RA Laws “On the Constitutional Court” and “On Prosecution”, Draft laws “On Making Amendments and Addenda to the Labor Code of the Republic of Armenia”, can be mentioned.

The applications addressed to the RA Constitutional Court in 2017 are presented in detail in the corresponding sections of this report.

Cooperation with the RA Constitutional Court was of a particular value in the reporting year. This is evidenced by the introduction of the Institute of the Human Rights Defender’s Permanent Representative in the Constitutional Court and further improvement of its work. In terms of fostering resolution of systemic issues in the area of human rights, introduction of the practice of providing a special position by the Human Rights Defender to the cases, examined by the Constitutional Court, was fundamental.

Based on these new working principles, the Human Rights Defender’s and the Constitutional Court’s staffs conducted a joint study of the state of implementation of the decisions of the RA Constitutional Court in 2015-2016. This study was carried out taking into account also the new constitutional function of the Human Rights Defender to foster improvement of normative legislative acts, and the possibility provided by law to propose legislative amendments. As a result of the study, decisions of the Constitutional Court were revealed, where legal requirements for the necessity of legislative changes in the field of human rights have been presented, but which have not been fulfilled.

Accordingly, the Human Rights Defender’s and the Constitutional Court’s staffs have jointly developed proposals for amendments to a number of fundamental laws. As a result, it is expected that the adoption of proposed amendments will: enlarge the possibility of appealing against the enacted decision of the administrative court based on the "newly emerged" circumstances; appealing against the decision of the administrative court on dismissing the case shall become possible; complaints against the interim judicial acts of the Administrative Court on disputing

the legitimacy of normative legal acts will be examined by the Court of Appeal; the way of submitting electronic cassation complaint will be clarified; the requirement to attach judicial acts of the Court of Cassation and of the European Court of Human Rights to the cassation appeal will be removed, calculation of the period of appeal against the court decision will start from the moment when the judicial act is made accessible to the person, which will allow to use the whole period, provided by the law for the appeal; the court trial on the labor capacity will be conducted with the participation of that person; the persons recognized as incapacitated will have the possibility to apply personally to the court for the rehabilitation of their labor capacity; to stop collection of collateral through extra-judicial procedures, the pledgee will provide surety only in the amount of possible losses to the lender.

The Defender may also have a representative in the National Assembly of the Republic of Armenia. This regulation of the Constitutional law is aimed at strengthening institutional ties between the Parliament and the Human Rights Defender, at promotion and development of existing cooperation, especially considering the essential role of the National Assembly in the context of parliamentary governance, including in the area of human rights protection.

Thus, the cooperation between the two institutions during the law-making work of the National Assembly can be efficiently implemented both by presenting analyses and suggestions on the draft legislation projects discussed by the National Assembly, and by developing new legislative projects and making them subject of joint discussions. As it was already mentioned, the Defender's representative in the National Assembly has already started joint work with the representatives of the Parliament staff, as well as the experts of the Standing Committees of the National Assembly.

In 2017, the Human Rights Defender's Office has applied a new practice to address human rights-related system issues through drafting legal acts that envisage amendments or supplements to existing acts to be submitted to the competent authorities for further discussion.

1. As a result of studying RA Laws “On Advertising”, “On Lotteries”, “On Prized Games, Internet Prized Games and Casinos”, “On Television and Radio” and other related laws, as well as their implementation practices, it was revealed that the detailed legal regulation of advertisements of the internet prized games and lotteries (betting pools). Meanwhile, this legal gap can be a cause for violation of rights of persons, including juveniles. Hence, the Defender's Staff developed a draft, proposing to prohibit in the advertising of lotteries and internet prized games: addressing juveniles in any form; use of audio-visual and any other forms of human images; creating an impression that the participation in the game ensures and opportunity of regular income (profit) or is an alternative to labor; creating an impression that the income (profit) is guaranteed; create an impression, that achievement of social, professional, sport or personal success through the game is possible; criticize for not participating in the lottery or internet prize game. It was also suggested that the advertising of lotteries and Internet prized games should contain warning information about the inadmissibility of playing in drunk or depressed state.

2. Based on the review of the complaints of military servicemen, a package of legislative drafts has been elaborated and circulated regarding the guarantees of the rights of military servicemen. The adoption of the project will eliminate the fact of having committed a crime in the past, as a condition of aggravating the disciplinary responsibility of the serviceman, a mandatory requirement to issue or announce the disciplinary penalty order to the serviceman will be clearly fixed. Types of decisions that can be taken by the superior commander as a result of appeal by the military serviceman to the disciplinary sanction will be determined. It is also recommended to exclude the use of "extraordinary daytime guarding" on a serviceman as a disciplinary penalty. It is also suggested to legislate that since the moment of participating in an official investigation, the serviceman has the right to get acquainted in writing with his rights and obligations; the grounds for and procedures of stopping, suspending, restarting investigation on the military servicemen, etc.

3. Another package of legislative projects was aimed at exclusion of an unacceptable law enforcement practice, when in a course of criminal investigation a decision is being taken of prohibiting the detainee meeting his/her family members with no reasonable ground. The fact of a criminal investigation itself cannot become a basis for limiting the right of meeting the family members or close relatives. Any restriction of such communication should have a special and personalized substantiation. Particularly, the legislative projects proposed the following:

- to separate the members of the family and close relatives of the detainee from the circle of the persons having right of meeting the detainee, and provide clear grounds and procedures for the possibility of limiting the right of the detainee to meet them;
- Make sure that decisions that restrict this right are well grounded. Those should also be immediately handed to the detainee and his lawyer to fully ensure the legal possibility of appealing.
- Envisage, that the decision on limiting the right of meeting the family members or close relatives should become a subject of periodic review, irrespective of the intent or attitude of the detainee;
- Envisage, that the decision to appoint the court hearings on the case should also specifically mention this decision, etc.

4. As a result of studies on communication with the outside world, legal issues have been raised regarding the maintenance of communication of the imprisoned persons with the outside world. Issues related to the provision of short-term leave for imprisoned persons, and absence of opportunity of long-term visitors for the detainees have become topics of discussions. The problems are conditioned by ignoring the level of individual riskiness of a person in legislative regulations, connecting the short-term leaves only to the severity of the committed crime and other circumstances.

5. For detainees, legislation does not provide any opportunity for having long-term visitors. In order to provide a solution to the mentioned and other recorded issues, the set of legislative projects developed by the Human Rights Defender's staff propose the following:

- The basis of short-term leaves for the persons sentenced for imprisonment and the detainees should be not the severity of person's crime, but rather his / her individual conduct and riskiness should be taken into account;
- Envisage an opportunity for the detainees of having long-term visitors;
- Envisage a possibility of provision of a short-term leave for a convict who has a child in a difficult life situation to accommodate the child in an orphanage or with a relative, etc.

6. As a result of monitoring and revision of individual complaints, issues have been raised regarding hindering the advocate's work in places of detention, as well as regarding the free access of lawyers to these places.

Accordingly, the Defender's staff has developed a legislative project, which proposes the following:

- Part 1 of Article 332.3 of the Criminal Code of the Republic of Armenia, should be modified in a way, that except for the official, any other person who has hindered the lawful activity of the advocate, should become a subject of that offense, without limitation of the scope of the subjects. Accordingly, the project should be added as a separate Part.
- The sentence, prescribed by the Article 332.3 of the Criminal Code of the Republic of Armenia for hindering the execution of the advocate's powers using an official position should be toughened, intending also an imprisonment sentence.
- In the article of the Criminal Code, a responsibility should be envisaged by a new part, for impediment of activities of the lawyer, if it was made through illegal denial of entry at any place of detention/imprisonment for the advocate aiming to meet his/her client;

All of the abovementioned projects have been submitted to the relevant state bodies and human rights organizations for opinion and are in the finalization stage.

### *Human Rights Education and Training*

Capacity building of human rights defender's staff, partner organizations, as well as representatives of state and local self-government bodies in the area of human rights protection is always in the focus of the Defender's attention. The Constitutional Law provides for the Defender's powers to carry out training of the Defender's staff, as well as stakeholder bodies and organizations, on human rights and freedoms.

Accordingly, in 2017, as a result of cooperation between the Human Rights Defender and partner local and international organizations, a large number of trainings was organized, involving both public and non-governmental organizations, as well as in some specific cases – representatives of mass media. The number of these events has essentially increased in the reporting year.

Thus, in 2017, trainings were organized for representatives of the Human Rights Defender in the area of child rights protection. Four trainings, conducted in collaboration with the United

Nations Children's Fund were aimed at monitoring of the situation with child rights protection, capacity building in the field of interviewing children, and the most detailed presentation of international criteria of children's rights.

As a result of cooperation with the Council of Europe, capacity building trainings have been organized in 2017 on the topic of "Human Rights in the Armed Forces." During the two trainings, international legal provisions on the protection of human rights in the armed forces and case laws of the European Court of Human Rights and the Court of Cassation were presented.

During 2017, a number of trainings have also been conducted on the international standards existing in the field of torture and ill-treatment. Both the Defender's Prevention Advisory Board members and members of the Monitoring Group of the Penitentiary Institutions of the Ministry of Justice participated in these trainings.

In 2017, representatives of the Human Rights Defender, as well as other stakeholders, participated also in trainings in foreign countries. For example, as a result of cooperation between the Human Rights Defender's Office and the Embassy of the Federal Republic of Germany in Armenia, a training visit was organized on "Human Rights and Domestic Violence" for the Defender's Staff and Journalists in Berlin on December 3-9. During the visit, the reporters had meetings with representatives of government-funded organizations to prevent violence in the family, visited the specialized court on family issues, and met leaders of non-governmental organizations acting against violence. The topic of the rights of the children was also touched upon; the importance of the right of the child to live in the family was underlined.

Another training was organized on water and sanitation requirements in public education institutions. A special training course was organized for the representatives of the National Human Rights Institutions of Armenia and Georgia in Geneva, Switzerland.

Important is that, in a number of cases, representatives of the Human Rights Defender's Staff have conducted trainings for representatives of other agencies. Thus, staff members have conducted trainings for the officers of penitentiary institutions of the Ministry of Justice of the Republic of Armenia. The trainings were conducted in cooperation with the Council of Europe, the European Union, as well as the Ministry of Justice of the Republic of Armenia.

During the trainings issues related to the rights and responsibilities of imprisoned persons and the officers of the penitentiary institutions were discussed. Discussions focused on such issues as proper care of imprisoned persons, peculiarities of behavior when working with vulnerable groups, prohibition of torture and ill-treatment, proper recording and documentation of bodily injuries by medical personnel, etc.

In 2017, the representative of the Human Rights Defender presented guest lectures in the RA Academy of Justice, on violence against women and domestic violence for the active judges. During the lecture international regulations of the sector, decisions of the European Court of Human Rights, as well as existing legal framework in Armenia and proposed changes were presented.

Moreover, the Defender's representative participated in a training for trainers, organized by the Council of Europe, received a qualification of the "HELP" Distance Learning Trainer, and therefore taught the "Violence against Women and Domestic Violence" distance learning training for investigators, prosecutors and advocates.

Representatives of the Human Rights Defender's staff have also regularly conducted trainings in the Justice Academy for investigators on the topics of "Investigation implemented with participation of vulnerable victims / witnesses and suspects," as well as on "Investigation of cases related to hindrance of the right to life, torture and other forms of ill-treatment."

A completely new practice was organization of English language courses for the Defender's staff by the American University of Armenia in Armenia with the support of the Armenian General Benevolent Union (AGBU). This project has had an invaluable role in terms of ensuring the real results of active engagement of the Defender's Institute in activities of international structures and in relations with partners in other countries. Thanks to the project, more than 40 staff members have been trained.

#### *International cooperation*

Projects with international organizations have special significance in the area of international cooperation.

In 2017, the Defender's Staff has implemented experience exchange projects with National Human Rights Institutions of different countries. Particularly, delegations from Morocco, Tunisia, Bosnia and Herzegovina, Georgia, Montenegro, Latvia, Lithuania and other countries have visited Armenia for that purpose.

##### *- Moroccan National Center for Human Rights*

In order to study the Armenian experience of the Human Rights Defender's office in the field of prevention of torture, representatives of the Moroccan National Center for Human Rights paid a two-week long visit to Armenia in 2017. Moroccan representatives, together with the representatives of the Defender's staff, conducted monitoring visits to places of detention of arrestees, detainees, and prisoners, to psychiatric hospitals, etc. They also participated in a special workshop involving international experts, dedicated to the peculiarities of monitoring in psychiatric institutions.

##### *- Tunisian National Authority for the fight against torture*

In order to study the experience of the Human Rights Defender's staff in the field of torture prevention, Deputy Chairman and the Secretary General of the Tunisian National Authority for Fight against Torture have visited Armenia for two weeks. They took part in the work of the Defender's staff in Yerevan, studied the new principles of execution of the National Preventive Mechanism, as well as the new directions of work based on these principles.

##### *- The delegation headed by three Ombudsmen of Bosnia and Herzegovina*

In 2017, a delegation, headed by three Ombudsmen of Bosnia and Herzegovina arrived in Armenia to get acquainted with the work of the Armenian Human Rights Defender. During the visit, the Bosnian partners got acquainted with the structure and powers of the Human Rights Defender's staff, the work implemented with the citizens, visited to places of detention, in particular, penitentiary facilities and places of detention for arrestees, in order to get acquainted with the activities of the Human Rights Defender as a National Preventive Mechanism.

As a result of the cooperation of the Human Rights Defender of Armenia and UNICEF, an international two-day conference entitled "The Right of the Child to Live in the Family" was held in Yerevan in 2017. Representatives of local and international organizations, representatives of right protection bodies from more than ten countries in Europe and Central Asia, especially those responsible for child rights, active and former Ombudsmen, civil society representatives took part in the conference.

In 2017, a report "Analysis of the Criminal Legislation of Armenia in the context of the standards set out in the "Council of Europe Convention on the Preventing and Combating Violence against Women and Domestic Violence " was presented. The report was developed based on the international standards. During the preparation of the report, meetings were organized with judges, prosecutors, police officers, civil society representatives, and academicians. The report was developed within the framework of the Council of Europe's "Women's Violence Prevention Program" as a result of cooperation with the Human Rights Defender of the Republic of Armenia

In 2017, a project on studying the water and sanitation situation in pre-schools, general educational facilities and childcare institutions has been launched, within the framework of which it is envisaged to examine the current legal framework of the Republic of Armenia, to conduct visits and monitoring to collect information on the water and sanitation situation in the mentioned facilities.

During the 2017, implementation of the projects launched in 2016 in cooperation with the United Nations Children's Fund (UNICEF) in Armenia, United Nation's Higher Commissioner on Refugees office in in Armenia (UNHCR), the Council of Europe Office in Yerevan and others have been continued. They are aimed both at ensuring the continued capacity building of the Human Rights Defender's staff, and the more effective introduction of international human rights standards in Armenia.

In 2017, together with the Council of Europe Office in Yerevan, the project "Enhancing the Application of European Human Rights Standards in the Armed Forces" was continued, which aims to introduce more effective mechanisms for protecting human rights in the RA Armed Forces. The project also envisages active cooperation with non-governmental organizations.

The Human Rights Defender also receives complaints from Armenian citizens residing in other countries. Naturally, the Defender's jurisdiction does not apply to the institutions of other countries, but due to close cooperation with the partner entities in these countries, an opportunity has been created to address the raised issues. This cooperation is implemented both

on bilateral and multilateral levels. Thus, in 2017 the Human Rights Defender of Armenia, the Commissioner for Human Rights of the Russian Federation, the Chairman of the General Inspection Office of the Islamic Republic of Iran and the Kyrgyz Ombudsman signed a memorandum on the creation of the Eurasian Union of Ombudsmen.

In 2017, a trilateral cooperation memorandum was signed between the RA Human Rights Defender, the Minister of Education and Science of RA and the Head of the “Kaspersky Laboratories” JSC on cooperation in the field of Information Security in education and the Information Security of Children in the Internet.

In 2017, the Defender took part in the General Assembly of the European Ombudsman Institute in Bucharest. An agreement was reached during the General Assembly to hold consultations with the management staff in Yerevan as well. During the work of the Assembly, the election of the President and Secretary General of the European Ombudsman Institute took place.

#### *Extraordinary public reports, legal analyzes and fact-finding activities*

The 2017 has also been valuable by extraordinary reports. They allow to carry out sectoral systematic studies, and to identify existing problems fundamentally. These reports have provided a number of legislative and practical recommendations. Thus, in the year 2017, 10 extraordinary reports and a comprehensive legal analyzes have been published. In addition, another five extraordinary reports and legal analysis regarding the year 2017 are finished and according to the developed schedule will be published in the first quarter of 2018. The main ones of them are:

1. An extraordinary report has been published on the rights of refugees and asylum seekers in Armenia. It was prepared within the framework of the jointly implemented project of the Defender's staff and the Armenian office of the United Nations Higher Commissioner for Refugees (UNHCR).
2. An extraordinary report on the right to health care for imprisoned persons in penitentiary institutions has been published. The extraordinary report reveals and discussed issues related to the medical care for imprisoned persons who need care, organization of proper care for them, issues with the unsatisfactory level of those. The report analyzes the medical care, care conditions, state-guaranteed free medical care, availability of sufficient medical equipment and medication in penitentiary institutions, and other issues.
3. An extraordinary report has been published on the Guardianship and Trusteeship Bodies and the Guardianship and Trusteeship Committees (GTB/GTC). The report examines the effectiveness of the activities of these bodies, the sector's legislative regulations, which are presented in detail in the "Children's Rights" section of this report.

4. 3 extraordinary reports in English and French have been published as a result of the fact-finding activities carried out in Chinari, Voskepar, Baghanis, Voskevan, Koti, Vazashen and Berekamavan villages of Tavush marz<sup>7</sup>.

5. A special report on "Analysis of the Criminal Legislation of Armenia in the context of the standards set out in the "Council of Europe Convention on the Preventing and Combating Violence against Women and Domestic Violence " was published. It discusses violence against women, domestic violence, the legal regulations and law enforcement practices required for response of criminal legislation. The report also aims to support the ratification of the Council of Europe Convention on the Preventing and Combating Violence against Women and Domestic Violence, which was signed on January 18, 2018, taking into account the Decision No 483-N on the "Approval of the Action Plan for 2017-2019 derived from the National Strategy for Human Rights Protection". The report was highly valued by international organizations and published on the Council of Europe website<sup>8</sup>.

6. A legal analysis has been published on the landmarks of the Defender's activities in the area of child rights protection. Ensuring progress in the field of child rights protection in Armenia implies that all the necessary preconditions are provided for children to live in families, to grow up in loving and caring environment, to have their needs heard, and in case of violations of their rights, to have easily available opportunities for the solution of those. The efforts of the RA Human Rights Defender aimed at the above-mentioned goals will be concentrated on creation of mechanisms for the protection of children in their basic social environment, including in general and especially in closed institutions.

7. A comprehensive legal analysis has been published that addresses a number of guarantees of the advocate's professional activities, including access of a lawyer to a penitentiary institution or court, request for inspection of search and protection of interests of his/her clients.

The analysis was made considering the following legitimate interests:

- 1) Reputation of the lawyer and effectiveness of his professional work;
- 2) Protection of attorney-client privileged communication, and attorney confidentiality;
- 3) Guarantees for the attorney's client, including the defendant's right of fair trial and legal assistance;
- 4) Prevention of offenses, security of the relevant institution and the protection of the rights of others.

The conclusions and recommendations developed based on the analysis were sent to the Ministry of Justice, the Council of Court Chairmen and the Judicial Department.

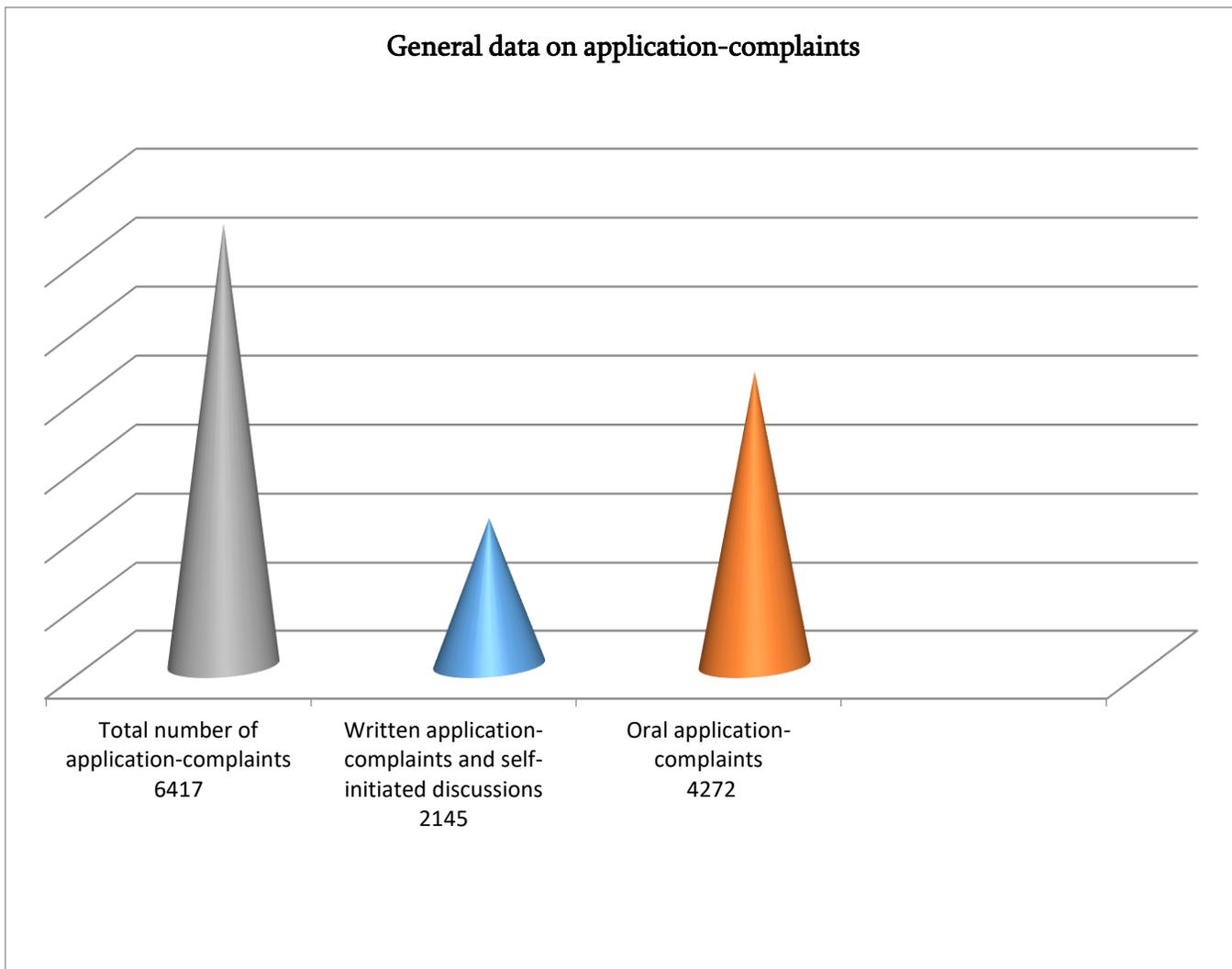
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<sup>7</sup> Detailed information is provided in the section "Human Rights in the Armed Forces" of this report

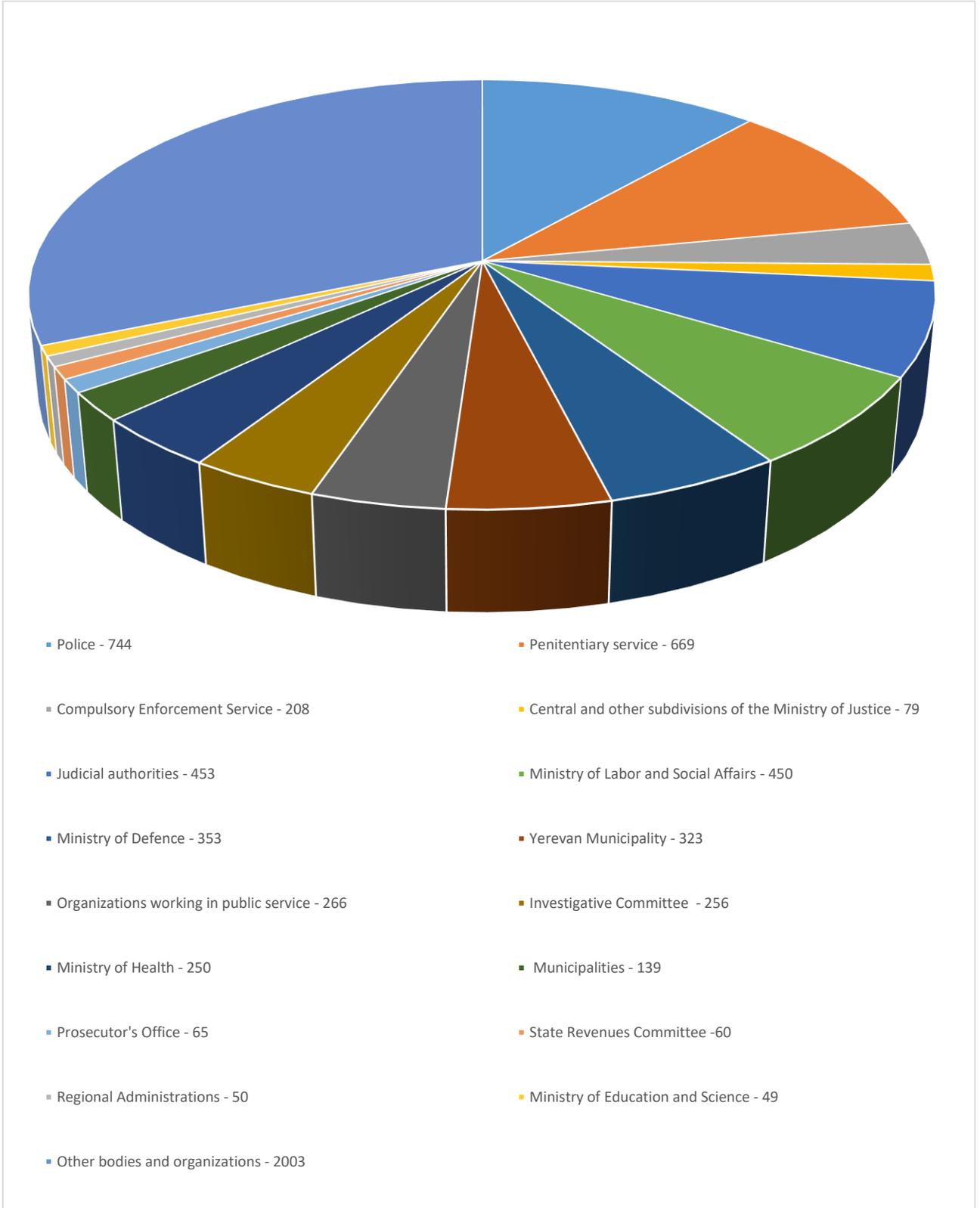
<sup>8</sup> Available in English on CoE web-site through the following link: [https://www.coe.int/en/web/istanbul-convention/newsroom/-/asset\\_publisher/anInZ5mw6yX/content/seminar-to-present-the-gap-anamysis-of-armenian-criminal-law-in-the-light-of-the-standards-established-by-the-council-of-europe-convention-on-preventi?inheritRedirect=false&redirect=https://www.coe.int/en/web/istanbul-convention/newsroom%3Fp\\_p\\_id%3D101\\_INSTANCE\\_anInZ5mw6yX%26p\\_p\\_lifecycle%3D0%26p\\_p\\_state%3Dnormal%26p\\_p\\_mode%3Dview%26p\\_p\\_col\\_id%3Dcolumn-1%26p\\_p\\_col\\_count%3D2%26p\\_r\\_p\\_564233524\\_resetCur%3Dfalse](https://www.coe.int/en/web/istanbul-convention/newsroom/-/asset_publisher/anInZ5mw6yX/content/seminar-to-present-the-gap-anamysis-of-armenian-criminal-law-in-the-light-of-the-standards-established-by-the-council-of-europe-convention-on-preventi?inheritRedirect=false&redirect=https://www.coe.int/en/web/istanbul-convention/newsroom%3Fp_p_id%3D101_INSTANCE_anInZ5mw6yX%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-1%26p_p_col_count%3D2%26p_r_p_564233524_resetCur%3Dfalse)



SECTION 2. STATISTICAL DATA REGARDING THE ACTIVITIES OF THE DEVENDER  
DURING THE YEAR OF 2017

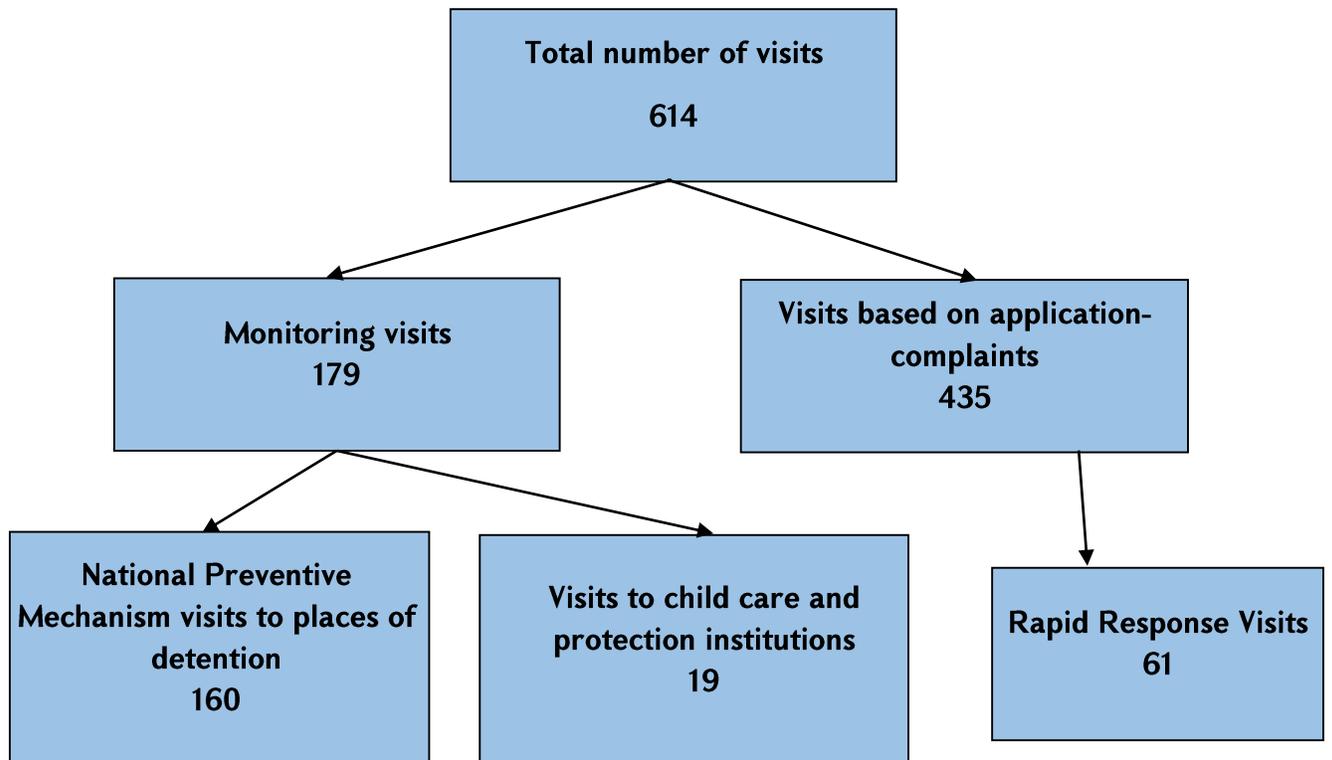


## Number of written and oral complaints per bodies and organizations



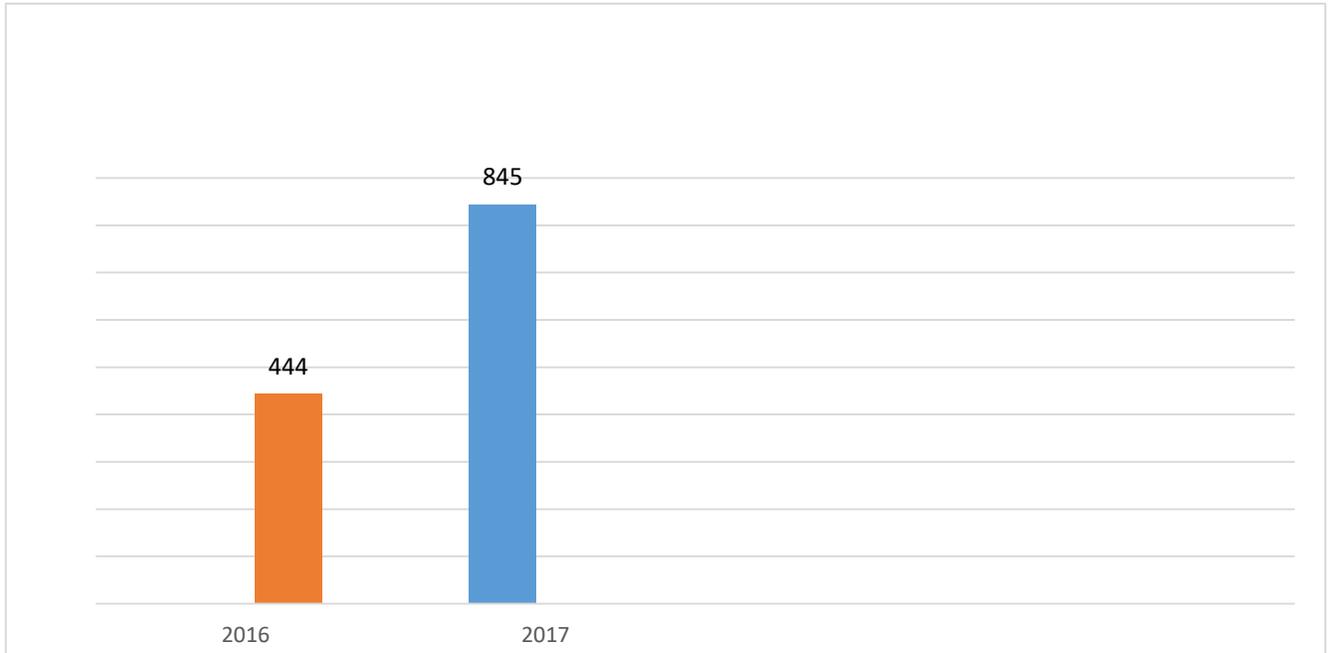


## Data about visits



**Comparative picture  
of positively solved cases in 2016 and 2017**

**(The following data does not include cases that have been addressed to the Defender, but do not refer to his jurisdiction)**



SECTION 3. SOCIAL-ECONOMIC RIGHTS  
CHAPTER 1. RIGHT FOR SOCIAL SECURITY

Article 83 of the RA Constitution states that every person has the right for social security in the cases of maternity, having many children, illness, disability, workplace accident, need for care, loss of breadwinner, old age, unemployment, loss of employment, etc. Social security is the amount of sufficient resources provided by the state to people with full or partial deprivation of opportunities to work and have income. The main types of social security in the Republic of Armenia are state pensions and social benefits, which are of great social significance as they relate to the vital interests of many citizens.

In this regard, it should be noted, that close professional cooperation was established with the Ministry of Labor and Social Affairs, State Revenue Committee, Yerevan City Hall and other competent authorities in 2017.

In some cases, joint discussions were also held, special responsible representatives were appointed, and every day work with whom was established. One of such examples is the work with the State Social Security Service.

In spite of the above mentioned legislative developments and joint work, in the course of 2017 violations of social security rights of citizens continued to be registered.

***1. Limitations of the possibility of obtaining a pension right***

***1.1 Appointment of pensions on preferential terms***

In 2017, the Ombudsman continued to receive complaints regarding granting pensions of preferential terms. According to these complaints, persons applying for pensions of preferential terms are denied in it, because their employee tenure is not sufficient, as their profession is not included in the list of heavy, harmful productions, jobs, professions, posts and indices.

Thus, according to Part 1 of Article 10 of the RA Law “On State Pensions”, a pension on preferential terms is granted to a person, who has turned 55 years of age and meets the criteria prescribed by law. The logic is that a person receives a pension on preferential terms, if worked during the term, envisaged by law, in particularly harsh, severe conditions that grants the right of a pension on preferential terms, or has performed a work that grants the right of a pension on preferential terms. The law also allows awarding a pension on preferential terms to persons who turned 59 or 45, if appropriate conditions exist (Parts 2 and 3 of Article 10 of the Law). At the same time, the lists of productions, jobs, professions, posts and indices giving the right to a pension on preferential terms, are defined by the RA Government Decree No 12-N of 12 January 2012.

The problem is that in a number of cases, people have been practically performing works granting the right to a pension on preferential terms for years, working in hazardous conditions; it is just that until 1993 that profession was mentioned differently in the lists granting right for pensions on preferential terms, and later that profession was named differently and enrolled in

the Government Decree (for example, the linotypist was renamed as operator of a machine printing linotypes). In another case, according to the person's workbook notes, the period during which he worked as an "energy man" has not been assessed as an employee tenure granting the right for pension on preferential terms, because according to the appropriate list approved by the Government, the persons who have worked as "energy men" have no right to receive pensions on preferential terms, since that profession is not included in the government decision.

According to another complaint, for example, when granting a pension on a preferential terms upon fulfilling the statutory age, the period of working in the factory as an apprentice, registered in the workbook, has not been counted in the employee tenure, as a result of which the length of service has not been met and the person did not acquire the right of a pension on a preferential terms. Then, with the Defender's support, the issue has been solved positively, and the Ministry of Labor and Social Affairs of the Republic of Armenia assessed the time period during which the applicant was employed (including those worked as an apprentice), as a period subject to enrollment in the employee tenure granting a right for a pension on a preferential terms, which became a precedent for all similar cases.

Accordingly, in some cases, people were deprived of the right for pension on preferential terms, as there was no corresponding record of the change in the name of the profession in the applicants' workbooks. Though, in some cases, after applying to the Defender, corrections were made in the workbooks, but the Authorized Body has again denied the appointment of the pension, this time explaining that the employers' references are baseless and are subject to verification.

Thus, the Ministry of Labor and Social Affairs of the Republic of Armenia should examine the relevant record regarding the change in the applicants' workbook, hence no ensuring a comprehensive, full and objective review of factual circumstances. Meanwhile, in accordance with Article 10 of the RA Law on "Fundamentals of Administration and Administrative Proceedings", the information, submitted by the person on the factual circumstances reviewed by the administrative body, is considered reliable in all cases, unless the administrative body has proven otherwise. If the administrative body has reasonable suspicion of authenticity of the information, data, submitted by persons, it is obliged to take measures on its own account and at its own expense, to verify their authenticity. Otherwise, by the force of the fact of reliability of the information provided by the person, the administrative body must grant the pension on preferential terms.

According to a number of other complaints addressed to the Defender, people have been performing hard and harmful work for many years, but have not enjoyed the pensions on preferential terms, since according to the records in the workbooks, those have been made by organizations not included in the approved list. For example, according to the applicant, he worked in the military unit as a diesel locomotive driver. According to the interpretation of the pension authority, the right can be utilized by those railway transport system drivers, who operate in the depots, repair shops and so on, and who do not directly participate in the

transportation of goods and organizing the traffic safety in the railway transport. Accordingly, he was denied granting of pension on preferential terms.

It turns out that the actual performance of heavy and harmful work was not sufficient to be granted of a pension on preferential terms, since the records in the workbook, or other bases of employment, should comply with the approved list.

*Taking into account the abovementioned, it is necessary to:*

- 1. When granting pensions, be guided by the principle that if the position, indicated in the workbook of that person, corresponds to the actual title or nature of the position registered in the list of professions and positions of pensions on preferential terms, defined by the RA Government decision, the person shall be appointed the pension;*
- 2. Based on each case, emerged from law enforcement practice, improve the lists granting the right to receive pensions on preferential terms approved by the Government Decree No 12-N of 12 January 2012.*

### ***1.2 Appointment of Partial Pension***

From the systemic point of view, in 2017, the problem of not conducting a comprehensive, objective and impartial investigation of the case circumstances by the administrative body in cases of assignment of partial pensions, which was raised by the Defender in 2016, has remained unresolved. This is evidenced by a number of complaints addressed to the Defender during the year 2017 by which people have informed that their partial pension was rejected on the grounds that the person's occupation, profession, or organization where the person worked, were not included in Annex 6 approved by the RA Government Decree N 665-N of 5 May 2011.

Thus, the content of Article 14 of the RA Law “On State Pensions” concludes that some categories of education and culture workers may obtain the right for partial pensions, if at the time of applying to a relevant unit of a body having authority to assign a partial pension, the applicant has turned 55 years of age, has at least 25 calendar years of employee tenure, and for at least 12 calendar years prior to August 1, 2003, has worked in relevant professions or positions granting the right of partial pensions. Therefore, the list of professions and positions that grant the right for receiving partial pensions to some categories of education and culture workers is defined by the Government Decree N 665-N of May 5, 2011 “On Ensuring the Application of the Law of the Republic of Armenia “On State Pensions””.

The problem is that the mentioned list names relevant organizations, professions and positions for which the obtained employee tenure is considered as granting the right to partial pension. However, it is not complete, and a number of professions and organizations are out of the list.

For example, according to one of the complaints addressed to the Defender, the applicant has played various brass instruments for many years. The applicant was not granted a partial pension because the list, approved in the Annex 7 of Government Decree N 665-N does not include the organizations where he worked for a long time, particularly the State Dance Ensemble, the

Bureau of musicians-instrumentalists by the Department of Culture of the Yerevan City Council.

It turns out, that the period of work, performed by a person in any other organization not included in the list, is not counted in the employee tenure granting the right of partial pension, regardless of the factual work granting the right of partial pension to a person.

Concerning this case, noteworthy is the position of the RA Cassation Court, made on the case VD 2/0584/05/13 of July 17, 2015, and referred to in the Human Rights Defender's 2016 annual report, with which the court referred to a similar legal settlement regarding assignment of partial pension. The Court, in particular, touched upon the legal question, if the administrative body, authorized to grant pensions have the authority to refuse assignment of partial pension to a person in situations, when the position indicated in the workbook of the given individual corresponds by its nature to the actual title of the position provided in the list of professions and positions granting the right for partial pension defined in the Government Decree. In the same decision, the RA Court of Cassation stated, that the administrative body authorized to appoint pensions, during the administrative proceedings initiated in regard to the application of an individual about assignment of a partial pension, shall be obliged to provide a comprehensive, full and objective review of the circumstances of the case, in order to determine the existence or absence of all the mandatory conditions and requirements prescribed by the RA Law on State Pensions to receive a partial pension.

Despite the above-mentioned judicial act, presence of similar applications in 2017 shows that the issue has not yet been resolved on the systemic level. Moreover, the Ministry of Labor and Social Affairs does not have a separate register of the grounds for declining assignment of a pension, which could become a basis for continuous improvement of the approved lists and ensuring implementation of the right for partial pensions for the people.

*Taking into consideration the abovementioned, it is necessary to:*

*1. In all cases of assignment of a retirement pension, in addition to the comprehensive, full and objective review of the circumstances, as well as disclosing the circumstances that are essential to the administrative proceedings, including the circumstances in favor of the applicant, should also consider the essence of each profession and position defined by the list approved by the Government Decree # 665-N, which grants the right for partial pensions to workers in certain categories of education and culture, and do not narrow-explain them or perform additions in the list.*

*2. Based on each case arising in the law enforcement practice, improve the approved list in the Annex 6 of the RA Government Decree No 665-N of May 5, 2011.*

*3. Hold a separate register of the grounds for declining assignment of a pension.*

### ***1.3 Recalculation of the Employee Tenure:***

In 2017, a survey of documents of the citizens, who applied for and were assigned pensions after 2013, has been carried out, and recalculation of their employee tenure was performed; subsequently the overpaid pensions were charged with. As a result, the pension amounts have dropped.

Part 1 of Article 38 of the RA Law “On State Pensions” exhaustively enumerates bases for recalculation of labor pensions. The amount of pension is recalculated also if a false (non-reliable) document has been found in the pension files, resulting in reduction of the pension amount; or an additional document (information) has been found in the pension files, resulting in increase of the pension amount.

At the same time, pursuant to Point 2 of Part 1 of Article 43 of the RA Law “On State Pensions”, deductions can be made from pensions, due to provision of false information, as well as due to the failure or non-fulfillment of the pensioner's obligations under Article 50 of the same law (with a violation of the law) or on the basis of the decision of the subdivision of the pensions issuing authority on the withdrawal of the overpaid amounts and the written consent of the pensioner, but no more than 15% of the assigned pension, if the amount of the overpaid pension does not exceed twice the amount of the pension to be paid in the month following the month of the decision. According to the first point of Part 4 of the same article, the amount of pensions paid in excess by mistake (with violation of law) may be restored to the state budget, based on the schedule agreed with the subdivision of the pensions issuing authority by the employee of that subdivision due to the fault of which (as a result of action or inaction) the excessive amounts of pension were paid.

For example, a complaint was addressed to the Defender, that the pensioner received a notice from the pension issuing authority that 28 years of his employee tenure, included in his retirement experience were not substantiated, based on which it was reduced resulting in 222,950 AMD overpayment, hence, he has to make a transfer to the treasury account. The applicant has appealed the issue of reduction of employee tenure. According to the clarification of the Ministry of Labor and Social Affairs, the fact that the applicants have worked for a particular period is not substantiated on the basis of non-disclosure of an insurer's title with the employer's name in the Database of the State Social Security Service of the Ministry, as well as on the basis of not grounding the fact of working through records in the submitted workbooks and social payments enquiries (which are void) on the ground of not grounding the fact.

According to another application submitted to the Defender, a person with 34 years and 2 months of employee tenure was appointed an age-based labor pension in 2003. From the notice of the State Social Security Service of the Ministry of Labor and Social Issues of the Republic of Armenia, the person was informed that his workbook was filled with violations of the established order, in particular, the birthday of the book holder, the signature, the date of filling in the workbook were absent on the title page. The same notice also noted that according to the information available in the State Social Security Service of the RA Ministry of Labor and Social Issues, the employee (insurer) with the necessary name was not found.

Thus, the analysis of the complaints provide basis for conclusion, that there are no appropriate mechanisms for the elimination of unfair and unlawful work and practices of the employees of the pension issuing authority and, respectively, no appropriate structure of their responsibility. As a result of the pensions recalculation, initiated by the pension issuing authority, the responsibility lies with the pensioners, irrespective of the fact that when appointing the pensions, the appropriate amount of pensions have been calculated based on the assessment made by employees of the pension issuing authority.

It turns out that the pension issuing authority did not ensure timely collection of the pensioners' documents, nor did provide the applicant with accurate information regarding the employee tenure. In the presented cases, as well as the dozens of other cases of pension reductions, the issue of the guilt of the pension issuing authority employee has not been discussed, respectively, nor the latter's responsibility in the issue of restoration of the overpaid amount.

At the same time, studies of the complaint give grounds to conclude, that employees of the State Social Security Service, in order to avoid their liability, take agreement papers from the pensioners for the collection of overpaid amounts based on a schedule.

According to the Ministry of Labor and Social Affairs, in 2017, only one case of reimbursement of overpaid pensions paid to the pensioner due to mismanagement, by the employee of the department of pension issuing authority, has been registered. By the explanation of the Social Security Authority, it is difficult to find fault of the employee of the department of pension issuing authority through administrative measures. Besides, it was argued, that no record of the persons conducting reimbursements of pensions to the RA state budget is being kept, so the cases that an employee reimburses the amount of paid pension to the RA state budget on behalf of the pensioner cannot be excluded.

During 2017, according to the Order of the Minister of Labor and Social Affairs of the Republic of Armenia No. 39-A / 1 of March 2, studies have been carried out in 10 territorial bodies for social assistance, 6 social security territorial bodies; 7 territorial offices of the State Employment Agency, 2 orphanages subordinated to the Ministry, 2 children's care and protection boarding schools, 2 full-time nursing homes for elderly and / or disabled people, as well as in 4 LLCs, 2 NGOs and 1 SNCO. In addition, home visits were made to 315 families included in the Family Benefit System and 358 beneficiaries of the prosthetic-orthopedic and rehabilitative care services.

A close cooperation has been established between the Defender and the State Social Security Service of the Ministry of Labor and Social Affairs of the Republic of Armenia in order to ensure the proper solution to the above-mentioned issue, as well as other retirement protection related issues addressed to the Defender during 2017. In particular, sector responsible officers have been assigned in the staffs. Taking into account that beneficiaries of this field are elderly persons and pensioners, in order to effectively respond to complaints and to ensure the accessibility of the process of restitution of the right, as a result of effective cooperation, a practice of verbal discussions has been formed (for example, via telephone).

*Taking into consideration the abovementioned, it is suggested to:*

- 1. Carry out a comprehensive, full and objective review of the circumstances of the administrative proceedings in each case of recounts, to disclose all the essential circumstances for the administrative proceedings, including the circumstances favoring the applicant;*
- 2. Apply clear mechanisms of personal responsibility in the process of the record keeping of the employee tenure during the recalculation of pensions;*

#### ***1.4 Record of Employee tenure***

Through a number of complaints addressed to the Defender, the applicants expressed their concern that under existing statutory regulations a certain period of their work may not be registered as employee tenure, even though they were paid salaries, social payments have been accrued and transferred for the whole mentioned period.

According to Article 32 of the RA Law "On State Pensions", the main document confirming the employee tenure before January 1, 2013 is a workbook or other document defined by the Government of the Republic of Armenia. For the period from January 1992 to January 1, 2013, also a document confirming the payment of social benefits or wages, except for the cases defined by the Government of the Republic of Armenia. Therefore, in order to confirm the labor activity for the period from January 1992 to January 1, 2013, the people, in addition to the workbook, need to provide additional work-related documents. If the pension authority determines the fact that the social payments have been paid, or the organization in which the person has worked is acting at the period of issuing the pension, no difficulties arise for people. Meanwhile, if organizations where citizens have worked during the period under review are not functioning (terminated or dissolved) at the period of retirement, many problems arise for citizens to confirm their employee tenure.

According to complaints, in some project implementation offices, the employer did not submit an application for opening an individual account and did not submit individual reports for a specific period, and the State Social Security Service cannot include the data for that period from the enquiries, provided by these institutions, in the State Pension System database. The reason is that according to point 4 of the RA Government Decree 390-N of April 18, 2013, employers could submit data to the State Social Security Service on employee's social payments for inclusion in the database of recording of personal data, as defined in Decree 938-N of May 12, 2005, until July 1, 2013; and the State Social Security Service no longer has such authority.

It turns out that the Ministry of Labor and Social Affairs cannot include the data in the databases because they are closed, and the State Revenue Committee – because of absence of reports for the period in question. As a result, employees of these institutions may be deprived of implementation of their right for social security.

As per the explanations of the RA Ministry of Labor and Social Affairs, appropriate works are being carried out to reveal and exclude the cases of calculation of the employee tenure based on the documents containing inaccurate data. According to the Ministry, a system of control over the validity of the calculation of the employee tenure will be introduced in the future, including through implementation of risk-based analyzes.

*Taking into consideration the abovementioned, it is necessary to amend the deadlines for completing personal data defined by Government Decision N 390-N of April 18, 2013.*

The issue of non-calculation of the period of employment in the foreign countries in the employee tenure as a result of the absence of an agreement in the field of pension security with those countries was raised through another group of applications addressed to the Defender. According to the position of the Ministry of Labor and Social Affairs, the period of work in a foreign country cannot be counted in the applicant's employee tenure if the Republic of Armenia does not have an agreement with the that country in the field of pension security. Besides, no separated accounting in the State Pension System Database is being carried out.

At the same time, the right to receive pension is interconnected with the labor activity in the given country, and Article 29 of the RA Law “On State Pensions” establishes the periods of record keeping in the employee tenure, and the conditions for their registration. Particularly, the periods of business activity are recorded in the employee tenure, if the income tax or retirement benefit or social payments have been paid. Applicants have documents certifying proper payments made in other countries for their working periods. However, the abovementioned is assessed as not enough to include those periods in the employee tenure.

According to the clarification of the pension authority, the purpose of concluding an intergovernmental agreement in this field is to determine the agreed rules for the exercise of a person's right to receive pension, based on the employee tenure acquired on the territory of each of the parties. According to the clarification of the Ministry of Labor and Social Affairs, pension insurance security agreements are concluded in international practice taking into account "territorial" (pension assignment is made by place of residence) or "proportionate" (pension assignment is made proportionally, based on the employee tenure acquired on the territory of the given country), principles. In particular, the “Agreement on the Guarantees of the Rights of Citizens of the CIS Member States in the sphere of Pension Security” of March 13, 1992 is concluded on the "proportional" principle.

According to the clarification of the pension authority, the works on development of a draft agreement on pension security for the workers of the EurAsEC member states are underway. The agreement is based on the "proportional" principle.

*Taking into consideration the abovementioned, it is suggested to:*

*1. to review the assigned pensions, to disclose the periods worked in other countries, and all the cases of not counting the years of experience in the employee tenure on the basis of having no relevant agreement with that country;*

*2. Expand the scope of the countries with which the Republic of Armenia has relevant agreements.*

### ***1.5 Possibility of receiving military pensions in CIS countries***

The issue of a group of former employees of the fire service deprived of the possibility to receive military pensions in the CIS countries, regularly voiced by the RA Human Rights Defender since 2014 in annual and special reports, remains problematic in the year 2017. The problem is that there is no relevant note in the “Agreement on the procedure for pension provision of military personnel and their families and state insurance of servicemen of the member states of the Commonwealth of Independent States” (Agreement) regarding the fire service employees of the Ministry of Emergency Situations, as a result of which those individuals are deprived of the opportunity to receive their pension in the CIS countries.

Military servicemen of the CIS countries can legally register and receive their pensions in any CIS country, including Russia, according to Decision No. 4468-1 of the Russian Defense Minister of 12 February 1993, and Decisions of the CIS Council of Ministers on December 10, 2003. At the same time, the former employees of the fire service were employees of the fire protection department of the Ministry of Internal Affairs of the Republic of Armenia, and then, according to the RA Government Decree N 1142-N of August 1, 2002, they entered state firefighting service at the RA Emergency Situations Department adjacent to the Government of RA. After the acquisition of the right of military pension, they were registered as firefighters in the social department of the RA Military Commissariat, but later, having obtained the right to live in the Russian Federation and suspending the pension case in the Republic of Armenia, have transferred it to the Russian Federation. However, the applications submitted by the former firefighters to register military pension in Russia have been rejected by the Russian Federation's authorized body on the grounds, that there is no indication in the Agreement regarding the possibility of granting pension to servicemen of the fire protection department of the Ministry of Internal Affairs.

No changes were made in the 2017 agreement, as a result of which former employees of the fire service were deprived of the possibility of receiving military pensions in the CIS countries, which resulted in the violation of the social security right of those persons.

*Therefore, it is necessary to make amendments to the relevant CIS agreement in a short time, to ensure the opportunity for former fire servicemen of the fire protection department of Ministry of Internal Affairs of RA, to receive pensions.*

### ***1.6 Timing in changing the type of pension;***

The Defender also received complaints regarding the issue, that as a result of implementation of the designed procedures of changing the type of pension, the person suffers losses. Thus, in one of the complaints, the applicant stated that he had received a disability pension as a person with a disability of a third degree. His right to receive pension was terminated because of non-

recognition of his disability. The person reapplied to the Medical and Social Expertise (MSE) Commission for medical and social re-expertize, but as a result, was not recognized as disabled<sup>9</sup>. Accordingly, the person has applied to the territorial unit for changing the type of pension, to be assigned the age pension and, according to the procedure established by the legislation, was appointed and paid the age pension from the day of application. In fact, as a result of appointing a new expertize after termination of the pension, the applicant submitted an application for the change of the pension type belated for 7 days, as a result of which the latter acquired the right to receive the age pension on February 7, 2017. In the mentioned period, he did not receive pension, although he had that right.

In another case, the person informed that he was assigned a first group of disability, indefinitely. In January 2017, the territorial division of the State Social Security Service informed the applicant in writing that the pension payment would be terminated in February 2017, based on the information about the medical and social expertise decision to recognize him as non-disabled, whereas the applicant claimed that he had never passed medical-socially expertize, therefore it is the fact of recognizing him as non-disabled is incomprehensible. Despite this fact, the right if disability labor pension was discontinued on February 1, 2017 and the age pension was appointed only four months later, based on the written application of the pensioner.

According to point 2 of Part 1 of Article 41 of the RA Law "On State Pensions", the right to receive a pension is terminated in case of expiry of the term of disability. In this case, the right to receive a pension shall be terminated from the first day of the month following the date of the occurrence of such circumstance. In connection with the settlement of the above-mentioned law, as a result of changing the type of pension due to loss of the right to a pension of an appropriate type, issues regarding the timing of assignment of pension arise in practice. Thus, a person may acquire another pension, such as age-based, from the date of termination of the right to disability pension. The problem is that periods suspension of the pension of one type and assignment of the pension of another type do not coincide in a number of cases, as a result of which people remain without the right to a pension in that particular period.

Analyzing the above, it becomes clear that the provision for restoring the pension after termination of the pension on the grounds of losing the right to pension is not envisaged by Part 3 of Article 41 of the Law.

In the clarifications of the Ministry of Labor and Social Affairs, the provisions of Article 37 of the RA Law "On State Pensions" have been presented, according to which, irrespective of the application of the pensioner, from the first day of the month following the fulfillment of the age granting the right of the age pension, the preferential, partial or long-term service types of pension are changed to age pensions, at the same time informing, that within the framework of upcoming legislative changes the question of changing the type of pension to the age pension in

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<sup>9</sup> It should be noted that according to point 25 of the "Procedure of Implementation of Medical and Social Expertise", approved by the RA Government Decree #276-N of 2 March 2006, the expertise decision should be made no later than 30 days from the date of the application (complaint) was filed with the competent state authority in the field of medical-social expertise.

case of termination of the right of disability pension because of fulfillment of the age granting the right for the age pension, without the pensioner's written request, shall also be discussed.

*Taking into account the abovementioned, it is proposed, in cases of changing the type of pension, if the application is received in a certain period, to determine an opportunity of assignment and payment of the new pension from the day of suspension of the previous pension.*

### **1.7 Maternity benefit recalculation**

In 2017, the Defender was addressed with complaints that the maternity benefit of the citizens having dual employer situation has been calculated and assigned without inclusion of the income from the other employer. Thus, in one of the complaints in 2017, after receiving the maternity benefit from the main employer, without calculation of maternity benefit from the second employment income, the applicant applied and submitted a statement from the competent authority about the income from another employer, but that did not serve as a basis for recalculation of maternity benefits.

By the power of the RA Law "On Temporary Disability and Maternity Benefits", the maternity benefit is calculated and paid by the principal employer. According to the paragraph (a) of 3 sub-point of the point 14 of Annex 2 approved by the RA Government Decree 1024-N of July 14, 2011, which ensures the enforcement of the Law, in order to calculate, appoint and be paid the maternity benefits, the employee provides the principal employer also the document regarding the period of pregnancy and childbirth, issued by the other employer, as well as a certificate issued by the territorial division pursuant to Part 8 of the Article 22 of the Law.

According to Part 1 of the Article 24 of the Law, the benefits of the employee are being calculated assigned and paid by the employer, after submitting the necessary documents, within the timeframe established by law for payment of the next salary. At the same time, pursuant to Part 1 of the Article 27 of the Law, the payment of the amount of the less paid benefit as a result of miscalculation is made without limitation of time. Moreover, the employer pays the amount of benefits less paid to employees at his own expense, within a month after the miscalculation has been discovered.

According to the clarification of the Ministry of Labor and Social Affairs, the Article 27 of the RA Law "On Temporary Disability and Maternity Benefits" clearly stipulates the bases for the payment of less paid benefits, while there is no provision in the article regarding the recalculation of assigned and paid benefit based on the reference regarding the income received from another employer issued by the RA authorized body. The information on the income received from another employer should be presented to the principal employer (calculating and assigning the benefit) by the employee based on the reference issued by the authorized body in accordance with the procedure established by the RA Government. The applicant submitted it after the benefit was appointed and paid.

In fact, in case, that opportunity of payment of the less calculated benefit as a result of wrong calculation, without time limitations, is envisaged by the Law, non-calculation and non-

payment of the maternity benefit from the other employment is not considered to be wrongly calculated and less paid case, and is not deemed as a ground, caused by the abovementioned conditions, for the recalculation of maternity benefit. As a result, in this case the individual is deprived of the opportunity to receive compensation for not receiving salary for the work he / she has conducted with the other employer.

According to the RA Law "On Temporary Disability and Maternity Benefits", in the course of pregnancy and childbirth leave (having the right for the leave), as defined in the Labor Code of the Republic of Armenia, the persons, defined by the Article 4 of the same Law, are fully or partially compensated for the loss of salary (income), due to incapacity to work as a result of pregnancy and childbirth, that they were or could be receiving.

In other words, the essence of the state benefit paid is that a certain amount of compensation should be paid to the individual, in case of appearing in the circumstances specified in the law, against the loss of salary (income), caused by temporary incapacity, which the individual received or could have received. Hence, appropriate mechanisms should be established to ensure payment of that benefit in any case, given the conditions for obtaining the right to maternity benefits as provided for by law are satisfied.

Thus, the opportunity to recalculate the benefits provided that a person meets the statutory requirements and has paid income tax (profit tax) in accordance with the procedure prescribed by law, but the deadline for filing a relevant application has been missed.

*Based on the abovementioned, it is necessary to make appropriate legislative amendments to determine such procedures for recalculation of the maternity benefit, which will provide grounds for payment of maternity benefit from the other employer as a less paid benefit, without time limitations.*

### ***1.8 One-time Childbirth Allowance***

In the complaints addressed to the Defender, the issue of refusing a one-time childbirth allowance due to not submitting the required payment application within the timeframes established by law was raised.

The RA Law "On State Benefits" stipulates that the parent, adopter or guardian of a child (on the occasion of whose birth the right for the one-time childbirth allowance has appeared) is entitled to one-time childbirth allowance. The one-time childbirth allowance is assigned and paid if the parent and the newborn child are registered at the address of the place of residence in the Republic of Armenia, and the state registration of the birth of a newborn child is carried out by the competent authority of the Republic of Armenia, or the parent and the newborn child are in the Republic of Armenia on the day of application (if the state registration of the birth of a newborn child was carried out by the competent authority of a foreign state). It is also stipulated that the one-time childbirth allowance is assigned if the application has been submitted within 12 months after the month of the birth of the newborn child. At the same time, the law provides that in the case of the birth of a third and the next child (if the child's birth allowance

is assigned to the third and the next child born), a part of the child's birth benefit is paid to the special family account, opened in the name of the newborn child, in a bank that has signed a respective service contract with a Public Governance body, authorized by the Government of the Republic of Armenia.

Before the adoption of the RA Law "On Additions and Amendments to the RA Law on State Benefits" HO-240-N of December 6, 2017, the Point 2 of Part 9 of the Article 24 of the RA Law "On State Benefits" stipulated, that the right for one-time childbirth allowance should be terminated also in case, if the allowance of a parent, who is entitled to a one-time childbirth allowance, is not paid within 12 months following the month of assigning the allowance.

However, as a result of legislative amendments made on 6 December 2017, the Point 2 of Part 9 of the Article 24 of the mentioned Law has received a different content, in particular, the second point referred to in Law HO-240-N was amended to read "in the case referred to in the Part 2 of the Article 8".

According to Part 4 of the Article 8 of the Law, the maternity allowance of a non-employed person and one-time childbirth allowance (except for the amount referred to in Part 7 of the Article 25) is paid, in accordance with the Civil Code of the Republic of Armenia, through transferring the amount to the payment account opened in the name of the person, who was assigned to receive the allowance. If within the 12 months from the month of transferring the necessary information for opening one-time payment account to the bank, the person does not present the request according to the requirements of Part 3 of the Article 928.8 of the RA Civil Code, the amount of the allowance transferred to the one-time payment account shall be returned to the state budget of the Republic of Armenia in accordance with the procedure and within the time limit set forth in the Part 4 of the Article 928.8. It should be noted that, in parallel, corresponding additions were also made to the RA Civil Code. Thus, as a result of legislative changes, the legal requirements of the law regarding the condition of termination of the right for one-time childbirth allowance have been further determined by placing an additional obligation on the parent to sign a contract with the relevant bank to obtain the amount.

Thus, prior to the mentioned legislative amendment, the termination of the one-time childbirth allowance was related to the fact that the beneficiary was not paid the allowance within 12 months following the month of appointment of the allowance.

It should be noted that in accordance with point 25 of Appendix 1 approved by the Government Decree No 275-N of March 6, 2014, "On Defining the size of One-time childbirth allowance, and establishing the procedure for assigning and payment of one-time childbirth allowance" paying the directly paid amount on a non-cash basis is to transfer the amount to the bank account of the parent or his authorized person.

Thus, when commenting on "not receiving a benefit" as a "nonpayment", the issue of the legality of the termination of the right of a person to receive one-time childbirth allowance was raised, which was resolved by the legislative amendments of December 6, 2017. Meanwhile, before the

legislative amendment, the misinterpretation of existing legal regulations in practice has caused problems.

For example, the complaining person informed that in August 2016 she applied to the territorial division of the State Social Security Service to be assigned a one-time allowance for the birth of the third child. Once the benefit has been assigned, the allowance the directly paid sum of AMD 500,000 was transferred to the account opened under its name. A year later, in September 2017, she wanted to withdraw the cash in the relevant bank, but was denied. The State Social Security Service clarified, that right to one-time childbirth benefit has ceased because of the non-payment of the allowance within 12 months following the date of payment of the allowance to the parent entitled to a one-time childbirth allowance.

In fact, pursuant to Clause 17 of the Government Decree No 275-N of March 6, 2014, "On Defining the size of One-time childbirth allowance, and establishing the procedure for assigning and payment of one-time childbirth allowance", based on the provided documents and existing information, within ten working days the territorial division decides to:

- 1) Refuse to grant the allowance and inform the parent on the matter (inform the parent about the need to submit additional documents);
- 2) Assign and pay the allowance.

According to point 25 of the Procedure, paying the directly paid amount on a non-cash basis is to transfer the amount to the bank account of the parent or his authorized person.

As it follows from the abovementioned, the allowance is paid by the State Social Security Service at the moment of transferring the 500,000 drams to the account opened in the name of the applicant. At the same time, it follows that a person has fulfilled the request of the Law, which is to apply for the allowance within 12 months after the birth month of the newborn child.

In fact, the appointment was made, the payment was also made by transferring to the bank, but because the person did not apply for encashment for 12 months, she was deprived of the right for allowance.

Thus, the amount of unpaid benefits is subject to non-specific provisions of the legislation, as the person has not been explicitly required by law to apply to the bank within 12 months and receive that amount. Moreover, since according to the new regulations, the parent's liability relates to filing a request to the bank, that is, the requirement to acquire a bank's customer right.

*Taking into account the abovementioned, it is necessary to implement, before the new legal regulation comes into force (01.01.2018), the payment of one-time childbirth allowances assigned, but unpaid due to the abovementioned law enforcement practice.*

## ***2. Right for social assistance***

### ***2.1 Family vulnerability assessment system***

In 2017, the question of problems existing in the Family Vulnerability Assessment System, including the deficiencies in the formula of family vulnerability points calculation, as well as inadequate administration of the system, continued to be raised. Examination of the data presented in the applications allows concluding, that the beneficiaries are not included in the vulnerability system because of the lack of registration, registration at the residence address, not having permanent residence, and for other reasons. In particular, the latter, due to the difficult situations in their lives, have to change their place of residence regularly, which results in not being enlisted in the vulnerability system. The problem becomes more apparent when citizens are forced to change the place of residence, especially during winter months.

Complaints are also filed regarding the failure to receive, or deprivation of the right for a vulnerability allowance, because of incorrect calculation of the vulnerability points. The problem is that the assessment of vulnerability of families is carried out automatically, based on the data included in the database of the family vulnerability assessment system. Only the practitioners are able to carry out the calculation of the vulnerability points.

For many years, the Ministry of Labor and Social Affairs of Armenia has argued that the justification for the requirement for residence at the address of registration or to have a permanent place of residence is based on the principle of targeted allowances, whereas it is not justified by the simple reason that especially the lonely, elderly and those in need of permanent care are not provided with adequate alternative care services. In case of necessity, the persons referred to above, are forced not to change their place of residence in order to avoid losing their right for allowance.

Thus, in 2017 in complaints addressed to the Defender, the issue of non-availability of vulnerability allowances in case of socially insecurity for persons with disabilities, people with no heir, lonely pensioners, has been voiced.

According to Article 10 of the RA Law on State Benefits, while evaluating the degree of vulnerability of a family, a small social group of citizens (actually living) registered in the same place of residence, whose members are sharing the same household and have common budget, as well as a single citizen are considered to be a family. For example, in one of the complaints, a citizen living alone does not live at his registered address constantly because he needs some care and at the same time does not want to be removed from registration in his only property. Even leaving the registration and registering him / her at the same place of residence with the caregiver causes issues with vulnerability assessment and does not guarantee the acquisition of the right for allowance.

At the same time, another application addressed to the Defender, mentions that acquisition of the right for allowance was rejected on the grounds of receiving financial assistance. According to the applicant, it does not correspond to the reality.

It is here that the risk of abuses comes from the human factor existing in the process, which often leads to corruption risks. Particularly, the problem concerns home visits by inspectors. In this case, there is no proper control mechanism to evaluate activities of the inspector directly

involved in the vulnerability assessment. In the event of detection of abuse, the liability is completely exposed to the beneficiary and the latter is deprived of the right to receive family or social allowances.

At the same time, the basis for termination of the right for social allowance is not receiving the social allowance for three months without a valid reason, as defined by point 3 of part 1 of the Article 3 of the RA Law “On State Benefits”. The lawmaker has left the appraisal of the causes of unacceptable reasons to the practitioners, which allows for the different types of abuse and application of dual standards. According to explanation of the Ministry of Labor and Social Affairs, among those receiving the family livelihoods increase allowance, the number of cases that have been suspended for not receiving the allowance for three consecutive months without a valid reason for during 2017 was 1973. The cases of restitution of the suspended right, as per the Ministry's information, were not registered in 2017, so it is not possible to present a description of the events that are considered to be good reasons. Whereas, in practice, there are many cases when a person has been absent from the place of residence for a variety of reasons (illness, receiving of treatment in an appropriate facility, absence from the country for a short period), and has not received or was not paid the allowance.

The vulnerability assessment system often takes into account circumstances that do not really reflect the vulnerability of a person, while obstructing the right for vulnerability allowance. For example, as per one of the complaints, the family lives in a difficult social conditions, but there is a very old, non-exploit vehicle in the household, which reduces the vulnerability point to acquire the right for the allowance in the assessment formula.

*Taking into consideration the abovementioned, it is proposed to increase the system's targetedness and transparency, control over inspectors to identify, prevent and prosecute abuses.*

## ***2.2 Compensation of deposits***

In 2017, the Human Rights Defender has received complaints regarding the lack of procedures for timing of reimbursement of damages caused by an error during the administration of the process of receiving compensation for the money deposits.

Particularly, one of the complaints addressed to the RA Human Rights Defender presented, that the person applied to the territorial division of social assistance to receive compensation for the money deposit on March 3, 2017, but the application was reviewed only in June. According to a survey of information received from Nork Information-Analytical Center CJSC and a territorial division of social support, the employee of the social support department made a mistake when entering a person's data into the deposit compensation database, due to which the number of the applicant in the summary list of deposit compensation was formed with one-month delay. As a result, instead of August 2017, the applicant was expected to be paid the deposit compensation in September 2017.

In response to the person's application to receive the deposit compensation out of turn, the Ministry of Labor and Social Affairs of the Republic of Armenia has returned rejection

explaining, that the compensation payments for money deposits are being made in accordance with the established list of one month periodicity and there is no provisions for exceptions in the legal acts regulating the process of deposit compensation.

According to Article 95 of the RA Law “On Administrative Procedures and Administrative Proceedings”, the damage caused to persons caused by the administration of administrative bodies is subject to compensation. According to Article 98 of the same law, if the damage is in changing of any factual circumstance of the person, the liable party is obliged to eliminate the consequences to the previous circumstance, or if it is impossible or ineffective, then through restoration to another equal circumstance.

Point 20 of the Government Decree 460-N of 23 April 2014 provides: “Taking into account that the right of the depositor to claim compensation is considered to be inalienable, it can not be transferred to another person (Article 398 of the RA Civil Code), be a subject of pledge (Article 230 part 1 of the RA Civil Code), be a part of inheritance (Part 2 of Article 1186 of the Civil Code of the Republic of Armenia)”.

It follows from the aforementioned, that the right for compensation for a person's deposit belongs exclusively to that person, and not timely realization of it may also lead to the deprivation of the right at all.

With the assistance of the Defender, the compensation for the deposit was made on the principle of restoration of the previous circumstance, which is, that the data on the person was included in the deposit compensation payment list of August.

*Taking into consideration the abovementioned, it is recommended to carry out regular checks of the process of provision of compensations for the deposits aimed to disclose any mistakes in the administration, in order to ensure compliance with the terms for filing a claim for compensation and being enlisted in the appropriate registers.*

In 2017, the Human Rights Defender has received complaints about refusal to provide compensation for money deposits due to not residing in Armenia. For example, the person, appealing to the RA Human Rights Defender stated that he was a citizen of the Republic of Armenia and applied to the Ministry of Labor and Social Affairs of the Republic of Armenia to receive compensation for deposits made in the former USSR Savings Bank's Armenian SSR branch. Provision of deposits was rejected on the grounds that a person must be registered in the State Register of Population in the place of his actual residence in order to be registered in the compensation program, since according to Sub-point 3 of Point 6 of Annex 1, approved by Government Decree number 460 of 23 April 2014, in the process of registration, the territorial division of social support compares the data from the identification document mentioned in the application with the data in the State Population Register database.

According to Sub-point 3 of Point 1 of Appendix 1, approved by Government Decision # 460-N of April 23, 2014, a person has the right to receive compensation against deposits made in Armenian SSR republican bank of USSR Savings Bank before June 10, 1993, if the person registered in the State Registry of Population as of August 1, 2014 in the communities enlisted in

the list included in the Annex 1 approved by the RA Government Decree #1444-N of December 18, 2014, have made deposits, including the deposits in Soviet Rubles, in Armenian SSR Republican bank of USSR Saving Bank before June 10, 1993, including if the deposit was made by deceased spouse during joint life.

As it follows from the abovementioned, that the legal act regulating the mentioned relationships, aimed to provide compensation for the deposits, does not stipulate a clear and specific requirement to be registered in the State Population Register for the persons born before December 31, 1931, which may serve as a basis for refusal of deposit compensation in case of having a registered address in another State. Furthermore, the mandatory authority of the authorized body to compare the data of the person mentioned in the application with the data of the State Register of Population cannot be interpreted as a requirement or obligation to be registered in the State Registry's database at the address of the RA Residence.

On the occasion of a complaint with similar factual circumstances, the Ministry of Labor and Social Affairs of the Republic of Armenia has clarified, that in connection with the definitions in the Government Decree # 460-N of April 23, 2014, giving an opportunity for misreading, the Ministry is conducting works towards making amendments and additions to the mentioned decision, in the context of which process of registration in the compensation program, grounds for appointment, payment and refusal of deposit compensation will be clarified.

However, there are no direct bases for rejecting a person's request to provide compensation for deposits in the RA Government Resolution 460-N of April 23, 2014, on the basis of not being registered in the State Registry of Population on the actual place of residence, therefore, according to the regulations of current legislation, the person's deposits in Armenian SSR republican bank of the former USSR Savings Bank are subject to compensation.

As per the clarifications of the RA Ministry of Labor and Social Issues, according to Article 18, Part 2 of the RA Law “On Social Assistance” any person residing in the Republic of Armenia has the right for social assistance: citizens of the Republic of Armenia, citizens of foreign countries having right for residence (resident status), persons without citizenship, as well as having refugee status in the Republic of Armenia, in the presence of the grounds prescribed by law. According to the position of the RA Ministry of Labor and Social Issues, if the person is not registered in the Republic of Armenia, the right for compensation cannot be realized.

*Taking into account the abovementioned, it is proposed to provide compensation for the deposit to these persons, given that the provision of residence in the RA for deposit compensation is not clearly defined.*

### ***3. Protection of the rights of elderly people in social security institutions designed for them***

The state social policy implies the establishment of an effective social security system that will ensure a satisfactory living standard for each member of the society and at the same time will

include complex measures taken by the state aimed at social security of those citizens who are unable to work and take care of their own needs.

International principles of human rights call for full recognition of the rights of elderly people, which will ensure the realization of right of elderly people, as a vulnerable stratum of the society, to a healthy and full-fledged life. Consequently, the domestic law of countries should develop appropriate mechanisms to ensure and protect the elderly people's rights.

Emphasizing the importance of realization of elderly people's rights, Article 84 of the Constitution of the Republic of Armenia states that every vulnerable and elderly person has the right to a dignified existence in accordance with the law. Despite the above-mentioned, studies conducted by the Human Rights Defender's Staff have shown that there are some problems with the implementation of elderly people's rights.

Thus, one of the challenges facing the elderly is the unsatisfactory amount of necessary means for specialized services, such as nursing homes, care homes, as well as the means needed for palliative care services. The Republic of Armenia, as a social state, implements its social assistance through various institutions, particularly through orphanages, nursing homes and other institutions designed for vulnerable groups.

One of the most important directions of the Defender's activities in 2017 was the assessment of care for elderly people living in nursing homes. Older people in nursing homes often need complex care, but many are not there only to receive care and treatment. For some elderly, the nursing home is their home, the place of permanent residence, for indefinite time. In this regard, it is very important that national, regional and international legislation set forth appropriate standards to ensure the best of protection of the rights of elderly in the nursing homes.

In order to ensure the proper processing of the complaints received by the Defender, as well as of the self-initiated investigations on the issues, in the course of 2017 professional cooperation has been established between the Defender and the Ministry of Labor and Social Affairs, as well as with a number of other institutions, particularly with institutions implementing social protection of the population. As a result, a joint working group was formed, which implemented studies, where many of the sector related issues have become a subject of discussion.

During the year 2017, regular visits were paid to "Yerevan N 1 Retirement Home" and "Gyumri Nursing Home" state non-commercial organizations. The issues were raised through regular visits by the Defender and the Defender's Staff. As a result of the visits, as well as studies of the complaints received from the care-receivers, the revealed violations and shortcomings were recorded and voiced. Conditioned by the proper study of the conditions of care for the persons residing in the nursing homes, protection of their rights and fundamental freedoms, the Defender's Staff has started a self-initiated process of discussions on the issue. Particularly, the subject of discussion is the compliance of care in the nursing homes with the defined minimum standards.

Thus, as a result of joint efforts of the Defender's Staff and the RA Ministry of Labor and Social Affairs, the following registered issues were solved in 2017 at the N1 nursing home, acting under the Ministry's jurisdiction:

- a) persons with health problems were provided with directions to specialized medical institutions;
- b) if necessary, accompanying of the care-received to the appropriate medical facility by the nursing house staff was organized;
- c) the issue of supply of medicines has been solved, medicines are provided to the care-receivers according to the appointment of a doctor;
- d) Dinner is provided at the prescribed time, diet food is also prepared;
- e) The care-receivers are already using the bathrooms without restriction, and for those who refuse, a schedule is developed;
- f) The care-receiving persons are provided with clothing, footwear, slippers, bedding, and items of personal hygiene;
- g) separate office was provided to the psychologist;
- h) The library of the institution has been replenished with new books;
- i) new washing machines have been purchased;
- j) boxes for complaints have been installed in all the buildings.

At the same time, a number of problems remain unresolved in the nursing home, particularly, at the Yerevan N1 nursing home it is necessary to,

- a) carry out repairs of the relevant buildings;
- b) provide all the living rooms with hot water;
- c) ensure installation of ventilation system in the kitchen;
- d) organize a visit of Psychiatric Expert Group to the nursing home.

In 2017, the Defender and the Defender's staff visited also the Gyumri Retirement Home, during which a study on the conditions of care for the persons residing in the retirement home, the protection of their rights and fundamental freedoms was conducted. Based on issues recorded during of the study made in the course of the visit, the following suggestions were made:

- Ensure individual living space for each care-receiver – no less than 5 m<sup>2</sup> per care-receiver.
- Organize renovation and improvement works in garment storage, tailor's and hairdresser's rooms, replenish with necessary stock
- Organize the ventilation in the kitchen with fans
- Adjust the rooms and toilets for persons with disabilities
- Ensure the availability of hot water in all living rooms
- Follow-up on the cleanliness of bed linen
- Take steps to ensure timely provision of clothing, shoes (slippers) to the care-receivers of the retirement home.
- Provide a psychologist with a separate room, in order to ensure efficient and comfortable work with the care-receivers of the retirement home.
- Take steps to provide wheelchairs to those care-receivers without wheelchairs.

- As a result of the joint efforts of the Defender's Staff and the RA Ministry of Labor and Social Affairs, some of the problems faced in Gyumri Retirement Home have already been settled and, according to the Ministry, the relevant steps will be taken within the shortest terms and within their competence and capabilities regarding the rest of the issues.

*Taking in consideration the abovementioned, in order to improve the living conditions of persons living in a nursing home, it is recommended to:*

1. *In accordance with international standards, ensure satisfactory living conditions in the institutions of social protection of the population.*
2. *Saturate the continuity and consistency of measures to ensure that the care-receivers are provided with adequate dressing, shoes, and food.*
3. *Continuously implement renovation works in the buildings.*

#### ***4. The right to social security at workplace in case of accident, illness***

The RA Human Rights Defender's reports and communiqués have been voicing for many years the issue of limiting the right to social security in case of accidents and occupational disease in the workplace. The issue was addressed with reference to the application of the "Disabled Pilots of Civil Aviation" NGO, which testifies that as a result of legislative changes in 2004, a number of individuals were deprived of the right to receive compensation for damages caused to life and health as a result of occupational accidents, and diseases.

The problem is that pursuant to RA Government Decision No. 1094-N of July 22, 2004, paragraph 16 of the rules approved by the Decision of the Government of the Republic of Armenia No 579 of 15 November 1992 has been repealed, according to which in the case of liquidation or restructuring leading to termination of its activities, the damages shall be compensated (compensation should continue) by his legal successor, and in the absence of the latter – the social security body at the expense of the state budget. As a result of this change, the warranty for reimbursement has been eliminated for the cases when the organizations responsible for the damage have been liquidated after August 1, 2004.

It should be noted, that in the event of the liquidation or bankruptcy of a legal entity recognized as responsible in the prescribed manner, the procedure for capitalization of relevant payments and their payment to the aggrieved, are set out by the RA Government Decision N 914-N of 23 July 2009, which, however, regulates only the cases arising after its adoption.

The study of international documents shows that in such cases the right of the person to enjoy social guarantees should be clearly defined, the state should establish clear rules to ensure the exercise of these rights. Thus, according to Article 11 of the 1925 “Convention on Compensation for Workers in Case of Industrial Accidents”<sup>10</sup>, the national legislation, taking into account the national peculiarities, provides such clauses that, in the circumstances of the employer's or

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<sup>10</sup> Has come into force for the Republic of Armenia on December 17, 2004.

insurer's insolvency, the compensation will most adequately be provided to the victims of the accident, or, in case of death, persons under their care.

The Expert Panel on Assessment of Implementation of Conventions and Assignments of The International Labor Organization, in its 2015 observations on the application of Article 11 of the Convention in Armenia has outlined the following: "In response to the previous observation, which refers to the lack of compensation for about 800 victims of industrial accidents, which occurred during 2004-2009, after the Government decree No. 1094-N of July 22, 2004, the Government of the Republic of Armenia does not cite the legal provisions applicable to the cases of liquidation or bankruptcy of legal entities responsible for damages caused to life or health, nevertheless, by attaching the letter of Confederation of Trade Unions of Armenia of July 25, 2014, which indicates that the State has taken no action so far in regard to the mentioned problem, the Committee once again requests the Government to indicate how this provision of the Convention is being applied in abovementioned cases."

At the same time, in accordance with Article 9 of the 1992 "Convention on the Protection of Employees in Case of Insolvency of the Employer", in the event of an employer's insolvency, the protection of workers' claims is made by the guaranteeing institutions.

That is to say, all the mentioned documents fix the existence of clear and effective legislative mechanisms, whereas it is not embedded in Armenia and, in the result of the loss of the force of the previous mechanism, persons are actually deprived of the opportunity to exercise their right.

*Taking into consideration the abovementioned, it is necessary to:*

- 1. provide compensation for damages caused to life and health as a result of occupational accidents, occupational diseases to employees of legal entities, which have been liquidated or became insolvent after 2004, including the employees of "Armenian Airlines" CJSC.*
- 2. Establish a definite procedure for reimbursement of damage to the life or health of employees at the place of work (in case of accidents and occupational diseases) in the event of an employer's liquidation.*

## CHAPTER 2. PROPERTY RIGHTS

Everyone has the right to own, use and dispose of their property at their discretion in accordance with Article 60 of the Constitution of the Republic of Armenia, as well as with a number of international instruments, including Article 1 of Protocol No. 1 to the “European Convention for the Protection of Human Rights and Fundamental Freedoms”.

In 2017, cases have been documented, examination of which reveals existence of some systemic issues in the field of property rights, which are presented below.

### ***1. Sending a fine to the owner of the vehicle in case of violation of traffic rules***

Since 2015, the issue of not dispatching decisions on administrative offenses based on video records recorded by video cameras to the actual users and possessors of the vehicles has been raised in the Human Rights Defender's annual reports and communiques.

The problem is that as a result of amendments to the RA Code “On Administrative Offenses” (LA-178), of December 21, 2015, the Article 32, Part 3 of the Code states, that in cases where the violation of traffic rules has been fixed through video filming or photography, the administrative responsibility provided for by this Code shall be borne by the owner of the vehicle, and if the vehicle is the property of a legal entity or sole proprietor, then, accordingly, the head of the legal entity or the sole proprietor, if the latter do not prove that the violation was committed by another person. As a result, the penalties based on the decisions regarding administrative offenses, are sent to the owner of the vehicle even when it is been used for another person and has been exploited by him for many years.

As it becomes clear from the analysis of the abovementioned provisions of the law, this problem is actual in the case of vehicles belonging to individuals and private legal entities, as the issue is legislatively regulated for vehicles belonging to state and community organizations. In the mentioned case, Part 4 of the Article 6 of the RA Law on "Peculiarities of Administrative Proceedings on Cases Regarding Violations of Traffic Laws Detected by Video or Cameras" defines that if the offense has been committed by a vehicle belonging to the state (state body, public institution, state institution or a state-owned organization of any other status) or a community (community-based organization or any other community organization), in order to clarify the addressee of the administrative offenses provided for in Part 6 of the mentioned article, the administrative body shall, within five days after clarifying the details of the offense, issue a written request to the relevant organization (the request may also be sent to the organization's official e-mail).

In practice, both individuals and legal entities have the opportunity to request readdressing of the fine, based on a relevant application. Thus, in case of provision of sufficient evidence by the person in accordance with the procedure provided for in Article 32, Part 3 of the RA Code “On Administrative Offenses”, the administrative act will be forwarded to the appropriate person. However, it should be noted that the problem is not the existence of an opportunity for the

owner to prove that the infringement was done by another person, but it is that, for example, both in the case of long-term lease and, in the case of a legal entity, when assigning the vehicle to employee that legal person, an additional burden is put on the vehicle owner, that is, to prove the fact that each violation was committed by another person.

*Therefore, it is necessary to make a change in the RA Code "On Administrative Offenses", by which an opportunity will be given, in case of handing the vehicle, belonging to a legal person or a natural person, over to another person on the basis of the relevant document (for example, contract) for the long-term use, the fine shall be imposed based on the data of the person actually using the vehicle.*

## **2. The definition of terms "creditor debt" and "accounts receivable" by the government decision, and hence the interference with property rights in the manner not provided for by law**

As a result of discussion of the applications addressed to the RA Human Rights Defender during the year 2017, it was found out that the definition of the term "creditor debt" and "accounts receivable", which regulates the tax sphere, is defined not by the RA Law "On Profit Tax"<sup>11</sup> but by the Government Decree No. 2052-N " On Approval of the Procedure for Creation of a Reserve (Reserve Funds) for possible losses of Accounts Receivables of Organizations (Excluding Banks and Insurance Companies), Recognition as Unreliable and Disclosure of Creditor Debts and Accounts Receivables" of December 19, 2002<sup>12</sup>. As a result of the study and analysis of the problem, the fact that the definition of the terms "creditors debt" and "accounts receivable" by the government decision does not derive from the Law, which entails interference with property rights in the manner not provided for by the Law.

Thus, the legislator using the term "creditors debt" (Article 7, Part 1, Sub-point d) of the Law) and "unreliable creditors debt" (Article 7, Part 2, Sub-point o) of the Law) does not disclose their content. Sub-point o) of the Part 2 of Article 7 of the Law stipulates that the procedure for deducting the amount of unreliable creditors debts should be established by the Government of the Republic of Armenia, and in the case of banks, credit organizations, investment companies and insurance companies, it should be done jointly by a body authorized by the Government of the Republic of Armenia and the Central Bank of the Republic of Armenia. The Decision, however, has also provided the definition of the above terms. However, as it has been mentioned, it is out of the subject of regulation, delegated by the Law. Consequently, the term "creditor's debt" used in sub-point o) of part 2 of Article 7 of the Law is practically used in the meaning of the term "creditors debt" defined by the Decision.

On the other hand, the Sub-point "b" of Point 3 of Appendix 1 of the Decision also considers the amount of debt payable (in other form of repayment) by the entity to other persons (creditors) in the case of dividends, as a creditor's debt. However, it is necessary to reiterate once more that according to Article 11 of the Law, the amount of dividend payable is considered an element not containing expenses, and therefore has no effect on the determination of taxable profit. As a

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<sup>11</sup> Hereinafter in this subsection, the Law

<sup>12</sup> Hereinafter in this subsection, the Decree

result, it comes out, that this amount, not being considered as an expense by the Law, not having any effect on the process of determination of taxable profit, in case of being reviewed from the point of view of the Decision, can be considered as unreliable creditors debt and be taxed.

As a result of the study of the issue, it was also revealed that the mentioned interference does not proceed from the public interest. Particularly, from the principle of ensuring the constitutional obligation to pay taxes, since by the law, the state, in the person of the tax authority, is "not interested" with non-taxable items with elements not considered as expenses (the gross income does not decrease, it does not have any impact on the tax amount), they are not accounted for as creditors debts and therefore cannot be written off as unreliable creditors debts.

The Point 14 of Appendix 1 defines that the accounts receivable defined by the same procedure is recognized as unreliable from the 366th day of the deadline pass, if the total debt of the debtor to the organization does not exceed 100,000 drams, or *in case of presence of appropriate court decision on exaction of the account receivables, if the total debt of the debtor to the organization exceeds 100,000 drams.*

At first, the Law does not define the concept of accounts receivable, and then the Decision imposes a liability on the entity to have an appropriate court decision on pledging the amount of the accounts receivable regarding the amount exceeding 100,000 drams. It should be noted that the decision on confiscation might not be possible due to civil-legal relations (passed the statute of limitations for the action, or no basis for invalidity was found). In this case, not offsetting the accounts receivable cannot be considered as justified.

In such a situation, the state does not perform any action deriving from public rights (payment of taxes). Definition of criteria and order is not an end in itself; the logic here is that the state should make sure that the businessperson does not unreasonably decrease the amounts. That's why it is necessary first to make sure that taxes were paid for the same transaction in the past, and that there is no other tax offense. The requirement of a verdict of confiscation, imposed by the decision, does not necessarily guarantee the balance of public and private interests.

Moreover, it should also be taken into consideration that in case of recognition of the accounts receivable as unreliable, it will result in the fact that, in the absence of a tax liability in previous reporting periods, payments VAT and profit tax were made.

It is necessary to state that Point 11 of the Part 4 of Article 109 of the RA Tax Code, which has fully come into force since January 1, 2018, again entrusts the Government of Armenia with a procedure for the writing off the unreliable accounts receivables and creditors debts. Thus, again, there is a danger of regulating different issues (rights and responsibilities), as well as defining concepts in contradiction with the Law, when defining the order by the Government of the Republic of Armenia

*Based on the abovementioned, it is proposed to make appropriate amendments and supplements to the Tax Code to define the terms of "creditors debt" and "accounts receivable" by the Law and*

*hence, to exclude the possibility of interference with property rights in the manner not intended by the Law.*

***3. Restriction of the right of ownership as a result of acknowledgment by the state of an exclusive, priority public interest***

In 2017, the systemic problem, which has been repeatedly discussed in the Defender's Office and submitted to the appropriate competent state bodies, as regards to the recognition of the territories of former residents of a number of residential areas by the RA government's relevant decisions as an exclusive public interest, and since 2007 being alienated to various organizations acquiring territories, but not providing compensation by these organizations so far, remains actual. It should be noted that Article 3 of the RA Law "On Alienation of Property for Public and State Needs" stipulates that the alienation of the property for public and state needs must be carried out in accordance with the law, and the preliminary adequate compensation must be given for alienated property. According to the regulation set forth in the Part 4 of the Article 10 of the RA Law "On Alienation of Property for Public and State Needs", the property may be alienated according to the agreement between the acquirer and the owner of the property to be alienated, and in this case, only by the agreement of the parties the amount of the adequate compensation, its form, procedure, terms, conditions and liability of the parties are being decided. Thus, guided by the abovementioned regulation, the companies concluded agreements with the former residents regarding provision of apartments in the multi-apartment buildings that were to be built on the place of the purchased territories. To date, however, neither housing nor adequate compensation have been provided.

As it can be noticed, in this case there is a contradiction between the norms set out in two articles, that is, one of the articles uses the term "preliminary adequate compensation", according to which the alienation of property to ensure the primary public interest is carried out in exceptional cases and in the order provided by the Law, only with preliminary and equivalent compensation, whereas the other article uses only the term "equivalent compensation" and the amount, form, procedure, terms, conditions and liability of the parties to compensation are left at the discretion of the parties.

The word "compensation" used in the Law "On Alienation of Property for Public and State Needs" should be used in any article along with the words "preliminary equivalent". Meanwhile, in the Part 4 of the Article 10 of the Law the word "compensation" was used with the "equivalent" adjective, and the word "preliminary" is absent in the above-mentioned article at all.

As a result of the review of agreements between companies and former residents of alienated territories, it was found out that on the basis of the aforementioned legal norm, by mutual agreement of the parties, it was decided to grant the applicants with apartments in multi-apartment buildings to be constructed, against the alienation of the property belonging to them under the right of ownership. That is to say, the contract actually provided a postponement of

the compensation for a definite period of time. The mentioned period has expired, and adequate compensation has not been provided, and it is not clear whether it will be provided at all.

In the context of the abovementioned, the Constitutional Court stated in its judgment #753 of 13 May 2008 that no legal norm could be regarded as "law" if it did not comply with the principle of *res judicata*, that is, it was not formulated with sufficient clarity, which will allow the citizen to adapt his / her conduct with it.

Having examined the circumstances set out in the complaints, in the light of the abovementioned legal norms, the Defender has come to the conclusion that in violation of the condition of preliminary adequate compensation, the residential territories on Arami, Buzand, Firdusi, Hanrapetutyun, Khanjyan streets and in Cond block of Kentron administrative district, belonging to the former residents of those territories under the right of ownership, were alienated in lawful expectation to receive apartments in the newly built multi-apartment building in the 30 (thirty) months period as an adequate compensation, in the meaning of interpretation of the norms fixed in the Part 4 of the Article 10 of the Law "On Alienation of Property for Public and State Needs", which also has not been provided up to the day

Within the meaning of Article 1 of Protocol No. 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and the case law of the European Court of Human Rights, the property is considered not just the existing material means, but also the legitimate expectation of acquiring that material means<sup>13</sup>.

The RA Constitutional Court has also expressed its legal position on this issue by the Decision # 741 of 18 March 2008, with the following definition: "The Constitutional Court states that the protection of property rights guaranteed by Article 31 of the Constitution of the Republic of Armenia is provided to those persons, whose ownership right has already been recognized in accordance with the law, or who has legitimate expectation of acquiring the property right by law". The RA Constitutional Court reaffirmed this position on 2 April 2014 by the Decision # 1142.

It follows from the abovementioned, that alienation of the territories for the urban development as the exclusive priority public interest for the needs of the society and the state, does not stem from the public interest, because first of all, the buildings constructed as compensation (multi-apartment buildings) do not serve their purpose since stand semi-constructed for many years, the territories are not developed, and secondly, it does not stem from the public interest as the former owners of the alienated territories have been forced to live in rented apartments for years, and as a result not receiving any adequate compensation to the day.

As a result of revision of the complaints received by the Defender regarding the raised issue, it was found out, that the issue of the state's subsidiary responsibility was also problematic, which, according to the norms set out in Part 1 of the Article 16 of the RA Law "On Alienation of Property for Public and State Needs" arises only in the event of failure by the acquirer to perform certain actions, mentioned in the Part 1 the same Article. Meanwhile, as a result of

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<sup>13</sup> See the decision on the case Trgo v. CRAtia of 11 June, 2009, Complaint # 35298/04:

numerous complaints filed to the Defender, it appears that contracts were signed between acquiring organizations and owners of alienated residential areas by virtue of which these organizations were obliged to build multi-apartment buildings in the time-frames set in the agreements and provide apartments, but the construction works of these buildings still remain unfinished, and the state's subsidiary responsibility for that part is not defined.

According to Article 16 of the RA Law “On Alienation of Property for Public and State Needs”, if the acquirer does not send the owner of, or a person having property rights on the alienated property a draft of the alienation agreement in the time period set up in the Article 10 of the same Law, or does not submit the compensation amount on the deposit account in the time period set up in the Article 12 of the Law, or does not appeal to the court with the appellation on alienation of the property in the time period set up in the part 1 of the Article 13 of the Law, or does not submit to the deposit account the additional compensation amount defined by the court in the time period set up by the Part 6 of the Article 13 of the Law, then it is considered, that the acquirer refuses to buy the given property and all the legal documents regarding recognition of that property as subject of exclusive primary public interest are considered void. The acquirer is obliged to compensate the owners of the alienated property, as well as those who have property rights to that property, the losses arisen as a result of breaching the requirements of Part 1 of the mentioned Article. The Government carries subsidiary responsibility for the damages caused by the acquirer as a result of breach of the requirements of the Part 1 of the same Article.

In other words, this article narrows the sphere of state subsidiary liability by linking it to the failure of the acquirer to fulfil certain obligations, which in this case is not a sufficient guarantee of protection of the property rights of the people by the state.

It follows from the abovementioned, that the RA Law “On Alienation of Property for Public and State Needs” also does not include mechanisms of full-fledged state control over the process of alienation.

Article 1 of Protocol No. 1 of the ECHR protects individuals or legal entities from the arbitrary interference of the state in the exercise of their property rights. Nevertheless, the article recognizes the right of the State to control the exercise of rights of the individuals or legal entities regarding the property they own, or even to deprive them of their right, with the condition to comply with the requirements defined by the clauses of the article. States that have ratified the Convention are required to ensure that any interference with the right of ownership is made only based on public interest.

In order to ensure a balance between the interests of the public and the individual, it is necessary that the interference is not arbitrary and fits within the framework of the law. As regards the need for intervention, it should be mentioned, that the ECHR has, in general, provided the State with a broad discretion for assessment of the need. Although Article 1 of Protocol No. 1 does not unambiguously refer to the right of confiscation of property or the right to compensation in case of any interference with property rights, in practice it is

unconditionally assumed<sup>14</sup>. Only in exceptional cases, the refusal to grant compensation may be justified, for example, in the case of Germany's reunification<sup>15</sup>.

However, when examining legal relations between individuals on the cases regarding property, the Convention authorities should clarify if the legislation creates such unequal conditions, as a result of which a person may be arbitrarily or unjustly deprived of the property in favor of another person. In certain cases, however, the state may be imposed an obligation to interfere with the regulation of actions of private individuals.

It should be noted that Article 1 of Protocol No. 1 is mainly applicable in situations where the State itself interferes with property rights or permits third parties to do so.

*Taking into consideration the abovementioned, it is suggested to:*

1. *Amend Part 4 of the Article 10 of the RA Law "On Alienation of Property for Public and State Needs", which is, to fix the term "preliminary adequate" compensation also in this article.*
2. *Exclude the possibility of determining the size of the adequate compensation, its form, procedure, terms, conditions, and liability of parties through the contract (agreement of the parties);*
3. *Make the following amendments to the RA Law "On Alienation of Property for Public and State Needs":*
  - *To establish subsidiary responsibility of the State for the execution of the signed contracts,*
  - *Establish state control mechanisms over the fulfillment by the acquirer of obligations towards the beneficiary in the process of property alienation, by providing appropriate sanctions.*

#### ***4. Provision of compensation to residents of houses adjacent to the North-South highway***

In 2017, the issue of causing property damage, but providing any compensation against it to the residents of the residential areas of Yerevan's Arshakunyats Avenue, adjacent to the north-south highway, which was raised in the annual report "On the Human Rights Defender's Activities, the State of the Protection of Human Rights and Freedoms in 2016" remains actual. According to complaints filed to the Defender in 2017, some of the residential areas adjacent to the highway being built were recognized as exclusive supreme public interest by RA Government Decisions N990-N of 26 May 2011 and N 1256-N of November 14, 2013, and were included in the list of the territories subject to the construction of a North-South highway corridor. However, the specific territories in question were not included in the list.

According to the claimants, the construction was carried out very close to their homes, using heavy equipment, which resulted in significant property damage. Meanwhile, without considering the above-mentioned circumstances, the residential premises of the mentioned

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<sup>14</sup> See the decision on the case Holy Monasteries v. Greece of 1 September, 1997, complaints ##13092/87 13984/88:

<sup>15</sup> See the decision on the case Jahn and others v. Germany of 30 June, 2005, complaints ## 46720/99 72203/01 72552/01:

persons have not been included in the territories subject to realization, in case that they participated in the discussions on the issue from the very beginning and have received relevant documents (letters). Accordingly, the persons who filed the complaints demanded to include their homes in the territories subject to realization or to be provided with adequate compensation. Meanwhile, according to the statement of the Yerevan Municipality, the damages caused to the buildings are not in general conditioned by the construction carried out.

*In order to prevent such issues, as well as to resolve the existing, and taking into consideration the abovementioned, it is recommended, that:*

- 1. Local self-governing bodies should continuously carry out studies on the possible impacts of construction throughout the whole construction period.*
- 2. Ensure that an expert examination on the expense of the administrative body is conducted after the completion of the construction, resulting in provision the residents with a well-grounded and well-reasoned conclusion, which will ensure that unsafety of the buildings is not conditioned by the construction works.*

#### ***5. Use of the buildings on the sides of the North-South highway by their owners***

In 2017, the filed complaints raised the issue of limiting the free access to the households located on the sides of the North-South highway and belonging to persons under the right of ownership, during the construction of the highway.

For example, in one of the complaints the applicant informed, that as a result of lowering the level of the automobile road of a common use directly adjacent to his property in Shamiram community area of Aragatsotn Province, which he possesses under the right of ownership since 1997, for two meters, the vehicle entry to and exit from his property has become impossible, thus causing property damage to the applicant.

According to the clarification of the Ministry of Transport, Communication and Information Technologies of the Republic of Armenia on the matter, as per the power of point (a) of Part 16 of Article 13 of the RA Law “On Automobile Roads”, landowners and land users of the plots located in the safety zones of the general-purpose motor roads are obliged to build lanes connecting the objects located in the safety zones with the road, by agreeing the construction with the road managing structures in prior. In this case – with the RA Ministry of Transport, Communication and Information Technologies and the Traffic Safety Authorized Body.

Hence, within the framework of the raised issue, the claimant might have the right to file a request for compensation of damage in case of existence of a lawfully built entry to/exit from the land plot in question to the main road. The Ministry of Transport, Communication and Information Technologies has not received any request for agreement on construction of access and exit lane to and from the land plot located at the 1/1 Shamiram towards the inter-state highway Yerevan-Gyumri-Georgia Border, to the present day. Therefore, the issue has not received any regulation within the framework of the law.

It is noteworthy that the RA Law "On Automobile roads" was adopted and entered into force in 2006-2007, and it does not have any provisions for its retroactive force, and the land plot in the immediate proximity to the reconstructed motorway on the North-South highway is owned by the applicant since 1997, and by 2007, such obligations to the owners of objects adjacent to the automobile roads were not set by the legal acts governing the current sector. Based on the above, the obligation on the applicant to build a lane linking the object belonging to him under the right of ownership with the road does not exist.

Additionally, in this case, in the framework of the construction of the North-South highway, it is envisaged to reduce the level of general use automobile road by two meters. As a result, the truckloads to and from the mentioned building will become impossible, and the right of a person of a free use of his property will be violated, particularly the right to use and possess that property, fixed by the Constitution

*Based on the abovementioned, it is proposed to provide adequate compensation to the people who suffered damage from the construction of the North-South highway, or build lanes that connect the plots of landowners located on the edge of the general use automobile roads with those roads, at the expense of state.*

#### ***6. Provisional Payments for construction of a Cooperative Residential Buildings and remaining of those buildings half-constructed***

In 2017, a number of complaints addressed to the Defender were raising the systemic issue, that have been included in the 2016 annual communique, that the people have made provisional payments for the construction of buildings and allocation of apartments on a cooperative basis, but as a result of devaluation of the Soviet Union rubles the buildings to be constructed remained half built.

By the Decree of the Government of the Republic of Armenia No 432-N "On Approval of the Procedure for providing financial support for the Losses of Deposits by the Shareholders of Construction Cooperatives due to devaluation of the deposits paid in the USSR Rubles and the order of its provision", a financial support was envisaged to finish the construction of the mentioned buildings. However, it has not been provided up to the day.

According to the information received from the RA Ministry of Finance regarding the raised issue, the program approved by the Government Decree # 700-N of July 3, 2014 "On Approval of the State Medium-Term Expenditure Program of the Republic of Armenia for 2015-2017" no means to provide financial support to housing cooperatives for unfinished constructions are envisaged.

For example, in one of the complaints addressed to the Defender, a group of members of the cooperative informed that by the decision of the Executive Committee of the City Council in 1990 a cooperative was provided with a building. According to the applicants, 51.6% of the building was constructed at the expense of the cooperative members, but the construction

remains unfinished. Then the Yerevan Municipality alienated the aforementioned building to another company through an auction without the applicants' knowledge.

According to Points 3, 4 and 8 of the RA Government Decree 191-N of 18 June 1997 "On approving the procedure for privatization of apartments attached to the citizens in the state-owned (public) unfinished multi-apartment houses", the construction of multi-apartment unfinished houses is carried out in accordance with the procedure laid down in point 3 of the RA Government Decree 358 of November 15, 1996 "On privatization of unfinished state (public) residential buildings (apartments)".

As per the procedure approved by the legislation of the Republic of Armenia, in the case of refusal of citizens from provision of apartments in the unfinished multi-apartment residential buildings and not forming unions of property owners within a year, the unfinished multi-apartment residential houses shall be submitted to auction according to the approved procedure, as per the point 8 of the aforementioned procedure.

Incomplete construction multi-apartment houses (apartments) which citizens refuse to receive under the right of ownership, are submitted to auction according to the RA Government Decree No. 196 of April 22, 1994, "On approval of the general procedure on sale of state-owned enterprises and unfinished construction facilities and lease of state enterprises by auction without a right of acquisition" (revoked).

At the same time, pursuant to the Point 3 of the procedure defined by RA Government Decree No 358 " On privatization of unfinished state (public) residential buildings (apartments)" of November 15, 1996, the small multi-apartment houses and apartments, which the citizens refused to receive under the right of ownership, are submitted to auction, according to the RA Government Decree No. 196 of April 22, 1994, "On approval of the general procedure on sale of state-owned enterprises and unfinished construction facilities and lease of state enterprises by auction without a right of acquisition".

A comprehensive study of the above-mentioned provisions indicates, that in order for the Yerevan Municipality to have the right to alienate the semi-constructed building constructed by the cooperative members through an auction, the beneficiaries – the members of the cooperative, should provide the Yerevan municipality with a refusal to receive the unfinished building under the right of ownership, which, according to the applicants, did not happen, hence, the legal grounds, by the force of which the Yerevan Municipality was eligible to alienate the mentioned property through an auction, are absent.

According to the legal position expressed by the RA Constitutional Court decision 1271 of 10 May 2016, as per the Part 1 of the Article 60 of the RA Constitution, every person is guaranteed not only the right to possess, use and dispose at his/her discretion, but also the right to legally acquire a property, which requires the state to govern the legitimate basis to ensure that the person does not bear losses, but is guaranteed the right to acquire property.

With the support of the Defender, the cooperative members received compensations from the Company, though not adequate.

*Taking into consideration the abovementioned, it is proposed to envisage financial means in the medium-term state expenditure plans for the upcoming years to provide financial support to unfinished constructions of multi-apartment residential construction cooperatives.*

### ***7. Violation of the rights and legitimate interests of individuals as a result of unauthorized construction***

Like in previous years, in the course of 2017, the complaints were filed to the Defender regarding violations of the rights and interests of individuals protected by the law due to unauthorized construction in the City of Yerevan.

According to Article 188 of the Civil Code of the Republic of Armenia, a premise, building, or a structure is considered unauthorized, if it was constructed or reconstructed on the land plot not provided for that purpose in accordance to the procedure defined by the law or other legal acts, or without permission or with violation of conditions prescribed by the permission, or with substantial violations of norms and rules of urban development. An unauthorized building cannot be recognized legitimate, if existence of the building violates the rights and the interests of other persons protected by law, or endangers the lives and health of the citizens.

At the same time, according to Article 26 of the RA Law “On Urban Development”, in the territories of urban and rural communities, the heads of the communities, in Yerevan it is the Mayor of Yerevan, supervises the architectural assignments given to the developers, implementation of the requirements of the urban development regulations of the settlements, the targeted use of land and fixed assets in terms of urban development, as well as prevents, suspends cases of unauthorized construction and ensures the elimination of their consequences as prescribed by law.

Thus, in the complaint addressed to the Defender, a person informed, that he wanted to carry out construction of a residential house on the land plot belonging to him under the right of ownership, but the presence of a pavilion placed directly at the border of the plot with significant violations of urban norms and rules, hinders the implementation of the mentioned construction. Numerous applications addressed to the Municipality were left unanswered, and administrative hearings were not conducted.

In response to the Defender's inquiry on the above mentioned issue, the Yerevan Municipality has clarified that an unauthorized pavilion has no legal status and actually overwhelms the community-owned land, so the issue of further disposal (legalization or demolition) of the pavilion is subject to consideration within the framework of the procedure approved by the RA Government Decree 912-N of May 18, 2007 "On Approval of the Procedure for the Legalization and Disposal of Unauthorized Structures".

Meanwhile, in response to the Defender's inquiry on the raised issue in December 2017, Yerevan Municipality responded that the unauthorized building and the overburdened land were recognized as legal by Yerevan Mayor's decision in March 2017, and the rights of the person towards the mentioned real estate received state registration in May 2017.

*Taking into consideration the abovementioned, it is recommended that the local self-governing bodies ensure proper and consistent implementation of measures to prevent, suspend and eliminate the consequences of unauthorized construction.*

#### ***8. The compensation in case of becoming of individual dwellings unfit for residence due to landslides***

In 2017, a number of complaints have raised the issue of non-provision of compensation by the state in the form of financial support and improvement of housing conditions for the private residential houses in the borderline communities, which have become unsuitable for living due to landslides.

According to explanation, provided by the RA State Urban Development Committee, as per the information provided to the Committee, as of the beginning of the year 2017, more than 1,000 houses with damages of the 4th degree exist in the Republic of Armenia, of which over 200 – in the Tavush Province.

At the same time, according to the information provided, the state budget of the Republic of Armenia for 2017, as well as the state medium-term expenditure program of the RA 2017-2019 did not provide for the implementation of programs aimed at improving the housing conditions of residents of houses with damages of the 4th degree, hence, the discussion of the issue is possible in case of provision of financial means for implementation of projects according to approaches and priorities developed by the concept, aimed at ensuring safe residential space for the residents of the housing fund of the RA, having 4<sup>th</sup> degree of damages, and subject to demolition, approved by the RA Government Protocol Decision #9 of 7 March, 2013.

The study of the abovementioned concept revealed, that according to the Annex 3 of the Concept, approval was provided to the schedule of measures ensuring implementation of the concept, aimed at ensuring safe residential space for the residents of the housing fund subject to demolition, as well as already demolished, due to 4<sup>th</sup> degree of damages (except for the communities included in the Disaster Zone rehabilitation program), according to which before the first decade of December of 2013 a draft of RA Government Decree “On approval of the priority state support program on ensuring safe living space to the residents of housing fund subject to demolition, as well as already demolished, due to 4<sup>th</sup> degree of damages” should be presented for the approval of the RA Government, and starting 2014 the implementation of the priority state support program on ensuring safe living space to the residents of housing fund subject to demolition, as well as already demolished, due to 4<sup>th</sup> degree of damages, should begin its implementation, which has not been implemented so far.

According to the RA Urban Development Committee, the issue of improvement of housing conditions for residents of 4-degree damaged residential buildings subject to demolition in different regions of Armenia (including because of landslides), has been presented by the State Committee for Urban Development of the Republic of Armenia in its requests for 2017-2019 and 2018- 2020 mid-term expenditure programs. However, the financial means (quotas) for

implementation of the program on improvement of living conditions of the residents of residential houses, subject to demolition due to 4<sup>th</sup> degree of damages because of landslides, were not provided by the permanently acting high council on development of medium-term expenditure programs neither through the medium-term expenditure programs, nor through the state budgets of 2017 and 2018.

It should be noted, that according to the Order of the RA Minister of Urban Development No. 282-N of 2009, the 4<sup>th</sup> degree damage have the buildings, constructive parts of which are damaged and those buildings are dangerous for their future exploitation. According to the same Order, the residents of these buildings are subject to evacuation, and buildings are subject to demolition, as the works on their reconstruction and strengthening are economically inexpedient.

It is noteworthy, that based on study of clarifications from the State Committee for Urban Development, it was found out, that there are more than 1,000 houses with 4<sup>th</sup> degree damages in the Republic of Armenia, many of which are abandoned by their residents, who have become homeless, and those who continue to live in their homes, are endangering their lives.

*Taking into consideration the abovementioned, it is suggested to,*

- 1. To provide financial means for the continuous implementation of the programs aimed at improving the housing conditions of residents of residential houses with 4<sup>th</sup> degree damages, within the medium-term state expenditures program for the following years;*
- 2. Adopt a RA Government Decree “On approval of the priority state support program on ensuring safe living space to the residents of housing fund subject to demolition, as well as already demolished, due to 4<sup>th</sup> degree of damages”.*

***9. The requirement for payment of state duty and penalties in case of non-implementation of passenger transportation by a passenger-taxi after receiving the license,***

During 2017, a number of complaints have been raised regarding the issue of non-payment of the state license duty, non-timely calculation and non-collection of that amount due to non-performance of passenger transportation by a passenger-taxi automobile after receiving the license, but being presented a claim by the RA Ministry of Transport, Communication and Information Technologies, to pay the state duty and appropriate penalties.

Thus, according to the complaint addressed to the Defender, on May 10, 2015, a person was granted a license for passenger transportation with a passenger-taxi automobile, for which he paid a monthly fee of 12,000 AMD. Sometime later, starting from September 2015, the applicant did not pay state duty due to the non-performance of passenger transportation. On April 14, 2017, the applicant submitted an application to the Ministry of Transport, Communication and Information Technologies of the Republic of Armenia requesting revocation of the license, in response to which the applicant was sent an appropriate extract from the Order of the Minister of Transport, Communication and Information Technologies of April 18, 2017, according to which the license issued for passenger transportation with a passenger-taxi automobile was

declared void, as well as a note (as the body is presenting - "a reminder"), that his debt to the State Budget for the State Duty is 317.262 AMD.

During the whole period of validity of the license (about two years), the applicant did not receive any notice regarding the obligation to pay state duty, as well as on calculation of penalties.

It should be noted that according to Article 35 of the Law of the Republic of Armenia "On Licensing", the licensing authority has the right to suspend the license due to violation of the legislation requirements only in accordance with the conclusions of the licensing committee of the licensing authority. At the same time, pursuant to the Point 11 of Part 1 of Article 36 of the same Law, the license may be suspended in case of non-payment of annual state duty.

It is noteworthy that in accordance with Article 6.1 of the RA Law "On State Duty" in case of suspension or notified suspension of a patent, permit, license or qualification certificate in the manner prescribed by the legislation of the Republic of Armenia (except for the cases, when the licenses, permits, licenses or qualification certificates are declared void during the period of suspension, based to the application according to legislation of the Republic of Armenia, or cases of termination of the notified activity), regular annual state fees shall be subject to payment regardless to the grounds and periods of suspension of the validity of the patent, permit, license or qualification certificate. According to Article 6.2 of the same Law, the provisions of the annual state fee set up by the mentioned Law shall also apply to monthly and quarterly state duties, unless otherwise provided for by this Law or are not contrary to the nature of payment relationships for the monthly or quarterly state fees.

As it follows from the analysis of the above-mentioned norms, the licensing authority may, but does not have the right to suspend the validity of the license in case of non-payment of the state duty by the licensee for a long time. At the same time, even after suspension of the license by the licensing authority, the monthly state fee continues to be calculated until the loss of validity of the license based on the application.

It is also problematic, that neither the provisions of the Law "On State Duty" nor the Laws of the Republic of Armenia "On Licensing" do not stipulate the norms obligating the licensing authority to notify regarding the debt accumulated as a result of non-payment of the state duty. In fact, in this case, the applicant did not provide adequate services with the passenger-taxi automobile (had no income) for about two years, but due to the imperfection of the law, he will have to pay both the monthly state duty accumulated, and the penalties for the services that he did not provide.

*Taking into consideration the abovementioned, it is suggested to:*

- 1. Make appropriate changes to the mentioned laws by establishing a procedure for notifying on the existing obligations within the validity period of the license.*
- 2. Make amendments to the RA Law "On Licensing", such as to define the terms "the licensing authority must" suspend and "the licensing authority should" suspend instead*

*of terms “the licensing authority has right to” suspend and “the licensing authority may” suspend, in cases of non-payment of the state duty.*

- 3. Make appropriate amendments (define norms), in the Article 6.1 of the RA Law “On State Duty”, according to which in case of suspension of the license (due to the fact that the licensee does not provide services on suspension basis), the process of calculating the monthly state duty shall be suspended at the moment of suspension of the license by the licensing authority.*

## CHAPTER 3. LABOR RIGHTS

The right of a person of free choice of employment and protection in case of unjustified dismissal is enshrined in Article 57 of the Constitution of the Republic of Armenia as a fundamental right. At the same time, the criteria for the exercise of labor rights are fixed in a number of international treaties ratified by the RA: the revised European Social Charter, the United Nations Convention on Economic, Social and Cultural Rights, as well as in a number of treaties and documents of the International Labor Organization. Guarantees for the exercise of labor rights are also enshrined in the acting RA laws and other legal acts.

No matter how important the protection of labor rights is, and there are legitimate protection guarantees for their implementation, some cases violations of the labor rights of a person are taking place. The main reasons for these violations are people's insufficient awareness of the mechanisms for labor rights protection, as well as the low level of protection of workers' rights. Moreover, based on their social-economic situation, the shortage of vacancies, and the fact that the labor market is not so large, workers often have to adapt to abuse of their rights not to lose their jobs.

### ***1. Absence of an extrajudicial authority overseeing the observance of labor rights and the prevention of labor rights violations;***

1.1 As in the previous years, in 2017 cases of violation of labor rights and other issues have been also registered. Various issues raised can be categorized as follows:

1. Failure to perform final settlement by employers;
2. Unjustified dismissal from work;
3. Failure to notify the employees in prior about resolving the employment contract within the timeframe prescribed by law;
4. Use of different salary calculation related to working time,
5. Not paying remuneration for the probation period and so on.

1) Comparison of a number of complaints addressed to the Human Rights Defender gives an opportunity to state, that widespread in the sector is the problem, when the employer does not make a final settlement in case of resolution of the employment contract. Meanwhile, the above-mentioned relationship is regulated by the Article 130 of the Labor Code (hereinafter the Code), entitled "Procedure Final Settlement with Workers". Particularly, Part 1 of the mentioned article specifies that in the event of termination of the employment contract, the employer shall be obliged to perform a complete final settlement with the employee on the day of termination of the employment contract.

That is to say, the code implies the employer's obligation to make a final settlement in the order defined, which means that diverting of the law is inadmissible.

2) Many workers have raised the issue of their groundless dismissal, mentioning at the same time, that they have been subjected to persecution by employers from time to time, have received unfounded reprimands, and in some cases even have had to submit their resignations as a result of employer's pressure. It should be noted, that the grounds for the termination of the employment contract are clearly defined by Article 109 of the Labor Code of the Republic of Armenia.

3) Article 115 of the Code provides for employers an imperative requirement to notify employers in a specific period before solving the employment contract on their own initiative. At the same time, pursuant to Part 2 of the same Article, in the case of non-compliance with the timeframes established by law, the employer shall be obliged to pay the employee *a fine* for each overdue day of notice, which is calculated on the basis of the average daily salary of the employee. It is clear from the study of the complaints submitted to the Defender, that employers often violate the terms of the pre-notice in accordance with Article 115 of the Code when dismissing employees on their own initiative. Moreover, a general review of the complaints indicates that in case of inappropriate notification employers refuse to pay the employees even the penalty specified in the Part 2 of the Article 115 of the Code.

4) 4) In 2017, complaints were received regarding the application of different wages calculations for employees doing the same work under the same conditions in different institutions. According to Part 1 of the Article 139 of the Code, the normal duration of the working time cannot exceed 40 hours per week. The cases of short-term working hours are set out in Article 140 of the Code. Part 7 of Article 142 defines the peculiarities of the working and resting regime for employees in the health, guardianship (caregiving), childcare, power supply, gas supply, heat supply, communication and other sectors with special characteristics, are defined by the Government of the Republic of Armenia. The Government of the Republic of Armenia has defined it by the Government Decree 201 of 1 February, 2007, "On defining the peculiarities of the working and resting regime for employees peculiarities of the working and resting regime for employees in the health, guardianship (caregiving), childcare, power supply, gas supply, heat supply, communication and other sectors with special characteristics". The working and resting regimes for the employees of the sectors having specific characteristics of the work, defined by the mentioned Decree, are considered as normal, and not the short duration of the working time.

At the same time, Part 4 of the Article 139 of the Code stipulates, that for special categories of employees (health care organizations, guardianship (caregiving) organizations, educational institutions, specialized organizations for power supply, gas supply, heat supply, specialized organizations of communication and eliminating consequences of accidents, and other working in the continuous duty mode), duration of the working time can be 24 hours a day. The average duration of working hours for these employees cannot exceed 48 hours a week, and the rest time between the working days cannot be less than 24 hours. The list of such works has been defined by the Government Decree 1223-N of August 11, 2005 "On establishment of a list of works, defined by 24 hours per day working time, for the employees of a specific category".

Therefore, for employees included in the lists of the above two decisions, within the framework of an agreement between employees and employers, the normal duration of the working time

(defined by the decision of the CO-201-N), or 24 hours a day, 48 hours a week average working time can be defined.

Thus, one of the complaints addressed to the Defender raised the issue of application of wrong wages calculation for some employees at one of the childcare facilities. According to the complaint, for the doctors, nurses and nannies of the orphanage, short duration of working time has been set for over a ten-year period, and the salary calculation has been performed based on 36 hours of working time a week. The applicant claimed that 36 hours of work per week is defined in the orphanage only for employees working in daylight hours. Meanwhile, in the same organization, the wages of a part of the employees with the same specialty, working under the influence of the same harmful factors, and during the same hours, are calculated based on 48 hours of working hours per week, as a result of which the salary has decreased by about 25%.

It should be noted that employees of the orphanage who work shorter working hours of 36 hours per week stipulated in Point 6 of the Part 1 of the Article 140 of the RA Labor Code and those, who work in the shifts mode for maximum of 48 hours of work time per week as per the Part 4 of the Article 139 of the RA Labor Code, are performing absolutely the same work, whereas shift mode employees receive less wages than those with no shift mode, for the same work.

As a result of review of the received complaint, as well as the joint discussions between the Defender and the Ministry of Labor and Social Affairs of the Republic of Armenia, it was found out that legal basis for setting 24 hours a day, 48 hours a week average working hours for pedagogical, medical and service personnel of state non-profit organizations subordinated to the Ministry of Labor and Social Affairs has been defined by amendments made to the Government Decree 1223-N in 2014 (Government Decree No 1378-N of December 11, 2014), after which the mentioned working regime was used for the abovementioned employees of the SNCO-s (24 hours a day, 48 hours weekly average), as the most optimal. However, at the initial stage of the application of this mode of operation, a number of non-SNCOs did not keep the Code requirements, and applied the normal working hours and 24 hours a day, 48 hours a week regimes simultaneously. Particularly, 36 hours were put as basis of weekly working hours, and the daily working time was set as 24 hours.

As a result of the studies carried out by the Ministry in the SNCOs, these issues have been raised and adjusted according to the relevant recommendations.

Information was also provided, that by measures aimed at improving the efficiency of work and the quality of services provided by SNCOs currently existing under the Ministry, it is planned also, within the framework of existing financing from the RA state budget, to increase the salaries of employees directly involved in beneficiary care processes.

5) 5) According to the complaint addressed to the Defender, a citizen passed a probation period in a company that was delegated the State's garbage disposal authority, but was not employed at the end of it, and was not paid for the days worked.

According to Points 1 and 2 of Article 91 of the Labor Code of the Republic of Armenia, at signing the employment contract, a probation period may be set by the agreement of the parties. It may be determined by the employer's wish to check the employee's compliance with the job (position), or at the wish of the employee to determine his / her compliance with the proposed job (position). Terms of probation period shall be determined by the employment contract.

During the probation period, the employee has all the rights and bear all the responsibilities set forth in the Code, other laws and regulations, collective and employment contracts. As a result of the Defender's support, the company, carrying out the delegated state powers in the sphere of garbage disposal, has paid the citizen for the worked days.

### ***1.2 Supervision of observance of labor legislation***

The lack of state control over the observance of the legislative norms and the inadequate actions aimed at raising the awareness of employers and employees on labor rights and responsibilities, limit the prevention of such cases. The issue has been voiced by Human Rights Defenders for years. Thus, following the legislative changes in 2013, as a result of merging the State Hygiene and Anti-Epidemic Inspectorate of the RA Ministry of Health and the State Labor Inspectorate of the RA Ministry of Labor and Social Issues, the State Health Inspection of the Staff of the RA Ministry of Health Staff<sup>16</sup> was reorganized. The problem is that according to the Article 1 of the RA Law “On Amending the Labor Code of the Republic of Armenia and Revocation of the Law of the Republic of Armenia “On Labor Inspection” ” accepted on 17 December, 2014 and entered into force on January 17, 2015, the Article 34 of the Labor Code of the Republic of Armenia, dated November 9, 2004, was repealed. This article was defining the authority of the State Labor Inspectorate to control and supervise the sector. Particularly, it was noted that the state control and supervision of implementation of normative provisions of labor legislation and other normative legal acts containing labor law norms by the employers, was exercised by the State Labor Inspectorate.

Although the State Health Inspectorate of the RA Ministry of Healthcare is the successor to the RA State Labor Inspectorate<sup>17</sup>, since 9 January, 2015, the State Health Inspection of the Ministry of Health of the Republic of Armenia is authorized only to carry out state control and supervision over implementation of legislative acts, containing norms on ensuring labor safety and health protection, determined by RA Labor Code and other legal acts containing legal norms on labor law.

As a result, a situation is created, when, except for the abovementioned spheres, the State Health Inspectorate does not deal with the issues that arise in the labor relations, and in general, with discussing and solving other problems in the field, with implementation of control and supervision. Hence, solution of issues as labor disputes can be solved only through judicial proceedings.

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<sup>16</sup> RA Government Decree #857-N of 25 July, 2013.

<sup>17</sup> RA Government Decree #857-N of 25 July, 2013

The need to monitor the protection of the rights of workers and labor relations is mentioned also in a number of international documents. Thus, in accordance with the International Labor Organization's "Labor Inspection Convention" # 81, ratified by Armenia, member states are committed to establishing a labor inspection system at industrial and commercial enterprises, which is called to ensure the application of the legal norms relating to the working conditions and protection of employees during work<sup>18</sup>. Moreover, the Authorized Body for the Control of Labor Relations should be institutionalized adjacent to the central authorities, under their supervision. However, as a result of the above-mentioned changes in this sphere in Armenia, the State Healthcare Inspectorate has become a subdivision of the RA Ministry of Health, being lowered in the status from the central body.

At the same time, it should be noted that the revised European Social Charter also stipulates that each party shall have a labor control system in accordance with national conditions<sup>19</sup>.

Attaching importance to the problem, the relevant action has also been provided for by the Point 40 of action plan defined in Appendix 1 of Decision # 483-N of May 4, 2017 of the RA Government "On Approving the Action Plan for 2017-2019 derived from the National Strategy for Human Rights Protection". In fulfillment of the latter, the study of the possibility of introducing an extrajudicial national mechanism for the protection of workers' rights in labor relations was undertaken. The Ministry of Justice of the Republic of Armenia also informed that the results of the study should be considered within the framework of the process of drafting the new Labor Code of the Republic of Armenia.

At the same time, according to information from the RA Ministry of Labor and Social Affairs, the Ministry of Labor and Social Affairs of the Republic of Armenia applied to the Government of the Republic of Armenia in July 2017 by submitting a number of issues arising from the fulfillment of the international obligations undertaken by Armenia in the sphere of regulation of labor relations, which are related to the absence of functions of labor inspectorate in Armenia at present. Though, according to the clarifications provided by the Ministry, certain steps have been taken to establish a relevant competent body (inspectorate) during 2017, however, it should be noted, that the issue of systemic violations of the labor rights of persons in the Republic of Armenia remains unresolved.

*Based on the above, it is necessary to:*

- 1. create an extrajudicial body, authorized to prevent and eliminate violations of working conditions, observance and protection of labor rights and freedoms of workers, labor legislation and other legislative acts containing norms of labor law;*
- 2. continue to inform the public about the labor rights and ways of their protection through mass media;*

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<sup>18</sup> ILO Convention No 81 "On Labor Inspection in Industry and Trade", Articles 1-3.

<sup>19</sup> Revised European Social Charter, Part 3, Article A, Clause 4.

*3. Review the wages of pedagogical, medical and service personnel of state non-profit organizations subordinated to the RA Ministry of Labor and Social Affairs.*

## ***2. The Right to Strike:***

In 2017, the issue of legislative limitation of the strike, raised by the Human Rights Defender's annual reports and communiques, was not settled. The Labor Code of the Republic of Armenia defines the right of workers to strike, which is limited to existence of a collective labor dispute<sup>20</sup>. Meanwhile, in practice, the workers may also resort to a strike to protect their social, economic and other rights, which will be deemed illegal in the mentioned situation. The situation is problematic both from the point of view of the RA Constitution and from the international obligations of Armenia<sup>21</sup>. Thus, Article 58 of the RA Constitution defines workers' right to strike for the protection of their economic, social or labor interests. Moreover, the same article also states that the strike may be restricted solely by law, in order to protect the public interest or fundamental rights and freedoms of others. Additionally, when interpreting the right of workers to strike, the RA Constitutional Court has expressed a position, that it is related not only to legal relationships of “employer-employees”, but also to “workers-third persons (society)”, “employees-state bodies”, and “employer-state bodies” interrelations<sup>22</sup>. The logic is that a person must have a right to strike even when there is no collective dispute, in other words, if the problem raised by a person is not linked to the relationship between the employee and the employer. However, due to existing legislative regulations it comes out, that it is restricted only to employee-employer relationships.

According to the RA Ministry of Labor and Social Affairs, in 2017, legislative amendments on the extension of the right to strike (provision of possibility to strike also in the absence of a collective labor dispute) were not implemented.

*Taking into account the abovementioned, it is proposed to develop and adopt a draft law providing a wider range of strikes, which will also allow striking also in “workers-third persons (society)”, “employees-state bodies”, “employer-state bodies” interrelations.*

## ***3. Right to free choice of employment after retirement***

In 2017, the issue of restricting the right of judges to free choice of work guaranteed by the Constitution of the Republic of Armenia was raised through applications addressed to the RA Human Rights Defender.

Thus, the content-based analysis of the provisions of Part 3 of Article 2, and Part 4 of the Article 6 of the RA Law “On Social Guarantees of Former State Officials” shows, that in the meaning of the RA Law “On Social Guarantees of Former State Officials” a person who held a position of judge has the right to receive pension, if he/she does not perform other paid work (employment

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<sup>20</sup> RA Labor Code, Part 1 of the Article 73

<sup>21</sup> “International Covenant on Economic, Social and Cultural Rights”, Article 8, Revised European Social Charter, part 2, Article 6

<sup>22</sup> Decision of RA Constitutional Court # 677, of 7 February, 2007

in public or community service or other paid work, except for scientific, pedagogical and entrepreneurial activities as a private entrepreneur, holding a notary office), and case of employment his/her right to receive pension is terminated. In addition, it refers not only to holding public and community positions, but also to any paid work (except academic, pedagogical and creative work), engaging in entrepreneurial activities as an individual entrepreneur and holding a notary office. It turns out that, in this case, the right of a person who held a position of a judge to receive a pension against the performed work as a special social guarantee provided to the person is actually being linked to not performing any other paid work.

It is necessary to underline that the social guarantee to a person who held a position of a judge, which is the pension fixed by the mentioned law, is provided by the state against the work done by him/her and as a guarantee of an effective and impartial exercise of that work. A number of international documents also state that<sup>23</sup>. The Constitutional Court of the Republic of Armenia has also come to the same position in the Point 7 of its Decision 1302 of 16 September 2016. The content of the aforementioned documents indicates that the right of a judge to receive a pension is related solely to the independence of the judges, the impartiality of the court, as well as the work done by the judges.

According to Part 1 of the Article 57 of the RA Constitution, *everyone has the right of free choice of employment*. When analyzing the right to work, first it is important to refer to its purpose and content. Thus, the main purpose of execution of the right to work is to receive remuneration.

Thus, observation of purely legislative regulations shows that there is no restriction on labor rights for persons who held positions of judges, as well as for judges who have reached retirement age. That is, a person can freely conduct any job. However, when the problem is examined in terms of social guarantees for those persons, in particular from the point of view of realization of the right to pension, it becomes clear that a person can freely choose and perform paid work chosen by him, as a result of which he / she is deprived of the right to receive pension for the persons holding public positions. That is, a person faces a dilemma, which in turn leads to the limitation of the right of free choice of employment.

*In order to examine the constitutionality of provisions of the abovementioned normative legal acts on the issue raised as a result of its comprehensive examination, the RA Human Rights Defender has applied to the RA Constitutional Court in 2017. In the application filed with the Court, the issue of the right to free choice of employment after the retirement for the persons who held positions of the judges has been raised, in particular from the point of limitations on*

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<sup>23</sup> Point 11 of the UN Basic Principles on Independence of the Judiciary; Paragraph 19 of Comment # 32 on Article 14 of the International Covenant on Civil and Political Rights adopted by the United Nations Human Rights Committee (right to equality before courts and tribunals and to a fair trial); Point 34 of the Report on the state of Judges and Justice in the member countries of the Council of Europe by the Advisory Panel of European Judges; Magna Carta of judges adopted by the Advisory Panel of Judges of the Council of Europe (17 November 2010, Strasbourg); Point 6.4 of the European Charter “On the Status of a Judge” of 10 July 1998; Article 13 of the Universal Charter of Judges (17 November 1999); The Committee of Ministers of the Council of Europe, in its recommendation CM / Rec (2010) 12 of 17 November 2010:

*work in the private sector. At the same time, the issue was resolved by the adoption of the new Judicial Code in 2018.*

#### ***4. Lack of criteria for electing a director of a public secondary educational institution***

As a result of examining applications filed to the Office of the RA Human Rights Defender in 2017, procedural issues have been identified regarding conducting vacancy competitions and making decisions on the final results of those, for the positions of directors of public secondary educational institutions.

Thus, according to the Government Decree # 319-N of March 4, 2010 "On Approval of the Order of the selection (Appointment) of the Director of the Public Secondary Educational Institution" the procedure for the election (appointment) of the director of the state public educational institution was approved according to the Annex. In particular, in accordance with paragraph 28 of the Appendix, if only one nominee has applied for the competition and has not been declared a winner, there shall be no second voting and a new competition should be announced according to this procedure. If the number of candidates is more than one, then if the number of the candidates is 2 and no director is elected, no re-voting is held and the Council, in case of educational facilities under the regional government, within three working days submits to the RA Deputy Prime-Minister, and in case of educational institutions under the jurisdiction of the RA Ministry of Education and Science, or the City of Yerevan submits to the appropriate authorized body, copies of the minutes of the meeting of the Council and the personal files of the candidates for the position of the Director. In accordance with point 28.1 of the Annex, based on the documents submitted in the cases provided for in paragraph 28, within five working days, in case of institution under regional jurisdiction, the Deputy Prime Minister of the Republic of Armenia submits a letter of nomination to the head of the Authorized Body, in order to conclude an employment contract in the manner prescribed by law. In the case of educational institutions subordinated to the Ministry of Education and Science of the Republic of Armenia, or the City of Yerevan, the applicant is selected and nominated an employment contract, in accordance with the procedure, prescribed by law, by an appropriate authorized body. The Authorized Body communicates the results of the selection to the Council for the purpose of informing the applicants in due form.

The problem is that the procedure for the selection (appointment) of the director of the public secondary educational institution approved by the above mentioned regulation does not contain the regulation on standards and appropriate criteria on the nomination of a candidate from the applicants by the RA Deputy Prime Minister and, in such a situation, it is not clear, based on which criteria priorities are given to participants of the competition, which causes issues regarding nature and purpose of the competition being held to select a director, as well as can contain corruption risks.

*Considering the abovementioned, it is necessary to set clear criteria of the selection of director of public secondary educational institution for the nomination of one of the candidates and hence to select the appropriate candidate for the director.*

### ***5. Release from Service in Police***

In the complaints addressed to the Defender, the issue of limiting the possibility of dismissal from the Police and thereby limiting the possibility of using social guarantees was raised. Thus, the applicant was an officer of the RA Police, 20 years of his / her working experience were fulfilled and hence, he/she has acquired the right to pension. Then 6 months later, due to the abuse of official authority, by the order of the RA Chief of Police the applicant's authorities were temporarily terminated, after which he/she was dismissed from the post and recorded in the personnel reserve by another order. The applicant filed rapports to the Chief of Police with a request for dismissal from the police and retirement. However, he received refusal with explanations, that according to Part 1 of the Article 16.1 of the RA Law "On Approving the RA Police Disciplinary Code", a police officer, charged with criminal prosecution cannot be appointed to a new position, dismissed from police service by his/her own initiative, until the criminal prosecution is suspended.

Due to refusal to release the person from the service and keeping him/her in the personnel reserve for period longer than determined by the law, a person's right to retirement, guaranteed by the Constitution of the Republic of Armenia, has not been ensured, since he was not able to retire for a long-term service pension.

According to Point 11 of the Part 1 of the Article 45 of the RA Law "On Police Service", police officers are dismissed from the police when they are removed from the personnel reserve in the prescribed manner. According to the Part 2 of the Article 49 of the same law, the maximum period of one-time stay of a police officer in the police service personnel reserve is six months (with the exception of the cases defined by the Part 4 of the same article), but not more than the expiry of the maximum service period defined for the appropriate group.

On the other hand, Part 1 of the Article 16.1 of the RA Law "On Approving the RA Police Disciplinary Code", a police officer, charged with criminal prosecution cannot be appointed to a new position, dismissed from police service by his/her own initiative, until the criminal prosecution is suspended. It turns out, that the RA Law "On Police Service " and "On Approving the RA Police Disciplinary Code" contain provisions, one of which is violated by the application of the other, since from the one side, the term of the police officer in the police service personnel reserve is 6 months, and on the other hand, a person who has been subjected to criminal prosecution cannot be dismissed from the police service upon his / her initiative before its suspension.

Taking into account the abovementioned, the Defender suggested that the Police of the Republic of Armenia takes adequate measures to ensure the implementation of the mentioned regulations in practice, as well as ensuring execution of the right of the citizens for free choice of employment and for retirement in the mentioned situations. As a result, the RA Police assured that the law enforcement practice of the Police HR Department has completely changed: from now on, the servicemen with expired period of being in the personnel reserve and being under prosecution, will be dismissed from the service in the Police of the Republic of

Armenia on the basis of Point 11 of the Part 1 of the Article 45 of the RA Law "On Police Service" in the event of withdrawal from the personnel reserve in the manner prescribed.

*Taking into consideration the abovementioned, it is proposed to make amendment in the Part 1 of the Article 16.1 of the RA Law "On Approving RA Police Disciplinary Code", stating, "The Police Officer, who is charged with criminal prosecution, cannot be appointed to a new position until the criminal prosecution is suspended. He cannot be dismissed from the police service on his own initiative, except for the grounds of Point 11 of the Part 1 of the Article 45 of the RA Law "On Police Service", in case of being withdrawn from the personnel reserve in the manner prescribed".*

## CHAPTER 4. THE RIGHT TO EDUCATION

The right to education is set out both by the RA Constitution and a number of international documents ratified by the Republic of Armenia. In particular, according to the Article 15 of the RA Constitution, the state promotes the development of education and science, and the Article 38 of the Constitution defines the right to education as a fundamental right of a person. The right to education is also established by a number of international treaties ratified by RA, such as UN Educational, Scientific and Cultural Organization (UNESCO) Convention “Against Discrimination in Education”, UN International Convention “On Elimination of All Forms of Racial Discrimination”, the UN International Covenant “On Economic, Social and Cultural Rights” etc. Some of the international treaties set out the general right to education, while others refer to the right to education of persons of special groups (e.g., persons with disabilities).

The right to education and the mechanisms for its implementation are set out in a number of Laws and other legal acts of the Republic of Armenia. Despite all the existing legal acts, there are both legal and practical issues impeding the full exercise of the right to education.

Works in this area have been implemented in cooperation with the Ministry of Education and Science.

### *1. The right to education in pre-school educational institutions*

Pre-school educational institution is an important institute for the application of the right to education in the process of early childhood socialization. It is also important for promotion of child’s natural development, as the first years of development are fundamental, and at this age, any intervention affects the further socialization of a child. At the same time, the issue of absence of pre-school educational institutions has not been solved to date. Moreover, in 2017, issues related to the admission of children to pre-school institutions have also been recorded. As a result, children are deprived of the opportunity to receive pre-school education.

In 2016, there were 721 community, departmental and non-state pre-school institutions (PSI) functioning in Armenia, of which 575 kindergartens, 113 nursery schools, 33 pre-primary schools. From the total number of PSIs, 654 are subordinated to community, 15 are departmental and 52 – non-state. Children's enrollment in PSI (of the number of population aged 0-5 years) was 28.9%, in urban areas - 35.6%, in rural areas – 17.2%. An average number of children in one group was 27 children; the actual occupancy rate was 85.8%. On average, 100 children attended one PSI, teacher – children ratio was 1 to 12. The total area of PSI buildings was 731.0 thousand square meters. The area of the adjacent territory to PSIs was 557.9 thousand square meters<sup>24</sup>.

Based on the Yerevan Mayor’s Decision # 2973-A of August 31, 2017, amendments have been made to the Yerevan Mayor Decision # 1101-A of March 31, 2011, and above-mentioned Decree

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<sup>24</sup> [http://www.armstat.am/file/article/poverty\\_2017\\_a\\_4.pdf](http://www.armstat.am/file/article/poverty_2017_a_4.pdf)

was supplemented by Point 2.1, according to which “The enrolment/ registration of a child for pre-school institution (kindergarten) attendance is carried out based on the application by a parent/legal representative after reaching the age of 2 or 3 years old, for only one preschool institution (kindergarten), if the child has an identification document; moreover, the registration and admission of children aged below 3 years is carried out in the given kindergarten, provided that there are appropriate facilities available for pre-school educational programs for the groups aged 2 to 3 years”.

According to the data provided by Yerevan Municipality, as of December 2017, about 30,070 children were registered in the kindergartens and about 8,000 children are on a waiting list as per “Kindergarten” electronic system. Based on the Yerevan Mayor’s Decision # 2973-A of August 31, 2017, registration and admission of children is being conducted according to age groups, according to which the registration and admission is carried out in kindergartens having groups for relevant ages.

It turns out, that those children, who were registered in the waiting lists before adoption of the Decision mentioned above, and were to attend a kindergarten from September 2017, are deprived of this right because they are not 2 years old. Moreover, the parents of the mentioned children were not aware of the expected changes. As a result, parents had to be recorded as absent at work, because their children were deprived from the opportunity to attend a kindergarten.

The mentioned issues are in fact conditioned by the incomplete and non-unified legislative regulations in the field of pre-school education, particularly by the absence of a unified procedure for enrollment in pre-school educational institutions. Thus, admission to primary educational institution in RA is not approved by any central public body. Instead, each community regulates this issue independently.

In 2016, the State Program on Development of Education in the Republic of Armenia for 2016-2025 has been elaborated, which has not been approved by the Law to date. One of the goals defined by this program is to ensure equally accessible and high-quality pre-school education for all children aged 3 to 6 years by 2025. Namely, the main priorities of pre-school education are ensuring affordable and accessible pre-school education and increasing the quality of education.

Ensuring the accessibility of pre-school education was envisaged by the 2012 RA Government Action plan, for the implementation of which the system of pre-schools was introduced in communities having no PSIs<sup>25</sup>. Within the framework of the World Bank loan program, the "Raising the Level of Children's Readiness for the School and Ensuring Equal Access to Education" subprogram is being implemented, in the frames of which, pre-schools for children aged 5-6 years are established in different communities, predominantly in rural settlements, based on facilities and resources of the schools. The program includes also training of pre-

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<sup>25</sup> The Appendix to the RA Government Decree # 730-A of 18 June, 2011, “RA Government Programme”, page 8

school's principals and educators, monitoring and methodological support in the framework of the World Bank's "Education Quality and Relevance" project<sup>26</sup>.

*Taking into consideration the abovementioned, it is necessary to:*

*1. increase the number of pre-school educational institutions, especially in order to ensure pre-school education for children below the age of three, paying special attention to smaller communities;*

*2. introduce unified centralized system and envisage precise legislative regulation for the admission of children to pre-school educational institutions.*

## ***2. Exercising the right to education during admission of a child to a public educational institution***

As a result of examination of applications submitted in 2017 to the RA Human Rights Defender's Office, a systemic problem related to the admission procedure to public educational institutions was revealed, which limits the exercise of children's right to education. As a result of incomplete legislative regulations, children are not able to be admitted to a school near their place of residence.

Thus, according to the Point 2 of the Annex to the RA Minister of Education and Science Order # 1640 of November 24, 2010, admission to school is usually organized in two stages – from June 1 to June 30, and from August 1 to August 31, and Point 14 of the same Annex defines the list of documents to be submitted by a parent in case of admission or transfer of a child (student) to school. However, having studied the legal acts, it should be noted that there are no clear regulations on decision-making defined for admission procedures: no timeframes for decision-making are defined; there are no established regulations for the school principals regarding informing the parents on the necessary documents to be submitted for admission to school.

Thus, while discussing the complaint, a decision on the existence of a violation of human rights or freedoms was made, and the RA Minister of Education and Science was proposed to make the matter of making appropriate amendments to procedure for admission, transfer and dismissal of student of public educational institution of the Republic of Armenia, approved by the RA Minister of Education and Science Order # 1640 of November 24, 2010, a subject of discussion. As a result, the RA Ministry of Education and Science has initiated the development of the draft order on making amendments to the appropriate order.

*Taking into account the abovementioned, it is necessary to:*

*1. adopt the order on making amendments and additions to the RA Minister of Education and Science Order # 1640 or set out clear and unified procedures for admission to public educational institutions by other legal acts;*

*2. ensure fulfilment of requirements of admission procedures in public educational institutions.*

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<sup>26</sup> Source: the website of MoES Educational program center PIU

### ***3. Collection of deposit amounts for using textbooks in public educational institutions***

In 2017, the issue of collecting deposit amounts for textbooks in public educational institutions has been raised by the complaints addressed to the Human Rights Defender.

According to the Point 5 of the Annex to the RA Minister of Education and Science Order # 752-N<sup>27</sup> of August 21, 2009 “On Approval of the procedure for forming commissions to evaluate the compliance of textbooks to the state general education standard, to provide public educational institutions with textbooks, and publish textbooks of general educational subjects”, an annual sum of deposit amounts for using textbooks to be paid by parents (legal representatives) of students is approved by the RA Minister of Education and Science at least 15 days prior to the beginning of each school year.

It turns out that the state provides free textbooks to first-to-fourth grades students of public educational institutions on account of the state budget, envisaged by the elementary general educational programs, and for the textbooks of students of other grades, the students’ parents (legal representatives) pay deposit amounts for using textbooks. Moreover, the payment of these deposit amounts is a mandatory requirement for provision of textbooks.

The Staff of the Human Rights Defender has examined the similar orders of the RA Ministers of Education and Science on approval of the amount of deposit funds for textbooks of institutions implementing general education programs for 2010-2017, which indicate that the amount of deposit funds specified for textbooks, not only does not decrease from year to year, but increases instead<sup>28</sup>.

Moreover, no exception is envisaged on the level of the Law regarding these payments for textbooks for children from vulnerable groups. By the RA Government Decree # 1262-N of 24 August 2006, “On approval of procedure for calculation of expenditures of the public educational institutions, relocations in expenditures of public educational institutions and revocation of the RA Government Decree # 773 of 25 August 2001”, the formula of funding implementation for all public educational institutions of the RA according to the number of students, which also includes the amount of compensation paid for textbooks for children from socially vulnerable families, was approved.

Accordingly, the list of students from socially vulnerable families of the public educational institution is discussed and developed at the joint meeting of the pedagogical and parent councils of the institution, and approved by the Principle.

However, the problem is that it is unclear upon what criteria or principles the children or their families are selected to be included in the lists. Is the fact that the family receives allowances

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<sup>27</sup> Hereinafter in this section – Order

<sup>28</sup> The tendency of annual increase in the amount of investment in textbooks approved by educational institutions can be demonstrated by the example of 5<sup>th</sup> grade textbooks of educational institutions: mother tongue language: 330 AMD; y. 2010, 470 AMD; y. 2014, 490 AMD; y. 2017, Mathematics: 330 AMD; y. 2010, 470 AMD; y. 2014, 490 AMD, y. 2017, Russian language: 450 AMD; y. 2010, 420 AMD, y. 2014, 420 AMD, y. 2017.

accepted as a basis, or the list is compiled based on other criteria too? All these issues leading, in practice, to uncertainty cause a number of problems. First of all, out of shame, and in order to keep their children away from possible stigma, some parents generally do not speak out about the difficulties in making these payments, and in some cases, this situation leads to discriminatory attitudes. The parents, who reported to the Staff of the Human Rights Defender, noted that the attitude of the school staff towards their child worsened as a result of delaying the deposit payments for textbooks. This is also evidenced by separate conversations with relevant non-governmental organizations and individuals. It turns out that for two different families living in the same social conditions, the collection of the amount is carried out in different ways. That is, in one case, the family will be considered as needy and therefore will be exempted from paying the investment amount, and in another case, another family, which is in the same social status, will have to pay the deposit amount. In fact, we deal with double standards in assessment of children's social needs, which are based on subjective approaches, and accordingly bear corruption risks.

However, the Article 15 of the RA Constitution sets the right to free secondary education, according to which the State promotes development of education and science. Moreover, according to the Part 1 of the Article 38 of the Chapter 2 of the RA Constitution, which establishes fundamental rights of a person, secondary education is free in the state educational institutions. The right to free education is guaranteed by a number of international documents ratified by RA, including UN International Covenant on “Economic, Social and Cultural Rights”, European Social Charter (revised) of the European Council.

It turns out that Armenia recognizes and guarantees the right to free secondary education. At the same time, a fee has been envisaged for textbooks that is necessary for and is an integral part of the realization of that right, which is charged from the holder of the right. Moreover, there is no disaggregation related to, for example, provision of textbooks to vulnerable children. In addition, existing mechanisms to provide children from socially vulnerable families with textbooks assume confirmation of vulnerability of some children at schools and their separation from other children, which is also a manifestation of discriminatory treatment.

Taking into account abovementioned, the RA Human Rights Defender has applied to the RA Constitutional Court in 2017. The issue of free textbooks envisaged by general educational programs, and the issue of setting clear criteria for socially vulnerable families and, accordingly, provision of assistance to them, were raised in the application.

*Therefore, it is necessary to set up a mechanism for providing free textbooks to children in public educational institutions, or perform appropriate gradual transition. First, it refers to the establishment of clear criteria based on which the family will be considered socially insecure and therefore will receive assistance in obtaining textbooks.*

#### ***4. Restriction of the right to education as a consequence of being left out of education.***

The issue of children left out of education systematically remains unresolved, which was also referred in the Human Rights Defender's Annual Report (2016). The issue was also referred to in detail in the Human Rights Defender's Extraordinary Report (2018) "On the status of fulfilment of obligations defined by the Republic of Armenia under the Convention on the Rights of the Child and the accompanying protocols".

Studies indicate that reasons of remaining out of education for a child may be conditioned by different factors, including poor social conditions, child's disability, inadequate response of competent persons to child's absence, involvement of child in labor, and in case of some ethnic groups, even due to child marriage.

According to the Report of the RA National Statistical Service (2017), at the beginning of the 2016-2017 school year, 260 children<sup>29</sup> were left out of the general education in Armenia. According to the same report, the gross enrollment rate of students in schools in the 2016/2017 school year was 86%, whereas 91.2% in elementary school, 90.7% in primary school and 65.1% in high school. Net enrollment rate of students is 89.1% in elementary school, 89.6% in primary school. "The adjusted net enrolment" rate of students in elementary school is 89.5%, in primary school – 89.9%<sup>30</sup>. Unlike primary education, students' enrolment is relatively lower in higher grades of secondary and higher educational institutions and the enrollment gap between the poor and non-poor is quite noticeable<sup>31</sup>.

First, the problem is that the Legislation does not provide definition for the concept of "a child left out of education". Besides, there is no active system tracking and referral for the children left out of school<sup>32</sup>. As a result, collection of sound unified statistical data on children left out of education becomes complicated.

According to the nationwide survey called "In children's opinion..." one of the obstacles to education for children is working at an early age. It is most common in rural and remote locations, which is evidenced by the respondents, who pointed out that in some provinces of Armenia (such as Aragatsotn, Armavir, Gegharkunik) the number of children, who were absent from school because of being involved in labor, is high. The highest percentages of students, who cannot attend the school due to their involvement in labor, are recorded in Gegharkunik (26%), Tavush (19%) and Vayots Dzor (15%) provinces<sup>33</sup>.

Collection of precise data about children left out of education, as well as the identification of these children, is also an obstacle, since the number of children enrolled in school is more than the number of children attending school. The UN Committee on the Elimination of Discrimination against Women also expressed a concern over the issue in its Concluding

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<sup>29</sup> [http://www.armstat.am/file/article/poverty\\_2017\\_a\\_4.pdf](http://www.armstat.am/file/article/poverty_2017_a_4.pdf)

<sup>30</sup> [http://www.armstat.am/file/article/poverty\\_2017\\_a\\_4.pdf](http://www.armstat.am/file/article/poverty_2017_a_4.pdf)

<sup>31</sup> [http://www.armstat.am/file/article/poverty\\_2017\\_a\\_4.pdf](http://www.armstat.am/file/article/poverty_2017_a_4.pdf)

<sup>32</sup> <http://www.unicef.am/am/articles/education>

<sup>33</sup> [https://armenia.savethechildren.net/sites/armenia.savethechildren.net/files/library/YV\\_brief%20version\\_Final%20-%20arm.pdf](https://armenia.savethechildren.net/sites/armenia.savethechildren.net/files/library/YV_brief%20version_Final%20-%20arm.pdf)

observations<sup>34</sup>. The main reason is that public schools are financed based on the number of students, so teachers often do not record students' absences objectively<sup>35</sup>. The same problem exists in inclusive and special schools, especially given the fact that schools receive 3-4 times more funding for children in need of special education than for children, who do not have special educational needs<sup>36</sup>.

Some measures were taken by the competent authorities to address the problem. In particular, this issue was addressed by the project on Development Assistance for 2016-2020, agreed between the Government of the Republic of Armenia and the United Nations on July 31, 2015, and it was envisaged to introduce inter-sectoral mechanisms and strategies enabling identification of and support to children, not attending the school and involved in risk groups<sup>37</sup>.

According to the information of the RA Ministry of Education and Science, within the framework of identification and guidance of children left out of compulsory education the National Center for Educational Technologies of the RA MoES has created in 2017 a "Registration of children left out of compulsory education" subprogram. The subprogram enables to monitor the risks for children who are already enrolled in the school, of being left out of school for different reasons, however, in order to identify non-enrollment of children in education, all data of children born in the year corresponding to each school year are required. In academic year 2017-2018, it is envisaged to implement the subprogram in Lori region, and later on the entire country.

However, the abovementioned data and analysis show that there is no existing system of tracking and referral for children left out of education in Armenia

*Taking into account the abovementioned, it is necessary to:*

- 1. legislatively define the term of "a child left out of education", providing clear criteria allowing evaluation of the child's status.*
- 2. maintain unified and separated statistics on the number of children left out of education, the reasons of being left out of education.*
- 3. undertake measures to prevent such cases. Those measures may be:*
  - support the children from socially vulnerable families in reaching educational institutions located far from their place of residence,*

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<sup>34</sup> Concluding observations of the UN Committee on Elimination of Discrimination against Women on the 5<sup>th</sup> and 6<sup>th</sup> periodic reports of Armenia, Points 22 and 36, 18 November 2016.

<http://www.refworld.org/pdfid/583863b34.pdf>

<sup>35</sup> Child Rights Situation Analysis: Armenia,

<https://armenia.savethechildren.net/sites/armenia.savethechildren.net/files/library/book-eng.pdf>

<sup>36</sup> Child Rights Situation Analysis: Armenia,

<https://armenia.savethechildren.net/sites/armenia.savethechildren.net/files/library/book-eng.pdf>

<sup>37</sup> <http://www.un.am/up/file/Armenia%20-%20UNDAF%202016-2020%20-%20ARM.pdf>

- *exclusion of possibility of being left out of education due to disability, by ensuring accessibility of educational programs and physical conditions of public educational institutions.*

### ***5. Exercise of the right to education for children with disabilities***

The application, received by the Staff of the RA Human Rights Defender, raised the problem of accessibility of special textbooks relevant to the needs of children with disabilities both at public educational institutions implementing inclusive education and at special schools, which indicates restrictions of the exercise of the right to education for children with disabilities in those institutions. In particular, there are not enough textbooks required for children with visual and mental impairments for schools with inclusive education. Moreover, similar issues were also raised in 2017 by publications<sup>38</sup> in media. Therefore, one of them indicates that the number of textbooks in Yerevan's Special School # 14 is insufficient and there are content issues related to the textbooks being old and incompatible with the educational programs.

The results of study of the list of Braille system and speaking textbooks presented by the RA Ministry of Education and Science also indicates the textbooks availability issue. So, among the textbooks of subjects envisaged by the educational program only the following are available in Braille system for the appropriate grades: 2<sup>nd</sup> grade - Mathematics; 3<sup>rd</sup> grade – Mathematics and Russian language, 5<sup>th</sup> grade – History of the Armenian Church, and out of the list of textbooks envisaged for the 12<sup>th</sup> grade only the Armenian Literature has a speaking textbook. According to the data of the RA Ministry of Education and Science, three inclusive schools have applied for Braille alphabet textbooks and copybooks in 2017, whose applications were satisfied for only copybooks required for writing in Braille alphabet, and Braille alphabet textbooks could not be provided, since a very limited number of them is available at the school. According to the Ministry, the main problem of availability of textbooks and compliance to the educational program is the absence of textbooks on the exact sciences in the Braille alphabet. According to the same data, the school has published all the textbooks for elementary grades in Armenian and Russian languages. However, due to changes in the content of the educational programs, most of these books have become purposeless. In 2017, 2000 Braille copybooks were purchased for organization of education of children with special educational needs. A methodological guidebook on Inclusive Education (4000 copies) was published and provided to all Armenian regions to be distributed to secondary schools. Packages of educational games (9 packages) were purchased and provided to special public schools and centers of pedagogical-psychological support (26 institutions) of the country.

Thus, according to the Part 2.1 of the Article 4 of the RA Law “On Public Education”, the Republic of Armenia declares the universal inclusive education as a guarantee of the right of every child to education. The policy of inclusive education is aimed at ensuring access to, opportunity for equal participation in and quality of education for every child.

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<sup>38</sup> <http://www.mediamax.am/am/news/special-report/26378/>

Inclusive and accessible education for each person derives also from a number of international documents. In particular, in the Concluding Observations of 2013 of the UN Committee on the Rights of the Child regarding 3<sup>rd</sup> - 4<sup>th</sup> Periodic Report of Armenia, it is stated that the state should continue its efforts aimed at inclusion of children with disabilities into general educational system, and while implementing it, special attention should be paid to the children with disabilities enrolled in special educational institutions and those from provincial regions.

Therefore, the lack of textbooks for the needs of children with disabilities in public educational institutions implementing inclusive education, as well as in special schools is incompatible with international standards, the requirements of RA Legislation, and limits the accessibility of inclusive education for these children.

*Taking into consideration the abovementioned, it is necessary to:*

- 1. ensure availability of the necessary number of textbooks in educational institutions implementing inclusive, as well as special education throughout the country;*
- 2. increase funding of educational institutions for printing affordable textbooks relevant to educational programs.*

#### ***6. Restriction of the exercise of the right to education in public educational institutions due to money collections and other illegal actions***

Due to illegal money collection, as well as abuse by the pedagogical and administrative staff of educational institutions of their authorities, the restriction of the right to education remains a problematic issue. In 2017, similar cases of restricting the exercise of the right to education have been recorded by the Staff of the RA Human Rights Defender, as well as raised in mass media.

Particularly, children visiting the Office of Human Right Defender informed, that illegal money collections are being conducted in their schools (e.g. before the celebration of the last call). As per children, some of their friends, conditioned by the social-economic status of their families, cannot afford to pay that amount, as a result, they pay for their friends, or their friends simply do not participate in the celebration. Children also pointed out that this affects the relations between them and their classmates, as well as students and their teachers.

Relevant departments also received alerts. Hence, in 2017, the RA Ministry of Education and Science “Hot-line” received 118 complaints (in 2016 – 180 complaints). Out of 118 complaints, 78 were about the illegal activities of the director of the educational institution, a teacher’s inappropriate professional behavior or knowledge. Complaints were received about issues raised from applications referred to the RA Ministry of Education and Science: 17 complaints on employer-employee relationships; 49 complaints about illegal activities of the director; 26 complaints against a school teacher; 3 complaints about director’s relatives working in the same school; 21 complaints about directors’ inefficient, bad work; 19 complaints about improper selection of staff by the director. The study of issues raised through applications indicates that the most of them refer to improper or incomplete performance of directors and staff of

educational institutions, in particular, evident is the number of complaints raised about the issue of money collection – 50. According to information from Yerevan Municipality, in 2017, in three schools under the Municipality’s subordination, improper behavior toward a student by a teacher was recorded, resulting in three teachers receiving disciplinary sanctions.

In the education sector of anti-corruption program for 2015-2018, there is an event bearing a wide formulation of “Comprehensive study of corruption risks in education”, which should be conducted in 2015, during the first year of the Strategy implementation, and for 2016-2018, the development and implementation of anti-corruption program in the field of education based on corruption risk assessment is envisaged. It should be noted, that studies show that although the Ministry of Education and Science has developed, circulated a draft program of anti-corruption measures in the field of education in 2016, however, it has not been yet adopted by March 4, 2018<sup>39</sup>.

The study of the problem and the discussions of the cases show that the abovementioned issues have not been solved, which create barriers for the effective exercise of the right to education. Moreover, money collection in the name of organizing festive events in schools has become traditional and distorts public confidence towards school education.

Besides, the right to education is also affected by the politicization of the administrative staff (especially the principals) of the public educational institutions. The school administration has no right to be engaged in political or party propaganda in the schools, whereas carrying of party’s pins by some of the directors, incitement of parents to vote in favor of this or that party in the pre-election period and the use of opportunities of children’s successful learning (or hindering of it thereof) for that purpose is an abuse of official position and directly affects involvement of children in educational processes. Moreover, prior to Elections to the National Assembly in 2017, the Staff of the Human Rights Defender has thoroughly investigated the publication titled "ARP abuses the administrative resource in schools and kindergartens (114 records)" by the “Union of Informed Citizens” non-governmental organization. The recordings that, as per organization, reflect phone conversations with directors of public schools and kindergartens were also investigated. Accordingly, it was worrying that study and recordings published by the civil society institute refer to public educational institutions and their directors<sup>40</sup>.

*Taking into consideration the abovementioned, it is necessary to:*

- 1. examine in detail the grounds and causes of such occurrences;*
- 2. strengthen and target the mechanisms of detection, prevention and sanctioning of cases of illegality, including money collection, by any pretext;*
- 3. make amendments to the RA Electoral Code prohibiting employees of secondary educational institutions from participating in pre-election campaigns or to use their*

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<sup>39</sup> <https://transparency.am/files/publications/1489693195-0-123422.pdf>

<sup>40</sup> See more in the Section of Electoral Rights of this Communique

*administrative resources in this process in any way (including out of fulfilment of their powers).*

### ***7. Restriction of the exercise of the right to education in connection with conditions of buildings and assets, as well as heating, in pre-school and public educational institutions***

A number of issues related to insufficient building and asset conditions, as well as heating in some educational institutions of the country were referred to in annual reports of the RA Human Rights Defender, about which, the complains were also received by the Staff of the RA Human Rights Defender in 2017. Students of a number of educational institutions have also raised the issue in their conversations with the representatives of the Defender.

Thus, according to the data of "Social Status of the Republic of Armenia" Annual Report (2017) published by the National Statistical Service, 52.8% of 1432 schools in Armenia had sufficient building conditions in 2016. Hence, almost half of the schools needs current repair or capital renovation. 71 schools still do not have water supply, and 141 do not have sewerage, and eight schools have no heating<sup>41</sup>. Moreover, according to available data, 425 schools in Armenia need seismic safety improvement. Buildings of about 60 of these schools have 3rd or 4th grade of emergency<sup>42</sup>.

Poor conditions of the school buildings hinder the normal course of the classes, as well as are dangerous in terms of child health. As an example, the strike of teachers and students of the School after V. Petrosyan of Ashtarak town of Aragatsotn Province held in 2017 can be pointed out<sup>43</sup>. The reason was the poor condition of the school: school has the need for capital renovation and repair, there are no proper toilets, the doors and windows are very old, and school does not have a sport hall, necessary conditions for teaching informatics, chemistry and other subjects. According to the data, the building conditions of the given educational institution are a significant obstacle to ensuring the full realization of children's right to education, for proper implementation of educational process.

Accordingly, the Defender initiated the discussion of the issue and its study on his own initiative. According to the data of RA Ministry of Education and Science, capital repair project of "Ashtarak Basic School after V. Petrosyan" was envisaged to be ordered in 2018 on account of state budget for RA Aragatsotn Region for 2012-2020, through medium-term capital expenditures program. As a result, renovation of one educational building have started. Works are in process.

In some cases, the parents prohibited their children to go to school, because of school building conditions. Particularly, residents of the Jrarbi community of Armavir Province organized a protest demonstration and a strike in 2017, as the school building is in an emergency condition

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<sup>41</sup> <http://www.armstat.am/am/?nid=82&id=1958>

<sup>42</sup> <https://www.azatutyun.am/a/27221091.html>

<sup>43</sup> <http://www.1in.am/2136343.html>, <http://hetq.am/arm/news/78411/usucichnery-gortsadul-en-anum-ashakertneri-apagayin-materi-aranqov-chenq-nayum.html>

and has no heating. Finally, the issue of school heating was resolved, and improvement of building conditions is promised to be made in the near future<sup>44</sup>.

In 2017, it has also been voiced about the disconsolate conditions of the secondary school in Tsilkar community of Aragatsotn province. Here, in addition to building and sanitary-hygienic conditions, there is no adequate heating in the school. Tin stoves are placed in the classrooms, the use of which is prohibited by the RA Minister of Health Order # 12-N of 28 March 2017 “On the Approval of the Sanitary Regulations and Norms N 2.2.4-016-17 “Requirements for Educational Institutions Implementing General Educational Programs” and Revocation of the RA Minister of Health Order # 82 of February 11, 2002”. According to the available data, the temperature reaches 13-14 degrees, the school gym does not function, it is impossible to maintain proper cleanliness, because the floor is made of concrete and is damaged<sup>45</sup>. Although there are problems with building and asset conditions of public schools both in urban and in regional and rural schools, however the studies show that the most vulnerable in this regard are rural schools<sup>46</sup>.

Apart from the general building conditions of the schools, ensuring sanitary and hygienic conditions is also problematic. The studies indicate that children also consider this issue more problematic. Thus, the majority of surveyed children mentioned that school infrastructures need to be improved. In particular, 48% of respondents wanted improvement of water and sanitation conditions<sup>47</sup>. There is no water supply in 6.5% of schools (88 schools), Gegharkunik (12.7%) and Syunik (11.6%), and sewerage is absent in 12.1% of the schools (153 schools): Gegharkunik-19 %, Armavir -18.2 %, Tavush-17.3%. The toilets of 204 schools were rated "1", which means that those do not operate within the building, but located outside the school, of which 198 schools are rural. The toilets of 487 schools were rated "2" or "3", which means that toilets of these schools are not repaired, of which 153 lack permanent water supply<sup>48</sup>.

According to the studies, insufficient building conditions were repeatedly pointed out by the parents of kindergarten #2 in Yeghegnadzor, according to whom the kindergarten building is in an emergency condition<sup>49</sup>. In Malishka, the poor building conditions are also mentioned, particularly, in the kindergarten #1, which was established on the base of a building constructed for other purposes, and in kindergarten #2, where not-renovated rooms still exist, despite the

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<sup>44</sup> <https://www.youtube.com/watch?v=xNxnHU0tndA>

<sup>45</sup> <https://www.hraparak.am/posts/591f93a8e3d84d0d37fc3c3d/%D5%B0%D5%A1%D5%B6%D6%81%D5%A1%D5%A3%D5%B8%D6%80%D5%AE%D5%B8%D6%82%D5%A9%D5%B5%D5%B8%D6%82%D5%B6-%D5%A7-85-%D5%A1%D5%B7%D5%A1%D5%AF%D5%A5%D6%80%D5%BF%D5%AB-%D5%A1%D5%BC%D5%B8%D5%B2%D5%BB%D5%B8%D6%82%D5%A9%D5%B5%D5%B8%D6%82%D5%B6%D5%A8-%D6%84%D5%A1%D5%B5%D6%84%D5%A1%D5%B5%D5%A5%D5%AC%D5%A8-%D6%84%D5%A1%D5%B2%D5%A1%D6%84%D5%A1%D6%81%D5%AB%D5%B6-%D5%A4%D5%BA%D6%80%D5%B8%D6%81%D5%AB-%D5%BF%D5%B6%D6%85%D6%80%D5%A5%D5%B6%D5%AB%D5%B6-%D5%B4%D5%A5%D5%B2%D5%A1%D5%A4%D6%80%D5%B8%D6%82%D5%B4-%D5%A7-%D5%AC%D5%B8%D6%82%D5%BD%D5%A1%D5%B6%D5%AF%D5%A1%D6%80%D5%B6%D5%A5%D6%80>

<sup>46</sup> [http://www.osf.am/wp-content/uploads/2017/09/Educ\\_Equity\\_MainData\\_PPT.pdf](http://www.osf.am/wp-content/uploads/2017/09/Educ_Equity_MainData_PPT.pdf)

<sup>47</sup> [https://armenia.savethechildren.net/sites/armenia.savethechildren.net/files/library/YV\\_brief%20version\\_Final%20%20arm.pdf](https://armenia.savethechildren.net/sites/armenia.savethechildren.net/files/library/YV_brief%20version_Final%20%20arm.pdf)

<sup>48</sup> [http://www.osf.am/wp-content/uploads/2017/09/Educ\\_Equity\\_MainData\\_PPT.pdf](http://www.osf.am/wp-content/uploads/2017/09/Educ_Equity_MainData_PPT.pdf)

<sup>49</sup> <https://transparency.am/files/publications/1501517554-0-840922.pdf>

recent renovation. The main problem in the Nor Kharberd kindergarten is a lack of space: one of the groups is located in the hall, which is adapted as a group-room<sup>50</sup>.

Alerts have also been received by the state and local self-government bodies about aforementioned issues. In particular, according to the data of the RA Ministry of Education and Science, the arguments presented in the application received from the Kindergarten #12 of Abovyan community of Kotayk Province, inform that there is no hot water supply in kindergarten. As a result, children were deprived of basic hygiene conditions. Particularly, the water flowing from the taps is so cold that the educators and nannies are forced to forbid children to wash their hands even after using the toilet. The study revealed that most of the arguments correspond to the reality. Moreover, according to the Ministry data, of five (5) age groups operating in kindergarten (junior, second, two middle and two senior groups), only the middle group is provided with hot water. Dining place and dishwashing room are also provided with hot water.

Some steps have been taken to solve the problem in 2017, for example, according to the Yerevan Municipality, in 2017 the school # 71 named after N. Stepanyan was renovated and equipped with assets and up-to-date technologies compliant to modern requirements, the renovation works of schools ## 22, 51, 91, 143, 191 were also in progress in 2017. Moreover, "Seismic Safety Improvement" loan program funded by Asian Development Bank is implemented since 2015, the main beneficiaries of which are 58.700 students and teachers of the reconstructed schools with enhanced seismic resistance, and about 87,500 inhabitants of adjacent areas, since during earthquakes and other emergencies the schools will serve as temporary lodgments and shelters<sup>51</sup>.

However, the results of a study combined from the received data show that the measures taken are not sufficient, given that the building and property conditions of a number of public educational institutions in the country are not sufficient for the normal course of the classes, which leads to limitation of exercise of the child's right to education.

The issue of provision of heating for public educational institutions is also problematic, on which the RA Human Rights Defender also received complaints in 2017. The problem is that it is a general practice to start the school heating from November 15, which is, however, not a mandatory legislative requirement.

According to the RA Minister of Health Order # 12-N of 28 March 2017 "On the Approval of the Sanitary Regulations and Norms N 2.2.4-016-17 "Requirements for Educational Institutions Implementing General Educational Programs" and Revocation of the RA Minister of Health Order # 82 of February 11, 2002", the air temperature in classrooms, educational cabinets, lecture auditorium, library, medical unit (doctor's office), dressing rooms of sports hall, labs, rooms for group classes, hall of ceremonies should be at least 18-22 degrees Celsius, and in educational workshops, foyer, dressing room and recreations, at least 18-20 degrees Celsius in cold weather conditions, and in the sports hall – 17-19 degrees Celsius. There is no provision

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<sup>50</sup> <https://transparency.am/files/publications/1501517554-0-840922.pdf>

<sup>51</sup> <https://www.adb.org/sites/default/files/project-document/175756/49078-001-sfg.pdf>,  
<http://www.atdf.am/Content/UploadedFiles/SSIP/BriefSSIP.pdf>

(including restriction) available on the time of heating for the public educational institution in the mentioned order of the Minister of Health of the Republic of Armenia. Despite the mentioned legislative regulation, during the meetings with the staff of the RA Human Rights Defender, the students mentioned the start of heating from November 15, as well as its absence in some cases. In practice, the location of the public educational institution, as well as the climatic conditions of the given year are not taken into account when starting the heating from November 15 (e.g. heating should start earlier than November 15 in schools located in windy or humid areas).

The heating issue is also especially actual in regions, as a result of which in some cases the work of pre-school educational institutions has seasonal nature. Moreover, in some cases the absence of a centralized heating system also creates problems. In particular, parents from some pre-school educational institutions in Tavush Province have expressed their concern on the use of electric or wooden stoves the kindergartens of the region, which is not safe for their children<sup>52</sup>.

The UN Committee on the Rights of the Child has also raised the issue, specifying both unfavorable building and assets conditions and heating issues, and urged the state to invest in the improvement of school infrastructures<sup>53</sup>. The UN Committee on Economic, Social and Cultural Rights has also made a similar proposal, emphasizing the need for more effective use of financial resources for improvement of educational institutions<sup>54</sup>.

According to the RA Ministry of Education and Science, in order to control the thermal regime in public educational institutions, a system has been developed on the initiative by the RA Ministry of Health in 2017, which allows real-time online monitoring of the thermal regime in every educational institution, to obtain objective and continuous information using existing modern devices (for example, GPRS temperature monitoring and registration device S260), which are designed to measure temperature by accurate and sensitive sensors and transfer data to unified electronic system via GPRS or Internet connection. With those devices, it becomes possible to have not only real-time simultaneous and continuous measurement data of thermal regimes obtained from multiple temperature sensors, but also provide temperature violation alarms and a database for the entire period of device exploitation. The data of temperature recording devices can be accessible both for educational institutions and for responsible bodies.

The study of the data presented in this section indicates that poor building and asset conditions, as well as heating issues in public educational institutions remain to be unsolved in 2017 as well, largely hindering the learning process, thus leading to the violation of children's constitutional right.

*Taking into consideration the abovementioned, it is necessary to:*

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<sup>52</sup>[https://armenia.savethechildren.net/sites/armenia.savethechildren.net/files/library/Assessment%20on%20Access%20to%20Pre-school%20Education%20Services\\_ARM.pdf](https://armenia.savethechildren.net/sites/armenia.savethechildren.net/files/library/Assessment%20on%20Access%20to%20Pre-school%20Education%20Services_ARM.pdf)

<sup>53</sup> Final reviews of the UN Committee on the Rights of the Child on the 3<sup>rd</sup> and 4<sup>th</sup> periodic report of Armenia, May 27 – June 14, 2013, <http://www2.ohchr.org/english/bodies/crc/docs/co/CRC-C-ARM-CO-3-4.pdf>

<sup>54</sup> Final reviews of the UN Committee on Economic, Social and Cultural Rights on the 3<sup>rd</sup> and 4<sup>th</sup> periodic report of Armenia <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmIBEDzFEovLCuW0fp9m5PoYHYLH3qkguQgxwB0Dv54x9D%2FtTVTtkqVIVcgKieaWt6S0CjmsSRHd2YbUGKIROrDzjo9z47iNYCZgmYgv27A6%2F5Jw0ZBjno1vpNcA>

- 1. increase funding allocated for improvement of building and asset conditions of public educational institutions,*
- 2. ensure compliance of public educational institutions with air and heat maintenance requirements through strengthening control over detection of violation cases.*

#### ***8. Restrictions of the exercise of right to education related to food safety in public educational institutions***

Food safety issue in educational institutions was actual also in 2017. The issue is that the canteens in a number of public educational institutions sell types of food, which are prohibited by the Point 26 of the RA Minister of Health Order # 32-N of 6 June 2014 “On approval of sanitary rules and norms N2.3.1-02-2014 “Hygienic requirements for the organization of catering for students in public education institutions”. This is also evidenced by the information received through private interviews with the children visiting the Human Rights Defender's Office. The children reported that carbonated drinks and other unauthorized foods are being sold in their schools to date. This issue is raised by the RA Human Rights Defenders since 2014, and the UN Committee on the Rights of the Child has also referred to it<sup>55</sup>.

The abovementioned issues were also revealed by the competent authorities. Thus, according to Governor's Office (Provincepetaran) of the RA Lori region, a study was carried out at preschools and public educational institutions of Lori region. The directors of institutions are informed about violations recorded in their institutions by the employees of the State Food Safety Service of RA Ministry of Agriculture. The recorded violations related to: sanitary and hygienic conditions for food services, compulsory periodic medical examinations of employees, inconsistencies of food labeling, and accompanying documents certifying safety of the food, are mainly eliminated. The overwhelming part of violations is related to the poor condition of the catering areas, the elimination of which requires renovation. Directors of the abovementioned institutions were instructed to undertake measures aimed at eliminating of recorded violations.

According to information from Yerevan Municipality, consistent control over food arrangement and its quality has been implemented in 2017 by working groups consisting of staff of the supervision and public education departments of the municipality and corresponding administrative districts, in canteens of all secondary educational institutions in the capital, aimed at excluding the use of expired food.

According to the Point 48 of the RA Minister of Health Order # 32-N of June 6, 2014, the director of educational institution is the person responsible for organization of catering and full inclusion of the students in it. Moreover, according to the same Order, to implement preventive measures aimed at protecting the health of the students, the director of the institution shall ensure availability of sanitary rules, their implementation, etc.

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<sup>55</sup> Final reviews of the UN Committee on the Rights of the Child on the 3<sup>rd</sup> and 4<sup>th</sup> periodic report of Armenia, May 27 – June 14, 2013, <http://www2.ohchr.org/english/bodies/crc/docs/co/CRC-C-ARM-CO-3-4.pdf>

According to the Article 60 of the exemplary charter of the State Non-Commercial Organization approved by the RA Government Decree # 2179 of 26 December 2002, “On reorganization of “RA State special public educational institution” state institutions, determination of the types of state special public educational institutions adoption of the exemplary Charter of “RA State special public educational institution” state non-commercial organization and making changes to the RA Government Decree # 1392-N of 25 July, 2002”, supervision over performance of the institution is fulfilled by the founder, authorized state body and other public governance bodies authorized by a founder, as well as prescribed by the Law.

According to the Article 38 of RA Law “On Education”, in line with other powers, the Governor controls enforcement of RA Legislation on Education and normative acts adopted by the public administration authorized body, by preschools and secondary education institutions.

According to Point 2 of Part 1 of the Article 31 of the RA Law “On Public Education”, the territorial administration body in the field of education and Yerevan Mayor, along with other powers, oversee the enforcement of RA Legislation on Education and normative acts adopted by the public administration authorized body, by preschools and secondary education institutions.

*Therefore, state authorized bodies defined by the abovementioned legal acts should ensure organization of catering in public educational facilities in compliance with requirements of RA Minister of Health Order # 32-N of 6 June 2014 “On approval of sanitary rules and norms N2.3.1-02-2014 “Hygienic requirements for the organization of catering for students in public education institutions”.*

### ***9. Freedom of mind, conscience and religion in public educational institutions***

As a result of surveys conducted with children of religious and ethnic minorities, it was found out that during the class of the "History of Armenian Church", sometimes teachers impose ritual actions, such as praying or crossing, which contradicts some people's religious beliefs<sup>56</sup>. In connection with the mentioned problem, in 2013 the UN Committee on the Rights of the Child offered the Republic of Armenia to review school curriculum, reflecting the freedom of religion of children<sup>57</sup>.

According to the Article 4 of the RA Law on “General Education”, “The Republic of Armenia ensures the democratic and secular nature of education”, however bases for circumvention of this requirement are established in the Point 8 of the same Article, establishing that religious activity and propaganda in educational institutions are prohibited, with the exception of cases prescribed by the Law, based on which, such issues are regulated by the RA Law “On relations between the Republic of Armenia and the Armenian Apostolic Holy Church”<sup>58</sup>. RA Human Rights Defenders also referred to this issue in their previous reports.

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<sup>56</sup>[http://www.coe.int/t/dg4/youth/Source/Resources/Publications/2014\\_Field\\_Study\\_Rights\\_of\\_Children\\_arm.pdf](http://www.coe.int/t/dg4/youth/Source/Resources/Publications/2014_Field_Study_Rights_of_Children_arm.pdf)

<sup>57</sup>[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fARM%2fCO%2f3-4&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fARM%2fCO%2f3-4&Lang=en)

<sup>58</sup> <http://armhels.com/wp-content/uploads/2016/01/Ditord-2016-01Armenian.pdf>

*Taking into consideration the abovementioned it is necessary to prohibit mandatory prayers and visits to churches in the course of the educational process.*

#### ***10. Restrictions on the exercise of the right to education in connection with the politicization of student councils in higher educational institutions (HEI)***

The problem of politicization of student councils in higher education institutions, raised in annual reports and communiques by the RA Human Rights Defender, has not yet received systemic solution in 2017.

The UN International Covenant on “Economic, Social and Cultural Rights”, to which Armenia is also a member, obliges the state to organize equally affordable higher education for all<sup>59</sup>. At the same time, according to the UN Committee on Economic, Social and Cultural Rights, in comparison with educational institutions, the university professors and students are more vulnerable to political and other pressures that can threaten their scientific and academic freedom, which is essential for the full exercise of the right to education<sup>60</sup>. Moreover, in order to ensure the autonomy of HEI and to carry out free research, the requirement for academic freedom in higher education institutions is also envisaged by Bologna process of the Educational system reform, to which the Republic of Armenia has also joined since 2005.

Existing legal arrangements do not provide or partially provide full-fledged mechanisms required for autonomy and academic freedoms of the HEI, aimed at ensuring further development of governance and independence of HEI depending on their organizational-legal form and status. Accordingly, in 2017, the RA Ministry of Education and Science has developed the drafts of the RA Law “On Higher Education” and related laws aimed at modernization of the field, solution of problems, and compliance to international standards, on which the Staff of the Human Rights Defender presented its observations. The draft sets out a number of provisions for the settlement of this issue, however, those do not have comprehensive problem solving nature. Besides, the draft, which sets out those provisions was circulated at the end of 2017, and has not yet been defined by the RA National Assembly.

Accordingly, the RA draft Law "On Higher Education" stipulates provisions related to management of higher educational institutions, whereas, in particular, the competencies and the bases of performance of the management bodies of Higher Educational Institutions, including management boards of public higher educational institutions, are set out. It should be noted that independence and de-politicization of the activities of these boards are extremely important. To settle this issue, the proportion of the board members was proposed, as well as a provision, according to which the persons, holding a political post and the governors may not be members of the board. At the same time, it should be noted that the boards might be under the influence of a political party without persons holding a political post being directly represented in the board. Therefore, additional guarantees are needed to ensure the independence of the board. Accordingly, it was proposed to envisage independence from the influence of political parties in

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<sup>59</sup> The UN International Covenant on “Economic, Social and Cultural Rights”, Article 3, [http://www.un.am/res/UN%20Treaties/III\\_3.pdf](http://www.un.am/res/UN%20Treaties/III_3.pdf)

<sup>60</sup> UN Committee on Economic, Social and Cultural Rights., General commentary #13, 1999, <http://www.refworld.org/docid/4538838c22.html>

the provisions setting out the mentioned regulations of the draft, as the principle of the boards' activity, which will be a guidance for the activities of all the boards.

*Therefore, it is necessary to set out and prohibit in the HEI Charters, organization and implementation of any political activity in the HEIs premises and/or with the direct participation of HEIs structures, including organization by student councils of student's camps, outgoing expeditions funded by any political party.*

## CHAPTER 5. PARTICIPATION IN CULTURAL LIFE

The Article 15 of the Constitution of the Republic of Armenia, defining the protection of the Armenian language and cultural heritage, promoting culture, education, and science, sets out that the development of culture, education and science is promoted by the state; Armenian language and cultural heritage are under the care and protection of the State. Moreover, one of the main goals of the state policy prescribed by the RA Constitution is to promote youth participation in political, economic and cultural life. The right of a person to participate in cultural life is also stipulated in number of international documents (e.g., the UN International Covenant on Economic, Social and Cultural Rights, the Universal Declaration of Human Rights, etc.). International documents stipulate rights such as equality of participation in cultural life, participation in all aspects of social and cultural life, participation in cultural life in conditions of equality with other persons, and some other rights.

However, in 2017, for effective and full realization of the right to participate in cultural life the problem of limited access to cultural life for socially vulnerable individuals remained actual.

### *1. Accessibility of cultural values for socially vulnerable people*

For some groups of society, that is, for socially vulnerable people, there are difficulties in terms of realization of the right to participate in cultural life on the basis of equality with other persons. Specifically, due to the socioeconomic situation of these persons, they have no opportunity to participate in cultural events and visit facilities, which assume payments. This situation endangers the full realization of their rights guaranteed by international conventions.

Thus, special attention was paid to those in need of special protection, including socially vulnerable people, in the General Comment 21 of the Committee on Economic, Social and Cultural Rights. In particular, it was noted that culture as a public product should be universally accessible, based on principles of equality, non-discrimination and participation. For this reason, by exercising the right of every person to participate in cultural life defined in Article 15 of the UN International Covenant on Economic, Social and Cultural Rights, the state should establish clear mechanisms focused on implementation of the right of vulnerable persons and their communities to participate in cultural life, and to ensure its adequate protection<sup>61</sup>.

It is pleasing that a number of steps have been taken in 2017 to address this issue, which may serve as a basis for systemic solution of the problem. Particularly, the RA Ministry of Culture presented the measures on providing participation of the elderly in the cultural life, encouragement and promotion of creative activity among the elderly and transfer of folk crafts to young generation using the potential of the elderly, which were approved by the RA Government Protocol Decision # 20 of 18 May, 2017, "On approval of the strategy and the action plan for 2017-2021 for the implementation of the strategy for overcoming consequences of aging and social protection of the elderly".

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<sup>61</sup> See E/C.12/2001/10, Point 14:

Moreover, according to the RA Minister of Culture Order # 368-A of 6 July 2017, the prices and privileges were defined for explanatory (tour) tickets and the visits to permanent exhibitions of museums under the subordination of the Ministry. The following discounts were defined for a ticket to visit permanent exhibitions of museums for pensioners and refugees (50% of ticket price), students (maximum 300 AMD for museums with up to 1000 AMD ticket price; 25% discount, if ticket price is more than 1000 AMD), as well as for school-aged children (maximum 300 AMD), who are citizens of the Republic of Armenia. The privileges for free visits to permanent exhibitions of museums on any working day have been established for **two-parent orphan children**, elderly people in need of special care and everyday services, World War II participants (The Republic of Armenia and former USSR republics), members of the families of soldiers killed during military service in the Republic of Armenia and the Republic of Artsakh, disabled persons – 1<sup>st</sup> group (with the accompanying person), disabled persons – 2<sup>nd</sup> and 3<sup>rd</sup> groups (without accompanying person), beneficiaries included in the poverty (family) benefit system, children from large families, conscript military servicemen, school age children from the border side regions of the Republic of Armenia (based on previously submitted applications), journalists (when performing professional duties), and preschool children.

## CHAPTER 6. THE RIGHT TO HEALTHCARE

Article 85 of the RA Constitution establishes the right of every individual to healthcare, in accordance with the Law. Taking into account the fundamental nature of this right, implementation of public healthcare and health improvement plans, as well as facilitation of conditions for effective and affordable health services have both been secured amongst the primary objectives of the national policy in regard to economic, social and cultural areas (Article 86 of the RA Constitution).

The individual's fundamental right to healthcare is also listed in the international documents ratified by the Republic of Armenia. According to Article 12 of the UN's International Covenant on Economic, Social and Cultural Rights, countries acting as Covenant parties recognize every individual's right to the highest attainable standard of physical and psychological healthcare. In 2017, a number of procedures were carried out for the purpose of ensuring and realizing the individual right to healthcare, which resulted in positive solutions to existing problems in that area. Nonetheless, the effective and thorough implementation of the right to healthcare has been halted by several obstacles, as described in this section.

Throughout 2017, public reports, addressed to the Human Rights Defender, voiced the fact that people were not able to gain access to the state-guaranteed medical assistance and services, free of charge or on preferential terms, despite being entitled to those. The problem resided in the unavailability (consumption) of state-budget funds provided for relevant services.

According to Subpoint 1 of the Point 4 of the Annex 2 approved by the RA Government Decree # 318-N of 4 March, 2014 "On State Guaranteed Free of Charge and On Preferential Terms Medical Assistance and Service", funding for hospital-based medical assistance and services is implemented in accordance with the limited budget principle: in exchange for actually accomplished procedures, although without exceeding the amount set by the RA State-Funded Medical Assistance and Service Implementation and Compensation Agreement, signed between an organization and the party authorized to implement the RA state funding. In practice, implementation of the limited budget principle faces certain problems that have been voiced through the complaints addressed to the Defender.

In the meantime, 2018 healthcare budget reduction became a matter of concern and discussion in 2017<sup>62</sup>, and this grew to be problematic within the context of the abovementioned issues.

Furthermore, the course of several adjustments, initiated in that area, indicated the insufficiency of actions taken to ensure public awareness prior to those adjustments. For instance, in 2017 the RA Ministry of Health undertook the papilloma virus vaccination. In the meantime, the subsequent flow of information and public viewpoints concerning the vaccine side effects,

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<sup>62</sup> <http://armtimes.com/hy/article/124461>, <http://hetq.am/arm/news/83290/inchu-en-krtchatvel-aroxjapahutyanyan-ev-socialakan-olortneri-byujetyayin-hatkacumneri-parzabanum-e-pokhnakharary.html>

alongside the lack of insight into the matter, implied that no efficient actions had been taken to extensively raise public awareness before the Ministry launched this initiative.

### ***1. Discriminatory attitudes towards patients.***

As specified by the RA Constitution, the right to healthcare comprises certain components. In accordance with the international standards, prevention of discrimination is amongst the fundamental principles of human rights and is one of the key elements of ensuring high-level medical assistance<sup>63</sup>. Discrimination is also prohibited by Article 29 of the RA Constitution, which has additionally been supported by the RA Law “On Medical Assistance and Service to the Population”, from the perspective of the right to healthcare. Thus, according to Article 4 of the above-mentioned Law, any individual is entitled to medical assistance and service in the Republic of Armenia, regardless of their nationality, race, gender, language, religion, age, health condition, political or other views, social background, property status and so on. Furthermore, in accordance with Article 5 of the same Law, when applying for medical assistance and/or when receiving medical assistance and service, any individual is entitled to respectful treatment from those who provide medical assistance and service. As specified in the Point “g” of the Part 1 of the Article 19 of mentioned Law, those who provide medical assistance and service are required to ensure caring and respectful treatment of patients.

Guarantees related to the protection of the abovementioned rights are also secured through a number of international documents. For instance, according to the Part 2 of the Article 2 of the UN’s International Covenant on Economic, Social and Cultural Rights, the states consent to guarantee the implementation of the human rights, publicized by the Covenant, without any discrimination. Namely, by ratifying the Covenant, the RA has consented to ensure the provision of the right to healthcare, as specified by the Covenant, without any discrimination. Similar regulations have also been established by the RA through other international documents<sup>64</sup>.

Despite the above-mentioned legally established regulations and international standards, cases of medical workers’ discriminative and disrespectful attitude towards patients with certain health conditions (e.g. disabilities, HIV/AIDS, Hepatitis B or C) were nevertheless observed throughout 2017. As a result of that, several individuals did not get proper medical assistance and were not able to use medical services. The issue is that individuals who have already found themselves in a vulnerable position avoid seeing a medical worker or visiting a medical institution, knowing they will face a negative discriminative attitude based on their health condition. Furthermore, in some cases medical workers themselves refuse to provide services to individuals with certain diseases (e.g. Hepatitis B or C).

The Defender’s 2016 annual report addressed this issue, stating that, according to the information provided by the RA Ministry of Health, no supplementary training on the specifics of treating the disabled needs to be offered, considering the fact that medical workers are

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<sup>63</sup> <http://www.ohchr.org/Documents/Publications/Factsheet31.pdf>

<sup>64</sup> e.g. the UN International Convention on the Elimination of All Forms of Racial Discrimination (Article 5)

conventionally obliged to be tactful and to demonstrate ethical behavior when dealing with patients. The mentioned standpoint is viewed as problematic within the context of international standards, the international obligations assumed by the RA, as well as for individuals representing vulnerable groups from the perspective of the right to healthcare<sup>65</sup>.

*Taking into account the abovementioned and the fact that objectives and concerns of the RA Ministry of Health include ensuring development and implementation of a state policy, as well as defense and protection of human rights in the Healthcare sector, it is necessary to:*

- 1. develop relevant guidelines for medical workers treating individuals from specific vulnerable groups (those with disabilities, HIV/AIDS, Hepatitis B, C, or confronted by discrimination due to other conditions);*
- 2. increase the number of (diploma and post-diploma) training sessions for raising medical workers' awareness in regard to the ways of spreading of various diseases, as well as preventive and safety measures.*

## ***2. Palliative medical assistance.***

The introduction of palliative medical assistance into the Healthcare system still remained an unresolved issue in 2017; for years, it had been set forth by Human Rights Defenders, as well as various social and international organizations<sup>66 67</sup>.

The RA Government Protocol Decree “On the approval of 2017-2019 strategy on development of palliative medical assistance and service and the program of measures of the 2017-2019 strategy on development of palliative medical assistance and service” states, that the death rate in the Republic of Armenia in 2014 amounted to 27,714, the 60-70% of the registered deaths being those of 20,000 patients in need of palliative medical assistance and treatment<sup>68</sup>. This points to the fact that introduction of palliative medical assistance is an extremely significant and relevant issue.

At the present time, the RA legislation envisages certain regulations concerning the provision of palliative medical assistance. In particular, according to Part 1 of the Article 2.1 of the RA Law “On Medical Assistance and Service to the Population”, palliative medical assistance is one of the types of medical assistance and service aimed at improving the life quality of patients with life-threatening or incurable diseases and the life quality of their families, with its objective being to alleviate patients' pain, sufferings, as well as disease-related physical, social-psychological,

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<sup>65</sup> See in detail: “Rights of Persons With Disabilities” Chapter

<sup>66</sup> <http://www.who.int/mediacentre/factsheets/fs402/en/>

<sup>67</sup> Even the 2011 UN General Assembly meeting emphasised the inevitability of the introduction of palliative medical treatment by means of a political declaration [http://www.hrw.org/sites/default/files/wr2014\\_web\\_0.pdf](http://www.hrw.org/sites/default/files/wr2014_web_0.pdf).

<http://apps.who.int/iris/bitstream/10665/250584/1/9789241565417-eng.pdf?ua=1>, <https://www.hrw.org/world-report/2017/country-chapters/armenia>

<sup>68</sup> <https://www.e-gov.am/protocols/item/709/>

spiritual and other problems, by detecting and evaluating those in the early stages and implementing required interventions. Furthermore, Part 2 of the same Article states that the criteria for provision of palliative medical assistance and service are defined by a state-authorized institution representing the Healthcare sector of the Republic of Armenia.

In the meantime, the mentioned regulations as such are not sufficient for providing palliative medical assistance. Moreover, their full implementation is hindered by several legislative regulations that, according to expert opinions, are complicated and time-consuming. The experts also claim that the amount of morphine and its alternatives in Armenia is not sufficient for all the patients in need of those<sup>69</sup>. In addition, back in 2017, no mechanisms for home-based palliative treatment were put into action.

The good news is that the strategy for development of palliative medical assistance and service and the 2017-2019 events programme got approval on February 2, 2017. This in fact suggests that the necessity of development of system for palliative medical assistance and service is being accentuated. The mentioned document highlights strategic objectives that can ensure resolution of issues related to provision of palliative medical assistance and service. As a result of that, the RA Minister of Health Order # 45-N, of 18 October 2017, approved “The Criterion for Palliative Medical Assistance and Service”, which defined fundamental principles and relevant organizational duties for providing the population with palliative medical assistance and service. “Methodological guidelines for pain management in the context of palliative medical assistance and service” were developed; training sessions on palliative medical assistance and service were organized for 25 medical workers from medical institutions of Ararat, Aragatsotn, Lori, Shirak provinces and Yerevan.

Despite the aforementioned steps taken towards introduction of palliative medical assistance, it, nevertheless, did not become fully accessible to those in need of it. In the meantime, monitoring and evaluation the strategy for development of palliative medical assistance and service, as well as monitoring and evaluation of the 2017-2019 events programme got approval on February 2, 2017. Thus, the section of the programme titled “Managing, monitoring and implementing procedures for the strategy-envisaged events” states that regulating and *monitoring* processes aimed at the progress of palliative medical assistance and service at medical institutions, as well as development of monitoring and evaluation tools are to be implemented by the RA Ministries of Health, Labor and Social Affairs, Education and Science, as well as by the RA provincial administrations and the Yerevan Municipality, each within their statutory limits. Furthermore, the programme also reveals that the data necessary for calculations of its progress/results indicators throughout the implementation should periodically be collected and analyzed by the RA Ministry of Health. The mentioned regulations do not envisage a sufficiently precise and productive monitoring mechanism, and this puts the program’s effective implementation at risk.

*Based on the abovementioned, it is suggested that:*

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<sup>69</sup> <http://www.who.int/mediacentre/factsheets/fs402/en/>

- 1. a precise monitoring mechanism should be enacted for the program's implementation;*
- 2. Civil society representatives should be involved in that mechanism.*

### ***3. Protection of Medical secrecy***

The RA Human Rights Defender's annual reports have outlined the absence of legislative guarantees for protection of medical secrecy, which is one of the fundamental elements<sup>70</sup> of the right to healthcare, which continued to be the case in 2017. The problem is that, as a result of either the lack of awareness or the lack of precise and detailed legislative regulations, medical secrecy disclosure cases have been reported, alongside alarm signals addressed to the Human Rights Defender.

Up to this date, cases have been reported, where someone else's medical examination results were handed to a different patient, or where medical assistance or advice at medical institutions was provided in the presence of other patients.

In some cases, when visiting their medical worker, patients feel uneasy about insisting on confidentiality of their personal data, primarily because there are not sufficient legislative mechanisms for that; and also because patients are concerned about possible negative reaction as a result of their demand (e.g. mistreatment). Such a situation causes problems both for patients and medical workers.

There is a number of detailed international regulations concerning protection of medical secrecy. For instance, according to Point 9.5 of the EU Council of Ministers' Bulletin Supplement # (2015)5, health-related details that require medical confidentiality protection should only be available to / established by those individuals, who are under such an obligation – either directly or on the basis of professional confidentiality rules. According to Paragraph 40 of the EU Council of Ministers' Bulletin # (89)14, healthcare institutions are strictly advised to demonstrate respect for confidentiality protection, and, if necessary, to implement a special policy for healthcare workers and to promote educational programmes for clarifying issues related to mandatory confidentiality protection in cases of HIV infection.

The European Court of Human Rights has outlined the significance of medical data protection in a number of decisions. In particular, the European Court has stated that protection of personal and medical data is of fundamental significance for the enforcement of the individual's human right to respect for personal and family life, as guaranteed through Article 8 of "The European Convention for Protection of Human Rights and Fundamental Freedoms". Respect for confidentiality of personal health data is one of the vital principles within the legal systems of

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<sup>70</sup> <http://www.who.int/genomics/public/patientrights/en/>

the Convention member states<sup>71</sup>. According to the European Court, respect for medical data confidentiality is of fundamental importance in the process of protecting the patient's privacy<sup>72</sup>.

The European Court of Human Rights has stated that disclosure of an individual's HIV-related data can drastically influence personal, family, social life and employment of the latter, exposing them to the threat of being rejected. Such a factor may also make others hesitate to undergo medical examinations and treatment, thus eventually ruining public efforts aimed at securing preventive measures for the sake of public safety<sup>73</sup>.

Protection of personal details is secured by the RA Constitution amongst the individual's basic rights: according to Article 34, every individual has a right to protection of his personal data. This constitutional right has also been established by Article 5 of the RA Law "On Medical Assistance and Service to the Population", which states that every individual has the right to demand confidentiality for the details related to their personal health condition, medical examinations, diagnosis and treatment. Furthermore, Point 7 of the Part 1 of the Article 19.3 of the same Law sets medical secrecy protection as medical workers' obligation. This right is not absolute and is subject to limitations. Namely, specific data disclosure cases may be defined by the law as an exception, but they need to be precise, explicit and in compliance with legitimate causes. In order to emphasise the significance of the matter, measures have been envisaged to set forth regulations defining liability for medical private data processing and transmission, as well as medical secrecy violation, on the basis of the Decree # 483-N "On Approval of the Action Plan for 2017-2019 derived from the National Strategy for Human Rights Protection", which in its turn suggests ineffectiveness of current regulations.

Naturally, the above-stated legal regulations cannot be considered complete from the perspective of ensuring protection of medical secrecy. For instance, it is necessary to highlight the fact that the RA Law "On Medical Assistance and Service to the Population" does not specify important clauses, which envisage the definition of medical secrecy, no subjects are defined to which the private medical data can be transferred, as well as the peculiarities of the order of processing and transmission of that data. There are no legislatively defined precise liability mechanisms related to unlawful transmission of private medical data. To resolve the issue, even back in 2016, the RA Ministry of Health has developed a draft RA Law "On Medical Assistance and Service to the Population", which was supposed to tackle the above-mentioned matters. A number of suggestions were made by the RA Human Rights Defender concerning the project, the vast majority of which were accepted and regulated in the revised version. The project, however, was not approved in 2017. Furthermore, by order of the RA Prime Minister, the project has been removed from circulation and is to be substituted by the draft RA Law "On Healthcare".

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<sup>71</sup> See the Z v. Finland case, decision of February 25, 1997, appeal # 22009/93, Point 95; and the L.L. v. France case, decision of October 10, 2006, appeal # 7508/02, Point 44.

<sup>72</sup> See the L.L. v. France case, decision of October 10, 2006, appeal # 7508/02, Point 23.

<sup>73</sup> See the Z v. Finland case, decision of February 25, 1997, appeal # 22009/93, Point 96.

Based on the aforementioned, it is possible to assume that medical workers face problems from the perspective of evaluating and planning their actions, as well as protecting patients' rights. In the meantime, the individual's fundamental right to healthcare is threatened in that situation.

*Taking into account the abovementioned, it is necessary to:*

- 1. enforce legislative regulations, within a tight time frame, concerning definition of the medical secrecy, as well as processing and transmission of the latter;*
- 2. inform patients about protection of the medical secrecy, and regulations related to the latter through mass media;*
- 3. advise medical workers on the importance of protection of the medical secrecy and all legislative regulations in relation to the latter, by means of relevant qualification training sessions.*

#### ***4. Individuals receiving medicines for personal use from another country via postal services***

As a result of deficient legislative regulations, there has been a shipping limitation issue related to medications not registered on the RA territory for personal use by a private individual. The issue is observed in the case where a medication is not registered in Armenia, and private individuals need to acquire it for their treatment from other countries. For instance, the analysis of one of the reports submitted to the Human Rights Defender in 2017 clearly points to the fact of individuals acquiring medications for their personal treatment in another country and having an opportunity to personally import those to Armenia, when travelling from that country to Armenia. Whereas, the same medications purchased from the same destination, would be impossible to ship to Armenia.

Thus, Part 1 of the Article 16 of the RA Law "On Medicines" allows producing, importing, distributing, releasing, selling and applying those medicines that are registered in the Republic of Armenia, with the exception of cases defined by this Law. Part 4 of the Article 21 of the same Law specifies that the import of drugs, medicines, herbs, under-review pharmaceutical products is permitted based on an import certificate, with the exception of the cases envisaged by the Law. According to Point 1 of the Part 7 of the same Article, no certificate is required for import or export of medications for personal use or treatment, if an individual travels to and from a foreign country, as long as the quantity corresponds to that defined by the RA Government.

Hence, the current legislative regulations allow the import of the aforementioned medications to the RA only when a person travels to the RA; in other words, these medications cannot be shipped to individuals residing in the RA via postal services, for their personal use.

According to the RA Ministry of Health, in 2017, the RA Ministry of Health and experts from the State Revenue Committee adjacent to the RA Government, discussed the question of implementing appropriate amendments in the RA Law "On Medicines", the RA Government Decree # 581 of 20 September, 2000 "On approving the order of Import and Export of Medicines in Armenia", as well as the RA Government Decree # 865 of 30 July 2015 "On

presenting the obvious commercial quantities of goods, being imported to the Republic of Armenia in the manner prescribed by the Law of the Republic of Armenia by private individuals not being private entrepreneurs and presentation of an import tax declaration and on defining the form of informing regarding the obligation to pay the indirect taxes, and on revocation of the RA Government Decree # 502-N of 20 March 2003”. As a result of joint discussion, it was agreed to develop a draft of amendments in the RA law “On Medicines”, for the purpose of regulating the import of medications that are of vital importance to private individuals. However, the issue failed to be resolved in 2017.

*Considering the abovementioned, we propose legislative regulation of the following matter within a short period of time: shipping of medications, not registered in Armenia, by private individuals via postal services, for the private individuals whose treatment requires those medications.*

#### ***5. Availability of medications to those with mental health problems.***

Throughout 2017, complaints were forwarded to the Defender from individuals with mental health issues, who expressed their discontent with the quality of a certain state-funded medication. Based on the reported complaints in 2017, individuals with mental health issues were supplied with a medication known as Olanzapine, instead of previously provided Zyprexa. After taking the new medicine, as claimants asserted, individuals with mental health problems would start to feel unwell: fatigue, insomnia, limb strain, physical inactivity, etc. - which was why they no longer wished to receive and take that medication. The RA Human Rights Defender had voiced a similar issue back in 2014, in the course of an attempt to replace Zyprexa with a medication known as Zolaxa. The RA Human Rights Defender’s mediation had helped to perform an analysis of the Zolaxa drug, the results of which had revealed the high level of the medication’s detrimental effect. Subsequently, a decision had been made to supply beneficiaries with Zyprexa within the framework of the 2015-2016 “Outpatient Treatment with Zyprexa” program.

According to clarification of the Ministry of Health, the Zyprexa drug is in fact the original medicine containing Olanzapine. Other drugs that contain Olanzapine are generic. In the Republic of Armenia, when registering generic drugs, drug manufacturers need to produce certain documents in order to prove the bio-equivalence of their drug and the original one. In this context, the results of the analysis performed for “Arpimed” pharmaceutical enterprise’s Olanzapine during its registration brought to a positive conclusion. Quality differences are out of the question, since the quality of all the registered medications must conform to the accepted pharmaceutical norms. The drug registration system is aimed at resolving this issue: before the drug is given permission to reach the market, the documents confirming its quality, safety and efficacy must be thoroughly examined according to the legislation. The Ministry of Health has also produced the results of studies carried out by the Academician E. Gabrielian Scientific Centre of Drug and Medical Technology, for detecting the side effects of drugs produced.

The Ministry informs, that if the frequency of side-effects cases exceeds the specified limits, or if life-threatening phenomena are reported, then the RA Ministry of Health is entitled to halt the registration and distribution of that drug in the republic.

In accordance with the position of the RA Ministry of Health, the ministry has adopted a policy for implementation of cost-effective projects tackling healthcare standards improvement: the continuity of the project is inexpedient in terms of both healthcare and financial standards.

Due to the discontent from a number of beneficiaries in regard to the Armenia-manufactured Olanzapine drug, as well as the drug's ineffectiveness and side-effects, the Ministry of Health has established the fact that any drug, be it generic or original, can manifest side-effects of all kinds of nature, strength and frequency, which may depend not only on the drug itself but also on the characteristics of a specific patient's physiology, illness progression, as well as the treatment process. Occasional drug-related complaints from beneficiaries may be of subjective nature and cannot be viewed as the definite basis for negative conclusions concerning the drug's quality and efficacy.

As the RA Ministry of Health informs, beneficiaries' complaints have not been ignored, and a bio-equivalence analysis has been performed for Olanzapine (10mg, # 30) manufactured by "Arpimed" CJSC and Zyprexa (Olanzapine) manufactured by ELI Lilli and company (USA): the results have confirmed the bio-equivalence of the aforementioned drugs.

*Taking into consideration the abovementioned, it is essential to:*

- 1. acquire a few types of medicine, within the existing financial capacity, to give patients and treating doctors an opportunity to use the drug label of their choice;*
- 2. conduct the necessary research, in order to make a list of beneficiaries who have reported the negative effect or ineffectiveness of Olanzapine;*
- 3. to supply the listed beneficiaries with the Zyprexa drug by means of relevant programs.*

#### ***6. Stomatological Medical Assistance and Service for Children.***

Throughout 2017, complaints were forwarded to the Defender from the republic's provinces in regard to the lack of stomatological services for children in certain regions. In particular, there was a complaint from a mother about her disabled child's need for stomatological treatment and the doctor who claimed they had run out of state funds, which was why he wouldn't treat the child. In the meantime, it turned out that, according to the RA Ministry of Healthcare database, no state-funded stomatological clinic was available in that particular region, namely Sisian, and that the required medical assistance could only be provided in the town of Goris.

According to the RA Minister of Health Order # 49-N of 17 September 2015 "On the Guidelines for Applying for State-Funded Medical Assistance and Service, and on Establishing the Norms for Assessing the Efficiency of Management of Medical Institutions that Provide State-Funded Treatment", decisions concerning state funding at medical organisations are made in the

prescribed manner by the RA Ministry of Health, based on the review of applications submitted by provincial administrations / medical organisations - this suggests that the state funding provision matter can only be discussed in case of a relevant application.

In the meantime, according to Supoint 1 of the Point 7 of the Craterion, approved by the RA Minister of Health Order # 45-N of 11 September 2013, stomatological medical assistance and service to the population within the framework of state-guaranteed cost-free medical assistance and service are provided by a doctor based on free choice of the patient, without any territorial limitations.

The RA Ministry of Healthcare have also discussed the failure to submit applications for state-funding by organisations providing stomatological medical assistance and service in Sisian, with the RA Syunik Provincial Adminsitration.

Hence, the following conclusion can be made: procedures for state-funding applications in that specific region were not maintained in 2017; in particular, no state-funding applications were submitted by medical organisations providing ambulatory clinical services, as well as other medical organisations, within the framework of state funding - as a result of this, the availability of stomatological medical assistance and service for children could not be guaranteed within the context of state funding.

*Considering the abovementioned, our suggestion is to ensure submission of state-funding applications by organisations providing stomatological medical assistance and service for children in all the communities of the republic.*

## CHAPTER 7. ECONOMIC RIGHTS

According to Article 59 of the RA Constitution, every individual has economic rights, including the right to entrepreneurship. The implementation order and requirements for this right are established by the Law. Limitation of competition, possible types of monopoly and their permissible extent can only be determined by the Law for the protection of public interests. Regardless of legal enactments in the legal sphere, there are both legal and practical issues that hinder the fully-guaranteed implementation of this right.

### ***1. Application of criminal law instruments aimed at the tax liabilities of business entities.***

In 2017, complaints were forwarded to the Human Rights Defender regarding the issue of a wide practice of opening a criminal investigation in the investigations department of the RA SRC tax service and later, lifting the criminal liability from the person based on the unlawful use of an encouragement norm of Part 5 of the Article 189 of the RA Criminal code - lifting the criminal liabilities from a person for a number of deeds prohibited by the criminal law, including willful evasion from taxes, duties or other mandatory payments, which was outlined in the Defender's annual reports and communiques.

Furthermore, before the changes took place on February 28 2017, the definition of criminal offence, as specified by Article 205 of the RA Criminal Code, happened to be problematic, in terms of its certainty. In particular, there was confusion in relation to the precise crime definition for large-scale criminal activities, such as: willful evasion from taxes, duties or other mandatory payments specified in the Part 1 of the Article 205, failure to produce statutorily required reports, account statements or other taxation-related compulsory documents, and falsification of the aforementioned documents. It was not clear whether or not the phrase "evasion from taxes, duties or other mandatory payments" in Part 1 of the Article 205 could be interpreted as equivalent to non-payment of taxes. The interpretation and application of the term "willful" in the criminal offence definition of Article 205 of the RA Criminal Code was also problematic.

The good news is that changes were made based on the RA Law # 44-N of 28 February 2017 "On Making Amendments to the RA Criminal Code" concerning the problematic phrase "evasion from tax payments" in Article 205: this was replaced by "non-payment of taxes", whereas the term "willful" was removed.

The enactment of the RA Law # 44-N "On Making Amendments in the RA Criminal Code" on April 8 2017 resolved the problem of shortcomings in legislative regulations in regard to the matter in question; however, the problem of application of legal norms concerning the fact that the above-stated criminal offence is applied as a criminal law instrument for indirect pressure targeted at fulfilment of tax obligations by business entities, has not been fully resolved on the legislative system level.

This, in particular, is about the results of a research based on the complaints addressed to the Defender. In particular, there have been actual cases, in which the individual agrees to fulfil his allegedly unfulfilled tax obligations and is granted exemption from criminal liability, according to the Criminal Code, while facing the risk of the probability of procedural enforcement measures (specifically, detention) within the context of criminal law threat, criminal prosecution and initiation of criminal proceedings.

In the age of free market economy, fulfilment of economical entities' payment obligations, as well as their on-time accurate calculations of taxes, duties and other mandatory payments, may lead to a more flexible state policy. In such cases, the State must generate a legislative regulation system that will ensure the reasonable balance of public (state budget formation) and private (business entities) legal interests. The statutory measures in this sector (which also includes the criminal policy), especially those related to the liability for non-payment of taxes, are eventually aimed at the full formation of the state budget - a most significant issue that needs to be resolved.

Thus, the criminal law norms, targeted at the proper enforcement of tax obligations, cannot be viewed as detached from the rest of legislative regulations: it is essential to see those in systemic unity with the tax legislation, ever mindful of the state policy priorities in the sector. Judging from the international experience, it is also important to implant the predominance of preventive purposes in the criminal policy, as opposed to punitive ones.

Furthermore, the statistics provided by a government agency show that, initiation of criminal proceedings is used as a mechanism for ensuring fulfilment of tax obligations in case of evasion from tax payments,.

For instance, according to the information provided by the State Revenue Committee adjacent to the RA Government, the preliminary investigation of 37 (out of 131 initiated and 448 conducted) criminal proceedings carried out by the investigation department of the RA SRC in 2017 has now ended; the case, alongside the indictment, has been forwarded to the Court within the framework of 21 criminal proceedings, whereas 68 proceedings were suspended. In fact, only 21 out of 579 criminal proceedings were forwarded to the Court with indictment.

The situation remained unaltered for years. For instance, based on the SRC database, back in 2016, the preliminary investigation of 135 (out of 60 initiated and 386 conducted) criminal proceedings was ended; the case, alongside the indictment, were forwarded to the Court within the framework of 16 criminal proceedings, whereas 18 proceedings were suspended.

It eventually turns out that despite the enforcement of legislative regulations, the situation, nonetheless, has hardly undergone any alterations; hence, the following statement is still true: it is only out of fear of possible unfavourable consequences that taxpayers express willingness to pay allegedly unpaid taxes, including calculated fines and penalties. Based on the above-stated, we can conclude that apart from unwarranted restrictions in regard to economic competition and constitutionally guaranteed freedom of economic activity, the possibility of taking effective measures for protection of the individual's rights and legislative interests is also being violated.

On account of the above-mentioned, in order to ensure legal certainty for business entities and elimination of the practice of using initiation of criminal proceedings as a lever for ensuring fulfilment of tax obligations, we suggest taking steps towards the proper enforcement of established statutory provisions and the implementation of constitutionally guaranteed objectives. *Hence, it is necessary to:*

- 1. develop criteria and guidelines for the implementation of the articles of the RA Criminal Code;*
- 2. arrange special training courses for appropriate investigators;*
- 3. raise awareness of the business entities regarding the application of the Criminal Code.*

## ***2. State procurements in the medication sector and their influence on the rights of individuals.***

2017 also raised the alarm concerning the low quality and minimum usefulness of medicines acquired as a result of state procurements. The problem is that, within the procedure of state procurement, preference is normally given to cheaper medicines, and it is not always that the latter turn out to be sufficiently effective. For instance, a number of healthcare providers mention that they advise their patients to obtain more expensive medicines, which, as opposed to some cheap ones, give faster and more effective results. This issue has drawn the Human Rights Defender's attention, and it has been voiced through annual reports and communiques.

Thus, according to the Point 3 of the Annex to the RA Government Decree # 502-N of 02 May 2013 "On Specifying the Criteria for Technical Specifications of Medications purchased through the Republic of Armenia state Budget or other funds", the technical specifications of medications that are to be purchased need to include full and precise description and details of internationally accepted universal (generic) or active components. The Annex also regulates the inclusion of RA-registered medications in the state catalogue (registry, also including other registered versions with the same components), concerning which there is a regulation which ensures that technical specifications for procurement of drugs are listed in such a manner that the probability of any registered version's non-involvement in the competition is eliminated, and equal terms are guaranteed in the competition for all parties, all of this being based on the RA state catalogue (registry) for registered medications.

In the light of such regulations, there is no way to make a list of technical specifications with optimally precise and detailed criteria for clients and their needs. As a result of this, when mentioning the name of a drug in technical specifications for purchasing medications, the names of medications' internationally accepted universal (generic) or active components are to be listed, according to the specified criteria. This creates an opportunity for a number of representative organisations listed in the RA state catalogue (registry) of registered medications to be involved in the competition: these are organisations whose medications customers do not prefer, because of their side-effects. In practice, when two recommended medications meet the technical specifications criteria, preference is given to the low-cost option, which may result in purchasing a medication with low efficiency and more side effects.

The analysis of legal acts focusing on the same regulation has revealed that a number of international documents envisage various mechanisms and structures for the regulation of the matter. For example, according to Article XV, Section 5, of the World Trade Organisation's revised agreement, the client signs a contract with the provider that, in their opinion, can fulfil the terms of the contract and make a more profitable offer *or suggest the minimum price in cases where price is the only criterion* - all of this on the basis of criteria exclusively specified in notifications and documents related to the act of purchase. According to Section 6 of the same article, in cases where the client receives an offer featuring a product price that is much lower than the prices featured in the other offers, the client may clarify whether that offer meets the requirements and whether that party is able to fulfil the terms of the contract.

Directive 2014/24/EC of the European Parliament and Council also tackles this issue. In particular, Article 67 Section 1 of the Directive states that the client must consider signing the contract related to the *most economically profitable offer*, when dealing with prices of provided products or costs of services - without violating domestic legislation, rules or administrative regulations. At the same time, Section 2 of the same article states that the offer, which is considered economically most profitable from the client's perspective, must be determined on the basis of the price or the cost, with the application of the cost-effective approach: for instance, in the light of Article 68, the life cycle cost; and such an offer can be based on the best combination of price and quality, which, depending on the subject of the contract, must be evaluated according to criteria that are influenced by quality, ecology and/or social conditions. The element of cost can take the form of a fixed price or cost: this ensures that the competition of parties involved only focuses on the quality criterion. Member states may demand that the client should not use price as the only criterion, or may limit the application of that criterion for certain client groups or specific contracts. In other words, according to provisions specified through international documents, an opportunity is given to acquire a quality product in a more profitable manner, as a result of price comparison.

According to the information previously received from the RA Ministry of Health, even back in September 2015, the RA Government draft Decree "On the Approval of the Criteria for Non-Competitive Procurement of Healthcare Services and the Approval of the Schedule of Competitive Procurement of Healthcare Services" was submitted to the RA Government for resolving the matter. However, it must be noted that, as of March 2018, no decision has been made, whereas the above-stated matter still remains relevant.

*In the light of the abovementioned, it is necessary to:*

- 1. amend the RA Government Decree No.502-N of 02 May 2013, "On Specifying the Criteria for Technical Specifications of Medications purchased through the Republic of Armenia state Budget or other funds" by specifying most effective criteria for technical specifications of medications, the purchase of which is either state-funded or based on other resources.*

2. *Based on the regulation specified by Point 2 of the Part 2 of the Article 34 of the RA Law “On Procurement”, when purchasing a product make conclusions using not only the minimal price, but the method of comparison of price and other non-price criteria.*

### ***3. Customs clearance of goods using the transaction price method.***

During 2017, a number of problems were encountered in regard to the unfounded rejection of customs clearance of goods using the transaction price method, by the customs authorities of the State Revenue Committee adjacent to the Government of the Republic of Armenia.

In fact, often the customs authorities of the State Revenue Committee adjacent to the Government of the Republic of Armenia reject clearance of vehicles at their acquisition price, with the explanation of existence of unessential, amendable mistakes in the documentation, as well as the customs authorities' doubts about the authenticity of documents.

In this case, it is mandatory to refer to the RA Law “On Customs Regulations”, the Part 3 of the Article 86 of which states that before making a final decision concerning rejection to estimate customs value via the transaction price method, regional, specialised or border customs authorities are supposed to inform the declarant in writing, but no later than within two working days after the date the declarant submits documents required by Article 78 of the same law, about the reasons hindering the approval of the customs value estimated via the transaction price method and to give the declarant five working days to submit additional documents and/or information, after the review of which the customs authorities will make a decision concerning either rejection to estimate customs value via the transaction price method, or approval of the customs value proposed by the declarant.

According to the State Revenue Committee's information, throughout 2017, the transaction price method was applied in 66.13% of custom clearance formalities, the 2nd method - in 3.95%, the 3rd - in 11.71% and the 4th - in 18.21%. However, 7 complaints (2 of which were settled, 2 partially settled, and 3 rejected) were submitted in regard to the failure to apply the transaction price method when estimating the customs value of goods.

Within the context of the matter in question, it is worth mentioning the Agreement “On Customs Valuation of Goods Transported Across the Customs Borders of the Customs Union”, accepted on 25 January 2008, which states that the transaction price of goods must be the basis for customs valuation of imported goods (namely, the method of the imported goods' transaction price). In cases where it is not possible to estimate the value of imported goods on the basis of the transaction price, the customs value of goods is established by means of the other methods specified in the aforementioned agreement, in due order.

Furthermore, the RA Constitutional Court (Decision # SDO-1176, 2014) has taken a distinct position, stating that customs valuation via the transaction price method during clearance of goods is a general rule, whereas the other methods of customs valuation are exceptions to the general rule. In reality, however, it is right the opposite.

Thus, to sum up the above-stated, we can note that the matter still remains problematic.

*Hence, considering the abovementioned, it is proposed to create effective mechanisms for taking steps in ensuring improvement of the sector-regulating legislation and its proper practical implementation, in order to eliminate unfounded rejection of clearance of goods via the transaction price method.*

#### **4. Collection of VAT from private individuals.**

Reports forwarded to the RA Human Rights Defender in 2017 voiced a problem that still remains relevant: requirement from tax authorities for private individuals to pay Value Added Tax (VAT).

Following the discussion on the issue, currently circulating law-enforcement interpretations were reviewed, in regard to Subpoint “b” of the Point 2 of the Article 6 of the RA Law “On Value Added Tax”. In reality, problems arise in relation to the excersize of the individual’s right to property, as a result of various interpretations and irregular application of this clause: the RA Human Rights Defender has received complaints concerning this. Research shows that the vagueness of legislative formulations and their actual practical interpretations cause controversy, from the perspective of the individual’s right to property, which is one of the fundamental human rights.

For instance, Subpoint “b” of the Point 2 of the Article 6 of the RA Law “On Value Added Tax” (the pre-01.01.2018 edition) states that in cases of alienation of property in exchange for property compensation for two or more individual or joint properties of the same kind - be it a flat, a house (even if partially constructed), a personal car, a land for agriculture and settlement, or a garage - alienation of the 2nd and further property of the same type is viewed as goods delivery, if alienation takes place within one year, following the acquisition of that property. The aforementioned regulation states the following: in terms of the alienation transaction being viewed as goods delivery, the requirement about acquisition of goods taking place during the time period (not exceeding one year) preceding the alienation, refers to the second and further alienated property of the same kind. The RA Court of Cassation has also revealed its legal position in regard to the above-stated law regulation (the Decision # 26 VD/0811/05/15 of 26 December 2016 of the Civil and Administrative Chamber of the RA Court of Cassation).

The position of the tax authority officials’ is as follows: in the RA Law “On Value Added Tax”, the phrase “alienation takes place within one year, following the acquisition of that property” functions at those times when we deal with alienation of the second (and further) property. As a result of such interpretation and application, we face a situation, in which alienation of two same-kind units of property may end up becoming a target for VAT charges in one case, while in the other case it may not: this depends on the order of alienation transactions.

This issue should be set forth as a discussion topic within the context of the RA Law “On Legal Acts”, Part 1 of the Article 86, of which states: a legal act is interpreted by the literal meaning of the words and phrases it comprises, taking into account requirements of the law. In other words,

as a result of a comprehensive analysis of the above-stated clauses, we conclude that goods delivery and VAT charges can only refer to compensated alienation of two or more units of property (within only one year) that was implemented within the time period following the acquisition of all the property units.

It is worth mentioning the RA Court of Cassation Decision of 02 December 2016 on the Case # VD/4109/05/14, which has a special significance for shaping unified and predictable judicial practice with similar cases. In the above-mentioned Decision, the Court of Cassation's position was as follows: a transaction made by a private individual who is not a private entrepreneur is considered goods delivery, and therefore a VAT-charged transaction, in case of concurrent existence of a number of requirements. The Court of Cassation also mentioned that if a transaction meets all the listed requirements, then, in the light of the RA Law "On Value Added Tax", it is considered goods delivery, and therefore is a VAT-charged transaction; however, if even one of the listed requirements is missing, the transaction cannot be considered goods delivery. The Court of Cassation states that, according to the approach adopted by the Legislator, goods delivery may refer to the second and further same-type property alienation transactions within one calendar year, if the alienated property was acquired within one year preceding the alienation.

The Court of Cassation has been focusing its discussions on a number of possible situations. For instance, if, within one calendar year, a private individual who is not a sole proprietor has alienated property that was acquired before the year preceding the alienation, while alienating property that was acquired within the year preceding the acquisition, via the second transaction, then, according to the above-mentioned regulation in Article 6 of the RA Law "On Value Added Tax", the second alienation transaction is considered goods delivery, and therefore a VAT-charged transaction. On the other hand, though, if, within one calendar year, the first transaction of a private individual who is not a sole proprietor has alienated property acquired within one year preceding the alienation, whereas the second transaction has alienated property acquired before the year preceding the alienation, then, according to the Legislator-adopted approach, the second transaction cannot be viewed as goods delivery in this scenario. Let us also note that, according to the discussed legal order, the notion of goods delivery refers to the second and further same-type property alienation, and, in such a scenario, the first transaction cannot be considered goods delivery, either.

The Court of Cassation has based such a conclusion on the literal interpretation of the phrase "if alienation of property takes place within one year, following the acquisition of that property" from the third paragraph of the Point 1 of the Article 6 of the RA Law "On Value Added Tax", in which the term "property", used by the Legislator, is supposed to imply the alienated property of the currently discussed transaction, and not the property previously alienated within the same year.

For this reason, considering the above-stated, it is worth noting that, no matter when the first alienated property was acquired within the calendar year, in order to qualify the second and

further same-type property alienation transactions within one calendar year as goods delivery, the time interval between the acquisition and alienation transactions must not exceed one year.

As far as this issue is concerned, it should be mentioned that the RA Law “On Value Added Tax” was announced inactive, as of January 1, 2018. No similar VAT-related regulations have been enforced in the Tax Code. In the case of private individuals’ business activities focused on alienation of property, income tax procedures have been regulated by Section 7 of the RA Tax Code. In particular, according to the Subpoint “a” of the Point 16 of the Part 2 of the Article 147 of the Tax Code, alienation of property which is the focus of business activities, refers to the second (and further) alienation of same-type property of personal, family or domestic use (a flat, a house [even if partially constructed], a land for agricultural or settlement purposes, a car, a garage), if both the acquisition and the alienation of those took place within one year.

It needs to be mentioned that, despite the fact that this issue was resolved in the light of the 2018 RA Tax Code, the relevant clause had been in force throughout the entire 2017, thus originating a number of practical problems for economical entities.

*To ensure effective application of the new clause, it is necessary to:*

- 1. raise public awareness concerning the nature of the new regulations and the included amendments;*
- 2. raise awareness of those that apply the clauses, in order to help them avoid incorrect and fragmented interpretations as a result of their application.*

## SECTION 4. ENVIRONMENTAL PROTECTION

Protection, improvement and rehabilitation of the environment are one of the objectives of the state. Article 12 of the Constitution defines the obligation of each person to take care of the environment. The same article also envisages state's obligation to promote protection, improvement and rehabilitation of the environment, rational use of natural resources, guided by the principle of sustainable development and accountability to future generations.

Although in order to achieve the goals fixed by the abovementioned Article of the Constitution, Armenia has ratified a number of international treaties, a number of legislative acts have been adopted, but still there is a number of problems, which remain unresolved in 2017.

### *1. Safe removal and destruction of chemicals and waste*

One of the reasons for pollution of atmosphere, subsoil, water and soil is waste, the dangers of which have been repeatedly voiced by the Human Rights Defender's annual reports and communiques. The impacts of heavy metals, toxic substances contained in tailing dumps, and their accumulation in reservoirs, rivers, are particularly negative for the environment. Additionally, the issue of maximum utilization of waste, reduction of their generation and environmentally safe disposal (destruction) is still actual and unsolved.

An obstacle to the solution of problems in the field is the fact that the competencies in environmental protection are distributed between different agencies, which reduces the effectiveness of implemented policies. At the same time, there is no unified monitoring body that would have an opportunity to present a summarized picture of the problems and situation in the area.

Thus, according to the RA Ministry of Nature Protection, the destruction or removal of hazardous wastes is carried out by companies licensed in accordance with the procedure established by Government Decision # 121-N of January 30, 2003 " On approving the procedure of licensing the activities of recycling, clearance, storage, transportation and installation of hazardous waste". Moreover, according to the same procedure, supervision of compliance with license requirements and conditions, is carried out by the relevant inspection bodies of the Ministry of Nature Protection and Ministry of Health of the Republic of Armenia.

A number of steps have been taken to address the problems in the sector. Based on Parts 1 and 4 of the Article 5 of the RA Law "On Inspection Agencies", the Government of the Republic of Armenia adopted a Decree # 445 of 27 April 2017 "On Establishment of the Environment and Subsoil Inspectorate of the Ministry of Nature Protection of the Republic of Armenia, approval of the structure and charter of the Environment and Subsoil Inspectorate of the Ministry of Nature Protection of the Republic of Armenia, making amendments and additions to the Decrees of the Government of the Republic of Armenia #1237 of 8 August, 2002, #654 of 15 May, 2008, #649 of 14 April, 2004, declaring the Decrees of the Government of the Republic of Armenia #1149 of 25 July, 2002 and # 1577 of 11 December, 2008 revoked.", based on which,

the State Environmental Inspection of the staff of the Ministry of Nature Protection and the State Inspectorate on Subsoil of the Ministry of Energy and Natural Resources of the Republic of Armenia have been liquidated in 2017. Instead, The Environment and Subsoil Inspectorate of the Ministry of Nature Protection of the Republic of Armenia was established.

According to information provided by the RA Ministry of Nature Protection, as a priority task of the Government of Armenia in 2018 it is envisaged to submit to the Government of Armenia the draft concept of "Integrated Management System for Environmental Protection" by the end of the first half of the year, and to take steps towards the establishment of a single institutional system in the sector by the end of the year.

Moreover, as a result of merging 4 state non-commercial organizations operating under the Ministry of Nature Protection, the "Center for Environmental Monitoring and Information" SNCO was established, which, among other things, also completed digitalization of the archive data of surface water and atmospheric air monitoring (from 1977 to 2005).

At the same time, pursuant to the Action Plan for 2017-2019 derived from the National Strategy for Human Rights Protection, defined in the Annex 1 of the RA Government Decree # 483-N "On Approval of the Action Plan for 2017-2019 derived from the National Strategy for Human Rights Protection", of 4 May, 2017, a number of activities are being implemented by the Ministry of Nature Protection. Particularly, works on development of amendments and additions to the RA Law "On Assessment and Expertise of the Environmental Impact" are being done within the framework of which the draft amendments are brought into line with the decisions of the respective Aarhus Convention Committee on Armenia, particularly in regards of the freedom of information on environment, and decision-making through effective mechanisms of public participation and access to justice.

At the same time, given the importance of the issue, it has also been included in a number of international documents. Thus, the elimination of excretion of the hazardous chemicals and materials, reduction of their leakages and reduction by half the proportion of unclean wastewater, are among the sustainable development objectives included in the United Nations 2030 Sustainable Development Agenda, which came into force on January 1, 2016. It should also be noted, that the final solution to the problem of eradication of overdue pesticides is also reflected in the concept of "Sustainable Development Agenda 2030" of the Strategy to implement the recommendations of the UN "RIO +20" Summit. The latter also presented such problems, the solution of which will contribute to the improvement of the system environmentally safe disposal of hazardous waste in the Republic of Armenia<sup>74</sup>.

Taking into consideration the abovementioned, it is necessary to underline, that continuous actions still should be taken to provide systemic solutions to the issues in the sector.

*Based on the abovementioned, it is suggested to:*

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<sup>74</sup> <https://www.ecolur.org/files/uploads/pdf/RIO%2020%20hayecakarg/rio20hayetsakarg.pdf>

1. *Establish a unified management system in the field of environmental protection through also creating an independent centralized monitoring body.*
2. *As a result of legislative changes, create a program (policy) providing privileges and applying other means of economic encouragement towards the businesses, which will introduce, use or implement the most waste free means, mechanisms or technologies, or will choose such types of those, that are environmentally safe and have the least harmful effect on the environment.*

## ***2. Ensuring public awareness and proper engagement of the public on environmental issues***

For many years, Human Rights Defenders have voiced the issue of promoting proper public awareness on, and ensuring proper involvement of the society in the solution of environmental issues, as mentioned in the decision IV / 9a of the Committee on the compliance of Armenia with the requirements of the Aarhus Convention. In particular, development of procedures for ensuring public participation at all decision-making levels, through undertaking proper means aimed at ensuring accessibility of effective justice, as a suggestion<sup>75</sup>, as well as keeping both national and conventional provision ensuring public participation in different stages of decision-making process as an issue, are particularly highlighted by experts<sup>76</sup>. In its First and Second Conclusions of its Progress Evaluation on the RA Government's 2014 Report<sup>77</sup>, the Committee noted, that along with the steps taken towards the conventional obligations, nevertheless, Armenia has not yet fulfilled the requirements of the committee's decision<sup>78</sup>.

A number of steps were taken to address these problems. Thus, according to the Ministry of Nature Protection, in accordance with the decision V/9a of the Meeting of the Parties to the Aarhus Convention, and with the decision of the Aarhus Convention Compliance Committee to extend the deadline for submitting comments and suggestions by the public in the environmental impact assessment and expertise process, the RA Government Decree # 1325-N of November 19, 2014 was amended by the RA Government Decree # 357 of 9 March, 2017, according to which the deadlines for submitting comments and suggestions by the public in the stages of the environmental impact assessment and expertise process were changed. Moreover, by this decision, the public receives the right to present any comments and suggestions that it

<sup>75</sup> the decision IV / 9a of the Committee on the compliance of Armenia with the requirements of the Aarhus Convention, point 4(b), [http://www.unece.org/fileadmin/DAM/env/pp/mop4/Documents/Excerpts/Decision\\_IV-9a\\_Compliance\\_by\\_Armenia\\_e.pdf](http://www.unece.org/fileadmin/DAM/env/pp/mop4/Documents/Excerpts/Decision_IV-9a_Compliance_by_Armenia_e.pdf), the decision IV / 9a of the Committee on the compliance of Armenia with the requirements of the Aarhus Convention, point 4 (i), [http://www.unece.org/fileadmin/DAM/env/pp/mop5/Documents/Post\\_session\\_docs/Decision\\_excerpts\\_in\\_English/Decision\\_V\\_9a\\_on\\_compliance\\_by\\_Armenia.pdf](http://www.unece.org/fileadmin/DAM/env/pp/mop5/Documents/Post_session_docs/Decision_excerpts_in_English/Decision_V_9a_on_compliance_by_Armenia.pdf)

<sup>76</sup> the decision IV / 9a of the Committee on the compliance of Armenia with the requirements of the Aarhus Convention, point 4 (a), [http://www.unece.org/fileadmin/DAM/env/pp/mop4/Documents/Excerpts/Decision\\_IV-9a\\_Compliance\\_by\\_Armenia\\_e.pdf](http://www.unece.org/fileadmin/DAM/env/pp/mop4/Documents/Excerpts/Decision_IV-9a_Compliance_by_Armenia_e.pdf) the decision IV / 9a of the Committee on the compliance of Armenia with the requirements of the Aarhus Convention, point 4 (i), [http://www.unece.org/fileadmin/DAM/env/pp/mop5/Documents/Post\\_session\\_docs/Decision\\_excerpts\\_in\\_English/Decision\\_V\\_9a\\_on\\_compliance\\_by\\_Armenia.pdf](http://www.unece.org/fileadmin/DAM/env/pp/mop5/Documents/Post_session_docs/Decision_excerpts_in_English/Decision_V_9a_on_compliance_by_Armenia.pdf), Aarhus Convention (The Convention), Article 3.

<sup>77</sup> Committee on compliance to Aarhus Convention – Progress Evaluation report [http://www.unece.org/fileadmin/DAM/env/pp/compliance/MoP5decisions/V.9a\\_Armenia/frmParty9a\\_PROGRESS\\_REPORT\\_V9a\\_3\\_.pdf](http://www.unece.org/fileadmin/DAM/env/pp/compliance/MoP5decisions/V.9a_Armenia/frmParty9a_PROGRESS_REPORT_V9a_3_.pdf)

<sup>78</sup> The first observation on the progress in implementation of the Decision V/9 of the Committee on the Compliance of Armenia with the requirements of the Aarhus Convention [http://www.unece.org/fileadmin/DAM/env/pp/mop5/Documents/Post\\_session\\_docs/Decision\\_excerpts\\_in\\_English/Decision\\_V\\_9a\\_on\\_compliance\\_by\\_Armenia.pdf](http://www.unece.org/fileadmin/DAM/env/pp/mop5/Documents/Post_session_docs/Decision_excerpts_in_English/Decision_V_9a_on_compliance_by_Armenia.pdf)

believes are related to the fundamental document and the intended activity. Legislative restrictions to consider the public comments and suggestions have also been taken out.

The abovementioned actions were directed at the implementation of the Action Plan for 2017-2019 derived from the National Strategy for Human Rights Protection, defined in the Annex 1 of the RA Government Decree # 483 "On Approval of the Action Plan for 2017-2019 derived from the National Strategy for Human Rights Protection", of 4 May, 2017.

At the same time, previously, the Defender's annual reports pointed out that there are certain contradictions between the RA Law "On Environmental Impact Assessment and Expertise" and the Aarhus Convention, ratified by Armenia, which create obstacles in resolution of a number of environmental issues, which existed in 2017 too. Thus, before adoption of the RA Law "On Environmental Impact Assessment and Expertise", the 1995 RA Law "On Environmental Impact Expertise" was acting, in regards to which the Aarhus Convention Compliance Committee presented in its decisions<sup>79</sup> the inconsistency of the latter and the practices used, to the Convention<sup>80</sup>.

According to the 1995 Law "On Environmental Impact Expertise", the affected community leaders and entrepreneurs organize public hearings regarding the planned activities within 15 days after receipt of a notification (the protocol of which determines the Government of the Republic of Armenia), providing information on planned activities, the hearings and dates of hearings through mass media<sup>81</sup>. According to the same law, the authorized body, the affected community leaders and the initiator, organize and ensure study of the documents by the public and the hearings within 30 calendar days<sup>82</sup>. As a result of the legislative amendments made in 2014, the public shall be notified by the Authorized Body on the application, reports and expertise conclusion, submitted by the initiator, at least seven working days before the hearings<sup>83</sup>. As we can see, in the new Law, the abovementioned 30 days have become seven, and there is no term set out at all for expressing an opinion. Meanwhile, the Aarhus Convention Compliance Committee considered such deadlines as problematic in the relevant provisions of the 1995 law.

According to the data provided by the Ministry of Nature Protection, in 2017 a draft law "On Making Amendments and Addenda to the RA Law "On Environmental Impact Assessment and Expertise"" has been elaborated, where, after discussions with the civil society, other issues envisaged by Decision V / 9a, will also be included. Particularly, Article 26 of the Law will be presented in a new edification, bringing its regulations in accordance to provisions of the Aarhus Convention and setting the longest possible deadline for public notice. Other issues will also be regulated.

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<sup>79</sup> <http://www.unece.org/env/pp/ccimplementation.html>

<sup>80</sup> <http://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf>

<sup>81</sup> RA Law "On Environmental Impact Expertise" (1995), Article 6

<sup>82</sup> RA Law "On Environmental Impact Expertise" (1995), Article 8

<sup>83</sup> RA Law "On Environmental Impact Expertise" (2014), Article 26, Part 2, Point 1:

However, no amendments or additions have been made to the RA Law “On Environmental Impact Assessment and Expertise” in 2017, as a result of which the issues presented in this section still remain problematic.

The Aarhus Convention Compliance Committee has taken Armenia under annual supervision to carry out specific control over the large-scale sectoral issues related to introduction and implementation of the provisions of the Aarhus Convention by Armenia.

At the same time, it should be also noted, that there is no independent body designated by the Aarhus Convention in the Republic of Armenia. Meanwhile, Article 4 of the Aarhus Convention provides that in response to a request for information on the environmental issues, the public authorities provide information to the public. At the same time, under Article 9 of the same Convention, the ratified states take the obligation to establish a separate body other than the court, envisaged by the Law, which will review / revise the decisions made by the state bodies regarding the provision of information. Moreover, the Convention also provides that this review should be done through quick procedures, requiring no or minimum remuneration. Despite the above-mentioned criteria, as it was mentioned, there is no such body in Armenia up to the day.

*Based on the abovementioned and fulfilling the Committee's recommendations, it is necessary to make amendments to the RA Law “On Environmental Impact Assessment and Expertise” of 2014, bringing the regulations of the Point 1 of the Part 2 of the Article 26 in conformity with the Aarhus Convention and providing the longest possible time for informing the public regarding the public hearings.*

### **3. Inspections in "Teghout" CJSC**

The issue of conducting environmental inspections at "Teghut" CJSC and the problems arising from it have always been included in the Annual Reports and Communiques of the Human Rights Defender of the Republic of Armenia. In 2017, environmentalists have repeatedly referred to the problems caused by the exploitation of the Teghut mine<sup>84</sup>.

Ore extraction and enrichment is accompanied by pollution of working area and the environment with various toxic chemicals and heavy metals, which has a negative impact on the environment. As a result of this, the health of the population is hampered, particularly environmental and health risks arise, associated with with heavy metals, including elements of the first class of toxicity, as a result of penetration into different parts of the food chain, particularly through the air-water-soil-agricultural system<sup>85</sup>.

Though the Ministry of Nature Protection has been reporting for years that “Teghut” CJSC was involved in the 2013, 2014 and 2015, as well as the 2017 listings of organizations subject for

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<sup>84</sup> <http://ecolur.org/hy/news/teghout/locals-beating-an-alarm-signal-shnogh-river-and-areas-irrigated-with-its-water-polluted-because-of-teghout-tailing-dump-leaks-photos/9451/>,

<sup>85</sup> <https://www.ecolur.org/files/uploads/pdf/RIO%2020%20hayecakarg/rio20hayetsakarg.pdf>

inspection by the State Environmental Inspectorate of the Ministry of Nature Protection, but neither in those years, nor in 2016 and 2017, no inspections have been carried out.

*Based on the abovementioned and taking into account the issues that the environmentalists regularly raise concerning the Teghut tailing dump, it is recommended to ensure implementation of necessary inspections in "Teghut" CJSC.*

#### ***4. Issues with overuse of water resources, as well as with river ecosystems, parallel to construction of small hydropower plants***

Problems with the overuse of water resources and issues with river ecosystems continued to maintain their relevance in 2017. The Human Rights Defender, in his annual reports and communiques, as well as civil society representatives, have repeatedly voiced the issues of violations during the exploitation of the SHPPs that have a negative impact on the environment. The absence of adequate environmental flow during the operation of the SHPP is part of that series of violations, resulting in disruptions in the ecological balance and self-renewal of the water resource<sup>86</sup>. For example, in 2017, the issue of the Yeghegis River was raised, as the latter, being once one of Armenia's most abundant rivers is threatened to turn into a river in crisis, because of water scarcity. Yeghegis, water reserves of which were 8 m<sup>3</sup>/s, today does not exceed 1.0 m<sup>3</sup>/s<sup>87</sup>. At the same time, the results of the monitoring carried out by the "ecolor.org" environmental web-site at various ecosystems also raise issues in the sector<sup>88</sup>.

According to information received from the Ministry of Nature Protection of the Republic of Armenia, certain steps have been taken in 2017 to improve the situation in this area and solve the problems. Thus, in 2017, the RA Ministry of Nature Protection has developed a draft Decree of the Government of the Republic of Armenia "On Making Amendment to the Government Decree # 927 of June 30, 2011", according to which the river replenishment and seasonal peculiarities will be taken in consideration. A draft Protocol Decision of the Government of the Republic of Armenia "On Approving Environmental Impact Assessment Standards for the Construction and Operation of Small Hydroelectric Plants" has been developed. At the same time, the Ministry reported that a draft RA law "On Making Addendum to the Water Code of the Republic of Armenia" was submitted to the RA Government, which envisages the restriction zones for the construction and operation of SHPPs and, based on environmental specifications, bases for rejection of applications for water use permits granted to new small hydropower stations.

After the adoption of the law, a draft Decree of the Government of the Republic of Armenia "On Approving the List of Rivers where Construction and Operation of Small Hydroelectric Plants is Banned" is also envisaged.

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<sup>86</sup> Water Code of the Republic of Armenia, Article 1. Ecological flow - the minimum water outlet, which ensures the ecological balance of water resource and its capacity to self-restoration.

<sup>87</sup> <http://www.aravot.am/2018/01/20/932288/>

<sup>88</sup> <http://ecolor.org/hy/news/energy/>

Valuing the abovementioned legislative initiatives aimed at addressing issues related to the overuse of water resources, as well as the river ecosystems, in parallel with the construction of SHPPs, in 2017 those were still in development or discussion phase, so the existing problems remain unresolved.

*Taking into consideration the abovementioned, it is recommended to strengthen the control over the operation of small hydropower plants in order to prevent and eliminate the issues connected to ecosystems and excessive use of water resources.*

## SECTION 5. THE RIGHT TO PROPER ADMINISTRATION

Article 50 of the RA Constitution states that every individual has the right to have their cases studied and dealt with by administrative authorities within impartial, fair and reasonable deadlines. During administrative proceedings, every individual has the right to familiarise themselves with all documents related to them, except for state classified information. State and local self-government authorities and officials have an obligation to hear individuals out before adopting their mediatory personal acts, except for the cases defined by the Law.

Despite the above-mentioned statement and a number of constitutional guarantees, many incidents of restriction of right for proper administration were nonetheless reported in 2017.

### ***1. Failure to notify citizens in a manner prescribed by the law about decisions concerning administrative acts.***

Examination of reports received in 2017 showed that the problem of failure to properly notify the participants of administrative acts proceeding still prevailed.

According to Part 1 of the Article 59 of the RA Law “On the Fundamentals of Administration and Administrative Procedure” (hereinafter, the Law), the administrative authority informs participants of the proceeding about the adoption of the administrative act by delivering it or publishing it, in a way specified by the same article. According to Part 2 of the article, I nthree days upon the adoption of the written administrative act, it shall be delivered to participants of the proceeding. This can be done via ordered mail, which will require addressee’s signatures, as well as via other legally specified means. The RA Constitutional Court Decision # SDO-1210 of 26 May 2015 states that the institution of proper notification, which makes delivery of information about administrative fines possible, is an important guarantee in terms of protection of individual rights, including legal protection matters before the court or other state bodies.

The RA Cassation Court Decision # VD/5086/05/09 of 03 December 2010 in regard to an administrative case, stated that the choice of mode of notification by an administrative authority had to correspond to the requirements of the Part 2 of the Article 6 of the RA Law “On the Fundamentals of Administration and Administrative Procedure”. Based on these: when exercising discretionary powers, administrative authorities have an obligation to be guided by the necessity to protect human and citizen rights and freedoms defined by the RA Constitution, by the principles of equality of those rights, balance of their administration and exclusion of arbitrariness, as well as by following other objectives specified by the law.

In addition to the above-stated, the RA Cassation Court Decision # VD/5086/05/09 of 03 December 2010 stated the following: “An administrative proceeding notification from an administrative authority shall be delivered to proceeding participants in such a manner that the participation of the latter in the administrative procedure may be reasonably ensured.” The same decree of the Cassation Court stated that the process of notifying proceeding participants about the examination of administrative liability cases would need to be aimed at ensuring

individuals' chances to be heard - which would provide grounds for protecting their rights. Hence, the selected notification mode would have to meet the aforementioned requirements.

The European Court of Human Rights has also addressed this systematic issue of notification, stating that the individual does not have to be informed about the adoption of an administrative act via an official notification (electronically), but the individual must be informed about the administrative act and the initiated administrative procedure in person<sup>89</sup>.

A report forwarded to the Defender says that, according to the decree of the RA Minister of Finance, a limited liability company (hereinafter, the Company) activities were suspended on the basis of the RA Law "On Suspension of Cash Register Machine Users". The decision regarding the suspension was sent to the Company's director via ordered mail. As the Company director puts it, the representatives of the RA Ministry of Finance local tax office (hereinafter, LTO) turned up and made an attempt to suspend the Company activities, without considering the fact that he (the director) had not been properly notified about the suspension decision regarding his Company prior to their arrival.

The analysis of the matter revealed that the administrative authority did not have any proof confirming the delivery of the suspension notification to the Company director prior to the suspension day, which meant that LTO representative attempted to suspend the Company activities on the basis of an administrative act that had not yet come into effect. In connection with this incident, the Defender made a Decision "On Registered Violation of Human Rights and Freedoms".

In view of this, on 24 July 2017, the State Revenue Committee adjacent to the RA Government adopted and enacted the SRC Chairman's Decree # 236-A "Concerning Notifications of Suspension of Activities of Cash Register Machine Users", which eventually regulated the issue of notifications of suspension of activities of cash register machine users.

Another report forwarded to the Defender revealed that an individual was subjected to an administrative liability by the head of the RA Transport Inspection (part of the RA Ministry of Transport, Communication and Information Technologies) for an unlicensed freight transportation: something the individual in question had not been properly notified about. According to clarifications made by the RA Ministry of Transport, Communication and Information Technologies, the Inspection head's decision about subjecting the individual to administrative liability had been sent to the individual's address, which the freight vehicle was registered to. The head's decision was returned with a "moved to another address" note. Subsequently, the administrative authority posted the decision on the RA public notifications' official website; after receiving no appeal within the deadline specified by the RA Constitution, the decision was eventually made unappealable.

The analysis of the complaint revealed: after being returned with the "moved to another address" note, the Transport Inspection head's decision was not resent to the individual's

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<sup>89</sup> See the *Serghides and Christoforou v Cyprus* case decision of 05-11-2002, complaint # 44730/98, Point 69.

address; this resulted in improper administration and specifically in violation of the individual's right to proper notification. In connection with the incident, the Defender made a decision "On Registered Violation of Human Rights and Freedoms", which proposed to invalidate the Transport Inspection head's decision and apply the consequences of its invalidity. According to the Ministry's clarifications, the applicant did not submit any documents to the Inspection staff; and, on the basis of the requirements of Point 5 of Annex 2 of the RA Government Decree # 1251-N of 09 November 2010 (namely - a transport vehicle registered to an individual's name is considered to be linked to the individual's registration address; in the absence of such an address, it is considered to be linked to a temporary registration address; and in the absence of a temporary registration address - linked to the individual's residential address), the administrative case notification and, subsequently, the decision notification were sent to the vehicle registration address of the applicant.

Nonetheless, it must be mentioned: based on the analysis of Article 283 of the RA Code on Administrative Offences and its specific interpretation specified by Part 10 of the Article 45 of the RA Law "On Legal Acts", we conclude: the very fact in the aforementioned situation that the applicant had not provided the Inspection staff with the details of his registration address, does not release the administrative authority from the legislatively specified obligation to properly notify the citizen.

In other words, the correct application of the legal norm requires that the decision should be sent to the individual's specific registration address, alongside being posted on the public notifications' official website.

*Considering the abovementioned, it is proposed to ensure proper notification about administrative acts, according to legislative clauses.*

### ***1.1 The problem of notifying citizens according to the legally specified regulations by the RA Compulsory Enforcement Service of Judicial Acts.***

Throughout 2017, complaints were received regarding decisions made by the Compulsory Enforcement Service of Judicial Acts (hereinafter, the Service) to place freezing orders over citizens' property and funds without proper notification.

It must be noted that the complaints forwarded to the Defender were also brought to the Service's attention. Furthermore, a special Service representative was in constant communication with the Defender's staff, assisting to the prompt examination and resolution of outlined issues. The resolutions were periodically discussed between the Defender and the RA Chief Compulsory Enforcement Officer.

According to the clarifications from the RA Ministry of Justice in regard to the aforesaid, the Service notifies enforcement proceeding participants on the basis of court enforcement sheets, administrative acts or enforcement shorthand notes, within deadlines specified by legislation, by postally delivering decisions about enforcement proceedings and placing freezing orders over

debtors' property and funds. No freezing order is placed over debtors' property or funds, without the application of the aforementioned enforcement actions.

Furthermore, the analysis of the legislation shows that there is a legally specified precise deadline set for notifying citizens. For instance, according to Part 3 of the Article 28 of the RA Law "On Compulsory Enforcement of Judicial Acts", a copy of the compulsory enforcement officer's decision shall be properly delivered to both the claimant and the debtor, as well as to other individuals and authorities legally involved, within a time period of not more than 3 days after making the decision.

Despite the above-stated, complaints forwarded to the Defender suggest that, in a number of cases, citizens are still not properly notified about freezing orders being placed over their property and funds. For example, in one of the cases, an individual was not properly notified by the Road Police Service of the RA Police in regard to the administrative fine as a result of violation of traffic rules, whereas a freezing order was placed over the individual's bank account funds - something they were not notified about, either. Due to the failure to properly notify the applicant about the freezing order because of the notification having been sent to a wrong address, the aforementioned decisions were overturned thanks to the Defender's mediation, and the confiscated funds were returned to the applicant.

In another case, an individual's flat was sold within the framework of an enforcement procedure, while a phone call from the Service informed about the individual's upcoming eviction. The claimant stated that no eviction notice had been received from the Service; and a phone call from the Service regarding eviction cannot be considered proper notification, according to the RA Law "On Fundamentals of Administration and Administrative Procedure". The eviction was postponed thanks to the Defender's mediation, on the grounds that the individual had not been properly notified.

Based on the information received from the RA Ministry of Justice in regard to the problem of proper notification, the Service introduced a new alternative electronic mechanism at the end of 2016, for notifying enforcement procedure parties via short text messages. It was also established that, prior to that, the Service had developed and introduced a special applicatoin for receiving notifications via the internet. In both cases, the alternative notification function was free of charge, and only the citizen's social card number would be required for registration in the system. As the Ministry of Justice claims, these mechanisms were fully applied throughout 2017, and the number of their users progressively grew.

Besides, the RA law "On making amendments to the RA Law "On Compulsory Enforcement of Judicial Acts" was adopted on October 25, 2017. As a result of that, Part 3 of the Article 28 of the RA Law "On Compulsory Enforcement of Judicial Acts" shall be amended with a new paragraph comprising the following: "When placing a freezing order over a debtor's property or immediately after applying a restriction, a notification shall be sent to the individual's official email address; or, in the absence of the latter - to another email address specified by the individual; alternatively, a brief sms text shall be sent to the individual's mobile phone." This regulation shall come into effect from 1 April 2018 onwards.

During 2017, in order to ensure a proper process for the analysis of forwarded complaints and to find possible solutions to problems voiced by citizens, the Defender constantly collaborated with a number of state authorities, including the Service. A collaborative working team was formed, the implemented actions of which led to the discussion of numerous sector-related systematic issues (e.g. placing freezing orders over citizens' property and funds without proper notification about the decision of the Service; acting beyond the boundaries specified in enforcement sheets; and so on).

The good news is the introduction of the alternative notification system through the application of information technologies. In the meantime, it is necessary to note that the mentioned system does not seem to be easy-to-use and accessible to some representatives of the society; this means that the traditional paper form of notification needs to be constantly improved. Furthermore, despite the aforementioned measures, the analysis of reports shows that the issue still remains unresolved on the system level, because of still happening violations.

*Considering the abovementioned, in order to ensure legislatively regulated proper notification of citizens regarding the Service's decisions and to avoid potential cases of failure to properly notify citizens about those decisions, it is necessary to:*

- 1. reinforce supervision over compulsory enforcement authorities in terms of following the requirements of the Law;*
- 2. confirm the notification delivery via a phone call (in case of having contact details of enforcement proceeding parties), after delivering compulsory enforcement authorities' decisions to enforcement proceeding parties.*

## ***2. Ensuring parent-child visits within the framework of initiated enforcements proceedings.***

Due to the lack of legislative and practical mechanisms for childcare in terms of court rulings, parents do not have an opportunity to implement their childcare rights and obligations, which negatively affects their children.

The analysis of current complaints forwarded to the Defender allows to outline cases, in which parent-child visits have not been guaranteed within the context of initiated enforcement proceedings, for various reasons. In some cases, the possibility of visits is hindered by the parent the child is staying with; in other cases, visits fail to be arranged because of lack of actions from the Service.

In particular, in one of the cases, despite the decision for the child to be staying with the father, the kid in fact resides with the mother. Service officers from the relevant department have performed 2-4-hour enforcement actions for 20 times, but the child has kept refusing to move to the father's place. The case analysis shows: what actually happened during those enforcement actions was not fully reported in the statements. It was specifically revealed that, during the enforcement actions, the compulsory enforcement officers, the representatives of trusteeship and guardianship authorities, as well as the psychologist demonstrated a partial attitude: to a

certain extent, the child's best interests were not taken into account; the child was subjected to psychological violence from the psychologist and physical violence from the father. Enforcement actions were also attempted on the premises of the child's school, which later resulted in the child missing school classes.

Another complaint forwarded to the Defender states that a detained individual has not been able to visit his child for a long time, despite the court's permission. It is necessary to note that guarantees for parent-child visits have certain specifications in the case of one parent being in detention: this results in occurrence of new problems in the process of ensuring parent-child visits. According to the clarifications made by the RA Ministry of Justice, the detainee's former wife refused to bring the child to the visitation location at the penitentiary institution, in view of the child's best interests and emotional state. This implies that the detainee is deprived of the opportunity to implement active actions related to parent-child visits; whereas the other party refuses to take the child to penitentiary institutions, in view of the child's best interests and emotional state.

In connection with the issue of guaranteeing visits, certain difficulties occur when the claimant and the opponent reside in different regions of the republic. In particular, parent-child visits fail to take place due to the fact that the former wife has moved to a different region, after which the enforcement proceeding was transferred to the relevant regional department of the Service. Based on the Service's explanations, the enforcement sheet mentions the dates for the applicant to attend the Service's relevant regional department for the parent-child visit; the citizen, however, refuses to attend, with the excuse of being unemployed and not having sufficient funds for regularly travelling from Yerevan to another region (Syunik).

In all the mentioned cases, a parent has in fact been deprived of the parent-child visit opportunity, which has also resulted in violation of the child's rights. Article 36 of the RA Constitution establishes parents' rights and obligations to take care of their children's upbringing, education, health, full and harmonious development. Also, based on Article 37 of the Constitution, every child has the right to enjoy a regular personal relation and to maintain an individual communication with the parents, with the exception of cases, in which it goes against the child's best interests, according to the court ruling. The principle of children's best interests stems from the UN Convention "On the Rights of the Child" and has been specified in a number of legal acts, such as, for instance, the RA Family Code. Besides, the right to parent-child regular relationship has also been established in laws: e.g. the RA Law "On the Rights of the Child". Hence, in cases of a court order about parent-child visits, the order shall be enforced in view of the child's best interests.

Despite the aforementioned legislatively established rights, the reality is that the guarantees for their implementation have not been sufficient or effective, since the analysis of the previously described complaints shows that even court orders have not ensured the implementation of these.

*Considering the abovementioned, especially the necessity to implement parents' rights to childcare and to guarantee children's best interests, it is mandatory to define effective legislative*

*and practical mechanisms aimed at ensuring parent-child visits within the framework of initiated enforcement proceedings.*

### ***3. The process of road fee charges***

Throughout 2017, before the new RA Tax Code came into effect, road fee payment procedures were regulated by the RA Law “On road fees”<sup>90</sup>. According to Article 2 of the Law, the road fee is a compulsory, legally established, state-budget payable payment, aimed at fund formation for organising and implementing construction, renovation and preservation works on common-use automobile roads.

According to Article 5 of the Law, the road fee is paid when using motorways via transport vehicles: the payment rates are specified by the same article. This norm’s general logic suggests that if individuals do not use automobile roads via any transportation modes, then no fee shall be charged. This implies that in order to be charged a road fee, individuals are supposed to have used automobile roads: that is the requirement.

The grounds for being exempt from fees for using automobile roads via transport vehicles registered in other countries are specified by Article 18 of the Law: these, however, do not include cases of non-use of automobile roads due to factual non-exploitation of transport vehicles.

There have been actual cases when transport vehicles would be imported to the Republic of Armenia but would not be exploited due to a malfunction. Under such circumstances, the individual still has an obligation to pay road fees covering the entire period of non-exploitation, the requirement for charging the fee in such cases being the use of automobile roads via the transport vehicle specified by the individual.

In regard to the aforementioned, according to the clarifications of the RA Government State Revenue Committee (hereinafter, SRC), the issue of the law enforcement practice aimed at exemption from road fees has been influenced by state-provided documents presented by various individuals. In particular, documents (notices) provided by the “Road Police” service of the RA Police and the RA Investigative Committee normally serve as confirmation for non-use of automobile roads via transport vehicles.

On account of the voiced issue, according to the information received from the SRC, the SRC registered 70 applications for exemption from road fee charges in 2017; a number of these applications resulted in favourable administrative acts from the tax authority, since relevant documents were produced by individuals in support of non-use of RA automobile roads.

Based on one of the reports forwarded to the Defender, an individual entered the Republic of Armenia with a car registered in the Russian Federation back in 2016 but did not use it for an extended period of time, due to a car malfunction. Considering the situation, the claimant

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<sup>90</sup> Hereinafter in this section, the Law

applied to the SRC for exemption from road fee charges on the grounds of the vehicle being registered abroad, but to no avail. The exemption refusal was explained within the context of the RA Constitution, in view of the failure to produce a car malfunction certificate providing sufficient arguments for road fee exemption.

The analysis of the report revealed that the claimant had applied to the SRC for initiating an administrative proceeding and had produced relevant evidence for exemption from road fee charges. The initiation of the administrative proceeding resulted in refusal due to an improper administrative procedure. Later on, in response to the Defender's written statement, the administrative authority announced that the issue in question could be discussed again within the framework of an administrative proceeding, if evidence were provided for the examination and evaluation of the circumstances. Subsequently, based on the above-stated, the claimant reapplied to the SRC with another request to initiate an administrative proceeding.

As a result of the administrative proceeding and the examination of the claimant's second application for exemption from road fee charges, the administrative authority exempted the individual from road fees, on the basis of the evidence, which had already been attached to the claimant's first application. This suggests that the administrative authority had not carried out a multifaceted, complete and objective administrative procedure in regard to the claimant's first application and had not ensured multifaceted, complete and objective discussion of the facts and evidence.

In connection with the case, the Defender issued a decision "On Violation of Human Rights and Freedoms", by which a proposal was made to the SRC to exempt the claimant from the road fee charges for the entire period of non-exploitation of the vehicle. It was also proposed to come up with an initiation to make additions and amendments in the RA Law "On Road Fee Charges", in order to specify relevant privileges for exemption from road fee charges.

According to the SRC clarifications, the RA Administrative Court is currently dealing with the citizen's demand to recognise the illegitimacy of the SRC's actions: so the administrative authority will be able to address the issue of exemption from road fee charges only in case of the final judicial act.

When referring to the issue of making additions and amendments in the RA Law "On Road Fee Charges", in order to specify relevant privileges for exemption from road fee charges, the SRC revealed that the aforementioned law had been invalidated. Yet, it must be noted that the RA Tax Code, which functions as a legislative act regulating situations related to exemption from road fee charges, did not address the issue, voiced in the Defender's statement, either.

Also, according to Article 186 of the RA Tax Code passenger transportation vehicles are not subject to road taxation, only freight transportation vehicles are. Similarly, only freight transportation vehicles are subject to road taxation privileges specified by Article 191 of the same Code. In the light of such legislative regulations, the issue of passenger transportation vehicles may be considered resolved. However, the question still prevails: whether or not the individual is supposed to pay road taxes for the entire period of non-exploitation of the freight

transportation vehicle, if the latter entered the territory of the Republic of Armenia, without being registered in the RA, and remained unexploited for an extended period of time. The literal interpretation of Article 188 of the RA Tax Code suggests that road taxes shall not be paid if the individual does not use automobile roads via freight transportation vehicles. This means that the use of automobile roads is an essential requirement for road taxation. Yet, non-exploitation of freight transportation vehicles is not in the requirement list for exemption from road taxes.

*Considering the above-stated, it is proposed to apply new legislatively regulated grounds for exemption from road fees, based on the factual non-use of roads via transportation vehicles.*

#### ***4. Other cases related to proper administration.***

The overall analysis of complaints forwarded to the Defender has also revealed other cases of improper administration.

For instance, in one of the cases, claim satisfaction took place: a freezing order was placed over the individual's funds, equal to the value of 5.000.000 AMD: after this, the claimant submitted a new court-provided enforcement sheet from the court, invalidating the previous claim satisfaction. As a result of this, the claimant managed to claim back 1.000.000 AMD, whereas the remaining 4.000.000 AMD were not returned due to lack of administrative authorities' actions. The issue, of course, was eventually resolved: the Service returned the remaining 4 mln AMD to the claimant. This shows that, in most cases, citizens' violated rights are not restored due to improper administration by the administrative authorities.

In another case, as the claimant states, in order to ensure implementation of an enforcement sheet, the compulsory enforcement officer placed a freezing order over the property of an individual who had the same name and surname as the debtor, but a different patronymic. According to the information from the RA Ministry of Justice, the wrongly placed freezing order was invalidated, while the compulsory enforcement officer, alongside the head of the case-involved local department of the Service, were dismissed due to improper implementation of their duties.

It must be noted that, according to the information received from the RA Ministry of Justice, the RA Ministry of Justice and the RA Chief Enforcement Officer took the following measures throughout 2017 in regard to illegitimate enforcement actions or failure to act: 33 Service employees were subjected to misconduct liabilities, 19 employees received misconduct notices, 11 were fined for misconduct, and 3 were dismissed from the Service. These facts actually show that there were registered cases of illegitimate enforcement actions during 2017.

Numerous complaints forwarded to the Defender in regard to non-enforcement of effective court verdicts are another proof of administrative authorities' improper administration. According to Article 14 of the RA Civil Procedure Code, an effective judicial act is obligatory for all the state authorities, local self-governance authorities, their executive officials, legal representatives, citizens, and is subject to implementation all over the territory of the Republic of Armenia.

The European Court of Human Rights has also addressed the issue of enforcement of effective judicial acts, stating that the right to a fair trial (specified by Article 6, Section 1, of the European Convention [hereinafter, the Convention] “On Protection of Human Rights and Fundamental Freedoms”) would become invalid if the state legislative system did not enforce final and mandatory judicial decisions. Moreover, if Article 6 of the Convention left the enforcement of judicial acts unprotected, this would probably result in a reality completely incompatible with the basic principles of the rule of law, which the member parties agreed to ensure when certifying the Convention<sup>91</sup>. In another case-related ruling, the European Court of Human Rights stated that enforcement of any judicial verdicts had to be viewed as an inseparable part of the trial process, according to Article 6 of the Convention<sup>92</sup>.

The State has an obligation to organise its legislative system in such a mode that interaction is ensured amidst state authorities in charge of judicial act enforcement, and the latter is guaranteed within a reasonable deadline<sup>93</sup>.

Concurrently, the forwarded complaints demonstrate that, regardless of the current legislative requirement, certain verdicts do not get actually enforced. For instance, in one of the complaints forwarded to the Defender, a citizen reported that the State Revenue Committee adjacent to the RA Government refused to enforce an effective judicial verdict, by not paying average wages for the entire duration of the forced outage. Thanks to the Defender’s mediation, based on a written statement from the RA SRC to the RA Ministry of Finances, the Ministry issued a 12,940,853 (twelve million nine hundred and forty thousand eight hundred and fifty-three) AMD worth bill to the claimant’s name.

Article 50 of the RA Constitution specifies individuals’ right to proper administration, which includes their rights to have their cases reviewed by administrative authorities within an impartial, fair and reasonable deadline. Improper administration demonstrated by administrative authorities may be manifested both through certain actions and through failure to act. Complaints forwarded to the Defender speak of improper administration as a result of failure to act. For example, in one of the cases, an individual applied to the local division of the State Social Security Services of the Ministry of Labour and Social Affairs for guaranteed pension payment; however, no decision was made regarding his application within the legislatively specified deadline. According to the complaint in question, the applicant had not been registered in the RA population state registry, and this reason resulted in the refusal of his pension payment; yet, no such resolution was adopted within the deadline specified by the RA Law “On State Pensions”. By submitting a relevant application to the pensionary committee and without being notified about the refusal to be granted a pension within the legally specified deadline, the claimant had legitimate expectations that he would be granted pension payment.

In connection with this case and in response to the Defender’s written statements, the Ministry of Labour and Social Affairs clarified that the electronic version of the claimant’s pension

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<sup>91</sup> See the 19-03-1997 *Hornsby v Greece* case verdict, complaint # 18357/91, Point 40

<sup>92</sup> See the 26-11-1996 *Di pede v. Italy* case verdict, complaint # 15797/89, Point 20

<sup>93</sup> See the 10-08-2007 *Glushakova v. Russia* case verdict, complaint # 23287/05, Point 17

payment case lacked the refusal notification issued by the local division of the Social Security Services, whereas the paper copy of that alleged decision was not preserved.

Hence, the absence of the pension refusal decision in the electronic version of the individual's case results in the presumption that no such decision was made - which in itself points to improperly implemented administration.

On the basis of the analysis of the application, as well as Parts 1 and 4 of the Article 33 of the RA Law "On State Pensions", Point 12.3 of the Annex 1 of the RA Government Decree # 665-N of 05 May 2011 "On Ensuring Enforcement of the RA Law "On State Pensions"", and relevant clauses of the RA Constitutional Court Decision # SDO-723 of 15 January 2008, the Defender made a statement that the administrative authority had not fulfilled its obligations specified by the RA Law "On State Pensions": namely - failure to make a decision within a legislatively specified 10-working-day deadline after the submission of the application.

Throughout 2017 there were registered regular cases of compulsory enforcement officers crossing the boundaries set by the enforcement sheet requirements during enforcement proceedings. Moreover, no statistical records are kept by the RA Ministry of Justice, which complicates the real picture reproduction of such incidents and their prevention.

For instance, numerous complaints were forwarded to the Defender during 2017 in regard to the Service placing ungrounded freezing orders over individuals' property and funds.

The analysis of the complaints forwarded to the Defender revealed that the Service's compulsory enforcement officers crossed the boundaries set by the enforcement sheet requirements during enforcement proceedings, and a freezing order was placed over individual property and funds, whereas the court order had specified a freezing order over property only. In fact, Article 4 of the RA Law "On Compulsory Enforcement of Judicial Acts" (hereinafter, the Law) states that the basis for compulsory enforcement is the legislation-based and legally issued enforcement sheet, as well as the application meeting the requirements of Part 4 of the Article 88 of the RA Law "On Fundamentals of Administration and Administrative Procedure".

Consequently, thanks to the Defender's mediation, the freezing order over the funds was invalidated.

In 2017, a number of claims were received concerning the fact that the Service placed freezing orders over funds that were not subject to confiscation. In connection with such confiscation incidents, the RA Ministry of Justice clarified that the Service always outlines the bank account numbers, the transferred funds of which are not subject to confiscation, when sending electronic messages to the banks in regard to placing freezing orders over debtors' funds. Yet, the reality shows multiple cases, in which funds were transferred from transitional or personal accounts, which the enforcement authority could not have had any information about. Immediate action is taken upon receiving such claims, and freezing orders become partially or completely invalidated.

Alongside the Ministry's actions taken to eliminate the latter, it must be noted that the issue still carries systemic characteristics. This has been confirmed by over 776 citizens' claims submitted to the Service for invalidation of freezing orders placed over their wages, pensions, disability payments or social support.

Currently, numerous complaints have been forwarded to the Defender, in relation to the Service's confiscation of funds from individuals' military disability pensions, as if aimed at social support and alimony obligations.

In particular, the analysis of one of the cases revealed that, as a result of an enforcement proceeding initiated by the Service, the confiscation order interfered with the funds of the claimant's son's military disability pension. Whereas, Point 8 of the Part 1 of the Article 60 of the RA Law "On Compulsory Enforcement of Judicial Acts" states that no confiscation, authorised with an enforcement sheet, can be performed over the funds paid to individuals with disabilities. Thanks to the Defender's mediation, the claimant provided the Service with documents confirming the military disability, as a result of which the confiscation order placed over the disability pension account number was invalidated.

In another case, according to a complaint, the Service placed a freezing order over alimony funds paid to the claimant's child. Based on Point 2 of the Part 1 of the Article 60 of the Law, no confiscation, authorised with an enforcement sheet, can be performed over the funds paid towards alimony obligations. With the support of the Defender, the confiscation order, placed over the claimant's bank account number, was invalidated.

Still existing issues include those of freezing orders over debtors' full wages, within the framework of an initiated enforcement proceeding, in cases where Article 58 of the Law specifies that enforcement sheet procedures only allow to keep not more than 50% of debtors' wages or equivalent funds, until the full repayment of the amount. In the aforementioned cases, thanks to the Defender's mediation, confiscation orders were placed only over the 50% of the wages.

In the above-stated situations, individuals were deprived of their rights to property, due to the improper actions of legislative authorities.

The analysis of complaints forwarded to the Defender clearly shows that in some cases the Service places confiscation orders over individuals' funds that are not subject to confiscation, which is another result of improper administration.

Compulsory enforcement authorities frequently place confiscation orders over individuals' disability pension accounts, justifying their actions with an excuse that they were not aware that these accounts were used for the individuals' pension payments. Also, it is worth noting that debtors' age can normally suggest that these people are pension-entitled and pension-receiving individuals, which is why enforcement authorities are expected to clarify whether or not the funds in those individuals' bank accounts are pension related, in order to avoid placing wrong confiscation orders over those accounts.

According to Part 1 of the Article 37 of the RA Law “On Fundamentals of Administration and Administrative Procedure”, administrative authorities have an obligation to ensure multifaceted, full and objective examination of factual circumstances, by disclosing all circumstances (including those related to the proceeding participants). By not disclosing the circumstances related to the proceeding participants, the administrative authority thus demonstrates failure to act as required.

Based on Part 1 of the Article 43 of the same Law, the burden of proof within the individual vs. administrative authority interaction lies on:

- a) the individual - in case of the existence of factual circumstances that are considered favourable for the individual;
- b) the administrative authority - in case of the existence of factual circumstances that are considered unfavourable for the individual.

According to Part 3 of the same article, if - as specified by Point “b” of the Part 1 of the Article - the administrative authority can only receive information (details) regarding investigated factual circumstances exclusively from the individual in question, then the burden of proof is laid upon the individual.

It must be noted that enforcement authorities can receive information about pension-payable account numbers not only from individuals, but also by applying to relevant state authorities. Hence, the aforementioned scenario is not the only incident, in which enforcement authorities can receive required information exclusively from specific individuals (see Paragraph 1 of the Report’s Section “Right to Property”).

There are also cases, in which individuals themselves inform enforcement authorities about confiscation orders being placed over funds that are not subject to confiscation on the basis of Article 60 of the RA Law “On Compulsory Enforcement of Judicial Acts”: the enforcement authorities, however, ignore that information. Enforcement authorities demand specific evidence from debtors in support of those facts.

Yet, it is worth mentioning that, according to Part 1 of the Article 10 of the RA Law “On Fundamentals of Administration and Administrative Procedure”, in cases of major doubts regarding provided facts and information, administrative authorities themselves have an obligation to take measures at their own expense, in order to confirm the genuineness of those.

Thus, in all the cases where enforcement authorities have doubts regarding information provided by individuals, they have an obligation to take necessary measures, in order to confirm the genuineness of those. Otherwise, in view of the genuineness of information provided by individuals, enforcement authorities have to invalidate confiscation orders placed over individuals’ pension-payable accounts.

*Considering the abovementioned, it is proposed to:*

1. *ensure multifaceted, full and objective implementation of administrative proceedings and, in every case, to ensure compensation for damages caused to individuals by illegitimate administration;*
2. *take all the necessary actions - in case of compulsory enforcement authorities coming across funds in RA commercial bank accounts belonging to enforcement proceeding debtors - required for establishing the type of funds (wages, pension, social support, etc.), without excluding the process of making personal phone calls to debtors for acquiring the information.*

Within the context of the proper administration issue, it is worth addressing concerns related to preventing or stopping intrusions and establishing legitimacy of police actions in terms of that. The thing is that the number of this issue-related complaints forwarded to the Defender is huge. According to claimants, the main problem is that the police demands prevention of intrusion even in the middle of a legal dispute, e.g. within the framework of a judicial procedure.

In the light of this, the regulations specified by the RA Government Decree # 797-N of 10 May 2007 “On Specifying Regulations and Requirements for Legal Owners of the Real Estate to Authorise the Police in the Process of Preventing or Stopping Intrusions” seem to be problematic.

For example, according to Point 7 of the Decree’s specified regulation, police officials have no right to apply any means or demands in relation to either party, if it turns out that

(...)

***3) the real estate legal owner’s demand is in fact a legally signed and currently effective civil-law or family or other dispute between participating parties***

(...).

Complaints forwarded to the Defender are mostly related to the framework of Point 7 of the Government Decree. In particular, the following major issue was highlighted thanks to the general examination of the complaints:

1. Actions for preventing or stopping intrusions were justified by the fact that, *no “legally signed and currently effective civil-law or family or other dispute between participating parties” was in force, in the light of the Government Decree.* This specifically refers to the cases, in which active disputes do not stem from “*currently effective civil-law or other agreement*” or in which the dispute parties are not “*legally bound*”.
2. Actions for preventing or stopping intrusions in some cases have been successful, despite in-progress judicial proceedings. In this case, the justification has been as follows: in spite of being a proceeding participant, the individual is not an agreement party; so a court-applied measure, requested by another individual, in relation to others is invalid.

The aforementioned implies that concerns related to those police actions are not just a law enforcement matter, but also an issue of precise and specific regulations stemming from the aforementioned governmental decree.

***6. Failure to provide disclosure documents prepared in connection with traffic accidents***

In the process of regulating insurance benefits, the damage caused by traffic accidents is estimated by experts or, within expected certain limitations, via case-resolving and legislatively effective judicial acts. If no such case or no such case-resolving judicial act has been initiated, then estimation is still performed by experts.

In all cases, according to the RL-1-001 rules of the Car Insurance Bureau of Armenia (CMTPLI general requirements), examination orders come with certain documents attached. For instance, in cases of accident-related legislatively effective case-resolving judicial acts, or criminal prosecution authorities' refusal to initiate criminal proceedings, or discontinuing criminal proceedings and stopping criminal prosecution, or orders to stop criminal proceedings, or administrative proceeding conclusions (verdicts) by authorities in charge, - it is mandatory to present copies (photocopies) of the documents supporting those conclusions (verdicts). Thus, the Rules specify a strict requirement to provide insurance companies that represent accident-involved individuals, with accident scene schemes, explanations and expert conclusions.

On account of this, verbal and written complaints have been received, stating that authorities in charge of proceedings refuse to provide required documents; and this results in individuals' inability to receive their insurance compensation.

For instance, in one of the cases, upon their decision to refuse initiation of criminal proceedings, criminal prosecution authorities provided the copy of the decision, as requested by the party concerned, but refused to provide any other required documentation. In another case, the party concerned did not even receive the copy of the decision to refuse initiation of criminal proceedings.

In connection with this issue, the RA General Prosecutor's Office received at least 2 complaints in 2017, concerning failure to guarantee individuals' right to familiarise themselves with materials prepared before the initiation of criminal proceedings, even in cases of refusal to initiate criminal proceedings. However, complaints forwarded to the Defender's office were much more numerous.

Despite the fact that, according to the official statement of the Prosecutor's Office, there are regulations dealing with received complaints and guaranteeing individuals' right to familiarise themselves with materials prepared before the initiation of criminal proceedings, - the number of complaints forwarded to the Defender demonstrates that in specific cases the issue still remains unresolved.

Therefore, it is proposed that authorities in charge of proceedings should take required measures, in order to avoid creating artificial obstacles within the process of insurance compensation.

## SECTION 6. ELECTORAL RIGHT

According to Article 21 of the Universal Declaration of Human Rights, every person has the right to take part in the governance of his country, directly or through freely chosen representatives. Article 25 of International Covenant on Civil and Political Rights defines that every citizen has the right to vote and to be elected, as well as the right to take part in the conduct of public affairs, directly or through freely chosen representatives, and to have access to public service.

The international legal regulations do not impose any particular electoral system to states<sup>94</sup>. On the contrary, it is accepted that no united electoral system exists, which can be applicable to all the states. Each state is to decide its electoral system that should be respected as a matter decided on national level<sup>95</sup>. The European Court of Human Rights in the decision of 13 March 2012 on the case *Saccomanno and Others v. Italy*, upon defining the electoral system recognizes considerably wide scope of a discretionary power of a state<sup>96</sup>.

Article 2 of the Constitution of the Republic of Armenia defines that the people shall exercise their power through free elections, referenda, as well as through state and local self-government bodies and officials provided for by the Constitution. Article 48 of RA Constitution foresees the election right and the right to participate in a referendum.

Elections, as an immediate means of exercising democracy, play a key role in the life of each democratic state and society. The will of the people expressed through the elections is very important in the formation of a civil society and the state of law. Elections are considered the expression of democraticity of the state and public life. The elections provide the people with the opportunity to take an immediate part in the process of public administration. For this very reason, it is of crucial importance to not only adopt legal regulations, which comply with international standards, in the national legislation, but also to bring those regulations to life in a steady manner.

During 2017 different electoral processes took place in the Republic of Armenia. During both the voting days, and pre-election and post-election processes the Staff of the Human Rights Defender worked in an emergency mode by following and responding to the cases of alleged violations of human rights, of the occurrence of problems of realization of rights, of hindering journalists' professional activity. A cooperation was held with the Central Electoral Commission, as well as with the law enforcement bodies, in particular with the RA Prosecutor General's Office.

With the invitation from the Prosecutor General's Office the representative of the Defender participated at the working meeting held in the framework of the Parliamentary elections. The complaints and information addressed to the Defender and subject to being checked within the scope of criminal proceedings were presented during the meeting.

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<sup>94</sup> UN Committee on Human Rights, 1981-2014, Comment 25, Paragraph 21

<sup>95</sup> Venice Commission, 2002, Guidelines, section 2.4

<sup>96</sup> See *Saccomanno and Others v. Italy* Decision of May 12, 1999, Appeal # 36719/97, Point 51

Regardless of the facts that through the Constitutional Law “The RA Electoral Code” adopted in 2016 a range of problems connected with the preparation, organization, conduct and conclusion stages of the national elections were addressed, the suggestions about the national elections presented in the final reports of the OSCE/ODIHR holding observing mission, the recommendations, as well as the legal approaches aimed at improving the electoral code that were expressed in the decisions of the Constitutional Court of the Republic of Armenia were adopted, it should well be stated that there still exist a range of problems in this sphere.

### ***1. Parliamentary Elections***

During the processes of preparation and implementation of the Parliamentary Elections of April 2, 2017 within the limits of the powers assigned to the Human Rights Defender by the Law, for the purpose of providing the guarantees and effective protection of electoral rights a working group was formed on February 27, 2017 according to the decision of the Human Rights Defender. The working group was comprised of the representatives of the Staff of the Human Rights Defender both from Yerevan and regional subdivisions.

The following were defined as the functions of the working group by the principle of monitoring: study of mass media publications regarding the alleged violations of electoral rights; ensuring proper discussion of verbal and written complaints and quick response, if necessary, as well as ensuring activities of citizens’ reception and legal advice. The working group was also assigned to hold a separate study of the issues related to the rights protection of the observers and representatives of mass media during the discussion of complaints and publications, as well as to closely cooperate with the civil society organizations, mass media and local and international organizations carrying out observation mission, involved in the electoral process. Particularly, discussions were held with the special representative of the EU Delegation in Armenia, the OSCE representatives and other partners.

The results of monitoring of the electoral processes implemented by the Human Rights Defender’s Staff recorded worrisome information and cases of bribe distribution, abuse of administrative resources. The study of the Defender’s Staff also recorded cases of pressure on public servants including employees of public schools (we cover this in detail in our further report of this chapter), as well as cases of intimidation of voters to vote for a participant of the electoral process. Corresponding alarming calls were received by the hotline of the Human Rights Defender’s Staff. Publications were also made regarding this matter in the mass media, by the civil society and opposition figures participating in the electoral process.

These realities recorded during the electoral processes had a negative impact from the viewpoint of public trust towards the electoral process, also they urged the voters’ concerns about the free expression of their will.

The Defender's Staff studied around 1000 publications regarding the electoral bribes, of which more than 100 publications were referred to the criminal prosecution authorities<sup>97</sup>.

Problems connected with the Parliamentary elections were recorded in the corresponding report of the OSCE/ODIHR observation mission<sup>98</sup>. The report particularly reflected on the voters' reports of the cases of electoral bribes. According to the report, there were widespread claims about the cases of bribe distribution in favor of some parties all over the country, and the OSCE/ODIHR EOM received numerous trustworthy reports immediately from the voters. The matter continued also on the elections day when the media reported and the EOM witnessed before the voting how the voters in large groups visited the pre-election offices of the parties. The report states that the connivance towards the institution of the election bribery contradicts paragraph 33 of the OSCE Istanbul Document according to which "Participating States pledge to strengthen their efforts to combat corruption and the conditions that foster it, and to promote a positive framework for good government practices and public integrity".

Moreover, according to the report some opposition parties informed OSCE/ODIHR EOM that their supporters underwent pressures not to attend their meetings.

According to the report common avoidance from reporting about trading of votes continued. There were only two reports about election bribes to the legal authorities from citizens. Many of the OSCE/ODIHR speakers mentioned that there exists common avoidance within the society to report the cases of electoral fraud for the reason of lack of trust towards the effectiveness of the system of examining the complaints and incomplete independence of the judicial, electoral administration systems and law enforcement bodies.

As the OSCE/ODIHR assessed, a range of abovementioned incidents and some incidents prior to the elections have negatively influenced the formation of public confidence towards the electoral processes. According to the statement, in total, the numerous reports of the electoral bribes, the pressures and terrors on the voters negatively affected the campaign by further decreasing the level of initially low public trust in the electoral process. This, together with significant concerns regarding the provision of voting privacy on the day of the elections and following it (see Post-election developments), arose doubts whether the voters were able to express their will freely and without any fear of revenge as foreseen in paragraph 7.7 of OSCE Copenhagen document of 1990.

Apart from what was mentioned above, the Defender's Staff recorded cases of hindrance of journalists' professional activity. The journalists carry out irreplaceable public function especially within such severely important occasion, as are the parliamentary elections, through which the highest representative body of the country is formed. ***Therefore, the journalists' professional activities must be fully protected to guarantee that the society receives complete information about the electoral process, including frauds or other illegal actions.***

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<sup>97</sup><https://www.aysor.am/am/news/2017/04/13/%D4%B8%D5%B6%D5%BF%D6%80%D5%A1%D5%AF%D5%A1%D5%B7%D5%A1%D5%BC%D6%84-%D5%84%D4%BB%D5%8A/1244629>

<sup>98</sup> <https://www.osce.org/hy/odihr/elections/armenia/333491?download=true>

The state of being protected in its turn requires quick reaction to any hindrance of a journalist's professional activity from the law enforcement bodies. Still this is not enough. It is necessary to ensure utilization of strict methods of criminal responsibility against any person hindering a journalist's professional activity, regardless of his/her status or any other condition. The Defender's researches come to testify *that there is a just perception among the journalists that it is because of the absence of the protection mechanism that there occurs the impression of impunity which in its turn does not have any preventive effect from the point of preventing similar violations in the future.* All this is problematic especially when electoral processes are concerned as far as a journalist's protected professional activity is an essential component of the formation of the public confidence in elections.

*The system should favor the formation of such an atmosphere in the country so as the journalists feel protected by the state from any intrusion into their professional activity.*

Results of monitoring conducted in the framework of the electoral process by the working group formed within the Defender's Staff reveal that information was published in mass media according to which regardless of the restrictions in the law<sup>99</sup>, employees of the public educational institutions are involved in the preparations of the elections through listing of students' parents, propagating at workplace, threatening to fire from work and other means<sup>100</sup>.

To this regard, the information published in mass media was summarized and immediately sent to the RA Ministry of Education and Science. According to the Ministry sources on February 22, 2017 a circular note was sent to Yerevan Municipality, RA regional administrations and schools subject to the RA Ministry of Education and Science to practically eliminate the implementation of political activities or propaganda in the educational institutions, as well as to the administration and pedagogical staff of the educational institutions to eliminate the pre-election propagation and distribution of any kind of propagation material while carrying out their professional activities.

Despite the mentioned fact, the information in press showed that the problems in this sphere continued. In fact, on March 24, 2017 *the Union of Informed Citizens* non-governmental organization released a publication named *ARP abuses administrative resource at schools and kindergartens (114 records)*<sup>101</sup>. On the same day, the RA Human Rights Defender made a public statement and noted: "It is concerning that the research and records published by the civil society organization relate to the public educational institutions and their principals. This fact is of special importance in the scope of conditions when the Republic of Armenia undergoes through a most important democratic process and the public confidence towards it is of fundamental importance. This primarily means that all that information should be subject to a thorough examination within the procedure foreseen by the Law in the shortest period possible.

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<sup>99</sup> According to Article 19 of the Electoral Code of the Republic of Armenia, the state and local self-governing authorities, as well as public and community servants, the pedagogical staff of the educational institutions is prohibited to conduct election campaigns and disseminate any kind of propaganda material in the course of implementation of their professional duties.

<sup>100</sup> The mentioned information was published and is available through the following link: <http://www.aravot.am/2017/02/20/857401/>, <http://hayeli.am/article/990616>, <http://hraparak.am/?p=139408&l=am/>:

<sup>101</sup> <https://sut.am/archives/803>

The very procedure must be transparent, and its result – public. Especially when the matter refers to the schools and kindergartens all the assessments should be based on results”<sup>102</sup>.

On the occasion of the mentioned case, according to the information provided by the RA Ministry of Education and Science, as regard to the mentioned material, the circular note of March 27, 2017, based on the requirements foreseen in Part 5 of Article 19 of RA Electoral Code and Part 8 of Article 4 of RA Law “On Public Education”, once again required the administrative and pedagogical staff of the educational institutions to eliminate pre-electoral propagation and distribution of any kind of propagation material while implementing their professional activities. Besides, the Deputy Minister fulfilling the duties of the RA Minister of Education and Science on March 27, 2017 met with those school principals whose names were mentioned in the material published by The Union of Informed Citizens NGO. The Deputy Minister informed that, as regard to the record related to the employees of the mentioned schools subordinate to the RA Ministry of Education and Science, an administrative proceeding was launched in the Central Electoral Commission that required them to give explanations to the Central Electoral Commission of RA.

Meantime, according to the information provided by the RA Prosecutor General’s Office a working group was formed which studied the phone call records of 114 schools and kindergartens principals, published by The Union of Informed Citizens NGO. The study revealed that it is the phone call record of the principal of # 37 high school in Gyumri that had apparent characteristics of crime.

Also the information about the employers’ pressures towards the employees negatively impacted in the formation of the public confidence in the elections. In fact, on April 14, 2017 a recording was published in media in which one of the executives of “SAS” group called the company employees for a pre-electoral meeting during which he was influencing the employees’ right of voting through threatening to dismiss from work<sup>103</sup>.

The Human Rights Defender, immediately responding to the mentioned case, expressed his concern about the manifestations of enforcement and threatening existing in the recording that are connected with the exercising of citizens’ electoral rights and pressure towards them. It was noted through a public statement that a criminal procedure on this regard should also guarantee the protection of people present in the recording. It was also noted that to eliminate any possible violations in the process of that protection, the Human Rights Defender, within the scope of his powers, would carry out corresponding means foreseen by the law to guarantee the confidentiality of potential applicants on this matter.

With the General Prosecutor’s assignment, the published recording was sent to the Special Investigation Service of RA to examine the facts mentioned in it<sup>104</sup>. Based on this case a criminal

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<sup>102</sup> The statement regarding phone conversations with the principals of public schools and kindergartens, <http://pashtpan.am/media/tnorenner.html>

<sup>103</sup> <http://www.a1plus.am/1535829.html>

<sup>104</sup> <http://yerkirmedia.am/low/sas-hqc/>

proceeding was launched in the Special Investigation Service based on the materials<sup>105</sup> prepared from the publication in “Chorrord Ishkhanutyun” (“Fourth Power”) newspaper; the process was later canceled on the basis of lack of corpus delicti<sup>106</sup>.

On April 2, the day of the RA Parliamentary Elections, the Human Rights Defender’s Staff worked in a 24-hour mode and since early morning the representatives of the working groups were working in the regions of Syunik, Gegharqunik, Lori and Shirak, as well as in Yerevan. During the whole day they received citizens, provided consultations, were quick to respond. The complaints, that the administration received, referred to the assembling in groups in polling stations, malfunction of technical means, interruption of online broadcasting of the voting process, the absence of facilities for people with disabilities to cast their votes, notes on the voter lists, prohibition of the participation of the parliamentary candidate and the proxy in counting of ballots, electoral bribes, as well as the place of voting.

There were complaints as well as a common concern received by the hotline of the Human Rights Defender that reported 5 specific cases of the lack of facilities for people with disabilities to cast their votes. It is worth mentioning in this regard that people with disabilities have the right to participate in the public administration, including the right to elect and be elected just as all the citizens<sup>107</sup>. Therefore, as a result of the joint discussion between the Defender’s administration and the Central Electoral Commission, the latter assigned all the district electoral commissions to pay a special attention to the people with special disabilities who visited the polling stations with no proper facilities. With all the specific cases, the citizens were informed about the opportunity of support.

The attention of the Human Rights Defender’s administration was also focused on the information regarding the possible hindering of the professional activity of journalists and observers. During the whole day the Defender’s administration was in constant contact with the representative of the EU Delegation and the members of the OSCE/ODIHR group of observers, who were regularly updated about the above mentioned information.

Around 850 publications found in mass media and social networks regarding the alleged violations of electoral rights were studied; the information about violations was not confirmed in 325 of them, and 131 of them included apparent characteristics of crime that were sent to the criminal prosecution authorities. Discussion procedures were initiated around 176 publications regarding the regions of Shirak, Lori, Syunik and Gegharqunik. In particular, 60 published and verbal complaints referring to Gegharqunik region, 13 to Shirak region, 53 to Syunik region and 50 to Lori region were studied. Corresponding work has been carried out with the electoral commissions and the police authorities. As a result, 45 raised issues in Gegharqunik, 11 in Shirak, 47 in Syunik and 21 in Lori were confirmed and addressed<sup>108</sup>.

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<sup>105</sup> <http://yerkirmedia.am/low/sas-zoxov-qreakan-gorc/>

<sup>106</sup> <http://www.yerkir.am/news/view/136082.html>

<sup>107</sup> For details see the section "Rights of Persons with Disabilities" of this Communiqué.

<sup>108</sup> The final report on the work done by the Staff of the Defender during the Elections held on April 2, <http://pashtpan.am/media/ampopoich-haghordum.html>

Thus, a member of the Citizen Observer Initiative presented information to the RA Human Rights Defender's Staff regarding the fact that a member of the same initiative was being prohibited to get acquainted with the documents under the disposal of the commission in one of the district electoral commissions. The law clearly states all the rights and responsibilities of the observers during the elections. In fact, according to the Article 32 of the RA Electoral Code, the observer, in a range of other rights also has the right to be acquainted with election related documents under the disposal of the Central Electoral Commission, district electoral commission. In its turn the very guarantee aims at providing the uninterrupted implementation of the observer's mission. Therefore, as a result of the support from the Defender's representatives, the observer was provided the opportunity to get acquainted with the corresponding documents.

In another case, on April 2, 2017 the RA Parliamentary candidate called RA Human Rights Defender's Staff and informed that he had turned to the police officers on duty at the station to eliminate the assembling around one of the district polling stations but they did not process his verbal complaint. Whereas, Part 3 of Article 22 of the Electoral Code prohibits assembling in groups on the territory — with up to 50 meter radius — adjacent to a polling station, as well as clustering of vehicles on the territory adjacent to the entrance of a polling station on the Election Day. Moreover, it is also foreseen that the enforcement of the provisions of this part of the Article, as well as maintenance of the public order within that territory shall be ensured by the police officers on duty at the polling station, irrespective of the requests of the election commission. Meanwhile, according to one of the police officers, the assembling of groups were conditioned by the fact that the two polling stations were located within the same building. The problem was resolved with the involvement of the additional police forces.

With another case, one of the parliamentary candidates informed that he wanted to enter the polling station to be present at the counting of ballots but the commission members did not allow him. Whereas, Part 2 of Article 68 of the Electoral Code states that besides the persons having the right to be present at the sitting of the electoral commission, the candidate shall also have the right to be present at that sitting. This problem was positively resolved as a result of the support from the representatives of the Human Rights Defender's Staff. A complaint about hindrance to enter the polling station was also received from a proxy whose entrance was prohibited for the reason that another proxy from the same party was already present at the polling station, whereas the law foresees no such limitations. After the complaint was received the problem was positively resolved with the support from the representatives of the Defender's Staff: the proxy had the opportunity to be present at the polling station.

Records were received about violations during the Parliamentary elections also in the RA Prosecutor General's Office. According to information of the latter, the working group of the Office examined 923 publications in mass media about electoral violations and topically similar alarming calls received in the regional departments of the Police of RA, which were recorded during the preparation and implementation phases of the Parliamentary Elections

According to the clarification note from the RA Prosecutor's Office, as a result of the investigation and examination of all the mentioned cases, with an accusatory conclusion of 13 persons 12 criminal cases were sent to the court, of which 10 have already been held with an accusatory verdict, with 8 of them a person was sentenced to a certain period of imprisonment and with the application of Article 70 of the RA Criminal Code, a certain probation period has been appointed. An appeal complaint was filed by the supervising prosecutors against five of the mentioned verdicts on the application of Article 70 of the RA Criminal Code, one of which was rejected by the Court of Appeal, and for the other one the Court of Appeal made a verdict of acquittal. Three appeals are still under investigation. In one case a fine was imposed on one person, in one case one person was sentenced to two years of imprisonment, and the proceedings on two criminal cases are still in process.

## ***2. Yerevan City Council Elections***

Yerevan City Council elections were held on May 14, 2017. This time also the Human Rights Defender's Staff followed the whole electoral process. Case studies were held based on the information received from alarming calls and public sources, and corresponding measures were taken according to the study results.

According to May 12 publication in "Haykakan Zhamanak" ("Armenian Times") Daily, on May 11, there was an act of violence against journalist Anna Zakharyan. According to the published information, electoral bribes and marked ballot papers were distributed to voters at the mayor candidate's pre-electoral headquarter on the Kurghinyan street of Araratyan district, and when making video footage on the spot, her professional legal activity was hindered: they took away the phone and deleted its content. According to the information presented by the General Prosecutor's Office, based on the report received at the Malatia Division of the Yerevan City Police Department, materials were prepared in the same division of the RA Police and necessary urgent investigative, procedural actions were carried out. As a result of the materials prepared by the prosecutor of Malatia-Sebastia administrative district prosecutor's office of Yerevan on the cases of hindering the implementation of the professional activity of a mass media representative and explicitly giving pre-election bribe, pursuant to Part 1 of the Article 149, and Part 2 of the Article 154.2 of the RA Criminal Code a criminal case was initiated, the preliminary investigation of which was assigned to the RA Special Investigation Service.

The candidate for the mayor of the "Yelq" Alliance N.Pashinyan also disseminated public information on the distribution of bribe at the same pre-election headquarter as well as of bodily injuring his proxy and breaking the phone. Having regarded the hindrance of the journalist's professional activity or violence against a journalist as problematic, on the basis of published information, the RA Human Rights Defender's Staff initiated a discussion procedure of the matter on its own initiative. The same information was sent to the RA General Prosecutor's Office to discuss and resolve the issue of initiating criminal proceedings. According to the information from the General Prosecutor's Office, the RA Special Investigation Service has been assigned to prepare materials in accordance with Articles 180-181 of the RA Criminal

Procedure Code. Later, the criminal case based on these materials was dropped due to the lack of corpus delicti<sup>109</sup>.

The RA Human Rights Defender's Staff thoroughly studied the video recording of the incidents held at the Republican Party mayor candidate's pre-electoral headquarter of Yerevan's Avan administrative district, with the participation of National Assembly MP, Yerkir Tsirani party candidate Zaruhi Postanjyan. Especially, the police officers' actions during the incident related to attitude towards Zaruhi Postanjyan and the attempts to detain her were thoroughly studied. All the materials related to the police officers' activities were summarized and sent to the Police Department with the demand to initiate corresponding proceedings. At the same time, according to the Police response, no information was received on disciplinary violations of the police officers' actions, so the results of the service investigation were left unaddressed. A letter was also sent to the Special Investigation Service and to the General Prosecutor's Office. According to the information provided by the Investigation Service, a criminal case has been initiated. According to the information provided by the General Prosecutor's Office, on September 17, 2017 a decision was made to abolish the mentioned criminal proceedings and not to implement a criminal prosecution due to the lack of corpus delicti.

In general, and in this case as well, when electoral procedures are concerned, the Human Rights Defender's Staff constantly announced that the Police must respect the human rights, be tolerant during the contact with any citizen and particularly with a participant of political process.

Alarming calls were also received on the voting day that were connected to organization and implementation of the law-defined voting procedure. The citizens were provided with legal consultations in all the cases.

At the same time, 113 publications of mass media regarding the alleged violations of the electoral right were examined. The publications referred to the cases of assembling at the polling stations and electoral headquarters, the malfunction of technical means, failure of the online broadcast of the voting process, the notes on voter lists, the furnishing of the polling stations, the distribution of bribes to voters, the confidentiality of voting, as well as to its organization and conduct.

In this case too, Human Rights Defender's Staff examined the information regarding the possible hindrance of the professional activity of journalists and observers with special attention.

Particularly, all the information containing explicit features of crime through violence against observer V.Gaspar, "www.azatutyun.am", "www.hraparak.am" media reporters T.Khachatryan, S.Gabrielyan and S.Adamyan as well as through hindrance of the professional activity of journalists and observers, were sent to the criminal prosecution authorities. According to the information provided by the Prosecutor General's Office, all 14 publications of the press were investigated by the working group of the RA Prosecutor General's Office and sent to the RA Police, the regional divisions of the RA Investigative Committee and the RA Special

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<sup>109</sup><https://www.azatutyun.am/a/28656322.html>,<https://www.azatutyun.am/a/28656438.html>,<https://factor.am/11295.html>,

Investigation Service for the preparation of materials in accordance with Articles 180-181 of the RA Criminal Procedure Code on May 14, 20017.

### ***3. Early elections of community leaders***

On the day of elections of the local self-government bodies the central and regional departments of the RA Human Rights Defender's Staff studied the information about the alleged violations of electoral rights, also working groups were sent to the regions.

Fifty-two publications regarding the elections that were published on mass media and social networks were examined. There referred to the gathering of groups around the polling stations, gathering of cars, confidentiality of the ballot, distribution of bribes to the voters, referral to the citizens, furnishing of the polling stations, as well as organization and conduct of the elections.

Sixteen issues rased out the recorded cases of electoral violations were confirmed and addressed with an accelerated procedure through the combined work with the Central Electoral Committee. There were some instances when gatherings of people and cars around the polling centers were removed.

The Human Rights Defender's administration separately examined also the information regarding the possible hindering of the professional activity of journalists and observers. One out of 2 verbal complaints received by the hotline referred to the request of journalistic information, the other referred to the hindrance of the professional activitiy of a journalist.

To this regard, particularly, the information about the hindrance of the professional activity of the filming group of "Aysor" news program of "Tsayg" TV<sup>110</sup> have been sent to criminal prosecution authority for examination. The response from the Prosecutor General's Office stated that based on the case of hindrance of "Tsayg" TV representative's professional activity at polling station 30/08 in Marmarashen village of Shirak region, Prosecutor's Office of RA Shirak Province launched criminal proceedings on November 8, 2017 with the crime features defined in Part 1 of Article 149 of RA Criminal Code; according to this the hindering person was found guilty and was imposed punishment<sup>111</sup>.

*As to any electoral process, it should be fundamentally set that information regarding any legal breach should be responded as soon as possible. A proper examination should be initiated with the acceleration principle in a way so as any person having violated the law be subject to strict responsibility regardless the status of the very person, the place of the violation and else. It is only with this principle that the work will have preventive impact and will also contribute to the strengthening of the public confidence in an electoral process.*

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<sup>110</sup> <http://tsayg.am/qaxaqakanutyun/21814-ss-gnc-bse-l-p.html>

<sup>111</sup> <http://www.datalex.am/?app=AppCaseSearch&page=default&tab=criminal>

## SECTION 7. FREEDOM OF EXPRESSION AND FREEDOM OF INFORMATION RIGHTS

### *1. Guarantees for journalists' professional activities*

The guarantee of freedom of expression and the safety of journalists' activities in a democratic society are of immense importance.

The Recommendation of the Committee of Ministers of the European Council # CM/Rec(2016)4[1] of 13 April 2016 "On protection of journalism and safety of journalists and other media actors" states **that the favourable environment for freedom of speech needs to comprise a number of key attributes, which, when combined together, will provide a background for endorsing freedom of speech and information, as well as active public debates. The right to information includes the right of access to information. The society has the right to receive public-interest information and ideas that journalists have a hard time spreading.** Collection of information is an important preliminary phase in journalism and a component of freedom of press that needs protection. **The involvement of journalists and other media representatives in public debates on public legitimate concerns must not be hindered, for instance, by overloading the means of access to information or by discretionary restrictions: these may end up becoming methods of indirect censorship.**

According to Paragraph 30 of the Recommendation, establishing the principle of promoting public debates, in terms of guaranteeing unrestricted activities of journalists and other media representatives in a democratic society, the European Court of Human Rights has stated that the freedom of speech of the latter should be widely protected. Such protection should include guarantees functionally related to their activities: specifically, confidentiality of information sources, **safety of the news and information collection process**, autonomy of editing and presentation, and so on. This principle also implies that journalists' operational and functional freedoms related to the collection, processing and distribution of news and information are necessary for ensuring the relevance and effectiveness of journalists' freedom of speech.

According to Paragraph 2 of Section "Principles" of the Recommendation, **the right to freedom of speech and information, guaranteed by Article 10 of the Convention, is one of the key foundations in a democratic society, one of the requirements of its progress and of the personal growth of every individual.** The freedom of speech is applicable not only in cases of acceptable, safe or neutral information and ideas, but also in cases of information that offends, shocks or troubles the State or a specific group in the society. Hence, the freedom of speech promotes a reasonable public debate, which in its turn is a prerequisite for a democratic society founded on pluralism and tolerance. Any interference with that right of journalists and other media representatives may result in social consequences, since such a restriction will interfere with other people's rights of access to information and public debate.

According to Article 10, Section 2, of the Convention, **the implementation of the right to freedom of speech calls for obligations and liabilities. In terms of journalistic activities,**

**conscientious workstyle is amongst such obligations, being aimed at the provision of clear and reliable information alongside following the principles of journalism ethics** <sup>112</sup>.

Thus, the international law asserts that journalists and media representatives play an important role in the process of public debates and decision making in a democratic society, by functioning as public and social watchdogs and by creating general platforms for the exchange and discussion of information and ideas.

It is worth noting that, in regard to the right to freedom of expression and the importance of journalists' activities, the Human Rights Defender has published the legal criteria for journalists' right to enter correctional facilities, right to receive information containing personal details, as well as the criteria for state authorities' relevant obligations<sup>113</sup>.

In particular, the Human Rights Defender has set forth those general principles, which are to be applied when discussing issues presented by state authorities within the context of journalistic activities:

- *The work of journalists and media representatives is of public significance. In a democratic society, journalists play an important role in terms of promoting public debates and the society's right to seek and receive information.*
- *Journalists' high responsibility and call to act conscientiously and according to the law affect state officials' obligation to do their job by presuming the legal, conscientious and honest nature of journalists' work.*
- *The society is the final addressee of any implemented state actions, so every member of the society must have an opportunity to follow the implementation process of that action, in order to be able to shape their own perspective and assessment.*
- *Such type of social supervision can be effective only if every state authority acts by following the principles of sufficient transparency and accountability, according to the matters in question.*
- *Any citizen's report or complaint addressed to state authorities must receive a proper feedback. Special attention is required when state authorities receive a report within the framework of professional journalistic activities.*

The Human Rights Defender states that **journalistic activities, that are aimed at promoting the society's right to information and at ensuring state authorities' accountability in relation to their actions, thus become those of public significance.**

In the meantime, it is utterly important to change social perceptions about the role of journalists and the significance of their work. This is about public perceptions and expectations, as well as state authorities' principles of working with journalists.

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<sup>112</sup>[https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=09000016806415d9#\\_ftn1](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016806415d9#_ftn1)

<sup>113</sup> [http://pashtpan.am/images/Media\\_Personal\\_Data\\_30.03.2018.pdf](http://pashtpan.am/images/Media_Personal_Data_30.03.2018.pdf), [http://pashtpan.am/images/media\\_access\\_to\\_prison\\_13.03.2018\\_1\\_1.pdf](http://pashtpan.am/images/media_access_to_prison_13.03.2018_1_1.pdf)

In other words, **the final objective of journalists' legal activities is to promote public debates and resolution of current issues in the country, through the coverage of social-political events. It is this common purpose that should be at the bottom of the state authority - journalists - civil society interaction.**

In this sense, the current objectives of journalistic activities to follow the principle and professional approaches of "responsible journalism" are truly essential. These objectives are in fact an important prerequisite for increasing public authorities' accountability and commitment in order to be guided by the presumption of journalists' conscientiousness, thus ensuring unrestricted journalistic activities.

The **protection of the freedom of journalistic activities and therefore the freedom of expression implies that there ought to be sufficient legislative and practical guarantees for safeguarding information and for journalists' personal safety.**

Any form of restriction of journalistic activities is unacceptable and must undergo an adequate legal assessment. Not only are such encroachments a threat to journalists' rights, but also they negatively affect the implementation of the society's right to information.

In view of this, mass-media information published in 2017, in regard to obstruction of professional journalistic activities of several media, raises some concerns.

The Human Rights Defender has launched discussion procedures for all the cases and has outlined the prospect of looking into the circumstances of each case via criminal proceedings.

According to the information from the RA General Prosecutor's Office, throughout 2017, 12 reports and mass-media publications were submitted in regard to cases of obstruction of journalists' legal professional activities: subsequently, 6 criminal investigations were launched based on Article 164 of the RA Criminal Code (obstruction of journalists' legal professional activities) and 6 criminal investigations - based on Article 149 of the RA Criminal Code (obstruction to the implementation of electoral rights, electoral commissions' activities and people's electoral privileges). Out of the aforementioned criminal cases, one resulted in guilty verdict, two resulted in the proceedings being discontinued in the absence of the corpus delicti, another one - discontinued due to the inapplicability of factors specified in Article 35 of the RA Criminal Procedure Code and the applicability of factors specified in Articles 72, 73, and 74; two of the proceedings still continue. In five cases, initiation of the criminal proceedings was refused.

3 criminal cases (concerning 4 individuals), based on the criminal factors specified in Article 149 of the RA Criminal Procedure Code, were forwarded to the Court with guilty verdict, out of which 2 criminal proceedings regarding 3 individuals still continue, 1 case resulted in 1 person being convicted (on the basis of the applicability of the factors specified in Article 149, Section 1, of the RA Criminal Procedure Code), and in 3 cases the proceedings were discontinued in the absence of the corpus delicti.

*On account of the abovementioned, the Human Rights Defender states that interaction with journalists ought to be the principle guiding every state authority's actions, since it also guarantees the publicity and transparency of the public authority's actions.*

*Besides, to put an end to cases of obstruction of journalistic activities, there must be guarantees such as the State's adequate assessment concerning specific cases and presumption of journalists' conscientiousness and treatment of their activities as an important component of social supervision in the same state system.*

***2. Daytime TV programmes that contain images of erotic nature and violence, as well as have a possible negative impact on minors' health, mental and physical development, and upbringing.***

For years, the RA Human Rights Defender's reports have voiced the issue of daytime TV programmes that clearly contain horror and violence and negatively affect minors' upbringing. The problem is that such programmes have a negative impact on minors' development, thus violating children's rights.

For instance, Article 17 of the UN Convention on the Rights of the Child asserts that the states ought to guarantee the availability of resources and information aimed at children's social, spiritual, moral well-being, their physical and psychological healthy growth, as well as to ensure the development of guidelines for protecting children from information and resources damaging their well-being. In other words, the Convention-approved countries are supposed to take steps in regard to children's growth, by safeguarding them from information that can negatively affect their psychological health.

The non-restricted possibility of the above-mentioned type of programmes being broadcasted on daytime TV is the result of a legislative gap. According to Part 2 of the Article 22 of the RA Law "On Television and Radio", TV and radio programmes with erotic content, as well as films containing horror and apparent violence, alongside programmes that can possibly have a negative impact on minors' health, mental and physical development and upbringing, may be broadcasted from 24:00 till 6:00. The law says that the norms for such programmes are to be legally specified. This means that the norms for the evaluation of scheduled programmes, and, accordingly, the approval for daytime broadcast, are established by the law. These norms were already specified by the Decision of the TV and Radio National Commission (The Commission) of 15 February 2010<sup>114</sup>, but they still need to be established by a relevant law.

It is necessary to outline that the RA Government approved the new draft law "On Television and Radio" and of the scheduled legal regulations list for making necessary additions in the adjacent legislation on 16 November 2017 and submitted all of these to the National Assembly. Article 22 of the draft law states that the norms for TV and radio programmes with erotic content, as well as films containing horror and apparent violence, alongside programmes that can possibly have a negative impact on minors' health, mental and physical development and

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<sup>114</sup><http://www.arlis.am/DocumentView.aspx?DocID=56607>

upbringing, are to be specified by a decree from the Television and Radio Commission of the Republic of Armenia<sup>115</sup>.

Despite the mentioned draft law, such programmes were still aired on daytime television throughout 2017.

*Considering the importance of this issue, it is mandatory to urgently apply a legislative regulation to the matter, and, until the enactment of the new RA Law “On Television and Radio”, to make relevant amendments in the current law, either by defining the norms for TV and radio programmes with erotic content, films containing horror and apparent violence, alongside programmes that can possibly have a negative impact on minors’ health, mental and physical development and upbringing; or by having the current law specify those norms via a regulatory legal act enforced by a competent authority.*

### ***3. Airtime for Public Radio and TV broadcasts in ethnic minorities’ languages.***

The issue of airtime limitations for Public Radio and TV broadcasts in ethnic minorities’ languages, as legislatively guaranteed, was not resolved in 2017: this was voiced in the Human Rights Defender’s reports and statement. The problem is that Subpoint “d” of the Point 3 of the Part 5 of the Article 26 of the RA Law “On Television and Radio” states that the Public Television and Radio Company has an obligation to provide airtime for the broadcast of special programmes and shows in the languages of ethnic minorities of the RA. However, according to the article, the total television airtime must not exceed 2 hours per week, and the total radio airtime must not exceed 1 hour per day. Thus, the legislation itself has put limitations in regard to the airtime of TV and radio programmes broadcast in minorities’ languages. This is a problem from the perspective of international standards and providing minorities with universal access to media resources, and as such it unnecessarily restricts minorities’ access to national media.

According to the Recommendation of the EU Committee of Ministers No.(2007)3 “On the remit of public service media in the information society” forwarded to the member states, the states must ensure that all individuals, social groups, minorities and vulnerable groups are provided with universal access to national media through various technological means<sup>116</sup>. Furthermore, the 1995 RA-certified framework convention (the Convention) “On Protection of Ethnic Minorities Rights” envisages that every ethnic minority representative’s right to expression should include freedom of thought and freedom to receive and broadcast information and ideas in a minority language. Moreover, according to the Convention, ethnic minority representatives should not face discrimination, in terms of their access to media<sup>117</sup>.

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<sup>115</sup><https://www.e-gov.am/sessions/archive/2017/11/16/>

<sup>116</sup>Paragraph “V” of Recommendation of the EU Committee of Ministers # (2007)3 On the remit of public service media in the information society, <https://wcd.coe.int/ViewDoc.jsp?id=1089759>

<sup>117</sup><http://www.arlis.am/DocumentView.aspx?DocID=81178>

It must be noted that the EU Committee of Ministers has addressed this legislative problem: it has specifically been stated that the legal clause in question obstructs public TV and radio broadcasts in ethnic minorities' languages and that it is mandatory to guarantee the minimum airtime in a minority language<sup>118</sup>. This implies elimination (based on the current legislation) of the requirement not to exceed the total airtime provided for TV and radio programmes in minorities' languages.

It is necessary to outline that the RA Government approved the new draft law "On Television and Radio" and of the scheduled legal regulations list for making necessary additions in the adjacent legislation on 16 November 2017 and submitted all of these to the National Assembly. The mentioned restriction is absent in the draft.

*Hence, it is necessary*

*1. to enact the RA new law "On Television and Radio" as urgently as possible;*

*or*

*2. until its enactment, to make required amendments in Subpoint "d" of the Point 3 of the Part 5 of the Article 26 of the RA Law "On Television and Radio", by eliminating Public TV and radio airtime restrictions for broadcasts in ethnic minorities' languages (by setting the minimum airtime).*

#### ***4. Freedom of information: legislation and law enforcement practice***

In 2017, the draft RA Law "On Freedom of Information" was circulated and submitted to the Human Rights Defender. Considering the special significance of the draft RA Law "On Freedom of Information" in terms of ensuring transparent, publicised activities and public accountability, the Human Rights Defender's Staff was actively involved in the draft's public discussions and put forward suggestions for making necessary amendments in the draft. Several remarks and suggestions were made. In particular, the draft law defined those that had the right to familiarise themselves with the information they search for, or to receive the information by legally applying and requesting it from information-guarding authorities: RA citizens, private individuals legally residing in the RA, RA-registered legal entities, branches and representatives of foreign legal entities registered in the RA (with the exception of 100% state-involved organisations). However, it turned out that, according to this draft law, the right of access to information referred only to private individuals legally present in the Republic of Armenia, whereas there might be cases of individuals, illegally present in the Republic of Armenia, who would need to receive information in regard to implementation of their right to freedom of movement. Article 30 of the RA Law "On Foreigners" specifies cases, in which foreigners are required to voluntarily leave the RA territory (for instance, if their entry visas or residence status verification deadlines have expired). However, in case of failure to leave the country

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<sup>118</sup>The 2012 European Council Resolution in regard to the framework convention "On Protection of the Rights of Ethnic Minorities", [http://www.gov.am/u\\_files/file/kron/Resolution.pdf](http://www.gov.am/u_files/file/kron/Resolution.pdf), [http://www.gov.am/u\\_files/file/kron/Opinion.pdf](http://www.gov.am/u_files/file/kron/Opinion.pdf)

voluntarily, foreigners could be detained and kept in detention for a period of up to 90 days before further deportation, according to Article 38 of the aforementioned law. Thus, as a result of the above-stated draft law regulations, such individuals would be deprived of the right of access to information during that period, since they would have no legal grounds for staying in the RA.

On the basis of the aforesaid, the Defender proposed to review the draft law regulation referring only to private individuals who are legally present in the Republic of Armenia. As a result of this, the current draft law states that every individual has the right to familiarise themselves with the information they search for, or to receive the information by legally applying and requesting it from information-guarding authorities.

Apart from that, the draft law does not specify any regulations for implementation of disabled individuals' rights of access to information. (This issue has been thoroughly discussed in the "Rights of persons with disabilities" section of this communique.)

Throughout 2017, complaints were forwarded to the Defender's office in regard to violations of the right of access to information. Specifically, the analysis of the latter led to a conclusion that there were incidents of state authorities' past-the-deadline responses to citizens' applications for receiving information. Hence, violation of an individual's right to receive adequate response within a set deadline would take place.

In their complaints forwarded to the Defender, citizens also voiced the following problem: access to information would often be declined on the grounds of the requested information containing personal life details of individuals, the access to which had to be restricted according to Point 2 of the Part 1 of the Article 8 of the RA Law "On Freedom of Information". This means that information holders are in fact not aware that, according to Point 2 of the Part 1 of the Article 8 of the RA Law "On Freedom of Information", if parts of requested information contain details, the provision of which must be declined, then access is granted to the information in the rest of the parts. Consequently, information holders must provide as much information as permitted by Part 1 of the Article 8 of the Law (by masking the fragments containing details specified by Point 1 of the Part 1 of the same article). One of the reasons why such incidents occur is that information-holding authorities do not provide information due to not being sufficiently aware of their legal obligations and due to lacking required knowledge and skills for applying laws.

Violations of rights to freedom of information have also been frequently tackled by civil society organisations actively working in this sector: these also voice the problem of state authorities' failure to respond to citizens' or organisations' applications and the problem of state authorities' law-violating forms of response.

*Hence, considering the abovementioned, it is necessary to:*

- 1. arrange supplementary training sessions for individuals responsible for equipping state authorities' teams with required information: this will result in all information-holding*

*authorities' sufficient knowledge concerning mechanisms for application of the RA Law "On Freedom of Information";*

- 2. to envisage detailed mechanisms in the RA Law "On Freedom of Information" in regard to the process of disabled individuals requesting and receiving information.*

## SECTION 8. RIGHT TO A FAIR TRIAL AND PERSONAL LIBERTY

The exposure and resolution of problems related to guarantees for human rights and freedoms in the sphere of criminal justice are efficient in case of close cooperation between the bodies within the field. In this sense collaboration with the bodies within the judicial and law-enforcement system – the Prosecutor’s Office, Investigative Committee, Special Investigative Service, Police, National Security Service, as well as the Ministry of Justice and Judicial Department – was on the whole effective during 2017. This refers to the implementation of measures aimed both to restore people’s rights within definite complaints and to solve the system problems voiced by the Human Rights Defender.

It is worth noting that the responsible state departments have provided all the information requested by the Human Rights Defender. The RA Prosecutor General’s Office, for example, to provide statistics and other necessary data concerning preliminary detentions reviewed all the criminal cases in the reporting year. As a result, the obtained data made it possible for the Defender’s staff to consider the practice of detention and development trends in a more substantial way, to work out more precise proposals to improve the legislation and practice.

Thus, the present annual communique analyses the criminal justice issues from the perspective of positive developments within the sphere and also reflects upon problems concerning the legislation and law enforcement and comes up with options for their solution.

### *1. Guarantees and practical provision of rights of an individual when giving explanations*

Under the 2015 amendments to Article 65 of the RA Constitution, no one shall be obliged to testify about himself, his spouse, or his close relatives, if it can be reasonably presumed that it may subsequently be used against him or them. The rights to exempt from the duty to testify and not to witness against oneself constitute the cornerstone of the right to a fair trial guaranteed by Article 6 of the European Convention on Human Rights.

While legally restricting an individual’s rights and freedoms, it becomes most urgent to exercise constitutional principles consistently in the criminal justice sphere where the danger to violate an individual’s rights is especially great.

In this sense, it is necessary to reflect upon the issue of providing relevant judicial guarantees while giving explanations within criminal proceedings.

Thus, according to Article 180 of the RA Criminal Procedure Code, prior to initiation of criminal prosecution the body conducting the proceedings may request additional documents, explanations, other materials, as well as it may conduct examination of the locus criminis; given sufficient grounds of committing a crime individuals may be detained or searched; samples may be collected for further forensic analysis.

The cited norm presumes that, while making a decision on initiating criminal prosecution on the grounds of a statement about the crime, the body conducting the proceedings may, among others, request also explanations. In other words, the explanation requested in order to consider

the reason for initiating a criminal case legal and the grounds sufficient might prove crucial and become bases for initiating criminal proceedings. Quite often people, who gave explanations during the process of preparing the materials, later appear in the status of the suspect or accused within the initiated proceedings.

**It is obvious that the explanations are taken beyond the initiated criminal proceedings and from the individuals who do not have any procedural status so far, while the legislation on procedure doesn't provide any procedure concerning explanations.** There is a lack of legislative leverages that would obligate the body conducting the proceedings to inform the person of his/her rights and responsibilities (specifically those of keeping silent and not giving any explanations), the possible consequences of a certain action.

**Thus, absence of relevant regulations may lead to disproportionate limitation of the rights of the person who gave explanations as long as no guarantees are envisaged to inform an individual of his minimum rights and to ensure their exercise.**

It must be noted that, although under Part 2 of Article 104 of the RA Criminal Procedure Code the explanation provided by a person during the period of preparation of materials is not evidence as such, consideration of the complaints submitted to the Human Rights Defender proves that there are cases when an explanation is recognized as a document of some other character and is implemented as evidence, which is unacceptable. The same results have been revealed after reviewing judicial practice. For instance, in one of its verdicts made in 2013, the Court of First Instance fairly ruled this unacceptable evidence highlighting that: "... The Court needs to note that with this practice the right of the accused not to testify or the right "to keep silent", guaranteed under the RA Constitution and Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, becomes abstract and unreal because the explanation produced by an individual is used against him without any argumentation, specifically the person hasn't been given any clarifications concerning his right to abstain from giving explanations and the opportunity to implement the explanation produced by him against himself."<sup>119</sup>

Among the complaints submitted to the Human Rights Defender during 2017, in connection with the issue, for example, there was a case where the lawyer informed that his client had given an explanation without being notified about his rights, including the right not to furnish evidence against himself, his/her spouse, and close relatives. Actually, he had given some explanation against his son, which, the person claimed, had served as grounds for instituting criminal prosecution.

At its 16 December 2016 session, the RA Prosecution Collegium addressed the issue of the existing practice of recognizing the protocol of explanation as some other type of document and stated that the protocol of explanation can be regarded as another type of document and among other evidence can become a basis for a charge in case it was impossible to interrogate the

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<sup>119</sup> See, Verdict EAND/0092/01/12 of the Court of General Jurisdiction of Kentron and Nork-Marash Administrative District from May 15, 2013.

person who provided the explanation for reasons that made it impossible for him to come to the preliminary investigation body.

In fact, practice shows that such cases, when the explanation given by a person during the period of preparing materials is recognized as another type of document and becomes basis for a charge, are not excluded. We believe **unless relevant regulations, explicit procedures and appropriate legal guarantees are defined under the Criminal Procedure Code, such practice is inadmissible as it will inevitably entail violation of fundamental human rights, namely the right to defence.**

It should be noted also that even when the explanations do not lay grounds for the charge and judicial acts, they are of core significance for the proceedings as quite often it is the explanation provided by a person that serves the basis for initiating criminal proceedings or even for criminal prosecution. Actually, the explanation produced without being properly notified about one's basic rights and in the absence of a lawyer may later be used against that very person who provided it. Besides, the availability of the person's explanation among the materials of the criminal case may itself inflict certain impact on the body conducting the proceedings, although, formally, it cannot serve as evidence. Consequently, to eliminate any disproportionate restriction of a person's rights it is essential to set a legislative mechanism for acquiring explanations from a person during the material preparation stage, which will ensure the exercise of his rights secured by the Constitution and the Convention and will define relevant procedural guarantees.

Meanwhile, the protocol of the explanation can be used in the criminal proceedings provided it was produced keeping to appropriate criminal procedural safeguards. A similar decision was made also by the European Court of Human Rights in the case *Hovhannesyan v. Bulgaria*<sup>120</sup>. The Court specified that, when the body conducting proceedings while taking explanations provided actual conditions to exercise guarantees constituting an element of the right to a fair trial then the evidence cannot lose its value in the sense of contents and its recognition as a form of evidence cannot lead to any violation of the principle of a fair criminal proceeding.

Study of the RA Draft Criminal Procedure Code shows it doesn't define the procedure of taking explanations: this is first of all conditioned by the fact that unlike the current legislation the Draft doesn't comprise a separate stage of instituting a criminal case and from the moment of receiving a report on a crime criminal proceedings are initiated. Thus the body conducting the proceedings gets an opportunity to fully utilize the toolkit of criminal procedure, to conduct all those mandatory investigation and procedural activities most of which can nowadays be implemented solely if a criminal case has been initiated, while providing practical procedural safeguards to secure personal rights.

Taking into consideration the above noted, the Human Rights Defender records that:

*1. to find a fast solution to the issue, the Criminal Procedure Code needs to be amended in a way that sets an explicit procedure for taking explanations that would ensure an individual to*

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<sup>120</sup> See, *Hovanesian v. Bulgaria* case decision, # 31814/03 of 21 December 2010, Points 36-44.

*exercise his right guaranteed under the Constitution and the Convention to be duly informed about his rights and responsibilities and about the potential negative effects of his explanation.*

*2. as a long-term solution, the legislative regulations should be harmonized with the new conceptual approaches towards the procedural stages: the institute of taking explanations should be eliminated in line with the stage of initial preparation of instituting a criminal case.*

## ***2. Legislative and practical defence safeguards against “factual criminal prosecution”***

The process of investigation of and solution to criminal cases should proportionately protect both private and public interests. The practice of this most important principle supposes that, given a person’s procedural status within the framework of criminal proceedings, the person must be provided with equivalent rights and safeguards. In fact, the more interference with the person’s rights is supposed, the wider range of personal rights should be guaranteed. In the context of the statement, the Human Rights Defender considers it essential to reflect upon the so-called illegitimate practice of “factual criminal prosecution”.

The issue appeared in “Annual Report on the Activities of the RA Human Rights Defender, the situation with the protection of human rights and freedoms of 2016” through the analysis of constitutional, legal and international legislative approaches, as well as from the perspective of comprehensive criminal procedural regulations<sup>121</sup>.

During 2017 the Human Rights Defender received several complaints claiming that, for instance, a person was first interrogated as a witness were later involved in the same proceedings as an accused.

In this connection Human Rights Defender reaffirms that no change of status of a person within any definite criminal case proceedings can be problematic unless the body conducting proceedings has provided the person with rights and appropriate procedural safeguards defined under the Constitution while carrying out investigative and other procedural activities, including questioning of the person. The situation is different when, for example, an individual is called to testify and enjoys the procedural status of a witness with the relevant scope of rights and responsibilities. However, the body conducting proceedings already has certain suspicions concerning the person’s affiliation to the action prohibited by law. Problems arise when, in case such “suspicions” are available, certain investigative and other procedural activities are taken involving the person enjoying the procedural status of a witness, which aim to obtain sufficient evidence to confirm that person committed a crime.

According to the legal judging of the European Court of Human Rights the terms “accused” and “criminal charge” have an “autonomous” meaning, and should be interpreted not so much formally as taking into consideration objective reality.

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<sup>121</sup> See more detailed in Annual Report “Annual Report on the Activities of the RA Human Rights Defender, the situation with the protection of human rights and freedoms of 2016”, pp. 122-125.

In this context, charge supposes not only the official notification of an allegation that the suspect has committed a criminal offence, but also any measure that substantially affects his status<sup>122</sup>.

In fact, it is of principal importance to define the starting moment for the assessment of “a criminal charge” because it predetermines the moment of origin of the right secured by Article 6 of the European Convention on Human Rights as of “criminal charge”.

Unlike the safeguards of the Constitution of 2005 which provided that “everyone shall have the right to a counsel of his or her own choosing from the moment of arrest, selection of a measure of restraint, or bringing a charge”, Article 67 of the 2015 Constitution with amendments lays down that “everyone accused of a crime” shall have the right to defend against the charge and sets its elements (including the right to defend himself or herself personally or be defended through an advocate chosen thereby). By repeating the safeguards of Part 3 of Article 6 of the European Convention, this Constitutional provision, actually, sets out from the idea that the status of “a person charged with a crime” is autonomous.

Meanwhile, the current RA Criminal Procedural Code does not provide any legal mechanisms to give a non-formal definition of “a criminal charge”. The thing is that as per the legislative definitions of a suspect and accused laid down in Articles 62 and 64 of the RA Criminal Procedural Code, a person assumes certain procedural status and, consequently, begins enjoying the right to defend himself by any means not prohibited by law in cases when the criminal prosecution agency implements procedural enforcement measures or brings a charges before a person. In other words, the status of a person – be it a suspect or accused – becomes dependent upon the official charge brought before him or upon the implementation of enforcement measures presupposing obvious restriction of rights for the person.

In this connection, back in his 2016 Annual Report, the Human Rights Defender had made the conclusion that conceptual amendments are envisaged in the draft of the RA Criminal Procedure Code aimed to find legislative regulation<sup>123</sup>.

In line with this, it is necessary to mention the initiative of making legislative amendments that suppose modifications in the Criminal Procedure Code of the Republic of Armenia<sup>124</sup>, which define the mechanisms for guaranteeing a person's rights since the moment of detaining him. Firstly, the rights of “the person taken in custody” have been set out thus regulating the legislative gap in the precedence law concerning the RA Court of Cassation<sup>125</sup>. Besides, the draft of the Criminal Procedure Code has given legal basis to adopt the approach regarding the rights acquired by a person ipso factum. Namely, the legislative amendments set before the protocol of arrest the right of a person taken to custody to be notified about his rights, including his right to

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<sup>122</sup> See, judgement on *Eckle v. Germany*, 15 July, 1982.

<sup>123</sup> In particular, Article 110 of the new draft of the RA Criminal Procedure Code prescribes that at the time of receiving the order on his detention, and if it was not produced within the time limit prescribed by this law, then six hours after the moment of his detention, a detained person shall assume all the reasonable and valid rights and responsibilities prescribed for an accused as of under this code. Prior to assuming the reasonable and valid rights of an accused, a detainee has minimum rights, including the right to remain silent [http://www.parliament.am/draft\\_docs5/K-084lr\\_19102016.pdf](http://www.parliament.am/draft_docs5/K-084lr_19102016.pdf).

<sup>124</sup> It should be noted that a range of considerations regarding the mentioned draft have been presented by the Human Rights Defender, including some from the perspective of completeness of procedural mechanisms securing a person's constitutional right to personal liberty.

<sup>125</sup> See, Court of Cassation, judgment, case on *G. Mikayelyan*, 2009.

keep silent. Under the same provision, independent of the circumstances of handing out the protocol of arrest to the person, four hours after the factual detention the person gains rights and responsibilities related to a suspect.

These legislative amendments are certainly a positive step for a person deprived of liberty since the initial stage of such a restriction from the perspective of setting rights. Meanwhile, the effective legal mechanisms against “factual criminal prosecution” should foresee also some legislative opportunity to neutralize its consequences.

In respect to this, it is interesting that at the August 4, 2017 meeting of the RA Prosecutor Collegium a decision was taken to take all measures envisaged by law while administering procedural activities, to eliminate any delay in granting a person the status of a suspect and accused, provided bases envisaged by the RA Criminal Procedure Code are available, and interrogation of those people as witnesses. While discussing at the session the practical issues related to arrest as a measure of prevention it was recommended also to eliminate situations when, after long procedural activities involving the person actually suspected of having committed the crime as a witness, a motion for his arrest is submitted to the court.

Judging by the information collected by the RA Investigative Committee, during 2017 it has registered four cases of illegitimate actions of “factual criminal prosecution” by the body conducting the proceedings. Disciplinary sanctions “warning” and “reprimand” were applied as a preventive measure for those investigators.

Despite the mentioned measures, the illegitimate practice of “factual criminal prosecution”, as far as any procedural activity involving a person thus prosecuted is interference with that person's rights, should enshrine not only accountability of the official but also certain procedural consequences, i.e. inadmissibility of testimony gained within “factual criminal prosecution”. In this regard, we believe the issue of admissibility of evidence obtained within “factual criminal prosecution” should also become a matter of discussion every time the question of such prosecution is addressed. The draft of the RA Criminal Procedure Code has directly and legally enshrined this approach in Section 3 of Article 97, which says that the evidence is deemed gained with significant violation of law, if it, inter alia, was acquired from a person enjoying the status of the accused, in regard of whom actually criminal prosecution was conducted without duly notifying him about it.

The legislation on criminal procedure currently in force does not comprise any direct provision concerning inadmissibility of evidence gained in result of “factual criminal prosecution”. Instead, according to the abovementioned legislative amendments the materials, which were in particular acquired under significant violation of principles of investigative or other procedural activities, i.e. violating basic rights and freedoms of the participants involved in the criminal procedure or principles of criminal procedure, cannot be implemented as evidence.

Taking into consideration the above said, the Human Rights Defender reaffirms his standpoint regarding the idea that, no matter whether a person has acquired the status of a suspect or accused, he is eligible to exercise all the rights entitled for a person under criminal prosecution

in case when the activities (decisions) of the body conducting the proceedings bear the grounds to presume within reasonable limits that there is suspicion that the person has committed the crime.

Moreover, prevention of the practice of “factual criminal prosecution” should be held not only within the framework of departmental control, but the issue of neutralizing its negative impact within any definite criminal proceedings should become a matter of discussion as well.

### ***3. Illegitimate practice of taking away the suspect's or accused person's passport while applying a written obligation not to leave a place and restricting the person's right to free movement***

The problematic practice of disproportionate restriction of a person's right to free movement through implementation of the border management electronic information system (BMEI) within criminal case proceedings is still being applied.

The problem is that in case “a written obligation not to leave the place” is implemented as a prevention measure regarding the suspect or accused person within a criminal case proceedings a person's right to leave the Republic is being limited at the border checkpoint, which, however, is still in place when the prevention measure itself is lifted already. Unfortunately, the person learns about this only when he actually faces this obstacle, i.e. when he wants to leave the country.

In the cases examined by the Human Rights Defender during 2017 there were occasions when, even though a person had already suffered the punishment judged by the court (irrespective of the type of punishment – fine, imprisonment) the restriction on his right to leave the Republic via the BMEI system applied during the preliminary investigation stage had not been lifted yet.

For example, a person informed the Defender that the fine ascribed by the verdict had been fully paid and the receipt had been produced to the court, while the restriction on his right to leave the country had not been revoked.

On another instance, the lawyer had raised the issue and informed that his client was refused a visa at the Passport and Visa Department of the Police arguing that his exit from the territory of the RA was blocked. The lawyer noted also that the criminal prosecution regarding his defendant had been discarded one year before.

Taking note of the fact that complaints are regular and the problem is of systemic character, the Human Rights Defender carried out a comprehensive study of constitutional bases and international legal principles safeguarding a person's right to free movement, legislative experience of foreign countries, definite and predictable essence of intra-state legislative regulations of the sphere. As a result, the Defender has presented the issue from the perspective of legislation and law enforcement and has exercised his function to apply to the RA Constitutional Court. As a result, by its CCD – 1360 decision the RA Constitutional Court stated circumstances preconditioning legitimacy of the law enforcement practice noting that “provided such regulations and restrictions of a person's right to free movement through such mechanisms exist, the practice should be implemented solely on condition that the duly authorized body is obligated to install the information about the decision to lift the prevention measure in the same

system and obstacles to a person's right to free movement are eradicated” and noting that the legislation lacks any direct requirement for the body conducting the proceedings in this connection.

Moreover, when examining the contents of the complaints submitted to the Human Rights Defender<sup>126</sup>, the Constitutional Court has drawn the conclusion that the lack in the RA Government decision under consideration<sup>127</sup> of direct delegation of the obligation to send the information on lifting the preventive measure to the BMEI system questions the effectiveness of the procedure because no definite competent body is obligated with the duty to do so.

Taking into account the above said, the Human Rights Defender records that law enforcement practice conducted based on the obligation to inform about applying preventive measures should be paralleled with the adverse obligation, i.e. the duty to provide information about lifting the preventive measure.

In connection with the issue under consideration, the RA Prosecutor's Office has notified that, in order to eliminate any further occurrence of similar breaches and to prevent them, back on October 3, 2016 the RA Prosecutor General's Deputies submitted recommendations, each in their field of control, to the subdivisions of the RA Prosecutor's Office:

1. to set control, that in case “a written obligation not to leave a place” regarding a suspect or accused person is removed as a prevention measure the body having made the decision, through the relevant subdivision of the Police adjacent to the Republic of Armenia Government (the General Department of Criminal Intelligence of Police adjacent to the Republic of Armenia Government), notifies in written form the Border Management Electronic Information system about removing the ban on the suspect's or accused person's right to free movement;
2. in case the ban was removed from the defendant during the court trial stage by the court and after the judicial act has lawfully come into force, in order to lift the obstacle to the person's free movement the relevant subdivision of the RA Police is to provide written information about the person to the BMEI system.

Taking note of the fact that the RA Prosecutor's Office has institutionalised such obligation for cases both in the preliminary investigation stage and court trial stage, still, the continuity of complaints with similar contents submitted to the Human Rights Defender witnesses that the law enforcement practice is not harmonized. Provided the restrictions on a person's right to free movement are eliminated, the need arises for normative legitimate regulations at the legislative level in the mechanisms of installing the information in the BMEI system.

Another issue in securing the suspect's or accused person's rights within the scope of implementing “a written obligation not to leave a place” as a prevention measure is the framework of legitimacy of taking away the person's passport, which was also considered within

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<sup>126</sup> The complaints were described to the Constitutional Court as a whole body, without personal details.

<sup>127</sup> See, RA Government decision # 884-N “On establishment of electronic border management electronic information system, its exploitation and setting the list of the system users”, 22 June, 2006.

the motion to the Constitutional Court. Particularly, having compared the RA Criminal Procedure Code and Part 4 of Article 8 of the RA Law “On the Passport of RA Citizen”<sup>128</sup> the Human Rights Defender has come to the conclusion that any action, including taking away the passport of a person bearing any procedural status, of the body conducting criminal proceedings or any proceeding aimed to fulfil tasks of any separate stage shall have legitimate basis within the Criminal Procedure Code.

Moreover, the regulation under the article under consideration of the RA Law “On the Passport of RA Citizen”, according to which the passport of the suspect or accused person is instantly returned after the instituted criminal proceedings have ceased, comes to prove once again that the current mechanism of taking away a person's passport envisaged by law does not comply with the regulations of criminal proceedings regarding a written obligation not to leave a place.

The thing is that under Article 6 of the Criminal Procedure Code termination of the criminal prosecution constitutes the decision of the body conducting criminal proceeding to terminate the charge or to eliminate the charge.

Part 2 of Article 151 of the Code defines that the preventive measure shall be annulled when there is no necessity for its execution. These procedural regulations lay grounds to assume that the selected preventive measure can be annulled also while conducting criminal prosecution. Actually, it is possible that under Part 4 of Article 8 of the RA Law “On the Passport of RA Citizen” a person's passport shall not be returned even when the prevention measure of a written obligation not to leave a place has been annulled.

Having considered the issue of constitutionality of taking away a person's passport when implementing “a written obligation not to leave a place” as a preventive measure regarding a suspect or accused person, the Constitutional Court has voiced a definite position stating that in all cases when the body conducting criminal proceedings, without implementing a preventive measure (a written obligation not to leave a place) takes away the passport of the suspect or accused person, then there is also a lack of any reasonable suspicion concerning display of misbehaviour or hindering fulfilment of the verdict by the suspect or accused person. Consequently, there is no need to restrict the rights and liberties of a suspect or accused person via taking away his passport in order to prevent or expose crimes, or to protect the rights and liberties of others including the injured in the criminal case.

In result, the Constitutional Court stated that **the passport could be taken away from a suspect or accused person exclusively in case a preventive measure is implemented. Moreover, at the moment the preventive measure has been terminated, the person's passport shall be returned instantly.**

Reaffirming the Human Rights Defender's stance the Constitutional Court has noted, that **“the practice of keeping a person's passport by the competent body after the termination of the**

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<sup>128</sup> Part 4 of the Article 8 of the RA Law “On the Passport of the RA Citizen” states: “The inquiry or investigation body takes the passport of the suspect or accused person temporarily. (...) The passport of the suspect or accused person is kept at the officials conducting the proceedings and is returned promptly after the criminal prosecution is stopped.”

**preventive measure “a written obligation not to leave a place”, which is currently in use, violates a person's right to free movement guaranteed by the RA Constitution”.**

Besides, the practice of taking away the passport of a suspect or accused person during the criminal case proceedings is viewed from the perspective of proportionality of interference with a person's right to inviolability of his or her private life.

However, it should be noted that after the Defender's application was examined at the Constitutional Court the legislation regulating issuance of a substituting document when taking away the passport were amended. Paragraph 3 of Point 19 of RA Government Decree # 821-N of 25 December 1998 “On Approval of Regulations of Passport System in the Republic of Armenia and Description of Passport of the Citizen of the Republic of Armenia” was rendered revoked by the RA Government decision # 4-n of 12 January 2017.

*Prior to the amendments, the revoked provision ruled that suspects and accused persons not under detention are provided by the preliminary investigative or investigative bodies with an identification document instead of passport without permission to leave the Republic of Armenia, whose form shall be developed and approved by the Police of the Republic of Armenia adjacent to the Government of the Republic of Armenia.*

The Human Rights Defender discussed the provision on providing a person with a temporary identification document when taking away his passport from the perspective of insufficiency of the legislative mechanisms securing its implementation.

Thus, the Head of the RA Police Order # 2-N of 13 February 2012 approved the forms of references confirming the fact of taking away a Republic of Armenia's citizen's passport and identification card by state and local self-government bodies of the Republic of Armenia, which, although contain information about the fact of taking away the person's passport, grounds for that, time, data about the official taking the passport, cannot be applied as a temporary identification document because it does not comprise sufficient data identifying the person (for example, lack of photograph). Besides, the provisions of Part 1 of Article 8 of the RA Law “On the Passport of RA Citizen” and of Part 1 of Article 7 of the RA Law “On Identification Cards” regarding recognizing a passport or identification card invalid served as the basis for adopting that decision. Consequently, the area regulated by the order is also restricted to these cases, thus the issue under consideration is beyond its scope.

The regulations set by the RA Government Decree # 1660-N of 27 December 2012 and by the RA Government Decree # 821 of 25 December 1998 on “laying down the order and form of issuing a temporary identification document at a citizen's wish when passport is lost or is to be exchanged” concern solely the cases when the citizen applies to get such a document when his passport is lost or is to be exchanged.

However, the amendments resulted, actually, in a situation when the provision regarding issuing an identification document instead of the passport to the suspect or accused person was simply removed without laying down any replacing mechanisms. Even though the provision under consideration has been removed, the constitutional Court stated in the closing part that

*Paragraph 3 of Point 19 of the Decision (in edition of the RA Government Decree # 823-N of 31 July 2008) “complies with the RA Constitution within such constitutional-legitimate content according to which preliminary investigative and investigative bodies should provide an identification document to those not detained suspects and accused persons for whom a written obligation not to leave a place is implemented as a prevention measure”.*

In fact, the nonexistence of legislative regulations for issuing an identification document to a suspect or accused person in cases under consideration, as long as there are no bases for constitutional perception and interpretation, might give rise to problems from the perspective of fulfilling the legitimate positions stated by the Constitutional Court. Hence, the problem should be resolved by overcoming the legislative gap – through setting relevant procedures.

Consequently, taking into account the significance of providing a person with the right to free movement within a criminal proceeding, anxious about the continuity of the problems demonstrated, the Human Rights Defender states, that *it is crucial*:

1. to secure receipt by the BMEI system of information about termination of restrictions the moment the prevention measure “a written obligation not to leave a place” was lifted;
2. to set normative legitimate regulations at legislative level for mechanisms of installing information in the BMEI system about termination of restrictions on a person's right to free movement and to illicitly lay down definite duties of the competent body;
3. to eliminate the practice of taking away and keeping the passport of a suspect or accused person during a criminal proceeding;
4. to lay down a legislative requirement to issue an identification document when taking away a suspect's or accused person's passport while applying the written obligation not to leave a place as a preventive measure and procedures safeguarding it.

***4. The non-legitimate practice of taking away passports within the scope of a criminal proceeding from a witness and injured, as well as persons not involved in the proceeding and restricting them from leaving the country***

The practice of taking away a person's passport and interfering with the right to free movement via the BMEI system has displayed itself as non-legitimate also from the perspective that such limitations were implemented in regard to people who were witnesses or injured involved in a criminal proceeding, without any procedural status, while under the RA Criminal Procedure Code there were no legitimate bases for such actions.

During 2017, the flow of complaints filed to the Human Rights Defender concerning this issue was continuous. Thus, for instance, a person recognized the injured in a criminal case in his complaint filed to the Defender informed that he wanted to leave for another country but at Zvartnots airport he was informed that his right to leave the RA was restricted. According to the RA Police explanation, this incident was a misunderstanding and the applied ban had been

lifted. In another case, the lawyer informed that his clients had been invited and interrogated as witnesses. However, a ban to cross the RA state border was implemented towards them.

In this connection, such non-legitimate displays of the law enforcement practice have been registered also by the RA Prosecutor General's Office. According to the data provided, among the pre-trial criminal proceedings under the control of the Prosecutor's Office or examination of complaints received, 3 cases were registered during 2017, where the right to leave the Republic was restricted through the BMEI system for persons acting as witnesses or injured or not involved in the proceeding and measures were taken.

Although the cases got positive resolution in result of the Defender's interference and the restrictions were terminated, there is certain worry that the issue is systemic and remains not settled yet.

In this respect, the Human Rights Defender reaffirms his conclusion regarding the idea that the vicious practice of restricting through implementation of the BMEI system the right of a person, who acts as a witness or injured, to free movement without any lawful basis is continuous and inadmissible.

The practice of applying such restrictions towards a person acting as a witness or injured in a criminal case, even if this lawfully aims to provide fulfilment of responsibilities of a participant in the proceedings, can be legal and grounded only if the procedure has bases envisaged by the criminal procedure legislation.

In connection with the issue, the RA Constitutional Court in its decision CCD-1360 of April 4, 2017 stated that no legal act in the Republic of Armenia envisages a requirement to take away passport from or to input information about the person in the BMEI system on a witness or injured. The Constitutional Court also noted that “the information provided by the Human Rights Defender regarding that kind of practice in the Republic of Armenia concerns actions of competent bodies not envisaged by law, which is to be assessed relevantly in the form of punishment provided by law”. The Constitutional Court estimates that such a law enforcement practice is impossible in the context of the constitutional principle of a legal state and guarantees for a person's right to free movement.

*Based on the abovementioned, the Human Rights Defender notes that:*

- 1. the right to free movement of a person acting as a witness or injured or bearing no procedural status within a criminal proceeding can be restricted in no case: there are no legislative bases for taking away the person's passport or ban him from leaving the country through the BMEI system;*
- 2. any such violation of a person's right to free movement shall instigate the responsibility of the relevant responsible official as stipulated by law.*

### ***5. The practice of not considering the statements of physical persons about crimes and discretion of the body receiving the report***

Part 2 of Article 3 of the amended Constitution of 2015 sets that the respect for and protection of the basic rights and freedoms of the human being and the citizen shall be the duty of the public authorities.

The duty of the state to protect human rights and freedoms from crimes supposes institution of procedure stipulated by the Criminal Procedure Code for each individual criminal act.

In this context, it is essential to reflect upon the problems regarding practical safeguard of procedures stipulated by law for consideration of statements about crimes. Namely, after having examined law enforcement practice within the complaints filed to the Human Rights Defender (which continued also in 2017) the following problems regarding consideration of reports about crimes can be highlighted:

- denial to accept reports pertaining crimes and to set them to motion;

The thing is that the Human Rights Defender's Staff has received oral complaints that law enforcement bodies refuse to accept a statement pertaining a crime and record it. In such cases, justifications of similar content are produced saying that the supposed crime cannot be investigated by that body or, for example, that it is beyond the jurisdiction of this or that territorial subdivision of that body.

In one of the complaints, for instance, the lawyer informed that he filed a statement about a crime to the RA Police but received no decision stipulated by law. The lawyer also added that he filed a written application to the RA Police to get a written explanation of the reasons why he had not received any copy of the decision made, however, he received no answer to the mentioned application. In reference to the issue, the RA Police confirmed the fact of infringement of duties by the police officers and the latter suffered disciplinary sanctions. Besides, the statement filed by the lawyer was examined in compliance with the RA Criminal Prosecution Code.

- discussion of reports pertaining a crime within the “examination” procedure, its finalization with a written conclusion and responding the person with a written statement without making any of the decisions stipulated under the Criminal Prosecution Code;

In 2017 several complaints and notifications concerning examination of reports pertaining a crime were received stating that not in all cases of examining the reports by Police officials a decision stipulated by Article 181 of the RA Criminal Prosecution Code was made, which brought to violation of citizens' rights and legitimate interests.

In one case the investigation body even replied the person in writing that the content of the latter's report was the same as one examined prior to that. Meanwhile, in result of the inspection by the prosecutor's office held at the motion of the Defender the opposite was revealed.

The problem with examination of reports about crimes has been registered also by competent bodies.

Hence, according to the data provided by the RA Prosecutor General's Office in line with the steps aimed to resolve the issue, 15 cases were registered when reports pertaining a crime were not examined and decisions were not made in compliance with the regulations stipulated by the Criminal Procedure Code. In 11 cases recorded in result of examination of complaints filed to the Prosecutor's Office, recommendation was made to prepare materials and make one of the decisions stipulated by Articles 180-181 of the RA Criminal Procedure Code.

According to the information provided by the RA Police, 11 cases of investigation were conducted regarding denial by Police officers to accept reports pertaining a crime and to set them to motion in compliance with law, results of which left no consequences, and 14 line-of-duty investigations were conducted which resulted in 19 police officers suffering disciplinary sanctions (9 people got reprimands, 7 – severe reprimand, and 3 people's ranks were lowered by one degree). The explanation said that in all cases of line-of-duty investigations the Police had accepted the reports to restore individuals' rights. Meanwhile, examination of the provided information shows that 11 line-of-duty investigations out of 14 were initiated based on people's complaints and at the motion of the Prosecutor's Office.

Despite implementing in individual cases of restoration of rights of a person filing in a statement and accountability of infringing officials, the complaints submitted to the Defender prove that unlawful cases involving denial to accept a report pertaining a crime or to view it as a notification, finalizing the examination procedure with no conclusion, not replying the person filing in the report or not replying in writing, still persist.

In regard to legislative regulations of setting a report pertaining a crime to motion, adoption of the RA Government Decree # 1495-N of 23 November 2017 “On stipulating the order of accepting, recording and registering applications and reports pertaining crimes, administrative offences, other incidents and setting them in motion by the Police of the Republic of Armenia adjacent to the Government of the Republic of Armenia” is worth being emphasised<sup>129</sup>. Namely, according to Point 5 of the Decree, reports, irrespective of the place and time of the crime being committed or of the incident occurring, as well as of integrity of the information they contain, are to be accepted at territorial subdivisions of the Police and to be recorded at Police bodies with a duty desk.

Point 62 of the Decree defines that examination of reports pertaining a crime is held as is provided by Article 180 of the Criminal Procedure Code of the Republic of Armenia and result in making one of the decisions provided in Article 181 of the same Code.

The government Decree supposes also to provide citizens with coupon-notifications comprising clarification of their rights to promote people's awareness.

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<sup>129</sup> The decision came into force on January 1, 2018.

Adoption of the abovementioned Government Decree is a rather positive step in the sense that it defined the legal bases for non-procedural issues of accepting, recording, registering and examining offences<sup>130</sup>.

At the same time, it should be noted that the requirement to conduct investigation keeping to the requirements of the Criminal Procedure Code stipulated by the Government Decree refers to the report pertaining a crime.

Meanwhile, the main issue of concern raised in the complaints filed to the Human Rights Defender is that the statements submitted by individuals were not viewed as reports pertaining a crime.

In connection with the above said, according to Article 3 of the Government Decree on defining the terms, reports pertaining a crime are actually the reasons to institute a criminal case provided by Articles 177-179 of the Criminal Procedure Code of the Republic of Armenia.

Thus, Article 176 of the RA Criminal Procedure Code defines that “The reasons to initiate a criminal prosecution are:

- 1) statements about crimes sent to the investigation body, investigator, prosecutor by physical persons and legal entities;
- 2) mass media reports about crimes;
- 3) the discovery of information about crime, material traces of crime and consequences of crime by the investigation body, the investigator, the prosecutor, the court and the judge in their line of duty.”

Articles 177-179 mostly regulate technical requirements (requisites) of the abovementioned reasons for initiating a criminal prosecution.

This means that there are no legislative requirements regarding the content of a report pertaining a crime.

Those content requirements are defined in precedent decisions of the RA Court of Cassation. In particular:

- only a report pertaining a crime can serve as a reason to initiate a criminal prosecution;
- the reason is a condition in which case the law authorizes competent bodies and officials to enter into legal relations, take actions whose integrity comprises the activities of the initial stage of Criminal proceedings;
- the requirement to comprise information about a crime in no case means that a person should bring in his report such factual data that would suffice to render features of a crime to be seemingly confirmed;

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<sup>130</sup> The thing is that prior to this decision being made by the Government, the requirements set by the joint Order # 12/354 of the RA Prosecutor General and Minister of Internal Affairs served as legal basis. However, the government registration of the Order as a normative act was not ensured under the RA Law on Legal Acts.

- the information incorporated into the report may be sufficient for the legislative regulations (Articles 180-181 of the RA Criminal Procedure Code) to be implemented aimed to examine, to check it as long as there is reasonable probability that the check may reveal, but not will definitely reveal sufficient reason for the initiation of prosecution;
- any report consistent with this criterion generates the obligation of the body conducting proceedings to make one of the decisions as required in Article 181 of the RA Criminal Procedure Code.<sup>131</sup>

Taking into account the above said, the Human Rights Defender states that **examination of reports and initiation of proceedings of resolutions are conditioned not by the results of assessment of reliability and credibility of the submitted information about a crime, by checking their relevance, i.e. by the conclusion that the filed report comprises evidence that can in any way relate to an action prohibited by the criminal code.**

In this connection, we believe the discretion of the body accepting the report in the sense of initiating proceedings based on it should be restricted to solely checking the possible connection with a pertained crime without making any assessment regarding its truthfulness and argumentation.

It is remarkable that the draft of the new Criminal Procedure Code has also adopted the approach to regulate by law the information comprised in reports pertaining a crime. According to part 2 of Article 173 of the draft, the information is rendered about a delinquent criminal offensive if it confirms an action or inaction that can reasonably be given a preliminary legitimate assessment to be consistent with any of the criminal actions envisaged by the Criminal Procedure Code of the Republic of Armenia.

We hold that legal evaluations of the RA Court of Cassation and the requirements of the criminal procedure law currently in action provide sufficient definiteness in the sense of checking reports pertaining a crime and implementing criminal procedures. Still, stipulation of the notion “a report pertaining a crime” at legislative level reflecting the elements and features defined by the law of precedence of the Court of Cassation can contribute to eliminating the displayed problems from law-enforcement practice.

*Taking note of the abovementioned, it is necessary:*

1. *to define the notion of “a report pertaining a crime” in the RA Criminal Procedure Code clarifying at the legislative level the requirements for the content of the report in the sense of regarding it a reason for instituting a criminal proceeding;*
2. *while reviewing report of citizens pertaining a crime practically safeguard the requirements of the RA Criminal Procedure Code, taking into account the legal comments of the Court of Cassation. The provisions of the Criminal Procedure Code*

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<sup>131</sup> See the analysis the criminal regulations administering the acceptance and discussion of reports pertaining a crime, as well as of the precedence law of the RA Court of Cassation also in the Annual Report of 2016, pp. 137-140.

*must unconditionally be applied since the very first stage of accepting reports pertaining a crime.*

***6. Illegitimacy of considering notarizing an accused person's consent as a precondition to exemption from criminal liability as a result of expiry of the statute of limitation***

After examined complaints filed to the Human Rights Defender back in 2016, the Defender stated some illegitimate practice when the body conducting the proceedings demanded from the accused a notarized consent in order to terminate criminal case proceedings. The demand was put forward for the reason that the accused has to express that standpoint personally, which can be confirmed solely through notarizing unless the accused attends the body conducting proceedings in person.

Related to the issue in 2017 the Human Rights Defender made a decision “On violations of human rights and freedoms”, providing the following arguments and conclusions:

- considering notarizing an accused person's consent as a precondition to exemption from criminal liability as a result of expiry of the statute of limitation the terms within the framework of a criminal case proceedings and defining the obligation of the body conducting the proceedings the standpoint of an accused are meant to safeguard the accused person's right to a fair trial and maintenance of the presumption of innocence;
- the same logic of protecting human rights is set forth also in the position expressed by the Court of Cassation regarding the criminal litigation provision “if the accused person objects to that”. Specifically, when terminating a criminal case proceeding, the body conducting the proceedings is supposed to have the obligation to make sure that the consent was produced by the very person in regards to whom a decision is going to be made to terminate the proceedings, and that consent was produced voluntarily, grasping all legal consequences. Meanwhile, the legislative requirement does not precondition any explicit means to secure its lawfulness;
- in this sense it is admissible that coming in person to the body conducting the proceedings and formulating the consent in writing can be perceived as due record of expression of his will. In the same way, for example, the consent provided by a person under investigation, in the sense of verifying identity, can be notarized;
- nevertheless, the legitimacy of clarifying a person's standpoint and making a decision in accordance therewith to terminate the criminal proceeding can be provided for also through other circumstances deriving from the case, when, say, a person conducts his defence indirectly – through being represented by a lawyer and through expressing his standpoint that way;
- in such cases the actions of the lawyer, as the representative of his defendant's rights and legitimate interests and, thus, as a subject of litigation contained by the client's

standpoint, should be viewed as indirect protection of his rights and legal interests by a person, including the issue of producing consent on the matter under consideration;

- in practice, not only is it possible that a person's notarized consent being mandatory cannot act as a safeguard for a person's rights in matters of making a decision to exempt from criminal liability as a result of expiry of the statute of limitation, it may also grow into a requirement giving rise to additional obstacles impeding termination of criminal prosecution of the person provided there are reasons stipulated by law.

As a positive development it should be noted that, in answer to the decision “On violations of human rights and freedoms” of the Defender, the RA Prosecutor's Office informed that a decision had been made regarding exemption from criminal prosecution of a person on the basis of (expired prescription) Point 6 of the Part 1 of the Article 35 of the RA Criminal Procedure Code.

According to the information provided by the RA Prosecutor General's Office, two complaints were filed during 2017 in connection with not viewing by the body conducting proceedings an accused person's consent, certified by the accused, presented by the lawyer involved in the criminal case as a reason for terminating the criminal proceeding and lifting criminal prosecution for the accused in consistency with the criminal procedure law.

The RA Prosecutor's Office also stated its position regarding the issue that an accused person's consent, certified by the accused, presented by the defence attorney impleaded in the criminal case is viewed as a reason for terminating the criminal proceeding and lifting criminal prosecution for the accused in consistency with the Criminal Procedure Code, because it is the lawyer who bears the unfavorable consequences stipulated by law for producing a fraud document.

Statement of such an official position by the RA Prosecutor's Office, as the body exercising its constitutional function of oversight over the lawfulness of pre-trial criminal proceedings is a progressive step in eliminating the problem in practice.

Despite that, the Human Rights Defender was filed complaints also in 2017. For example, in one of the cases an accused person under investigation residing abroad submitted a notarized consent to lift the investigation against him and to terminate the criminal proceeding as a result of expiry of the statute of limitation.

The European Court of Human Rights has also referred to the imminence of the institute of not suffering criminal prosecution as a result of expiry of the statute of limitation noting, in particular, that laches can be defined as the right of a person not to be prosecuted or convicted some period of time after committing a crime. Implementation of expiry of the statute of limitation as an institute characteristic of the legal systems of member states pursues certain goals: it has to secure legitimate certainty and finalism and prevent potential violations of

human rights in cases when judges have to make decisions based on evidence unreliable because of protracted time.<sup>132</sup>

Meanwhile, consideration of a petition by the body conducting the proceeding was postponed until essential circumstances were clarified based on an inquiry on providing legal assistance to foreign law-enforcement bodies (the circumstances of the power of attorney being duly notarized and issues concerning a person's having a criminal record). As a result, the criminal prosecution was not terminated for more than a year despite the grounds by law.

In fact, although the body conducting the proceeding had not demanded a notarized consent of the accused person, that document was produced at the initiative of the defendant party, which served as reason for conducting actions to check its credibility.

In other words, the body conducting proceeding no longer puts the burden of obligations not envisaged by law on a person but initiates measures to check credibility of the consent submitted, thus protracting the time of criminal prosecution. Another problem then arises that the final end of the actions applied by the body conducting criminal proceedings is to confirm credibility of grounds of exemption from criminal liability as a result of expiry of the statute of limitation which, irrespective of the results of such a check (in the sense of formalities of the document) are already available since the moment the written consent was submitted to the body conducting the proceedings.

Although the “checking measures” as such may not lead to any violation of a person's rights, their durability directly touches upon the interests of the person under criminal investigation, may disproportionately restrict his rights and end up in their violation.

*Taking into account the abovementioned, it is necessary to:*

- 1. give a solution to the issue by excluding it from the law-enforcement practice;*
- 2. terminate criminal prosecution for a person as a result of expiry of the statute of limitation in all cases when a person's written consent is in place. Actions of the body conducting the proceedings to check its credibility should be fulfilled within such scope and period of time that would be justified from the perspective of certifying legal and factual reasons stipulated by law.*

### ***7. Illegitimacy of preliminary detention resulting from a failure to serve the subpoena duly within a criminal case proceedings***

Persons impleaded in litigation according to the criminal procedure law are obliged to appear before the body conducting the proceedings when summoned. Nevertheless, that cannot be secured even despite the person being conscientious, if the person is not duly notified.

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<sup>132</sup> See, Coeme and others v. Belgium case decision of October 18, 2000, complaints ## 32492/96, 32547/96, etc., Point 146. Stubbings and Others v. the United Kingdom case decision of October 20, 1996, complaint # 22083/93, Point 51.

In result of examining complaints filed to the Human Rights Defender, the following problems have been identified:

- preliminary detention of a person for not appearing before the investigation without any good reason, in case when the subpoena hadn't been handed to him in the designated time period;
- inconsistency of the form and contents of the subpoena with the requirements of the law.

Namely, in 2017 also the Human Rights Defender was filed several oral and written complaints stating that without being served a subpoena a person had been preliminarily detained by the body conducting the proceedings as a party in criminal proceedings failed to appear for investigation without any substantiated reason.

The complaints also concerned persons being summoned to interrogation without due notification about the case, about their capacity, as well as about their rights and responsibilities conditioned by their capacity. Persons whose complaints were oral wanted to know if that way of summoning to an interrogation was legitimate and if they were to appear before the body conducting the proceedings in such cases. In some cases the subpoena handed to a person did not comprise in what capacity they were summoned to an interrogation.

According to Article 205 of the RA Criminal Procedure Code defining the order of summoning to an interrogation:

“1. the witness, the injured person, the suspect, the accused are summoned to the investigator by a notice. The notice indicates who is summoned, to whom, in what procedural capacity, where and when (the day and hour of appearance) the summoned person shall come, as well as consequences of not coming without any good reason.

(...)

3. The summoned person must appear before the investigator in the designated time period or must inform in advance about the reasons for not coming. In case of not coming without substantiated reasons, the summoned person can be detained, according to Article 153 of this Code, while other coercive measures as stipulated by the present law can be implemented against a suspect or accused person (...)”

Part 1 of Article 153 sets that in case of failure to appear for investigation the suspect, the accused, the defendant, the convict, the witness and the injured shall be forcibly brought to the body conducting the proceedings in order to fulfil certain procedural action stipulated by law, which can be accompanied with temporary restriction of a person's rights and liberties.

Analysis of criminal procedural regulations regarding due notification of parties to a criminal litigation case and their preliminary detention in connection with this, makes it possible to come to the conclusion that:

- the requirement to summon somebody with a subpoena to the body conducting proceedings, as well as the requirements concerning the contents of the subpoena, the circle of persons to whom a subpoena may be handed are defined only within the summoning to interrogation part;
- implementation of the term “subpoena” and the legislative requirements for its contents envisage it to be in written form only, while the practice of oral notification of a person prejudices the requirements of criminal procedural law;
- no procedural regulation exists for handing in the designated time period a subpoena summoning a person to the body conducting the proceedings, for checking if the subpoena was received and, consequently, finding out the reasons for not coming;
- the requirement to summon somebody with a subpoena to the body conducting proceedings, as well as the requirements concerning the contents of the subpoena, the circle of persons to whom a subpoena may be handed are defined only within the summoning to interrogation part;
- meanwhile, detention, as a coercive procedural measure accompanied with restrictions of a persons rights and liberties, can aim to secure the detainee's involvement in other procedural actions as well;
- the requirement for a substantiated order of the inquiry body supposes that such a decision can be made solely in case the person was duly notified and fails to inform about substantiated reasons impeding his appearance in the designated time period;
- the requirement for adequacy of summoning a person to the body of inquiry should be predetermined not only by the fact of handing the subpoena over to the person, but also by keeping to the requirements regarding its form and contents, as well as by handing the notice within a reasonable time period so that the person has an opportunity to inform about his capacity or incapacity to appear.

As a result, the Human Rights Defender has stated that, in order to secure legitimacy of appropriate notification to a person and detention of the latter, the relations within the framework of a criminal case proceedings must be explicitly defined in the RA Criminal Procedure Code.<sup>133</sup>

In connection with this, it should be noted that, to define legislative regulations of the abovementioned issue, draft RA law “On amendments and supplements to the Criminal Procedure Code of the Republic of Armenia” was initiated in 2017. The resolutions incorporated in the Draft intend to regulate relations regarding notification of persons impleaded in litigation within criminal proceedings; in particular, it specifies the forms of notification about a procedural action or a court session, the contents of the subpoena and the order of handing it over. And the resolutions proposed in the Draft are actually admissible. Meanwhile, the Human

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<sup>133</sup> See, Human Rights Defender's Annual Report of 2016, pp. 146-149.

Rights Defender has drawn some key considerations regarding the Draft under discussion, which are as follows:

- from the perspective that the subpoena needs to be specific for the person to appear before the inquiry body, we believe, it should also comprise certain information about the instituted criminal proceedings;
- legislative demand to send the list of procedural rights and responsibilities of the person notified who is to appear in a specific capacity in a definite criminal proceeding for the first time should be defined;
- in cases provided for under the law, the fact of notifying a person later than the designated time period cannot exclude exercise of his procedural rights by the person, including the scope of the procedural activities, as well as exercise of his right to inform the inquiry body about good reasons for not appearing;
- objective criteria of appropriateness of the subpoena should be specified, i.e. those actions (facts) with conduct (availability) of which a subpoena is rendered appropriate.

*Taking into account the abovementioned, the Human Rights Defender states that:*

- 1. the Criminal Procedure Code should specify the procedures of notifying a person on appearing before the inquiry body, in line with regulations of the time and forms of notification, the contents of the subpoena and a person's rights and guarantees in this regard;*
- 2. cases when a person is detained without being duly summoned to appear before the inquiry body should be practically eliminated;*
- 3. special courses aimed to resolve the noted problems for representatives of relevant inquiry bodies should be organized.*

#### ***8. Safeguards and practical protection of the rights of persons deprived of liberty***

Systemic problems related to safeguarding the right of personal freedom were reflected upon in the Annual Report on the Activity of Human Rights Defender in 2016, as well as within the special public report on the July 2016 events.<sup>134</sup>

Namely, taking into account international legal approaches to and constitutional-legal safeguards for the protection of personal freedom the following legal criteria have been put forward by the Human Rights Defender:

- when defining the fact of interference with a person's right to liberty – “depriving of liberty” – the specific factors are the type of deprivation of liberty, the objective and

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<sup>134</sup> See, Human Rights Defender's Annual Report of 2016, pp. 149-154, also Public Report on July events of 2016, pp. 41-59.

subjective elements of deprivation of liberty. The objective element involves the place and time of deprivation of liberty, while a person's consent is the subjective element;<sup>135</sup>

- deprivation of liberty occurs when a law-enforcement body, with or without exercise of force, forbids a person to leave a place or demands to go to some other place, or the person has to obey the police officer's will. In another case of “deprivation of liberty” is when a person was stopped in the street and banned to leave<sup>136</sup>, or, for instance, banned to leave the police station even though the person had gone there wilfully, without any coercion of force by the law-enforcement bodies<sup>137</sup>;
- it is not essential to realise the fact of being deprived of liberty. What matters is that the person is no longer able to leave the place of his location<sup>138</sup>, which could be not only a space utilized for some specific purposes (for instance, a cell), but also any space, including a means of transportation<sup>139</sup>;
- a person gains the capacity “deprived of liberty” even when voluntarily appears at the police station and has no opportunity to leave it;
- any interference with a person's right to liberty, independent of the grounds and procedures stipulated by law for its implementation, should suppose provision of legal guarantees proportional to the nature and degree of restriction;
- at the core of their activities competent state bodies should have a key approach according to which by the mere fact of being deprived of liberty, regardless of procedural features (criminal, administrative), availability or lack of formal procedures, exercise of operative measures, a person must be procured with minimum rights stipulated by the Constitution and norms of international law;
- in other words, deprivation a person of liberty, whether exercised, say, within the proceedings of an administrative offence or criminal proceedings, or whether he has been arrested or detained, should be secured with providing a person with certain minimum rights and defining unified guarantees.

The requirement for provision of minimum rights targets not only at safeguarding the right to personal liberty, but also the absolute right not to be subjected to torture. Taking this requirement into account, the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has defined three rights of persons arrested by the police among its criteria: the right for a lawyer, the right

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<sup>135</sup> See, Guide on Article 5 of the European Convention, pp. 5-7 [http://www.echr.coe.int/Documents/Guide\\_Art\\_5\\_ENG.pdf](http://www.echr.coe.int/Documents/Guide_Art_5_ENG.pdf).

<sup>136</sup> See, *Gillan & Quinton v. the United Kingdom* case decision of 12 October, 2010, complaint # 4158/05, Point 57.

<sup>137</sup> See, Guide on Article 5 of the European Convention, pp. 17-18. [http://www.echr.coe.int/LibraryDocs/DG2/HRHAND/DG2-EN-HRHAND-05\(2004\).pdf](http://www.echr.coe.int/LibraryDocs/DG2/HRHAND/DG2-EN-HRHAND-05(2004).pdf).

*Shimovolos v. Russia* case decision of 28 November, 2011, complaint # 30194/09, Point 49.

<sup>138</sup> See, *De Wilde, Ooms and Versyp v. Belgium* case decision of 18 June, 1971, complaints ## 2832/66, 2835/66, 2899/66, Point 65.

<sup>139</sup> See, Guide on Article 5 of the European Convention, pp. 17-18. [http://www.echr.coe.int/LibraryDocs/DG2/HRHAND/DG2-EN-HRHAND-05\(2004\).pdf](http://www.echr.coe.int/LibraryDocs/DG2/HRHAND/DG2-EN-HRHAND-05(2004).pdf).

of access to a doctor and the right to inform a family or any other third person to his discretion;

- a person deprived of personal liberty within any procedure defined by national legislation, under international requirements, shall enjoy the following minimum rights:
  1. to be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him;
  2. to remain silent;
  3. to inform a person of his selection about being deprived of liberty;
  4. invite a lawyer;
  5. to have medical examination, including by the doctor of his choice;
  6. to challenge the legitimacy of depriving him of liberty, whereon the court shall order his release if the deprivation of liberty is non-legitimate.

However, there are no explicit mechanisms and procedures for deprivation of liberty within proceedings of an administrative offence enshrined in law. And the list of a person's rights and rules of notification about them in cases of restricting the right to liberty by the police have been laid down in the sub-legal act adopted under the RA Government decree # 818-N of 14 June 2007 "On the list of rights and order of notification about them arising from restriction of human rights and liberties". Yet, even the requirements of the abovementioned Decree are not followed in practice.

Taking into account the systemic character of the issue and deficiency of legislative regulations, the Human Rights Defender has raised the question of insufficient regulations for depriving a person within proceedings on an administrative offence and constitutionality of law enforcement practice. In result, explicit legal evaluation of the above noted criteria for protecting a person's liberty by the decision of the Constitutional Court from 24 January, 2017, specifically, the Constitutional Court stated that national legal regulations comply with the RA Constitution in its contents, according to which since the moment of factually depriving a person of liberty applying the actions of "summoning the infringer", "administrative arrest", "preliminary detention" the person being deprived of liberty shall be provided with the rights laid down by Article 27 and Part 1 of Article 64 of the RA Constitution as directly applying rights, and the list of rights to be notified to everyone deprived of liberty must comprise at least the rights set forth by Article 27 (Personal liberty) and Part 1 of Article 64 (the right to receive legal aid).

Moreover, the Constitutional Court, reflecting upon the deficiency of legislative regulations for procedures of depriving a person of liberty within administrative proceedings, emphasized that "illegitimate law-enforcement practice has formed in the sphere of securing a person's liberty, thus even making it possible for the police to continuously implement a provision that was rendered anti-constitutional and void by the Constitutional Court, which, in its turn, is a serious

threat to the constitutional lawfulness in the country” and concluded that adoption of a new RA Code on Administrative Offenses is urgent<sup>140</sup>.

Problems recorded during 2017 come to prove the continuity of this practice<sup>141</sup>.

Namely, the complaints filed to the Defender referred to the preliminary detention of persons to police stations without any clarification of grounds for that. Some cases were registered when citizens had come to a police station voluntarily or at the “invitation” of a police officer were kept there for hours unable to leave.

Besides, examination of complaints allows us to note that the practice of “inviting” a person to a police station and not securing his rights defined by the factual deprivation of liberty is in some cases justified by the law-enforcement bodies on the grounds that no decision on the preliminary detention of the person had been made as he was invited to the station within an operative action.

In this regards, the Human Rights Defender reaffirms his position that **such cases should also be rendered deprivation of liberty and those persons should exercise due rights and guarantees protecting them. This should become the principle of action for law-enforcement bodies.**

As to **the excuses of “implementing operative actions”, they cannot be accepted and that practice must simply be eliminated.**

In regards to the procedure of “inviting” to the police the RA Police have provided information that a Draft Law “On RA Police” has been elaborated, which envisages the voluntary character of “invitation” and also the order of delivering it.

In respect to this, it is worth noting that legally setting forth the procedure of “inviting” as a form of voluntary visit to the police can in no way imply any of the cases of factual deprivation of liberty.

Hence, **the results of the immediate observations and legal analysis made by the Human Rights Defender while conducting his activities prove the urgent imperative for explicit regulations for the procedures of administrative arrest, preliminary detention and summoning the infringer, which presume deprivation of liberty.**

Therefore, conditioned by the priority of safeguarding rights of persons deprived of liberty, the Human Rights Defender notes that *it is necessary*:

1. *to secure law enforcement complying with the legal standpoints of the RA Constitutional Court. At the same time, explicit and definite procedures for depriving a person of liberty within proceedings on an administrative offense needs setting out;*

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<sup>140</sup> See, RA Constitutional Court decision ՄԴՌ – 1339.

<http://concourt.am/armenian/decisions/common/2017/pdf/sdv-1339.pdf>

<sup>141</sup> Legislative amendments aimed to clarify procedures of detention with criminal proceedings (safeguarding right since the moment of detention, capacity of a detained person , etc.) are discussed in the «Legislative and practical defence safeguards against “factual criminal prosecution” part of this report.

2. *to make appropriate amendments in the acts regulating the activities of the Police, as well as to conduct trainings for police officers in a way that each police officer gets to know minimum rights of citizens and his obligations in accordance therewith.*

### ***9. Safeguards for accessibility of a lawyer for a person deprived of liberty and guarantees for professional activities of lawyers***

Activities of a lawyer are of key importance in the judicial system and in securing the rule of law. Free access of a lawyer to detention facilities and his unimpeded work constitute a serious guarantee from the perspective of preventing ungrounded criminal proceedings against a person and to protect a person deprived of liberty from potential coercion and violence.

As the European Court of Human Rights has noted, the freedom of lawyers to conduct their professional activities without any futile impediments is an essential element of a democratic society and a crucial precondition to fulfil the requirement of the European Convention on Human Rights<sup>142</sup>.

The issue of the right to accessibility of a lawyer has been dealt with in the practice of the RA Court of Cassation as well. Namely, with its judgment on the case of G. Mikayelyan of 19 December 2009, the Court of Cassation stated the definite scope of rights of a person in the initial stage of arrest, which, inter alia, involves his right to invite a lawyer.

However, the observations conducted by the Human Rights Defender and continuous complaints prove that in the law enforcement practice cases persist when a lawyer was deterred from entering a detention facility to visit his client.

Thus, during his activities in 2017 the Human Rights Defender recorded cases when a lawyer was banned from entering a detention facility, including a certain Police station. Representatives of the law-enforcement body produced various excuses concerning banning lawyers from entering police stations intending to assume the protection of their clients' rights. In particular, in a number of cases the delay in permitting entry was reason by the Head of the Police Station being out.

Some problems have been registered regarding the inquiry body and the police station being housed in the same administrative building. The thing is that in some cases the denial of entry was reasoned with the absence of permission from the inquiry body, while the inquiry body explained that it had not been informed about the lawyer's visit.

Such obstacles to a lawyer's professional activities are worrisome and unacceptable.

In another case of 2017 the lawyer stated that, after visiting the police station, his juvenile client suspected of a crime was not explained his rights; procedural actions were conducted without the participation of a lawyer or legal representative; evidence was extracted which was later applied against him.

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<sup>142</sup> See, *Elci and others v. Turkey* case decision of 24 April 2004, complaints # 23145/93 and # 25091/94, Point 669.

Taking into account that banning a lawyer may lead to negative effects, including the client further remaining in custody or criminal proceedings, timely prevention of such illegitimate actions is crucial.

The Rapid Response Department of the Staff of the Human Rights Defender, taking note of the said, promptly interferes in the cases submitted to the Defender.

Despite that, when in some cases lawyers received access and appeared before the body conducting the proceedings in result of interference of representatives of the Human Rights Defender, they found out that the actions with lawyers' clients had already been carried out.

Still in his Annual Report of 2016, the Human Rights Defender, reflecting upon this problem, stated his position that it is necessary that **to criminalize behavior hampering exercise by lawyers of their functions in order to secure unimpeded activities of lawyers.**

The thing is that Part 1 of Article 332<sup>3</sup> of the RA Criminal Code in force deems hindering exercise of a lawyer's functions a crime.

This regulation of the cited norm defines a narrow circle of subjects from the perspective of criminal legal impact. However, the circle of subjects hindering a lawyer's activities can, in practice, be much wider. The current legislative regulation does not involve the situations when, for example, a state official does not directly hinder a lawyer's work, but people who are not officials and act provoked or motivated by the official.

Studies of related regulations of the RA Criminal Code have displayed that the sanction stipulated by Article 332<sup>3</sup> is also ambiguous. Namely, for lawyers to fulfil their duties appropriately there is a need to provide protection of a higher level within the scope of the mentioned Article.

Taking into account the need for legislative regulation of the current issues, in 2017 the Human Rights Defender's Staff prepared and circulated a draft Law "On making amendments to the RA Criminal Code"<sup>143</sup>. The Draft proposes that:

- the first part of Article 332<sup>3</sup> should be amended in a way that not only state officials, but anyone who hinders the professional work of a lawyer guaranteed by law may be considered as a subject of this crime, without limiting the circle of those subjects;
- to consider a stricter punishment for using one's official position for the obstruction of implementation of competencies by a lawyer or notary than that presumed by Article 332<sup>3</sup> of the RA Criminal Code to make it compatible with Articles 164 and 319 of the RA Criminal Code;
- to supplement the mentioned article with a new part that will stipulate liability for obstruction of implementation of competencies by a lawyer if this was displayed through illegally banning a lawyer from entering any place of deprivation of liberty to meet his/her client

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<sup>143</sup> See, more details on the official webpage of the Human Rights Defender. <http://pashtpan.am/media/nakhagcer-pastaban.html>.

It should be noted that through the draft of the new RA Criminal Code an attempt has been made to enhance the safeguards of criminal law for a person deprived of liberty to exercise his right to access a lawyer. Namely, Article 447 of the Draft envisages criminal liability of a competent official for hindering exercise by a person under criminal prosecution of his right for protection: his procedural rights; his right to be informed promptly, in a language, which he understands, of the reasons for his arrest and of any charge against him. The Draft sets punishment of maximum four years of detention/sentence for that crime.<sup>144</sup>

While discussing the issue, the concerns of some lawyers that were voiced during 2017 either via public information sources, or the complaints addressed to the RA Human Rights Defender should be discussed. These concerns refer to the cases when their professional activities were hindered with respect to entering a penitentiary institution or a court and exercising protection of their clients' interests, including providing them with legal aid.

The lawyers were mostly concerned by the situation when employees of a penitentiary institution or a court bailiff, abusing their position, are trying to conduct actions presuming personal search of the lawyer. This, for example, may mean a demand to open the bag containing materials necessary for the lawyer's professional activities or to produce the papers he has for review. In case of courts, it should be noted, this happens prior to every court sitting without any reason. This results in breach of the clients' rights because the lawyer is unable to enter the relevant institution. Besides, lawyers have raised the issue of displaying a discriminatory approach towards them in the sense that, as they claim, other participants of the court proceedings, including, prosecutors, do not undergo a search.

The issues raised by lawyers, actually, refer to securing and protecting both their own and their clients' rights. Thus, they are directly connected with the safeguards for a lawyer's professional activities at the mentioned institutions.

In this relation, the Defender's Staff has carried out a comprehensive legal analysis of the problem<sup>145</sup>.

Within the analysis, the Defender has emphasized that in almost all examined situations lawyers face a dilemma when **any option of their behavior could bring to disproportionate restrictions of their defendants' rights**. In other words, **the demand or offer of an employee of a penitentiary institution or a court bailiff addressed to a lawyer to undergo some checking action, provided there aren't any sufficient facts or information or need to protect legitimate interests as stipulated by law, can create a "stalemate" situation in the sense that the lawyer has to counterbalance his client's right for access to a lawyer and legal aid, on the one hand, and advocacy secret, on the other. Moreover, in certain cases we can deal with other guarantees of a fair trial and the right to personal liberty.**

The following legal conclusions and proposals of the Human Rights Defender based on the analysis have been provided to competent state bodies:

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<sup>144</sup> See, Draft of the RA Criminal Code, <https://www.e-draft.am/projects/496>.

<sup>145</sup> See, The Human Rights Defender's Position on a number of Guarantees for the performance of an advocate's Professional Activities, <http://www.ombuds.am/media/iravakan-verlucutyun.html>.

- A lawyer's professional work is an indispensable part of exercise of justice and is subject to special guarantees.
- A lawyer's public reputation is a crucial safeguard for effective protection of his client's rights and one of the key guarantees for the development of lawyers institute in the country.
- The high responsibility and mission to act in compliance with law define the obligation of any state representative, including a penitentiary official and a court bailiff, obligation to be guided by the presumption a lawyer's legitimacy, his honesty and decency.
- The notions "examination" and "search" should be explicitly defined setting the circle of actions for each of them and taking consideration of its legal characteristics in any definite sphere.
- Acts defining the procedures under discussion should unambiguously set forth legal regimes of a checking action – each with relevant grounds and procedures when the action is:
  - an imperative action based on reasonable and valid evidence and "strong doubt";
  - is a mandatory condition of entering a definite state building, i.e. applicable not on selective principle.
- Technical means of examination can in no way decrease the rate of protection for the privileged lawyer-client communication or advocacy secret.
- Any examination action applied to prevent legal offense, to provide security or protection of others' rights should be conducted under the conditions of balancing the interests of a lawyer and his client and with relevant grounds.
- Monitoring of the practice occurred during 2017 proves that in some cases the arguments brought by lawyers concerning their refusal to be examined at entering a court were not taken into account from the perspective of proportionality by court bailiffs when making a decision in the sense that refusal from examination – a procedure not limited by a definite circle of actions – produced rather grave consequences: ban from entering the courtroom.
- Special regulations for checking actions should be envisaged for persons fulfilling their professional obligations, namely grounds and legitimate framework for examination of a lawyer, while eliminating any demonstration of discrimination for other subject (for example, prosecutors). These should relevantly reflect the legislative prohibition on search of a lawyer when fulfilling his professional obligations.
- It is of imminent importance that actions aimed at legitimacy should not create conditions that could pose the danger of, for instance, access to documents comprising advocacy secret, thus distracting from that aim.
- A legal rule should fix that a lawyer, based on the requirement of protection of advocacy secret, has the opportunity with his own actions, without the interference of a penitentiary

official or a court bailiff, to remove the items presumably impeding his entry. These articles could be deposited with the institution.

- It is an urgent need to define the objective grounds for the list of forbidden articles. Then the list of forbidden articles should be compiled in the logic that the ban is introduced to prevent offenses, to provide security or to protect others' rights. Here, the requirement for safeguarding the right of a person to proper legal aid should be taken into consideration, thus presuming exceptions from the general ban concerning those articles, which a lawyer might need to fulfil his professional activities.
- Special methodological guidelines need to be worked out on checking actions (examination or search) when entering a state institution, in particular a penitentiary institution or a court, which would provide certainty for both a law enforcing official and a citizen.

In order to form relevant legal practice, it is necessary:

- to provide courts and penitentiary institutions with all the necessary technical equipment;
- to hold regular trainings for officials conducting checking actions targeting formation of appropriate knowledge and skills to apply the relevant methodological guidelines in practice and to implement the technical equipment;
- to ensure that the guidelines are accessible for visitors of courts or penitentiary institutions through disseminating them in the media and other means available to the general public, including via posting them in places visible to anyone entering the building;
- to ensure unified practice for all subjects conducting professional obligations in a definite institution (a lawyer, a prosecutor, etc.) while conducting a checking action.

In connection with the problems revealed through legal analysis of the Human Rights Defender and bringing to life the proposals aimed to resolve them, the RA Judicial Department informed that in its decision # 02N of 11 September 2017, the Council of the Chairmen of RA Courts has fixed the list of articles forbidden entry into a building, as well as provisions on banning use of technical equipment for examination and review of documents constituting a secret<sup>146</sup>. As to conducting organizational measures, the Department has informed that, in order to make the examination procedure more effective, x-ray devices have been purchased and the list of forbidden articles is posted in places visible to everyone.

Settlement of the issue of regulations for the procedure of examination when entering an RA court building, the list of forbidden articles and purchase of technical equipment should, definitely, be viewed as positive steps aimed to resolve the problem. Meanwhile, it is worth noting that after studying of the list of forbidden articles made by the Council of Chairmen of Courts it seems that it is an exhaustive list of such articles. However, according to Part 3.1.8

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<sup>146</sup> See, the Council of Chairmen of the RA Courts decision # 02-N of 11 September, 2017 "On Making Amendments to the decision of the Council of Chairmen of the RA Courts # 04-N of 21 July, 2011", <http://www.irtek.am/views/act.aspx?aid=91590>.

*closed cartons, boxes, packets and bags, except for files, bags, etc. intended for personal use, inter alia*, are among the items forbidden to carry into a protected area.

This “conclusion” of the list of forbidden articles does not arise from the general logic of an exhaustive enumeration of definite items; it leaves space for variable interpretations, hence, for discretion of a state official. The thing is that the reason for other forbidden items being included in the list is conditioned by their nature (gun, cutting, hinged weapon and sharp articles, explosives and chemicals, drugs and narcotics, etc.). Conversely, the ban on “closed” containers and bags, perhaps, lies on the principle that an article is banned unless its content is disclosed, while the exception for “intended for personal use” leaves space for varying interpretations. Actually, the criteria should be clear-cut and distinct, while the regulations for the competent body to make decisions and for the person under examination, in this case the lawyer, should be consistent.

**In this situation, the Human Rights Defender reaffirms his standpoint that actions of a state body shall not impede the protection of secrecy of the privileged lawyer-client communication or create such a danger.**

As to the regulation for the examination procedure when entering penitentiary institutions, the Defender has noted that the regulations of the RA Government Decree # 1543-N “On approval of internal regulations of detention facilities and correctional institutions of the Penitentiary Service of the Ministry of Justice of the Republic of Armenia” are called to ensure sufficient certainty when explaining the contents of the procedure through essentially repeated wordings. The thing is that, according to the Regulations, both examination and search can be conducted over persons entering a penitentiary institution. And there is no differentiation concerning the circle of persons due to examination or search, which proves that the document comprises legal regulations inconsistent with the law requirements<sup>147</sup>.

Taking into account the abovementioned, *it is necessary*:

- 1. as a priority resolution, to clarify the provisions of the special act on the judicial authority body, and in case of penitentiary institutions of the Regulations taking note of the principles put forward by the Human Rights Defender;*
- 2. as a fundamental resolution, to discuss the adoption of an act that would prescribe unified approaches to be implementable in regards to all institutions (for example, law-enforcement bodies, areas under special protection, etc.) while conducting checking actions.*

### ***10. Effective implementation of the right to defence***

In the course of the 2017, a number of problems have been documented in the law-enforcement practice, with the full exercise of the right of the suspect or the accused to defence within the framework of the criminal proceedings. This is proved by the complaints submitted to the

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<sup>147</sup> See, Legal analysis on a number of guarantees for performing advocate’s Professional Activities made by the RA Human Rights Defender, <http://www.ombuds.am/media/iravakan-verlucutyun.html>.

Human Rights Defender, according to which his attorney's participation was not ensured in the proceedings with the participation of the accused.

Thus, a case has been recorded, when a lawyer visits his client's office to participate in the investigative action there, but he was not allowed to enter the site of the investigative action because of the fact that the attorney had to appear at least before the start of the operation, and in the current circumstances it could not be interrupted.

In another instance, the lawyer informed that despite the requirement of his client regarding the attendance of the defence attorney involved in the charge, the body conducting the proceedings posed the charge before the person, and the latter was interrogated in the absence of the attorney.

On examining the issue, the Human Rights Defender made a decision "On the violation of human rights and freedoms", in which, in particular, the following legal conclusions have been presented:

- the contents of the fundamental right to defence against accusations, among other things, are the rights to have adequate time and opportunities to prepare ones own defence, be defended through an advocate chosen thereby<sup>148</sup>;
- providing the suspect and the accused with the right to choose or to invite a defender during the criminal proceedings, primarily aims at securing the implementation<sup>149</sup> by the latter the right of protection, thus ensuring the "equality of arms" and the principles of competition stipulated by the Criminal Procedure Code of the Republic of Armenia<sup>150</sup>.
- By the force of Point 1 of the Part 1 of the Article 69 of the RA Criminal Procedure Code, the participation of the defence attorney in the criminal proceedings is mandatory when the suspect or the accused has expressed such a wish. And in Part 4 of the Article 69 of the Code, the compulsory participation of the defence attorney in criminal proceedings is ensured by the body conducting the criminal proceedings. Moreover, pursuant to Part 2 of the Article 19, the body conducting the criminal proceedings is obliged to explain to the suspect and the accused their rights and provide them with actual possibility to defend themselves against the charges by all means not prohibited by law;

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<sup>148</sup> Article 64 of the Constitution of the Republic of Armenia states that everyone has the right to legal assistance, and Article 67 states that anyone charged with a crime has the right to defend himself personally or through his advocate.

Part 3 of the Article 14 of the International Covenant on Civil and Political Rights states, that that in the examination of any criminal charge against him, everyone has the right to at least the following guarantees (warrants) on the basis of full equality: (...)

(b) to have sufficient time and facilities to prepare for his defense and to enter into a relationship with the person he chooses; (...)

(d) be tried in his presence and defend himself personally or by his / her chosen defender; even if he/she does not have a defender he/she should be aware of that right and have an advocate assigned to him in any case, when it requires the interests of justice, in all cases where it is free of charge, unless it has sufficient means to pay for that defense counsel.

Such a definition is provided in Part 3 of the Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

<sup>149</sup> See, Decision on the case EKD / 0209/01/10 of the Court of Cassation on February 24, 2011.

<sup>150</sup> See, Decision of the Court of Cassation HYQRD2/0153/01/08 on the case on March 26, 2010.

- It is unequivocal from the criminal-procedural provisions guaranteeing the right of defence to a person charged with a crime, that the desire of the suspect or the accused to have a defence lawyer causes the body of the proceeding from the moment of its announcement to ensure the mandatory participation of the defence attorney in the proceedings.

Thus, the right of protection from criminal prosecution is one of the fundamental rights of every individual, the provision of which is a necessary condition for any democratic society. An inseparable element of the right of defence is the opportunity of every person to exercise his or her rights through the defender. The state is responsible for ensuring that opportunity. It guarantees the competitive nature of the proceedings and the failure to meet the abovementioned requirements may result in a violation of the person's right to defence, consequently it may lead to the violation of the right to a fair trial.

Within the framework of discussing the complaints submitted, the obligation of the body conducting the proceedings to ensure the participation of the defence when bringing the charge before a person and when interrogating the latter became the subject.

In this regard, it should be noted that, according to the RA Constitutional Court Decision CCD-1119 of 8 October 2013, the fact that it is necessary to ensure the legitimacy of the obligation of the body conducting the proceedings, which is to guarantee the participation of the defence attorney in the investigative and other procedure actions in the cases under Article 73 of the Criminal Procedure Code of the Republic of Armenia, has become a subject of discussion.

Thus, in accordance to Point 3 of the Part 1 of the Article 73 of the Criminal Procedure Code, rendered void by the above mentioned decision of the Constitutional Court, the defence attorney (...) has the right to participate in the investigative or other procedure actions conducted by the criminal prosecution body upon the suggestion of the criminal prosecution authority, to participate in all investigative or other procedural actions performed by the body conducting prosecution upon its motion, to participate in any investigative or other procedural action conducted with the participation of the client, if that is demanded by the suspect or the accused or if is requested by the defence attorney prior to the beginning of these actions.

The Court, in particular, has recorded that the provision of the challenged norm concerning the participation of the defence attorney in the investigative and other procedure acts involving the defendant's participation upon the requirement of the suspect or the accused, as well as the provision concerning motion when initiating the action, in violation of the provisions of Part 1 of the Article 43 of the RA Constitution (as amended in 2005), constitute limitations to the constitutional right of legal protection and legal assistance before state bodies and, as a result, limitations on the constitutional right for effective defence before state bodies. Moreover, such a restriction does not pursue any legitimate aim.

As a result, the Court concluded: "In all cases, the defence attorney must have the right to participate in investigative and other procedure actions involving the defendant, without

submitting any motion, and independent of the fact whether the suspect or the accused has demanded such participation or not".

Apart from this, according to Part 5 of the Article 212 of the Code, the accused has the right to be interrogated with the participation of the defence lawyer. The attendance of the defence attorney is mandatory in cases provided by this Code.

Thereby, the foregoing gives grounds to assert that the body conducting the proceedings must ensure the participation of the defence attorney in investigative or other procedure actions involving the person liable to criminal prosecution, including participation in the interrogation, regardless of whether such a request or motion was submitted or not.

Consequently, the Human Rights Defender considers unacceptable the fact that when the body conducting the proceedings, being restrained by the suspect's (the accused person's) right for a defence attorney, as well as with the requirements to ensure the latter's involvement in the investigative or other proceedings, and to maintain to the judicial procedure when bringing charges, nevertheless, conducts procedure actions without the participation of the defence attorney although the person has one. As a result, the defence attorney of that person is deprived of the opportunity to exercise a range of his rights as defined in Article 73 of the Code, and, consequently, to defend his client effectively. Moreover, any prerequisite or limitation on participation in procedural actions by the defence attorney, which is not stipulated by the criminal law and does not pursue a legitimate aim, violates the constitutional right of the person to defence against the charge.

Within the frames of criminal proceedings, the Human Rights Defender, in the context of the effective protection of the person, have risen the issues of freedom of the individual to have a defence advocate by his preference. The point, in particular, refers to the uncertainty of the relationship between the institute of mandatory legal representation and the institute of an accused person to defend himself or through a defence attorney of his choice

In this regard, the RA Chamber of Advocates has appealed to the Human Rights Defender to submit the issue to the Constitutional Court. As a result of consideration of the application, the Defender submitted an application to the Constitutional Court, which raised the question of constitutionality of regulations of the current criminal procedural rules of the Republic of Armenia.

Having investigated the case law of the European Court in this respect, the following general principles have been raised up:

- though the right of the accused to be protected by a defence attorney of his choice, should be respected as a general rule, the right of the defendant to make a choice may be overlooked or subordinated by the court if there are relevant and sufficient grounds conditioned in accordance with the priority of justice<sup>151</sup>;

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<sup>151</sup> See, *Mefta and Others v. France* case decision of 26 July 2002, complaint ## 32911/96, 35237/97, 34595/97, Point 45.

- in spite of the importance of a trust-based relationship between a lawyer and a client, the right to choose a defence advocate cannot be considered absolute. It is a subject to certain limitations where a person is provided with free legal assistance as well as when the court decides whether the interests of justice require that the accused be represented by his defence counsel. When appointing the defence attorney, national courts should, of course, take into account the defendant's will. However, this desire may be ignored when there are adequate and sufficient grounds due to the fact it is found necessary for the sake of justice<sup>152</sup>.
- "effective participation" guaranteed by Article 6 of the Convention implies that the accused generally understands the nature of the court proceedings, including the type of punishment that may be applied to him. The accused should also be able to explain to his advocates his version of what happened, to point out the allegations he disagrees with and to report about the facts that must be laid down in the basis of his defence;
- refusal to have a defence attorney guaranteed by the Convention to the extent that it is permissible should not contradict the public interest and must be accompanied by the minimum guarantees equivalent to the importance of waiving the right. Moreover, in the event of a waiver of the rights laid down in Article 6 of the Convention, the accused must demonstrate that he reasonably realizes the consequences of the denial of his right<sup>153</sup>.

According to the abovementioned statements, the Human Rights Defender records that the right to have a defence advocate is not absolute. The right of the accused to choose a defence advocate may be ignored or subordinated by the court if there are relevant and sufficient grounds for the fair trial. At the same time, the defendant's refusal to defend himself should be expressed unambiguously, accompanied by minimal procedural guarantees, including the recognition of the consequences for the accused in case of his waiver.

Meanwhile, it stems from the combined content analysis the criminal-procedural regulations regarding choosing a defence lawyer and defending mandate of the defender, the inadmissibility of the defender<sup>154</sup>, that a situation is created where we observe how on one hand the fundamental right to defend the suspect or the accused through his advocate and, the obligation to provide legal representation (as part of the right to a fair trial), on the other hand, come into contradiction with each other. Within the framework of the already mentioned statements the body conducting the proceedings has the right to refuse (and in the case of sanction enforcement the court does not accept) the defendant's or the accused's refusal. In their turn, these two are opposed to the right of the suspect or the accused to defend himself by the advocate he chooses.

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<sup>152</sup> See, *Mayzit v. Russia* case decision of 20 January 2005 complaint # 63378/00, Point 66.

<sup>153</sup> See, *Panovits v. Cyprus* case decision of 11 December 2008, complaint # 4268/04, Point 68.

*Talat Tunc v. Turkey* case decision of March 27, 2007, complaint # 32432/96, Point 59, *Jones v. The United Kingdom* case decision of December 9, 2003, complaint # 30900/02.

<sup>154</sup> See Point 11 of the Part 1 of the Article 69 of the Criminal Procedure Code of the Republic of Armenia, Part 5 of the same Article, and Part 2 of the Article 72.

In other words, Part 2 of Article 68 of the Code considers the consent of the suspect or the accused as the sole condition for the lawyer to obtain the status of a defence attorney. Meanwhile, when the court involves the public defender as the defendant's advocate without the consent of the defendant by the force of Part 5 of the Article 69 of the Code, thereby creates a contradiction with the Part 2 of the Article 68.

It turns out that as a general condition, the advocate assumes his powers under the consent of the accused, whereas in case of applying a sanction the consent of the accused is not essential, since the rule of compulsory participation in the proceedings is valid regardless of the accused's consent. It is clear that this situation is a collision between two different institutions, whose interrelation should be clearly regulated by the Code to avoid legal uncertainty.

Meanwhile, the Code does not define in the case of which dominant interest or the right it is possible to subordinate the accused person's right to be defended through his defender to ensure a compulsory legal representation.

*Taking into account of the abovementioned statements, the Criminal Procedure Code should define clear and specific criteria for each case to confirm the existence of supremacy of justice and to ensure the balance between a person's right to defend himself, either personally or through his or her defence counsel, and the priority interests of justice.*

#### ***11. Disproportionate interference with the property of a person recognized as material evidence within the proceedings of a criminal case***

In the Human Rights Defender's Annual report, 2016, detailed reference was made on the issues of how to ensure a reasonable balance between public interest and individual property, proportionality of the interference to the property rights. In particular, by implementing a systematic analysis of the constitutional, conventional, and domestic legislations, the report states: "(...) [U]nder the general rule, objects recognized as material evidence are kept by the body conducting the criminal proceedings before the final judicial act or decision is taken in the case.

At the same time, in the case of certain items of property, the legislator has provided an exception to the said rule of protection of the evidence, according to which the property is returned to the owner or the legitimate possessor during the investigation of the criminal case.

We believe that such a legislative regulation is conditioned by public and private interests, particularly, with the requirement to ensure fair equilibrium between the proof of proper implementation of the process for legitimate, justified and just resolution of the case and respect for the individual's rights as the owner.

In this regard, it should be noted that although the criminal law does not establish a specific procedural deadline for the body conducting the proceedings before the evidence is returned to the end of the criminal proceedings, nevertheless, the normative value of this legal requirement assigned towards the protection of property rights implies that the body conducting the

proceedings should demonstrate sufficient effort and goodwill to ensure that the investigative and other procedural actions relating to the property of a person recognized as material evidence is carried out in a reasonable timeframe, and the obligation to return the property to the owner's possession is fulfilled.

Therefore, it is necessary practically to ensure the reasonable timeframe for conducting investigative and other procedural actions related to the property of a person recognized as material evidence, by returning the corresponding property to the owner's possession in accordance with the requirements of the Criminal Procedure Law."

According to the information received from the competent state body, in the course of 2017, 25 vehicles, recognized as material evidence in the criminal case, after the end of the examination, before the end of the preliminary investigation, have been handed over to the owners. Apart from this, 11 vehicles considered to be material evidence of criminal cases under investigation clarified by the RA Investigative Committee, have been handed over to the owners by the decision of the body conducting the proceedings before the end of the preliminary investigation because of absence of properly protected storage area.

Nonetheless, it should be noted that the problem of disproportionate restriction of the right of a person towards property, as well as implementing investigative and other procedural actions related to the property of the person recognized as material evidence, and the obligation to return the property to the possession of the owner, are still respected. Particularly, in the year 2017, complaints were filed that they were not handed over to the owner or to the legitimate possessor because of conducting investigative or other procedural acts against the property of a person recognized as material evidence in the criminal proceedings. The study of complaints has shown that citizens and law enforcement agencies often face the abovementioned problem, mainly because of the fact that, in case of appointment of expertise, the conclusions usually take a long time to be derived.

Thus, in one of the complaints, the person stated that a vehicle, which was recognized as material evidence in the criminal case and sent to forensic examination, is the only means of subsistence as he works as a driver. In another case, the citizen informed the RA Human Rights Defender, that his son was accused of selling illegally acquired property, but during the preliminary investigation due to the investigator's decision, the car and car spare parts owned by his son were confiscated. Yet, only one spare part was obtained illegally.

In connection with the above mentioned, the RA Investigative Committee has clarified that in both cases items recognized as material evidence (including cars) cannot be returned because of the expertise they have been assigned.

In response to the Defender's additional note, it was also reported that the cases were sent to the court with the indictment, so the issue of disposition of material evidence can be solved exclusively by a court order. As a result of consideration of the complaints addressed to the Defender, it was found out that the cars owned by the citizens were recognized as material evidence within the criminal case proceedings and kept in a specially protected area of the Road

Police Service of the RA Police for expertise. In the case of the first complaint, the assignment of the investigator to transfer the vehicle to a specially protected area was not given to the investigating authority at all, and the person returned his car with the intervention of the Defender. In the case of the other complaint the body, conducting the proceedings has appointed forensic ballistic, chemical, traceological complex expertise at the RA Police Inspectorate, and the car was provided to the experts. Afterwards, the RA General Prosecutor's Office informed that the car was returned to the owner as soon as the conclusion of the examination was received.

Within the frames of criminal proceedings another case of disproportionate interference with the person's right of ownership has been recorded, when the restriction on the vehicle belonging to the person has been maintained, despite the fact that the proceedings on the criminal case have been completed and the absence of legal grounds for such limitation.

In this particular case, there was a disproportionate interference with the rights of the individual as a property owner, in the sense that the latter, who had actually owned his property, was deprived of the opportunity to dispose of it freely though. In this regard, The Human Rights Defender underscores, that within the proceedings of the criminal case any action of the body that implements the process of restriction of the rights of individuals should have the grounds provided by the Criminal Procedure Code. Furthermore, although such a restriction can initially be legitimate by virtue to meet the requirements of "prescribed by law" and "pursue a legitimate aim", nevertheless, its continuity can lead to an issue of interference proportionality problem of that right. Moreover, any form of law enforcement practice is inadmissible and contrary to the law, when a person's right of ownership is restrained in the absence of any factual and legal grounds.

*Thus, according to the abovementioned, it can be affirmed that*

- 1. In the event of an exception to the general rule of keeping the evidence available to the criminal case under the Criminal Procedure Code, the body conducting the proceedings is obliged to consider the question of leaving the property to the owner or the legitimate possessor, and, in case of failure, a proper justification should be provided.*
- 2. The body conducting the proceedings shall put sufficient effort and good will to carry out investigative and other procedural actions connected with the person's property, recognized as material evidence, in the reasonable timeframe and the obligation to return the property to the owner's possession.*
- 3. Any interference with the right of ownership, not based on factual and legal grounds, leading to detention of property must be excluded within the scope of criminal proceedings.*

## ***12. Failure to provide a copy of the decision to suspend criminal proceedings from the body conducting the proceedings***

The Human Rights Defender touched upon the issue of non-provision of a copy of the decision on suspension of criminal proceedings also while summarizing the activities of previous years<sup>155</sup>.

Particularly it refers to the narrow interpretation that is given on the practice of the obligation of the preliminary investigation body, in accordance with Part 1 of the Article 258 of the RA Criminal Procedure Code, to inform participants of proceedings interested in the outcome of the criminal case in written form about suspending the proceedings. Such an interpretation actually implies that "written notification" does not suppose the possibility of issuing a decision. As a result, the mentioned persons are not provided even with a copy of the decision irrespective of their right, under the Criminal Procedure Code of the Republic of Armenia, to appeal against the decision to suspend the criminal proceedings.

In this regard, in order to ensure the unified practice of applying Part 1 of the Article 258 of the RA Criminal Procedure Code, the Prosecutor General of the Republic of Armenia instructed the prosecutors, who supervise the structural and territorial units, to ensure that the victim, his representative, civil plaintiff, civil defendant or their representatives are provided with the notification of suspension of proceedings on the criminal case. Under the recommendation, the notification should be in writing, at the same time it should be clarified, that in case of a written request by the abovementioned persons, they may be provided with a decision to suspend the proceedings on the criminal case in order to appeal it according to the Criminal Procedure Order of the Republic of Armenia.

In spite of this, in 2016, the problem was raised in the sense that according to the RA Prosecutor General's Office clarification on the failure to provide the victim with the decision to suspend the criminal proceedings does not reserve the procedural law to the investigator and sends the copy of the decision to suspend the criminal proceedings against the investigator and the RA Criminal Procedure Code On the basis of Part 1 of the Article 258, the investigator is obliged to inform the victim, including the information on the suspension of the criminal proceedings, which has been provided by the investigator's letter<sup>156</sup>.

In such circumstances, we believe the issue should be resolved through clarification of legislative regulations. The point is that in contravention of the decision to terminate the criminal case, the Criminal Procedure Code of the Republic of Armenia does not directly provide for the obligation to send a copy of the decision on suspending the criminal proceedings to the participants of the above-mentioned proceedings referred to in the article.

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<sup>155</sup> Annual Report on Human Rights Defender's Activities and Human Rights and Fundamental Freedoms in the Country in 2013, pp. 85-87. <http://www.ombuds.am/resources/ombudsman/uploads/files/publications/afe1e423a8f465a4fba32ccc27ef913a.pdf>

Annual report on the activities of the Human Rights Defender of the Republic of Armenia in 2016, the status of human rights and freedoms protection, pages 161-163. <http://www.ombuds.am/resources/ombudsman/uploads/files/publications/28731eccde752a30c70feae24a4a7de7.pdf>

<sup>156</sup> See, the 2016 Annual Report pages 161-162.

Such a situation where the law stipulates a person's right to appeal, yet, the lack of the necessary guarantees safeguards for its implementation, may lead to a disproportionate restriction of the right of effective remedies proclaimed by the RA Constitution and international legal instruments.

Accordingly, the Human Rights Defender reaffirms the position, that the right to appeal to the relevant procedural act may be realized only if the copy of that decision is provided to the person entitled to appeal.

A systemic interpretation should be provided to the legal regulation of Article 258 of the Code, and the obligation of the investigator envisaged by the article to suspend the proceedings on a criminal case should assume the obligation to provide the interested party with a copy of the decision at least at the request of the latter.

*Thus, taking into account the abovementioned, is necessary:*

- 1. To provide a copy of the decision on the suspension of the criminal proceedings at the request of the interested party, observing the legal regulation of Article 258 of the Code based on the systemic interpretation of the current criminal-procedural regulations.*
- 2. In the light of the provision of a common law enforcement practice, the responsibility of the body conducting the proceedings should be directly codified in the Criminal Procedure Code.*

### ***13. Proper organization of care for juveniles or incapacitated persons left without supervision as a result of the actions of the body conducting criminal proceedings***

Within the framework of criminal proceedings as a result of the seizure of a person, issues related to the full protection of the rights of minors and incapacitated persons under the care of the latter are always in the focus of the Defender's attention.

The issue was also touched upon comprehensively in the reports summarizing the activities of the Human Rights Defender of the Republic of Armenia over the previous years<sup>157</sup>.

Article 37 of the Constitution of the Republic of Armenia proclaims that children left without parental care are under state care and protection.

The regulations of Article 140 of the Criminal Procedure Code are to ensure the provision of the right of the care of juveniles and incapacitated persons under the care of the detainee by virtue of which the obligation to provide the said right is exercised by the body conducting the proceedings.

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<sup>157</sup> See, Annual Report on the Status of Human Rights and Freedoms and the Activities of the Human Rights Defender of the Republic of Armenia in 2015, pages 12-13, annual report for 2016, pp. 130-136.

Notwithstanding the positive duty of the State as defined by the Constitution and the law, however, the application of the above-mentioned provision has not always been fully ensured in practice. Moreover, in the previous years there were cases, when necessary care and social support for the children in the situation described above have been ensured through the support of non-governmental organizations, including international organizations, whereas children without parental care are under state care and protection.

In spite of the situational positive results given in separate cases, the solution to the problem must be a systemic change in the policies and approaches.

The Defender reaffirms the position expressed as a result of the analysis of a number of international documents and domestic legal procedures relating to the care of juveniles and incapacitated persons conditioned by the limitation of the individual's right to freedom within frames of the proceedings of the criminal case, that the full realization of the provision of care as a state's positive obligation first of all implies the sphere regulations, providing sufficient certainty of legislative procedures as well as ensuring the mutually agreed actions of the responsible authorities and the clarity of responsibilities.

Although the systematic study of the domestic legislative framework allows us to conclude, that within the proceedings of the criminal case the procedures for providing care for juveniles and incapacitated persons are defined, from institutional point of view the scope of responsibilities of the state and local self-government agencies involved in the care organization process is clarified<sup>158</sup>. Nevertheless, the social security of the mentioned persons, for the full realization of the task set before the state, should be ensured through

- Effective and consistent interaction of all the parties involved, (social protection institutions, territorial administration and local self-governing bodies, the juvenile police units of RA, territorial subdivisions of social assistance, other bodies and organizations involved in the process as defined by the law, as well as criminal prosecution authorities) based on the principle of good faith.

#### ***14. Judicial practice of applying detention as a preventive measure in the Republic of Armenia***

The need to make the annual dynamics and general tendencies of detention practice during criminal proceedings a subject matter of discussions is conditioned by a number of factors:

- detention is the most severe preventive measure applied within the framework of criminal proceedings, which is accompanied by the deprivation of a person's liberty and with the restriction of personal rights (inviolability of private and family life, inevitable impact on work and educational processes, etc.);

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<sup>158</sup> In the annual report of the Human Rights Defender of the Republic of Armenia, in the year 2015, a proposal was submitted to the legislature to establish clear mechanisms, in the presence of which the body conducting the proceedings could effectively provide the care and survival of the person.

- detention as a preventive measure is applied against the accused, a person whose guilt is not yet proven by a court verdict entered into legal force in the manner prescribed by law;
- continuous detention can be justified only if there are concrete indications of true public interest requirement, which, despite the presumption of innocence, prevails over the rule of respect for the individual's freedom;
- general regularities of the judicial practice of detention use within the judicial system are important indicators of realization of the "liberty presumption" principle. Those predetermine the state criminal policy in terms of the application of influence measures for depriving of liberty;
- the judicial practice of detention use remains one of the most important issues of public concern as a factor building trust towards the judicial system;
- finally, complaints regarding detention or long-lasting terms of detention addressed to the Human Rights Defender within 2017 were constant.

The reference to the protection of human rights and freedoms in the country within this annual report by the Human Rights Defender would not be complete if it did not touch upon the application of detention in the Republic of Armenia. Within the framework of this report, a thorough legislative and practical analysis was carried out.

The problem has a constant relevance. This is also evidenced by the imperative of practical implementation of the precedent decrees regarding Article 5 (the right to liberty and personal inviolability) of the European Convention on Human Rights and Fundamental Freedoms issued by the European Court of Human Rights, as well as of the legal positions of the Cassation Court of the Republic of Armenia.

The complaints addressed to the Human Rights Defender also raised issues related to the use of detention. Such complaints have been received mostly from detainees, their defenders and relatives. The problem has also been raised during visits to penitentiary institutions, as a result of direct contact with detainees.

Particularly, the majority of these complaints relate to the non-legitimacy of the courts to satisfy the petitions for detention use, i.e. to not considering properly the existence of a reasonable suspicion of a person's guilt, as well as important circumstances while deciding the necessity to impose a preventive measure. Additionally, in a number of cases, detainees stated in their complaints that while applying detention the courts did not take into consideration their health status, including disabilities, age, family status, as well as the facts of having underage children and elderly parents in their care.

Taking this into account, the investigation of the judicial practice of detention use has been implemented having the comparative analysis of the official statistics on detention, their compliance with international legal approaches and indexes, as well as the completeness of legislative regulations as a starting point.

Thus, according to the case law of the European Court of Human Rights, Article 5 of the European Convention on Human Rights, which guarantees the right of individual to personal freedom, aims to prevent cases of arbitrary or unjustified deprivation of personal liberty. The right to personal liberty and security is of paramount importance in a democratic society<sup>159</sup>.

According to the legal criteria of the European Court, the legality of interference with law cannot be guaranteed only in accordance with national legislation. In turn, the national law must comply with the requirements and general principles of the Convention. Within the framework of Article 5 of the Convention, these general principles are the following: the rule of law, legal certainty, proportionality and arbitrariness protection. The latter is the real objective pursued by Article 5 of the Convention<sup>160</sup>.

At the same time, the study of the European Court Law shows that the legality of interference with the right of a person, in particular the right to personal liberty, may be determined by taking into account the factual circumstances of a particular case. As the Court notes, the arguments for or against the release of a person cannot be "general and abstract"<sup>161</sup>: they should contain references to the person's personal qualities and specific facts, justifying the detention of the person<sup>162</sup>.

In particular, the following principles should be applied as such legal basis:

1. to be guided by the "presumption of liberty" when discussing the detention<sup>163</sup>;
2. to apply detention as last resort of the restriction of a person's right to personal liberty<sup>164</sup>;
3. to use detention only when the means with less force of impact cannot provide legitimate aim pursued<sup>165</sup>.

The official statistical data on the activities of the courts of the Republic of Armenia for 2017, with the data reflected in the 2011 and 2016 reports were subjected to comparative study in order to identify general trends in the application of judicial detention practice<sup>166</sup>. The number of petitions on applying detention as a preventive measure or extending the period of detention, the specific weight of the petitions satisfied by the courts, as well as the trends in choosing bail as an alternative preventive measure have been analysed.

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<sup>159</sup> See, *Medvedyev and Others v. France* case decision of March 29, 2010, complaint # 3394/03, Point 76,

*Ladent v. Poland* case decision of March 18, 2008, complaint # 11036/03, Point 45, sufficient transparency to the maximum limits not to hinder the solution of problems faced by this body.

<sup>160</sup> See, *Simons v. Belgium* case decision of August 28, 2012, complaint # 71407/10, Point 32.

<sup>161</sup> See, *Boicenco v. Moldova* case decision of July 11, 2006, complaint # 41088/05, Point 142; *Khudoyorov v. Russia* case decision of November 8, 2005, complaint # 6847/02, Point 173.

<sup>162</sup> See, *Aleksanyan v. Russia* case decision of December 22, 2008, complaint # 46468/06, Point 179.

<sup>163</sup> See, *Korniychuk v. Ukraine* case decision of January 30, 2018, complaint # 10042/11, Point 59.

<sup>164</sup> See, *Mehmet Hasan Altan v Turkey* March 20, 2018 decree, complaint No.13237/17, Point 211.

<sup>165</sup> See, *Djundiks v Latvia* case decision of October 13, 2014, complaint # 14920/05, Point 89, *Lutsenko v Ukraine* case decision of November 19, 2012, complaint # 6492/11, Point 66,

*Navalny and Yashin v Russia* case decision of December 4, 2014, complaint # 76204/11, Point 96,

*Ladent v. Poland* case decision of March 18, 2008, complaint # 11036/03, Point 55.

<sup>166</sup> See, Reports on the activities of courts in the Republic of Armenia on the official website of the "Judicial System of Armenia", <http://www.court.am/>.

Thus, the investigation of the absolute figures of the petitions on the application of detention presented to the court allows recording a tendency of decrease in such petitions presented by the prosecuting bodies in recent years, which has also been maintained in 2017. For instance, if in 2011 the total number of petitions on detention amounted to 3262, the figure was 3172 in 2013, 2563 in 2016, and then in 2017, the number of petitions has dropped to 2363.

At the same time, it should be noted that the indexes of the satisfaction of these petitions presented to the court within the years under review comprised more than 90% of the detention petitions presented to the court (92-95% depending on the year). 2017 is not an exception in this regard, during which the specific weight of satisfied and partially satisfied petitions exceeded 94% of the total number of petitions (satisfied - 2220 or 93.9%, partially satisfied - 12 or 0.5%).

Unlike previous years, partial satisfaction cases regarding detention petitions were recorded in the last three years (11 cases in 2015, 13 cases in 2016, 12 cases in 2017). These figures, however, are rather low in terms of changing the overall picture of the practice of detention use. Besides, the quantitative figures of the petitions on extending the term of detention, and their satisfaction continue to cause concern. Thus, more than 95% of such 1438 petitions presented in 2017 have been satisfied or partially satisfied (satisfied - 1339, partially satisfied - 36). It should be noted that such a picture is special for all the years under discussion. On the other hand, it should be noted that the number of such petitions has dropped to some extent compared to 2016 (1795 in 2016), and cases of rejection have increased (36 cases in 2016). The change in recent figures, however, is also quite low in changing the overall picture of the practice of detention use.

High indices for the satisfaction of petitions on detention are also somehow conditioned by the lack of flexible mechanisms for the application of alternative means at the legislative level. Thus, according to current criminal-procedural regulations, the bail can be used as an alternative to detention, i.e. bail can be used only when the court satisfies the petition on the detention of a person.

The low indices of bail application as an alternative preventive measure to detention are worrying. Thus, the quantitative ratio of cases of partial or complete satisfaction of petitions on detention as a preventive measure and the release of a person on bail from 2011 to 2017 continued to fluctuate between 4-7%. Additionally, there is a certain negative tendency in relation to the ratio of application of bail and their satisfaction or partial satisfaction. Thus, if in 2011 the application of bail was satisfied (including partial) in 131 cases, making 29.2% of the total number of petitions, 134 cases, 30.3% of the total number of petitions, in 2012, 161 cases, 20.9% in 2016, then in 2017 both the number of satisfied petitions, and their specific weight have decreased to 125 and 15.9% respectively<sup>167</sup>.

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<sup>167</sup> See Comparative Statistical Analysis on the Activities of the Courts of the Republic of Armenia in 2016-2017, [http://www.court.am/files/news/4630\\_am.pdf](http://www.court.am/files/news/4630_am.pdf).

In terms of overall monitoring of judicial practice of detention use, the statistical data on the preventive measures applied against the persons acquitted in 2017, including the data on detention, are also of particular interest. Thus, according to the final data of the Judicial Department of the Republic of Armenia in 2017, signature for non-leave was applied as a preventive measure against completely or partially acquitted 112 (62.2%) out of 180 persons, command control was chosen for 5 (2.8%), parental control for 4 (2.2%), personal guarantee for 1 (0.6%), no preventive measure was applied against 3 (1.7%), detention for 55 (30.5%), and bail was used for 12 out of those 55 (6.7% of the total number of acquitted, 21.8% of detainees).

It turns out that detention as a preventive measure was chosen only for 19 out of 142 completely acquitted persons (13.4%)<sup>168</sup>.

It is noteworthy that in the resolution 2077 (2015) on abuses of pre-trial detention in the Member States of the European Convention on Human Rights the Parliamentary Assembly of the Council of Europe noted that the large number of detainees in Europe as of 2013 (the specific weight both in absolute figures and in the total number of persons deprived of their liberty), which constitutes 425 000 (25% of all persons deprived of their liberty), itself shows that the grounds for preliminary detention, particularly, in terms of preventing a person's escape, or influencing a witnesses, or impeding the process of testimony, are exposed to general spatial interpretation or pro forma application, aiming to justify detention, instead of reaching abusive purposes<sup>169</sup>.

In conformity with international legal approaches, the general picture of the practice of detention use is formed, taking into account the ratio between the specific weight of the number of detainees and the proportion of persons deprived of their liberty, as well as the total number of population.

According to the official data of the Ministry of Justice of the Republic of Armenia, there are 1,326 detainees in penitentiary institutions of Armenia as of January 8, 2018, and the total number of persons deprived of liberty (detainees and convicts) is 3549. It turns out that the specific weight of the number of detainees, which is approximately 37.4%, surpasses the worrisome 25% set by the Parliamentary Assembly.

Besides, the international legal documents indicate the number of prison population per 100,000 people, averaged in European countries to 31, as a formula for estimating the prevalence of detention use<sup>170</sup>.

Such a ratio of the total number of people in Armenia<sup>171</sup> (2,979,600 as of October 1, 2017) and the number of detainees is about 44.5, which is also higher than the European average.

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<sup>168</sup> See Statistical data published by the Judicial Department of the Republic of Armenia [http://www.court.am/?l=lo&id=11&item\\_id=4620](http://www.court.am/?l=lo&id=11&item_id=4620)

<sup>169</sup> See, The resolution 2077 (2015) on abuses of pre-trial detention in the Member States of the European Convention on Human Rights the Parliamentary Assembly of the Council of Europe <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=22206&lang=en>.

<sup>170</sup> See The opinion of the Commission on Legal Affairs and Human Rights on September 7, 2015, over the bill on the resolution 2077 (2015) on abuses of pre-trial detention in the Member States of the European Convention on Human Rights the Parliamentary Assembly of the Council of Europe on October 1, 2015 <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=21992&lang=en>.

We believe that such a high level of satisfaction of petitions, as well as the surpassing of the European average indices (which are also rated as worrisome) indicate about the inadequate implementation of the principles of being guided by the “presumption of liberty” while applying detention, and using detention as a “last resort” by the courts.

Certain steps taken by the Prosecutor's Office of the Republic of Armenia in 2017 should be considered positive. In particular, according to the information provided by the RA Prosecutor General's Office, on August 4, 2017, a Board meeting was held in the RA Prosecutor General's Office regarding the issues discussed.

The meeting discussed the issue on “The efficient application of the legislative and case law criteria to eliminate the practical shortcomings of the justification of petitions on choosing detention as a preventive measure and extending the term of detention”.

The examination of the information provided by the Prosecutor's Office and the established criteria indicate that the minimum requirements for the justification of petitions on detention as a preventive measure and extension of the term of detention relate to the reasoning of petitions, as well as the implementation of necessary procedural and operational measures, to ensure the factual validity of the petitions submitted.

Moreover, the Human Rights Defender acknowledges that the criteria discussed at the Collegium Board generally reflect the legal positions of the European Court of Human Rights.

Ensuring such assignments, of course, is important in terms of introducing the legal positions expressed by the European Court as well as the Court of Cassation of the Republic of Armenia in the law enforcement field and of guiding the practice. Therefore, although taking the criminal prosecution body's steps aimed at improving the quality of petitions into account, we believe that the high rate of satisfaction of over 90% of the petitions on detention by the courts over the years testifies that the general approaches of applying detention as an ultimate or last resort in judicial practice are not fully introduced yet. In any case, it should be considered that the procedural status of the criminal prosecution body already implies the accusation orientation of the latter's actions, which should be excluded in case of a judicial body with institutional and functional independence.

The court should apply a higher standard of reasonableness of judicial action when considering the issue of detention and prove that in this case, there are such strong facts that exclude the possibility of ensuring proper conduct of the accused in case of release<sup>172</sup>.

In other words, even though the criminal prosecution body carries the responsibility to make its reasonable assumptions on the need for detention based on factual data, it is the judicial body that makes a decision to deprive a person of personal liberty.

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<sup>171</sup> See, The statistical bulletin on “The Number of Permanent Population of the Republic of Armenia as of October 1, 2017” published by the National Statistical Service of the Republic of Armenia [http://armstat.am/file/article/nasel\\_01.10.2017.pdf](http://armstat.am/file/article/nasel_01.10.2017.pdf).

<sup>172</sup> See, also the decision of the Cassation Court of the Republic of Armenia on the case of A. Hovsepian, # 0386/06/15.

The positive developments in the judicial system regarding the new practice introduced by the Criminal Court of Appeals of the Republic of Armenia are also remarkable.

Particularly, by the decision on the case EAQD/0189/01/14 of July 28, 2017, the Criminal Court of Appeal of the Republic of Armenia has taken into consideration that the criminal case has been in the court proceedings since December 8, 2014, and the defendant has been detained for 3 years and 4 months. As a result, the court concluded that in this case there is no interest that justifies keeping the person in detention for a long time, therefore the Court of First Instance had sufficient data during the petition debate to conclude that the use of the bail could ensure the proper conduct of the defendant.

At the same time, we believe that the record of material and tangible results in improving the application of detention in judicial practice should be ensured in the case of maintaining a high level of proof that justifies the interference with a person's personal liberty by the judicial authority, which in turn determines the need for conceptual changes in legislation.

The existing legislative regulations are not flexible enough. In particular, it relates to the lack of an effective system of alternative measures, of a requirement to prioritize the use of such alternative measures to ensure the proper conduct of the accused<sup>173</sup>.

This also means that fundamental changes are especially essential in the judicial system, which must be continuous and consistent. It refers both to legislative changes and to law enforcement practice. Of course, under the current practice, legislative changes are more than required, because those can have a direct impact on law enforcement practice.

This refers primarily to the adoption of a new Code of Criminal Procedure of the Republic of Armenia. According to the legislation, one of the main conditions of legality of detention should be considered its application only in the case when it is not possible to ensure the proper conduct of the person charged with the offense by means of preventive measures not related to deprivation of liberty.

Another important issue is the change of legal perceptions of judges regarding the presumption of liberty and detention as an exceptional measure of influence.

In all these matters, the Supreme Council of Judges newly established by the Constitution may have an important role.

Thus, based on the overall review of the judicial practice of detention use, the Human Rights Defender states that:

The general judicial practice of detention use in 2017 has not changed. *Therefore, the Defender reaffirms that the solution of the problem should be ensured by the revision of the legislative*

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<sup>173</sup> In this regard, it is necessary to record, for example, the definition of new preventive measures (police registration, home arrest, etc.) provided by the draft of the new Criminal Procedure Code, as well as the provision of the bail as a separate preventive measure, which should contribute to the reduction of the number of unfounded or forced detentions in the law enforcement practice.

See The Concept of the New Criminal Procedure Code of the Republic of Armenia [https://www.e-gov.am/u\\_files/file/decrees/arc\\_voroshum/Mar9-6\\_1.pdf](https://www.e-gov.am/u_files/file/decrees/arc_voroshum/Mar9-6_1.pdf).

*framework containing new conceptual approaches, in particular, rapid introduction of flexible legislative mechanisms for application of alternative preventive measures and establishment of a consistent judicial practice.*

***15. Compliance with reasonable timeframes for criminal case proceedings. Completeness of judicial and procedural regulations.***

Issues related to the delay of the investigation of criminal cases were raised in the complaints presented to the Human Rights Defender in 2017.

The main content of these complaints is that the preliminary investigation or trial of criminal cases is delayed for unreasonable reasons. For example, in one of the complaints, a detainee informed that since 2014, the criminal case has been sent to the court with the indictment, and no final court verdict has been issued so far. The results of the private interviews with the detainees and the results of the observation testify that such cases in the judicial practice are not exclusive and inevitably affect the overall picture of the judicial practice.

Taking into account the requirement of the law not to interfere in the concrete judicial proceedings and the exercise of the judge's powers, the Defender did not consider the issue of the alleged violation of the right to investigate separate cases within a reasonable timeframe. Nevertheless, the general reference to the situation of human rights and freedoms in the country also implies the study of the issue of maintaining reasonable timeframes for the criminal case investigation, analysis of international legal standards, judicial and procedural legal regulations.

Article 63 of the Constitution of the Republic of Armenia guarantees that everyone has the right for a fair, public investigation of his case within a reasonable timeframe by an independent impartial court.

An inseparable and important element of the content of this constitutional right is the investigation of the case and the provision of the final act within a reasonable timeframe.

By virtue of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, "In the determination of (...) any criminal charge against him everyone is entitled to a fair hearing (...) within a reasonable time.

Recommendation R(87)18 of the Committee of Ministers of the Council of Europe of September 17, 1987, aimed at the simplification of criminal justice, states that any delay in disclosing a crime discredits the criminal proceedings and generally negatively affects proper administration of justice<sup>174</sup>.

The Committee of Ministers of the Council of Europe, in its DH (97) recommendation, which has been adopted in regard to the violation of a reasonable timeframe for the investigation of civil cases in Italy, underlined that "excessive delay in the administration of justice poses a serious threat to the rule of law". When assessing the duration of the trial or

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<sup>174</sup> See, The recommendation R (87) 18 of the Committee of Ministers of the Council of Europe, September 17, 1987 aimed at simplification of criminal justice [http://www.barobirlik.org.tr/dosyalar/duyurular/hsykkanunteklifi/recR\(87\)18e.pdf](http://www.barobirlik.org.tr/dosyalar/duyurular/hsykkanunteklifi/recR(87)18e.pdf).

other legal proceedings in national bodies, the European Court is also guided by the principle that the violation of the demand for a reasonable timeframe may be violated only by delays in the fault of the state.

The goal of the guarantee on case review within a reasonable timeframe is to protect the participants in the trial from excessive delays in the investigation, which can undermine the effectiveness of the administration of justice or its credibility<sup>175</sup>.

The European Court, speaking of proper investigation, also defines the obligation of the state to examine a case within a reasonable timeframe<sup>176</sup>, viewing it as an important condition for public confidence in the actions of state bodies<sup>177</sup>.

The European Court of Human Rights in the case of *Eckle v. The Federal Republic of Germany* states that a "reasonable timeframe" in a criminal case starts to be counted from the moment when the charge is filed. It may happen earlier than the case is sent to the court. This timeframe may be calculated from the moment of detention of the person or from the moment when the person is officially informed that a criminal case has been instituted against him or from the time the preliminary investigation was initiated.

The timeframe ends when the examination is completed at the highest instance court, i.e. when a final decision is made. In other words, when evaluating the reasonableness of the total duration of the case, the duration of the proceedings in the appeal and cassation instances should also be taken into account<sup>178</sup>.

The violation of the demand for a reasonable duration of the case cannot be justified, even if the relevant court decisions have been made in favour of the person (termination of criminal proceedings, punishment mitigation, satisfaction of appeal, etc.)<sup>179</sup>.

Within Point 1 of Article 6 of the Convention, the European Court evaluates the validity of the duration of domestic proceedings in each case, taking into account the specific circumstances of the case. Nevertheless, the case law of the European Court has established certain criteria as a result of examination of a number of cases relating to a reasonable period of dispute settlement, which are applicable to all cases when evaluating the reasonableness of the proceedings.

Accordingly, in relation to a reasonable timeframe, the European Court follows the following criteria:

1. the complexity of the case

In determining the complexity of the case, the European Court considers a set of standards as baseline, noting that the complexity may be linked to both factual and legal points of view. The

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<sup>175</sup> See, ECHR Case-law issues in criminal matters, teaching material, D. Melkonyan.

<sup>176</sup> See, *Yasa v. Turkey* case decision of September 2, 1998, complaint # 22495/93, Points 102-104.

<sup>177</sup> See, *Mahmut Kaya v. Turkey* case decision of March 28, 2000, complaint # 22535/93, Points 106-107.

<sup>178</sup> See, paragraph 98 of the Opinion No. 6 (2004), adopted by the Advisory Council of the European Judges (CCJE) from 22 to 24 November 2004 to bring the fair trial within reasonable timeframes and the role of the judges in the trials (taking into account the alternative measures for debate resolutions) to the attention of the Committee of Ministers.

<sup>179</sup> See, *Eckle v. Germany* case decision of July 15, 1982, complaint # 8130/78, Point 73.

Court places great importance on the following factors: the nature of the facts to be approved, the number of suspects and witnesses, international factors, involvement of new people in the trial, calculations, the need for experts, etc.

2. the consequences of non-compliance with a reasonable timeframe for the applicant

Such consequences for the applicant are the possible risks of ensuring the rights of the latter, which may result from the delay in the procedural timeframes.

3. efficiency of relevant bodies

Efficiency of relevant bodies means full, comprehensive and timely investigation of all the circumstances of the case by the body conducting the proceedings. Moreover, according to international legal approaches, it should be noted that the delay in the investigation of the case leads to a violation of reasonable timeframe, if this is due to subjective reasons, such as excessive overload of courts, non-professionalism of judges, etc. In such cases, the state is responsible for providing high quality and quick justice.

4. the applicant's conduct

With regard to the applicant's own conduct, the European Court states that the latter must "demonstrate willingness to take part in all the stages of the investigation directly related to him, refrain from trial dilatory tactics, as well as to expedite the proceedings by using all the measures envisaged by domestic law<sup>180</sup>. If the delay in the case is due to the applicant's fault, this is undoubtedly a factor that reduces the effectiveness of his complaint<sup>181</sup>.

The guarantee of the right to a fair trial, in particular, within a reasonable timeframe, is primarily predetermined by a comprehensive system of judicial and procedural proceedings and their proper application. Consequently, the compliance with reasonable procedural timeframes is conditioned by a number of institutional and functional factors, such as, proportionality of court workload, clear procedural mechanisms to ensure the smooth progress of the investigation, the proper conduct of those involved in the proceedings and the legislative levers ensuring that, setting of the procedural timeframes, etc.

At the same time, it should be noted that a reasonable timeframe is not an abstract concept: it is largely dependent upon the specific features of a particular case, the same duration may be considered reasonable in one case, and non-reasonable in the other.

Regarding the issue, the Court of Cassation stated that in compliance with the procedural timeframes, it is of vital importance to ensure the reasonable duration of the proceedings, and the right to trial within a reasonable timeframe is one of the fundamental principles of international human rights law<sup>182</sup>.

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<sup>180</sup> See, *Alimentaria Sanders. v. Spain* case decision of July 7, 1989, complaint # 11681/85, Point 35.

<sup>181</sup> See, *Commentaries to the Constitution of the Republic of Armenia*, General Edition, G. Harutyunyan, Yerevan, 2010, pp. 232-233, <https://www.osce.org/hy/yerevan/74940?download=true>.

<sup>182</sup> See, *Decisions of Cassation Court of December 23, 2010, # 1/0012/13/09 and # / 0082/13/09*.

Under the logic of international legal approaches of reasonable timeframes for case review, the Council of Court Chairmen of the Republic of Armenia in its turn noted that the investigation of the case should be carried out within the shortest possible time. The Council has stated that in determining the duration of the case, the beginning of the trial shall be considered to be the time when the charges are filed, which may occur earlier than the case is sent to the court, this timeframe may be counted from the moment of detention of a person, or from the moment when the person is officially notified that a criminal case has been instituted against him or from the time the preliminary investigation was initiated<sup>183</sup>.

We consider it necessary to review the issue of complying with the reasonable procedural timeframes at the legislative level in two dimensions:

1. in terms of fundamentals and principles of organization and functioning of the judiciary

The compliance with reasonable timeframe for case investigation is directly related to the structure of the judiciary, the number of judges, the distribution of court sittings, their service areas and judges, etc. In this regard, as of 2017, it should be noted that the development of the constitutional law on “Judicial Code of the Republic of Armenia” provides for new institutional solutions to compliance with the reasonable timeframes for the examination of cases, which mainly come to the following:

1. establishment of one court of first instance jurisdiction in Yerevan, the court territory of which is the territory of Yerevan;
2. non-fixed number of judges of the first instance court of general jurisdiction (Article 23), the authorization of the Supreme Court Council to increase the number of judges of separate courts;
3. establishing the criteria for determining the reasonableness of the duration of the trial in the court, taking into account the legal positions of the European Court<sup>184</sup>;
4. definition of the average benchmark duration of the case defined by the Higher Judicial Council by particular types and complexity of cases

Additionally, it should be noted that Part 9 of the Article 21.1 of the current Judicial Code<sup>185</sup>, under the title "Judicial Statistics and Publicity Maintenance" prescribes that the following

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<sup>183</sup> See, the Council of Court Chairmen of the Republic of Armenia decision # 98 of June 13, 2006, [http://www.court.am/files/news/101\\_am.pdf](http://www.court.am/files/news/101_am.pdf).

<sup>184</sup> According to Article 9 of the Judicial Code of the Republic of Armenia: “1. the investigation and resolution of the case must be carried out within a reasonable timeframe. 2. The following are taken into account while determining the reasonable timeframe for a trial:

1. the circumstances of the case, including the legal and factual complexity; the conduct of the proceedings participants and the consequences of the lengthy investigation of the proceedings for the proceeding participant,
2. the actions of the court and their effectiveness aimed at implementing the investigation of the case and the making of the decision within a shortest possible timeframe,
3. total duration of the case proceedings,
4. the average benchmark duration of the case defined by the Higher Judicial Council.

3. If a special timeframe is defined by law for the investigation and settlement of the case, it should be examined and resolved within that timeframe. Extension of such period shall be allowed exclusively in cases and in the manner prescribed by law”.

<sup>185</sup> The Law loses its force on the date of the newly elected President’s assumption of the office pursuant to the Part 2 of the Article 166 of the RA Law # 95-N of February 7, 2018.

information on each of the first instance courts and judges, according to criminal, civil and administrative cases, should be published:

1. the average duration of the investigation, according to the number of sessions,
2. the average duration of the investigation, according to time (calculation unit - hour) (including the average duration of the trial preparation, the trial, and the duration of the judicial act).

Despite the legislative requirement, the review of the public data on courts' activities indicates that such statistics is not currently being maintained, which does not give an opportunity to disclose the average duration of the case review by the court. Therefore, we believe that the development and analysis of such statistical data and the publication of the results may have a meaningful significance in identifying the reasons for non-compliance with reasonable timeframe for investigating cases, and in doing so, to implement common measures to improve judicial practice.

At the same time, the examination of the reports for 2015-2017 on criminal cases in the Courts of First Instance of the Republic of Armenia testifies that there is a tendency of increase in the workload of courts in the next year due to the increase in the number of unfinished cases in the given year. Thus, in early 2015 the number cases from the previous year was 1087 and the number of unfinished cases at the end of the year became 1295. According to the same logic, the number of unfinished 1295 cases in the beginning of 2016 increased to 1602, and the number of unfinished cases in 2017 was 1935.

We believe that the aforementioned indices, in the case of the increase in the number of unfinished cases for each subsequent year, provide grounds for drawing conclusions on the workload of the courts and the non-compliance of the proceedings with reasonable timeframes.

## 2. in terms of legislative regulations in criminal procedures

The existing criminal-procedural mechanisms are incomplete in terms of compliance with the timeframes for the investigation of criminal cases. Thus, the regulations fixing procedural timeframes are as follows:

1. the investigation should end within 10 days of the institution of a criminal case;
2. preliminary investigation of a criminal case must be completed no later than within a two-month period. This timeframe is counted from the date of the decision to institute criminal proceedings, and ends the day on which the case is sent to the court or on which the decision on the dismissal of the case is made;
3. at the same time, the duration of the preliminary investigation may be prolonged by the investigator's reasoned mediation, making a decision on whether to fully or partially satisfy the petition. Partial extension of the timeframe of preliminary investigation is subject to explanation. The duration of the preliminary investigation can be extended for up to two months in each case.

It turns out that even though the maximum timeframes for pre-trial investigation stages, investigation and preliminary investigation are fixed by law, the body conducting the proceedings is authorized to prolong the two-month period of the preliminary investigation, with no legal restrictions. Despite the need to justify the extension of the preliminary investigation timeframe in each case, such a legislative framework may be problematic in terms of the rights of the person subjected to criminal prosecution, including the reasonable timeframe for examining his case.

4. Article 292 of the Code relating to the preparation stage of the case trial states that the judge who has taken the case is investigating the materials in the case and makes a decision within 15 days after taking the case into his examination,
5. according to Article 293 of the Code, the judicial examination should be appointed within 10 days after making a decision to appoint a judicial examination,
6. the Criminal Procedure Law does not envisage maximum duration of the case proceedings.

Unlike the current Code, the first part of Article 194 of the draft Criminal Procedure Code states that since the initiation of public criminal prosecution in pre-trial proceedings cannot last more than:

- two months on a minor offense proceeding
- four months on an average severity offense proceeding
- eight months on a severe offense proceeding
- ten months on particularly serious offense proceeding.

According to the second part, in exceptional cases when it is required by the interests of justice, the timeframes may be prolonged for a maximum of two months by the superior prosecutor.

The abovementioned solutions of the draft actually state the maximum deadlines for criminal prosecution of a person.

Based on this, we believe that in order to improve the legal practice of providing reasonable timeframes for the investigation of criminal cases, it is necessary to:

1. *fix maximum timeframes for criminal prosecution in line with the Criminal Procedure Code approach;*
2. *ensure the proper implementation of the requirements of the Constitutional law "The Judicial Code" regarding the validity of the case review duration.*

## ***16. Criminal proceedings with special public assurance component***

Response to any violation by both law enforcement and any of judicial bodies in the frame of their appropriate jurisdiction is a key precondition to secure a citizen's credence in those bodies. This trust is enhanced when a comprehensive, complete and objective investigation takes place in accordance with the principle of acceleration.

Speaking of cases of social significance, inevitably the legitimate need to provide periodic news to the public about the cases is being emerged by the eligible body (prosecutorial or investigative authorities, etc). The quick examination of such kind of cases and relevant awareness to public has become a special component of ensuring public assurance of those cases, as well as of the whole country's legal and judicial systems.

*Investigation of criminal proceedings instituted with regards to violations by Police during the events of July 2016* should be viewed among such cases.

From the point of view of human rights, the events of 2016 July, surely, created serious challenges for our country. However, those events also gave the opportunity to understand the country's systemic problems, as well as the reasons and conditions contributing to those problems. They also gave an opportunity to understand what preventing actions must be undertaken to avoid similar situations in future. For this reason, in 2017 the extraordinary public report of the Human Rights Defender "Ad hoc public report on July 2016 events" was published, which was highly appreciated by his international colleagues<sup>186</sup>. The July events were thoroughly discussed in the report, as well as detailed reviews were presented concerning them. Problems concerning human rights and freedoms occurred during the events of July 17-31, about which the Human Right Defender's staff got reports, recorded violations, and presented suggestions and demands of eliminating them or undertaking other actions stipulated by law. The unprecedented outbreak of hatred speech and violence propaganda was noticeable in those days, which is addressed in detail in the extraordinary report.

The materials on actions gained during the fact finding process and comprising features of delinquent crimes, were filed by the Human Right Defender to the body conducting criminal prosecution. They referred to creating obstacles for the legal professional activities of journaists covering the events through implementing violence and other means against them, to use of disproportionate force by a number of police officers and some other cases.

As the extraordinary report on the events of July 2016 states, "on July 23 and later the RA Special Investigation Service spread announcements connected with initiating criminal proceedings and conducting preliminary investigation. The Special Investigation Service provided clarifications stating that criminal proceedings had been initiated based on the reports of the Human Rights Defender, a number of citizens, their lawyers and publications of the mass media. Those reports and publications referred to the occurrences of July, namely, that the police officers going beyond the scope of their powers presumably used their official positions

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<sup>186</sup> See, "Ad hoc public report on July 2016 events" extraordinary public report by the Human Rights Defender <http://pashtpan.am/resources/ombudsman/uploads/files/publications/e014052ce8bdca5513f5a7d68deb6224.pdf>. Hereinafter in this section: Extraordinary Report

against the interests of the service and caused injuries to different people using different special weapons, they committed violence, and hindered journalists' legal professional activities and the functioning of lawyers. According to the Special Investigation Service, a criminal proceeding was initiated based on information comprising delinquent evidence about implementing violence against journalists covering the demonstration and about other means applied to hinder the journalists' legal professional activities on July 29 in Sari Tagh”.

Within the framework of preparing this statement, information about the investigation of the criminal proceedings instituted in regards to the July events was demanded from the competent state authorities. Taking into account the public significance of the events under consideration and the necessity to ensure sufficient level of public awareness about events of public concern, seeking to be objective, the data obtained from state bodies is introduced in the present report.

Another statement was delivered by the Special Investigation Service on August 31, 2016, according to which out of 99 presumable victims of the 29 July night events in Sari Tagh, 23 were journalists, 19 of whom were recognized injured. As of the situation of October 31, 2016, within the criminal proceedings under investigation by the Special Investigation Service, charges of committing delinquent crimes were brought before 8 people, and the inquiry of 7 of them, separated from the criminal proceedings on hindering employees of “Azatutyun” radio station, “Armenia” TV and “news.am” webpage from conducting their legal professional activities, was concluded and sent to the Court with the incriminatory conclusion.

The Service still has under its surveillance the criminal case instituted on the grounds of causing bodily injuries to different people, subjecting people to detention in the RA Police subdivisions and further implementing violence against them by undertaking special measures, causing bodily injuries by the RA police officers in M. Khorenatsi street and in Sari Tagh within the period of July 29-30, 2016, which has recognized 60 citizens as the injured. Within this case 24 journalists from different media have been interrogated, 21 of whom were recognized as injured. 60 police officers have also been interrogated. The inquiry has brought charges before 8 citizens.

Four of them were charged under Article 164 (Hindrance to the legal professional activities of a journalist) and Article 258 (Hooliganism) of the Criminal Code. As a result, the condemnatory verdict is entered in power. The punishment constituted against each of them was imprisonment for one year with a fine in the amount of 200 times the amount of minimum salary (AMD 200.000). Another person was charged under Article 164 of the Criminal code (Hindrance to the legal professional activities of a journalist). The verdict is entered in power. Fine was constituted in the amount of 200 times the amount of minimum salary (AMD 200.000).

Within another criminal case, the charge was brought against one of the citizens based on the following articles of the Criminal code: 164 (Hindrance to the legal professional activities of a journalist) and 185 (Willful destruction or spoilage of property), yet another was accused under Article 185. The verdict is entered in power, for the first one the fine was in the amount of 250 times the amount of minimum salary (AMD 250.000), for the other 200 times the amount of minimum salary (AMD 200.000).

One more citizen was charged under the following articles of the Criminal code: 164 (Hindrance to the legal professional activities of a journalist) and 185 (Willful destruction or spoilage of property). As a result, verdict entered in power and the penalty was imprisonment for one-year period, which was not applied conditionally, and the fine was in the amount of 200 times the amount of minimum salaries (AMD 200.000). The Court satisfied the civil claim within the present case.

According to the information received from the Special Investigations Service, investigative and operative-investigative activities are proceeding to find out how legitimate the police officers' actions were, the basis of the persons' detention by them and the implementation of special measures.

In the proceedings of the Special Investigation Service, there was another case which referred to bodily injuries caused by police officers to different citizens on M. Khorenatsi street and in the neighbourhood during the period of July 17-27, 2016, as well as the cases were about detention of different people to the RA Police subdivisions and applying violence against them. According to the information provided to the Defender, police officers must be exercised for using their official positions to supposedly impede the journalists' legal professional activities during the incidents and to impede lawyers who had come to provide legal aid to the detainees from conducting their functions.

Taking into account the great public interest towards July incidents and the importance of keeping the public aware about those incidents, it is necessary to emphasize that it is of fundamental significance to periodically provide public reports about the measures being or to be undertaken by every competent state body (who were the people who used violence against the demonstrators and journalists, as well as who prevented journalists' legal professional activities, and what punishments are they liable to). This is significant from the point of view of preventing future similar violations as well. Furthermore, periodic increase of the level of public awareness about the work done or to be done by law enforcement bodies can have a positive impact on public trust towards these state bodies.

The need for public awareness concerning the issues of great importance to the public is emphasized by relevant international demands. Specifically, the decision of the European Court of Human Rights concerning the case of *Tønsberg Blad AS and Marit Haukom v. Norway*, testifies that in similar cases the state discretion is being restricted by the benefits of the democratic public, to secure the role of the media as a "public watchdog" in spreading information about cases of considerable public concern<sup>187</sup>.

When cases of public interest and public resonance occur, the necessity to inform the public about the process of criminal proceedings is evident, it is even recorded in different recommendatoin of the Committee of Ministers of the European Council. Thus, according to the Recommendation # R(2000) of March 8, 2000 "On the right of journalists not to disclose

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<sup>187</sup> See, *Tønsberg Blad AS and Marit Haukom vs Norway* case decision of 1 March, 2007, complaint # 510/04, Point 82.

their sources of information”, free journalism is enshrined in the right to freedom of expression as a fundamental precondition to ensure public awareness about issues of public concern<sup>188</sup>.

The basic principles of the European Council’s Committee of Ministers’ Recommendation Rec(2003)13 “On provision of information through the media in relation to criminal proceedings” of July 10 2003, emphasise the public awareness of criminal proceedings of public interest and importance of the media from the viewpoint of providing it. Specifically, Principle 5 of the Recommendation stresses “the importance of media reporting in informing the public on criminal proceedings, as well as in ensuring public scrutiny of the functioning of the criminal justice system”<sup>189</sup>.

Moreover, Principle 6 of the same Recommendation defines the necessity to provide information about criminal proceedings periodically. Particularly it mentions that: “In the context of criminal proceedings of public interest or other criminal proceedings which have gained the particular attention of the public, judicial authorities and police services should inform the media about their essential acts, as long as this does not prejudice the outcome of the proceedings. In cases of criminal proceedings which continue for a long period, this information should be provided regularly”<sup>190</sup>.

The quoted arrangements come to prove that the public should be informed periodically about the essential acts taken by competent state bodies within criminal proceedings of public interest or other criminal proceedings, which have gained the particular attention of the public. Moreover, the same formulation makes it evident that the most fundamental way to inform the public about those steps is media. As was mentioned, it has several fundamental purposes, such as prevention of similar future incidents, the provision of trust towards law enforcement bodies, as well the provision of information about practical relevant legislative arrangements. This is why the mass media constitute such a sublime role in similar cases. Therefore, in those situations competent organs should not impede the legal activities conducted by journalists, especially through implementing violence against them.

Taking into account the extent of interest about July’s incidents among the public, surely they have public significance, no matter to what extent each of the incidents is consisted a different episode. Therefore, it is necessary to ensure public awareness concerning the activities of competent state bodies and to create beneficial conditions for journalists’ impetuous activities.

In the context of discussing July incidents, it is necessary to focus our attention on another case which again has public significance, and is connected with the examination of the criminal case concerning the information that some police officers entailed violent actions towards defendants

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<sup>188</sup> See, the testimonial of the Committee of Ministers of European Council # R. (2000)7 of March 8 of 2000 “On the right of journalists to not revealing the sources of information”, <https://rm.coe.int/16805e2c13>.

<sup>189</sup> See, the principle 5 of the testimonial of the Committee of Ministers of European Council #(2003) 13 “On providing information to the public about the process of criminal proceedings through mass media”. [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=09000016805df617](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805df617).

<sup>190</sup> See, the principle 6 of the testimonial of the Committee of Ministers of European Council #(2003) 13 “On providing information to the public about the process of criminal proceedings through mass media”. [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=09000016805df617](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805df617).

which took place on June 28, 2017 in the building of the Court of General Jurisdiction of First Instance of Avan and Nor Nork administrative districts.

Thus, on June 28 2017, through the phone call to the hot line of the staff of the RA Human Rights Defender, advocates Ara Gharagozyan and Arayik Papikyan informed that in the basement of the Court of General Jurisdiction of First Instance of Avan and Nor Nork administrative districts, near the cells, police officers implemented violence against Arayik Khudoyan, Areg Kyureghyan, Mkhitar Avetisyan, Smbat Barseghyan and Gagik Yeghiazaryan. Later there were other public announcements about that as well.

To meet the abovementioned persons, the representatives of the Defender's staff visited RA "Nubarashen", "Vardashen" and "Yerevan-Center" Penitentiary Institutions of the RA Ministry of Justice. Private conversations were held during the visits. The Defender's representatives conducted external examinations of the bodies of the above-mentioned persons; the protocols about body examination in the Penitentiary Institutions were studied and recorded. Moreover, medical documents of the abovementioned persons were examined in detail.

During the private interviews, the detainees reported that the traces of the use of physical force were the consequence of the violence committed by the police officers.

Based on the collected materials and information, on June 29 2017, the RA Human Rights Defender independently started a discussion procedure. All obtained data, which were received within the Defender's jurisdiction, with detailed medical descriptions were summarized and sent to the RA General Prosecutor's Office for verification within the framework of the criminal proceedings and for necessary legal assessment. Relevant record was sent to the RA Police as well to check the obtained information within the framework of their jurisdiction.

Everything was introduced in a public report. Apart from that, the RA Human Rights Defender made a public statement about the necessity to institute immediate criminal proceedings on the same day, it comprised the following: "All the mentioned information contains features of a delinquent crime, and procedure should be instituted promptly stipulated for by the Criminal Procedure Code<sup>191</sup>.

Later, at his own initiative, within the framework of the discussion procedure, the RA Human Rights Defender periodically requested information from Prosecutor's Office, the Special Investigation Service and the Police concerning the above-mentioned incidents and the measures that each of them took within the framework of their jurisdiction.

RA General Prosecutor's Office gave information to the Defender about the criminal case that was instituted on July 3 2017 on the grounds of Part 2 of the Article 309 of the RA Criminal Code – actions willfully committed by an official which obviously exceeded his authorities which supposedly took place during the above-mentioned incidents.

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<sup>191</sup> See, "Statement on the necessity to immediately initiate a criminal proceeding" by the RA Human Right Defender, <http://www.ombuds.am/media/statement-on-the-necessity.html>.

During the preliminary investigation Areg Khandoyan, Mkhitar Avetisyan and Gagik Yeghiazaryan were recognized as the injured. Areg Khandoyan and Mkhitar Avetisyan refused to give any testimony, while Smbat Barseghyan, Arayik Khandoyan and Gagik Yeghiazaryan were interrogated and testified about the case.

According to the obtained information, A. Khandoyan, A. Kyureghyan, G. Yeghiazaryan, M. Avetisyan and S. Barseghyan were designated to medical expertise to clarify a number of questions connected with their bodily injuries. During the external examination the officers of the battalion of the RA Police of Yerevan who were on service in the Court building on the same day, including those police officers on service on the floor personally for the detainees were interrogated, too. Court bailiffs who were on service in number 1 juridical session hall of the Court of General Jurisdiction of First Instance of Avan and Nor Nork administrative districts were also interrogated. 5 persons were recognized as injured: Arayik Khandoyan, Gagik Yeghiazaryan, Smbat Barseghyan, Mkhitar Avetisyan and Areg Kyureghyan, the preliminary investigation of the criminal case is still in process.

Concerning the mentioned incidents, it is necessary to mention that especially the information about committing violence in the building of the Court is quite distressful and from the perspective of public cognition it can have negative influence, especially on the Court as an authority of justice. Similar steps can have negative impact on the trust of the public towards the criminal justice system, as the persons who were accused in that criminal case were under the state responsible control.

Therefore, to further eliminate this kind of incidents and to not cause any negative public perception of them a relevant criminal-justice response of the state, public awareness about the process of the case, as well as the accomplishment of the examination within a short periods should be secured.

The investigation of the famous case concerning the threats against director of the Helsinki Citizens' Assembly Vanadzor Office Arhur Sakunts, should be considered among those enjoying public trust.

Specifically, A. Sakunts publicized information on June 2017 about the threats of taking his life<sup>192</sup>. According to the obtained information, he wrote something on his Facebook account, and another user of the network left a comment about killing A. Sakunts with a gunshot.

Based on the above-mentioned publications, taking into account the public significance of the human rights and impermissibility of similar cases, a discussion procedure was initiated by the Human Right Defender. The Defender himself discussed the issue with A. Sakunts.

Having the results of the examination, the Defender applied to the RA General Prosecutor with the request to institute proceedings on the case of a delinquent crime. The human rights defender was recognized as injured in the instituted criminal case. Afterwards, A. Sakunts

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<sup>192</sup> See, the media publications: <http://www.armtimes.com/hy/article/114198>, <http://www.lin.am/2153667.html>.

introduced his concerns to the Defender about the slow pace of the criminal case process, as well as about the issue of investigative activities within the framework of the case.

Later, according to the clarifications provided to the Defender, the criminal proceeding of the case was inhibited, based on the Point 1 of Part 1 of Article 31 of the RA Criminal Procedure Code as the person to be involved as the accused was unknown.

The demand for inevitability of criminal responsibility of guilty people, and for further prevention of similar encroachments supposes that all means should be implemented by competent authorities to clarify all circumstances and to find the persons who made the encroachments.

### ***17. The examination of the criminal cases concerning the deaths of 10 victims on March 1 2008***

In the annual reports of 2011, 2012, 2013, 2014, 2015 and 2016 of the Human Rights Defender, reference was made on the preliminary investigation about the facts of the deaths of 10 victims on March 1 2008 and on the issue of the public awareness concerning them. Family members and relatives of the 10 victims of March 1, different politicians, civil society and international institutions have expressed their concerns and dissatisfaction about the case several times. Taking into account the broad public resonant of March 1 incidents of 2008, the Defender considers it important to discuss the level of public awareness concerning the activities of revelation of the criminal cases, and to introduce and discuss the information that was provided to the Human Rights Defender without any prejudice to the principle of secrecy of preliminary investigation.

Thus, the Special Investigation Service again provided information to the Human Rights Defender about the process of examination of the criminal cases concerning the deaths of the victims from March 1 to March 10 2008. According to it, 10 separate proceedings have been instituted from the criminal case concerning the incidents of March 1-2 2008 about the deaths of 10 persons and bodily injuries of persons, and the preliminary investigation of each proceeding is continuing. Based on the obtained information, investigative activities and operative-investigative measures are being conducted to reveal the persons who committed the crime, to find them and to bring them to responsibility.

According to the information provided to the Human Rights Defender by the Special Investigation Service, they have 10 separate cases concerning facts of 3 persons receiving bodily injuries and of 10 persons killed, all of which occurred during the events of March 1 and March 2 2008. Preliminary investigation of each case is in process and relevant investigative activities are being held. Specifically, due to the obtained information, almost 200 persons have been examined for all cases, recommendations have been given for accomplishing different operative-investigative acts and interrogations have been held.

The information which was provided by the Special Investigation Service testifies that the Service implemented special judicial activities, nevertheless within the framework of the

examination of the criminal cases, throughout 2017, the relevant level of the public awareness was not provided.

*Therefore, it is necessary to provide relevant awareness about the 10 deaths that occurred on March 1 2008 to the victims' relatives and to the public about the activities being performed by the Special Investigation Service within the framework of the examination of the criminal cases. Within a short time to provide a full, objective and comprehensive investigation of the criminal cases under the acceleration principle.*

## SECTION 9. OTHER RIGHTS

### *1. Causing discomfort to the population of the nearby territories due to noise*

During 2017 complaints continued to be received on the issues of causing discomfort to the population of the nearby territories due to noise coming from dance studios, nightclubs and other amusement places in the evening and night hours.

Although the right of rest is reserved in the Article 82 of the RA Constitution named “Working conditions”, it is noted in the comments to the RA Constitution that the right of rest has a wider meaning: it is not an attached right to the labor sector or the right for labor, but a social right, as it assures the social-biological and natural needs of the society and its members.

European court of human rights has noted in one of its precedent verdicts that although the European “Convention for the Protection of Human Rights and Fundamental Freedoms” doesn’t directly provide the right of having peaceful environment, however, in cases when the noise seriously affects a person, a danger of violating the right of respect towards personal and family life, guaranteed by the Article 8 of the European Convention,<sup>193</sup> can appear.

In one of the complaints addressed to the Defender the person informed, that there was a dance studio in the basement of a multi-apartment house, right under their apartment, where the dance classes were conducted accompanied by loud music, which caused discomfort to him and the members of his family. According to the explanations received from the Ministry of Health of RA, the experts of the “National Center for control and prevention of diseases” SNCO have performed inspection in the dance studio. As a result, it was recorded, that the noise coming from the studio has surpassed the requirements of sanitary norms # 2-III-11.3 “Noise in workplaces, residential and public buildings, and in residential construction areas”, established by Decision of RA Minister of Health order # 138, of March 6, 2001. The owner of the studio was subjected to administrative responsibility, after which the noise from the dance studio has decreased, according to the citizen’s information.

Review of another appeal addressed to the Defender, revealed that people living in the areas adjacent to a nightclub were complaining of the loud music and noise coming from it. According to explanations received from RA Ministry of Health, the experts of the State Inspection of RA Ministry of Health have conducted appropriate inspection in the abovementioned club, after which, as per information from the residents, the noise has stopped.

*Taking into consideration the abovementioned, it is necessary to:*

- 1. Conduct periodic inspections in nightclubs, dance studios and amusement places, the noise level of which can reasonably surpass the requirements of sanitary norms # 2-III-11.3 “Noise in workplaces, residential and public buildings, and in residential construction areas”, established by Decision of RA Minister of Health order # 138, of March 6, 2001.*

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<sup>193</sup> See, Oluic v. Croatia case decision of May 20, 2010, appeal # 61260/08, Point 45.

## *2. Be consistent with respect to compliance with these norms.*

### ***2. Unsatisfactory condition of the roads***

In 2017 the unsatisfactory condition of roads of intra-city and regional importance, resulting in some cases in difficulties for free movement and cargo shipments, remained a problematic issue.

Particularly, in 2017 inhabitants of Tavush region had closed M4 interstate highway passing through the regional center Ijevan. The participants of the protest complained of bad state of the road, saying that damages are caused to the vehicles because of numerous holes on the road<sup>194</sup>. In another case, the residents of Herher village in Vayots Dzor province have raised the issue of the impassable state of the road leading to the village. The villagers state that because of the condition of the road many people have problems in traveling, as taxis refuse to serve them mentioning the bad condition of the road. According to the villagers, the absence of the road also affects tourism development<sup>195</sup>.

As a result of the abovementioned we can state, that the bad condition of the roads is directly proportioned to issue of availability of transport. For example, taxi services refuse to drive via impassable roads. In this particular case, it is worth mentioning the case in Nor Akhuryan district of Shirak province, which has about 500 inhabitants. The rout-taxi company, which exploited the route to Nor Akhuryan refused to participate in the competition after the expiry of the contract because of bad state of roads, and the taxi drivers were taking higher fees for their services because of the bad condition of the road<sup>196</sup>. The same situation is in Lernarot village of Aragatsotn province, where the bad roads result in absence of public transport<sup>197</sup>.

Information was published in 2017, that many rout-taxi drivers in Vanadzor went on strike complaining about the bad condition of the roads. Particularly, the drivers, while insisting on the bad condition of all the roads in Vanadzor, simultaneously were voicing the issue of damages caused to the cars because of that<sup>198</sup>. The inhabitants of Gyulagarak community of Lori province raised the issue of the bad condition of the road leading to “Sochut” dendropark<sup>199</sup>.

At the same time it its worth mentioning that certain steps have been taken in 2017 to solve those problems. Thus, in the frames of the program for restoring and rebuilding of 90km long main passage of Vanadzor-Alaverdi-Georgia interstate (M-6) highway, restoration and rebuilding works of the three tunnels located in Dzoraget-Pambak segment of Alaverdi-Vanadzor interstate highway were conducted<sup>200</sup>. In the framework of the program, it is planned to renovate 6.7km of roads in Vanadzor, about 43.9 km of the highway in Vanadzor-Alaverdi

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<sup>194</sup> <https://www.azatutyun.am/a/28478712.html> , <http://hetq.am/arm/news/78584/ijevancinery-pakel-en-mijpetakan-tchanaparhy-lracvox.html>

<sup>195</sup> <https://www.azatutyun.am/a/28886101.html>

<sup>196</sup> <https://hetq.am/arm/news/83001/21-tari-xekavarox-hamaynqapety-chi-karoxanum-lutsel-nor-akhuryan-taxamasi-tariner-dzgvok-khndirnery.html>

<sup>197</sup> <http://hetq.am/arm/news/84180/ereq-tari-aranc-ertuxayin-transporti-lernarot-gyuxi-bnakichnery-dzhvarutyamb-en-ashtarak-kam-erevan-hasnum.html>

<sup>198</sup> <http://www.aravot.am/2017/05/31/889153/>

<sup>199</sup> [https://www.youtube.com/watch?v=Rh\\_xr\\_z4POU](https://www.youtube.com/watch?v=Rh_xr_z4POU)

<sup>200</sup> <http://hetq.am/arm/news/76604/mijpetakan-tchanaparhi-vtangavor-tuneli-verakarucman-ashkhatanqery-motenum-en-avartin.html>

segment, 3.4 km of the roads in Alaverdi town, 36.3 km of the highway in the segment of Alaverdi-Georgia border. However, according to available data, another issue has come forward as a result of construction works. Thus, in the course of renovation works, the transport was led from Alaverdi to Vanadzor through Alaverdi-Odzun-Stepanavan road. The latter increased the time in travel. As a result, both taxi and bus drivers demand higher rates from the passengers than it was before<sup>201</sup>.

As a result of studying and analyzing the abovementioned facts it can be stated, that in spite of performed activities in 2017, the issue of bad condition of the roads remains unsolved.

*Based on the abovementioned, we suggest raising the funding for renovations of the roads having intra-city and regional importance.*

### **3. Transport overload, quality of service**

The issue of overloaded transport, its service quality and other issues have been raised throughout the years in the annual reports and communiques of the Human Rights Defender. The issue of overall unsatisfactory quality of public transportation service in 2017 remains both in Yerevan and in regions.

Thus, according to the data received from RA Ministry of Transport, Communication and Information Technologies, there was no significant change in the quantity of the means of transportation exploited on interregional routs in 2017. In comparison to 2016, during the 2017 no means of transportation were added to the interregional route chain, however, 2 interregional routs have been formed: Yerevan-Zvartnots – with 3 vehicles, and Yerevan-Araks – 2 vehicles. According to the data provided by RA Ministry of Transport, Communication and Information Technologies, there was no significant change in the passengers' quantity in 2017; moreover, in 2017, 30 vehicles on interregional routes were replaced with new ones.

It should be noted, though, that in spite of these explanations the citizens continue to complain about the existence of problems. Moreover, both in previous years and in 2017, citizens have complained about inappropriate work of public transport in Yerevan city, especially of buses and vans. According to the data provided by the Yerevan Municipality, in the course of 2017, 317 complaints from the citizens about the work of public transport were received both in written form, and in verbal reports – on the “hot line” phone number. The complaints mostly touched the issue of long intervals between the arrivals, drivers smoking in the transport and talking on the phone, and cases of inappropriate attitude towards the passengers, as well as unsatisfactory service in several districts at weekends and in the evenings.

There are also some communities, where the absence of transport can lead to many problems for the residents of that community (for example from the point of accessibility of educational and healthcare institutions). Thus, the study of data received from the Ministry of Territorial Administration and Development revealed issues regarding the absence of public transport. As

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<sup>201</sup> <http://hetq.am/arm/news/76604/mijpetakan-tchanaparhi-vtangavor-tuneli-verakarucman-ashkhatanqery-motenum-en-avartin.html>

an example, it should be mentioned, that the public transportation does not operate in 105 residences of Syunik province. There is also no public transport in 22 communities (39 residences) in Aragatsotn province, 6 communities in Lori province, etc. In 24 residences of Tavush province, the problem of absence of regular public transportation is solved through means of transportation working on private basis.

Meanwhile, it should be mentioned, that during 2017 there have been several positive changes in this area. For example, according to the data provided by the Ministry of Territorial Administration and Development at the beginning of 2017 in 3 communities of Shirak region (21 residences), where no transportation functioned, Shirak provincial administration has opened new regular intraregional transport routes, which included the residences with no public transportation services. As a result, by the end of the year, the number of communities having no public transportation services has lessened to just one – Arpi community (9 residences).

However, along with all this, it is obvious, that there is no access to public transportation service in many residences, and the problem has a systemic nature especially, in regions and regional communities.

*Based on the abovementioned, we suggest to:*

- 1. Raise the quality of public transport services by determining mechanisms of control over the quality of services in companies dealing with regular transportation of passengers by the means of public automobile transport.*
- 2. Increase the number of intercommunity public transportation means, as well as ensure availability of transport in all regional communities.*

#### ***4. Legislative issue related to the means of securing the claim***

The RA Human Rights Defender has raised for a number of times the issue of impossibility, in some cases, arresting debtor's property and (or) finances during the introduction of measures securing the claim, because of the absence of property, due to incomplete legislative regulations.

Thus, during the examination of civil case the creditor has a right filing a motion to apply measures securing the claim. Paragraph 1 of Part 1 of Article 97 of RA Civil Procedure Code, determines, that the court, either upon the motion or by the initiative of the person taking part in the case, takes measures to ensure implementation of the lawsuit, if not taking those measures can make the implementation of the judicial act impossible or difficult, or lead to deterioration of property being the subject of the lawsuit. At the same time through a motion of the person taking part in the case, the court has a right to change one measure of securing the claim with another, or modify it<sup>202</sup>. It is also worth mentioning that pursuant to Article 101 of the RA Civil Procedure Code, the provision of the lawsuit is also stopped by the court. At the same time, if

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<sup>202</sup> RA Civil Procedure Code, article 100.

the decision to satisfy the suit is made, the remedy will be maintained until the execution of the judgment.<sup>203</sup>

In case the court satisfies the motion for securing the suit, the court's decision on securing the claim is carried out per regulations of the RA Law “On Compulsory Enforcement of Judicial Acts”<sup>204</sup> and the writ of execution is transmitted to the Judicial Acts Compulsory Enforcement Service of the Ministry of Justice, bases of which a restriction is imposed on the debtor’s property.

If the court satisfies the measures securing the claim, the verdict on the case is made immediately based on RA law of regulations on “Enforcement of court decisions” and the writ is given to the RA Ministry of Justice, the service providing the enforcement of court decisions, on the basis of which the restriction is being put on the debtor’s property.

According to Part 12 of the Article 44.3 of the RA Law “On Compulsory Enforcement of Judicial Acts”, in case of restricting the money placed on the bank or deposit account opened in the name of the debtor at the amount of the claim, or in case of payment of the amount of the claim by the debtor to the deposit account of the Compulsory Enforcement Officer, the Compulsory Enforcement Officer makes a decision on removal of the restriction from the previously seized property and completion of the enforcement proceedings.

At the same time, based on the above-mentioned and guided by Point 6 of Part 1 of the Article 41 of the RA Law “On Compulsory Enforcement of Judicial Acts”, the restriction on property and money is taken off by the Compulsory Enforcement Officer and the enforcement proceeding ends. As a result, after the removal of the restriction on property and money by the Judicial Acts Compulsory Enforcement Service, the debtor has an opportunity to sell his property and, after a while, when the creditor requests the court to apply measures securing the claim against the debtor by imposing a restriction on the property and / or the money for an additional amount, it becomes clear that the debtor has no more property. It turns out that due to incomplete legislative regulations, the creditors are deprived of the opportunity to secure their claim.

Thus, the abovementioned issue is not clearly regulated and continued to be challenging during 2017.

*Based on the abovementioned, we suggest development of legislative amendments to clearly regulate the mechanisms for changing the mechanisms of measures securing the claim.*

##### ***5. Discrimination based on sexual orientation***

The prohibition of discrimination is fixed in the Article 29 of RA Constitution according to which the discrimination by gender, race, skin color, ethnic or social status, genetic signs,

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<sup>203</sup> RA Civil Procedure Code, article 101.

<sup>204</sup> RA Civil Procedure Code, article 99.

language, religion, ideology, political or other opinions, national minority belonging, condition of property, birth, disabilities, age or other conditions of personal and social character is prohibited.

The studies of legislation show that legal acts having a separate subject of regulation do not contain provisions defining discrimination. Moreover, RA legislation defines the prohibition of discrimination; however, as a result of absence of precise legal mechanisms, the individuals are deprived of the effective means of defending their rights. In order to ensure the full realization of the rights of persons within the framework of the problem under discussion, it is important to define clear statutory regulations, where clear definition of discrimination, its types and the clear mechanisms of its prevention will be provided.

The issue of comprehensive legislation defining discrimination was pointed out by the UN Universal Periodic Review working group still in 2015, when Armenia was recommended to adopt comprehensive legislation defining discrimination, as well as effective mechanisms to combat discrimination, aimed at exclusion of propaganda and incitement of hate towards the vulnerable groups<sup>205</sup>.

In July 2017, The Human Rights Watch International human-rights organization has reflected the manifestations of discrimination, harassment and physical violence against sexual minorities in Armenia in its report, particularly highlighting the accessibility of access to justice for the sexual minorities. The report states, that no reports are filed because of the fear of being discriminated<sup>206</sup>.

According to the data from the annual report of Armenia's Helsinki committee on "Human rights defense in 2017", 26 cases of harassment towards LGBT individuals have been recorded as of December 7, 2017. Five of the mentioned cases were about physical violence towards transgender persons, one of which led to death.

In regard to the issue under discussion, it should be underlined that the person's sexual orientation or gender identity as a quality of hate-based crime is not envisaged by the provisions of the Special Part of the RA Criminal Code, as well as the Article 63 of the RA Criminal Code, "Causes of aggravating liability and punishment " envisages only the national, racial or religious hatred, as the motive for the hate-based deed, as a result of which, due to a legislative gap, the crimes committed based on the hatred conditioned by a person's sexual orientation, or gender identity, do not affect the qualification of the crime and the amount of punishment<sup>207</sup>. Meanwhile, the European Court of Human Rights, referring to manifestations of discrimination

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<sup>205</sup> UNO Universal Periodical Review working group, 2015,

[http://www.upr-info.org/sites/default/files/document/armenia/session\\_21\\_-\\_january\\_2015/a\\_hrc\\_wg.6\\_21\\_1.8.pdf](http://www.upr-info.org/sites/default/files/document/armenia/session_21_-_january_2015/a_hrc_wg.6_21_1.8.pdf)

<sup>206</sup> <https://www.hrw.org/world-report/2018/country-chapters/armenia>

<sup>207</sup> Armenia's Helsinki committee for "Human rights in Armenia 2016", report, observer #1, January 2017, <http://armhels.com/wp-content/uploads/2017/01/Ditord-2017-01arm-Web.pdf>

on the basis of sexual orientation, stated that discrimination on the basis of sexual orientation is as problematic as discrimination based on "gender, race, color"<sup>208</sup>.

### ***6. Control of the quality and safety of toys***

Though the quantity of toys in the market rises year after year, there is no appropriate control on the quality and safety of toys. The issue was also raised by the RA Human Rights Defender in his annual reports.

Sanitary rules of hygienic requirements for toys (games) and of the materials used for production of toys (games) for children up to 14 years are established by the Order of the RA Minister of Health # 539 of March 26, 2007, "On approval of sanitary rules for the production and sale of toys and games for children". The requirements of these rules apply to toys (games) for the children both produced and sold, and imported to the Republic.

Meanwhile, in 2017, a survey was carried out of 16 different types of toys from 5 countries, of which nine were Chinese, 3 - Russian, 1 - Vietnamese, 2 – of an unknown country of origin. Phthalates were found in all the toys examined<sup>209 210</sup>.

Certification of the toys is another issue. Particularly, as a result of inspections carried out by the Market Control Inspection of the Ministry of Economic Development and Investments in 2017, 70% of the companies subjected to testing in the toys market did not have a certificate<sup>211</sup>.

*Given the importance of the issue, the Market Control Inspection of the RA Ministry of Economic Development and Investments should exercise proper control over the quality and safety of toys available in the market.*

### ***7. The issue of causing loss to citizens through "Money from the air" program.***

In 2017, complaints were addressed to the Defender in regard to the losses caused to the citizens by broadcasting of the "Money from the Air" show on the TV. It turned out that the RA Laws "On prized games, internet prized games and casinos", and "On Television and Radio", as well as other related Laws, lack the legal regulation of television and radio broadcast of prized games, whereas this legal gap can in practice become a cause of violation of citizens' rights.

Thus, the concept of prized games is defined by the Article 2 of RA Law "On prized games, internet prized games and casinos". At the same time according to the Part 2 of the Article 1 of RA Law "On prized games, internet prized games and casinos", the operation of this law does

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<sup>208</sup> See Vejdeland and Others v. Sweden case decision of February 9, 2012, complaint #1813/07, point 55.

<sup>209</sup> <http://www.a1plus.am/1581353.html>

<sup>210</sup> Phthalates are used in production of plastic toys giving them softness and flexibility. Penetrating into the organism, phthalates lead to decrease of the immune system and its protective properties, affect the liver, kidneys, cause infertility and cancer, metabolic disorders, obesity, diabetes, and in the course of the brain development cause neurotoxic interactions. Among males, phthalates affect the development of spermatozooids and cause testicle ingrowth, which leads to infertility. Young women and children are considered a more vulnerable group. <https://hetq.am/arm/news/83203/haykakan-shukayum-vatcharvox-khaxaliqnerum-haytnabervel-en-hormonal-khangarum-arajacnox-nyuter.html>

<sup>211</sup> <http://www.a1plus.am/1579450.html>

not cover activities of conducting prized games by broadcasting them via any media, except for the cases determined by this law.

Based on the abovementioned, it can be concluded, that defined regulations of RA Law “On prized games, internet prized games and casinos” cannot be applied to the “Money from the air” TV show.

Moreover, the comprehensive review of the appropriate provisions in the legislation regulating the telecommunications, the RA Laws “On Lotteries”, “On Television and Radio” is came out, that the activities of organization and broadcasting of prized games, being broadcasted on the Television and Radio, are not regulated by the RA legislation as of now.

In 2017, 14 complaints on the “Money from the air” television quiz program were sent (forwarded) to RA National Committee on Television and Radio. According to the Committee, the RA law “On Television and Radio” provides that the Tele-Radio companies develop and implement their broadcasting policies by themselves and the Committee has no function by Law to interfere the broadcasting policies of the Tele-Radio companies.

*Taking into consideration the abovementioned, it is suggested to change the RA law “On Television and Radio” in a manner, that the games of that kind could be broadcasted only at night hours from 24:00 until 06:00. Moreover, it is suggested to define, that the TV or Radio broadcasting company must publish information on the number of the calls and the possibilities of being connected, to inform during the whole broadcast on the tolls, and at the same time, a reliable information on the tariffs should be visible or audible. It is suggested also to determine a warning on the restriction for the participation of the minors. It should also be mentioned, that the Staff of the Defender has developed and presented the appropriate legislative draft the competent authorities.*

#### ***8. Problems caused by advertisement of internet prized games and lotteries***

In 2017, through the complaints addressed to the Human Rights Defender, as well as through the mass media, a number of issues resulted from the advertisement of internet prized games and lotteries. Thus, the review of RA legislation revealed that there are no detailed legal regulations on advertisement of internet prized games and lotteries, which results in violation of human rights, including rights of children.

In 2017, the defender has addressed a question to the RA Ministry of Finance about the number of advertisements permissions denied by the Ministry, and the bases for the denials.

According to the RA Ministry of Finance, no separate registration regarding the issue of addressing the minors in the advertisements was made. At the same time, the Ministry informed that according to the Point “J” of the Part 2.1 of the Article 6 of RA law “On prized games, internet prized games and casinos” the organizer of internet prized games ensures fulfillment of the requirements of the RA Law "On advertisement". According to the mentioned law, there is

no requirement of agreeing the advertisement with the authorized bodies by the organizer of the internet prized games; therefore, the RA Ministry of Finance did not have any jurisdiction to register cases of violations in advertisements of internet prized games.

In order to defend the rights and interests of consumers, to protect the minors and citizens from being seduced by gambling advertisements, to prevent individuals from moral and financial loss, it is suggested *to allow the television broadcast of advertisements of lotteries and internet prized games, as well as advertisements of their organizers, from 24:00 until 6:00. We suggest to forbid in advertisements addressing minors in any form; use of audio-visual and any other forms of human images; creating an impression that the participation in the game ensures and opportunity of regular income (profit) or is an alternative to labor; creating an impression that the income (profit) is guaranteed; create an impression, that achievement of social, professional, sport or personal success through the game is possible; criticize for not participating in the lottery or internet prize game. It is also suggested to fix in the Law, that the advertising of lotteries and Internet prized games should contain warning information about the inadmissibility of playing in drunk or depressed state.*

Taking into consideration the abovementioned, the RA Ministry of Finance and the Staff of RA Human Rights Defender have developed Draft RA Law “On making amendments to the RA Law “On Advertising””.

## SECTION 10. THE HUMAN RIGHTS DEFENDER'S WORK IN THE PUBLIC SERVICE ORGANISATIONS SECTOR.

The 2015 constitutional amendments established the Defender's authority to monitor the protection of human rights and freedoms by organisations: this was specified in detail in the RA Constitutional Law "On the Human Rights Defender". In light of the amendments, the Defender reserved the right to discuss violations of human rights and freedoms by organisations delegated with authority from state and local self-governance authorities and organisations in the public services sector, when those were large-scale violations or were of social importance or were related to the necessity to protect interests of individuals who could not resort to legal remedies for protection of their rights and freedoms on their own initiative.

Within the context of the RA Law "On the Authority Regulating Public Services", the public services sector comprises: the energy sector, the water sector, the telecommunications (electronic communications) sector, postal communications sector, railway transportation sector (in terms of methods for calculation of infrastructure utilisation fees, implementation of utilisation fees calculation, utilisation fees approval), the sector of mandatory maintenance inspection of transportation vehicles (only in terms of tariffs).

To efficiently tackle the issues voiced in complaints forwarded to the Human Rights Defender's staff, close cooperation has been initiated between the Commission regulating the RA Public Services and the Defender's staff: this has resulted in creation of a working group that has already discussed issues related to the water supply, water tariff increase, gas supply, energy supply, applicants' disagreement over the results of the recalculation of commercial metering devices' data. On account of the aforementioned collaboration, residents' problems have been positively resolved in the majority of cases.

For example, the supply of energy, gas and water has been restored in the flats of those who appealed to the Defender. Apart from that, the gas supply company has replaced a gas pipe at their own expense and has placed a gas detector in a resident's flat, where they previously would not do that.

Throughout 2017, complaints were forwarded to the Defender in regard to the following: some individuals appealed to "GasProm Armenia" CJSC concerning their decision to check the operation of commercial metering devices (gas meter) in residential buildings: as a result of this, the commercial metering devices were replaced. Subsequently, the gas supply company notified that, according to the expert opinion of the metrological authority, somebody had interfered with commercial metering devices, which was why the company had to recalculate the gas costs. Residents expressed their disagreement concerning such an outcome.

Considering the fact that this was a large-scale problem, a discussion process was initiated by the Defender. According to the clarifications provided by the Public Services Regulation Commission, the recalculation of the natural gas amount and costs carried out by the company took place because of the commercial metering devices' malfunction (this was confirmed by the

expert opinion of the metrological authority) and was based on the amount of gas, which had been used by the consumers but not yet calculated. As the Commission claimed, the implemented measures met the requirements defined by Point 4.9 and Subpoint “a” of Point 4.13 of the natural gas supply and utilisation rules specified by the RA Public Services Regulation Commission Decree # 95-N of 08 July 2005.

It must be mentioned that, according to Point 4.1 of the RA Public Services Regulation Commission Decree # 95-N of 08 July 2005 “On Specifying the Rules for Natural Gas Supply and Utilisation”, commercial metering devices calculating gas costs in residential buildings are mounted outside residents’ flats. As far as the gas supply for houses and organisations with domestic consumption is concerned, commercial metering devices are mounted outside the property. The location for mounting commercial metering devices for organisations with non-domestic consumption is specified with an installation agreement.

In the case of the malfunction of a commercial metering device, when no metering control device was available, the expert conclusion of the metrological authority stated that the stamps of commercial metering devices were missing, forged or damaged; or that the malfunction of the commercial metering device was a result of a malfunction or damage of separate components of commercial metering devices, which could have only been caused by someone’s interference. Also, according to the supplier’s assessment, considering the expert conclusion of the metrological authority, the malfunction might have led to the miscalculation of the amount of natural gas used by the consumer. On the other hand, in the case of the malfunction of a commercial metering device, if the malfunction, confirmed by the expert conclusion of the metrological authority, was indeed the result of a consumer’s wilful interference (as the supplier claimed), then the supplier would have the right to demand payment of a fine equivalent to the recalculated gas costs. If the consumer agreed to the supplier’s demand to pay the fine, the supplier would take note of the paid fine in the next-month bill (payment documents) delivered to the consumer. If the consumer did not agree to the supplier’s demand to pay the fine, the supplier would resolve the dispute via juridical proceedings. Until the final settlement of the dispute, the supplier would have no right to turn off the consumer’s gas supply.

In case of establishing the fact of more than one malfunction of the commercial metering device registered to the same consumer, within nearly a two-year period, when, as the supplier claims, the incidents of commercial metering device malfunction, confirmed by the metrological authority’s conclusion, have been the result of the consumer’s wilful actions, - the supplier has the right to set a fine, equivalent to the double amount of the recalculated gas costs, and to take note of it in the next-month bill (payment documents) delivered to the consumer. In this case, the supplier has the right to turn off the consumer’s gas supply for the non-payment of the fine (according to Chapter 6 of the Rules - concerning organisations and Chapter 8 of the Rules - concerning individual residents). In case of disagreement about the fine, set by the supplier, the consumer settles the dispute via juridical proceedings.

In 2017, in regard to the issue in question, information was received from the Commission, stating the following: in connection with malfunction of commercial (natural gas) metering

devices (influenced by the human factor) that led to miscalculation of the amount of gas used by the consumer, the RA Public Service Regulation Commission recorded 49 written complaints, 5 of which resulted in the supplier making adjustments to reduce or cancel the recalculated gas costs demands, and 1 of which resulted in the gas supply company taking court action for exaction of the recalculated gas costs payment. In the other 43 cases, the supplier's natural gas amount and costs recalculation was carried out due to the malfunction of commercial metering devices (this was confirmed by the expert conclusion of the metrological authority) to establish the amount of gas used by the consumer but not yet calculated. The Commission verified the aforesaid, within its jurisdiction, on the basis of the analysis of the supplier's clarifications, and revealed its position in relation to the fact that the performed recalculations met the requirements specified by Point 4.9 and Subpoint "a" of Point 4.13 of the natural gas supply and utilisation rules specified by the RA Public Services Regulation Commission Decree # 95-N of 08 July 2005.

Nonetheless, it is necessary to state that, according to the current legislative regulations, commercial metering devices for gas supply in residential buildings and houses are mounted outside consumers' property. Hence, in case of a gas meter malfunction or damage as a result of physical interference, only the consumer is charged with the liability without proof of guilt.

*Considering the abovementioned, it is proposed to make amendments in the RA Public Services Regulation Commission Decree # 95-N of 08 July 2005, to ensure relocation of commercial metering devices onto the consumer's property and supervision area.*

In 2017, the Defender received reports concerning inadequate work in the waste management sector, by organisations delegated with authority from the state. The reports specifically voiced the issue of placing litterbins and waste containers in locations not specified by the law and the failure to follow the waste collection timetable.

This could have a negative impact on the sanitary and hygienic state of the surrounding environment and could negatively affect people's health.

Specific criteria for waste containers' locations have been established by the RA Healthcare Minister Order # 25-N "On specifying the sanitary rules and norms to enforce hygienic requirements # 2.1.7.002-009 "Sanitary protection of residential premises, waste collection, waste storage, waste transportation, waste processing, waste recycling, waste exploitation, waste neutralisation, waste disposal, as well as workers' operational safety in the areas of sanitary protection of residential premises and waste collection"". However, some of the reports forwarded to the Defender have outlined the fact that waste containers have been placed in locations not specified by legal acts (for instance, despite the law requirement that these are not to be placed in the streets and on the lawns, there have been complaints about such cases).

In regard to the issue, the Yerevan City Council has informed that, throughout 2017, special platforms for placing waste containers were constructed in the capital city, as a result of which most of litter bins were removed from traffic zones. These procedures also continued in 2018.

Despite delegating its authorities in the waste management sector, the State still carries the responsibility to supervise the sector. It must be noted that litterbins in Yerevan streets are often placed in disallowed locations, there is always plenty of scattered litter (around the containers) that is rarely collected by the waste management workers.

Besides, waste collection in Yerevan often takes place during rush hours, thus causing traffic jams, which provokes civilians' discontent.

*On account of the abovementioned, it is proposed to:*

- 1. set a specific timetable for waste collection, while arranging the process at proper hours, not to cause traffic jams;*
- 2. arrange proper supervision over the waste management organization to ensure it follows the set timetable.*

## SECTION 11. HUMAN RIGHTS IN THE ARMED FORCES OF THE REPUBLIC OF ARMENIA

One of the fundamental principles of ensuring the security of a democratic country is the reliable protection of human rights and freedoms. At the same time, security - both legal and military, is safeguarded by the effectiveness of human rights protection system.

Article 4 of the RA Law “On Defence ” states that the Defence of the Republic of Armenia is organized and executed based on the principles of legality, respect for human rights and fundamental freedoms, democratic and civilian control over the activities of the armed forces, state and territorial administration, and engagement of local self-governing authorities, natural and legal persons.

The OSCE Code of Conduct on Politico-Military Aspects of Security issued in 1994, was the first attempt to declare internationally that democratic political control over the military forces is an inseparable element of stability and security and one of the most important expression of democracy (paragraph 20)<sup>212</sup>.

The Code of Conduct embodies four key principles, namely the primacy of constitutional civilian power over military power, the subjection of armed forces to international humanitarian law, respect for the human rights of members of the armed forces, and limits over the domestic use of force to what is commensurate to their legal mission and restricting interference with the peaceful and lawful exercise of human rights<sup>213</sup>.

Each participating State undertakes to ensure that the recruitment or call-up of personnel for service in its military, paramilitary and security forces is consistent with its obligations and commitments in respect of human rights and fundamental freedoms. The participating States undertake to reflect in their laws or other relevant documents the rights and duties of armed forces personnel.

The Code of Conduct embodies the concept of “citizen in uniform”, meaning that each participating State ensure that military, paramilitary and security forces personnel will be able to enjoy and exercise their human rights and fundamental freedoms as reflected in OSCE documents and international law, in conformity with relevant constitutional and legal provisions and with the requirements of service.

Hence, the “citizen in uniform” approach implies that armed forces personnel, whether professional or conscripted, are entitled to the same rights and protections as all other persons. Naturally, both this and other relevant international documents define that the peculiarities of military life and the impact it has on individual soldiers should be considered while exercising the rights of “citizen in uniform”.

This annual report reflects the issues related to the protection of human rights and freedoms in various stages of military service, the main issues of protection of the rights of the RA citizens

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<sup>212</sup> Code of Conduct on Politico-Military Aspects of Security, <http://www.osce.org/fsc/41355>

<sup>213</sup> “Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel”, p. 29.

enlisted for military service associated with lack of or improper legal regulation, as well as alternatives for the solution of those issues.

The issues voiced by this report are based on the complaints addressed to the RA Human Rights Defender followed by visits to military facilities, as well as publications on the protection of the rights and freedoms of citizens enlisted for military service posted by mass media and civil society organizations.

### **Cooperation with Public Authorities and Civil Society**

Protection of the rights and freedoms of servicemen and their family members is one of the key directions of the activity of the RA Human Rights Defender.

Obviously, this direction of activity is specific and requires a special and careful approach. In this regard, the activities will lose their efficiency unless a specialized approach is applied.

For this purpose, in 2017, the Staff of the RA Human Rights Defender established a department in charge for human rights protection in the area of Criminal Justice and in the Armed Forces. A specialized unit was created in this department to deal with the issues of servicemen and their family members. The Unit implements a procedure for examination and consideration of complaints on breaches of rights of servicemen and their family members, provides relevant legal consultancy and conducts reception of citizens.

To ensure protection of the rights and freedoms of servicemen and their families, the RA Human Rights Defender cooperates with international organizations, civil society representatives and the RA Ministry of Defence.

Among other examples of cooperation with international organizations, the project for “Strengthening the Application of European Human Rights Standards in the Armed Forces in Armenia” launched by the Council of Europe in 2016 is worth mentioning.

The specific objective of the Project is to improve the national capacity to apply European human rights standards in the RA Armed Forces in line with the “European Convention for the Protection of Human Rights and Fundamental Freedoms”, the Recommendations of the Committee of Ministers of the Council of Europe on the human rights of servicemen issued in 2010, and other relevant international legal instruments. The importance of the Project lies in creation of new opportunities for enhancing cooperation between the Human Rights Defender’s Office and the Ministry of Defence, as well as with non-governmental organizations.

An Expert Council on the Rights of Soldiers operates under the Human Rights Defender. The Council is composed of representatives from non-governmental organizations and independent experts in psychology and sociology, as well as mother of Captain Armenak Urfanyan, an April war hero. Authorized representatives from the RA Ministry of Defence have also been invited to participate in the Council’s meetings.

The Council has held a number of meetings to assist the Human Rights Defender in his activities for protection of the rights of soldiers. The meetings covered studies and analyses aimed at

improving the efficiency of the protection of rights of servicemen; systemic issues were voiced and relevant recommendations developed. The effectiveness of the Council's activities depends on engagement of the civil society and the competent representatives from the RA Ministry of Defence. The Council's sessions are built around the issues identified in the area and the efforts to discuss and find mutually agreed alternative solutions. Afterwards, those recommendations are elaborated by the Staff of the Human Rights Defender and submitted for the approval of the relevant state authorities.

Particularly, the Council has discussed psychological fitness of citizens at their pre-recruitment and recruitment age, legal regulation of military registration process, protection of the rights and freedoms of servicemen during the recruitment into compulsory military service, and practical and legal issues related to the housing of servicemen. A separate discussion was held at the Council's sessions to consider the legislative package of amendments and additions to the Disciplinary Code of Conduct of the Armed Forces and the Procedure of Service Examination, as well as recommendations on non-financial benefits to servicemen and their family members.

In 2017, effective cooperation with the RA Ministry of Defence directed to protection of human rights in the Armed Forces was of particular importance.

In particular, joint discussions with representatives from the RA Ministry of Defence were periodically organized. In addition, in 2017, joint visits to garrison military hospitals were conducted to address the complaints sent to the Human Rights Defender related to the process and outcomes of medical treatment of servicemen, and to examine their medical records. Within 2017, representatives from the Human Rights Defender's Staff participated in the sessions of the Central Medical Commission to discuss complaints related to the health issues of recruits.

As a result of joint discussions and visits to the RA Ministry of Defence, recruits were sent to medical examinations, servicemen were sent to additional military medical expertise, recruits were granted the right to draft deferment, servicemen were sent to military hospitals to receive appropriate treatment.

In this regard, it is essential that the RA Ministry of Defence undertakes a commitment to strengthen monitoring of human rights in the RA Armed Forces, as well as the cooperation with the Human Rights Defender's Staff.

At the stage of transition to the parliamentary system, cooperation with the RA National Assembly is also important in terms of ensuring the effectiveness of protection of rights of servicemen and their family members. In 2017, this cooperation was led in a new format, through discussions and exchange of information with the Standing Committee on Defence and Security of the RA National Assembly, and participation in the Committee's hearings. For this purpose, a continuous contact was maintained with the Head of the Committee.

In October 2017, parliamentary hearings on "On new legislative regulations of Military Obligation and Military Service" were held at the RA National Assembly Session Hall on the initiative of the Standing Committee on Defence and Security of the RA National Assembly. Various international facilities, competent authorities and civil society representatives attended

the hearings. It is worth mentioning, that such parliamentary hearings represent a new practice deriving from the fundamental concept of participatory debates. The Head of the Committee invited the Human Rights Defender to give a separate speech at the parliamentary hearings, as well. Delivery of the speech was an important opportunity for the Human Rights Defender to update the public about the issues raised by his office from the high parliamentary tribune, and inform about the positive developments in the area and represent the vision of cooperation with the partners.

Cooperation with the media and advocates is also important for effective protection of rights of servicemen and their family members.

In addition, the Human Rights Defender initiated a debate procedure based on the information on alleged breaches of rights of servicemen or their family members published in the media in 2017. In a number of cases, rights and freedoms of servicemen were restored thanks to procedures launched on the basis of media outlets.

Cooperation with advocates was organized periodically and on professional basis. Joint protection of rights of servicemen who entrusted their case to the Human Rights Defender, was an integral part of daily work.

## CHAPTER 1. PROTECTION OF HUMAN RIGHTS IN THE STAGES OF MILITARY REGISTRATION AND RECRUITMENT

In the Republic of Armenia, military service of citizens includes military registration, military service preparation, compulsory military service through enlistment, and availability in reserve. Military service is compulsory for men at the age of 18 to 27.

### *1. Rights of RA citizens enlisted for military service (recruits) in the process of recruitment into compulsory military service*

Military service of the recruited RA citizens starts the day, when they pay a visit to the military registration and enlistment office to depart for the venue of their service.

Part 1 of the Article 20 of the RA Law “On the Status of Military Service and Servicemen” states that the relevant military registration and enlistment office shall inform citizen enlisted for military service, either on paper or electronically, about their obligation to appear in a military registration and enlistment office, mentioning the deadlines of the visit.

For the first time, this Law stipulates that citizens enlisted for a military service may be notified of their obligation to appear in the relevant military registration and enlistment office through electronic tools. Electronic recruitment notice is a common practice in a number of foreign countries.

For example, in Finland, recruitment into compulsory military service is arranged every year, from August until December. Citizens at the age of 18 subject to military service receive a package containing a guideline on compulsory military service<sup>214</sup>, questionnaires<sup>215</sup> and a notice through a regular post.

The failure to receive the call-up package due to the change of registered or residence address does not relieve recruits from the obligation to visit the military registration and enlistment office. In case of changing the place of residence, citizens shall be obligated to provide information to the territorial office of registration. The information can also be provided via Internet ([www.muuttoilmoitus.fi](http://www.muuttoilmoitus.fi)).

Information on recruitment is also published on the official website of the Defence Forces of Finland ([www.puolustusvoimat.fi](http://www.puolustusvoimat.fi)) and on the official announcement platform of local self-governing authorities<sup>216</sup>. The announcement shall be available at least two weeks before the start of the call-up and include information on the place and time of the call-up. Moreover, the Law “On Defence Forces” of Finland stipulates that access to announcements may also be provided through other distribution tools (Article 15), however, the Law provides no further details on the latter<sup>217</sup>.

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<sup>214</sup> The guideline includes information on the main procedures and requirements for military registration, recruitment and military service.

<sup>215</sup> The preferences of recruits regarding the place of military service and the exact date of recruitment mentioned in the questionnaires are taken into account by the competent state authority, if possible.

<sup>216</sup> Electronic recruitment notice system to invite the recruits to military registration and enlistment offices is a common practice in Algeria, Bolivia, Ecuador, Iran and Iraq, as well.

<sup>217</sup> See the Law “On Defence Forces” of Finland through this link <https://www.finlex.fi/fi/laki/kaannokset/2007/en20070551.pdf>

Based on the complaints addressed to the RA Human Rights Defender, the latter conducted a review of the form and content of the recruitment notices sent to citizens enlisted for the military service in the Republic of Armenia.

The review indicates that the forms lack legal regulations that address the procedure of proper notice sent to recruits, do not define the rights, responsibilities and obligations of relevant officials, and clarify the form of the notice and the scope of the information included therein. Currently, those requirements are not addressed.

In fact, the content of the notice bears psychological impact. Every word or sentence contained in the forms may cause both a positive and a negative psychological attitude felt by recruits and their parents towards the army and its moral and psychological environment. Military service is a turning point in the life of each person, an essential change in the usual and safe lifestyle that forces recruits to face the need for adaptation and self-actualization. Negative position formed before the call-up (including through the notice form and its content) impact each individual's attitude towards the army, regardless of its objective situation. This means that a recruit may undergo a certain level of stress due to their pre-formed negative attitude towards the army.

To address the mentioned gap of the recruitment notice form, the Human Rights Defender's Staff has drafted a template for the Notice on "Participation in the Defence of the Homeland". On March 2, 2017, the template was also reviewed at a session held by the Council of Experts on Rights of Servicemen of the RA Human Rights Defender, with participation of Council member psychologist<sup>218</sup>.

Thus, there is no legal act that would regulate the process of proper notice to citizens enlisted for military service, would define the rights, responsibilities and obligations of relevant officials during that stage, and would clarify the form of the notice and the scope of the information included therein. Consequently, the procedure of notice is not certain for recruits, neither it is clear for them, whether they were properly notified or not. Moreover, the military registration and enlistment office drawn up recruitment notices in different formats, and there is no common law enforcement practice.

*It is required to regulate the process of proper recruitment notice to citizens enlisted for military service, define the rights, responsibilities and obligations of relevant officials, the notice template and the scope of the information included therein.*

*It is also required that both the paper-based and electronically distributed recruitment notice received by recruits are enclosed with an informative guideline covering the rights and responsibilities of servicemen during military registration and military service.*

## ***2. Missing legal regulation on the templates of military cards and certificates on military recruitment, and procedure for completion and provision thereof***

Clause 7 of Recommendation CM/Rec(2010)4 of the Committee of Ministers of the Council of Europe to member states on human rights of members of the armed forces states that special

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<sup>218</sup> The notice template was submitted to the RA Ministry of Defence for their reference.

attention should be given to the protection of the rights and freedoms of persons under the age of 18 enlisted in the armed forces.

In this regard, it is essential to exercise proper regulation of registration of pre-recruitment age persons, as well as regulation of military registration of persons in military service and in reserve, release from military registration and other associated legal relations.

In 2017, the Human Rights Defender received written complaints regarding the process of military registration, in particular on the failure to record participation of servicemen in combat operations in their military cards, or marking the already taken records as “invalid” or removing them. For direct forward consideration of the issue, the Human Rights Defender personally accepted the servicemen and their family members to hear their concerns. Moreover, the Human Rights Defender initiated a relevant discussion procedure based on the complaints received.

Information on this issue was also disseminated through mass media<sup>219</sup>. In particular, according to the disclosed information, numerous servicemen are released from the service with simply no record of their participation in combat operations in their military cards. In other cases, the already taken records are deleted or marked as “invalid”.

As explained by the RA Ministry of Defence, within 2017, 67 citizens filed a complaint to the RA Military Registration and Enlistment Office about the missing relevant records in their military cards and military registration documents on their participation in combat operations. In addition, 285 complaints were received through the hotline of the RA Ministry of Defence.

In order to solve the mentioned issue, the competent state authority has established committees to clarify the nomenclature of compulsory military servicemen engaged in combat duty and combat operations.

According to the RA Ministry of Defence, the process is expected to be settled in the framework of enforcement of the new RA Law “On the Status of Military Service and Serviceman” issued in 2017 within the scope of new legal regulations of military registration.

It is also worth mentioning, that for the first time, the new RA Law “On Defence” envisages to set up an electronic management system of military registration, to be run by the RA Ministry of Defence.

We believe that the introduction of the electronic management system of military registration will improve the effectiveness of the military registration process.

*Based on the abovementioned points, it is required for the RA Minister of Defence to issue a normative order defining the template of military call-up certificates, military cards and the completing procedure thereof, as well as regulating the relations associated with the provision of those documents. In this way, it will allow for conformity of military registration documents,*

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<sup>219</sup> The articles can be found through the following links: [www.azatutyun.am/a/28269835.html](http://www.azatutyun.am/a/28269835.html), [www.tert.am/am/news/2017/01/27/zingrquyk/2261168](http://www.tert.am/am/news/2017/01/27/zingrquyk/2261168), [www.aravot.am/2017/01/18/846327/](http://www.aravot.am/2017/01/18/846327/), [www.a1plus.am/1517936.html](http://www.a1plus.am/1517936.html), <http://razm.info/95742>, [www.aysor.am/am/news/2017/02/02/UF0/1205248](http://www.aysor.am/am/news/2017/02/02/UF0/1205248), etc.

*for a clear framework of information included in the military registration documents and a completing procedure thereof, making the law enforcement practices more clear and predictable.*

### ***3. Healthcare and proper medical examination of recruits during the recruitment into compulsory military service***

Recommendation CM/Rec(2010)4 of the Committee of Ministers of the Council of Europe to member states on human rights of members of the armed forces states that, the members of the armed forces have the right to health protection.

Article 85 of the RA Constitution states that everyone has the right to health protection in line with the law.

The legal, economic and financial basis of the organization of medical care and service ensuring the execution of the constitutional right to health care is defined by the RA Law “On Medical Aid and Services of Citizens”.

Within 2017, the majority of complaints addressed to the RA Human Rights Defender were related to issues such as the right of recruits to a proper medical examination during the recruitment, appeal of committee decisions (conclusions) of medical and military expertise based on the lack of reasonable justifications, and the right to draft deferment from the compulsory military recruitment due to health issues.

During the discussion of complaints, representatives of the Human Rights Defender Office requested written explanations from the RA Ministry of Defence, paid visits to military hospitals, attended sessions held by the Central Medical Commission and by the Central Military Medical Commission of the RA Ministry of Defence.

In each case of recorded complaints, it is required to check the actual state of health of the person enlisted for the military service to ensure that there is no illness or incompatibility with military service.

The European Court of Human Rights has declared that despite the fact that it is the State’s function to determine criteria for recruits’ health and fitness, the latter must be physically and mentally fit to handle the challenges associated with the peculiarities of military service, as well as ready to demonstrate high sense of responsibility typical of members of armed forces and undertake added obligations. While completing military service may not be in any way overwhelming for a healthy young person, it could constitute an onerous burden on an individual lacking the requisite stamina and physical strength owing to the poor state of his health. Thus, considering the requirements of military service, the **States shall take measures to introduce criteria for verifying the actual health state of a recruit through medical examination, to prevent any harm threatening the recruits’ health during military service.** Military medical commissions should organize their activities in such a way that persons unfit for military service due to health issues, are not recruited into compulsory military service<sup>220</sup>.

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<sup>220</sup> See *Kayankin v. Russia* case decision of May 11, 2010, complaint # 24427/02, Point 87, [https://hudoc.echr.coe.int/eng#{"itemid":\["001-97214"\]}](https://hudoc.echr.coe.int/eng#{)

In the course of examination and consideration of complaints addressed to the RA Human Rights Defender in 2017, there were cases when it was not possible to obtain detailed objective information on the health status of the recruit through medical examination.

For example, in one of the complaints a recruit informed the RA Human Rights Defender that he had spinal disk ruptures. The military registration and enlistment office referred him to an x-ray examination at medical centres; however, no spinal disk rupture was detected after examinations.

The review and investigation of the complaint, as well as the visits by the Human Rights Defender's Office staff to the Central Medical Commission revealed the following:

1. In order to determine the fitness of the recruit for military service, the medical commission of the military registration and enlistment office referred the recruit to a medical centre for in-patient examination. The X-ray examination of the patient revealed "initial signs of degenerative dystrophic changes in the lumbosacral region of the spine with a light root pain syndrome on the left side".
2. On January 19, 2017, the recruit was invited to undergo the Central Medical Commission's examination for the second time. During the examination, members of the Commission and the Human Rights Defender's Staff examined the recruit's personal file, as well as the image of spinal disk ruptures diagnosed during the magnetic resonance imaging (MRI) examination taken at another medical centre of his choice.

Eventually, the recruit was declared temporarily unfit for military service, based on the requirements of Column 1 of Point "b" of the Article 16 of the Annex 1 of the RA Ministry of Defence Order # 410 of 8 April 2013. The decision was based on the diagnosis of the magnetic resonance tomographic (MRI) examination in the medical centre of his choice, given that it was not possible to determine the existence, position and size of the spinal disk ruptures.

*Therefore, it is required to conduct medical examinations with more targeted instruments, ensuring the effectiveness of the process of obtaining detailed and accurate information on the health status of the recruits through medical examination.*

Reviewing of complaints addressed to the Human Rights Defender within 2017, there were cases, when a serviceman was released from the military service earlier than his service term, due to a disease diagnosed either before or during the recruitment.

Information provided by the RA Ministry of Defence indicates that in 2017, 24 servicemen in compulsory military service were released early from the military service due to a disease (course of a disease or complications thereof) diagnosed during the recruitment.

For example, in a complaint addressed to the RA Human Rights Defender, parents of the serviceman was explaining that their son took a magnetic resonance tomography (MRI) examination at a civilian medical centre on May 21, 2017, and a second one at another civilian medical centre on May 23, 2017. The applicant also informed that on June 1, 2017, their son

took a “computed tomography scan” at the Central Clinical Military Hospital. The medical examination detected a mass lesion on the brain.

The applicant sent a request to the RA Human Rights Defender to assist their son in being released from compulsory military service and sent into reserve.

In the course of the complaint review, on July 7, 2017, the serviceman was sent to the relevant military hospital for in-patient examination and treatment. Required examinations and consultations among doctors identified a diagnosis of “a Rathke’s cleft cyst with hormonal disorder, in a condition of hemorrhagic proctitis developed into hipermotor dyskinesia of small and large intestines with an accelerating motor-evacuation function”.

On July 12, 2017, the serviceman was declared unfit for military service following Point “b” of the Article 14 and Point “c” of the Article 30 of the RA Minister of Defence Order # 410-N of 8 April 2013, based on the decision of the Central Military Medical Commission of the RA Ministry of Defence.

In the given case, the soldier was complaining of the mentioned health issue during the recruitment, as well.

In this regard, the European Court of Human Rights points out the already common practice established by the case of *Kayankin v. Russia* and states that it is generally for a State to determine the standards of health and fitness for potential conscripts. However, conscripts should be physically and mentally equipped for challenges related to the particular characteristics of military life and for the special duties and responsibilities incumbent on members of the army. Accordingly, States must introduce an effective system of medical supervision for potential conscripts to ensure that their health and well-being would not be put in danger and their human dignity would not be undermined during military service. Hence, State authorities, in particular drafting military commissions and military medical commissions, must carry out their responsibilities in such a manner that persons who are not eligible for conscript military service on health grounds are not registered and consequently admitted to serve in the army<sup>221</sup>.

In the course of the review of complaints filed in the Human Rights Defender’s Office within 2017, the staff recorded cases when during the recruitment potential conscripts took several medical examinations, the results of which essentially differed among each other, and the Central Medical Commission made no decision on the fitness of the recruit. Such practice cannot be considered legitimate.

The RA Law “On Conscription” still effective in 2017, as well as the new RA Law “On the Status of Military Service and Serviceman”, does not contain any provision for waiving a decision on a person’s fitness for military service after a medical examination.

In addition, Subpoint 4 of the Point 26 of the Annex to the RA Minister of Defence Order # 410-N of April 8, 2013 (hereinafter the Order) defines an exhaustive list of written conclusions on

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<sup>221</sup> See *Kayankin v. Russia* case decision of May 11, 2010, complaint # 24427/02, Point 87, [https://hudoc.echr.coe.int/eng#{"itemid":\["001-97214"\]}](https://hudoc.echr.coe.int/eng#{)

the health status of potential recruits to be issued by the Central Medical Commission. In each case, the Central Medical Commission shall provide one of the following conclusions: (a) fit for military service (or fit for military service with some restrictions); b) requires a deferment for health treatment; c) temporarily unfit for compulsory military service due to health issues; d) unfit for military service at the period of peace, e) unfit for military service and should be removed from military registration.

Consequently, a decision on the fitness of the recruit shall be made before the end of the recruitment process. We believe that in cases where it is not possible to determine the fitness of the recruit for military service, the Central Medical Commission shall refer to the National Recruitment Commission with a recommendation of deferment.

At the same time, it should be noted that neither the Law, nor the Procedure “On Medical Examination of Conscripts and Servicemen” defined by the RA Minister of Defence Order # 410-N of April 8, 2013, contain provisions for the regulation of such cases.

*It is recommended that the mentioned issue be clearly regulated in accordance with the procedures for health examination of potential conscripts and referral for medical expertise, examination and expertise defined by Article 2 of the RA Law “On the Status of Military Service and Serviceman”.*

Review of complaints addressed to the Human Rights Defender conducted within 2017, revealed cases where private medical centres refuse to examine persons of recruitment age or to provide their examination conclusions.

For example, in a complaint addressed to the RA Human Rights Defender, a parent of a serviceman was explaining that their son had vision problems. The applicant mentioned that on September 19, 2017, their son was examined in a polyclinic with a diagnosis of “low blood pressure glaucoma in the right eye and a suspected low blood pressure glaucoma in the left eye. Accordingly, additional medication examination and treatment was prescribed.

On the same day, on his personal initiative, the potential conscript applied to another civilian clinic for a visual field computerized screening, but the clinic refused to conduct such examination.

On November 8, 2017, on his personal initiative the potential conscript applied to an ophthalmological medical centre for instrumental examination, where an optical coherence tomography of the retinal nerve fibre was performed. The applicant claimed that his son had been diagnosed with “a depression of upper nerve fibres (organic change) in the right eye”. However, the medical centre refused to provide an excerpt from an ambulatory control card reflecting the disease of “glaucoma in the right eye”.

In the scope of complaint review procedures, the Human Rights Defender’s Office requested clarifications from the RA Ministry of Health and the Health Inspectorate of the RA Ministry of Health regarding the above-mentioned and other similar cases.

Following the written requests and issues raised by the Human Rights Defender addressed to the RA Minister of Health, the Health Inspectorate initiated administrative proceedings and revealed the following breaches in medical facilities:

- a) A company did not provide the recruit with clear information on the computerized ophthalmoscopy testing (OST) for which the latter paid 30.000 AMD on November 8, 2017, based on the first line of the price-list defined by the company director on July 18, 2017 through Order # 184.
- b) A company failed to conduct a proper completion, maintenance and circulation of the recruit's medication documents on medical aid and service.
- c) A doctor performing a computerized ophthalmoscopy testing (OST) failed to run a prescribed registry.
- d) The medical card run by a company on a recruit did not comply with the prescribed format of a medical care ambulatory card of a child (boy).

*Eventually, the Health Inspectorate concluded that the rights of a person were not respected in relation with access to health status information and maintenance of patients' relevant health records by health care service providers.*

#### ***4. The right to deferment of potential recruits fit for military service with some restrictions due to a number of health issues***

Issues associated with the right to deferment of potential recruits fit for military service with some restrictions due to a number of health issues, were carefully addressed by the Human Rights Defender in the Annual Report of 2016.

Particularly, it was mentioned that there is no mechanism and legal basis for assessing the recruitment of a person with a “qualitative set of diseases” (rather than a certain number of diseases). In the absence of “qualitative set of diseases”, the medical commission evaluates those diseases individually, rather than collectively. In such cases, a potential recruit is eventually declared fit for military service. However, actually, in the majority of cases, the conscript is unfit for military service and will most probably gain some disability or obtain complication of already existing diseases during the service.

Information provided by the RA Ministry of Defence does not mention any cases of recruiting conscripts unfit for military service in 2017; however, the same information indicates that 24 servicemen in compulsory military service were released early due to a disease (course of a disease or complication thereof) diagnosed during the service.

In this regard, it is recommended that the RA Government decree defining the procedures for health examination of potential conscripts and referral for medical expertise, examination and expertise undertake the following functions:

1. *regulate the grounds and procedure for determining the fitness of servicemen with a number of diseases (restrictions) detected during military service;*
2. *define a mechanism and legal basis for assessing the recruitment of a person with a “qualitative set of diseases” (rather than a certain number of diseases);*
3. *review and clarify the list of diseases;*
4. *perform stricter control over relevant medical examinations and military medical expertise.*

#### ***5. Medical examination and military medical expertise commissions***

Based on a number of complaints addressed to the RA Human Rights Defender, in 2017 the Office conducted a review of decisions and conclusions issued by Medical examination and military medical expertise commissions. The reviews revealed that regulations acting in 2017 contained no clear definition of requirements for the decisions (conclusions) made by the commissions and the scope of mandatory information included therein.

Meanwhile, the validity, descriptive, reasoning and concluding paragraphs of decisions made based on medical examinations and military medical expertise of conscript citizens, appeal procedure and timelines thereof and other mandatory notes, as well as the existence of a clear structure are essential and important for the protection of the rights of conscripts.

For the solution of the mentioned issue, the Human Rights Defender submitted a legislative proposal for the amendment of the RA Law “On the Status of Military Service and Serviceman”. Thus, Part 3 of Article 17 of the Law was revised to define that “based on the outcomes of a medical examination of a citizen, a conclusion on the state of health of a citizen shall be issued, consisting of introductory, descriptive, reasoning and concluding paragraphs. The conclusion includes at least a brief description of the health status of the citizen, the degree of fitness of the citizen for military service, contraindicating conditions of military service for their health status, appeal procedure and timelines thereof”.

According to information provided by the RA Ministry of Defence, in 2017, the Legal Department of the RA Ministry of Defence received only one appeal to void the Central Medical Commission’s decision, and seven lawsuits versus the RA Ministry of Defence and the National Recruitment Commission to issue a deferment and perform a medical examination due to health status. The consideration of the lawsuits is currently in progress.

#### ***6. The right to receive medical records***

Clause 50 of Recommendation CM/Rec(2010)4 of the Committee of Ministers of the Council of Europe to member states on human rights of members of the armed forces states that former and current members of the armed forces should have access to their own personal data, including medical records, upon request.

The RA Law “On Medical Aid and Services of Citizens” defines that everyone has the right to access information on their state of health, examination outcomes, diagnosis and treatment

methods, related risks, possible options for medical intervention, consequences and outcomes of treatment (Article 7).

In 2017, the RA Human Rights Defender received complaints on rejection of access to information on the state of health, results of medical examinations, diagnostics and treatment methods and outcomes, as well as on rejection of access to decisions issued and other medical records compiled based on medical examinations and military medical expertise.

The Human Rights Defender also touched upon this issue in his Annual Report of 2016.

It was recommended that the Law entitle potential conscripts to be provided access to information on the process of their medical examination and medical expertise, and obtain the conclusions and other records and documents compiled. In addition, the conscripts shall be entitled to submit suggestions, provide/request explanations or objections, to appeal the conclusion on their health status in the manner prescribed by law.

Based on the recommendation of the Human Rights Defender, Part 5 of the Article 17 of the RA Law “On the Status of Military Service and Serviceman” was revised to define that “potential conscripts are entitled to have access to information on the process of their medical examination and medical expertise, and obtain the conclusions and other records and documents compiled. In addition, the conscripts are entitled to submit suggestions, provide/request explanations or objections, to appeal the conclusion on their health status in the manner prescribed by law”.

According to information provided by the RA Ministry of Defence, in 2017, 18 citizens requested medical examination records to be provided to the conscripts or their legitimate representatives through the hot line of the RA Ministry of Defence. The requested were settled as a matter of routine procedure.

#### ***7. The privilege of serving at the same military unit***

In 2017, the RA Human Rights Defender received applications to review cases when two brothers recruited at different periods had not been sent to the same military unit. Family members of recruits expressed their concern that due to difficult social conditions or health issues (family members with disabilities) they would not be able to visit their sons serving in different military units.

Part 8 of the Article 11 of the RA Law “On Conscription” effective in 2017, used to stipulate that brothers recruited into the armed forces or other troops at the same time are allowed to serve at the same military unit at their discretion. Based on the mentioned regulation, if the brothers were recruited into military service at different periods, they were not privileged to serve in the same military unit.

Taking into account the abovementioned situation, in his recommendation on the RA Draft Law “On the Status of Military Service and Serviceman”, the Human Rights Defender had recommended that a privilege of serving in the same military unit is granted to the recruited brothers, given that the service term of the already recruited brother does not exceed 18 months.

Based on the Human Rights Defender's recommendation, Part 4 of the Article 26 of RA Law "On the Status of Military Service and Serviceman" states that "during the declared conscription, members of the same family conscripted for the lower ranks of compulsory military service, shall be assigned to serve in the same military unit at their discretion. A recruit conscripted for the lower ranks of compulsory military service shall be assigned to serve in the military unit of his brother's service at his discretion, given that the service term of the already recruited brother does not exceed 17 months".

## CHAPTER 2. HUMAN RIGHTS PROTECTION DURING THE MILITARY SERVICE

### *1. Right to military service*

A number of international documents highlight the need for a person to have equal access to public service.

Thus, according to Part 2 of the Article 21 of the United Nation's Universal Declaration of Human Rights of December 12, 1948, everyone has the right to equal access to public service in his country<sup>222</sup>.

Article 25 of the International Covenant on Civil and Political Rights of December 16, 1966 (entered into force on March 3, 1976) states, that every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions, to have access, on general terms of equality, to public service in his country<sup>223</sup>.

A chapter on "The Importance of Human Rights of Armed Forces Personnel" (Chapter 3) of the Handbook Published by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) in 2008, states that a citizen serving on a contractual basis recruited as a public servant shall have access to the rights of a public servant<sup>224</sup>.

In 2017, the RA Human Rights Defender received applications to review complaints of citizens who had been refused access to military service. The citizens' request of a copy of the decision on rejection to sign a military service contract had been refused, as well.

For example, in an application addressed to the RA Human Rights Defender, a citizen was explaining that he had applied to the relevant territorial office of military registration and enlistment of the RA Ministry of Defence to enter a military service on contractual basis. According to the applicant, the commanders of the military unit refused to conclude an agreement on military service with him because he had a previous conviction.

The applicant also mentioned that his request of a copy of the decision on rejection to sign a military service contract was also refused.

The Human Rights Defender has addressed this issue in his Annual Report of 2016<sup>225</sup>.

According to the relevant authority, a military service contract with the citizen was rejected because it was not expedient. The RA Ministry of Defence explained that the citizen's request of a copy of the decision on rejection of a military service contract had been refused, because the citizen applying for a contract-based military service had already served in the RA Armed Forces in 2009-2014 on contractual basis. Part 2 of the Article 13 of the RA Law "On Military Service" states, a decision on rejection a military service contract shall be provided to a citizen, if it is a rejection of their first agreement.

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<sup>222</sup> Universal Declaration of Human Rights, <http://www.un.org/en/universal-declaration-human-rights/>

<sup>223</sup> Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel <http://www.osce.org/hy/odihr/88572>

<sup>224</sup> Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel <http://www.osce.org/hy/odihr/88572>

<sup>225</sup> Annual Report: The Activity of the Human Rights Defender of the Republic of Armenia in 2016: The Status of Protection of Human Rights and Freedoms, pp. 218-221.

In connection with this issue, in his recommendation on the RA Draft Law “On the Status of Military Service and Serviceman”, the Human Rights Defender had recommended to remove the abovementioned limitation from the Law, and for the latter to determine that all cases of rejection of a military service contract are notified to the applicant by the relevant state authority in written form within three days, mentioning the grounds and reasons for rejection.

The abovementioned recommendation was completely accepted by the RA Ministry of Defence, and it was incorporated in the RA Law “On the Status of Military Service and Serviceman”.

According to the information provided by the RA Ministry of Defence, after completing compulsory military service in 2017, 168 reservists had applied for a contract-based military service. 157 of the applicants are currently in service, and the recruitment of 11 reservists is in the process. In 2017, 108 former military servicemen and one special civilian officer applied for the restoration of contract-based military service. The RA Ministry of Defence approved the requests of 37 applicants, while 12 applications were rejected, due to the maximum age limit of the applicants. Applications of 9 citizens were rejected, as the applicants had been declared unfit for military service by the Central Military Medical Commission.

*It is recommended to strengthen control over the process of approval and rejection of applications for contract-based military service conducted in line with RA Law “On the Status of Military Service and Serviceman”.*

## **2. The right to be released from military service**

In 2017, the Human Rights Defender received complaints referring to the release from contract-based military service.

For example, in an application addressed to the RA Human Rights Defender, a citizen enlisted for military service reported that he had concluded a military service contract in 2009, and after graduating, was recruited into contract-based military service in the RA Armed Forces. In 2017, he submitted a report to the commander of the military unit with a request of withdrawal from military service and enlistment into the reserve of the RA Armed Forces. At the same time, the applicant had expressed willingness to compensate for tuition expenses, but his report was not processed. In the scope of the complaint review, the relevant authority calculated the amount of compensation for tuition expenses, and upon the payment of the specified amount by the serviceman, the latter was released from military service.

According to information provided by the RA Ministry of Defence, in 2017, 54 contract-based servicemen (graduates of military educational institutions) submitted a report for withdrawal from the RA Armed Forces before the expiration of the contract.

Point 8 of the Part 1 of the Article 54 of the RA Law “On the Status of Military Service and Serviceman” states that contract-based military serviceman shall be released from military service prior to the expiration of the contract, when submitting a report on withdrawal from military service, given that they do not have a compulsory term to serve established by this Law.

Clause 16 of Recommendation CM/Rec(2010)4 of the Committee of Ministers of the Council of Europe to member states on human rights of members of the armed forces states that members of armed forces have the right to withdraw from the armed forces.

In their 2012 report on Ireland, the European Committee of Social Rights of the Council of Europe stated that a person has the right to terminate their work (XIV-1 Conclusions, Pages 435-436).

*It is recommended to strengthen control over the process of releasing contract-based servicemen from military service.*

### ***3. The right of military servicemen to receive proper medical care***

In the Republic of Armenia the right to health care for everyone, including military servicemen, should be fully guaranteed. This is derived from both the international obligations of the Republic of Armenia<sup>226</sup> and the RA Constitution and laws. This right has a fundamental importance and implies the fundamental duty of the State to protect the health of servicemen. It is also due to the fact that conscripted servicemen are under the special care of the State. In most cases, the complaints and applications addressed to the Human Rights Defender by both current and former military servicemen, were related to the lack of proper medical care and service to the servicemen.

In the course of preparation of this report, the Human Rights Defender requested information from the RA Ministry of Defence on the number of conscripts whose medical examination detected a need for surgical interventions prior to recruitment, and how many of them received surgical care during their military service. The RA Ministry of Defence reported that in cases when a need for surgical intervention is identified during the medical examination, any surgery and treatment is performed prior to recruitment.

It should be mentioned, that in 2017, the Human Rights Defender received no complaints related to free of charge and proper medical care provided to pre-conscripts, either. **However, the review and analysis of some complaints addressed to the Human Rights Defender revealed cases when proper medical care and treatment had not been provided to persons of pre-recruitment and recruitment age.** Those servicemen received medical care, including surgery, during their military service, in the framework of cooperation with the Staffs of Human Rights Defender's and the RA Ministry of Defence.

For example, the Human Rights Defender received complaints from servicemen in compulsory military service that they had a nasal septum deviation and no relevant surgery had been performed. Obviously, this disease had been detected prior to the recruitment, and an appropriate surgical treatment should have been organized through the military registration and enlistment office, at first place.

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<sup>226</sup> Such as Article 12 of the UN International Covenant on Economic, Social and Cultural Rights; Clause "Q" of Recommendation CM/Rec(2010)4 of the Committee of Ministers of the Council of Europe to member states on human rights of members of the armed forces, states that members of the armed forces should have the right to dignity, health protection and security at work.

It should be mentioned, that according to paragraph 4 of the Article 70 of Annex 2 of the RA Minister of Defence Order # 410-N of April 8, 2013, conscripts with a nasal septum deviation leading to nasal breath disorder, shall be examined in line with point “b” of the Article 70 of Annex 1 of the same Order. According to paragraph 6 of the Article 70 of Annex 2 of the Order, conscripts with such diagnosis shall be prescribed a surgical treatment, while being enlisted in any recruiting units. In cases when a conscript expressed objection to undergo a surgical treatment during the recruitment, a decision on the fitness for military service is issued.

*It is recommended to strengthen the control over the process ensuring that potential recruits exercise their right to receive free of charge medical care. Particularly, it is required to make relevant notes in the personal files on the referral on appropriate treatment.*

According to Part 5 of the Article 64 of the RA Law “On the Status of Military Service and Serviceman”, former military servicemen who receive long-term military service or disability military pension, family members of servicemen killed (dead) due to a disease or injury caused during military service, shall be provided with medical care as prescribed by law.

Review of complaints received by the Human Rights Defender revealed that in some cases former military servicemen who had acquired a disease during their service had not been enjoying the right to free medical care. In particular,

- 1) There are cases, when citizens do not enjoy the right to free of charge medical care, although they have served their compulsory military service and acquired some disease during the service, which was not considered a basis for declaring them unfit, and were released from the service upon the expiration of their term.
- 2) There are cases, when contract-based servicemen do not enjoy the right to free of charge medical care, despite of a disease acquired during the service. Those former servicemen were released into reserve, not because of a long-term service or due to disability, injury or disease, but rather because of the expiration of the term under reserve.

The RA Minister of Defence Order # 410-N of April 8, 2013 was revised in 2016 to incorporate a new point (72.1). The latter states, that in case of health complaints, military servicemen being released from the service upon expiration of the compulsory term are also entitled to medical examination.

We believe that this regulation is insufficient because it is uncertain what happens after the medication examination, and how the treatment of the detected disease shall be organized. Moreover, it is questionable why contract-based servicemen should not enjoy this right.

*Therefore, it is recommended that a Government decree defines that all compulsory military servicemen have the right to request a medical examination either in the medical unit of the military unit or in the military hospital upon their release from the service. In case of a disease requiring treatment, they shall be provided a referral for a free of charge treatment.*

*It is also worth mentioning, that if a military servicemen who needs a scheduled surgery but does not receive it during their military service, shall receive a referral for a free of charge surgical treatment to be used upon expiration of the term.*

*Similar regulation is required for contract-based servicemen, as well.*

### CHAPTER 3. PROTECTION OF THE RIGHT TO LIFE OF SERVICEMEN

#### ***1. Cases of death and self-injury in the RA Armed Forces***

Both the RA Constitution and international documents ratified by the Republic of Armenia state that as a fundamental value the right to life is natural and inalienable.

The Human Rights Defender's Office reviewed the status of protection of the right to life of servicemen during the year 2017, based on the data provided by the relevant authorities of the field.

In particular, according to the data provided by the RA Ministry of Defence, 75 cases of death of servicemen were registered in 2017, including 41 servicemen killed (dead) during the military duty, and 34 cases - in other conditions.

The mentioned incidents were caused by the following reasons: attacks and subversive intelligence operations from the enemy's side, shots fired by sharpshooters, breaches of performance of military duty and provision of military service safety, of statutory rules on relations between the servicemen, diseases, road accidents and personal issues (due to family problems).

In 2017, 69 cases of self-injury by military servicemen were registered, of which 85% were committed in connection with military service duties.

According to the information provided by the RA Ministry of Defence, routine examinations and investigations of the cases of death and self-injury were conducted to reveal the weaknesses and gaps available in the organization and implementation of the service and the impacting conditions. Individual self-discipline activities were conducted with self-injured servicemen. In order to prevent repetition of such cases, certain orders and instructions were given to the commanding staff of military units.

Clause 7 of Recommendation CM/Rec(2010)4 of the Committee of Ministers of the Council of Europe to member states on human rights of members of the armed forces states that member states should ensure an independent and effective inquiry into any suspicious death or alleged violation of the right to life of a member of the armed forces.

According to the Recommendation, each member of the armed forces shall enjoy the right to a fair trial.

*Based on recorded cases of death and self-injury an in-depth investigation of relevant causes and conditions shall be conducted and appropriate preventive measures introduced.*

*At the same time, it is required to take relevant measures to prevent such cases and raise general awareness.*

## CHAPTER 4. PROTECTION OF THE RIGHTS OF SERVICEMEN DURING DISCIPLINARY PROCEEDINGS

In the RA Armed Forces, generally, the execution of legal norms is voluntary. However, legitimate behaviour is not specific to everyone, and sometimes it is necessary to apply some enforcement measures. The use of those measures in the armed forces is required to ensure the rule of law, discipline and order, and to protect the rights and legitimate interests of all servicemen.

One of the main tools of strengthening military discipline is the use of fair and adequate disciplinary sanctions against relevant military servicemen, including legal liabilities that are essentially manifestations of state enforcement measures.

Legal liabilities of military servicemen have the following peculiarities:

- 1) A wider scope of offenses causing legal liability, conditioned by the peculiarities of military service and strict and clear legal orders;
- 2) A stricter liability imposed on servicemen for the same offenses committed by civilians;
- 3) Wide powers of commanders (chiefs) assigned under the law, to impose legal liabilities upon military servicemen;
- 4) Special conditions for the exercise of such powers and the authority to impose legal liabilities;
- 5) Availability of special means to apply legal liabilities.

Military discipline implies not only strict and accurate maintenance of the order and discipline prescribed by law, military codes of conduct and commanders' orders by all servicemen of the RA Armed Forces, but also the application of enforcement measures imposed by law for the violation of that order.

*At the same time, while imposing disciplinary liabilities on a serviceman, the rule of law, respect for human rights and freedoms should be strictly adhered to and maintained.*

Among the complaints addressed to the Human Rights Defender in 2017, there were also cases referring to the protection of the rights of servicemen accused of disciplinary offenses.

For example, a military serviceman complained to the RA Human Rights Defender that a service investigation had been initiated towards him by the order of the military commander of their military unit on March 27, 2017. Based on the outcomes of the service investigation, on April 1, 2017, the commander of the military unit issued an order on imposing a disciplinary penalty towards the serviceman, namely "warning on incomplete compatibility with the position".

According to the serviceman, first, he had not committed any disciplinary offense; second, during the service investigation he was not informed that he was accused of disciplinary offense; third, the final conclusion of the service investigation was not disclosed to him, and finally, he was informed about the imposed disciplinary penalty on April 21, 2017. The serviceman

explained that the service investigation had been conducted in breach of the RA Law “On Disciplinary Code of Conduct of the RA Armed Forces”, as well as in violation of the requirements of the RA Minister of Defence Order # 991-N of September 20, 2012.

The serviceman had appealed against the Order on the Penalty submitting a number of reports to the commander of the military unit with no feedback from the latter.

The serviceman requested the Human Rights Defender to assist him restoring his violated rights.

On June 8, 2017, the staff of the Department for the Protection of the Rights of the Servicemen and their Family Members visited the military unit and had a private talk with the serviceman. During the visit, the materials of the service investigation were examined, and clarifications requested from the relevant authorized personnel of the military unit.

Eventually, the following was recorded:

- 1) There is no supporting document that the serviceman has been introduced with his rights and responsibilities in writing during the service investigation, no mention on the action or inactivity he is being accused of, no introduction either to the materials or the final conclusion of the service investigation.
- 2) Neither the final conclusion of the service investigation nor the order of the commander of the military unit issued on April 1, 2017, contain any reference to the circumstances of the mitigating or aggravating the serviceman’s liability, the purpose or motives of the offense, the type of the sin, the causes and conditions contributing to the offense, as well as information on the measures taken for the remedy of the offence.
- 3) The order of the commander of the military unit contains no justification for the application of the penalty, namely “warning on incomplete compatibility with the position”, nor any reasoning on the choice of the particular type of penalty.

Following the review of the complaint addressed to the Human Rights Defender, on September 15, 2017, the latter made a decision “On Delivery of a Proposal on Elimination of Violations of Human Rights and Freedoms”.

Based on the Human Rights Defender’s decision, the RA Minister of Defence issued a decree on voiding the order of the commander of the military unit on imposing a disciplinary penalty on the serviceman. The Legal Department of the RA Ministry of Defence was instructed to prepare a methodological guideline on conducting service investigation in cooperation with the Moral and Welfare Department, and the Centre for Protection of Human Rights and Integrity of the RA Ministry of Defence, and deliver the guideline to all military units.

For the effective protection of disciplinary rights of military servicemen, the Human Rights Defender’s Office has also developed Draft Law “On Amendments and Supplements to the RA Law On Disciplinary Code of Conduct of the RA Armed Forces” and Draft Order “On Supplements to the RA Minister of Defence Order # 991-N of September 20, 2012”.

In particular, the RA Law “On Disciplinary Code of Conduct of the RA Armed Forces” was recommended to be revised as follows:

1. The offense shall be considered aggravated only in cases when the conviction is neither removed nor extinguished;
2. To ensure an appropriate procedure for a serviceman to be informed about the order on a disciplinary penalty and the right to appeal the relevant decision, it was recommended to define that the written order on disciplinary penalty and the record in the serviceman’s military registration (service) card is provided to the serviceman for his information, to be signed by the latter upon receipt. At the request of the serviceman, the latter shall also be provided with the copies of the written order on disciplinary penalty and the record in the serviceman’s military registration (service) approved by the commander.
3. For the protection of procedural rights of military servicemen during the service investigation, the service investigator shall in writing explain to the serviceman accused of disciplinary offence his rights and responsibilities reserved to him by law.
4. To clarify the mechanisms for the withdrawal of a disciplinary penalty imposed on a serviceman as a result of an appeal, the superior commander (chief) shall be entitled to issue a written order to either void or maintain the disciplinary penalty.

In the Draft Order “On Supplements to the RA Minister of Defence Order # 991-N of September 20, 2012” it was recommended that the written report of the RA Human Rights Defender on the offense committed by the servicemen is considered as a basis for conducting a service investigation. In addition, it was recommended to define the basis and procedure for the suspension, cancelation and resumption of service investigations.

## CHAPTER 5. PROTECTION OF SOCIAL RIGHTS OF MILITARY SERVANTS AND THEIR FAMILY MEMBERS

### *1. Housing security of military servants and their family members*

One of the most vulnerable social issues of the RA Armed Forces is the execution of housing security rights of military servants and their family members.

The housing security of military servants in the system of the RA Ministry of Defence is based on the remaining housing stock of the USSR Armed Forces and the apartments acquired by the RA Ministry of Defence.

Clause 62 of Recommendation CM/Rec(2010)4 of the Committee of Ministers of the Council of Europe to member states on human rights of members of the armed forces states that members of the armed forces should be provided with accommodation of an adequate standard, which should also meet basic requirements of health and hygiene.

According to information provided by the RA Ministry of Defence, in 2017, 5152 military servants received monetary compensation for their rented apartments. Based on the current procedure, it is equivalent to providing a service accommodation. According to the relevant authority, in 2017, 93 military servants of RA Ministry of Defence, as well as 34 former military servants of the 1st group of disability and 131 homeless families of killed (dead) military servants were provided with apartments.

In 2017, military servants and their family members addressed a number of complaints to the RA Human Rights Defender on housing issues. The complaints were mainly filed by military servants in need for improvement of housing conditions, who had been registered for accommodations, with no significant progress in the queue for a couple of years. Other complaints were filed by retired military servants who had not been provided with accommodations.

For example, a former military servant who retired after a long-term military service, mentioned in his complaint addressed to the Human Rights Defender that during his military service he had been registered for accommodation, however received neither an accommodation nor any state funding to purchase it. The former military servant also explained that after retirement, his name was removed into the list of retired military servants; however, his housing conditions had never been improved.

According to the information provided by the RA Ministry of Defence, the retired military servant had been enlisted in accommodation list of the RA Ministry of Defence since 2002. During his service, he was behind the queue, and after retirement, his name was removed into the accommodation list of retired military servants.

As explained by the RA Ministry of Defence, in 2017, the Department of Social Security of the RA Ministry of Defence submitted a draft project for consideration in the scope of the Med-Term Expenditures for 2018-2020. The aim of the project is to improve the housing conditions of retired military servants who had been granted the right to permanent housing during their

military service, and that of special civilian servants. Thus, the issue of permanent housing of former military servants will be considered when the housing security program of retired military servants enlisted in the accommodation of the RA Ministry of Defence enters into effect.

The RA Human Rights Defender addressed the issue of housing security of military servants in his Annual Reports on the Activity of the Human Rights Defender of the Republic of Armenia in 2015 and 2016.

Based on the RA Government Decree # 384-N of March 7, 2007 “On Improvement of Housing Conditions of Military Servants of the RA Ministry of Defence”, all former military servants enlisted in the accommodation list of the RA Ministry of Defence, falling at least under one of the following categories, namely (a) retired from a long-term military service, (b) released from military service due to health issues or because of the age limit, (c) with a military service record of at least 12 years and 6 months, maintain their right of remaining in the list, and are removed from the list only after improvement of their housing conditions.

In this regard, it is worth mentioning that on November 30, 2017, the above-mentioned RA Government Decree was revised to read as follows: current military servants, or those (a) retired from a long-term military service, (b) released from military service due to health issues or because of the age limit, (c) with a military service record of at least 12 years and 6 months, are provided with ownership of accommodations with no compensation through a donation contract<sup>227</sup>.

As explained by the RA Ministry of Defence, the process of granting ownership of accommodations with no compensation will be implemented in February 2018. Apartments will be provided from the housing fund of the RA Ministry of Defence to military servants who have been granted rights to permanent use of apartments due to the lack of own housing facilities, and former military servants retired from long-term service and their family members.

In his Annual Report of 2016, the Human Rights Defender also recommended revising the mechanisms for the execution of housing rights of military servants and their families. It was recommended to consider the feasibility of introducing a saving and mortgage system in the RA Armed Forces based on review of international best practices<sup>228</sup>.

This recommendation was also accepted by the RA Ministry of Defence and incorporated in Part 2 of the Article 65 of the RA Law “On the Status of Military Service and Servicemen”. According to the latter, contract-based military officers are allowed to participate in state targeted program of long-term mortgage on affordable and privileged terms to purchase an apartment or a residential house, or to build one.

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<sup>227</sup> Point 14, Section IV of Annex to the RA Government Decree №384-N of March 7, 2007 “On Improvement of Housing Conditions of Military Servants of the RA Ministry of Defence”.

<sup>228</sup> Annual Report: The Activity of the Human Rights Defender of the Republic of Armenia in 2016: The Status of Protection of Human Rights and Freedoms, pp. 229-230.

As informed by the relevant authority, the RA Government is currently developing a targeted program of state support for long-term mortgage called “Affordable Accommodations for Military Servants”, to be launched on May 31, 2018. The program will solve the housing issue of about 500 military servants annually.

In 2017, the Human Rights Defender received complaints related to right to housing of family members of those persons who were recruits into the compulsory military service in the RA Police and were killed or died during the service, or those who received a disability due to a disease or injury acquired during the military service.

For example, the RA Human Rights Defender received a complaint from a former serviceman with a disability of Category 1. According to the applicant, in 1996, he appeared in the relevant territorial office of military registration and enlistment for the recruitment into compulsory military service and was sent to the military unit of the Internal Troops. Afterwards, as explained by the applicant, the RA Ministry of Defence transferred him to the frontline to continue his military service and perform combat duty, as a compulsory military serviceman of the ordinary staff. At the end of his service in 1998, he was deprived of sight, right hand, received contusion and other multiframegmentary injuries because of mine explosion during his military service. Based on the injuries received, he was included under disability of Category 1. The former serviceman mentioned in his complaint that since 2006 he had been registered in the RA Ministry of Defence as a home-seeker, and was used to receive regularly updates on his queue number from the RA Ministry of Defence. Afterwards, in connection with his application of March 3, 2017, he received a feedback from the RA Ministry of Defence explaining that issue of improving his housing conditions could no longer be considered, given that he was not registered as a military disabled person in the relevant registers of the RA Ministry of Defence, and had been included in the list of housing registration in breach of the procedure. Consequently, the applicant was recommended to apply to the RA Police with the request of improving his housing conditions.

The applicant mentioned that he had applied to the RA Police for the improvement of his housing conditions. However, his application has been rejected, since the RA Police does not possess housing funds and targeted means.

The Human Right Defender asked the RA Ministry of Defence to clarify the abovementioned case. In this regard, the procedure established by RA Government Decree # 947-N of June 9, 2005, “On Providing State Financial Support with no Compensation” states, that state financial support for obtaining an accommodation, is provided to family members of servicemen (freedom fighters) who had been killed or died while performing their service duties, or became disabled due to injuries, distortions and diseases acquired during their military service. Moreover, to be entitled to the mentioned right, the Department of Social Security of the RA Ministry of Defence shall issue a relevant certificate confirming the status of those persons. Consequently, the applicant of the above-mentioned case falls out of scope of the mentioned procedure. At the same time, it was highlighted, that the housing issues of persons disabled during the service in the RA Police, is regulated by the RA Government Decree # 805-N of July 24, 2008, “On

Housing Security of Military Servants of the RA Police, National Security and the Penitentiary System of the RA Ministry of Justice”.

Generally, differentiated approach should be justified by objective basis and legitimate purpose, otherwise it will lead to an unequal approach towards persons in the same situation, recruited either into the RA Armed Forces or other troops for compulsory military service, irrespective of their preferences.

*It is recommended to take measures to ensure that family members of servicemen (freedom fighters) who had been killed or died while performing their service duties, or became disabled due to injuries, distortions and diseases acquired during their military service in troops other than the Armed Forces, are provided with accommodation.*

*It is also required to ensure within the shortest terms the practical implementation of the state targeted program of long-term mortgage on affordable and privileged terms planned for contract-based military officers to purchase an apartment or a residential house, or to build one.*

## **2. The Right to employment of citizens released from military service**

The majority of former military servants retired from long-term service in the RA Armed Forces and military disabled persons are facing challenges of adapting to new conditions of life.

For example, in the United States, there are centres providing care and adaptation support to military servants and their family members. Those centres deal with both adaptation of the military service personnel related to the change of location of the military service and the employment of retired citizens. Those centres also provide support to military servants in the areas of childcare, legal aid to their families, financial consulting and other areas<sup>229</sup>.

The retirement from military service leads to numerous social and everyday issues, which is full of complicated challenges for former military servants who were used to receive high salaries and enjoy a wide range of benefits and privileges.

There are no state programs on employment assistance designed for former military servants. Therefore, most of them are unable to deal with employment issues on their own, which drives them into a difficult socio-psychological situation. Eventually, seeking at least some job, they are forced to leave abroad. As a result, in addition to demographic, family and other issues, it leads to lower quality of mobilization resources decreasing fighting fitness of armed forces.

Former military servants retired from long-term service of the RA Armed Forces are, generally, people capable of work, with higher education and advanced organizational skills. In the course of their long-term military service, they have gained extensive management experience, developed high sense of responsibility and discipline, adherence to principles and ready to take initiative. Such characteristics could help them play a significant role in the social and political life of the country and in different areas of economy.

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<sup>229</sup> Benefits, <http://www.goarmy.com/benefits/soldier-and-family-services.html>

### ***3. Recommendations for granting non-financial benefits to military servants and their family members***

The RA Human Rights Defender's Office has reviewed legal acts on benefits and social guarantees granted to military servants and their family members in the Russian Federation and other CIS member states.

The scope of the review focused on non-financial and other benefits granted to military servants and their family members in the studied countries. The outcomes of the review were analysed in comparison with the legal regulations of the RA relevant legislation. Eventually, recommendations for non-financial benefits to military servants and their family members were developed.

The objectives of the study and suggested recommendations were built around the concept of nation-army, namely:

1. Legislative bases shall be created to ensure that all members of the society, while performing their activities and duties as prescribed by the RA legislation, show engagement, contribution and support in the solution of military security issues of the Republic of Armenia.
2. Mechanisms of non-financial benefits shall be established for military servants and their family members, in all areas of public life, which will collectively increase the status of current and former military servants, especially that of officer personnel, and the reputation of military service in the RA Armed Forces.
3. New legal acts shall be drafted or the current ones amended and supplemented, to define *the right of priority* in dealing with the RA state and local self-governing authorities and organizations, for the current and former officer personnel of the RA Armed Forces, as well as for the family members of military servants who acquired a disability, died or were killed during the military service.

*Thus, it is recommended to provide the following non-financial benefits to military servants and their family members:*

- 1) Right to maintain their employment*
- 2) Compulsory procedure for unpaid leave*
- 3) Right to choose the time of annual leave*
- 4) Right to first employment*
- 5) Right of priority to be included in state employment programs*
- 6) Right to change the educational institution*

1. Article 179 of the Labour Code of the Russian Federation states that in case of reduction of employment and positions in a company, the priority is given to the personnel of higher qualification and advanced working capacity. In case of equal working capacity and

qualification, among other personnel, preference is given to people who have acquired a disability during military service.

A similar approach is also enshrined in the Labour Code of the Republic of Moldova. In particular, in accordance with Article 183 of the Labour Code of the Republic of Moldova, in the event of equal working capacities and qualification, among other staff, priority is given to persons with impairments acquired during military service or at war and to the family members of military *servants killed (dead) or missing*.

According to Part 5 of the Article 23 of the Law “On the Status of Servicemen” of the Russian Federation, in case of reduction of employment or positions, priority is given to the spouses of servicemen recruited into compulsory military service.

According to Point 2 of the Part 1 of the Article 113 of the RA Labour Code, the employer has the right to terminate an employment contract previously concluded for an indefinite term, as well as an employment contract of a definite term before the expiration of its validity, in case of reduction of employment and (or) positions in the following cases individually or collectively: a) reduction of the volume of production, b) economic and (or) technological changes, c) revision of work organization practices, d) and (or) revision of production requirements.

*The RA Labour Code does not provide for the right to priority of employees.*

*It is recommended to grant a right to priority to family members of current or former long-term contract-based ordinary, non-commissioned officer and officer personnel (including graduates of military educational institutions or relevant officer or sergeant trainings), members of families of servicemen currently in compulsory military service (during the period of military service), participants of combat operations in defence of the Republic of Armenia, servicemen and military servants (and their family members), who have acquired a disability during a military service in defence of the Republic of Armenia, as well as to family members of military servants killed (dead) during the performance of their military duties or during the participation in the defence operations.*

2. According to Article 128 of the Labour Code of the Russian Federation, the employer is obliged to provide unpaid leave to employees of the following categories, based on their written request:

- 1) Unpaid leave with a maximum period of 35 days a year to participants of the Great Patriotic War;
- 2) Unpaid leave with a maximum period of 14 days a year to the parents and spouses of servicemen killed (dead) during military service.

According to Article 99 of the Labour Code of Tajikistan, unpaid leave with a maximum period of 14 days is provided to employees of the following categories, based on their written request:

- 1) Participants of the Great Patriotic War and similar;

- 2) Parents and spouses of servicemen who have acquired a disability during military service, or of those who were killed or died in defence of their homeland.

According to Article 176 of the RA Labour Code, the list of categories of employees entitled for unpaid leave does not include parents and spouses of servicemen, who have acquired a disability during military service, or of those who were killed or died in defence of their homeland. However, Part 3 of the same article states, that based on a labour or employment contract or mutual agreement between the parties, an employee is entitled to unpaid leave for a maximum period of 60 days. Civil servants, public servants of other state (special) services, and community servants of local self-governing authorities are entitled to unpaid leave of a maximum period of 30 within per year.

However, the analysis of the above-mentioned law shows that, in the cases defined by employment contracts or based on mutual agreement between the parties, the employee may be provided with unpaid leave. Similarly, on discretionary basis or with a mutual agreement between the parties, unpaid leave may also be provided to civil servants, public servants of other state (special) services, and community servants of local self-governing authorities. Meanwhile, in the cases of the abovementioned countries, an employer is obliged to provide unpaid leave to parents and spouses of servicemen who have acquired a disability during military service, or of those who were killed or died in defence of their homeland, based on their written request.

*It is recommended that Part 1 of the Article 176 of the RA Labour Code is revised to include parents and spouses of the servicemen killed (dead) or disabled during military service, in the list of other categories of employees entitled to unpaid leave.*

3. Article 168 of the Labour Code of the Republic of Belarus addresses the priorities of annual leaves. According to this article, the order of annual leaves is determined by the schedule approved by the employer. At the same time, while preparing the schedule of annual leaves, the employer must consider the preferences of separate groups of employees as classified in the mentioned article. Those categories include participants of the Great Patriotic War, of military operations in other countries, as well as spouses of military servants and servicemen, who are entitled to request annual leave at the same time as their spouses.

According to Article 87 of the Labour Code of Turkmenistan, it is mandatory for the employer to provide a general annual leave to the wife of a serviceman in compulsory military service, who has one child.

According to Part 2 of the Article 164 of the RA Labour Code, the order of annual leaves is defined by a labour contract, and in the absence of such a contract, by mutual agreement between the parties. According to Part 3 of the same article, before the completion of six months of consecutive work, annual leave shall be provided at the request of women employees before or after the maternity leave or in other cases prescribed by the labour contract.

In this regard, it is worth mentioning, that, for example, according to Article 92 of the Labour Code of Tajikistan, the employer provides annual leave after at least 11 months of work in the first year of employment with them. However, in accordance with Part 2 of the same article,

servicemen in compulsory military service enjoy the right to annual leave starting after the third month of their service.

According to Part 4 of the Article 164, of the RA Labour Code, employees at the age of eighteen, as well as pregnant women and those with a child under 14 years of age, are entitled to choose the time of annual leave *after the completion of six months of consecutive work*.

*It is recommended to define priorities for the right to choose the time of annual leave before and after the completion of six months of consecutive work, as well as a right to annual leave before the completion of six months of consecutive work, to family members of current or former long-term contract-based ordinary, non-commissioned officers and officer personnel (including graduates of military educational institutions or relevant officer or sergeant trainings), members of families of servicemen currently in compulsory military service (during the period of military service), participants of combat operations in defence of the Republic of Armenia, servicemen and military servants (and their family members), who have acquired a disability during a military service in defence of the Republic of Armenia, as well as to family members of military servants killed (dead) during the performance of their military duties or during the participation in the defence operations.*

4. According to Articles 281 and 342 of the Labour Code of the Republic of Belarus, the State guarantees priority right to the first job for the servicemen released from compulsory military service in the Armed Forces or other troops of the Republic of Belarus.

According to Part 2 of the same article, first employment is the one provided to graduates of state educational institutions, to persons with special peculiarities of psycho-physiological growth, as well as to servicemen released from compulsory military service in Armed forces or other troops, who have not been in any labour relations before their conscription.

Procedure and conditions for providing the right to first employment are regulated by Decree of the Council of Ministers of the Republic of Belarus “On Approval of Procedure and Conditions for Providing First Employment”, dated December 19, 2006.

The right to first employment assumes that the State runs a register of current vacancies or planned new jobs available in both private companies and state authorities. After completing the registration, they make a job “reservation” and subsequently distribute vacancies by specialities thus ensuring employment for the people with the right to first job. “Job reservation” assumes a commitment from the side of state authorities or private companies to provide a certain number of job posts for persons recently released from compulsory military service.

*It is proposed that relevant state agencies undertake joint efforts to develop a mechanism to ensure that when there are any vacancies or new jobs openings in state authorities, the latter allocates some of those positions for persons recently released from compulsory military service as prescribed by law.*

*A similar “job reservation” mechanism shall also be developed for all private companies to ensure that everyone is united and engaged around the concept of nation-army to resolve the objective of the program.*

*In addition, relevant state authorities and educational institutions shall ensure relevant trainings, as necessary, prior to the recruitment of a serviceman recently released from compulsory military service.*

Introduction of the above-mentioned mechanism will contribute to the employment of young men recently released from compulsory military service, creation of a new family, and other social and economic objectives. Moreover, securing employment for young men recently released from compulsory military service will reduce the likelihood of their migrating from or leaving the country.

5. According to Part 5 of the Article 23 of the Law “On the Status of Servicemen” of the Russian Federation, spouses of military servants are entitled to priority rights for engagement into state employment programs.

According to Article 22 of the RA Labour Law, disability, age, the risk of leaving the workforce for a job abroad, registration in the relevant authority, within the six months after the release from compulsory military service, are among the criteria for determining the lack of competitiveness in labour market. Additional rights as defined in Article 23 of the RA Law “On Employment”, are granted to an unemployed person recognized uncompetitive in the labour market based on the grounds defined in the mentioned article, and the procedure for determining the lack of competitiveness defined by the RA Government Decree # 534-N of April 17, 2014 “On Approval of a Number of Legal Acts Enforcing the RA Law on Employment”.

Under this article, an unemployed person recognized uncompetitive in the labour market, obtains the following additional rights:

- 1) Right of priority to be included in state employment programs by the relevant authority;
- 2) Right to obtain support in small businesses;
- 3) Right to obtain support in using the services provided by a non-governmental organization cooperating with the relevant authority;
- 4) Right to obtain support for agricultural business by promoting seasonal employment.

This article also sets out monetary or financial benefits.

*It is recommended to define that unemployed spouses or family members (with certain additional conditions) of servicemen or military servants killed or dead during military service, shall be granted a right to be considered uncompetitive in the labour market, and enjoy additional rights as defined by points 1, 4, 5 and 7 of the above-mentioned Article 23.*

6. According to Part 6 of the Article 19 of the Law “On the Status of Servicemen” of the Russian Federation, in the event that spouses or family members (current students) of military servants have to change their place of residence because of the change in the location of military service, the former are entitled to continue their education in the educational institutions of the new place.

*It is recommended to extend the mentioned norm to the spouses or family members of contract-based or compulsory servicemen, who are current students in any of the state or non-state accredited higher educational institutions, and have to change their place of residence to follow their spouse or family member in changing the location of their military service.*

## SECTION 12. PROTECTION OF RIGHTS OF INDIVIDUAL GROUPS

### CHAPTER 1. WOMEN'S RIGHTS

Armenia has taken various actions and implemented measures to eliminate the historically rooted inequality between men and women, and for the recognition of women's rights, for the protection thereof and additional safeguards. Thus, in 1993, the Republic of Armenia ratified the UN Convention "On the Elimination of All Forms of Discrimination against Women" and several international treaties and conventions on the rights of women.

Moreover, equality before the law is enshrined in Article 28 of the RA Constitution. At the same time, paying particular importance to the equality of men and women, this principle has been re-defined in Article 30 of the RA Constitution with Amendments of 2015. In addition, according to the RA Constitution, one of the main goals of the state policy is the promotion of equality between men and women (Article 86, the RA Constitution). Guarantees for ensuring equality between men and women are also provided in the RA Law "On Equal Rights and Equal Opportunities for Women and Men" of 2013. However, there are no effective mechanisms to implement this law.

General review of the RA legislation revealed no legal norms discriminating against women. However, there are still no sufficient guarantees for the real exercise of equality between women and men. Consequently, in 2017, numerous cases of violations of women's rights and discriminatory treatment were recorded in Armenia.

One of the actions envisaged for the year of 2017 by Decree # 483-N "On Approval of the Action Plan for 2017-2019 of the National Strategy for Human Rights Protection" refers to the development of the project on "Strategic Plan of 2017-2021 for the Equal Rights and Equal Opportunities for Women and Men in the Republic of Armenia". It was developed by the RA Ministry of Labour and Social Affairs and submitted to the RA Government in line with the established procedure; however, it was not approved in 2017.

Accordingly, the key issues referring to the equality of women and protection of women's rights are presented below.

#### ***1. Violence against women***

Violence against women is one of the most common forms of discrimination against women. According to international norms,<sup>230</sup> violence against women is regarded as a violation of human rights and fundamental freedoms. Moreover, violence against women mainly occurs in the family environment and is manifested through physical, psychological, sexual and economical violence. Violence against women and domestic violence have both direct and indirect effects on the women's ability to adapt, self-actualize, gain self-confidence, and to feel protected. This phenomenon is common all over the world, has different manifestations and prevalence levels. It is also a common phenomenon in Armenia, reported both by the RA Government and the

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<sup>230</sup> See the Council of Europe Convention "On Preventing and Combating Violence against Women and Domestic Violence", Article 3; General Recommendations №19, made by the UN Committee on the Elimination of Discrimination against Women" (<http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>)

public and international organizations, and the society. At the same time, violence against women in the Armenian society, very often presenting it as a “national tradition” or as an outcome of a man’s inability to address socio-economic issues of the family, is mainly a consequence of low level of legal awareness both of men using violence and of women undergoing it.

Although numerous actions have been taken in recent years to address this issue, it is an integrated problem, which remains unresolved. The weakness of the protection system of women under violence raises a number of additional issues.

In 2017, the Human Rights Defender’s Office received a number of reports on violence against women, especially manifested as domestic violence. Review of individual cases allowed identification of issues that are systemic in nature and can be conditionally divided into several categories:

- Lack of accurate statistical data on domestic violence.
- Lack or incompleteness of legislative regulations in place to prevent or combat such cases.
- Lack of services provided to the affected people by the State.
- Lack of adequate level of legal awareness, and especially lack of confidence in the state interference in family matters, as well as lack of sufficient professional fitness of the relevant authorities.
- Stereotypes of the society, and the need for capacity building of specialists.

All these issues actually affect women’s access to justice, leading to a number of breaches of rights and complications in restoring the violated rights. In 2017, the RA Human Rights Defender conducted a special thorough analysis of the issue of violence against women, in assistance with the Council of Europe. The report on “Gap Analysis of Armenian Criminal Law in the Light of the Standards established by the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence” addresses such subjects as violence against women, domestic violence, legal regulations and law enforcement practices required in the response by the criminal law in combating relevant issues. The report also aims to support the ratification of the Council of Europe Convention “On Preventing and Combating Violence against Women and Domestic Violence”, which was signed by the Government of Armenia on January 18, 2018, based on the “Strategic Plan of 2017-2021 for the Equal Rights and Equal Opportunities for Women and Men in the Republic of Armenia”. The report was highly appreciated by partner international organizations and was published on the official website of the Council of Europe<sup>231</sup>.

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<sup>231</sup> Check the English version of the Report on the official website of the Council of Europe through this link: [https://www.coe.int/en/web/istanbul-convention/newsroom/-/asset\\_publisher/anInZ5mw6yX/content/seminar-to-present-the-gap-analysis-of-armenian-criminal-law-in-the-light-of-the-standards-established-by-the-council-of-europe-convention-on-preventi?inheritRedirect=false&redirect=https://www.coe.int/en/web/istanbul-](https://www.coe.int/en/web/istanbul-convention/newsroom/-/asset_publisher/anInZ5mw6yX/content/seminar-to-present-the-gap-analysis-of-armenian-criminal-law-in-the-light-of-the-standards-established-by-the-council-of-europe-convention-on-preventi?inheritRedirect=false&redirect=https://www.coe.int/en/web/istanbul-)

### *Lack of accurate statistical data on domestic violence*

Domestic violence is known as a type of latent violence, which means that the information and statistics on this type of violence do not fully reflect the real picture of the situation. At the same time, data provided by relevant authorities show that there are different types of domestic violence, which also indicates that domestic violence affects particularly women. Thus, according to the RA Police, criminal cases and materials investigated within 12 months of 2017, revealed 793 crimes of domestic violence, including 740 cases of physical violence and 53 cases of crimes using violence (no cases of sexual violence were reported). The reported number of 793 cases of domestic violence include one case committed by a common-law spouse, 480 cases by a husband against his wife, 18 cases by a wife against her husband, 67 cases by a parent against their child, 116 cases by a child against their parent, and 111 cases by other family members.

At the same time, in 2017, the RA Investigative Committee authorities and subdivisions instituted 258 criminal cases of domestic violence, and in general, in 2017, the RA Investigative Committee authorities and subdivisions handled 458 criminal cases of domestic violence. The mentioned 458 criminal cases, included 8 cases initiated under Article 104 of the RA Criminal Code, 1 case under Article 109, 3 cases under Article 110, 1 case under Article 111, 15 cases under Article 112, 13 cases under Article 113, 40 cases under Article 117, 285 cases under Article 118, 7 cases under Article 119, 1 case under Article 120, 1 cases under Article 124, 2 cases under Article 131, 1 case under Article 133, 39 cases under Article 137, 2 cases under Article 138, 1 case under Article 139, 12 cases under Article 141, 2 cases under Article 142, 1 cases under Article 170, 8 cases under Article 173, 4 cases under Article 185 , 11 cases under other articles of the RA Criminal Code. At the same time, according to the RA Police, in 2017, the latter prepared materials for 593 cases of domestic violence, including 168 cases for which a criminal was instituted However, criminal proceeding for 592 cases was denied due to the absence of the applicant's complaint.

86 criminal cases of the above-mentioned 458 were sent to the court with an official indictment. 281 criminal proceedings were discontinued, including 69 proceedings based on acquittal, and 212 with no acquittal. The proceedings for 28 criminal cases were suspended, including 12 cases due to the person being searched, and 16 cases for other reasons.

Moreover, it should be underlined that the above-mentioned statistical data do not reflect the full and real picture of domestic violence and violence against women, because there is no unified statistics on domestic violence in Armenia. Consequently, there are no official data on cases of violence, the reasons thereof, and especially, on the impact of violence on the vulnerable groups<sup>232</sup>. Moreover, the official data vary from the non-formal data. Particularly,

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[convention/newsroom%3Fp\\_p\\_id%3D101\\_INSTANCE\\_anInZ5mw6yX%26p\\_p\\_lifecycle%3D0%26p\\_p\\_state%3Dnormal%26p\\_p\\_mode%3Dview%26p\\_p\\_col\\_id%3Dcolumn-1%26p\\_p\\_col\\_count%3D2%26p\\_r\\_p\\_564233524\\_resetCur%3Dfalse](#)

<sup>232</sup> The UN Committee on the Elimination of Discrimination against Women has also addresses this issue in its Concluding Observations (CEDAW/C/ARM/CO/5-6), p. 37.

according to the data provided by the “Coalition to Stop Violence against Women”, 4500 cases of domestic violence were reported in the first 7 months of 2017<sup>233</sup>.

The issue, firstly, stems from the fact that until 2017, there was no single definition on “domestic violence” in the relevant legislation. Therefore, every authority in charge have been collecting the relevant data based on their own assumptions on regulations, criteria, and classifications. Additionally, some of the manifestations of violence against women and domestic violence had not been regulated by the RA legislation of Armenia, before the relevant legislative amendments of 2017. Consequently, the affected persons of these types of violence had filed no complaints. Statistical accuracy of the data is also affected by the common stereotypes of the public viewing domestic violence as a private case and assuming that it is shameful to talk about it. Thus, the majority of the society avoids reporting about the cases of violence they have come across with or have learnt about.

### *Challenges of legislative regulation of domestic violence*

On December 13, 2017, the RA National Assembly adopted the Law “On Prevention of Domestic Violence, Protection of Persons Affected by Domestic Violence, and Family Restoration” and a number of related laws.

The enactment of the law proceed by extensive public discussions with the participation of various members of the society. The Human Rights Defender also played an important role in that process. In particular, during the discussion of the legislative draft laws, the Human Rights Defender, as the National Institute of Human Rights Protection, has always worked with the draft law makers, with the groups who had either a positive or a negative attitude towards the project, and with non-governmental organizations and international partners. The Human Rights Defender has repeatedly pointed out the importance of engagement of various public representatives and non-governmental organizations in the legislative processes. In this respect, the RA Ministry of Justice played an important role in the organization and management of public discussions. The Human Rights Defender also played an important liaising role, through the communication of the stakeholders’ thoughts to the lawmakers, aimed at improving the draft. The website of [www.e-draft.am](http://www.e-draft.am)<sup>234</sup> also played an important role in the process of discussion of the draft, ensuring engagement of the general public. The draft law was adopted on December 13, 2017, following numerous discussions.

Nevertheless, due to the lack of comprehensive legislative regulations on some types of domestic violence in 2017, many individuals affected by domestic violence had no chance to receive proper protection and services.

Among other challenges, the domestic law does not qualify all types of domestic violence as being such; therefore, relevant authorities are sometimes unable to provide a proper response to those cases. Based on the RA Criminal Code Criminal, penal acts include some forms of physical

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<sup>233</sup> <http://coalitionagainstviolence.org/en/home/>, as of 12.02.2017.

<sup>234</sup> The website allows the uploaders of draft laws make a notice about the plans of relevant public hearings. The notice on public hearings, itself, allows highlighting, that the website cannot replace real-life public hearings. It is worth mentioning, that not all lawmakers use the website as a tool for gathering public opinion.

violence, and sexual violence (e.g. beating, rape, etc.). In some ways, the RA legislation regulates psychological violence, as well (Article 119, the RA Criminal Code provides for a definition of the act of causing severe physical pain or server mental suffering). Nonetheless, the Armenian legislation does not regulate, for example, the acts of harassment, forced marriage, forced termination of pregnancy, etc. It should be mentioned that “regular harassment of another person” is defined as an act of engaging another person in an unpleasant communication, or threatening the affected person with harassment, in the meaning of physically tracking the affected person, visiting their workplace, sports facility or educational institution, as well as tracking the affected person in a virtual space, (...) damaging the property of another person, leaving minor traces on personal belongings of the affected person, opening fake accounts with the name and personal data of the affected person in social networks, or disseminating false information about them. Meanwhile, a number of non-governmental organizations providing services to persons affected by domestic violence, as well as a number of law enforcement agencies and representatives of the judiciary system, mentioned that they have also witnessed the above-mentioned forms of violence.

Analysis of international documents and legislation of a number of countries shows that one of the effective methods of combating domestic violence is its criminalization. Moreover, it can be considered either one constituent element of an offense or as a matter of aggravating the punishment and liability of the offender, in the investigation of a case with a number of constituent elements of an offense, in the event that there is a family relationship between the offender and the affected person<sup>235</sup>.

Point 7 of the Part 1 of the Article 62 of the RA Criminal Code is another factor impeding effective response to domestic violence. It defines mitigation of punishment or imposes a liability on the affected person, in the event that the latter has provoked the commitment of the crime by their unlawful or immoral conduct. In the case of domestic violence, provision of such mitigating factor is not in line with international standards. In particular, Article 42 of the Council of Europe Convention “On Preventing and Combating Violence against Women and Domestic Violence” states that justifications for crimes committed in the name of the so-called “honour” are unacceptable. This applies particularly to the claims that the affected person has violated the cultural, religious, social or traditional norms or practices of good conduct, thus justifying the use of violence.

Legal regulation of cases of domestic violence prosecuted as a matter of public and private interest is another challenge. Article 33 of the RA Criminal Procedure Code states that depending on the nature and servility of the crime, prosecution in criminal proceedings is executed as a matter of public and private interest. Cases of private prosecution are listed in Article 183 of the RA Criminal Procedure Code. All other cases of crimes are subject to prosecution as a matter of public interest. In the case of prosecution as a private interest, when there is a reconciliation between the affected person and the suspect of the offense, or the former withdraws their claim, the criminal prosecution of the latter is terminated. In this

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<sup>235</sup> Council of Europe Convention “On Preventing and Combating Violence against Women and Domestic Violence”, Article 46.

regard, the burden of imposing a liability on the person committing a violence may fall on the affected person, which can affect their willingness of reporting to law enforcement authorities. Moreover, considering the psychological vulnerability of the affected person, as well as the high risk of exerting pressure on the latter by offenders, in the case of private prosecution, the claims will most likely be withdrawn by the affected person.

Analysis of the international best practice and a number of international documents also come to prove that private prosecution of cases is controversial. Thus, as stated in the Recommendation (2002)5 of the Committee of Ministers of the Council of Europe to member States “On the Protection of Women against Violence” that member states shall encourage prosecutors to regard violence against women and children as an aggravating or decisive factor in deciding whether or not to prosecute in the public interest<sup>236</sup>. A similar position is also expressed in a case of the European Court of Human Rights - “Opuz v. Turkey” - one of the fundamental cases examined by the Court on domestic violence. In the scope of this case, the Court has formulated essential positions. In particular, the Court noted that, given the seriousness and gravity of previous offenses committed by the offender, the prosecuting authorities should be able to pursue the proceedings as a matter of public interest, regardless of the victims’ withdrawal of complaints<sup>237</sup>.

In this regard, legislative amendments of 2017 affected Article 183 of the RA Criminal Procedure Code, which was revised to incorporate a new paragraph. Thus, Part 4 states, that regardless of the victims’ complaint, the prosecutor is entitled to initiate criminal proceedings for the offenses set forth in Part 1 of this article in cases of domestic violence, when the victims are unable to protect their lawful interests due to their hopeless state or dependence on the alleged offender. In this case, the criminal case is instituted and examined according to the general procedure defined by this Code, and even in case of reconciliation between the victim and the accused, criminal prosecution shall not be terminated<sup>238</sup>.

The lack of sufficient mechanisms for the protection of victims is another obstacle for the effective prevention of domestic violence. Thus, Part 1 of the Article 98 of the RA Criminal Procedure Code states that the State provides protection to each person involved in criminal proceeding, who can provide information revealing the crime and detecting the committer, and thus threatening the life, health, property, rights and lawful interests of their own, their family members and close relatives.

Article 98 of the same Code, protection measures include, for example, an official warning about who can be a potential committer of violence or other crime against the protection recipient, protection of personal data, personal security, accommodation and property and other belongings of the protection recipient. However, analyses indicate the mentioned measures as prescribed by law and the legal regulations necessary to ensure the implementation thereof, are

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<sup>236</sup> Recommendation (2002)5 of the Committee of Ministers of the Council of Europe to member States “On the Protection of Women against Violence”.

<sup>237</sup> See Opuz v. Turkey case decision of 9 June 2009, complaint # 33401/02, Points 128 and 145.

<sup>238</sup> The mentioned regulation entered into force in 2018.

not sufficient, and are not applied in the cases of domestic violence. The new law has already enshrined the decisions on protection; however, they will become effective only in 2018.

### ***Lack of services provided to the affected people***

People affected by domestic violence are often in need for special services. Members of the family indirectly affected by the violence, as well as the person committing a violence also need support.

Thus, in a number of cases, individuals suffering from domestic violence, including women, need psychological, social and economic support. However, in 2017, the RA Government provided no relevant services. In particular, during the whole period of 2017, there was no state-run accommodation, special help-line available to everyone in Armenia (including people with disabilities) to provide 24-hour support and counselling. In 2017, the above-mentioned and other types of services were provided to victims of domestic violence in Armenia by various NGOs.

Another challenge impeding the victims of domestic violence to file complaints to law enforcement agencies is the lack of affordability to hire a lawyer. Thus, Article 41 of the RA Law “On Advocacy” does not provide for free of charge legal support, namely there is no special regulation on the use of public defender’s services by the victims of domestic violence (the mentioned formulation was effective through 2017). Consequently, in 2017, in Armenia, free of charge legal support was provided to victims of domestic violence only by NGOs.

Following legislative amendments of December 2017, the RA Government has undertaken a commitment to provide shelters, establish support centres and provide other services. Moreover, in pursuance with the RA Law “On Advocacy”, starting from the second semester of 2018, free of charge legal support will be provided to victims of domestic violence based on the RA Law “On Prevention of Domestic Violence, Protection of Victims of Domestic Violence and Restoration of Harmony in the Family”, as well.

### ***Low level of legal awareness and distrust towards state authorities, particularly in respect of interference in family matters***

Part of the Armenian society, regardless of the level of education, still has a low level of legal awareness and does not realize the negative impact of their daily behaviour on the development of the country and society, and on the level of human security in the society. Neglect and indifference of state authorities towards such behaviour, on the one hand, and the lack of self-discipline of behaviour in a large group of population, on the other hand, leads to a situation where violation of rights of vulnerable groups of the society, in particular women, becomes a common and daily routine. In this case, favourable legislative amendments and relevant sanctions are perceived by such citizens as interference in their everyday lives, affairs and traditions, and therefore meet some resistance from side of the society.

In the Armenian society, there is still a widespread public practice to blame the victim of the violence, instead of providing protection. One of the manifestations of this phenomenon is the

attitudes towards the victims of violence approaching to law enforcement authorities as “a betrayer”, or “someone who washes their dirty laundry in public”. In the case of a woman voicing about domestic violence, they may become a subject of rumours around the community questioning the women’s morality. This is particularly true about rural communities where historically a relatively closed social environment has formulated, and the discussion of the major issues shall remain inside the family. In such cases, domestic violence usually remains inside the family and keeps being an attribute of everyday life.

### ***Stereotypes of the society, and the need for capacity building of specialists***

One of the practical challenges of combating violence against women and domestic violence is the stereotypes that exist in the society, which leads to numerous cases remaining unresolved. There are stereotypical approaches to domestic violence both in the mass media and in the public and among the relevant state authorities that make it even more difficult to detect and combat cases of violence. In particular, domestic TV series depicting Armenian family models, which demonstrate impunity of violence especially targeting women, act as a mechanism for propagating and legitimizing domestic violence.

Opinion polls show that 35.7% of respondents (including 44.6% male and 27.8% female respondents), agree that women should tolerate violence for the sake of family unity<sup>239</sup>. In some cases, 27.7% of respondents believe, that “women deserve beating”, including 35.2% male and 21% female respondents<sup>240</sup>.

Stereotypic approach demonstrated by representatives of relevant state authorities very often leads to double victimization. Such practices affect the process of revealing cases of violence in the future, since in a number of cases the victims avoid applying to competent authorities a second time<sup>241 242</sup>.

In this regard, mass media also have an important role as a tool to influence the existing perceptions. With that logic in mind, through cooperation between the Human Rights Defender’s Office and the Embassy of the Federal Republic of Germany in Yerevan, an informative visit was organized on “Human Rights and Domestic Violence” for the Human Rights Defender’s Staff and Mass Media representatives in Berlin on December 3-9, 2017. During the visit, reporters met with representatives of state-funded organizations dealing with prevention of violence in the family, paid a visit to a court specialized in family matters, and met with NGOs fighting against violence.

*Based on the abovementioned, the following actions are recommended:*

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<sup>239</sup> <http://www.unfpa.am/sites/default/files/IMAGES-executive%20summary-Arm.pdf>

<sup>240</sup> Ibid.

<sup>241</sup> Analyses conducted by various NGOs have revealed cases of double standards applied by the courts and investigating authorities, thus violating the victim’s right to use effective mechanisms of legal protection; see <http://coalitionagainstviolence.org/wp-content/uploads/2017/01/Report-short.pdf?x24321>

<sup>242</sup> The issue has been voiced by the UN Committee against Torture, mentioning that an attempt to justify violence by law enforcement officials due to stereotypes, is another obstacle to voicing violence. See “Concluding Observations of the UN Committee against Torture on the 4<sup>th</sup> Annual Report of Armenia” [http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/ARM/INT\\_CAT\\_COC\\_ARM\\_25977\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/ARM/INT_CAT_COC_ARM_25977_E.pdf)

1. *Revise the RA Criminal Code based on international standards on violence against women and domestic violence.*
2. *Organize mandatory and continuous trainings for relevant specialists (investigators, prosecutors, judges, etc.) to cover new legislative regulations of the Republic of Armenia, as well as international standards, which will also address the elimination of stereotypes about violence against women.*
3. *Raise women's awareness of their rights and existing mechanisms for their protection.*
4. *Develop and implement campaigns (social advertising, posters, short films, etc.) on prevention of domestic violence.*

## **2. Trafficking and exploitation**

Trafficking is another form of violence against women<sup>243</sup>. The RA Human Rights Defender is a member of the RA Council on Combating Human Trafficking, and relevant staff of the former is represented in the associated task force.

The available evidence indicates that women are the main subjects of trafficking and exploitation are. Thus, in 2017, 5 petitions on human trafficking and exploitation of 16 persons were submitted, with eventual identification of 13 persons, including 10 women, to receive relevant support. Moreover, 8 of the mentioned cases were classified as sexual exploitation<sup>244</sup>. Therefore, this type of violence also affects women, proportionately. The effectiveness of combating trafficking depends on the level of awareness of the phenomenon. In this regard, the RA Human Rights Defender periodically organizes awareness-raising campaigns and discussions on various subjects of human rights and fundamental freedoms, which also include information on trafficking and how to avoid it. In 2017, students from secondary educational facilities and children's care centres both from Yerevan and some other regions of Armenia, had informative visits to the RA Human Rights Defender's Office. During the visits, the hosts touched upon a number of issues related to protection of human rights, including human trafficking and mechanisms of effective combating thereof.

In addition, in 2017, a representative of the RA Human Rights Defender's Office participated in discussions, seminars and other activities aimed at raising awareness on various aspects of human rights and freedoms. Thus, in 2017, in the scope of the project on "Raising Awareness of Young People on Human Trafficking", a representative of the Human Rights Defender's Office introduced human trafficking issues related to human rights, international standards for combating human trafficking, rights of people affected by trafficking and other issues associated with human rights and freedoms.

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<sup>243</sup> RA Criminal Code, Article 132.

<sup>244</sup> [http://www.mlsa.am/?page\\_id=1345](http://www.mlsa.am/?page_id=1345)

*Therefore, it is important to continue awareness raising campaigns on trafficking and exploitation, the ways of how to avoid it, and the protection mechanisms available in those cases.*

### ***3. Sex-selective abortions***

Despite of numerous recent programs and projects promoting the equal role of women and men, as well as aimed at prevention of sex-selective abortions, this issue still represents an actual challenge. It is a discrimination against women based on both traditional perceptions of the society (e.g. preference for a male child) and stereotypical approaches towards the role of women.

Given the importance of the issue, a number of international organizations have urged for implementation of immediate measures to resolve the issue<sup>245</sup>. In Armenia, deviation from the standard sex ratio has been observed since 1991. In 2000, the data on the gender of new-borns show a ratio of 120 boys - 100 girls, compared to standard ratios is 102-103 boys - 100 girls<sup>246</sup>. Based on Recommendation # 1829 issued in 2011 by the Parliamentary Assembly of the Council of Europe, among other actions, Armenia was instructed to investigate the causes of sex-selective abortions and to take measures to increase the role of women, to ensure the application of legal norms preventing discrimination against women, and to raise the awareness of relevant healthcare personnel introducing the subject matter and its potential consequences<sup>247</sup>.

NGOs have conducted a number of studies to reveal the true picture of the issue. Thus, one of the surveys published in 2017 show that 56.3% of women and 82% of families have equal preference regarding the child's gender. The other respondents note that their friends and relative prefer a baby boy six times more than a girl (36.7% vs. 6.2%), and twice as much in the family (12.9% vs. 5.2%). Moreover, survey data by the location, indicate that in rural areas the preference among families of a boy child is three time higher (16.1% vs. 5.2%), whereas in urban areas the trend towards a male child is only twice as high (11.2% vs. 5.2%). 84% of respondent women from urban area and 79% of women from rural areas mention that the gender of their children is not a matter of preference in their family. Moreover, it has also been revealed that in all the regions of Armenia a firstborn male child is more preferred. Such preference is most expressed in the regions of Vayots Dzor, Ararat, Shirak and Lori, while the majority of women in Yerevan and Syunik Region (61.6% and 62.4%, respectively) had no preference regarding the gender of their firstborn during their first pregnancy<sup>248</sup>.

The aforementioned information and other data indicate that there are still existing stereotypes in the society, leading to sex-selective abortions. In addition, there is no sufficient monitoring over the legally required medical and social instructions to be maintained in due course by

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<sup>245</sup> In 1995, at the Fourth World Conference on Women, held in Beijing, sex-selective abortion was defined as a form of violence against women. Three years later, at the UN General Assembly, the resolution on "Girl Child" was approved, and the Member States were called upon to "adopt and implement relevant legislation".

<sup>246</sup> [http://unfpa.am/sites/default/files/Sex-selective\\_abortions\\_report\\_Arm.pdf](http://unfpa.am/sites/default/files/Sex-selective_abortions_report_Arm.pdf)

<sup>247</sup> [http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta11/ERES1829.htm#P7\\_28](http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta11/ERES1829.htm#P7_28)

<sup>248</sup> Report on the number and reasons of sex-selective abortions in Armenia, <https://ichd.org/?laid=2&com=module&module=menu&id=8>

healthcare personnel regarding abortions after the 12th week of pregnancy. There is not enough available. According to the RA Ministry of Health, in 2017, no cases of deliberate medical and social instructions by healthcare personnel for abortions after the 12th month of pregnancy were recorded. In this case, it should be identified how sex-selective abortions have been conducted, given that the sex of the child is most likely to be determined after the 12th week of pregnancy. Therefore, it can be concluded that in some cases abortion is performed after the 12th week of pregnancy.

Thus, Decree # 483-N “On Approval of the Action Plan for 2017-2019 of the National Strategy for Human Rights Protection” defines the list of actions required for the effective combat of sex-selective abortions. In this regard, for the prevention of sex-selective abortions, public campaigns were organized to promote negative attitude towards termination of pregnancy, including sex-selective abortions, thus preventing the mentioned practices.

Actions for prevention of sex-selective abortions include awareness raising campaigns, as well as measures based on the Project for “Prevention of Sex-selective Abortions 2015-2017”, which was developed in assistance with the UN Population Fund and approved by the joint order of the RA Minister of Health and the RA Minister of Labour and Social Affairs. In the framework of the Project, extensive public awareness raising campaigns were organized by joint efforts of government agencies, international organizations (the UN Population Fund, “International Centre for Human Development”, “Save the Children”, “World Vision” and others) and local community-based non-governmental organizations. A methodological guideline on “Qualitative and quantitative research and data analysis of the frequency, consequences and reasons of sex-selective abortions” was developed. In the framework of cooperation between the UN Population Fund and the RA Ministry of Health, in the 2nd semester of 2017, workshops and trainings were delivered to the personnel of hospitals providing birth care services, including the management of those facilities, the staff determining child’s gender through ultrasound examination, and gynaecologists.

According to the information provided by the RA Ministry of Health, the implemented measures contributed to reducing trends of sex-selective abortions. Thus, before implementation of actions against sex-selective abortions the following figures were recorded, namely within 2008-2012, the ration of newborn girls and boys was 100/115, 100/113.4 in 2014, 100/112.7 in 2015, 100/111.9 in 2016, and 100/110.3 within 6 months of 2017.

However, considering the fact, that it is a complex and integrated challenge, it is required to implement continuous preventive actions, including capacity building for women, awareness raising regarding the right to freedom of decision-making and other rights, as well as through enhanced monitoring of health care personnel.

*Taking into consideration the abovemention points, the following is recommended:*

- 1. Study the positive attitude of different groups of the population towards sex-selective abortions, including objective and subjective reasons, which would allow targeted combat against the phenomenon.*

2. *Contribute to prevention of gender discrimination through mass media, educational programs and other measures.*
3. *In cooperation with the RA Ministry Health, develop and apply mandatory mechanisms to monitor the maintenance of medical and social indicators by health care personnel during the termination of pregnancy after the 12th week.*

#### **4. Women's participation in political life**

Through its annual reports the RA Human Rights Defender, as well as a number of international and non-governmental organizations have continuously toughed upon the issue of full involvement of women in public and political life. Although existing studies suggest that women in Armenia are not inferior to men by their education<sup>249</sup>. However, women's involvement in political life is still on a low level.

Very often women are not considered as decision-makers because of the perceptions of the society about the women's role. Therefore, women are not actively involved in various social and political processes. In addition, political power in Armenia is directly related to the control of economic power and resources, and the authorities in the power are not interested in the active involvement of newcomers, including women. Moreover, most of the "rules of the game" played in the politics are well known and acceptable for women, therefore, even politically active women often choose to assume secondary roles. Eventually, woman's involvement in certain areas is rather low, and in particular among high-ranking positions.

The study of figure also make the situation even more explicit. Particularly, among 18 ministers of the RA Government, there is only one woman<sup>250</sup>; only 3 out of 57 deputy ministers are women<sup>251</sup>, and there are no women represented among the heads or deputy heads of seven bodies functioning under the RA Government<sup>252</sup>. Among the ministries of the RA Government, there is only one position of the Head of Staff held by a woman<sup>253</sup>. Moreover, only 19 out of 131 Member of the Parliament are women<sup>254</sup>, and only one of nine parliamentary committees is managed by a woman<sup>255</sup>

The data available as of January 1, 2016, indicate that the number of women holding senior positions in the civil service system is also dramatically lower than the number of men. There are 107 male and 20 female representatives in the civil service<sup>256</sup>. When reviewing such

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<sup>249</sup> The UN Population Fund, "Gender Gap: Diagnostic Study on Discrimination against Women", 2016. [http://www.unfpa.am/sites/default/files/2016 Gender-Gap-factsheet\\_Arm.pdf](http://www.unfpa.am/sites/default/files/2016%20Gender-Gap-factsheet_Arm.pdf)

<sup>250</sup> <http://gov.am/am/structure/>

<sup>251</sup> <http://www.gov.am/am/structure/>

<sup>252</sup> <http://www.parliament.am/deputies.php?lang=arm>

<sup>253</sup> [http://moj.am/staff/structure\\_of\\_the\\_ministry](http://moj.am/staff/structure_of_the_ministry)

<sup>254</sup> <http://www.parliament.am/deputies.php?lang=arm>

<sup>255</sup> <http://www.parliament.am/committees.php?lang=arm>

<sup>256</sup> <http://www.csc.am/documents/statistics/13.pdf>

indicators, one shall keep in mind that women make up 51.9% of the total population of Armenia<sup>257</sup>.

Women's representation in local self-governing authorities is also low. According to the data provided by the Yerevan Municipality, following the elections of the Council of Elders of Yerevan City in 2017, the latter is composed of 65 members, including only 18 women. Since independence, Yerevan has never had a female mayor, and none of the 4 positions of a deputy mayor was held by a women in 2017, either. Moreover, the involvement of women in the process of consolidation of communities continues decreasing. For example, in the community of Aragatsavan, which was included in the process of consolidation, there was only one woman candidate among the 24 candidates of the members of Council of Elders. Four villages were merged into the Community, with no woman member in the Council of Elders. Thus, in this case the situation remained unchanged<sup>258</sup>.

The analysis shows that, during the elections of the consolidation processes of 2016, the number of women candidates reduced with at least 2-3 times. The same trend was observed in 2017 year, as well<sup>259</sup>. Thus, the analysis of outcomes of elections in local self-governing authorities' shows that the number of candidates for members of the Council of Elders held on November 5, 2017 in 54 communities was 983 individuals, including 49 women (5% of the total number of candidates). Eventually, only 4.4% of the elected members are woman. It should be noted, that according to the same analysis, during the elections of local self-governing authorities of 2016, women represented only 11.7% of the Councils of Elders. In this regard, the elections of November 5, 2017, is a serious setback<sup>260</sup>.

According to the data provided by Gegharkunik regional administration, prior to the elections of local self-governing authorities held on November 5, 2017, the councils of members of the region's communities consisted of 610 members, including 566 men and 44 women, and the number of community leaders was 92, including 89 men and 3 women. Following the elections of local self-governing authorities held on November 5, 2017, the councils of elders of the region's communities have 456 members, including 441 men and 15 women, and there are 57 community leaders, including 56 men and 1 woman.

The above-mentioned data indicate, that women still do not hold high positions in a due manner, and that the society still expressed stereotypic attitudes towards the woman's role in the decision-making processes<sup>261</sup>.

*Therefore, the following integrated actions are recommended:*

- 1. Run a propaganda of the importance of women's role in the society, and of the active participation in political and public life.*

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<sup>257</sup> As of January 1, 2015, population of Armenia by gender was equal to 1.439.148 men and 1.571.450 women. See <http://armstat.am/>.

<sup>258</sup> <http://womennet.am/tim-16/>

<sup>259</sup> <http://womennet.am/tim-16/>

<sup>260</sup> <http://womennet.am/tim-5nov/>

<sup>261</sup> The UN Concluding Recommendation on Elimination of Discrimination against Women (CEDAW/C/ARM/CO/5-6), Clauses 20, 21.

2. *Raise the level of political and legal awareness of women, promote the development of professional knowledge and skills of young women on the political system, processes and effective decision-making procedures, and ensure equal conditions for political competition.*
3. *Raise the awareness of women about their rights through mass media, and various regular discussions and workshops.*

### **5. Right to health care**

The major issue related to the right of women to health protection, voiced by all RA human rights defenders since 2015, remains the lack of access to medical services. The issue is especially relevant in the regions and in a number of rural communities, where women are not provided with full examination and do not have access to appropriate medical care. Moreover, representatives of a number of medical organizations believe that the distribution of ambulance stations is not done properly<sup>262</sup>. Another issue is the insufficient number of ambulance brigades. Some health care personnel interviewed mentioned that one brigade serves a radius of 60 km, which cannot be secured with the available resources<sup>263</sup>. Consequently, an ambulance can be delayed for about two or even more hours. The Human Rights Defender has addressed this issue in his special report in the scope of monitoring of implementation of the UN Convention “On Children’s Rights”.

In addition to the lack of access to medical services, women with disabilities are faced with discrimination from the side of medical personnel, due to the lack of proper professional fitness, stereotypical or improper treatment shown by the medical personnel to women with disabilities using reproductive services<sup>264</sup>.

### **6. Labour rights**

While the analysis of legislation reveals no discriminatory norms in the legal relations between women and men, in 2017, the issue of inequality between women and men in the labour market remained unresolved. The RA Human Rights Defender has voiced this issue for many years.

According to Article 3 of the RA Labour Code, the main principles of labour legislation are the equality of the parties to the labour relations, regardless of gender of the parties. Article 180 of the same Code defines that in the employment qualification system, the same criteria must be applied both to men and women, and the system should be designed to exclude any gender-based discrimination. Despite the current legislative framework, actually, there is a vertical (unequal access to career advancement) and horizontal (by specialties and areas) discrimination against women. This comes to prove, that first, there are certain stereotypes towards job involvement of women. Moreover, additional safeguards are required for the execution of women’s labour rights.

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<sup>262</sup> <https://transparency.am/files/publications/1515577747-0-615102.pdf>

<sup>263</sup> <https://transparency.am/files/publications/1515577747-0-615102.pdf>

<sup>264</sup> For more details, see the Section on the Rights of Persons with Disabilities

The main challenges that women face in the labour market include recruitment, maintaining the job after a childbirth, and advancement in the workplace. Thus, the analysis of job vacancies and the process of recruitment reveals frequently exercised discriminatory behaviours. In particular, very often the main requirements of job announcements is a woman's age or good-looking appearance. At the same time, in some cases, due to discrimination towards women, the employer offers a job to a man with lower professional qualifications. Such issue is especially common in case of young women, as the employers are very often not committed to providing a maternity leave.

The issue of returning from maternity leave is another challenge of employment for women. First, women face some difficulties in organizing care for their children. In particular, pre-school educational facilities very often refuse organizing children's admission until they turn 2-3 years, and there are no other support programs available. Consequently, women often have to choose either maternity or work, which can have a negative impact on the birth rate, as well. Moreover, it is a commonly known truth, that pre-school educational facilities are open until 17:00, while a working day in Armenia finishes at 18:00. This is an additional challenge for working parents, especially for mothers. It should be noted that the RA Labour Code does not provide any privileges for such cases.

In this regard, positive changes in the RA Law "On Employment" shall also be mentioned. Thus, in 2017, the latter was revised to include Part 4.2 into Article 21, which states that a job seeker with a child under the age of three is entitled to a child's care assistance, if they decide to return to work before the child turns two years old. The procedure for the execution of the right to childcare assistance is prescribed by the RA Government. However, no such assistance was provided in 2017.

Moreover, there are no support programs (such as retraining courses) for women returning to the workplace after the maternity leave, who very often face the risk of losing their job due to lack of competitiveness.

In addition, there are still public stereotypes about the "suitability" of jobs for women. Thus, the number of women is particularly high in such areas as education, healthcare, social security, trade, manufacturing, while men are more commonly recruited in the fields of public administration and defence, trade, processing industry and construction<sup>265</sup>.

Moreover, studies conducted in 2016 show that the average monthly salary of women in Armenia is lower than the average salary of men in all sectors of the economy, and this gap is equal to 35.9%<sup>266</sup>. According to the same study, the gap in women's salaries varies by the sectors of the economy. The average monthly salary of women compared to men in the following sectors is as follows: agriculture - 83.8%, education - 81.3%, health care and social security services - 75.1%, public administration - 67.9%, finance and insurance - 54.9%. Such practice stems not only from the structure of the labour market, but also primarily from the stereotypes

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<sup>265</sup> <http://ampop.am/unemployment-in-armenia/#imageclose-2735>

<sup>266</sup> The UN Population Fund, "Gender Gap: Diagnostic Study on Discrimination against Women", 2016. [http://www.unfpa.am/sites/default/files/2016\\_Gender-Gap-factsheet\\_Arm.pdf](http://www.unfpa.am/sites/default/files/2016_Gender-Gap-factsheet_Arm.pdf)

about the role of women in the society (for example, in small towns and rural communities, it is assumed that a man should work, while a woman shall stay at home and take care of children and the household).

In addition to the abovementioned issues, the lack of a relevant state authority in charge for monitoring and coordination of labour rights and the relationships between employee and employer creates further complications in this area<sup>267</sup>.

*Based on the abovementioned challenges, the following is recommended:*

- 1. Promote women's capacities by assessing their educational, economic, social and employment potential in the relevant sectors of labour market.*
- 2. Develop and implement open and effective mechanisms for ensuring competition between men and women in the labour market.*
- 3. Provide retraining programs for women returning from maternity leave to reintegrate at work.*
- 4. Provide for mechanisms in pre-school facilities to accommodate the childcare hours with the working hours of the parents.*
- 5. Use the mass media to promote elimination of existing stereotypes about the role of women in the labour market.*

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<sup>267</sup> For more details, see the Section on the Labour Rights.

## CHAPTER 2. RIGHTS OF PERSONS WITH DISABILITIES

In 2010, Armenia ratified the UN Convention on the Rights of Persons with Disabilities<sup>268</sup> undertaking commitment to implement measures aimed at execution of the rights of persons with disabilities on equal basis with others. In this regard, a number of legal acts were adopted in Armenia to establish an environment for persons with disabilities to exercise their rights independently. Nevertheless, it is still required to improve legislation and law enforcement practices, as well as raise awareness raising on the relevant rights in a number of areas. In everyday life, persons with disabilities often face discrimination and constraints impeding execution of their rights. Eventually, rights to education, participation in business, sports and cultural life, unrestricted mobility, choice, health protection and other rights are very often breached. This section addressed the mentioned issues.

Highlighting the issue of protecting the rights of persons with disabilities, the Human Rights Defender made numerous visits to NGOs dealing with the protection of the rights of persons with disabilities in 2017. During the visits, the parties discussed the challenges that persons with disabilities frequently face. The main activities of the NGOs and the potential ways of cooperation were also considered. Moreover, in 2017, the Human Rights Defender's Office organized an event dedicated to the rights of persons with disabilities, in collaboration with the Embassy of Argentina in Armenia. Representatives of state and local self-governing authorities, as well as international and non-governmental organizations participated in the event. The experience of Argentina and Armenia on involvement of persons with disabilities into the labour market, as well as possibilities of further cooperation were discussed.

Moreover, in 2017, the Human Rights Defender submitted a special report to the Committee, on performance status of the rights enshrined in the Convention. The report provides information on issues voiced regarding the protection of the rights of persons with disabilities and relevant mitigation actions taken.

### **Integrated issues voiced in the Annual Report of 2016 that were resolved in 2017**

– In 2016, in his Annual Report the RA Human Rights Defender referred to the issue of foreign languages taught in the Yerevan Special Educational Complex for Children with Hearing Impairments; Russian is the only foreign language taught in this school. Based on the relevant recommendation of the RA Human Rights Defender, in 2017, English language was included in the curriculum of the school for the 5th grade students with an overall load of 1.5 hours per week.

– Since 2014, in his annual reports and recommendations, the RA Human Rights Defender has referred to the issue of rejecting the provision of driving licenses for some persons with physical disabilities due to the lack of clear legislative standards required for the adaptation of vehicles. Eventually, the RA Ministry of Health, in cooperation with the RA Police and the RA Human Rights Defender, drafted a relevant resolution, which was adopted by the RA Government on August 31, 2017. It defines solutions that required the vehicle to be adapted to

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<sup>268</sup> Hereinafter in this Section – the Convention.

the capabilities of the driver, and hence to ensure provision of a driving license (for example, in the case of a missing one eye, the vehicle is equipped with a sound signal system for parking).

### *1. Legal framework for the protection of the rights of persons with disabilities*

As of December 31, 2017, 193,302 persons with disabilities were registered in the national database on the Registration of Persons with Disabilities, including 8,231 children with disabilities<sup>269</sup>. The improvement of legislation is a priority for the protection of rights of these people.

In 2013, a new RA draft Law “On Protection of the Rights of Persons with Disabilities and Social Inclusion” was developed, and since then it has been under discussion. The enactment of this law will allow creating conditions required for the social inclusion and equal opportunities of persons with disabilities. It will also allow establishing monitoring mechanisms for protection of the rights of persons with disabilities, as well as localizing the provisions of the Convention<sup>270</sup>. Notwithstanding the above-mentioned advantages of the law, as well as the fact that its adoption is requirement set out by the Convention, it was not adopted in 2017. The adoption of the draft law is essential, as it will be the minimum legislative safeguard on the protection of the rights of persons with disabilities, to ensure grounds for further protection of rights and social inclusion will be exercised. Moreover, it is important to involve NGOs of the sector in the discussion process. The importance of involving NGOs in the decision-making process and the continuity of their engagement shall also be emphasized. That will make the legislative process complete and inclusive. It is impossible to record the outcomes of the process without participation of NGOs. Therefore, it is important to hold discussions with NGOs, and organize public and parliamentary hearings with their participation.

At the same time, although Armenia has ratified the Convention since 2010, they have not ratified the Optional Protocol to the Convention, which provides and implements individual communications and investigative procedures. The UN Committee on the Rights of Persons with Disabilities also expressed concerns over the issue in their Concluding observations on the initial report of Armenia’s 2017<sup>271</sup>.

In response to the list of issues prepared by the UN Committee on the Rights of Persons with Disabilities in 2016<sup>272</sup>, the RA Government noted that it would address the ratification of the Optional Protocol to the Convention when the legislation on equal opportunities for persons with disabilities was fully developed and relevant measures implemented<sup>273</sup>.

*Taking into consideration the above-mentioned issues, the following is recommended:*

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<sup>269</sup> RA Ministry of Labour and Social Affairs, Annual Report 2017.

<sup>270</sup> <http://parliament.am/drafts.php?sel=showdraft&DraftID=44106>

<sup>271</sup> [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fARM%2fCO%2f1&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fARM%2fCO%2f1&Lang=en)

<sup>272</sup> [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fARM%2fQ%2f1&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fARM%2fQ%2f1&Lang=en)

<sup>273</sup> [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fARM%2fQ%2f1%2fAdd.1&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fARM%2fQ%2f1%2fAdd.1&Lang=en)

1. *Immediate enactment of the Law “On Protection of the Rights of Persons with Disabilities and Social Inclusion”*
2. *Work towards ratification of the Optional Protocol to the Convention.*

## **2. Physical accessibility**

All RA Human Rights Defenders have repeatedly addressed the issue of proper access to physical environment in their annual reports and recommendations. However, the issue received no integrated solution in 2017, either. This issue was mentioned in the special report of the RA Human Rights Defender to the Committee in 2017, as well. Despite the existing legislative requirements, they mostly remain on paper, eventually providing no solutions of unrestricted mobility to persons with disabilities. The lack of freedom of movement is a fundamental issue, leading to restrictions of execution of other rights of persons with disabilities, including education, business activities, health maintenance and other self-realization opportunities. Moreover, a number of NGOs note that a wide number of buildings belonging to state and local self-governing authorities, as well as to private entrepreneurs and legal entities, are mostly inaccessible. At the same time, the NGOs also point out that despite of the actions taken towards adaptation of the physical environment for persons with disabilities, according to sector experts, very often the accessibility of the environment is limited only to installation of ramps<sup>274</sup>. These measures naturally do not solve the issue of movement obstacles within the building and are not relevant to all cases of disability.

Ensuring accessible environment for persons with disabilities derives from the requirements of both the Convention and the applicable law. Thus, according to the Convention, all barriers and obstacles to accessibility of buildings, roads, outdoor and indoor facilities, including schools, housing, medical facilities and workplaces shall be removed<sup>275</sup>. The reference to the term “accessibility” used in the Convention indicates that accessible physical environments are useful not only for persons with disabilities, but for everyone<sup>276</sup> and it implies not only accessibility of buildings, but also adaptation of the sidewalks and the elimination of other obstacles that limit the movement of pedestrians<sup>277</sup>. In addition, the environment should be accessible for people not only with movement, but also with visual, auditory, and other impairments.

The RA legislation also provides some guarantees for the accessibility of physical environment for persons with disabilities. Thus, Article 22 of the RA Law “On Social Protection of Persons with disabilities” prohibits design and construction of settlements, design of residential areas, development of planning solutions, construction and reconstruction of buildings and structures, unless they are adapted to the accessibility needs and use of persons with disabilities. Moreover, according to Article 16 of the RA Law “On Urban Development”, the system of normative and technical documents on urban development defines norms, rules and indicators ensuring the

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<sup>274</sup> <http://yerkirmedia.am/social/teqahartak-hashmandamner-ardyunq/>

<sup>275</sup> The UN Convention “On the Rights of Persons with Disabilities”, Article 9, Para. 1(a).

<sup>276</sup> <http://www.un.org/esa/socdev/enable/disacc.htm>

<sup>277</sup> <http://www.un.org/esa/socdev/enable/disacc.htm>

accessibility of environment for persons with disabilities, which are mandatory for urban development activities, including local self-governing authorities<sup>278</sup>. The latter (in particular the community leader<sup>279</sup>) give an instruction to prepare architectural master plan for urban development activities<sup>280</sup>, which shall also define the requirements for protection of persons with disabilities and vulnerable groups with movement impairments, as well as other requirements defined by relevant normative acts<sup>281</sup>. At the same time, the community leader supervises the execution of the architectural master plan requirements by the contractors<sup>282</sup>, as well as documents<sup>283</sup> the acceptance of the completed construction<sup>284</sup>. However, the aforementioned requirements are not ignored in a number of cases. The Committee also touched upon the issue in their Concluding observations on the initial report of Armenia, dated April 12, 2017<sup>285</sup>.

In 2017, a number of actions were taken to ensure accessibility to physical environments. Thus, according to Yerevan Municipality, 336 ramps were installed in line with the planned Action Plan for 2017. At the same time, the design permits issued in 2017 for 468 object included a mandatory condition for implementation of measures to ensure unrestricted mobility of persons with disabilities and vulnerable groups with mobility issues in order to secure their daily life activities. The design was done according to the requirements of normative documents on construction. During the same period, designs for 447 facilities were confirmed and reconfirmed to comply with the above-mentioned conditions. At the same time, intersections of streets, pedestrian crossings, and edges of 24 ramps in Kentron, Arabkir, Nor Nork and Kanaker-Zeytun administrative districts were facilitated with tactile paving for persons with visual impairments. Ten intersection of Yerevan were equipped with pedestrian traffic lights and associated alarms.

The RA Ministry of Labour and Social Affairs initiated installation of heated ramps, adapted bathrooms, elevators for the stairs, elevators with loudspeakers and an entrance door for persons with disabilities in the 3rd governmental building<sup>286</sup>.

While actions taken in Yerevan, in particular in Kentron administrative district, to ensure accessibility of persons with disabilities to physical environment, in some regions the issue of physical accessibility is more problematic. For example, in 2017, no actions were taken in the region of Vayots Dzor to ensure accessibility to the state-owned and community-owned construction sites and unrestricted mobility inside the buildings. In the region of Lori, Hagvi Village celebrations hall in Odzun Community was the only construction implemented in 2017. The hall is equipped with ramps for persons with disabilities.

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<sup>278</sup> RA Law “On Urban Development”, Article 4.

<sup>279</sup> RA Law “On Urban Development”, Article 22.1, Point 6.

<sup>280</sup> RA Law “On Urban Development”, Article 6.

<sup>281</sup> RA Law “On Urban Development”, Article 22.1, Point 2.

<sup>282</sup> RA Law “On Urban Development”, Article 26; RA Law “On Local Self-Government”, Article 37.

<sup>283</sup> Acceptance of completed construction (buildings, constructions, reconstruction, rehabilitation, reinforcement, modernization, expansion and renovation) is documented by statement on acceptance for operation upon completion of all the works planned by the approved architectural and engineering documents. The operation of the completed construction is permitted only after the formulation of the statement on acceptance for operation. (RA Law “On Urban Development”, Article 25).

<sup>284</sup> RA Law “On Urban Development”, Article 25, Point 2.

<sup>285</sup> The UN Committee on Persons with Disabilities, Concluding observations on the initial report of Armenia, 2017.

<sup>286</sup> <https://armenpress.am/arm/news/876928/karavarutyun-3-rd-masnashenqum-hashmandamutyun-uncocox.html>

Some actions are also taken in terms of integrated improvements. According to the State Committee for Urban Development under the RA Government, in 2017, the Committee sent circulars to RA territorial administration authorities (marzpetarans), in the framework of activities towards creation of an urban environment with unrestricted mobility for persons with disabilities.

Despite the above-mentioned actions, information contained in this section indicates that there are still integrated issues of insufficient access to physical environments.

*Taking into consideration the above-mentioned issues, the following is recommended:*

- 1. Take immediate actions to ensure accessibility of persons with disabilities to publicly owned buildings, including those of legislative, executive and judicial authorities, local self-governing authorities and all other state authorities.*
- 2. Conduct continuous supervision to ensure accessibility of newly constructed or fully refurbished urban development facilities.*

### ***3. Accessibility of vehicles***

In 2017, the issue of accessibility of vehicles for persons with disabilities was resolved in Armenia. The RA Human Rights Defender has raised the issue since 2013. The issue was also mentioned in the RA Human Rights Defender's Special Report delivered to the Committee in 2017. Moreover, in 2017, there were cases when drivers of transport means showed an improper attitude towards persons with disabilities.

Thus, according to NGOs, in one of the cases recorded in 2017, persons with respiratory diseases encountered obstacles in the use of public transport due to cigarette smoke or use of aroma accessories in the car<sup>287</sup>. In another case, a driver of public transport refused to serve a disabled person<sup>288</sup>.

Accessibility of vehicles is also a fundamental issue, because it can lead to restrictions on the exercise of other rights, as well. Similar to accessibility to physical environment, it creates an environment where persons with disabilities have the opportunity to exercise their rights independently and on an equal basis with others. The issue of accessibility of transportation for persons with disabilities is provided both by the Convention and by the RA legislation. Thus, the Convention establishes that States Parties appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to transportation<sup>289</sup>. This provision is also contained in Article 21 of the RA Law "On Social Protection of Persons with Disabilities in the Republic of Armenia".

In order to ensure accessibility to public transport, the vehicle must be equipped with buttons warning the bus stop, which can be useful for persons with speech impairments. To ensure to

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<sup>287</sup> Information provided by "Disability Info" NGO.

<sup>288</sup> <https://www.azatutyun.am/a/28588613.html>

<sup>289</sup> The UN Convention "On the Rights of Persons with Disabilities", Article 9, Para. 1.

accessibility to public transport for people with visual impairments, the vehicles shall have loudspeakers warning the passengers of each subsequent stop. Public transport stations and bus stops shall be facilitated with covered shelters, seats with a back and enough space for unrestricted mobility of persons with disabilities on wheelchairs. Pedestrian routes used by persons with disabilities shall be covered with tough and durable material to prevent slipping<sup>290</sup>.

Taking into consideration the above-mentioned issues, some actions were taken in Yerevan in 2017. In particular, according to Yerevan Municipality, for the accessibility and convenience of public transport for persons with visual impairments, 37 “Higer” buses (Routes 10, 22, 28) were equipped with automatic devices to announce subsequent stops (in Armenian and English).

However, in 2017 the issue of accessibility to the Yerevan Metro was not resolved. Although the Metro entrances are equipped with ramps, persons with disabilities (including mobility, visual or hearing impairments) cannot use the Yerevan Metro, as there are no special elevators for persons with disabilities, the platforms are not equipped with raised paving showing the way, there are no visual boards providing information on routes, etc. According to the information provided by Yerevan Municipality, the Yerevan Metro has initially been designed with no solutions for persons with disabilities. In 2017, no measures were taken in this regard, since adaptation of the Yerevan Metro to serve persons with disabilities requires considerable financial investments, which is currently not available.

The issue is more explicitly expressed in the regions of Armenia. The analysis of data provided by the RA Ministry of Territorial Administration and Development clearly shows that there are no public transport adapted for the needs of persons with disabilities in Armenian regions, and in 2017 no actions were taken to address that issue.

For the integrated solution of the issue, in 2016, the RA Ministry of Transport, Communication and Information Technologies drafted relevant supplements to be incorporated into the RA Law “On Automobile Transport” and the RA Government Decree # 762 of August 16, 2001 “On Approval of Procedure for the Selection of Organizations Conducting Regular Passenger Transportation by General Automobile Transport in the Republic of Armenia”. However, as of March 4, 2018, none of them was enacted.

Thus, despite some of the actions taken, the issue of accessibility to transport for persons with disabilities remains unresolved, which creates additional obstacles for the inclusion of the latter into the society.

*Taking into account the above-mentioned issues, it is recommended to urgently implement incorporation of the drafted relevant supplements into the RA Law “On Automobile Transport” and the RA Government Decree # 762 of August 16, 2001 “On Approval of Procedure for the Selection of Organizations Conducting Regular Passenger Transportation by General Automobile Transport in the Republic of Armenia”.*

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<sup>290</sup> <https://fullife.am/wp-content/uploads/2017/07/DPO-Zekuyec.pdf>

#### ***4. Access to information and communication***

Access to information is essential for persons with disabilities as it promotes independent decisions, raises awareness of rights and opportunities, and contributes full integration in the society.

Article 21 of the Convention states that States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice. At the same time, all the mentioned points shall be accessible to persons with disabilities with no additional costs for them. Moreover, Article 21 of the RA Law “On Social Protection of Persons with Disabilities in the Republic of Armenia” stipulates that the RA state authorities and governing bodies, and all employers operating in Armenia, shall create all conditions for persons with disabilities to ensure their unrestricted access to the means of communication and information.

In other words, receiving information means obtaining any available information independently and without the help of another person. It assumes such activities as reading price tags and announcements, booklets with health information, access to webpages, watching TV, and more. The issue is the lack of accessible information and communication technologies and accessible formats available in Armenia, including absence of easy-to-read formats and websites, as well as the use of Braille letters limited only to special educational facilities. This issue also stems from legislative gaps. For example, the RA Law “On Protection of Consumers’ Rights” does not contain any regulation on accessibility to information for persons with disabilities. Moreover, the RA Law “On Medical Aid and Services of Citizens” defines that every person is entitled to accessible information on their health status, diagnosis results, methods on diagnosis and treatment of the disease and the associated risks, possible options of medical intervention, its consequences and the results of the treatment. However, there are no effective mechanisms ensuring access to information materials.

At the same time, the RA Law “On Freedom of Information” does not provide for special regulations for the full execution of the right to freedom of information for persons with disabilities. Such regulations are missing from the RA Draft Law “On Freedom of Information”, either. The latter has been under consideration since 2017. Thus, if a person with visual impairments requests an inquiry from a relevant authority in a manner prescribed by law, it is not clear how accessibility to information should be provided for them. Moreover, according to “Disability Info” NGO, the information sought through an inquiry is not provided through an e-mail, despite of the note on it in the request.

Moreover, Article 5.1 of the RA Law “On Television and Radio” provides that the Public Television and Radio Company and other private TV companies operating in the Republic of Armenia, which broadcast children’s and (or) other television programs, are obliged to provide accessible information for persons with hearing impairments, as well as broadcast at least one children’s and news program with a translation into a sign language or with Armenian captions. Meanwhile, according to the information provided by “Disability Info” NGO, TV companies do

not provide the required accessibility to programs in the Armenian sign language during their daily broadcasts. Moreover, a number of citizens, NGOs and industry experts note that persons with hearing impairments use only computer, where access to information is much better<sup>291</sup>. The Committee also expressed their concern about the above-mentioned issues<sup>292</sup>.

Based on the abovementioned points, it is obvious that access to information for persons with disabilities is not sufficiently provided.

*Taking into consideration the abovementioned issues, the following is recommended:*

1. *Make relevant amendments to sectoral legal acts to provide for effective mechanisms (for example, a mandatory requirement for price tags in the Braille or relevantly accessible form in the shops, the compulsory requirement for accessible information in healthcare facilities, mandatory requirement for accessibility to websites), for example, in such laws as:*
  - *RA Law “On Protection of Consumers’ Rights”*
  - *RA Law “On Medical Aid and Services of Citizens”*
2. *Define special regulations in the RA Draft Law “On Freedom of Information” to ensure timely and accessible information for persons with disabilities with no additional cost.*

##### ***5. Participation in cultural life, recreation, entertainment and sporting events***

In 2017, the issue of accessibility to cultural and sports facilities remained unresolved in Armenia, despite of repeated references to the issue voiced by the RA Human Rights Defender for many years.

*Culture.* Participation of persons with disabilities in cultural life is, first of all, challenged by the lack of accessibility to cultural facilities. There are still numerous cultural facilities, which have taken no measures to provide accessibility to their buildings for persons with disabilities, as well as for unrestricted mobility inside the buildings. Moreover, specially adapted areas for people with mobility, hearing and visual impairments are not provided in the halls of a number of cinemas, theatres, and other cultural facilities. In addition, NGOs of the sector note that among the cinemas operating in the city of Yerevan, it is only in “Kinopark” Cinema, where several seats have been adapted for persons with disabilities.

Moreover, only ramps, adapted toilets and portable seats are not sufficient to ensure full participation of persons with disabilities in different activities. Persons with visual and hearing impairments also face challenges, such as access to cinemas; there are no captions, nor any audio description for them provided during screenings<sup>293</sup>. The issue of benefits for people

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<sup>291</sup> <http://champond.am/xuleri-mayreni-lezun-jesteri-ashxarh-2/>

<sup>292</sup> The UN Committee on Persons with Disabilities, Concluding observations on the initial report of Armenia, 2017.

<sup>293</sup> <http://www.aravot.am/2016/10/18/817426/>

accompanying persons with disabilities also remains unresolved. The Committee has also expressed concerns over this issue<sup>294</sup>.

Article 30 of the Convention defines the right of persons with disabilities to participate in cultural life on an equal basis with others. At the same time, the UN Committee's General Comment №2 of 2014 states that adaptations such as descriptions of pictures exhibited in galleries, subtitles for movie screening, translation of theatre performances into the sign language, alternative books for persons with mental impairments are required<sup>295</sup>. According to Article 26 of the RA Law "On Social Protection of Persons with Disabilities", state and local self-governing authorities shall ensure access to and use of cultural and sports facilities for persons with disabilities and provision of special sports equipment.

Certain actions have been taken to address the aforementioned issues. According to the RA Ministry of Culture, the issues (unrestricted mobility and adapted toilets) are completely solved in the museum-institutes of Komitas and the Armenian Genocide, Martiros Saryan House-Museum, Secondary Musical School after Pyotr Ilyich Tchaikovsky operating in Yerevan. There are 29 cultural organizations in Armenia, and 7 of them are located on the ground floor, for example, the Puppet Theatre after Hovhannes Tumanyan (fully equipped, including adapted toilets), National Centre for Chamber Music, regional libraries of Gegharkunik (after Vardges Petrosyan), Tavush, Lori and Armavir regions, etc. Eleven of the mentioned organizations are facilitated with a ramp, and 11 of them create all required facilities on the spot. Moreover, according to information provided by the RA Ministry of Culture, in 2017, the National Academic Theatre after Gabriel Sundukyan operating under the Ministry was partially equipped with adequate conditions for entry, exit and unrestricted mobility for persons with disabilities, with the exception of toilets. At the same time, the master plan of the new building of the Yerevan Chamber Theatre under construction includes all the required facilities. In addition, in 2017, renovation packages for "Vanadzor State Drama Theatre after Hovhannes Abelyan", "Museum of Friendship of Armenian and Russian People", "Yerevan State Pantomime Theatre" SNCOs were prepared in line with the accessibility requirements (renovation works will start in 2018).

The RA Minister of Culture Order # 368-A of July 6, 2017 defines ticket prices and benefits for the visits and excursions to the permanent exhibitions of museums operating under the Ministry. Particularly, persons with disabilities of 1<sup>st</sup> (with an accompanying person), 2<sup>nd</sup> and 3<sup>rd</sup> categories (without an accompanying person) are entitled to free of charge visits to the museums, during all working days. Meanwhile, representatives of NGOs engaged in protection of the rights of persons with disabilities have repeatedly stated at various public discussions that benefits should not be conditioned exclusively by a person's disability. For example, benefits shall be granted based on the combination of socio-economic situation and disability. Moreover, there are no benefits for people accompanying a person with disabilities, and it is not compatible with international standards, as explained by the sector experts.

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<sup>294</sup> The UN Committee on Persons with Disabilities, Concluding observations on the initial report of Armenia, 2017.

<sup>295</sup> <https://documents-dds.ny.un.org/doc/UNDOC/GEN/G14/033/13/PDF/G1403313.pdf?OpenElement>

*Sport.* According to Article 30 of the Convention, the State Parties shall ensure that persons with disabilities have an opportunity to organize, develop and participate in disability-specific sporting activities and, to this end, encourage the provision, on an equal basis with others, of appropriate instruction, training and resources. Despite the abovementioned requirement, requests and complaints addressed to the RA Human Rights Defender, as well as information provided by NGOs show that sporting facilities are not equipped with ramps and other devices to ensure unrestricted mobility inside the premises<sup>296</sup>. Eventually, athletes with disabilities are not provided with effective, continuous and full-fledged opportunities to participate in Paralympic, Surdolympic and Special Olympic Games and other tournaments. In this regard, “Disability Info” NGO has provided a list of sports schools or gyms that were not fully accessible<sup>297</sup>.

Sporting structures, such as pools, which can be healthy and useful for children with certain types of disabilities, are not physically accessible for persons and children with disabilities, are not available in their districts of neighbourhood, or are inaccessible for any other reasons. According to the information provided by the Armenian office of “Save the Children International”, sometimes parents have to pay a double price to community coaches for teaching swimming to their child with a disability<sup>298</sup>. Whereas according to the Convention, State Parties shall ensure that persons with disabilities enjoy their rights, including through participation in sporting activities, as well as ensure accessibility to sporting facilities, on an equal basis with others based on the principles of exclusion of discrimination and isolation, and promoting inclusion of persons with disabilities in sporting activities<sup>299</sup>. Therefore, sports schools shall be equally accessible for all, regardless of their disability.

Certain actions were taken in 2017 to solve the issue. Thus, according to information provided by the RA Ministry of Sport and Youth Affairs, only two of 24 sports schools operating under the Ministry are equipped with ramps at the school entrance (“Yerevan Shooting Sports School for Children and Youth” SNCO and “Gyumri Fencing Sports School for Children and Youth” SNCO). The other sports schools are not adapted for the needs of persons with disabilities to ensure accessibility to facilities, unrestricted mobility inside the buildings and adapted use of toilets.

At the same time, according to the information provided by the Ministry, in 2017, “National Paralympic Committee of Armenia”, “Armenian Association for Persons with Visual Impairments”, “Armenian Sports Committee for Persons with Hearing Impairments”, “Armenian Special Olympics” NGOs received state financing granted from the RA State Budget, in the framework of the project for “Services for Sports for Persons with Disabilities”. These organizations are using the provided amount for participation in various sporting events organized in the country, as well as in tournaments organized by various international federations for persons with disabilities. Moreover, in 2017, the RA President awarded nominal

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<sup>296</sup> For example, an elevator and (or) hoist, accessibility to toilets and entrance doors, etc. for persons with disabilities.

<sup>297</sup> For more details, see data from “Disability Info” NGO.

<sup>298</sup> <https://www.hrw.org/hy/report/2017/02/22/300330>

<sup>299</sup> Convention Articles 3, 4, 5 and 50.

pensions to 17 sportsmen, 11 personal coaches and 9 national team coaches of the Armenian National Teams for their achievements in Paralympic and Surdolympic Games and World and European Championships.

Despite of the above-mentioned points, the information contained in this section indicates that the issue of full participation of persons with disabilities in cultural life, recreation, entertainment and sporting activities has not been resolved in an integrated manner yet. These issues were also presented in the special report of the RA Human Rights Defender, submitted to the Committee in 2017.

*Taking into account the abovementioned issues, it is recommended that the State Committee of Urban Development under the RA Government, the RA Ministry of Culture, the RA Ministry of Sport and Youth Affairs, as well as the RA local self-governing authorities take actions, including temporary solutions (ramps or other facilities), if necessary to ensure accessibility to cultural facilities, locations and events, as well as sports schools and sporting events for persons with disabilities. It is also important to ensure accessibility to movies, performances and exhibitions by providing sound or subtitle solutions.*

## **6. Right to education**

### *Preschool education*

The issue of accessibility to preschool educational facilities for children with disabilities remains unresolved in Armenia. The issue has been repeatedly touched upon both the by the RA Human Rights Defender and the Committee<sup>300</sup>. In this case, the issue is also, first of all, related to accessibility to the physical environment, especially outstanding in some regions. Thus, according to the information provided by the RA Ministry of Territorial Administration, in 2017, Armavir Province had 64 preschool educational facilities, which are not yet adapted in a way to ensure accessibility for children with disabilities. There are 50 kindergartens in Syunik Province, and two of them are adapted for the accessibility of children with disabilities (ramps installed, entrance doors enlarged), for the toilets, the doors were enlarged and relevant facilities installed. Meanwhile, in 2017, no efforts were taken to ensure accessibility for persons with disabilities to preschool facilities in Syunik Province.

Moreover, the problem is that no document or legal act has been set up to regulate the mechanisms of acceptance of children with disabilities and/or with special educational needs to preschool educational facilities and organization of the learning process.

Accordingly, in 2017, the RA Ministry of Education and Science submitted a new draft law “On Preschool Education” for public discussion. It is required to enact this law according to a number of international documents that Armenia has joined with a commitment to ensure equal access to education for all, including for children with special educational needs. The draft law

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<sup>300</sup> See, for example, the UN Committee on Persons with Disabilities, Concluding observations of 2016, № [CRPD/C/SVK/CO/1](#) and № [CRPD/C/LTU/CO/1](#)

provides certain safeguards for children with disabilities, for example, the priority right of access to preschool educational facilities for children with disabilities<sup>301</sup>. However, the mentioned draft law was not still adopted as of March 4, 2018.

On July 13, 2017, the RA Government approved a Protocol Decision # 30 “On Approval of Strategic Plan 2017-2021 on Protection of Children’s Rights in Armenia and the Schedule for Implementation of Measures Defined by Strategic Plan on Protection of Children’s Rights 2017-2021”. Priority 1.3.2 defined by Annex 2 of the Protocol Decision on the inclusion of children with disabilities into the society states that only within the period of 2018-2020 it is planned to implement integrated services in preschool educational facilities for children with disabilities<sup>302</sup>.

Analysis shows that there are different perceptions about inclusive preschool facilities, as well. In particular, the study “On Accessible Preschool Facilities” indicates that 92.6% of respondents from rural communities mention that there are no children with special educational needs in the kindergarten of their children, while the same indicator was 83.7% in urban communities. 14.5% of respondents claim that they would not be happy to have a child with special educational needs or with a disability in their child’s group or kindergarten. Residents of rural communities express more tolerance towards inclusive preschool education, than the urban population. The lowest rate of positive perception and the highest rate of neutral perception towards enrolment of children with special educational needs in kindergartens was recorded in Yerevan. The respondents, whose child attends a kindergarten with children with special educational needs, are more positive towards the enrolment of the latter<sup>303</sup>. In addition, studies show that parents are not pRActive in taking their children with special educational needs to preschool facilities. They mostly prefer special rehabilitation or development centres. On the other hand, heads of preschool facilities also express lack of willingness in engaging children with special educational needs, mainly because their preschools have no appropriate items, specialists and conditions for special care<sup>304</sup>.

Eventually, children lose their opportunity to receive preschool education on an inclusive basis.

*Taking into consideration the above-mentioned issues, the following is recommended:*

- 1. Allocate relevant funds to make preschool facilities accessible (raise the physical accessibility).*
- 2. Provide clear mechanisms for the inclusion of children with disabilities and/or special educational needs into preschool facilities and for relevant organization of the learning process;*
- 3. Continue raising awareness on inclusive education among parents, children and relevant specialists.*

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<sup>301</sup> <https://www.e-draft.am/projects/504/justification>

<sup>302</sup> [https://www.e-gov.am/u\\_files/file/decrees/30-1\\_2ardz\\_voroshum.pdf](https://www.e-gov.am/u_files/file/decrees/30-1_2ardz_voroshum.pdf)

<sup>303</sup> [https://armenia.savethechildren.net/sites/armenia.savethechildren.net/files/library/Assessment%20on%20Access%20to%20Pre-school%20Education%20Services\\_ARM.pdf](https://armenia.savethechildren.net/sites/armenia.savethechildren.net/files/library/Assessment%20on%20Access%20to%20Pre-school%20Education%20Services_ARM.pdf)

<sup>304</sup> [https://armenia.savethechildren.net/sites/armenia.savethechildren.net/files/library/Assessment%20on%20Access%20to%20Pre-school%20Education%20Services\\_ARM.pdf](https://armenia.savethechildren.net/sites/armenia.savethechildren.net/files/library/Assessment%20on%20Access%20to%20Pre-school%20Education%20Services_ARM.pdf)

### *General Education*

According to the information provided by the RA Ministry of Education and Science, 201 inclusive schools have been recorded in Armenia in the academic year of 2017–2018. Moreover, the number of schools providing inclusive education increased with 81 as of March 1, 2017<sup>305</sup>. According to the RA Ministry of Education and Science, in the academic year or 2016–2017, 6700 children with special educational needs were engaged in general schools providing inclusive education<sup>306</sup>. Eventually, numerous children with disabilities study in segregated educational systems and do not get the support required for the engagement in inclusive education. Although Armenia has adopted a policy of gradual transition to inclusive education, and envisages completing the overall inclusion process in 2025, there are still a number of integrated issues in this area.

Review of complaints addressed to the RA Human Rights Defender shows that children with disabilities very often do not receive quality education on an equal basis with others, which is true about inclusive schools, as well. In particular, the lack of reasonable adaptation of facilities, including basic physical accessibility to buildings, insufficient number of properly trained teaching and administrative staff, individualized approach towards children’s education and the lack of awareness impede access to quality education for many children with disabilities. Additionally, physical access to school buildings for children with disabilities is limited mainly to a ramp at the entrance to the school. At the same time, the lack of accessible programs is another issue<sup>307</sup>. The RA Human Rights Defender has always voiced these issues in his annual reports and recommendations. A number of non-governmental and international organizations and the Committee have also highlighted these issues<sup>308</sup>.

Moreover, a number of NGOs working with children with disabilities and their families have expressed concern about the methods of implementation of the inclusive education in their communities. For example, as explained by the Director of “Unison”, an organization involved in protection of the rights of persons with disabilities, schools are not accessible for children with all categories of disabilities, but rather for children with minor disabilities. The Director also noted that children attend the school with their parents and communicate only with their parents, and not with their teachers or other children. Inside the school, there are no adapted facilities, such as adapted toilets or gyms<sup>309</sup>.

In 2017, in the framework of the project “Living Together, Learning Together”, the “Bridge of Hope” NGO published a research on the assessment of inclusive schools of Tavush Province, conducted with the participation of the civil society. According to the research, all schools in

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<sup>305</sup> <http://yerkirmedia.am/social/nerarakan-dproc-krtutyun-hashmandamutyun/>

<sup>306</sup> <https://www.hrw.org/hy/report/2017/02/22/300330>

<sup>307</sup> For more details, see the Section on the Right to Education.

<sup>308</sup> The UN Committee on Persons with Disabilities, Concluding observations on the initial report of Armenia, 2017.

<sup>309</sup> <https://www.hrw.org/hy/report/2017/02/22/300330>

Tavush Province are inclusive. The research shows certain challenges in the area of resources, especially related to the team of psychologists and the pedagogical staff<sup>310</sup>.

Certain actions have been taken to address the aforementioned issues. Thus, in 2017, the National Institute of Labour and Social Research of the RA Ministry of Labour and Social Affairs conducted trainings on “Social Inclusion of Children with Disabilities”, “Issues of Begging and Vagrancy among Adolescents” for 130 participants.

According to data of 2017 provided by the RA Ministry of Territorial Government and Development, all schools providing inclusive education in Kotayk Province, were equipped with ramps to ensure accessibility and unrestricted mobility for persons with disabilities. Six general schools providing inclusive education in Aragatsotn Province were equipped with ramps. A ramp was installed at the entrance to the Spandarian Village School in Gorayk Community of Syunik Province. In addition, the ground floor was adapted to ensure unrestricted mobility for persons with disabilities. Meanwhile, in 2017, no measures were taken in schools providing inclusive education in Vayots Dzor Province to ensure accessibility and unrestricted mobility for persons with disabilities.

Data provided by the RA Ministry of Territorial Administration and Development indicate, that in 2017, only two general schools providing inclusive education in Aragatsotn Province (Talin № 1, Talin № 2) and Vanadzor School №16 in Lori Province were facilitated with adapted toilets.

Moreover, according to the RA Ministry of Education and Science, in 2017, 2000 Braille copybooks were acquired within the framework of the project “Development, publication and acquisition of programs, manuals, other educational materials for the organization of education of children with special educational needs”. Four thousand methodological guidelines and handbooks on inclusive education were published and sent to all regions of the country for distribution to public schools. Educational games packages (9 packages) were purchased and provided to special public schools and pedagogical and psychological support centres (26 facilities) throughout the country.

Despite of the data provided in this section, it is clear that the actions taken are not sufficient to provide comprehensive inclusive education for children with disabilities in general schools. Despite of some actions taken, there are no elevators in the general educational facilities for people with mobility difficulties, the doors have no handles, are difficult to push and have doorsteps, there are no adapted toilets, and furniture is sometimes accessible thanks to the efforts of their parents. Buildings are also not adapted for people with visual and hearing

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<sup>310</sup> <http://bridgeofhope.am/wp-content/uploads/2018/01/%D5%8F%D5%A1%D5%BE%D5%B8%D6%82%D5%B7%D5%AB-%D5%B4%D5%A1%D6%80%D5%A6%D5%B8%D6%82%D5%B4-%D5%A4%D5%BA%D6%80%D5%B8%D6%81%D5%B6%D5%A5%D6%80%D5%AB-%D5%B6%D5%A5%D6%80%D5%A1%D5%BC%D5%A1%D5%AF%D5%A1%D5%B6%D5%B8%D6%82%D5%A9%D5%B5%D5%A1%D5%B6-%D5%A3%D5%B6%D5%A1%D5%B0%D5%A1%D5%BF%D5%B8%D6%82%D5%B4.pdf>

impairments, mental retardation, and other disabilities (for example, there are no colour markings, etc.). Lack of relevant textbooks is also another issue<sup>311</sup>.

*Thus, it is required that the RA Ministry of Education and Science, the State Committee of Urban Development under the RA Government, as well as the RA local self-governing authorities continue implementing integrated activities in the schools providing inclusive education, with a focus on the following issues:*

- Physical accessibility to schools*
- Accessible content of educational and training programs*
- Continuous teacher training.*

### *Higher Education*

According to Article 24 of the Convention, States Parties shall ensure that persons with disabilities are able to access higher education without discrimination and on an equal basis with others. Generally, in Armenia, physical accessibility to higher educational facilities is provided. Similar to general schools, higher educational facilities also ensure physical availability by ramps and elevators. The issues stems not only from the structure of buildings constructed during the Soviet Era and the lack of financial resources required for the adaptation of the environment, but also lack of awareness about the issue, and consequently, lack of proper attention to and prioritization of the issue.

According to the information provided by the RA Ministry of Education and Science, among higher educational facilities in Armenia, it is only the American University of Armenia that is completely adapted to the needs of persons with disabilities. At the same time, based on the integrated program on “Social Inclusion of Persons with Disabilities in 2017-2021”, higher, secondary and vocational educational facilities shall provide accessible learning conditions for persons with disabilities until 2021.

Moreover, in his annual reports and recommendations of 2014-2016, the RA Human Rights Defender highlighted that persons with disabilities were not provided with access to the Armenian State Institute of Physical Culture and Sports. In particular, the RA Government Decree, which regulates the process of admissions to state and non-state higher educational institutions, states that examinations of professional subjects of the Institute are intra-institute examinations, and are conducted in line with the peculiarities of the speciality and the requirements of the programs<sup>312</sup>. However, according to the admission procedure of the Institute, all applicants are required to pass an examination of “General Physical Fitness”<sup>313</sup>, as

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<sup>311</sup> For more details, see the Section on the Right to Education.

<sup>312</sup> The RA Government Decree # 597-N of 26 April, 2012.

<sup>313</sup> Includes running, triple jump, stretches, etc.

well as to provide a medical examination conclusion<sup>314</sup>. Therefore, special needs of persons with disabilities are not taken into consideration, and persons with mobility impairments are not provided with an opportunity to study in the given higher educational institution due to the lack of opportunity to pass the examination on the aforementioned subject.

The RA Ministry of Education and Science issued an instruction to the Armenian State Institute of Physical Culture and Sports to develop appropriate programs and methodological documents to ensure access to full education for persons with disabilities. Comprehensive studies show that large-scale financial investments are required to address the issue, because the Armenian State Institute of Physical Culture and Sports does not have adequate infrastructure with the required adaptations to organize education of persons with disabilities<sup>315</sup>. According to data provided by the RA Ministry of Education and Science, in 2017, no funding was provided to ensure full-fledged education of persons with disabilities at the Armenian State Institute of Physical Culture and Sports.

Moreover, in 2017, a Draft Law “On Higher Education” was submitted for consideration. The list of the main principles, goals and objectives of the State Policy on Higher Education includes the equality of conditions for obtaining higher education for persons with disabilities or with special educational needs. The Draft Law stipulates that buildings, structures and other areas provided for higher education shall be designed in a way to meet the needs of people with special educational needs. The existing buildings, structures and other premises shall be adapted in line with the needs of the latter. Additional charges for the provision of services to persons with disabilities are prohibited<sup>316</sup>, which is consistent with the opinion on the Draft Law, expressed by the RA Human Rights Defender’s Office.

Although some actions were undertaken in 2017, the sector requires urgent reforms to ensure higher and vocational education for persons with disabilities.

*In view of the above-mentioned issues, the following is recommended:*

- 1. The RA Ministry of Education and Science, the State Committee for Urban Development, as well as RA local self-governing authorities shall ensure the accessibility of the physical environment and educational programs of the RA higher education institutions.*
- 2. Appropriate financial resources shall be provided for the organization of education of persons with disabilities at the Armenian State Institute of Physical Culture and Sports.*

## ***7. Access to health services***

Articles 4 and 25 of the Convention state that States undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities,

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<sup>314</sup> In 2009, the RA Minister of Education and Science approved the program of professional admission examination of “Physical Culture and Sport” and the assessment criteria of the examination on “General Physical Fitness”.

<sup>315</sup> <http://www.ombuds.am/resources/ombudsman/uploads/files/publications/28731eccde752a30c70feae24a4a7de7.pdf>

<sup>316</sup> Data provided by the RA Ministry of Education and Science.

including the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. Despite the above-mentioned requirement, the RA Human Rights Defenders have raised the issue of access to health services for persons with disabilities for many years. In particular, medical staff have a low level of awareness about working with persons with disabilities, and health care services and buildings continue to lack accessibility for many persons with disabilities. The issue is especially outstanding in the regions. According to information provided by the RA Ministry of Territorial Administration and Development, in 2017, no relevant actions were taken in the provinces of Gegharkunik, Shirak, Kotayk and Syunik to ensure accessibility to healthcare services for the persons with disabilities. Moreover, in 2017, reproductive services were still inaccessible for women with disabilities<sup>317</sup>.

A number of actions were taken to address these issues. Thus, on August 10, 2017, the RA Government issued Decree # 958-N “On approval of the Healthcare Optimization Program of Aragatsotn Province”. Based on the Program, the in-patient treatment service provided by “Ashtarak Medical Centre” was concentrated in one building with an elevator and a ramp at the entrance to the reception. According to the Ministry, at the expense of the saved funds, capital repairs are currently in process, including installation of ramps at other entrances of the building. In 2017, an adapted elevator was installed in “Vayk Medical Unit” CJSC in Vayots Dzor Province.

According to information provided by the RA Ministry of Health, in 2017, construction works started in medical centres of Artashat city in Ararat Province and Sevan city in Gegharkunik Province. The construction is planned to be completed in 2018. The construction is financed by a loan program of the World Bank. Moreover, according to the information provided by the RA Ministry of Health, the aforementioned medical centres are adapted to all accessibility needs of persons with disabilities, including accessible entry and exit, unrestricted mobility inside the facilities and access to adapted toilets.

In his Annual Report of 2016, the RA Human Rights Defender referred to the special training of healthcare personnel, as well. In particular, according to the RA Ministry of Health, communication skills of healthcare personnel with the patients and the maintenance of ethical norms in those communications are acquired during the graduate and postgraduate education in medical institutions. Taking into consideration that healthcare personnel must show delicate attitude and maintain ethical norms in communication with their patients, no additional training on peculiarities of behaviour with persons with disabilities is provided to the former. According to information provided by the RA Ministry of Health, in 2017, no actions were taken to raise the awareness of healthcare personnel about the ethics of communicating with persons with disabilities.

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<sup>317</sup> These issues are thoroughly introduced in the project for “Strengthening Sexual and Reproductive Health Services” conducted by the UN Population Fund, and in the framework of the “Public Inquiry into Enjoyment of Sexual and Reproductive Health Rights in Armenia” (Survey) conducted in collaboration with the RA Human Rights Defender’s Office.

Based on the abovementioned issues, it is clear that there are still urgent integrated activities required for the full realization of the right to health guaranteed by the Convention and the RA Constitution for persons with disabilities.

*Therefore, the following activities are recommended:*

- 1. The RA Ministry of Health and local self-governing authorities shall ensure the full realization of the right to healthcare for persons with disabilities, including accessibility to medical services and medical equipment.*
- 2. The RA Ministry of Health shall implement continuous training for the healthcare personnel, taking into account the human rights-based model of disability.*
- 3. The RA Ministry of Education and Science, the State Committee for Urban Development and RA local self-governing authorities shall ensure accessibility to healthcare facilities.*

### ***8. Job and employment***

As of 2017, the issue of employment of persons with disabilities was still a complicated social issue faced by the latter. It is an integrated and systemic issue stemming from insufficient state programs aimed at promoting employment and the stereotypes existing in the society about persons with disabilities. The solution of the issue is also envisaged by Decree # 83-N “On approval of the Action Plan for 2017-2019 based on the National Strategy for Protection of Human Rights”. Starting from 2017, it envisages regular state assistance to employers hiring employees with low competitiveness in the labour market and persons with disabilities under the state employment programs.

Thus, according to Article 6 of the RA Government Decree # 339-N of March 30, 2017, the amount of lump-sum compensation to employers is determined by the categories of employees with low competitiveness in the labour market. The Decree also specifies trilateral agreements between the state, the employer and the employee with low competitiveness and their timeframes, and defines priorities for the lump-sum compensations by the categories of beneficiaries<sup>318</sup>. Moreover, as of July 1, 2017, the state program on “Lump-sum compensation to employers hiring employees with low competitiveness in the labour market” engaged 510 unemployed persons with low competitiveness in the labour market, including 15 persons with disabilities<sup>319</sup>.

According to the data provided by the RA Ministry of Labour and Social Affairs, as of January 1, 2018, 2983 persons with disabilities were registered in territorial employment centres, and 187 persons were employed during the year (including 56 persons in the framework of the employment programs). Eight persons with disabilities were included in vocational training courses.

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<sup>318</sup> Report on measures implemented by the RA Ministry of Health and Social Affairs in the framework of the Action Plan for 2017-2019 based on the National Strategy for Protection of Human Rights.

<sup>319</sup> Report on measures implemented by the RA Ministry of Health and Social Affairs in the framework of the Action Plan for 2017-2019 based on the National Strategy for Protection of Human Rights.

Taking into consideration the requirements of the Convention<sup>320</sup> and the urgency to address the issue of employment of persons with disabilities, starting from January 1, 2016, state authorities and agencies with more than 100 employees, are obliged to allocate a quota for job placement for persons with disabilities<sup>321</sup>. According to the preliminary estimates of the RA Ministry of Labour and Social Affairs, 708 organizations (state and private) involved in the quota system, should have secured 3621 job placements, including 1725 places in state organizations. However, based on the RA Government Decree # 453-N of May 4, 2017, the requirement for a mandatory quota was temporarily suspended until July 1, 2018. Analysis of the processes implemented by the organizations involved in the quota system indicated that there were still some objective obstacles impeding the full implementation of that requirement in some areas, which were reviewed separately<sup>322</sup>. The issues are as follows: the information contained in the personalized registration database of the State Revenue Committee of the RA Government does not allow for the full calculation of the number of job placements not provided per the defined quota with the current regulations in place. Thus, in some public administration bodies the number of employees (public servants) is confidential (RA Ministry of Defence, RA Police, etc.), which makes it impossible to calculate the number of quota-defined job placements by the organizations operating in those systems. In addition, there are legal restrictions on the recruitment of persons with disabilities in the positions of political, diplomatic, military, penitentiary, rescue services and community service, and a number of other practical obstacles, as well<sup>323</sup>.

Eventually, the RA Ministry of Labour and Social Affairs has developed a draft law “On amendments in the grounds stipulated by the law for the quota requirement”, and submitted it to the consideration of the RA Government in 2017. As of March 4, 2018, the draft law was not adopted yet.

*In the view of the abovementioned issues, the following is recommended:*

- 1. The RA Ministry of Labour and Social Affairs shall take all reasonable actions to develop and implement effective programs for the employment of persons with disabilities.*
- 2. The RA Ministry of Labour and Social Affairs shall take all reasonable actions to boost the efficiency of the quota system by introducing an effective mechanism for its assessment and monitoring.*

### ***9. The right of children with disabilities to live in a family environment***

Care for children with disabilities in a family or an equivalent environment is an integrated issue that remains unresolved. Adoption of children with disabilities is not a common practice, either. The Human Rights Defender has voiced these issues for years in his reports. According to the RA Ministry of Labour and Social Affairs, as of December 2017, the orphanages of the RA

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<sup>320</sup> RA Law “On Employment”, Article 20, RA Government Decree # 1308-N, dated November 19, 2014.

<sup>321</sup> <http://www.mlsa.am/?p=5945>

<sup>322</sup> <http://www.mlsa.am/?p=5945>

<sup>323</sup> <http://www.mlsa.am/?p=5945>

Ministry of Labour and Social Affairs were providing care to 620 children, including about 450 children with disabilities.

The figures indicate that children with disabilities make up the vast majority of children in orphanages, which itself means that the care for children with disabilities in the family is still an actual challenge.

The UN Convention on the Rights of the Child recognizes the right of every child to live in a family environment<sup>324</sup>. The right is universal, so children with disabilities also have the right to live in a family environment. In 2017, as part of the collaboration between the RA Human Rights Defender's Office and UNICEF, an international two-day conference entitled "The Right of the Child to live in the Family" was held in Yerevan. Representatives of the Council of Europe, officials in charge for the protection of children's rights from more than ten countries in Europe and Central Asia, current and former ombudsmen, attended the conference. Representatives of state structures, the National Assembly, representatives of NGOs also participated in the conference. The purpose of the conference was to discuss the ongoing measures with the sector responsible persons and stakeholders, as well as introduce the Armenian experience to the international community, and learn about the best practices of other countries. During the meeting, the participants also touched upon the actions required for the realization of the right of children with disabilities to live in families.

In 2017, certain actions were taken towards the solution of the issue. Thus, according to the RA Ministry of Labour and Social Affairs, in 2017, foster families provided care for 25 children without parental care, including two children with disabilities, within the framework of the program of "Providing Child Care and Upbringing Assistance in a Foster Family".

Based on Decree # 483-N on "Approval of the Action Plan for 2017-2019 based on the National Strategy for Protection of Human Rights", it is envisaged to enlarge the list of community centres providing social and rehabilitation services to children with disabilities and their families. According to data provided by the RA Ministry of Labour and Social Affairs, "Prkutyun" and "Full Life" NGOs receive state assistance in providing social and rehabilitation services to children with disabilities at the day-care centre. Moreover, in 2017, adolescents and young people with autism were provided with employment and social and rehabilitation services outsourced to "My Way" training and rehabilitation day-care centre. The centre provides services to adolescents and young people with autism, including care, daily employment, social and rehabilitation services, to assist them with professional orientation, to ensure realization of the right to live in the family, and contribute to their social inclusion.

A corresponding amendment to the RA Family Code has been incorporated to ensure that children enjoy their right to live in the family and in particular to facilitate the adoption of children with health issues from orphanages. Accordingly, a new provision was set out to relate to the compatibleness of the data of the adopted child and the adopting family. It is planned to issue a Government Decree establishing certain criteria for compatibility of data of the adopted

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<sup>324</sup> "Guidelines for the Alternative Care of Children", Resolution adopted by the General Assembly, 64/142 (A/RES/64/142\*), para. 14.

child and the person willing to adopt. Eventually, the adoption process will be based on the assessment of those criteria. In 2017, 40 children returned to their biological families in the framework of a program on returning of children to their biological families (relief and prevention), and 60 children were prevented from entering orphanage facilities, including those in Lori and Shirak Provinces, each of them with an indicator of 20 children returning to their biological families, and 30 children prevented from accessing to the facilities<sup>325</sup>.

However, as recorded by the Human Rights Watch human rights organization, although the RA Government has committed to bringing children out of at least 22 orphanages, special and boarding schools, and transform those facilities into community-based non-residential centres, there are no plans for the transformation of the three orphanages specialized in care for children with disabilities<sup>326</sup>.

Thus, the collected data indicate that the issue still remains unresolved. Moreover, the rate of adopting children with disabilities remains rather low. According to the centralized data of the RA Ministry of Labour and Social Affairs, 53 children were adopted in 2017. The number of children adopted by Armenian citizens is 24, including 12 children adopted from their families and do not have any health issue, while 8 out of 12 adopted orphaned children have serious health issues. The number of children adopted by foreign nationals is 29, including 28 children with health issues, where 15 of them have disability statuses.

Thus, in 2017, the issue of ensuring care for children with disabilities in a family or an equivalent environment was not solved from the systemic point of view. The same is true about the issue of introducing and promoting adoption practices of children with disabilities, as well.

*In view of the abovementioned issues, the following is recommended:*

- 1. The RA Ministry of Labour and Social Affairs shall continue developing programs to ensure execution of the rights of children with disabilities to live in a family environment, including the adoption of children with disabilities or their transfer to foster families.*
- 2. The RA Ministry of Labour and Social Affairs shall establish effective community-based services for children with disabilities and their families in order to prevent institutionalization.*

#### ***10. The lack of adequate shelter and care facilities for children with disabilities in specialized orphanages***

The issues of not releasing teenagers with disabilities from specialized orphanages or transferring them into neuropsychiatric nursing homes or appropriate medical institutions after their 18th year, remains an unresolved challenge. This issue, in particular, stems from the lack of adequate shelter and alternative care facilities in the Republic of Armenia. Since 2013, in his

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<sup>325</sup> RA Ministry of Labour and Social Affairs, Annual Performance Report 2017

<sup>326</sup> [https://www.hrw.org/sites/default/files/report\\_pdf/armenia0217arm\\_web\\_0.pdf](https://www.hrw.org/sites/default/files/report_pdf/armenia0217arm_web_0.pdf)

annual report and recommendations, the Human Rights Defender has raised the issue that children with serious mental and physical disabilities live in a specialized orphanage in Kharberd, and there is a serious issue of overcrowding.

According to the RA Ministry of Labour and Social Affairs, as of 2017, there are two 18 years old general school students in Vanadzor Orphanage, seven 18 years old teenagers in the Orphanage after Mari Izmirlyan, including 2 students at a special school, while the specialized orphanage in Kharberd hosts around 130 teenagers aged 18. At the same time, in 2017, four teenagers above 18 years old under the care of the social protection facilities (including the specialized ones) for day care of children operating under the RA Ministry of Labour and Social Affairs, were provided with social housing.

As for housing benefits for orphanage graduates with disabilities, according to the RA Ministry of Labour and Social Affairs, in 2017, no measures were taken towards establishing such benefits for disabled graduates of care organizations. Moreover, 222 graduates of childcare organizations (2003-2013) are currently registered in the waiting list of social housing.

Eventually, due to the lack of community-based services and alternative care facilities, orphanage graduates with disabilities have no capacities of living an independent life, and have to stay in their alma mater orphanages, or are transferred to “Dzorak” mental health care centre or psychiatric hospitals.

*Based on the abovementioned issues, it is recommended to establish alternative care facilities and allocate residential areas to orphanage graduates, and introduce community-based services with consideration of their needs and the necessity to integrate into society.*

### ***11. Political Rights***

In 2017, restrictions of execution of political rights by persons with disabilities were recorded. During the National Assembly elections held on April 2, 2017, the Human Rights Defender received a number of reports on the lack of voting facilities for persons with disabilities. In particular, through its support line, the Human Rights Defender received reports on five specific cases related to the lack of facilities or conditions required for voting by persons with disabilities, and one general concern. Following joint discussion between the Human Rights Defender’s Office and the Central Electoral Commission, all territorial election commissions of the Central Electoral Commission were instructed to provide special assistance to persons with disabilities in the polling stations that had no appropriate conditions or facilities. This comes to prove that the systemic issue remains unresolved.

The Committee also addressed the issues faced by persons with disabilities during their participation in the elections<sup>327</sup>. The main issue is related to the electoral process, in particular to the lack of effective mechanisms provided by the RA Electoral Code to ensure real enjoyment of the electoral right by persons with disabilities. Particularly, Part 5 of the Article 17 of the RA

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<sup>327</sup> The UN Committee on Persons with Disabilities, Concluding observations on the initial report of Armenia, 2017

Electoral Code states that local self-governing authorities shall take all reasonable measures to ensure that persons with restricted physical capacities<sup>328</sup> are provided with facilities and conditions required for the enjoyment of their voting rights. At the same time, Part 8 of the Article 65 of the RA Electoral Code underlines that the Central Electoral Commission is obliged to provide additional facilities for persons facing physical challenges in participating in the voting processes while ensuring that the voter's will is expressed freely and in conditions of confidentiality. Therefore, these regulations are not set out clearly enough and do not outline the action required.

In this regard, on June 30, 2011, the RA Central Electoral Commission issued Decision # 19-N "On Providing Additional Facilities to Ensure Access to Voting for Persons Facing Physical Restrictions in Exercising their Voting Rights". Based on the Decision a special procedure has been defined to ensure accessibility to voting for persons who are unable to fill out the ballot independently due to visual impairments. Moreover, taking into consideration that the majority of polling stations are not adapted for persons with mobility disabilities, the above-mentioned procedure envisages the following measures to ensure that persons on wheelchairs enjoy their voting right: once the chairperson of the territorial electoral commission is informed about a person on a wheelchair waiting at the entrance of the polling station, the former notifies about it to the polling station and approaches the voter to explain them the procedure for participating in the relevant voting<sup>329</sup>. However, the content of these provisions implies support to the mentioned vulnerable groups of persons only at polling stations, whereas they would require support for reaching the territorial polling stations, as well.

According to the information provided by the RA Ministry of Territorial Administration and Development, in 2017, some actions were taken in the regions of Armenia, to adapt the polling stations to meet the needs of persons with disabilities. Particularly, during the elections of the local self-governing authorities held in Aragatsotn Province, the polling stations were located on the first floors of the building. In the Ararat Province, ramps were installed in 32 polling stations out of the total 154, and the remaining ones were facilitated with temporary ramps, as necessary. Meanwhile, in Syunik Province there are no polling stations permanently adapted to ensure the execution of the voting right of persons with disabilities. However, according to Syunik Regional Administration (marzpetaran) mentioned that during all elections, procedures prescribed by law were implemented by polling stations to ensure full participation of all persons with disabilities who had expressed a willingness to vote. At the same time, according to the Ministry, during the municipal elections in Yerevan, the prevailing part of polling stations was adapted for persons with disabilities, except for those stations, which were technically impossible to adjust to the needs of persons with disabilities.

Thus, during the parliamentary elections held in April 2017, "Unison" NGO conducted a monitoring in 67 polling stations in different administrative districts of Yerevan. Only three of the studied polling stations were completely accessible for persons with disabilities, while 42 of

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<sup>328</sup> Formulation used in the RA Electoral Code.

<sup>329</sup> See <http://www.arlis.am/DocumentView.aspx?docid=69693>

them were completely inaccessible. “Unison” NGO also observed the accessibility to stations for voters with visual and hearing impairments and recorded formal availability of lenses in the stations; lenses were available in several polling stations. At the same time, it should be noted that the building of the RA Central Electoral Commission is not adapted for persons with disabilities, either<sup>330</sup>.

It should be highlighted that, in addition to ensuring a physically accessible area, other measures should also be taken to ensure the practical execution of the electoral right of persons with disabilities, by providing physical, information and communication accessibility to their electoral right. In addition, NGOs of the sector mention that the mechanisms for the inclusion of persons with disabilities in the electoral commissions shall also be a focus of legislative amendments.

Furthermore, the Central Electoral Commission has produced printed and audio-visual materials and prepared information on new voting procedures on the voting day for persons with disabilities. However, with an assessment of the aforementioned, in their Recommendations on the Parliamentary Elections of Armenia, the OSCE/ODIHR have mentioned, that the distribution of printed materials was not sufficiently wide to reach voters in remote areas<sup>331</sup>.

The OSCE/ODIHR recommended that the Central Electoral Commission should further intensify its efforts to provide widely accessible and comprehensive voter education materials for all groups of voters, including persons with various types of disabilities.

Based on the above-mentioned issues, it can be stated that persons with disabilities face various challenges related to their engagement in the political life.

*Thus, the following is recommended:*

- 1. Actions shall be taken to ensure that persons with disabilities participate in the political life, including full exercise of the right to vote by providing access to polling stations, unrestricted mobility in the stations, access to relevant information, as well as by establishing other legislative regulations.*
- 2. Amendments to the RA Electoral Code and related legal acts shall be considered to regulate the issue of the inclusion of persons with disabilities in electoral commissions.*

## ***12. Women with disabilities***

According to the Convention, States Parties recognize that women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms. It means, that the issues of women and girls with disabilities should be subject to a special study and, according to their special needs, certain measures should be taken to ensure the execution of their rights.

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<sup>330</sup><https://www.panorama.am/am/news/2017/04/04/%D4%B1%D6%80%D5%B4%D5%A5%D5%B6-%D4%B1%D5%AC%D5%A1%D5%BE%D5%A5%D6%80%D5%A4%D5%B5%D5%A1%D5%B6/1755719>

<sup>331</sup> <http://www.osce.org/odihr/328226?download=true>, p. 7

Since 2015, the RA Human Rights Defender has raised the issue of special challenge that women with disabilities usually face, including double discrimination, inaccessibility to reproductive services<sup>332</sup>. The Committee has also touched upon these issues<sup>333</sup>.

In particular, the Committee is concerned about the lack of reference to women with disabilities in disability and gender-related national legislation and policies; the lack of accessibility of mainstream services and reasonable accommodation for women and girls with disabilities, especially women with psychosocial and/or intellectual disabilities; the lack of legislation and relevant regulations protecting women and girls with disabilities from gender-based violence, particularly at home and in institutions, as well as the lack of access to shelters and adequate services for victims of such violence<sup>334</sup>.

Regarding reproductive health, women with disabilities face such challenges as the lack of accessibility to physical environment and information materials, as well as the lack of awareness among healthcare personnel about the rights of women with disabilities to reproductive health. The RA Ministry of Health was requested to provide a summary of the actions taken in 2017 aimed at increasing the accessibility to reproductive medical services for women with disabilities. In this regard, the Ministry pointed out the RA Government Decree # 318-N of March 4, 2014 “On the State-Guaranteed Free of Charge and Privileged Medical Care and Service”. According to the Decree, the State guarantees all types of pregnancy and childbirth associated ambulatory and in-patient medical care for all citizens of the Republic of Armenia. At the same time, according to the RA Ministry of Health, depending on the type of disability, medical facilities show individual approach to address the needs of persons with disabilities by involving their relatives, caregivers, accompanying persons or other specialists.

Despite the above-mentioned points, data provided by NGOs indicate existence of a number of issues. Thus, according to information provided by “Disability Info” NGO, a monitoring visit to “Kanakaner-Zeytun” Maternity Hospital in Yerevan conducted after a major renovation in 2017, revealed that although the entrance to the building, the elevator, the rooms and the cabinets were mostly accessible to persons with mobility impairments, the rooms were not equipped with adapted toilets. Small entrances and the lack of automatic control doors are another obstacle for those who use a wheelchair.

*Based on the abovementioned issues, the following is recommended:*

- 1. Relevant actions, including legislative amendments, shall be taken to ensure that women and girls with disabilities fully enjoy their rights to education, employment, healthcare and other fundamental rights.*
- 2. Appropriate measure shall be taken to raise public awareness about the rights of women and girls with disabilities.*

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<sup>332</sup> These issues are thoroughly introduced in the project for “Strengthening Sexual and Reproductive Health Services” conducted by the UN Population Fund, and in the framework of the “Public Inquiry into Enjoyment of Sexual and Reproductive Health Rights in Armenia” (Survey) conducted in collaboration with the RA Human Rights Defender’s Office.

<sup>333</sup> The UN Committee on Persons with Disabilities, Concluding observations on the initial report of Armenia, 2017.

<sup>334</sup> [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fARM%2fCO%2f1&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fARM%2fCO%2f1&Lang=en)

3. *Awareness-raising activities shall be taken among medical and other healthcare personnel on the peculiarities of reproductive healthcare of women with disabilities.*

***13. Restriction of effective measures for legal protection of persons with mental health issues and the right to fair trial due to insufficient legislative regulations***

Since 2014, in his annual reports and recommendations, the RA Human Rights Defender has raised the issue that the constitutional right to judicial protection of persons with mental health issues is not fully executed due to the gaps in legislation.

According to Article 171 of the RA Civil Procedure Code, when considering the issue of a person's capacity, a citizen can be summoned to a court hearing if their health condition permits. Therefore, it follows that the participation of a person in court proceedings is determined at the discretion of the court. Moreover, the cases of uncertainty of the content of the provision on "if their health condition permits", lead to various interpretations, and practically, to restriction of the accessibility to the court for a person. Eventually, the right to a fair trial of a person, as well as the basic principles of equality of the parties of the proceeding and the competitive trial are disproportionately limited. At the same time, according to Article 173 of the RA Civil Procedure Code, only a person's caregiver, a family member or the management of the psychiatric facility is entitled to appeal to the court for the restoration of a person's capacity. Thus, based on this regulation, a person recognized as incapable by a court decision cannot appeal to the court, either personally or through their selected representative, to restore their capacity.

Taking into consideration the importance of this issue, in 2014, the RA Human Rights Defender applied to the RA Constitutional Court to challenge the constitutionality of the controversial provisions. Eventually, on April 7, 2015, the RA Constitutional Court issued Decision # CCD-1197, which states that the right of a person to court protection, accessibility to court, including appeal of judicial acts, shall be equally applicable to those persons whose capacity is under judicial consideration. In this regard, the RA Constitutional Court also noted that there is a legal regulation gap in the RA Civil Procedure Code related to the issues considered, which require an integrated systemic solution, and can be resolved only by the RA National Assembly through legislative amendments<sup>335</sup>. At the same time, the RA Constitutional Court also referred to the concepts of "capacity", "incapacity" and "limited capacity" applied in the RA Civil Procedure Code.

At the same time, in 2017, a draft Civil Procedure Code was introduced to public discussion, which defines certain regulations for the above-mentioned issues. The Draft was approved in 2018.

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<sup>335</sup> RA Constitutional Court Decision CCD-1197, of April 7, 2015, Point 9.

#### ***14. Challenges of defining a disability status***

A person is recognized as disabled based on the results of medical and social expertise. Review of complaints addressed to the RA Human Rights Defender shows that there are still issues related to obtaining a disability status.

During consideration of complaints, the RA Human Rights Defender recommended organizing an additional medical and social expertise or extend the composition of the commission; however, the decisions following those examinations were left unchanged. In some cases, it was reported that there is no need for an additional expertise.

The applicants' complaints are basically focused on the issue that the extended commission does not conduct an objective medical and social examination or doctor specialists from the RA Ministry of Health do not actually participate in medical examinations. In other words, it is again the same specialists against whom the complaints have been directed to perform additional medical and social examination.

In this regard, it should be noted, that the criteria applied for the definition of a disability category by medical and social expertise commissions are established by the RA Government Decree # 780-N of June 13, 2003 "On Approval of Criteria for Medical and Social Expertise". However, those criteria have a very general formulation, which itself, creates wide opportunities for the committee members to make subjective decision. Moreover, it also opens a room for double standards.

With regard to the raised issue, it is worth mentioning the position of the European Court of Human Rights, which states that the legal principle of predictability, certainty and clarity shall be satisfied, among other things, to prevent or exclude "the risk of arbitrariness"<sup>336</sup>.

Analysing the criteria set out in the above-mentioned Decree, in the light of this position of the European Court, it should be noted, that the existence of such general criteria actually leads to differentiated approaches to people in the same situations. This, in its turn, leads to a breach of the principle forbidding arbitrariness prescribed by Article 7 of the RA Law "On Fundamentals of Administration and Administrative Proceedings".

Nevertheless, in practice, there have been a number of cases when an extended commission considered changing the status of disability from Category 3 into Category 2, based on additional examination as recommended by the RA Human Rights Defender. In another case, following an additional examination, the status of disability defined for a person for many years, was changed from Category 2 into Category 3 for a period of one year. With the support of the RA Human Rights Defender, the status of Category 3 disability was defined for an indefinite period, based on an additional examination.

According to Article 31(c) of Annex 1 to the RA Government Decree # 780-N of June 13, 2003 "On Approval of Criteria for Medical and Social Expertise", a disability category is determined for an indefinite period, when it becomes clear that a person with disability needs permanent

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<sup>336</sup> See, Hilda Hafsteinsdottir v. Iceland case decision of June 8, 2004, complaint # 40905/98, Point 56

social protection due to ineffective rehabilitative measures, (under supervision of relevant public authorities of medical and social expertise for at least seven years).

In addition, the RA Human Rights Defender received complaints cancellation of a disability status previously determined for an indefinite period, based on an additional medical and social examination. In a number of other cases, a long-lasting disability status was cancelled, while it would receive a permanent status in case of an examination performed that year.

As explained by the RA Ministry of Labour and Social Affairs, the Re-examination Department of the Medical and Social Expertise Agency conducted a review of the medical and social examination case. The review performed by the working group revealed that the person under consideration had been re-examined in 2008, eventually obtaining a permanent status of a Category 1 disability based on “a general disease”. Severe disorder of immune system had affected the person’s abilities of independent mobility and business/job activities (Category 3 restriction), and the ability of self-service (Category 2 restriction), which served as a basis for determining a disability of Category 1 for an indefinite period. In the framework of the Ministry’s audit, based on data from the RA Tax Service a reference was completed showing that the given person had been working as a saleswoman since 2007.

As explained by the RA Ministry of Labour and Social Affairs, the expert opinion states that the review of the medical and social examination case has revealed that Category 1 disability of the given person is not well grounded. Moreover, the medical records of the case show that the severe disorder of the immune system is not justified, clinical and biochemical test data confirming the immune system disorder is missing, the diagnosis determined by the commission and the mentioned restrictions of vital activity are not in line with existing standards. Thus, based on the recommendation of the Head of the State Medical and Social Expertise Agency, Re-examination Department conducted an additional examination as a monitoring procedure. Eventually, the previously determined status of disability was cancelled.

In fact, it turns out that the authority in charge, had not conducted a comprehensive, complete and objective consideration of factual circumstances in a timely manner, in order to disclose the real circumstances. Eventually, a person was declared a Category 1 disabled, enjoying that status for many years, despite the lack of justified need for social protection.

Determination of disability category has certain peculiarities in cases when the person with restriction of vital activity is not a citizen of the Republic of Armenia, but has a relevant Armenian registration. In such cases, if there is no corresponding intergovernmental agreement between the Republic of Armenia and the country of origin required for medical and social expertise, it becomes an obstacle in determining a disability category.

For example, the RA Human Rights Defender received a complaint from a citizen of Georgia who had been registered in Armenia (at the address of a penitentiary facility) since 2016. In 2015, the person was declared a Category 2 disabled for a period of one year, based on the results of the preliminary medical and social examination. The expiration date of the status of disability was defined as August 2016. The additional medical and social examination should have been

performed in July 2016. However, it never happened because the person had no Armenian citizenship.

As explained by RA Ministry of Labour and Social Affairs, the detainee is a foreigner, and according to Part 1 of the Article 5 of the RA Law “On Foreigners”, in the Republic of Armenia, foreigners have the same rights, freedoms and obligations similar to Armenian nationals, unless otherwise defined by the RA Constitution, laws and international agreements.

The RA Constitution does not stipulate any other regulation concerning the above-mentioned point. According to Article 3 of the RA Law “On Social Protection of Persons with Disabilities”, the rights and freedoms set forth in this law for the citizens of the Republic of Armenia apply also to persons having refugee status in the manner prescribed by law. According to Point 10 of the Procedure defined by the RA Government Decree # 276-N of March 2, 2006, citizens of a foreign state may undergo medical and social expertise in the Republic of Armenia if the latter has an appropriate intergovernmental agreement with the country of origin of the given foreigner.

The person under consideration does not have a status of a refugee; he is a citizen of Georgia; the Republic of Armenia has no intergovernmental agreement on social protection (medical and social expertise) with Georgia. Based on the aforementioned points, the petition of the Head of Penitentiary Facility addressed to the medical and social expertise commission specialized in psychiatry was returned on the basis that the person cannot undergo a medical and social expertise in the Republic of Armenia.

Thus, the person faces certain restrictions of vital activity; however, by virtue of the circumstances cited, no disability status can be established. In the current situation, due to the lack of a bilateral intergovernmental agreement, the person is unable to enjoy the rights of persons with disabilities.

*Taking into consideration the abovementioned issues, the following is recommended:*

- 1. Reveal cases of corruption used in the process of medical and social expertise, fire those specialists of the system, who have abused their position or have been associated with any misuse of powers.*
- 2. Conclude a relevant intergovernmental agreement on social protection (medical and social expertise) with Georgia, for the full realization of the social protection rights of Georgian citizens registered in the Republic of Armenia.*

## CHAPTER 3. THE RIGHTS OF THE CHILD

### *General Directions of the Annual Activities*

Children are the future of every society and nation; therefore, they should receive special and permanent attention with a key focus on the most important right of children to live and grow in the family. In Armenia, efforts directed to the protection of human rights suppose a coordinated efficient cooperation of state and non-governmental specialized organizations, and individual experts.

Protection of children's rights in one of the key aspects of the activities of the RA Human Rights Defender. This fact has been documented on the level of the constitutional law, as well. Thus, on February 2, 2017, the RA Constitutional Law "On Human Rights Defender" was enacted. According to Part 3 of the Article 2 of this Law, the RA Human Rights Defender is responsible for the monitoring of application of the provisions defined by the UN Convention "On the Rights of the Child", dated November 20, 1989, as well as for the prevention of violations of children's rights and protection thereof.

For the first time at the level of the Constitutional Law, it has been established that the Human Rights Defender has the power of conducting regular unrestricted visits or as required, to the facilities providing protection and care for children, as well as to general educational facilities, to make specific public reports on the child's rights and submit recommendations to relevant authorities on amendments of legal acts, drafts thereof or improvements of practices related to children's rights (RA Constitutional Law "On Human Rights Defender", Article 30).

The RA Human Rights Defender's staff also drafted legislative proposals on legal acts related to children's rights (for example, Draft Law "On the Rights of the Child"), organized training courses and workshops on children's rights and participated in the relevant activities of international organizations.

In 2017, the RA Human Rights Defender's staff received about 220 written and oral complaints about the rights of the child. Most of the complaints were related to the activities of Guardianship and Trusteeship Committees, as well as to the rights to protection and care of children's health, communication with their parents, and education.

Taking into consideration the issues raised in the complaints and the existing challenges in the area of protection of children's rights, the RA Human Rights Defender's Office issued special reports and legal analysis in 2017.

In particular, a special report "On Guardianship and Trusteeship Authorities and Guardianship and Trusteeship Committees" was published<sup>337</sup>. The purpose of this report was to reveal the issues arising during the activities of the guardianship and trusteeship authorities and their affiliated committees, to identify the gaps and discrepancies of the sector legislation, as well as to make relevant recommendations.

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<sup>337</sup><http://children.ombuds.am/%D5%A1%D6%80%D5%BF%D5%A1%D5%B0%D5%A5%D6%80%D5%A9-%D5%A6%D5%A5%D5%AF%D5%B8%D6%82%D5%B5%D6%81%D5%B6%D5%A5%D6%80/>

In addition, a legal analysis “On the Guidelines for the RA Human Rights Defender’s Activities related to the Protection of Children’s Rights” was published<sup>338</sup>. During the analysis, the staff conducted focus group discussions with children to identify the most accessible and preferable mechanisms for the enjoyment of their rights to be heard, to appeal, and to receive professional counselling. International best practice of the sector was also touched upon.

The RA Human Rights Defender’s Office also drew up a report on monitoring of compliance with the obligations set out by the UN Convention “On the Rights of the Child” and the accompanying protocols<sup>339</sup>. This report was drawn up in a form of Concluding Observations of the Committee on the Rights of the Child, according to thematic areas referring to a number of articles of the UN Convention “On the Rights of the Child”. The report outlines the actions taken based on the observations of the Committee addressed to Armenia within 2013-2017, the degree of protection of children’s rights, as well as recommendations for the full implementation of the Committee’s observations.

In addition to the above-mentioned actions, in 2017, the RA Human Rights Defender’s staff conducted monitoring visits to childcare and protection facilities, to get acquainted with the situation of protection of children’s rights in the relevant facilities, to examine their conditions and to eliminate possible violations.

### *Conferences, trainings, meetings*

In 2017, the RA Human Rights Defender participated in the activities of the European Network of Ombudsmen for Children. The Network links independent offices for children from 42 countries in Europe. Its aims are to encourage the fullest possible implementation of the Convention “On the Rights of the Child”, to support collective lobbying for children’s rights, to share information, approaches and strategies, and to promote the development of effective independent offices for children<sup>340</sup>. The Head of the Department on Protection of Children’s Rights of the RA Human Rights Defender’s Staff was elected a member of the Bureau of the Committee on the Rights of the Child. It should be noted that the Committee was established by the Council of Europe Committee of Ministers. One of the purposes of the Bureau of the Committee is the monitoring of implementation of the Council of Europe Strategy for the Rights of the Child (2016-2021)<sup>341</sup>, providing support the Council of Europe member states in implementing the UN Convention “On the Rights of the Child” and the Council of Europe standards associated with children, in order for the member states to develop laws, policies, awareness-raising and other relevant materials, as well as for the consulting of the Council of Europe ministers and the Secretary General of the Council of Europe.

The Department on Protection of Children’s Rights has been working to raise awareness of children about their rights. In 2017, about 500 children from Yerevan and various regions of

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<sup>338</sup> <http://children.ombuds.am/%D5%AB%D6%80%D5%A1%D5%BE%D5%A1%D5%AF%D5%A1%D5%B6-%D5%BE%D5%A5%D6%80%D5%AC%D5%B8%D6%82%D5%AE%D5%B8%D6%82%D5%A9%D5%B5%D5%B8%D6%82%D5%B6%D5%B6%D5%A5%D6%80/>

<sup>339</sup> The Report will be published in April 2018.

<sup>340</sup> <http://enoc.eu/>

<sup>341</sup> <https://rm.coe.int/168066cff8>

Armenia visited the RA Human Rights Defender's Office. The children learnt about their rights, and were introduced with the website of the RA Human Rights Defender's website dedicated to children's rights<sup>342</sup>. The children also learnt how to send an online application to the Human Rights Defender and receive online consultation. They were also introduced with the activities of the Human Rights Defender's Office.

In 2017, within the framework of cooperation with the UN Children's Fund, the RA Human Rights Defender's Office organized trainings for the staff members and for specialists dealing with protection of children's rights. During the workshops, the trainers introduced directions on ensuring "best interests of the child" in the area of protection of the child's rights, the methodology of monitoring the child's rights, the principles and tools thereof, methods and techniques for interviewing children. A round-table discussion with journalists "On Mass Media and Children" was also organized.

It is also worth mentioning, that in the framework of the cooperation with the UN Children's Fund, in 2017, an international two-day conference on "The Right of the Child to Live in the Family" was held in Yerevan<sup>343</sup>. The Conference was attended by persons in charge for the human rights and in particular for the child's rights, and human rights defenders from more than ten countries in Europe and Central Asia (for example, Bosnia and Herzegovina, Latvia, Lithuania, Malta, Croatia), representatives of state and local self-governing authorities, legislative authorities, civil society and researchers, as well as representative of international organizations (such as the UN Children's Fund, the Council of Europe, World Vision).

The topic of the Conference was chosen based on the fact that the majority of children living in orphanages and special care facilities in Armenia had been left there because of disability, poverty, and other factors that make it difficult for families to take care of their children. Moreover, the urgency of the issue depends on the fact that since 2014 the RA Government has initiated a new process of relieving such facilities.

One of the main goals of the Conference was to discuss the progress in reforming the child care system in Armenia (reorganization of large care facilities and establishment of community-based and family-based services network), to exchange experience on the child's right in the family, to introduce best practices on measures taken by Human Rights Defenders directed towards the monitoring of the process of reorganization of care facilities and reunion of children with their biological families, to coordinate actions on raising awareness about the challenges faced by children living in care facilities, in particular those with disabilities, and other matters.

During the Conference, the participants visited "Kharberd" Specialized Orphanage, "Ajapnyak" Day Care Centre, "Child Support Centre" Foundation, to get acquainted with the conditions of child care facilities and the activities of day care centres.

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<sup>342</sup> <http://www.ombuds.am/media/mijazgayin-hamajoghov.html>

<sup>343</sup> <http://www.ombuds.am/media/mijazgayin-hamajoghov.html>

## *1. Child poverty*

One of the most important issues related to the protection of the right of the child is the child poverty. The RA Human Rights Defender also mentioned this issue in 2016.

Provision of proper living standards of the child is an important safeguard for the protection of all other rights of the child. Therefore, both national and international legal acts emphasize the right of the child to social security. Thus, one of the main objectives of the state policy enshrined in Article 86 of the RA Constitution is to create favourable conditions for the full and comprehensive development of children's personality. Article 83 of the RA Constitution defines the right of everyone to social security. At the same time, the RA Law "On the Rights of the Child" defines the child's right to social security. Moreover, Article 26 of the UN Convention "On the Rights of the Child" states that every child shall enjoy the right to benefit from social security, including social insurance, and member states shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

It is worth mentioning, that the Convention also stipulates the right of every child to an adequate standard of living. All member states that have ratified the Convention have recognized the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development. The state plays an important role in the realization of the right of a child to an adequate standard of living. Article 27 of the Convention stipulates that States shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing. The right of the child to an adequate living standard is also stipulated by Article 8 of the RA Law "On the Rights of the Child".

Thus, although legal regulations ensuring proper child welfare in Armenia are in place, data on child poverty indicate that the issue remains one of the most serious challenges to the protection of children's rights.

According to the statistical analytical report on "Social Snapshot and Poverty in Armenia", prepared by the RA National Statistical Service, in 2015, 2.5% of children in Armenia lived in extreme poverty, and 33.7% of children lived in poverty<sup>344</sup>.

At the same time, the same report of the RA National Statistical Service published in 2017 shows significant progress towards better situation. Thus, according to the statistical analytical report on "Social Snapshot and Poverty in Armenia" prepared in 2017<sup>345</sup>, in 2016, 2% of children lived in extreme poverty and 34.2% of children lived in poverty. Meantime, 1.8 and 29.4% of the adult population of the country live in extreme poverty and poverty, respectively. These official data indicate that children are more vulnerable towards the risk of both general and extreme poverty than the overall population.

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<sup>344</sup> RA National Statistical Service, "Social Snapshot and Poverty in Armenia", Statistical Analytical Report, 2016, <http://www.armstat.am/am/?nid=80&id=1819>

<sup>345</sup> RA National Statistical Service, "Social Snapshot and Poverty in Armenia", Statistical Analytical Report, 2016, <http://www.armstat.am/am/?nid=82&id=1988>

According to the above-mentioned report, 24.0% of households with children received family allowances in 2016, including 34.7% of poor households, 50.3% of households in extreme poverty, and 18.5% of non-poor households. The data for 2016 show the difference in child poverty by gender, namely 36.1% of girls and 32.4% of boys live in poverty (34.2% of all children)<sup>346</sup>.

Official data indicate that the number of children living in extreme poverty has declined; however, the number of children living in poverty has increased. Thus, 65.3% of poor households and 40.7% of the extremely poor households with children are not included in the family benefit system. The reasons for being excluded from the system vary. Thus, the evaluation of “Family Living Standards Enhancement Benefits” State Budget Programme conducted by the “Economic Development and Research Centre”<sup>347</sup> indicates that the main reason of not getting registered is that 51% of the households have not considered themselves poor and have not applied. 6.7% of non-registered ones have not applied, as they do not consider themselves beneficiaries of the system. 9% of non-registered ones mentions that the reason is unawareness. 5.8% have not applied as they consider that the selection is unfair. 3.4% of households mentioned that the reason for not getting registered is difficulties in collecting the required documents and references.

In other words, the lack of awareness of their rights hindered the use of social assistance programmes in some cases. Moreover, the assessment of multidimensional child poverty conducted in Armenia in 2016 showed that child poverty has various manifestations. According to this assessment, almost half of children in Armenia are vulnerable to utilities, housing conditions<sup>348</sup> and in terms of entertainment<sup>349</sup>.

In 2013, the UN Committee on the Rights of the Child also touched upon the child poverty in Armenia in their concluding observations of Armenia<sup>350</sup>. The Committee urged the State party to continue and strengthen its efforts to combat poverty and to ensure that benefit packages cover all families in vulnerable situations by facilitating their access to State support and raising awareness on the existing benefits.

*Taking into consideration the abovementioned issues, it is recommended to raise public awareness on existing social assistance programs through awareness-raising campaigns.*

## ***2. The right of children with disabilities to live in a family***

The UN Convention “On the Rights of the Child” requires the member states to ensure that children are not separated from their parents, while in cases of separation it shall be performed

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<sup>346</sup> RA National Statistical Service, “Social Snapshot and Poverty in Armenia”, Statistical Analytical Report, 2016, Chapter 5 on “Child Poverty”, [http://www.armstat.am/file/article/poverty\\_2017\\_a\\_2.pdf](http://www.armstat.am/file/article/poverty_2017_a_2.pdf)

<sup>347</sup> Evaluation of “Family Living Standards Enhancement Benefits” State Budget Programme by the “Economic Development and Research Centre”.

[http://www.edrc.am/images/Publications/Analytical\\_Papers/2016\\_fbp\\_evaluation\\_eng.pdf](http://www.edrc.am/images/Publications/Analytical_Papers/2016_fbp_evaluation_eng.pdf)

<sup>348</sup> Housing conditions are defined as overcrowded and of low standard.

<sup>349</sup> [http://www.un.am/up/library/Child\\_poverty\\_Armenia\\_N-MODA\\_Report\\_2016\\_arm.pdf](http://www.un.am/up/library/Child_poverty_Armenia_N-MODA_Report_2016_arm.pdf)

<sup>350</sup> <http://www2.ohchr.org/english/bodies/crc/docs/co/CRC-C-ARM-CO-3-4.pdf>

only in the best interests of the child. The RA Family Code and the Law “On the Rights of the Child” (Articles 12, 13) also protect the right of the child to live in a family, as well as defines the state’s commitment to support that right. However, still many children live in care facilities, due to the lack of relevant conditions to enjoy their right to live and grow in their family.

Moreover, official data indicate that though the number of children under the case of orphanages continues to reduce, the number of children with health issues has increased in specialized orphanages. According to the information provided by the RA Ministry of Labour and Social Affairs, in 2017, foster families provided care for 25 children left without parental care, including two children with disabilities. According to the information provided by the Ministry, as of December 2017, 620 children were under the care of orphanages of the RA Ministry of Labour and Social Affairs, including about 450 children have disabilities.

In 2017, the RA Ministry of Labour and Social Affairs and the RA Ministry of Education and Science implemented a number of programmes and activities to reorganize childcare and protection facilities and develop alternative forms of childcare. Thus, several boarding schools and special facilities of general education were reorganized. Particularly, special facilities of general education in Kapan, Sisian, Goris, Vanadzor and Spitak were reorganized into territorial pedagogical and psychological assistance centres, and Boarding School # 1 in Yerevan was reorganized into “Nubarashen” Child and Family Support Centre.

Despite of the actions taken, so far many children with disabilities are under the care of relevant facilities, the number of community-based services available to children in difficult situations and their families is limited, actions towards adding the number of support services to children with disabilities and their families are insufficient<sup>351</sup>.

The RA Ministry of Labour and Social Affairs also mentioned that by the RA Medium-term Expenditure Program for 2018-2020 it is planned to ensure that every year at least 94 children receive care and upbringing in foster families. Actions towards adding the number of foster families is very important, however, it is essential to take special measure to ensure that children with disabilities also receive proper care by foster families.

In order to provide care for a child with disabilities in a foster family, it is important for the community to have support centres therein to assist families in childcare activities. Creation of such centres will also encourage the return of children with disabilities to their biological families, given that very often children with disabilities appear in childcare facilities due to the lack of adequate conditions in the biological family.

At the same time, orphanages with children with disabilities were not involved the state programme of reorganization and relief of childcare facilities implemented in 2017. “Human Rights Watch” human rights organization also referred to the reorganization process,

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<sup>351</sup> For more details, see the Section on “Rights of Persons with Disabilities” of this Report.

highlighting that the absence of plans to transform the country's three orphanages exclusively for children with disabilities <sup>352</sup>.

At the same time during monitoring visits to childcare facilities conducted in 2017, it was revealed that some of the children who had been returning from reorganized facilities (for example, from Sisian and Spitak special facilities of general education) were not attending general schools even though they had been properly enrolled in schools. It means that in the process of reorganization of the facilities it is required to fully assess the needs of children and their families, paying special attention to the effective realization of the right to education for children with disabilities. Moreover, during one of the visits at a private talk with the Director of Gyumri Special School # 3 for children with mental impairments, it was mentioned that the territorial administration authority of Shirak Province used to provide information to the school administration about children with special educational needs left out from general education. As explained by the Director, upon receipt of information about children excluded from general education, they take relevant actions to accommodate them and organize their studies.

Although it is highly appreciated that the administration of Gyumri Special School # 3 for children with mental impairments is making efforts to ensure that children with special needs enjoy their right to education, after the placement of a child in a special childcare facility, the latter spends most of their time away from the family. Therefore, efforts should be made to support the child and their family ensuring, thus providing the child with opportunities to be educated at a general educational facility in their neighbourhood.

Although specialists of Pedagogical and Psychological Assessment Centres established on the bases of reorganized facilities perform home and school visits to provide support to children on the spot, the performance of these centres remains ineffective. At private conversations with the personnel of the centres held during monitoring visits it was identified that the centres serve a large area and do not have enough resources to provide full support and organize the visits.

*Taking into consideration the abovementioned points, the following is recommended: suggest:*

- 1. Specialized community-based support centres providing services to children with disabilities and their families shall be created to prevent children from entering childcare facilities.*
- 2. Orphanages taking care of children with disabilities shall also be included in the reorganization process of childcare facilities to avoid creation of new ones.*
- 3. Training courses shall be organized for parents of children with disabilities to help them develop skills for childcare and upbringing.*
- 4. Monitoring mechanism for housing conditions of children returned to their families shall be introduced.*

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<sup>352</sup> [https://www.hrw.org/sites/default/files/report\\_pdf/armenia0217arm\\_web\\_2.pdf](https://www.hrw.org/sites/default/files/report_pdf/armenia0217arm_web_2.pdf)

5. *Pedagogical and psychological assessment centres based on reorganized childcare facilities shall be provided with sufficient resources to organize home visits and provide full support to children and their families.*
6. *The practice of placement of children with special needs into special schools of general education shall be prevented by means of creating mechanisms for organizing education in public education institutions in their neighbourhood.*

### ***3. Monitoring visits to childcare and protection facilities***

In 2017, representatives of the RA Human Rights Defender’s Office made monitoring visits to childcare and protection facilities (both public and private). The RA Human Rights Defender joined his staff and “Shirak Centre” NGO representatives (“Shirak Centre” NGO supports children and their families to return to their families from childcare facilities) to visit Gyumri Special School # 3 for children with mental impairments<sup>353</sup>.

All visits were made without a prior notice following a special methodology developed for that purpose. During the visits, the conditions of childcare were examined and the documents of admission to the facility were reviewed. The representatives of the Human Rights Defender’s staff had private interviews with children (both with separate groups of children, and randomly selected children), as well as discussions with facilities’ personnel. Eventually, issues raised by all stakeholders were recorded.

The issues voiced during the visits were further discussed with the administration and the personnel of facilities. Thus, the review and comparative analysis of collected information, documents and legislative regulations of the sector, revealed both practical issues and gaps and weaknesses in legislative regulation.

The issues identified were also combined with the individual complaints addressed to the RA Human Rights Defender, as well as with materials and studies published by international organizations, NGOs and media. Based on these observations, the RA Human Rights Defender provided recommendations on relevant remedies.

The identified issues, professional analyses thereof and recommendations on relevant remedies are provided in a systematic manner by identified issues.

#### ***3.1. Attitude towards children***

Children from childcare facilities raised the issue of negative attitudes towards themselves in general schools. Thus, children (for example, from Vanadzor orphanage and Gyumri Childcare and Protection Boarding School # 1) mentioned that schoolteachers often call them “orphans” or “boarding school children” with a negative intonation. This can lead to discrimination in a number of cases, despite of the anti-discrimination provisions defined in both the RA

<sup>353</sup><http://children.ombuds.am/%D5%BA%D5%A1%D5%B7%D5%BF%D5%BA%D5%A1%D5%B6%D5%B6-%D5%A1%D5%B5%D6%81%D5%A5%D5%AC%D5%A5%D5%AC-%D5%A7-%D5%A3%D5%B5%D5%B8%D6%82%D5%B4%D6%80%D5%B8%D6%82-%D5%A9%D5%AB%D5%BE-3-%D5%B0%D5%A1%D5%BF%D5%B8%D6%82/>

Constitution (Article 29) and the UN Convention “On the Rights of the Child” (Article 2), as well as in a number of other international instruments.

Children from orphanage, boarding school, or other childcare facilities shall be treated without any discrimination on an equal basis with children living in the family. A teacher calling a child an “orphan” or “a boarding school child” shows both a discriminatory attitude, and may threaten the realization of the child’s constitutional right to education. Moreover, such attitude of teachers may also affect the classmates’ negative attitude towards these children.

The names of some facilities bear another risk of creating discriminatory attitudes towards children living there. This issue was raised by the Head of “Shirak Centre” NGO V.Tumasyan. Accordingly, the Human Rights Defender visited Gyumri Special School # 3 for children with mental impairments. Eventually, it was revealed that some childcare facilities of Armenia still contain the phrase “mental impairment or retardation” in their name. Those names are a heritage of the Soviet-era and are fixed in the RA Government decree as a separate type of institution<sup>354</sup>.

Review of international best practice in regard of this issue shows that some post-Soviet countries (such as Russia, Kyrgyzstan, and others) also use the above-mentioned wording in the name of childcare and protection facilities. Meanwhile, the review of international best practice of developed European countries shows that such wordings are not common in those countries. For example, in Denmark and the Netherlands, they use the wording “Care Homes” or simply “Homes”; the Social Services and Well-being (Wales) Act of 2017 defines the name “Children’s Home”<sup>355</sup>. In France, similar facilities are called “Medical and Educational Centres”<sup>356</sup>. In Georgia, they are called “Family-Type Houses”.

The above-mentioned international best practice shows that the names chosen are neutral and create no risks of discrimination towards children. Therefore, similar names are more acceptable and do not label children in a negative way.

*In the view of the abovementioned points, the following is recommended:*

- 1. The RA Government Decrees # 2179-N of December 26, 2002 and # 381-N of March 24, 2005 shall be revised to exclude the use of wordings such “**mental impairment or retardation**” and replace it with a neutral formulation.*
- 2. With the same logic, the names of similar facilities shall be reviewed and changed accordingly.*

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<sup>354</sup> Particularly, according to Subpoint “e” of the Point 4 of the RA Government Decree # 2179-N of December 26, 2002, special schools of general education include “Special (supporting) schools of general education for children with mental impairment or retardation” SNCO. In addition, Point 7 of the Annex to the RA Government Decree # 381-N of March 24, 2005 “On Approving the Types of Childcare and Protection Facilities of the Republic of Armenia and the Criteria for Children’s Placement into those Facilities, and Amendments and Supplements into the RA Government Decree # 2179-N of December 26, 2002” states special schools of general education include special (supporting) schools of general education for children with mental impairment or retardation.

<sup>355</sup> <http://www.legislation.gov.uk/anaw/2014/4/section/86/enacted>

<sup>356</sup> <https://www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000006074069&idArticle=LEGIARTI000006906294&dateTexte=&categorieLien=cid>

3. *Trainings for teachers of general education schools shall be organized to address children's rights, focusing on the prohibition of discriminatory attitude and treatment. Mechanisms to prevent and suppress such discriminatory attitudes in schools shall be established.*

During the monitoring, it was identified that the conditions of buildings of Kapan Special Educational Complex # 3 and Gyumri Special School # 3 for children with mental impairments were not adapted for the needs of children with disabilities. In particular, there were no adapted toilets in the facilities and no ramps. Moreover, there were numerous stairs inside the building of Kapan School # 3 creating obstacles for children with mobility disabilities. At the same time, only the "Children's Home" in Gyumri was facilitated with an elevator.

The requirement of accessibility to and adaptability of physical environments for children with disabilities is defined both in national and international documents. Thus, Article 2 of the UN Convention "On the Rights of the Child" states that each child has all the rights guaranteed by the Convention without discrimination of any kind. According to Article 28 of the Convention, each child shall enjoy their right to education on an equal basis with others. Article 7 of the UN Convention "On the Rights of Persons with Disabilities" states that a child with a disability should enjoy human rights and fundamental freedoms on an equal basis with other children, and in all actions concerning children with disabilities, the best interests of the child shall be a primary consideration. Article 9 of UN Convention "On the Rights of Persons with Disabilities" states that to enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia, buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces<sup>357</sup>.

Notwithstanding the clear requirements of applicable laws and regulations, their application is not always in place, leading to violation of both the child's right to mobility and a number of other rights defined by law. Meanwhile, in any public place, including in childcare facilities, children should enjoy all their rights without a discrimination and inconvenience of any kind.

*In the view of the abovementioned issues, it is recommended that the buildings of facilities are adapted to meet the needs of children with disabilities, particularly, install ramps, build elevators, and adapt the toilets.*

During the monitoring visits, the Human Rights Defender's staff recorded a number of issues related to the sanitation and hygiene conditions of childcare facilities. For example, Kapan Special Educational Complex # 3 and Gyumri Special School # 3 for children with mental

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<sup>357</sup> For more details, see the Section on "Rights of Persons with Disabilities" of this Report.

impairments are facilitated with Asian toilets both form boys and girls, with one of two steps separated from the floor. The toilets of other building of the educational complex, except one, are also of Asian type and separated from the floor with three steps and no ramps. Such conditions are creating huge challenges in using toilets for children with mobility disabilities.

In Gyumri Special School # 3 there are chamber pots for children unable to use the toilets on their own; however, they are not enough, only one for 8-10 children.

In “Trchunyan Tun” educational complex and orphanage in Gyumri, there is no partition between the toilet seats, while the availability of personal space in this case is an important requirement.

In the Childcare and Protection Boarding Facility in Dilijan, the toilet seats were damaged and there was no hygiene items (soap, toilet paper, and towel).

Point 15 of the Annex approved by the RA Government Decree # 1324-N of August 5, 2004, “On Recognizing RA Government Authorized Public Administration Body and Approving the Minimum State Social Standards for the Care and Upbringing of Children in Childcare and Protection Facilities” states that the childcare and protection facility shall ensure all reasonable conditions for children to meet their individual needs and personal hygiene in isolated conditions on their own or with the help of the facility staff, if necessary.

Given that national legislation does not clearly define the standards of sanitation and hygiene conditions for childcare facilities, the Human Rights Defender’s Staff has reviewed international best practice on the issue. Thus, based on the United Kingdom standards for schools<sup>358</sup> (also applicable to community-based centres, special schools and other facilities), children and staff toilets shall be separate, children’s toilets shall have doors that are closed from inside and each room is meant to be used only by one child at a time. For children with mobility disabilities the toilets shall have no stairs or other obstacles, and the toilets shall be in a distance of a maximum of 40 meters. The World Health Organization has published a Guide<sup>359</sup> establishing sanitation and hygiene standards for schools. Standards for toilet facilities for children with disabilities include This includes level or ramped access, a wide door and sufficient space inside for a wheelchair user or helper to manoeuvre, and the provision of support structures such as a handrail and a toilet seat.

In Ireland, the “Guidelines and Standards for Sanitary Facilities in Primary Schools”, date April 2014, establish technical standards for sanitary facilities in educational institutions<sup>360</sup>. These criteria also define that each toilet facility shall be secured with doors. Singapore is another example regulating this issue through sanitary standards which require that toilet facilities be adapted for people with disabilities and be secured with doors<sup>361</sup>.

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<sup>358</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/410294/Advice\\_on\\_standards\\_for\\_school\\_premises.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/410294/Advice_on_standards_for_school_premises.pdf)

<sup>359</sup> [http://www.who.int/water\\_sanitation\\_health/publications/wash\\_standards\\_school.pdf](http://www.who.int/water_sanitation_health/publications/wash_standards_school.pdf)

<sup>360</sup> <https://www.education.ie/en/School-Design/Technical-Guidance-Documents/Current-Technical-Guidance/TGD%E2%80%932021-2-Guidelines-and-Standards-for-Sanitary-Facilities-in-Primary-Schools-1st-Edition-April-2014-.pdf>

<sup>361</sup> [https://www.bca.gov.sg/data/ImgCont/439/05\\_Sanitary%20Provisions.pdf](https://www.bca.gov.sg/data/ImgCont/439/05_Sanitary%20Provisions.pdf)

The conditions of bathrooms in childcare facilities were also reviewed during monitoring visits, with a number of issues revealed. Particularly, insufficient conditions for bathrooms, lack of adaptation of bathing facilities for children with mobility disabilities, as well as violation of the right of the child to private space.

Employees of Kapan Educational Complex # 3 claim that every night girl takes a shower before going to bed, however, it should be mentioned that there was no separate room for bathing in this facility. Moreover, there was a shower in the girls' toilet, near the washbasin, which was separated from the toilet, but was not secured with a door. In addition, on the other side of the shower there was a window, which was not closed at the time of the visit and was not covered in any way and it was visible from the residential building in front of the facility. This situation is unacceptable as it violates the rights of the human dignity set forth in Article 23 of the RA Constitution and the inviolability of private and family life, honour and reputation enshrined in Article 31 the RA Constitution. This situation is not created only due to certain economic issues.

International best practice has been reviewed in the view of the above-mentioned issue. For example, based on the United Kingdom standards, it is required that the bathrooms be separated from the toilets and adapted to children with special needs, and the maximum water temperature should not exceed + 43° C to avoid burns from water.

Insufficient bathing facility conditions were also recorded in “Trchunyan Tun” educational complex and orphanage in Gyumri and Childcare and Protection Boarding Facility in Dilijan.

*Taking into consideration the abovementioned points, the following is recommended:*

- 1. Toilet facilities shall be separated with partitions and secured with doors.*
- 2. Toilet and bathing facilities shall be adapted to the needs of children with mobility disabilities.*
- 3. Standards for toilet and bathing facilities of childcare and protection institutions shall be established based on the international best practice.*

During the monitoring visit, it was reported that the territory of the Childcare and Protection Boarding Facility in Dilijan, including the bedrooms, was extremely cold and the heating of the building was not on (as of October 23, 2017). As explained by the Head of the Facility, the issue of the heating was caused by the lack of sufficient funds, and the heating of the building would stay off before November 15. Another issue identified in Dilijan Childcare and Protection Boarding Facility was the lack of doors in the boys' rooms, and consequently, it was even colder in those rooms. Moreover, children had no own space.

It is also worth mentioning that the only heated room at the time of the visit was the medical room with an electric heating device on and a temperature of + 14° C.

The RA legislation does not define any special regulations on the air temperature regime for childcare and protection facilities. The only regulations available refer to schools of general education set forth in the RA Minister of Health Order # 12 of March 28, 2017, “On Approving

Sanitary Rules and Standards # 2.2.4-016-17 “Requirements for Educational Institutions implementing Secondary Education Programs” and Revoking the RA Minister of Health Order # 82 of February 11, 2002”. According to Point 48 of the Annex approved therein, the air in classrooms, study rooms, lecture auditoriums, library, medical room (doctor’s room), gym changing rooms, laboratories, group classrooms, event hall shall be at least 18-22° C, and 17-19° C in the gym.

Thus, even though there are no clear standards for air temperature in childcare and protection facilities, by referring to the standards defined for schools, it is evident that the air temperature in these facilities shall reach at least 18° C.

*Taking into consideration the abovementioned issues, the following is recommended:*

- 1. Clear criteria for the air temperature shall be defined for childcare and protection facilities (or the criteria set out for general schools shall apply) and, regardless of the season, the required air temperature shall be sufficiently provided.*
- 2. Before the approval of the above-mentioned order, the following existing one shall apply: the RA Minister of Health Order # 12 of March 28, 2017, “On Approving Sanitary Rules and Standards # 2.2.4-016-17 “Requirements for Educational Institutions implementing Secondary Education Programs” and Revoking the RA Minister of Health Order # 82 of February 11, 2002”.*

#### ***4. Complaints mechanisms for children living in childcare and protection facilities***

It is crucial to ensure children’s opinion is voiced and considered, including the cases of potential violations of children’s rights or mechanisms for obtaining relevant information on their rights. A detailed legal analysis prepared by the Human Rights Defender in 2017 on “The Guidelines on the Protection of the Rights of the Child”<sup>362</sup> addresses those mechanisms, as well.

The right of the child to be heard is enshrined in both national and international law. Article 37 of the RA Constitution states that the child has the right to freedom of expression and the right to be heard.

In accordance with the provisions of Article 12 of the UN Convention “On the Rights of the Child”, States Parties shall assure to the child who is capable of forming their own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

The right of the child to express their own opinion is also guaranteed by Article 10 of the RA Law “On the Rights of the Child”.

Moreover, the RA Government Decree # 1324-N of August 5, 2004, defines the minimum state social standards for childcare and upbringing to be applied in childcare and protection facilities. Criterion 2 of the Decree states that the child care and protection facility shall ensure full

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<sup>362</sup> [http://children.ombuds.am/wp-content/uploads/2017/12/Guidelines-for-Ombudsman\\_arm.pdf](http://children.ombuds.am/wp-content/uploads/2017/12/Guidelines-for-Ombudsman_arm.pdf)

realization of the right of the child and persons representing their interests (legal parents or legal representatives, relatives) to appeal against the illegal actions of the orphanage personnel, by establishing an internal procedure based on relevant legislation and providing a special box for complaints and suggestions to be lodged.

General Comment N°12 (2009) of the UN Committee on the Rights of the Child<sup>363</sup>, states that all processes, which involve children shall respect a number of principles, including awareness and safety. The principle of awareness implies that children shall be aware of their right to be heard, as well. At the same time, the principle of safety implies that when expressing their views children shall be ensured that their safety is not under risk, if they voice the issues of their concern.

One of the ways to enjoy the right to be heard for the child is the real opportunity to lodge a complaint. This is especially true for childcare facilities or for the closed ones. The most important criterion for the effective exercise of the right to appeal is the confidentiality of the appeal, which will enable the child to present their case to the competent authority without fear or risk of adverse consequences. All facilities have complaint boxes; however, they are not efficient. Thus, during the monitoring, it was revealed that complaint boxes in all facilities were placed in places where the child could be deterred from expressing their opinion.

At the same time, the heads of all the facilities mentioned that the children never used complaints boxes but freely expressed their opinion on the issues of their concern. Still, there are cases when a child is scared to express their concerns. In this regard, facilities shall ensure that complaint boxes are placed in such a place where the child can express their complaint or opinion (including anonymously) without fear and depression.

At the same time, it is important to inform children about the complaints boxes and the confidentiality of the complaint. Moreover, along with complaint boxes, the facility shall establish a clear mechanism of appeal and ensure that the children are aware of it.

International best practice in regard of this issue has been studied. For example, there is a special complaint mechanism for underage offenders in England. In particular, children submit their complaints in a closed envelope, which is immediately transferred to the controlling authority of the facility<sup>364</sup>.

*In the view of the abovementioned issues, the following is recommended:*

- 1. Appeal mechanisms available to children living in childcare and protection facilities shall be improved by ensuring their confidentiality and attaching special focus on the location of complaints boxes.*
- 2. Children's awareness on appeal mechanisms shall be raised through specific training courses.*

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<sup>363</sup> <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC-C-GC-12.pdf>

<sup>364</sup> [http://srsg.violenceagainstchildren.org/sites/default/files/consultations/restorative\\_justice/presentations/nikhil\\_roy/Complaints%20Procedures%20Presentation.pdf](http://srsg.violenceagainstchildren.org/sites/default/files/consultations/restorative_justice/presentations/nikhil_roy/Complaints%20Procedures%20Presentation.pdf)

3. *Children living in childcare and protection facilities shall be informed on the telephone and online mechanisms available in the Human Rights Defender's Office for lodging complaints and expressing their views.*

### ***5. Supervision over admission and care processes implemented in childcare and protection facilities***

During monitoring visits revealed some gaps in the documentation of children in some facilities. For example, the review of documents by the Human Rights Defender's representatives in Kapan Special Educational Complex # 3 revealed that 19 children had no certificate confirming the need for special education, which is a mandatory requirement to be admitted to special education facilities. In this regard, the facility personnel informed that the Pedagogical and Psychological Support Centre had already assessed as having special educational needs of nine children, and the relevant certificates were under way. The remaining ten children with no certificates are students of the 12<sup>th</sup> grade who have previously been assessed as having special educational needs, and the territorial administration authority (marzpetaran) does not provide a certificate for the graduates to be, as they are leaving the school this year.

Point 10 of the Part 1 of the Article 3 of the Law "On Public Education" defines **the concept of "assessment of special educational needs of a child"**, in the meaning of reviewing participation of a person in educational programs, identifying the child's development opportunities and establishing specific educational conditions. Based on Article 17.2 of the Law, the parent (legal representative) or the Pedagogical Board of the educational facility is entitled to submit an application for a child to undergo assessment of special educational needs, if the application of the facility is enclosed with the parent's agreement. Thus, the child's special educational needs shall be first defined by an appropriate conclusion. The latter is provided by a Pedagogical and Psychological Support Centre by assessing special educational needs of children residing in their service area. This procedure is defined by Point 2 of Annex 2 to the RA Government Decree # 1058-N of October 13, 2016, "On Approving Sample Charters and the Lists of National and Territorial Pedagogical and Psychological Support Centres". Eventually, based on the centre's conclusion, the state territorial administration authority issues a certificate on special educational needs of the child<sup>365</sup>.

It should be mentioned, that during the monitoring visit to Kapan Special Educational Complex # 3, nine children were already in the stage of assessment, which contradicts the requirements of the provisions of the abovementioned legal acts.

At the same time, documentation of the majority of children living in "Trchunyan Tun" educational complex and orphanage in Gyumri did not contain referrals provided by the RA Ministry of Labour and Social Affairs. Moreover, 45 children out of the total 87 under the care of this facility had no referral and/or conclusion provided by the RA Ministry of Labour and Social Affairs and the State Territorial Administration Authority, respectively.

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<sup>365</sup> RA Law "On General Education", Article 17.3

The above-mentioned referral and conclusion are mandatory requirements for the admission into special childcare and protection facilities, established by the RA legislation. Particularly, Annex “**On the Rules and Conditions for Providing Care for Children**”, approved by the RA Government Decree # 1112-N of September 25, 2015, **defines the procedure for conclusions to be issued by the RA territorial administration authorities and referrals to be provided by the RA Ministry of Labour and Social Affairs to children left without parental care. Based on the above-mentioned Part 19, territorial administration authorities of Armenia** shall perform a review of the child’s living conditions and socio-psychological status, a complete, objective and comprehensive examination of the required documents and the preliminary conclusion of the agency. Eventually, based on the combination of the collected documents and analysed information, territorial administration authorities draw up a conclusion on further care provided to the child. According to Point 2 of the Part 21 of the same Decree, the RA Ministry of Labour and Social Affairs shall refer the child to a general or special (specialized) social protection facility.

It turns out that “Trchunyan Tun” educational complex and orphanage in Gyumri was obliged to ensure the required conclusions and referrals, while the RA Ministry of Labour and Social Affairs should have properly monitored the process of placement of children in the facility. Such monitoring authority is reserved to the RA Ministry of Labour and Social Affairs under Article 25 of the RA Law “On the Rights of the Child”. The Article states that the state authority empowered by the RA Government, namely the RA Ministry of Labour and Social Affairs<sup>366</sup> shall perform monitoring of the process of placement of children in orphanages (regardless of their organizational and legal structure), as well as control over application of minimum state social standards for childcare and upbringing in childcare and protection facilities.

*Therefore, it is recommended that the RA Ministry of Education and Science and the Ministry of Labour and Social Affairs shall perform proper supervision over the process of placement of children in childcare and protection facilities, ensuring the availability of documents required by legislation.*

#### ***6. Challenges faced by persons aged 18 and over living in childcare and protection facilities***

During monitoring visits, it was revealed that as of September 2017, 15 persons with special needs aged 20-30 were under the care of Kapan Special Educational Complex # 3, previously relocated from Nubarashen Special School, with the permission of the RA Ministry of Education and Science and the territorial administration authority.

As explained by the Head of the Facility, after graduation, they stayed in the facility because they do not have a place to go. The facility has provided them with bedrooms, their care is provided on the account of the facility budget, and the staff takes care for them. The Head of the

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<sup>366</sup> Based on Point 1 of the RA Government Decree # 1324-N of August 5, 2004, the RA Ministry of Labour and Social Affairs has been defined as the state authorized body as required by the RA Law “On the Rights of the Child”, Article 25.

Facility also mentioned, that very often, these persons argue among themselves, and the administration and the personnel of the facility have to interfere.

In this regard, the Human Rights Defender's Staff reviewed the documents provided by the Head of the Facility, indicating that the latter had applied to both the Municipality of Kapan and the RA Ministry of Labour and Social Affairs with a request to handle the issues of those persons by providing either a residential area or transferring them to another facility. The Mayor of Kapan City replied that the adults living in the Facility were not considered residents of his community and the Municipality is not competent to solve that issue. In response to the application of the Head of the Facility, the RA Ministry of Labour and Social Affairs replied that the adults with special needs could be accommodated in "Dzorak" mental health care centre upon availability of free places.

According to the information provided by the RA Ministry of Labour and Social Affairs in response to the inquiry made in 2017 by the Human Rights Defender during preparation of his annual report, as of 2017, other facilities also provided accommodation for persons aged 18 and above. Thus, Vanadzor Orphanage accommodates 2 persons at the age of 18 enrolled in general education, Mari Izmirlyan Orphanage accommodates 7 persons aged 18, and Kharberd Specialized Orphanage accommodates about 130 people over the age of 18. In 2017, among persons aged above 18 living in childcare and protection facilities of the RA Ministry of Labour and Social Affairs, including the specialized one, only four persons were provided with social housing<sup>367</sup>.

The Human Rights Watch has also raised the issue of persons aged out of orphanages. The organization indicates that children with disabilities who age out of orphanages may remain in state institutions indefinitely. One of the reasons for their stay in those facilities is the lack of alternative services in the community, as well as the lack of guarantees for the young people with disabilities to be engaged in any type of employment<sup>368</sup>.

According to Part 6 of the Article 1 of the RA Law "On Social Protection of Children Left without Parental Care", the minimum state social standards for care and upbringing of children left without parental care include the housing rights. According to Supoint 1 of Point 1 of Annex 1 approved by the RA Government Decree # 1069-N of September 10, 2015, persons classified into socially vulnerable and special groups are entitled to receiving a housing or accommodation. According to the RA Law "On Social Protection of Children Left without Parental Care", persons left without parental care are included in the socially vulnerable and special groups.

According to the RA Ministry of Labour and Social Issues, many graduates continue living childcare and protection facilities. There are no alternative community-based services for disabled graduates. The centres available provide socio-psychological, socio-pedagogical and rehabilitation support services to children and their families in difficult situations. The aim of

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<sup>367</sup> For more details, see Section on "Rights of Persons with Disabilities" of this Report.

<sup>368</sup> [https://www.hrw.org/sites/default/files/report\\_pdf/armenia0217arm\\_web\\_2.pdf](https://www.hrw.org/sites/default/files/report_pdf/armenia0217arm_web_2.pdf)

those centres is to ensure favourable conditions for the welfare and development of each child and their family members of their community, through socio-psychological, socio-pedagogical and rehabilitation support services, by strengthening families, protecting children's rights and consolidating community resources.

The abovementioned issue is also touched upon in the Section on "Rights of Persons with Disabilities" of this Annual Report.

*Taking into consideration the abovementioned issues, it is recommended to designate alternative healthcare facilities and residential areas for orphanage graduates, and integrate community-based services, based on their needs and inclusion into society.*

### ***7. Challenges in identifying and assisting vagrant and begging children***

The issue of identifying and assisting vagrant and begging children is still an actual challenge due to the lack of effective relevant mechanisms. In 2017, the RA Human Rights Defender received numerous reports about vagrant children engaged in begging.

Based on the calls and reports received, the RA Human Rights Defender's Staff contacted the RA Police and the "Armenian Relief Fund for Children" Support Centre, who showed prompt feedbacks by sending the children to the Centre or to the family. However, further reports received by the Human Rights Defender about the same children comes to prove that the issue had not been resolved sufficiently.

Still in 2013, in their comments on Armenia's third and fourth periodic reports, the UN Children's Rights Committee underlined that a significant number of children, including children under the age of 14, leave schools to work in informal spheres, such as agriculture, car service, construction, collection of metal waste and family businesses. The Committee also expressed concern over the growing number of children involved in begging.

Despite the activities conducted by the RA state and local self-governing authorities, the number of begging and vagrant children has not changed significantly compared with that of 2016.

According to the information provided by the RA Police, in 2017, the RA Police officers invited 53 children engaged in begging and vagrancy to its territorial subdivisions, including children selling flowers and various things (coupled with begging).

In 2017, 50 of those children engaged in begging and vagrancy were identified in Yerevan, 2 in Vagharshapat, and 1 in Abovyan. In order to provide social support to identified begging and vagrant children and their families, the police transferred their information to the territorial social services. The RA Police territorial subdivisions and their department in charge for children's affairs, included 18 begging and vagrant children (including 11 in Yerevan, 3 in Spitak, 2 in Kotayk, 2 in Kumayri) in registration for preventive actions.

According to the information provided by the RA Police and Yerevan Municipality, they are engaged in active cooperation to resolve this issue. However, in 2017, 15 vagrant and begging children, including 14 from Yerevan and 1 from Kotayk Region were sent to the State Educational Complex # 1, which comes to prove that the actions taken to address the issue were insufficient.

Interdepartmental cooperation is also important in identifying begging and vagrant children, as well as preventing such practices.

In the context of prevention, it is essential to introduce a system of integrated social services. According to Part 1 of the Article 33 of the RA Law “On Social Assistance”, the system of integrated social service is a complex of functions (authorities) performed and measures taken by state and local self-governing authorities, organizations and individuals within the framework of social assistance. The system of integrated social service is based on cooperation and prevents a person (family, other social group) from appearing in difficult life conditions by eliminating the causes and consequences of the situation.

Part 2 of the same Article states that the main components of the system of integrated social services are the aspects of interdepartmental social cooperation.

The RA Government Decree # 1044-N of September 10, 2015 “On Establishing the Charter for Interdepartmental Social Cooperation” determines the parties, procedures and forms of interdepartmental social cooperation. Accordingly, the given cooperation involves informational, administrative and organizational cooperation, creation of coordination and advisory units, and multidisciplinary work for the review of a social case.

Thus, the parties to interdepartmental cooperation shall make joint efforts to prevent children from appearing in difficult life situations, and eliminate the causes and consequences of already existing situations.

It is worth mentioning, that Paragraph 28 of the Council of Europe “Strategy for the Rights of the Child” (2016-2021) states that child poverty and social exclusion can most effectively be addressed through child protection systems that carefully integrate preventive measures, family support, early childhood education<sup>369</sup>.

Although the existing regulations envisage cooperation of state and local self-governing authorities in detection and further referral of children in difficult situations, as explained by the RA Ministry of Labour and Social Affairs, they do not possess relevant information within the scope of their competences.

In this regard, it is obvious that the RA Police is the main structure handling the issue of identifying vagrant and begging children, and the cases of cooperation with social services are rather rare. Until now, no mechanisms for identifying children engaged in illegal employment and the relevant employers have been developed, and the placement of children in childcare and protection facilities has been chosen as the easiest way of treating the issue, instead of

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<sup>369</sup> <https://rm.coe.int/168066cff8>

efforts for working with families. There were no clear statistical data collected, no cooperation among relevant authorities conducted and no comprehensive assessment of the situation performed.

Vagrant and begging children are deprived of the opportunity to use social services properly. Moreover, social services and communities do not provide a day-to-day professional services to children and their family members in difficult life situations. There is no relevant monitoring of their live-styles and living conditions. There are no preventive services to identify families and children under risk in a timely manner.

*Taking into consideration the abovementioned situation, the following is recommended:*

- 1. The terms “homeless, begging and vagrant children” shall be defined by law, in the light of the provisions of General Comment # 21 (2017) on Children in Street Situations of the UN Committee on the Rights of the Child, which will allow having a clear picture and more precise statistics.*
- 2. Cooperation between the RA Police and Social Services shall be strengthened with a target of identifying and assisting vagrant and begging children.*

#### **8. Guardianship and Trusteeship Bodies (Committees)**

The RA Human Rights Defender has addressed the issues identified in the activities of Guardianship and Trusteeship bodies in a number of annual reports. A large number complaints and appeals received by the Department of Protection of Children’s Rights of the Human Rights Defender’s Office, both in 2016 and in 2017, referred to the activities of Guardianship and Trusteeship Committees. Moreover, in 2017, the number of complaints regarding the activities of the Guardianship and Trusteeship Committees has increased. Particularly, the majority of those complaints concerned the activities of Guardianship and Trusteeship Committees in protecting the right of the child to communicate with their parents and receive rearing care from them.

Several key issues have been identified and addressed in the special public report on “Guardianship and Trusteeship Bodies and Guardianship and Trusteeship Committees”, based on the previous annual reports of the Human Rights Defender, as well as the complaints received<sup>370</sup>.

The issues mentioned above, include the activities of Guardianship and Trusteeship Bodies and Guardianship and Trusteeship Committees implemented on a voluntary basis. One of the factors affecting the effectiveness of these structures is the engagement of its members in other core activities. Actually, they do not have full involvement in the implementation of the functions of Guardianship and Trusteeship Bodies and Guardianship and Trusteeship Committees, and sometimes perceive it as an additional burden.

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<sup>370</sup> <http://children.ombuds.am/wp-content/uploads/2017/12/GTC-report.pdf>

Another related issue is the lack of adequate qualifications and sufficient experience of overwhelming majority of the members of Guardianship and Trusteeship Bodies and Guardianship and Trusteeship Committees, as well as the lack of regular training. This issue is full threats, as the activities of Guardianship and Trusteeship Bodies and Guardianship and Trusteeship Committees are closely related to children's socio-psychological welfare and healthcare, which requires proper psychological knowledge and communication skills. It should also be noted that the majority of the members of Guardianship and Trusteeship Bodies and Guardianship and Trusteeship Committees, especially in the regions, are not fully aware of the mechanisms for the protection of children's rights.

The Human Rights Defender has stated in his Annual Reports 2013-2016, that the activities of Guardianship and Trusteeship Bodies and Guardianship and Trusteeship Committees are not regulated by appropriate methodology and procedures. It turns out that the lack of proper methodology and procedures affects full implementation of relevant functions, prompt response to situations and the objective approach to the cases under consideration.

The UN Committee on the Rights of the Child has also addressed the issue on activities of Guardianship and Trusteeship Committees in their Concluding Observations of Armenia in 2013, which underlines that the members of Guardianship and Trusteeship Committees are not paid and are not motivated accordingly.

Issues related to Guardianship and Trusteeship Committees have been mentioned in the "Strategic Plan for the Protection of the Rights the Child in the Republic of Armenia (2013-2016)"<sup>371</sup>, as well.

Thus, although the issue has been voiced for many years by the Human Rights Defender, a number of local and international organizations and government agencies, it has not been resolved yet. Moreover, based on the RA Draft Law "On Amendments of the RA Law "On the Rights of the Child"", Guardianship and Trusteeship Committees remain the key players of the protection of children's rights at the community level maintaining the same principles of activity.

The Human Rights Defender has addressed his opinion on the mentioned Draft Law to the RA Ministry of Labour and Social Affairs, highlighting that in the event that Guardianship and Trusteeship Committees continue operating on the same principles at the community level, the protection of the rights of the child at the community level will be insufficient leading to continuous violations of the rights of the child.

Thus, the Human Rights Defender has repeatedly pointed out the ineffectiveness of the activities of Guardianship and Trusteeship Bodies and Committees, and the Human Rights Defender's report on those activities underlines the key issues in the sector seeking urgent solutions. *In addition, the following recommendations have been made:*

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<sup>371</sup> <http://www.arlis.am/DocumentView.aspx?DocID=81357>

1. *The professional capacity of the members of Guardianship and Trusteeship Bodies and Committees shall be improved.*
2. *The principle of volunteer labour for the activities of Guardianship and Trusteeship Bodies and Committees shall be avoided as far as possible and relevant specialists involved on a paid basis (such as social workers, psychologists, etc.).*
3. *A methodological guideline shall be developed for Guardianship and Trusteeship Bodies and Committees, as well as appropriate means provided for the full implementation of their functions.*

### ***9. Violence against the child***

Violence against children has a negative impact on the development of the child and increases the risk that the same children will be using violence against others in the future. In this regard, there are relevant regulations on the prevention and elimination of violence against children provided in the current legal acts, including the RA Family Code, the RA Law “On Children, and others. According to Article 19 of the UN Convention “On the Rights of the Child”, States Parties shall take all appropriate measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child. Article 28 of the Convention states that school discipline shall be exercised through methods that are compatible with the child’s human dignity.

According to Article 5 of the RA Law “On General Education”, general education is aimed at, inter alia, respect of human dignity of each student. According to Article 9 of the RA Law “On the Rights of the Child”, it is forbidden to use violence or other degrading punishment or other similar treatment against the child by any person, including parent(s) or other legal representative(s).

The foregoing assumes that violence against a child in school, at home, and in any other place is unacceptable.

Despite the ban on violence against children, this issue has not been solved yet on systematic basis. The issue of violence against children was touched upon a detailed legal analysis prepared by the Human Rights Defender in 2017 on “The Guidelines on the Protection of the Rights of the Child”<sup>372</sup>.

In 2013, in its Concluding Observations of Armenia, the Committee on the Rights of the Child expressed their concern over the closed and partially closed facilities for children, where the latter are subject to ill-treatment and violence. The Committee also noted that although both the RA “Family Code” and the RA Law “On the Rights of the Child” have provisions against corporal punishment, there is a lack of enforcement mechanisms and the RA legislation does not provide sanctions in cases of violation.

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<sup>372</sup> [http://children.ombuds.am/wp-content/uploads/2017/12/Guidelines-for-Ombudsman\\_arm.pdf](http://children.ombuds.am/wp-content/uploads/2017/12/Guidelines-for-Ombudsman_arm.pdf)

According to the information provided by the RA Ministry of Labour and Social Affairs from 2013 to June 1, 2017, two cases of violence against children were recorded in such facilities. In particular, in 2014, a case of violence against children was recorded in “Byureghavan Childcare and Protection Boarding Facility” SNGO. A relevant criminal case was instituted against one of the employees of the facility, who had been repeatedly using violence against a dozen of “disobedient” children, as defined by himself, during the lines organized by the latter at the facility, as well as during other educational processes. This so-called “disciplinary measures” were used within the period of 2010-2014, with a common criminal intent, thus causing severe psychological harm to those children<sup>373</sup>.

The second case was recorded in Kapan Childcare and Protection Boarding Facility in May 2016. However, no criminal case was initiated due to the lack of constituent elements of the offense.

The above-mentioned rather small indicator may be explained by at least a few factors, namely:

1. *Peculiarities of awareness and perception of violence.* A study conducted in the field through five focus groups discussions among educators shows, that unlike teaching personnel in Yerevan, teacher of regional educational facilities do not tend to consider a number of their violent actions as violence (for example, pulling ears, physical repRach, etc.). Moreover, they believe that such definitions “are forced from abroad to our society and contradict our national mentality”. Many of them note that traditional education and upbringing methods have been much more effective using their own disciplinary system compared to what is required from educators nowadays<sup>374</sup>. In this sense, the small number of documented cases and relevant legal response may be conditioned by behavioural perceptions of violence accepted by the society and the corresponding indifference towards the persons using violence.
2. *Lack of indicators on violence in facilities, statistics on record keeping of such cases and relevant analysis thereof.* It should be mentioned, that in 2017, the Human Rights Defender’s Office received various complaints about cases of violence against children in schools. Complaints referred to violence against children used by both students and teachers in schools.

In 2017, reports of violence were also reported by the mass media. One of the manifestations of violence by pupils was the incident at the School after John Kirakosyan, in Kentron administrative district of Yerevan. According to information from mass media sources<sup>375</sup>, classmates of one of the pupils tied his hands with a tape, took him to the toilet, hit a few strokes, and then one of them cut the boy’s eyelashes with scissors. In 2017, the Human Rights Defender’s Staff initiated a discussion on the issue of violence recorded at the School after John Kirakosyan.

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<sup>373</sup> Criminal Case ԿՂ2/0060/01/15 <http://www.datalex.am/?app=AppCaseSearch&page=default&tab=criminal>.

<sup>374</sup> “Manifestations of Violence against Children in the Republic of Armenia”; Research Data Analysis Report// Research Work Group, Yerevan, Lusabats publishing house, 2014, p.116.

<sup>375</sup> <http://shamshyan.com/hy/article/2017/11/13/1082119/>

The Human Rights Defender's Office has also received and proceeded complaints about acts of violence committed by teachers in schools (including private one).

As already mentioned, children of different age groups pay regular visits to the Human Rights Defender's Office. During such meetings, some children have reported that there are cases of violence (both physical and psychological) committed against pupils by teachers in schools. Many of the children visiting the Human Rights Defender's Office were not aware that teachers have no right to hit students if, for example, they disturb the lessons. During the meetings, the children were explained their rights and the existing mechanisms of protection thereof.

*Taking into consideration the above-mentioned issues, the following is recommended:*

- 1. Clear procedures for recording and reporting cases of violence in schools and childcare and protection facilities shall be established.*
- 2. Starting with the first grade, special exercises, games and conversations shall be organized with children, to discuss and prevent possible risks of using violence against each other.*
- 3. During the lessons of social studies, the hours on children's rights shall be added, focusing on discussions about prohibition of violence against children.*
- 4. A clear responsibility for reporting cases of violence shall be imposed on teachers and school staff.*

#### CHAPTER 4. RIGHTS OF REFUGEES AND ASYLUM-SEEKERS

Securing the rights of refugees and asylum-seekers and creating guarantees for practical execution thereof, is one of the principles of the rule of law. Protection of the rights of the mentioned category of persons requires special attention. Taking into account the importance of ensuring the rights of refugees and asylum-seekers in Armenia and their respective challenges, in 2017, the Human Rights Defender initiated a relevant research, which was incorporated in a Special Report *“On the Rights of Refugees and Asylum-seekers in the Republic of Armenia”*<sup>376</sup>.

As recorded in the Special Report, *“for the full realization of the rights of asylum-seekers, it is important that the Border Guard Troops have the required knowledge of the asylum procedure, the related rights and responsibilities of the asylum-seeker, and their authorities. This stems from international requirements”*.

In this regard, it should be mentioned that in the framework projects conducted by the Armenian Red Cross Society<sup>377</sup> and the Armenian Office of the UNHCR, trainings on international and RA standards on refugee and asylum-seekers were provided to relevant groups, including servants of the Border Guard Troops of the RA National Security Service<sup>378</sup>. Trainings were organized for Border Guard Troops serving at “Bagratashen”, “Gogavan”, “Bavra”, “Agarak” checkpoints, as well as at “Zvartnots” and “Shirak” airports. The trainings mainly covered international protection mechanisms for refugees and asylum-seekers and the relevant national legislation, as well as amendments and supplements to the Law incorporated in 2016. The trainings were particularly important in the sense that they were attended by the authorized representatives of Border Guard Troops in charge for the subject matters of the training course. Representatives of the Human Rights Defender’s Office also participated in those trainings.

The purpose of the trainings was to raise the awareness of the participants on the international obligations of the Republic of Armenia, domestic and international regulations on the access to the country, the principle of non-refoulement, asylum accessibility procedures, identification and referral of asylum-seekers.

In the framework of the same project, round-table discussions were held in 2017 with participation of Border Guard Troops, officers in charge for border control, as well as representatives of other competent state authorities. Representatives of the Human Rights Defender’s Office, UNHCR, European Border and Coast Guard Agency (FRONTEX), ARCS and State Migration Service also attended the meetings. The topics covered mainly the provisions of the Convention and the Protocol, the basic principles of refugee protection, UNHCR mandate, identification and referral of asylum-seekers, as well as the admission and support of refugees at border crossing points. The powers of the Human Rights Defender defined by the RA Constitution and the Constitutional Law “On the Human Rights Defender”, as well as the measures taken to protect the rights of refugees and asylum-seekers, were also presented. The

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<sup>376</sup> See the RA Human Rights Defender’s Special Report “On the Rights of Refugees and Asylum-Seekers in the Republic of Armenia.

<sup>377</sup> Hereinafter “ARCS”.

<sup>378</sup> Hereinafter “Border Guard Troops”.

ARCS introduced the structure's functions related to the provision of translation services for asylum-seekers and refugees.

Discussions are essential in terms of raising awareness of border guards on the rights of refugees and asylum-seekers. They allow both studying the legislative framework of the field and discussing the peculiarities of their application in practice, which largely contributes to the realization of the rights of refugees and asylum-seekers. Moreover, the topics of those trainings are envisaged by the above-mentioned recommendation of the Committee of Ministers of the Council of Europe.

Trainings are also important in terms of establishing productive cooperation between the participants. This is especially true of the Human Rights Defender's staff and the servants of Border Guard Troops of the National Security Service. These parties currently cooperate and make joint efforts to exchange relevant reports and information regarding possible violations of the rights.

It is noteworthy that the awareness raising campaigns for Border Guard Troops are organised by the competent authorities on regular basis.

The Special Report also outlines the main issues raised on separate aspects for the rights of refugees and asylum-seekers and provides recommendations for their solution. Some of those recommendations are also found in this report.

### ***1. The RA legislation on the rights of refugees and asylum-seekers***

Despite of the legislative improvements related to execution and protection of the rights of refugees and asylum-seekers over the recent years, there are still issues requiring legislative solutions in this area. The Human Rights Defender has touched upon those issues in the relevant section of the Special Report. The main issues identified include the following:

- 1) Part 1 of the Article 9 of the RA Law "On Refugees and Asylum"<sup>379</sup>, sets out *the principle of non-refoulement. This provision prohibits that a refugee is returned to any territory where their life or freedom may be threatened based on their race, religion, particular national or social group, political views or widespread violence, external aggression, internal conflicts, massive human rights violations or other serious offenses that violate public order.* According to Part 3 of the same Article, *"A foreigner or a stateless person shall not be deported, returned or surrendered to another country where there is a substantial risk that they will be subject to severe and inhuman or degrading treatment or punishment, including torture"*.

In regard of the above-mentioned, it is unacceptable that the exception to the right to life is not included in the cited reasons. In particular, according to Part 1 of the Article 55 of the RA Constitution with Amendments of 2015, *"No one shall be deported or surrendered to a foreign state if there is a real threat that the person may be subjected to **death penalty**, torture, inhuman*

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<sup>379</sup> Hereinafter "The Law".

*or degrading treatment or punishment*”. Such approach is consistent with the provisions of Article 19 (2) of the Charter of Fundamental Rights of the European Union<sup>380</sup>.

- 2) By defining the concept of a refugee under Part 1 of Article 6, the Law reflects the notion set forth in the Convention and the relevant provision of the Protocol. Accordingly, a refugee is a foreign citizen, who left their country of citizenship due to a reasonable fear of persecution because of their particular racial, religious, national or social background, or political views and cannot or will not benefit from the protection of their country of citizenship due to the same fears, or a person, who does not have a citizenship and being outside their former place of residence, cannot or will not go back because of the same fears”. Point 2 of the same Part refers to cases where a person has abandoned his country of citizenship or the country of their former residence due to widespread violence, external assault, internal conflicts, massive human rights violations or other serious public disorders.

The Law does not stipulate any other means of protection, and the Law does not generally define a procedure for providing additional protection, which would enable the person to receive such protection and appropriate status based on the principle of non-refoulement, ensuring his security in the Republic of Armenia. It is worth mentioning, that Part 3 of Article 58 of the Law stipulates that the RA Police bears responsibility for solving the issue of the residence status of a foreign citizen in accordance with the RA legislation, if the latter has been refused an asylum. This is particularly important in cases when a refused asylum-seeker’s return is impractical based on the norms of international human rights law.

In this regard, the judgments of the European Court of Human Rights<sup>381</sup> define the discretion of the state not to allow a person’s entry into the country or institute an expulsion, based on reasonable justifications. Nevertheless, the Court also attached importance to the prohibition of Article 3 of the European Convention on Human Rights, which bears an absolute nature. In particular, Article 46 of the Judgment of July 5, 2005, on the Case *Said v. The Netherlands* states that “Contracting States have the right, as a matter of well-established international law and subject to their treaty obligations, to control the entry, residence and expulsion of aliens. However, the expulsion of an alien by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person in question, if deported, would face a real risk of being subjected to treatment contrary to Article 3 in the receiving country”<sup>382</sup>.

Moreover, while the Convention provides some exceptions to the principle of non-refoulement, Paragraph 1, Article 3 of the UN Convention “Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment” of 1984 states that “no State Party shall expel, return

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<sup>380</sup> See Part 2 of the Article 19 of the Charter of Fundamental Rights of the European Union. [http://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](http://www.europarl.europa.eu/charter/pdf/text_en.pdf).

<sup>381</sup> Hereinafter “European Court”.

<sup>382</sup> See *Said v. The Netherlands* case decision of July 5, 2005, complaint # 2345/02.

(“refouler”) or extradite a person to another State where there are substantial grounds for believing that they would be in danger of being subjected to torture”<sup>383</sup>.

Para. 1(f), Article 89 of the Convention “On Legal Aid and Legal Relations in Civil, Family and Criminal Cases” 2002 stipulates *that “no State Party shall return (“refouler”) or extradite a person, if there are weighty justifications to believe that the query on refoulement is connected with persecution of a person based on their particular racial, sexual, religious, ethnic background or political views”*<sup>384</sup>.

The analysis of the above-mentioned position, the national law and its application practices allow to conclude that there may be cases when a person shall be deported to the country of origin, if their refugee status application has been rejected or terminated. Nevertheless, it is impossible, if there is a substantial risk that they will be subject to torture, cruel, inhuman or degrading treatment or punishment.

In practice, the lack of legal basis for solving these issues leaves those persons in a vulnerable position in terms of legal protection. International law provides an opportunity for additional protection in such cases. For example, in Georgia, *in addition to the refugee status, there is also a humanitarian status granted temporarily to persons who do not meet the criteria for refugee status, but have been forced to leave their country due to violence, external aggression, occupation, internal conflicts, massive human rights violations or significant breach of public order, as well as to those persons who come from neighbouring countries and seek asylum due to natural disasters*<sup>385</sup>.

A similar protection mechanism is also enshrined in the Portuguese legislation. Particularly, *a subsidiary protection is provided to asylum-seekers who are not eligible for refugee status, but cannot return to their country of citizenship or permanent residence due to the threat of massive human rights violations or the risk of suffering severe harm*<sup>386</sup>. This provision allows non-returnees to live in a foreign country with a specific legal status and receive international protection instead of the ineffective national security of their own country.

*Therefore, the following is recommended:*

- 1. The article defining the principle of non-refoulement of the Law shall be revised to include a ban on expulsion or extradition of a person, in the event of a threat of death penalty.*
- 2. The RA legislation shall establish a new legal status to provide additional protection for aliens and stateless persons who do not meet the criteria for refugee status, but are entitled to protection under the principle of non-refoulement.*

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<sup>383</sup> See Paragraph 1, Article 3 of the UN Convention “Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment” of 1984, <http://www.ohchr.org/documents/professionalinterest/cat.pdf>

<sup>384</sup> See Paragraph 1(f), Article 89 of the UN Convention “On Legal Aid and Legal Relations in Civil, Family and Criminal Cases” <http://www.parliament.am/library/APH/195.pdf>

<sup>385</sup> See the Law of Georgia “On Refugees and Humanitarian Status”, Article 4, <http://mra.gov.ge/res/docs/2014022416564743748.pdf>

<sup>386</sup> See Law 27/2008 on Asylum, Article 7, <http://www.refworld.org/docid/48e5c13c8.html>

## ***2. Execution of the rights of asylum-seekers by the State Migration Service of the RA Ministry of Territorial Administration and Development<sup>387</sup> in the “Special Accommodation” SNCO***

In 2017, the RA Human Rights Defender’s authorized representatives visited the “Special Accommodation” SNCO of the State Migration Service<sup>388</sup> to examine the conditions of asylum-seekers and their family members, as well as the compliance of those conditions with international and national legislation. The visitors recorded a number of issues requiring urgent solution. Some of them are presented below:

- 1) The administration of the Accommodation runs a register on “Discipline and Safety Regulations”, which records the consequences of violating the written warnings of the Head of the Accommodation to an asylum-seeker who has violated the internal rules of residence in the Accommodation, set out in Point 12.1 of the Rules for Accommodation and Living Conditions. It should be mentioned, that according to the same Clause, *if an asylum-seeker has violates the internal rules of residence for two or more times, the referral issued to the asylum-seeker is cancelled by the State Migration Service based on the recommendation of the Head of the Accommodation.*

Internal Disciplinary Rules of Residence are defined by the RA Minister of Territorial Administration Order # 10 of August 10, 2016. It defines the rights and obligations of asylum-seekers residing in the Accommodation, as well as the consequences of failure to follow them. Taking into consideration that the failure by asylum-seekers to fulfil the obligations set out in the aforementioned Order or improper performance of their obligations may lead to cancelling their right to reside in the Accommodation, it is crucial to ensure that they are aware of their rights and obligations and make sure that the latter are executed in practice.

During the visit, it was revealed that in practice, the asylum-seekers are introduced with the internal rules of the Accommodation at the time of entry into the latter, and the asylum-seeker signs in the Entry and Exit Registry. However, the internal rules are available only in Armenian. It means that introduction of the internal rules to asylum-seekers is just a formality, if the information is not provided in a language they understand. This creates issues related to the proper exercise of the right of a person to receive information in the language they understand on their rights and obligations, as well as the potential consequences associated with the failure to fulfil their obligations. Moreover, the site visit also revealed that there was no information on the internal rules available in places of general use or other visible parts around the Accommodation that could be used by asylum-seekers.

This issue is created mainly due to the lack of translation. Particularly, in addition to the lack the mentioned documents in a written language known to asylum-seekers living in the Accommodation, there is no oral translation provided, either, due to the lack of a qualified interpreter in place. The administration has noted that everyday communication with asylum-seekers is carried out in English, Russian or any other understandable language. In practice, the

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<sup>387</sup> Hereinafter “State Migration Service”.

<sup>388</sup> Hereinafter “Accommodation”.

mentioned issue can directly affect to proper execution of the rights of asylum-seekers living in the Accommodation.

The European Court has also referred to the right of asylum-seekers living in special facilities to be informed of their rights and responsibilities in a language they would understand. In its Judgment of January 21, 2011 on the case of *M.S.S. v. Belgium and Greece*, the Court noted that *the issues of the asylum procedure include lack of clarity of the information provided, insufficient communication system between state authorities and asylum-seekers, associated with the lack of translators and interpreters*<sup>389</sup>.

Nevertheless, it should be noted that currently, the Accommodation is organizing free of charge Armenian language courses twice a week. During the visits, it was documented that the Accommodation dwellers were able to communicate in Armenian to some extent.

- 1) Issues identified in the Accommodation include the living conditions of asylum-seekers and their family members, as well. Particularly, according to Point 19 of the Procedure for Accommodation of Asylum-seekers and Provision of Living Conditions, *the administration of the centre shall provide the asylum-seekers located in the Accommodation with living conditions, such as meals (three times a day), linen, personal hygiene items, and clothing and footwear, if necessary. Point 21 of the same Procedure establishes that the daily food quota and linen provided to asylum-seekers located in the Accommodation is calculated based on the RA Government Decree # 730-N of May 31, 2007, "On Approving Minimum Standards of Care and Social Services for the Elders and Persons with Disabilities" (Minimum Standards defined by Annexes 2 and 4, respectively).*

In this regard, the issue is primarily related to the meals and the types of food provided to asylum-seekers. In particular, regardless of the religious and ethnic peculiarities of asylum-seekers living in the Accommodation, and the associated ban on certain types of food, asylum-seekers are provided with the same meals. Nevertheless, in practice, the administration of the Accommodation makes efforts to solve this issue, discussing the meals of the day with all residents. However, this is not a way of resolving the issue completely.

This issue has also been discussed during private interviews with asylum-seekers living in the Accommodation. Particularly, the latter mentioned that they often meet challenges with the served food because of their religious peculiarities.

Another issue identified with relation to the living conditions of asylum-seekers is that of sanitary and hygienic conditions. During the private interviews, asylum-seekers complained about the sanitary condition of the kitchen (for example, insects in the kitchen).

Food standards and peculiarities provided to asylum-seekers in special facilities are also set out in the UNHCR Guidelines "On the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention", issued in 2012. In particular, para. 48 (xi) of

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<sup>389</sup> See *M.S.S. v. Belgium and Greece* case decision of 21 January, 2011, complaint # 30696/09, Point 301.

the document states that *“food of nutritional value suitable to age, health, and cultural/religious background, is to be provided. Special diets for pregnant or breastfeeding women should be available. Facilities in which the food is prepared and eaten need to respect basic rules on sanitation and cleanliness”*.

The European Court also touched upon the issue of sanitary and hygienic conditions of accommodation provided to asylum-seekers. In the Judgment of January 21, 2011, on the case of *M.S.S. v. Belgium and Greece*, the Court expressed a position that *the excessive burden of special accommodations for migrants, as well as insufficient sanitary and hygienic conditions may lead to degrading treatment within the meaning of Article 3 (ban on torture) of the UN Convention “On Human Rights”*<sup>390</sup>.

*Therefore, the following is recommended:*

- 1. Asylum-seekers living in the “Special Accommodation” of the Republic of Armenia shall be provided with information on their rights and obligations both in writing and verbally in a language understandable for them.*
- 2. When delivering food to asylum-seekers residing in the Accommodation, the peculiarities of their national and religious background, as well as their physical condition shall be taken into consideration. Proper sanitary and hygienic conditions shall be ensured in the accommodation, particularly in the kitchen.*

### ***3. Execution of the rights of asylum-seekers within the framework of decision making by the State Migration Service***

Within the frameworks of this report, in 2017, the Human Rights Defender’s Office analysed several decisions issued by the State Migration Service on refusing applications of asylum-seekers, as well as on granting refugee status and providing accommodation, in order to clarify their compliance with the international obligations and national legislation of the Republic of Armenia. During the period under review, 151 persons applied for asylum in the Republic of Armenia, and 99 persons received refugee status<sup>391</sup>.

The review of decisions made by the State Migration Service on granting refugee status and providing asylum shows that the decisions are made based on the information on the situation of the country of origin of the asylum-seeker obtained from the well-known and reliable sources. In addition, during the decision-making process, the reliability of the information obtained through interviews with the asylum-seeker are assessed, and the principle of non-refoulement is considered. The decisions also contain relevant evidences, as well as references to international and domestic regulations.

The Human Rights Defender’s Office has also examined the timelines used for the consideration of the applications by the State Migration Service. For example, the asylum applications

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<sup>390</sup> See *M.S.S. v. Belgium and Greece* case decision of 21 January 2011, complaint # 30696/09, Point 222.

<sup>391</sup> See the official website of the State Migration Service, [http://www.smsmta.am/?menu\\_id=151](http://www.smsmta.am/?menu_id=151)

submitted by Syrian citizens were examined within the shortest time possible. Taking into account the well-grounded justification of the applications based on the obviously known internal conflicts in Syria, the applicants were granted refugee status under Part 2 of the Article 6 of the Law. It is noteworthy that all asylum-seekers with this case were granted refugee status.

During the period under review, applications of 14 asylum-seekers were refused. Those decisions were subject to additional examination.

The RA courts have made 17 decisions and judgments on the decisions of the State Migration Service to refuse asylum in the Republic of Armenia in 2017. Two of them were fully satisfied, and one was satisfied partially. The rest of the decisions were rejected by the court<sup>392</sup>.

Review of the decision to refuse asylum in the Republic of Armenia made by the State Migration Service revealed a number of issues that were also documented in the Special Report.

In particular, special attention was paid to the justification of those decisions. According to Part 3 of the Article 52 of the Law, *“decisions on granting asylum made by the State Migration Service should be based on the information on the country of origin of the asylum-seeker, which must be accurate, up-to-date and obtained from a variety of reliable sources (...)”*.

Referring to the reliability of information on the origin of the country, in its Judgment of June 28, 2011, on the case of Sufi and Elmi v. United Kingdom, the European Court mentioned, that *in assessing the weight to be attributed to country material, consideration must be given to its source, in particular its independence, reliability and objectivity. In respect of reports, the authority and reputation of the author, the seriousness of the investigations by means of which they were compiled, the consistency of their conclusions and their corroboration by other sources are all relevant considerations*<sup>393</sup>.

The European Court has referred to obtaining and comprehensive analysis of information in the process of considering an asylum application. As noted, a particular focus shall be attached to the cases when a rejection of asylum application and expulsion of a person bears a substantial risk that the latter will face torture, ill-treatment, or inhuman or degrading treatment or punishment. In particular, in its Judgment of September 22, 2009, on the Case of Abdolkhani and Karimnia v. Turkey, the Court stated that *the notion of an effective remedy under Article 13 requires independent and rigorous scrutiny of a claim that there exist substantial grounds for believing that there was a real risk of treatment contrary to Article 3 in the event of the applicant’s expulsion to the country of destination*<sup>394</sup>.

Moreover, in its Judgment of November 18, 2014, on the Case of M.A. v. Switzerland, the European Court observed that Contracting States have the right as a matter of international law and subject to their treaty obligations to control the entry, residence and expulsion of foreigners<sup>395</sup>. ***However, expulsion by a Contracting State may give rise to an issue under Article 3,***

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<sup>392</sup> See the official website of the State Migration Service, [http://www.smsmta.am/?menu\\_id=151](http://www.smsmta.am/?menu_id=151)

<sup>393</sup> See Sufi and Elmi v. United Kingdom case decision of 20 June 2011, complaints # 8319/07 and #11449/07, Point 230.

<sup>394</sup> See the Case of Sufi and Elmi v. United Kingdom case decision of 22 September, 2009, complaint # 30471/08, Point 108.

<sup>395</sup> See also R.C. v. Sweden case decision of March 9, 2010, complaint # 41827/07, Point 48.

*and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person concerned, if deported, faces an individual and real risk of being subjected to treatment contrary to Article 3*<sup>396</sup>.

Based on the logic of the European Court on the issue under consideration, it can be concluded that during the consideration of asylum application, the State shall conduct a thorough analysis of the obtained reliable and relevant information. Moreover, in situations where there is a substantial risk of violation of Article 3 of the Convention, the competent authority shall take all reasonable and most effective measures to prevent that.

Paragraph 35 of the 5th Guideline on International Protection of the “Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status” issued in December 2011 under the UNHCR Convention and Protocol states that “(...) *Detailed information on the country of origin is required to evidence whether the fear of persecution is objectively justified*”<sup>397</sup>.

In regard of the issue of collection of information on the country of origin, in February 2004, the UNHCR issued a Paper in the framework of the Program on “Country of Origin Information: Towards Enhanced International Cooperation”. According to paragraph 1 of the Paper, the latter “*focuses on policy concerning the provision of country of origin information (COI) and attempts to explore the possibilities in this regard for enhanced co-operation among States, and between UNHCR and States, through a more systematic exchange of information based on common standards*”. As stated in paragraph 9, “the information needed to assess a claim for asylum is both general and case-specific. Decision-makers must assess an applicant’s claim and their credibility and place their “story” in its appropriate factual context, that is, the known situation in the country of origin”. Furthermore, paragraphs from 22 through 50 of the Chapter on Legal safeguards, standards and limitations define the *principles*<sup>398</sup> *of the benefit of the doubt, Selection and evaluation of sources, Accessibility of information and its sources, Information sources in the country of origin, Protection of personal data, Credibility and authoritative of the information provider* in the process of collecting and using information to make a decision on refugee status.

Article 39 of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on Common Procedures for Granting and Withdrawing International Protection states that “*in determining whether a situation of uncertainty prevails in the country of origin of an applicant, Member States should ensure that they obtain precise and up-to-date information from relevant sources such as European Asylum Support Office (EASO), UNHCR, the Council of Europe and other relevant international organisations*”<sup>399</sup>.

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<sup>396</sup> See M.A. v. Switzerland case decision of 18 November 2014, complaint # 52589/13, Point 52.

<sup>397</sup> See para. 35, 5<sup>th</sup> Guideline on International Protection, Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status, December 2011 under the UNHCR Convention and Protocol  
<http://www.unhcr.org/3d58e13b4.pdf>

<sup>398</sup> See the UNHCR Paper issued in the framework of the Program on “Country of Origin Information: Towards Enhanced International Cooperation”, February 2004, paragraphs 1, 9, 22-50, <http://www.refworld.org/pdfid/403b2522a.pdf>

<sup>399</sup> See Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on Common Procedures for Granting and Withdrawing International Protection, Article 39,  
<http://eurlex.europa.eu/legalcontent/EN/TXT/PDF/?uri=CELEX:32013L0032&from=EN>

The European Asylum Support Office also underlines the importance of the quality and accuracy of information on the country of origin. Among the important criterion in collecting information on country of origin, the Office points out *targeted, relevant, reliable, accurate and up-to-date country of origin information in a transparent and impartial manner*<sup>400</sup>. Moreover, the Office has also developed a methodology for collecting and recording information. One of the key approached of the Methodology is the collection of additional information on the country of origin, if necessary, verification and evaluation of research sources, etc.<sup>401</sup>.

A number of manuals have been published on this subject. In particular, the Austrian Red Cross Society, as well as the Austrian Centre for Country of Origin and Asylum Research and Documentation produced a Manual on “Researching Country of Origin Information”. The Manual outlines the quality standards of country of origin information, as well as the international principles of their research and application. In particular, to ensure the *quality of the country of origin information the following quality standards should be present therein: “relevance”, “reliability and balance”, “accuracy and currency” and “transparency and traceability”*. According to this Manual, *country of origin information shall be researched and used based on the basic principles of “impartiality and neutrality”, “equality of arms as regards access to information”, “using public information” and “data protection”*<sup>402</sup>.

Paragraph 2 of the Section on Recommendations in the Chapter on the Use of Country of Origin Information in Reasons for Refusal Letters, in the Paper on the Use of Country of Origin Information in Refugee Status Determination: Critical Perspectives, May 2009, states that *“country of origin information should be used where necessary to address contextual issues as well as for the assessment of case specific questions in relation to the credibility of a claimant’s account as well as the assessment of future risk, should the claimant be returned to their country of origin”*. Furthermore, para. 8 defines that *“good practice guidelines in the use of country of origin information should be developed and incorporated into the Asylum Policy Instructions as well as the standard training and accreditation process (...)”*<sup>403</sup>.

However, review of decision on refusing asylum made by the State Migration Service shows that there is a room for improvement of the procedures for obtaining country of origin information of asylum-seekers, which also required expansion of country of origin information sources to ensure the quality of justification of decision. In practice, information used for making a decision, in most cases is not up-to-date (having a minimum of 3 months validity). Based on international best practice, the obtained country of origin information should be up-to-date, and the scope of sources should be broad enough to ensure that the decisions made are well-justified.

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<sup>400</sup> See official website of the European Asylum Support Office, <https://www.easo.europa.eu/country-of-origin-information>

<sup>401</sup> See the European Asylum Support Office Country of Origin Information Report methodology, [https://coi.easo.europa.eu/administration/easo/PLib/EASO\\_COI\\_Report\\_Methodology.pdf](https://coi.easo.europa.eu/administration/easo/PLib/EASO_COI_Report_Methodology.pdf)

<sup>402</sup> See the Manual on “Researching Country of Origin Information”, prepared by the Austrian Red Cross Society and the Austrian Centre for Country of Origin and Asylum Research and Documentation, 2013, p. 30

<sup>403</sup> See “The Use of Country of Origin Information in Refugee Status Determination: Critical Perspectives, May 2009”, Chapter on the Use of Country of Origin Information in Reasons for Refusal Letters, Recommendations, paragraphs 2 and 8, <http://www.refworld.org/pdfid/4a3f2ac32.pdf>

For the proper implementation of the above-mentioned requirements, it is necessary to set up a stable and clear mechanism for obtaining information, which will also ensure realization of the rights of asylum-seekers. In this regard, it is particularly important to follow the principle of confidentiality of information of asylum-seekers, given that sometime information collection practices may lead to disclosure of information to a third country. It is also important to ensure collection of country of origin information in different languages and proper translation thereof. This will enable examination of more reliable country of origin information, both through translated and original sources.

*Therefore, it is necessary to study international standards on the practice and methodology of obtaining high quality and reliable information on the country of origin of asylum-seekers and ensure their practical application by training the relevant personnel, as well as organizing collection and translation of the information on the country of origin of asylum-seekers.*

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